IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.648 of 2011
With
Interlocutory Application No. 734 of 2011

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Sanjeet Kumar son of Sri Shankar Prasad, resident of Mohalla Hathsarganj, Police Station, Hazipur, District Vaishali (Hazipur)

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Petroleum, New Delhi
2. The General Manager, Indian Oil Corporation Ltd. Vth Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chauraha, Patna
3. The Managing Director, Indian Oil Corporation Ltd. Ist Floor, Shahi Complex, Exhibition Road, Patna
4. The Senior Area Manager (Indane Area Office), Indian Oil Corporation Ltd. Ist Floor, Shahi Complex, Exhibition Road, Patna
5. Rabindra Kumar Pandey son of Sri Ganesh Pandey, resident of Village Hakma, Post Garkha, P.S.Garkha, District Saran (Chapra)
6. Dwarika Nath Kapoor son of not known, Domestic Gas Appliances, resident of Mohalla Dak Bunglow Road, Police Station Town, District Saran (Chapra)

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hemendra Prasad Singh, Sr.Advocate Mr.Pramod Ban Bihari Singh, Advocate
For the Respondent No.1	:	Mrs. Kanak Verma, CGC
For the Respondent Nos. 2 to 4	:	Mr. Kali Das Chatterji, Sr.Advocate Mr.Amlesh Kumar Verma, Advocate
For the Respondent No. 5	:	Mr.Bindhyachal Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
CAV JUDGMENT
Date: 03 -08-2015

The matter at issue is the award of LPG (Indane) distributorship under open category at location Garkha in the district of Saran (Bihar) under marketing plan 2008-2010 on the basis of advertisement dated 19.01.2009 (Annexure-1).

2. The petitioner, second empanelled candidate, has filed the present writ petition under Article 226 of the Constitution of India for the reliefs enumerated in paragraph 1 of the writ petitioner inter alia : (a) for setting aside the letter of Intent dated 23.09.2010

(Annexure-6) issued by the respondent no.4 in favour of the respondent no.5, (b) for re-consideration of the case of the petitioner and for grant of letter of Intent in his favour, (c) for re-casting of the merit list dated 04.11.2009 (Annexure-4) of all the empanelled candidates for award of LPG distributorship in question, wherein the respondent no.5 has been shown to be the first empanelled candidate and the petitioner has been shown to be the second empanelled candidate, and (d) for a direction to the respondent Indian Oil Corporation Limited to hold fresh interview of all the candidates including the petitioner and the respondent no.5 for award of LPG distributorship at the location in question.

3. The relevant facts which are necessary for disposal of the present proceeding are as under:

A common advertisement dated 19.01.2009 (Annexure-1) was issued by the Indian Oil Corporation Limited (IOCL) (hereinafter to be referred to as the Corporation), Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL) inviting applications from the eligible candidates for award of LPG distributorship by the aforesaid three Oil Companies at different locations in the State of Bihar including that at Garkha in the district of Saran (Bihar). So far as LPG distributorship at location Garkha under Open Category is concerned, that was to be distributed by the respondent Corporation. In response to the aforesaid advertisement, the petitioner, respondent no.5 and other candidates, total being 58 in numbers, submitted their application forms for award of LPG distributorship at the location in question. Interview of the candidates including that of the petitioner and the respondent no.5, was conducted by the Selection Committee of the respondent Corporation from 02.11.2009 to 04.11.2009. Accordingly, a merit list of all the empanelled candidates for award of LPG distributorship in question was prepared on 04.11.2009 (Annexure-4), wherein respondent no.5 was shown to be the first empanelled candidate having secured 96.50 marks out of 100 marks and the petitioner was shown to be the second empanelled candidate having secured 96 marks.

4. The petitioner, being aggrieved by the aforesaid merit list (Annexure-4), filed a complaint petition before the respondent Corporation and its officials alleging therein that the respondent no.5 has concealed certain material facts and has given certain wrong facts as a result of which he was wrongly allotted 96.50 marks and was placed at first position in the merit list. It was also pointed out that, in fact, the respondent no.5 was set up by the respondent no.6 for award of LPG distributorship in question. It was specifically pleaded that the respondent no.5 was an employee, working as a salesman of the respondent no.6. A copy of complaint petition filed by the petitioner before the officials of the respondent Corporation has been brought on the record as a part of Annexure-5 series of the writ petition.

5. Mr.Hemendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner submitted that the respondent no.5 is a poor employee earning Rs.2500/- per month only as salary and is working as salesman at Domestic Gas Appliances, Chapra which belongs to the respondent no.6. According to him, as a matter of fact, the respondent no.5 has been set up by the respondent no.6 for award of LPG (Indane) distributorship at location in question and he has no sufficient means/resources for running the LPG distributorship in question. It was further submitted that the petitioner secured 96 marks out of 100, whereas the respondent no.5 was awarded 96.50 marks. It was contended that if wrong information furnished by the respondent no.5 regarding his income and financial position are excluded, then he could not have been allotted 96.50 marks. Therefore, it was pleaded that the merit list as contained in Annexure-4 to the writ petition is required to be re-prepared/re-cast by the respondent Corporation showing the petitioner to be the first empanelled candidate and entitled for award of LPG distributorship. According to him, clause 14 of the Brochure of the respondent Corporation has not been properly complied with for award of marks to the respondent no.5. On these grounds, besides other incidental grounds, it is contended by the learned senior counsel that letter of Intent dated 23.09.2010 (Annexure-6) issued in favour of the respondent no.5 and all other consequential actions of the respondent Corporation are liable to be set aside and quashed by this Court. In support of the above contentions, he placed reliance on the judgments of the Hon'ble Apex Court in the cases of **Anil Kumar Singh Vs. The Chairman, Dealers Selection Board , Patna [2004 (1) PLJR (SC) 30]** and **Shiv Kant Yadav Vs. Indian Oil Corporation [AIR 2007 SC 1534]**. He has further placed reliance on the judgment of a learned single judge of this Court in the case of **Zullfikar Alee Vs. The Union of India through its Secretary, Ministry of Petroleum [2015 (2) PLJR 316].**

6. Au-contraire, the matter has been strongly contested by Mr. K.D.Chatterji, learned senior counsel appearing on behalf of the respondent nos. 2 to 4 and Mr.Bindhyachal Singh, learned counsel appearing on behalf of the respondent no.5. According to them, the present writ petition is liable to be dismissed and the petitioner is not entitled to get any relief in the given facts of the case.

7. Mr.Chatterji, learned senior counsel, by referring to the averments made in the counter affidavit filed on behalf of the respondent nos. 2 to 4, submitted that the written complaint filed by the petitioner on 25.11.2009 against the preparation of merit list and allotment of higher marks to the respondent no.5 than the petitioner was duly investigated by a senior official of the respondent Corporation and he submitted his investigation report on 10.07.2010 (Annexure-A to the aforesaid counter affidavit) reporting therein that the allegations of the petitioner against the respondent no.5 were not substantiated during the course of field investigation. It was further submitted that the statements made by the respondent no.5 in his application with respect to his income, financial status and valuation of immovable properties were found to be correct. According to him, in view of the findings recorded in the aforesaid field investigating report, wherein allegations of the petitioner against wrong preparation of the merit list and giving higher marks to the respondent no. 5 were found to have not been substantiated and proved, letter of Intent was issued in favour of the respondent no.5 way back in the year 2010 and subsequently letter of Appointment was also issued in favour of the respondent no.5 and LPG distributorship was commissioned in the year 2011 and since then it is running smoothly, therefore, at this belated stage, it may not be desirable to interfere with the selection and functioning of the respondent no.5 as LPG distributor for the location in question in view of various judicial pronouncements made by the Hon'ble Apex Court as also by this Court. In support of the above contentions, he placed heavy reliance on the judgments of the Hon'ble Apex Court in the cases of **K.Vinod Kumar Vs. S.Palanisamy [(2003) 10 SCC 681 : 2003 (4) PLJR (SC) 175]** as also **Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Limited [(2014) 3 SCC 493].** He has further placed reliance on the judgment of a learned single judge of this Court in the case of **Tej Pratap Singh Vs. The Union of India [2000(1) PLJR 935].**

8. Mr.Bindhyachal Singh, learned counsel, by referring to the averments made in the counter affidavit filed on behalf of the respondent no.5, submitted that the allegations of the petitioner that the respondent no.5 was set up by the respondent no. 6 for award of LPG distributorship at location in question is absolutely false and wrong. He also pointed out that the complaint petition filed by the petitioner was thoroughly investigated by an official of the respondent Corporation, but the allegations made in the complaint petition against the respondent no.5 were not substantiated during course of field investigation, though the statements made by the respondent no.5 about his annual income, his financial status and fulfilling all other conditions for award of LPG distributorship in question were found to be correct. According to him, the claims raised on behalf of the petitioner in the writ petition are within the realm of disputed question of facts and therefore, he is not entitled to get relief in the present proceeding filed under Article 226 of the Constitution of India in view of the various judicial pronouncements of the Hon'ble Apex Court as also by this Court. It is further contended by him that after issuance of letter of Intent dated 23.09.2010 (Annexure-6), the respondent no.5 invested huge money for preparation/construction of the show room and godown and for purchasing other required equipments for commissioning the distributorship in question. The respondent Corporation, being satisfied about the infrastructures created by the respondent no.5, issued letter of Appointment in his favour on 27.04.2011, whereafter LPG distributorship was commissioned in the month of May, 2011 and since then, it is running smoothly and consumers are being benefited by supply of LPG cylinders. It is pleaded that any interference by this Court at this belated stage would be contrary to the commercial interest of the respondent Corporation and interest of the general public. It is also pleaded that in the given circumstances of the case, the writ petition is liable to be dismissed with costs. In support of the above contentions, he placed reliance on the judgments of the Hon'ble Apex Court in the cases of **Popcorn Entertainment Vs.City Industrial Development Corporation [(2007) 9 SCC 593], Tata Cellular Vs.Union of India [(1994) 6 SCC 651], Virender Chaudhary Vs.Bharat Petroleum Corporation [AIR 2008 SC (supp.) 1160], Sanjay Kumar Shukla Vs Bharat Petroleum Corporation Limited (supra), and K.Vinod Kumar Vs. S.Palanisamy (supra).** He has also placed reliance on the judgments of this Court in the cases of **Tej Pratap Singh Vs.Union of India (supra), NIIT Ltd.Vs. Bihar State Electronics Development Corporation Ltd. [2007 (3) PLJR 438], The Hindustan Petroleum Corporation Vs. The Union of India [2008 (3) PLJR 350] and Dhananjay Singh Vs.Union of India [2010 (1) PLJR 59].**

9. The issues of law canvassed by learned counsel appearing on behalf of the parties in support of their respective cases are no longer res integra and are rather settled. In the case of **Raunaq International Limited Vs. I.V.R. Construction Limited [(1999) 1 SCC 492],** the Hon'ble Apex Court has observed in paragraph 9 that award of any contract, whether it is by a private party or by a public body or the State, is essentially commercial transaction. In arriving at a commercial decision regarding commercial transactions, commercial consideration are of a paramount importance.

10. While considering the scope of judicial review under Article 226 of the Constitution of India regarding a contractual matter, similar view was expressed by the Hon'ble Apex Court in the case of **AIR India Limited Vs. Kochin International Airport Ltd. [(2000)**

2 SCC 617] and for better appreciation, relevant portion of paragraph 7 of the said judgment is reproduced hereinbelow :

> "The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations..……………. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene".

11. In yet another decision in the case of **Jagdish Mandal Vs.State of Orrisa [(2007) 14 SCC 517]** while considering once again the scope of judicial review with respect to award of contracts, the Hon'ble Apex Court has observed in paragraph 22 of the aforesaid judgment as under:

> "Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial

> transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold."

12. Recently, in the case of **Sanjay Kumar Shukla Vs.Bharat Petroleum Corporation Limited (supra),** the Hon'ble Apex Court has sounded a word of caution in paragraph 19 of the said judgment by observing therein that the entertainment of a writ petition in contractual matters, can entail serious consequences. In the words of Hon'ble Apex Court "delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast-changing economic/market scenario are some of the pitfalls that may occur".

13. Now, coming to the present case, on consideration of the submissions made by learned counsel appearing on behalf of the parties and the materials available on the record, this Court is of the opinion that the petitioner has not been able to demonstrate that there has been violation of any mandatory clause/provision either of the advertisement (Annexure-1) or the Brochure of the respondent corporation. The complaint filed by the petitioner with certain allegations against the respondent no.5 was investigated by a senior official of the respondent Corporation, but those allegations were found not substantiated during the course of field investigation. The petitioner has not alleged mala fide or bias against any of the respondents. It is not in dispute that letter of Intent (LOI) for the LPG distributorship in question was issued by the respondent Corporation in favour of the respondent no.5 way back on 23.09.2010. In view of rejection of complaint petition filed by the petitioner, subsequently, letter of Appointment (LOA) was issued in favour of the respondent no.5 on 27.04.2011 and accordingly after execution of an agreement between the respondent no.5 and the respondent Corporation, LPG distributorship at the location in question was commissioned way back in May, 2011 and for the last more than four years it is running smoothly. Public at large, and/or for that matter consumers/beneficiaries have not raised any complaint about functioning and working of the respondent no.5 as LPG distributor at the location in question.

14. In above view of the matter, this Court does not feel persuaded to interfere with the allotment of LPG distributorship in question in favour of the respondent no.5, particularly, in the background that subsequent actions of the respondent Corporation regarding issuance of letter of Appointment (LOA) and commissioning of the LPG distributorship in question have not been challenged by the petitioner by filing any interlocutory application.

15. For the reasons recorded above, the writ petition has to fail and is, accordingly, dismissed, but the parties are left to bear their own costs. I.A.No. 734 of 2011 stands accordingly disposed of.

(Birendra Prasad Verma, J)

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