

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.5838 of 2012

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13.08.2015

Between:

Chodavarapu Rama Krishna Rao

...Petitioner

And

The Hindustan Petroleum Corporation,
Vishakapatnam and others

...Respondents

Counsel for the petitioner: Mr.M.Satish Kumar

Counsel for respondent Nos.1 to 3:

Mr.K.V.Simhadri,

standing counsel for Hindustan Petroleum
Corporation

Counsel for respondent No.4: Smt.M.Bhaskara Lakshmi

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to set aside letter, dated 06.08.2011, of respondent No.2, whereby he reviewed the case of respondent No.4 and allotted to him L.P.G. distributionship of Rajiv Gandhi Gramin LPG Vitrak (RGGLV) in respect of Makkauva Village and Mandal, Vizianagaram District.

Brief facts leading to the filing of this writ petition are stated as under:

In response to the notification, dated 30.03.2010, issued by respondent No.1 corporation for distributionship of RGGLV in respect of Makkauva Village, the petitioner, respondent No.4 and one Mr.A.Ravi Kumar have applied. The distributionship of the said Village was reserved for physically handicapped persons, besides deaf, dumb and visually impaired, with a minimum of 40% disability. The petitioner is a physically handicapped person with 75% disability, while respondent No.4 claimed to be a visually handicapped person. As per the procedure, the applications were evaluated and the applicants were short-listed based on the percentage of disability and the minimum marks of 80% secured by the candidates. It is not in dispute that the petitioner, respondent No.4 and A.Ravi Kumar were short-listed, as they were found eligible for consideration.

Initially, in the first draw, among the said three candidates, respondent No.4 was selected. After consideration, his tender was rejected on 20.12.2010 on two grounds, viz., that he failed to satisfy the condition that the site for godown is approachable in all weather conditions, and that the medical certificate produced by him was not in

currency as the same expired long back. Thereafter, a second draw was conducted between the petitioner and A.Ravi Kumar. As his ill-luck would have it, the petitioner again got eliminated in the said draw with the selection of A.Ravi Kumar. On examination, the tender of A.Ravi Kumar was also rejected on grounds reference to which is not necessary. Feeling aggrieved by the rejection of his tender, respondent No.4 filed W.P.No.3683 of 2011. The said writ petition was allowed by this Court on 21.02.2011 on the short ground that before rejecting his tender, respondent No.4 was not put on written notice and that therefore, the said action was in violation of the principles of natural justice. It is profitable to reproduce the core part of the said order, which reads as under:

“3. It is a matter on record that the petitioner was selected as a Dealer for Distribution of LPG on drawl of lots. It may be true that mere selection on the basis of drawl of lots cannot add finality to the selection. The respondents have every right to verify the relevant facts. However, if any adverse opinion is to be formed against the petitioner, the respondents are under obligation to put the petitioner on notice and seek clarification through written notice. Straightway the impugned notice was issued alleging two remarks against the petitioner. The impugned notice is violative of principles of natural justice.

4. Hence, the Writ Petition is allowed, setting aside the impugned order. It is left open to respondents to issue notice to the petitioner and pass appropriate orders on consideration of the explanation that may be submitted by the petitioner. There shall be no order as to costs.”

Following the disposal of W.P.No.3683 of 2011, a show-cause notice, dated 23.03.2011, was issued by respondent No.2 to respondent No.4, wherein, it is, *inter alia*, mentioned as under:

“B) We have met the issuing authority of the PH Certificates produced by you to ascertain the genuineness. The issuing authority i.e., The Andhra Pradesh Vaidya Vidhana Parishad, Vizianagaram issued a letter stating that the Doctors in the Medical Board, who had issued the certificate have already changed at present it is very difficult to find out the genuineness. Also, it was intimated that the validity stipulated period of the certificate is completed i.e.,

more than three years. Hence, it is established that you are not having a valid PH Certificate as on the date of application, which is required as per Clause No.4(c)(iii) of the advertisement dated 30/03/2010. Further, the certificate produced by you shows that you are having 70% visual impairment. Further, it is seen from the educational qualification certificate produced by you that you have passed B.Ed. from Nagarjuna University during the year 2005 whereas the 70% visual impairment certificate was issued during the year 2004. We are unable to comprehend as to how a person having visual impairment of 70% can pass the B.Ed. examination as regular candidate without any visual impairment.” (emphasis added)

It is not necessary to deal with the another ground relating to non-suitability of the site mentioned in the show cause notice as the said aspect is not relevant for disposal of the present writ petition. Respondent No.4 submitted his reply to the aforesaid show-cause notice wherein, while denying the allegation that the validity of the said certificate is only for three years and he requires fresh assessment after three years, respondent No.4, however, enclosed PH certificate, dated 10.01.2011, issued by the District Medical Board, Vizianagaram, showing that he had 40% congenital blindness. Respondent No.2 accepted the said certificate along with another certificate, dated 05.04.2011, issued by the Assistant Engineer relating to the accessibility of the site where the godown is proposed to be located, reviewed the earlier decision and awarded distributionship to respondent No.4 by the impugned letter.

At the hearing, Mr.M.Satish Kumar, learned counsel for the petitioner, strenuously submitted that the procedure followed by respondent No.2, viz., issue of show-cause notice and considering the explanation of an unsuccessful tenderer/applicant is alien to the concept of award of contract and that even if the said respondent was compelled by the orders of this Court in W.P.No.3683 of 2011 to issue notice to respondent No.4, entertaining of a fresh document, which was not even in existence when the tender of respondent No.4 was

rejected, is not only arbitrary but also the same is contrary to the tender conditions.

Mr.K.V.Simhadri, learned standing counsel for Hindustan Petroleum Corporation, appearing for respondent Nos.1 to 3, and Smt.M.Bhaskara Lakshmi, learned senior counsel for respondent No.4, have strongly opposed the submissions of the learned counsel for the petitioner. They have contended that the petitioner, being unsuccessful in review W.P.M.P.No.48343 of 2012 in W.P.No.3683 of 2011, cannot question the procedure followed by respondent No.2 in issuing show cause notice and calling for explanation from respondent No.4. They have further submitted that in pursuance of the orders of this Court in W.P.No.3683 of 2011, respondent No.4 submitted a fresh PH certificate showing that he suffers 40% vision impairment and that on verification of its genuineness, respondent No.2 accepted the said certificate and that, therefore, he has not committed any illegality or arbitrariness in awarding distributionship to respondent No.4.

I have carefully considered the submissions of the learned counsel for the parties.

As regards the first submission of the learned counsel for the petitioner, this Court, in W.P.No.3683 of 2011, has taken the view that rejection of tender of respondent No.4 without putting him on notice is in violation of the principles of natural justice. Correctness or otherwise of this view cannot be adjudicated in this writ petition as the petitioner failed in his review petition and did not carry the matter further. Therefore, it is not permissible for the petitioner to question the action of respondent No.2 in affording an opportunity to respondent No.4 to explain his case with regard to his eligibility for award of distributionship.

However, I find merit in the second submission of the learned

counsel for the petitioner. Ordinarily, an application/tender is considered based on the information furnished therein and the documents enclosed to it. Unless the conditions themselves allow the applicants to produce fresh documents after the last date for filing of the applications expired, it is not permissible for the applicants to file fresh documents thereafter. In the instant case, admittedly, after W.P.No.3683 of 2011 was allowed, respondent No.4 submitted a certificate, which was not in existence on 20.12.2010, when his tender was rejected and which came into existence for the first time on 10.01.2011. While the document enclosed by respondent No.4 along with his tender certified 70% of blindness, in the fresh certificate, the percentage has come down to 40%, which is the minimum percentage of blindness required for consideration of the tender. The only explanation offered by respondent Nos.1 to 3 and respondent No.4 is that as this Court allowed W.P.No.3683 of 2011 filed by respondent No.4, he was entitled to an opportunity of filing fresh documents. I am afraid, I cannot accept this submission, as no direction was given by this Court while allowing W.P.No.3683 of 2011 that respondent No.4 must be permitted to file fresh documents in support of his tender. On the contrary, the short ground on which W.P.No.3683 of 2011 was allowed was that respondent No.4 was not put on notice and clarifications were not sought from him.

While admitting that the tender conditions do not contain any clause under which a tenderer can file additional documents, the learned counsel for the respondents have placed heavy reliance on Clause 14(f) of the conditions contained in Brochure, which is in vernacular language (Telugu) and which, on true translation reads as under:

“If at any stage, information furnished in the application or the documents enclosed to it or any additional information furnished in relation to the application, is found incorrect, the application will be rejected without furnishing any reasons and if a candidate was already appointed as distributor, such

distributionship will be cancelled. In such an event, such candidate/distributor will not have any claim.”

In my opinion, this clause no way supports the case of the respondents. It only enables respondent No.1 corporation to reject the application or cancel the distributionship in the event it is found that the applicant/distributor, as the case may be, has furnished false information either in the application or in the documents filed along with application or in the additional information furnished by him in pursuance of the application. It is noteworthy that even under this clause reference is made only to the documents filed along with the application and not to the additional documents filed after filing of the application. Thus, it is implied from this clause that there is no provision for filing additional documents, while additional information with reference to the application is permissible during tender process, after tenders are filed.

That the applicants/tenderers are entitled to furnish information only based on the documents, which were available with them at the time of filing of the application, is evident from Clause 14(g) of the conditions truly translated, reads as under:

“The applicant shall furnish information in the application based on the documents which were available with them at the time of making the application. If the originals of such documents are not filed, or false documents are filed or irrelevant information is furnished, selection of the candidate will be cancelled.”

(emphasis added)

It is further evident from the aforesaid clause that the applicant shall produce the original documents along with the application, failing which the selection of the candidate will be cancelled. This clause, thus, reinforces the view of this Court that once the application is made, the applicants are not entitled to file fresh documents though they are entitled to furnish additional information in relation to the documents already filed by them.

In the light of the above discussion, this Court is of the considered opinion that respondent No.2 has committed a patent illegality in allowing respondent No.4 to file a fresh document which came into existence much after rejection of his application/tender and consequently, his action in awarding distributionship to respondent No.4 based on such document is not sustainable.

Therefore, the impugned letter, dated 06.08.2011, of respondent No.2 is set aside. As the petitioner alone remained in the fray under physical handicapped quota, respondent No.2 is directed to consider his case and appoint him as L.P.G. Distributor subject to his satisfying the eligibility criteria strictly as per the tender conditions.

The Writ Petition is accordingly allowed.

As a sequel to allowing the writ petition, W.P.M.P.No.7387 of 2012 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

13th August, 2015

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IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

W.P.No.5838 of 2012

Between:

Chodavarapu Rama Krishna Rao

.. Petitioner

and

The Hindustan Petroleum Corporation,
Vishakapatnam and others

.. Respondents

JUDGMENT PRONOUNCED: 13.08.2015

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
- 2. Whether the copies of judgment may be marked to Law Reporters/Journals?
- 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

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