IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.421/2015

Narendra s/o Pundlik Nagarale
...Versus...
Hindustan Petroleum Corporation Ltd., Mumbai through its Managing Director/C.E.O. and others

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri D.V. Siras, Advocate for petitioner
Shri P.D. Meghe, Advocate for respondent nos.1 and 2

CORAM : SMT. VASANTI A. NAIK AND A.I.S. CHEEMA, JJ.
DATE : 03.09.2015

By this petition, the petitioner impugns the order of the respondent – H.P.C.L., rejecting the candidature of the petitioner on the ground that the petitioner was wrongly allotted marks on the assumption that the petitioner had an amount of Rs.3,94,655/- in the savings account though the said amount was in the current account of the Bank.

The petitioner had applied for L.P.G. distributorship in pursuance of an advertisement issued by the H.P.C.L. As per the advertisement, certain marks were to be alloted to the applicants on the basis of the amount lying in the savings bank account on the date of application. The petitioner applied for L.P.G. distributorship by stating in the application that an amount of Rs.3,94,655/- was lying in the savings bank account of the petitioner. The candidature of the petitioner was considered as the petitioner was allotted marks on the assumption that the aforesaid amount was lying in the savings bank account of the petitioner. However, after the candidature of the petitioner was accepted and the petitioner was selected, it was found on enquiry that the amount so mentioned was not to be found in the savings bank account of the petitioner but was shown to be the credit balance in the current account of the petitioner. Since the petitioner was wrongly allotted the marks on a belief that an amount of Rs.3,94,655/- was lying in the savings bank account of the petitioner, the respondent – H.P.C.L. issued the communication informing the petitioner about the wrongful allotment of the marks to the petitioner and the rejection of his candidature. The petitioner has challenged the impugned communication in the instant petition.

It is submitted on behalf of the petitioner by placing reliance on the brochure of the respondent – H.P.C.L that it was not necessary for the applicant to possess the amount in the savings bank account and marks could have been allotted even there was any other resource which could be readily converted into liquid cash on the date of the advertisement. It is stated that since the amount of Rs.3,94,655/- was the credit balance in the current account of the petitioner, the same could have been converted into liquid cash. It is stated that the rejection of the candidature of the petitioner was illegal. The learned Counsel for the petitioner states that the condition in the advertisement is directory and not mandatory. The learned Counsel relied on the judgment reported in ***(2003) 10 Supreme Court Cases 681 (K. Vinod Kumar...Versus...S. Palanisamy and others)*** to canvass that the condition in the advertisement of possessing the amount in the savings bank account could be fulfilled even subsequent to the selection.

On the other hand, it is submitted on behalf of the respondent – H.P.C.L. that it was clearly mentioned in the advertisement that marks would be allotted to the applicants only on the basis of the amount lying in the savings bank account of the applicants. It is stated that the petitioner has misled the respondent – H.P.C.L. by stating in the application that an amount of Rs.3,94,655/- was the balance in the savings bank account of the petitioner. It is stated that a certificate of the Bank of Maharashtra was also submitted by the petitioner to show that the balance amount of Rs.3,94,655/- was lying in savings bank account No.60079275615. It is stated that the respondent – H.P.C.L. was misled by the statements made by the petitioner in the application as also the certificate and the Corporation wrongly allotted more marks to the petitioner on a belief that the petitioner had possessed an amount of Rs.3,94,655/- in the savings bank account. It is stated that since the petitioner had applied in pursuance of the advertisement with open eyes, the amount should have been possessed by the petitioner in the savings bank account only and the petitioner cannot rely on the brochure of the H.P.C.L, if there is a variance between the eligibility condition in the advertisement and the brochure, more so, when the petitioner has not challenged the condition in the advertisement as bad in law being contrary to the condition prescribed in the brochure. It is stated that in the circumstances of the case, the candidature of the petitioner was rightly rejected.

On hearing the learned Counsel for the parties, it appears that the respondent – H.P.C.L. was justified in rejecting the candidature of the petitioner. The petitioner has not annexed the advertisement to the petition. The statement made on behalf of the respondent that there was a condition in the advertisement that marks could be allotted on the basis of the amount lying in the savings bank account of the applicants is not disputed. There is reason to believe that such the condition must be existing in the advertisement as the petitioner had clearly stated in the application that an amount of Rs.3,94,655/- was the balance in the savings bank account of the petitioner. Also, a certificate of the concerned Bank was annexed to the application to show that an amount of Rs.3,94,655/- was lying in the savings bank account of the petitioner. The number of the savings bank account was also mentioned in the certificate of the bank. Believing the statement made in the application as also the certificate issued by the Bank, the petitioner was allotted higher marks. The petitioner was allotted more marks than several others on the belief that the amount of Rs.3,94,655/- was balance in the savings bank account. After the petitioner was selected and the respondent – H.P.C.L. verified the documents of the petitioner, it was found that the amount was not lying in the savings bank account of the petitioner but the said amount was shown to be the credit balance in the current account of the petitioner. Since the marks were wrongfully allotted to the petitioner and the petitioner was given weightage of those marks, the respondent H.P.C.L. rejected the candidature of the petitioner. We do not find any illegality in the action of the respondent – Corporation in issuing the impugned communication and rejecting the candidature of the petitioner. If there was any variance between the advertisement and the condition prescribed in the brochure and the petitioner was not happy with the condition mentioned in the advertisement, it was necessary for the petitioner to have challenged the condition in the advertisement before participating in the selection process. The petitioner participated in the selection process with open eyes, despite the existence of the condition in the advertisement that the amount should be possessed by the applicants in the savings bank account. The petitioner cannot turn around and take the benefit of the clause of eligibility in the brochure. Also, we find some truth in the submission made on behalf of the respondent – H.P.C.L. that the Corporation was misled by the statement made by the petitioner in the application about the balance amount of Rs.3,94,655/- lying in the savings bank account of the petitioner, though the said amount was not in the savings bank account. Also, the certificate of the Bank wrongly mentioned about the savings bank account though the account was the current account and not the savings bank account. We do not find any infirmity in the action of the respondent in rejecting the candidature, in the circumstances of the case. The judgment reported in ***(2003) 10 Supreme Court Cases 681*** and relied on by the Counsel for the petitioner cannot be made applicable to the facts of this case. In the instant case, the petitioner cannot subsequently cure the defect after his selection as in the instant case the selection itself was based on the marks allotted on the basis of the amount that was possessed by the petitioner in the savings bank account. If the amount was not possessed by the petitioner in the savings bank account on the date of the application, there was no reason to grant the marks for possessing the said amount in the savings bank account. If no marks were to be granted to the petitioner, there was no question of selecting the petitioner as the comparative merit of the applicants was to be guaged on the basis of the marks secured on the basis of different criteria including the criteria of possessing the amount in the savings bank account. The aforesaid judgment of the Hon'ble Supreme Court would therefore not come to the rescue of the petitioner in effectively challenging the impugned order. Hence, for the reasons aforesaid, the writ petition is dismissed with no order as to costs.

The prayer made by the learned Counsel for the petitioner for continuation of the interim relief is strongly opposed by the learned Counsel for the respondent – H.P.C.L. It is stated that in view of the order of *status quo* dated 28.1.2015, the verification of the other eligible candidates cannot be proceeded with. In the circumstances of the case, we reject the prayer for continuation of the interim order.

Order accordingly.

JUDGE **JUDGE**

Wadkar