

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2233 of 2011

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Sakendra Singh Dhrub S/O Late Harish Chandra Singh, resident of Village Hasanpur, Police Station Hasanpur, District Samastipur.

.... Petitioner/s

Versus

1. The Hindustan Petroleum Corporation Ltd. through its Chairman, 17 Jamshedji Tata Road, District, Mumbai.
2. The Chairman, the Hindustan Petroleum Corporation Ltd., 17 Jamshedji Tata Road, Mumbai.
3. The Divisional General Manager, East Zone, the Hindustan Petroleum Corporation. Ltd., 10 Industries House, Camac Street, Kolkata.
4. The Regional Manager, the Hindustan Petroleum Corporation Ltd., Patna L.P.G. Region, 6th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Chowk, Patna.
5. Mrs. Anguri Praveen @ Angoori Pravin W/O Md. Shahjahan Naddaf, resident of Village Simaria, Police Station Kashwa, District Purnea (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
For the Respondent Nos. 1 to 4 : Mr. Laxmi Narayan Das, Advocate
For the Respondent No. 5 : Dr. Pankaj, Advocate.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 10-07-2015

The matter at issue in the present proceeding filed under Article 226 of the Constitution of India is the validity and correctness of award of LPG distributorship of the Hindustan Petroleum Corporation Limited (HPCL) at location Bhawanipur in the district of Purnea reserved for the defence personnel category on the basis of the advertisement dated 19.01.2009 (Annexure-1).

2. It is not in dispute that Indian Oil Corporation Limited (IOCL), Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL) came out with a common advertisement published on 19.01.2009 in Hindi Daily News Paper "Hindustan" (Annexure-1) inviting applications from eligible candidates for award of LPG distributorship under different categories at different locations in the State of Bihar. In the aforesaid



advertisement, at serial no. 30, location advertised was Bhawanipur in the district of Purnea earmarked for defence personnel category (in short “DC”) and dealership was to be awarded by the respondent HPCL under the marketing plan 2008-2010. It is also not in dispute that the petitioner, being an ex-service man, and the respondent no.5, claiming to be the dependant of her deceased father, who was ex-service man and having died in the War, besides other eligible candidates, submitted their applications in the prescribed format within the time prescribed in the advertisement. All the eligible candidates including the petitioner and the respondent no.5 were issued interview letters and accordingly, interview of the eligible candidates was held on 06.07.2009. On the basis of interview conducted by the Selection Committee of the respondent HPCL, a merit list was prepared on 06.07.2009 itself. In the aforesaid merit list/panel (Annexure-5), one Sushil Kumar was placed at 1st position, respondent no.5 was placed at 2nd position and petitioner was placed at 3rd position.

3. It is the common case of the parties that for the reasons best known, 1st empanelled candidate Sushil Kumar did not accept the offer of the respondent HPCL for operating LPG distributorship at location in question, whereafter, the respondent no.5, being the 2nd empanelled candidate, was offered the LPG distributorship and field verification was conducted. Thereafter, she was issued letter of intent dated 23rd April, 2010 and finally she was awarded dealership by letter dated 26th August, 2010. The aforesaid letter of intent (LOI) dated 23rd April, 2010 and letter of award (LOA) dated 26th August, 2010 have been brought on record as Annexure-D series to the counter affidavit filed on behalf of the respondent no.5. In view of issuance of aforesaid letter of intent and letter of award, LPG distributorship at location in question was made operational.

4. Learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of issuance of impugned letters of intent and award of LPG distributorship in favour of the respondent no.5, submitted that at the time of issuance of advertisement on 19.01.2009, the respondent no.5 was married with one Md.Shahjahan Nadaf and she was employed as Prakhanda teacher and was working on that post since 15.06.2006 at Middle School Bochgoan in the district of Purnea. Therefore, she was no longer dependant of her deceased father, who was ex-service man, Hence, she was not eligible to apply for LPG distributorship at location in question. It is further submitted that the respondent no.5 concealed the material facts while submitting her application form for award of LPG distributorship and by committing fraud and manufacturing fabricated documents, she succeeded in obtaining LPG distributorship at location in question. According to the learned counsel, selection/appointment of the respondent no.5 by the respondent HPCL for the LPG distributorship was contrary to the terms and conditions of the advertisement, as contained in Annexure-1, as also contrary to the provisions of Information Brochure (Annexure-2) issued by the respondent HPCL. Hence, selection of the respondent no.5 and award of LPG distributorship in her favour for location in question is liable to be quashed and set aside by this Court. Thereafter, the petitioner, being the only left out eligible candidate in the merit list, is entitled to be awarded LPG distributorship for location in question. In support of his above contentions, he has placed reliance on various judgments of Hon'ble Apex Court as also of this Court including that in the cases of *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav [(2003) 3 SCC 437]*, *B.R.Chowdhury Vs. Indian Oil Corporation Limited [(2004) 2 SCC 177]*, *A.P.Public Service Commission Vs. Koneti Venkateswarulu [(2005) 7 SCC 177]*, *Shiv Kant Yadav Vs. Indian*

Oil Corporation Limited [(2007) 4 SCC 410], T.Vijendradas Vs.M.Subramanian [(2007) 8 SCC 751] and M/s Indian Oil Corporation Limited Vs. Raj Kumar Jha [2012 (2) PLJR 783(DB)].

5. Per contra, learned counsel appearing on behalf of the respondent nos. 1 to 4 and learned counsel appearing on behalf of the respondent no.5 have strongly opposed the prayer made on behalf of the petitioner and have supported the impugned actions of the respondents.

6. Learned counsel appearing on behalf of the respondent nos. 1 to 4 submitted that the respondent no. 5 was at 2nd place in the panel of the selected candidates and since 1st empanelled candidate refused to accept the offer for operating LPG distributorship at the location in question, therefore, the offer was made to the respondent no.5 and after field verification it was found that she fulfils all the conditions for award of LPG distributorship. Accordingly, letter of intent was issued in her favour and finally she was awarded LPG distributorship in the year 2010. According to him, as per materials produced by the respondent no.5 she was married on 01.11.2010, though advertisement in question was issued on 19.01.2009 and therefore, she was held to be dependant of her deceased father, an ex-service man. He further contended that she had tendered her resignation from the post of Prakhanda teacher on 23rd August, 2010 and, therefore, she was no longer in government service. Hence she was awarded LPG distributorship.

7. Learned counsel appearing on behalf of the respondent no.5, by referring to the averments made in the counter affidavit filed on her behalf, submitted that respondent no.5 was married on 01.11.2010 with one Md.Shahjahan, but at the time of issuance of advertisement and the selection process being continued, she was still unmarried, and she, being dependant of her deceased father, an ex-



service man, she was eligible to apply for the LPG distributorship reserved for the defence personnel category and thus she was rightly awarded LPG distributorship by the respondent Corporation. Learned counsel further submits that though the respondent no.5 was employed as Prakhanda teacher, but she had tendered her resignation on 23rd August, 2010. Therefore, according to him, the award of LPG distributorship in favour of the respondent no.5 cannot be legally faulted. He also contended that after award of LPG distributorship, respondent no.5 has invested huge money. Therefore, equity demands that she should be allowed to run the LPG distributorship and at this belated stage that may not be interfered with by an order passed by this Court. In support of his above contentions, he has also placed reliance on several judgments of Hon'ble Apex Court as also of this Court including that in the cases of *Union of India Vs. Sayed Muzaffar Mir* (AIR 1995 SC 176), *Virender Chaudhary Vs. Bharat Petroleum Corporation* [(2009) 1 SCC 297] and *Moumita Poddar Vs. Indian Oil Corporation Limited* [(2010) 9 SCC 291].

8. Before considering rival submissions made on behalf of the parties, it would be relevant to mention that in the advertisement dated 19.01.2009 (Annexure-1), clause 3 prescribed qualifications for the eligible candidates. So far as the defence personnel category (DC) is concerned, qualification/eligibility has been prescribed under Clause 3 (kha). According to this clause, the candidate must be a personnel of Armed Forces (viz: Army, Navy and Air Force) and/or widows and dependants of those armed forces killed/died in the war. In the information Brochure prepared by the respondent HPCL for selection of HP Gas distributors (Annexure-2) which was in vogue during the market plan under which the advertisement in question was issued, clause 4.5 prescribes disqualification. In clause 4.5(d) it has been provided that if any



person is allotted the distributorship by giving wrong information or by suppression of information, then it will be cancelled. Clause 5 (b) of the aforesaid brochure prescribes the eligibility criteria. Clause 16 provides for field verification in the manner indicated therein and clause 23 provides that if any information furnished by the applicant is found to be false at any point of time either before or after award of dealership, the same will be cancelled forthwith and in case distributorship has been commissioned, the same shall be terminated.

9. On examination of the conditions indicated in the advertisement and the provisions made in the brochure (Annexures-1 and 2 respectively), it is apparent that the petitioner or the respondent no.5 could have been eligible for submission of their applications for award of LPG distributorship at location in question provided he/she was either ex-service man or widow/dependant of the armed forces who died in war . So far as the petitioner is concerned, there is no dispute that he is an ex-service man. Therefore, he was eligible to apply for award of LPG distributorship at location in question. However, so far as the respondent no. 5 is concerned, she submitted her application only on the ground that her father was an ex-service man, who died in war and she, being the dependant of her deceased father, was eligible for allotment of LPG distributorship.

10. Admittedly, the respondent no.5 was appointed as Prakhanda teacher in the year 2006 and since then she was working in a Middle school in the district of Purina and this fact has been admitted even by the respondent no.5. in her counter affidavit. However, according to the respondent no.5, she tendered her resignation from that post on 23rd August, 2010 and her resignation letter has been brought on record as part of Annexure- D series to the counter affidavit filed on her behalf. From perusal of the aforesaid letter dated 23rd August, 2010 it is apparent that her resignation was



accepted on 10th September, 2010. The respondent no.5 has brought on record her application form as Annexure-B to her counter affidavit, which she had submitted for award of LPG distributorship at location in question. In the aforesaid application form, in marital status column she claimed to be single, which means that on the date of submitting application form she was still unmarried. Column 12 was for experience. In that column she has claimed that she was working with Bharat Gas distributor in the district of Katihar from 14.08.2007 to 30.10.2008, though indisputably during that period she was working as Prakhanda teacher in the district of Purnea. In column 17 of her application form she had given an undertaking that information given in the application was true and correct and if any information is found to be wrong and false, then she will be ineligible for the LPG distributorship. Document at Annexure-6 to the writ petition is the information supplied under the Right to Information Act, which shows that she was working on the post of Prakhanda teacher since 15.06.2006 and at the time of her appointment as Prakhanda Teacher (Block Teacher), she had given her declaration about her marital status. Her aforesaid declaration is part of Annexure-6 and there she has said that she was married with one Md.Shahjahan Nadaf.

11. From the facts noticed above, one thing is very evident that in the year 2006 particularly with effect from 15.06.2006, respondent no.5 was working as Prakhanda teacher and at the time of her appointment she was married. Therefore, when the advertisement as contained in Annexure-1 was published on 19.01.2009 she was not dependant of her deceased father, as she was neither unmarried nor she was unemployed at that point of time. That being the factual position, she was not eligible to apply for LPG distributorship at location in question, which was exclusively reserved for the defence personnel category. Furthermore, this Court finds that while



submitting her application form vide Annexure-B to her counter affidavit, she had concealed material facts about her marital status as also about her employment. In fact, she successfully misled the respondent Corporation by giving wrong information about her experience. If she was working as Prakhanda teacher in the district of Purnea, then she could not have been working with M/s Bharat Gas Distributor in the district of Katihar from 14.08.2007 to 30.10.2008. Furthermore, as per letter of intent dated 23rd April, 2010, the respondent HPCL had put a condition under Clause 5 of that letter that if she was already employed then she will have to submit acceptance of her resignation letter from her employer prior to issuance of appointment letter by the Corporation. In the present case, though the respondent no.5 submitted her resignation letter on 23rd August, 2010, but that was accepted on 10th September, 2010, yet the respondent Corporation issued letter of award on 26th August, 2010 with effect from 26.06.2010. Thus, it is apparent that the respondent Corporation and its functionaries have also not acted in fair and just manner.

12. In the case of *Indian Oil Corporation Limited Vs. Raj Kumar Jha (supra)*, a Division Bench of this Court, of which I was also a party, has observed that the Oil Company/Corporation being the State within the meaning of Article 12 of the Constitution is supposed to act fairly, reasonably and uniformly and has to be objective in its approach. Once the standard is set out in the advertisement or brochure issued by the Oil Company/Corporation, then they are bound to adhere to said standard without any variation. In the present case, from the facts discussed above, it is apparent that the respondent Oil Company/Corporation has not followed the terms and conditions indicated in the advertisement (Annexure-1) and the brochure (Annexure-2) as also the letter of intent issued to the



respondent no.5 on 23rd April, 2010 (part of Annexure-D series) and in a most arbitrary manner has awarded LPG distributorship in favour of the respondent no.5, though she was ineligible and had suppressed many material facts, which all have been noticed above. Respondent no.5 further appears to have manufactured the document of her experience in the district of Katihar, though she was indisputably posted and working as Prakhanda Teacher (Block Teacher) in the district of Purnea. She also appears to have committed fraud by giving wrong information about her marital status. From her declaration made in the year 2006 at the time of her appointment as Prakhanda Teacher, it is apparent that she was married at that time, but while making application for award of LPG dealership she concealed this material fact and falsely claimed that she was married with Md.Shahjahan Nadaf alias Md.Shahjahan on 01.11.2010.

13. The Hon'ble Apex Court in the case of **A.V.Papayya Sastry Vs.Govt. of A.P. [(2007) 4 SCC 221]** has observed that fraud vitiates all the judicial acts, whether in rem or in personam. It has further observed that any order obtained by practicing fraud has to be treated as non est and nullity. While defining fraud, the Hon'ble Apex Court has observed in paragraph 26 as under :

“Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of “finality of litigation” cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.”

In paragraph 21 of the aforesaid judgment, the Hon'ble Apex Court has further noticed that the Chief Justice Edward Coke

proclaimed three centuries ago that “Fraud avoids all judicial acts, ecclesiastical or temporal”. The principles laid down above have been reiterated by the Hon’ble Apex Court once again in the case of ***T.Vijendradas Vs.M.Subramanian (supra)***.

14. The Hon’ble Supreme Court has consistently held that suppression of material information and making a false statement has a clear bearing on the character and antecedents of a candidate in relation to any selection process. If a candidate has suppressed the material information and/or has given a false information cannot claim a right to continue in service or to continue to have the benefit of such selection process and in such circumstances, the candidature of such candidate is liable to be terminated at any stage by the competent authority. Reference can be made to the cases of ***Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav (supra)***, ***B.R. Chowdhury Vs. Indian Oil Corporation Limited (supra)***, ***A.P. Public Service Commission Vs. Koneti Venkateswarulu (Supra)*** and ***Shiv Kant Yadav Vs. Indian Oil Corporation Limited (supra)***.

15. In the present case, the respondent no.5 is apparently guilty of suppression of material facts and she could obtain LPG distributorship by practicing fraud upon the respondent Corporation by using manufactured documents. Above all, she was not eligible for award of LPG distributorship at location in question, as she was married at the time of submission of application form and was in government service. Therefore, she was no longer a dependant of her deceased father, an ex-service man, which was a pre-condition for submission of application form for award of LPG distributorship at location in question. The respondent Corporation also does not appear to have acted fairly and has not adhered to the terms and conditions of advertisement as also the brochure, as contained in Annexdures-1 and 2 respectively. Therefore, the selection of the respondent no.5 and

consequential award of LPG distributorship in her favour for location in question are vitiated and cannot be sustained in law.

16. For the reasons recorded above, letter of intent dated 23rd April, 2010 as also the letter of award dated 26th August, 2010 issued in favour of the respondent no.5 (Annexure-D series to the counter affidavit filed on behalf of the respondent no.5) and all consequential actions of the respondent Corporation are hereby set aside and quashed. Since this Court has come to the conclusion that the respondent no. 5 was ineligible, and the petitioner being the next eligible candidate in the panel, he is declared to be entitled to be awarded LPG distributorship for location in question. In above view of the matter, the respondent nos. 1 to 4 are hereby directed to issue letter of intent in favour of the petitioner and on fulfillment of the conditions by him, he will be issued the letter of award of LPG distributorship for location in question. The respondent Corporation and its functionaries shall make all endeavour to conclude entire procedures at an early date preferably within a period of three months from the date of receipt/production of a copy of this order.

17. In the result, the writ petition stands allowed with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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