IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10305 of 2014
Date of Decision.15.01.2015

Smt. Mamta Devi Dadwal and another ....Petitioners

Versus

Indian Oil Corporation and others ......Respondents

Present: Mr. K.S. Dadwal, Advocate
for the petitioners.

Mr. M.S. Rana, Advocate for
Mr. Ashish Kapoor, Advocate
for the respondent-IOC.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

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K. KANNAN J.

1. The cancellation of allotment made to the petitioners on alleged ground of mis-statement of facts with reference to the cash in bank is a subject of challenge in this writ petition. The petitioners' contention was that in the matter of allotment of retail outlet at village Harel, District Hoshiarpur, the petitioner had given a certificate of Chartered Accountant stating that he had movable property worth ₹ 42,03,014/- and after the advertisement, she had withdrawn ₹ 2 lacs. However, at the time of interview, the amount had been redeposited and this withdrawal was said to constitute mis-statement of facts regarding the financial status. On a cancellation made earlier, the petitioner had come by means of a writ petition in CWP No.15987 of 2011. The writ

petition had been dismissed and there was an appeal in LPA No.1475 of 2012. The Division Bench had through its decision on 21.02.2013 found after making reference to the decision of the Supreme Court in ***Ritu Mahajan Vs. Indian Oil Corporation 2009(3) SCC 506*** that withdrawal of ₹ 2 lacs from one of the accounts was wholly inconsequential to establish the financial capability. The Bench observed that other applicants had not even been near to the petitioners in terms of merit determined as per various factors. The Division Bench also observed that "it was not a case where the facts were concealed or mis-stated by the appellants (petitioners herein) in order to gain any advantage or to defeat the rights of other applicants. It has also to be kept in view that fresh advertisement was issued in the meanwhile but none applied for the same. Kisan Seva Kendra is meant to serve the people in rural areas and there is urgent necessity to set up the same." After making the observation, the Bench did not proceed to make the declaration in favour of the petitioner but however, left it to the Corporation to decide the matter afresh and if the alleged mis-statement of fact was found to be fatal to the eligibility, the Bench directed the Corporation to issue a fresh advertisement within one month therefrom after taking the decision.

2. The decision of the Division Bench was rendered on 21.02.2013 and as per the directions the decision on the petitioners' eligibility was required to be considered and given within one month i.e. on or before 21.03.2013. Admittedly, the order was not passed within the time prescribed but it purported to pass an order on 18.04.2013 which is impugned in the writ petition. The Corporation had filed C.M.

No.2166 of 2013 in LPA No.1475 of 2012 for extension of time and the application had been disposed of on 22.05.2013. Admittedly, on the date when an application had been filed seeking for extension, the impugned order could not have been passed. Even at the time when the application was disposed of on 22.05.2013, the Corporation did not apprise the Court or the petitioners that the impugned order of cancellation had been passed on 18.04.2013. This was referred for the first time only after the contempt petition had been filed by the petitioner in COCP No.1274 of 2014 on 06.02.2014. After notice in the contempt petition had been filed, it would appear that the Corporation had moved another application for further extension numbered in 2014, where the extension was for the period for causing the publication. That application was allowed and the petitioner was faced with the situation that the Corporation made a disclosure of two aspects (i) the cancellation order said to have been passed in April, 2013 and (ii) it had obtained an extension for publication of advertisement through the Court order that was passed on 07.03.2014. The contempt petition had not been disposed of at that time and when the matter came up and there was nothing for the petitioners to pursue in view of the fact that the Corporation had by that time disclosed that it had cancelled the allotment and had also caused a fresh advertisement. The petitioner, therefore, withdrew the contempt petition and had brought this writ petition.

3. The order passed by the Division Bench contains a reference to the fact that there had been no deliberate mis-statement of facts. We have extracted the portion already. It was still leaving it to the

Corporation to take a decision of whether the alleged mis-statement was fatal to the eligibility. The decision was to be taken within one month. The second portion of the order related to a matter of consequence that if such a decision resulted in cancellation of allotment, it could proceed with a fresh advertisement process within one month from such a decision. Admittedly, the Corporation had not taken the decision of cancellation within one month nor did it cause an advertisement to be made within one month. When it had approached the Court for an application for enlargement of time in C.M. No.2616 of 2013 in LPA No.1475 of 2012, there had been no reference to the order of cancellation said to have been passed in April, 2013. We have also observed that even when the application for extension was disposed of on 22.05.2013, there was no reference to the impugned order. This assumes significance because to a challenge brought by the petitioner to the impugned order, the contention in defence by the Corporation is that the Division Bench had already granted an extension of time for causing the advertisement itself and therefore, there was nothing left for the petitioner to challenge the cancellation now. The cancellation had been effected even in April 2013 but the writ petition has been filed only in May, 2014.

4. I find the entire contentions brought in defence to be false and a deception has been attempted to be made by the Corporation that ill-behoves a public body which is an instrumentality of State. When the petition is filed with a definite averment that the order of cancellation of allotment had not been communicated at all, there has been no attempt by the respondents as to when this order was communicated.

According to the petitioner, this was brought to his attention only at the time when an application had been filed for extension of time for causing an advertisement and in that application, this order had been surreptitiously filed. Even an application for extension of period itself was brought for orders only after an application for contempt was moved in February, 2014. The contempt petition could not be pursued since by that time the Court had granted permission for extension. I will find that there has been no undue laches on the part of the petitioner in approaching the Court and if there is any delay, it has been only on account of the fact that the Corporation had not communicated the order of cancellation of allotment soon after the date of the alleged order.

5. The Bench, even while holding that there had been no mis-statement or concealment left it to the Corporation to take a decision so that the Court itself was not setting up any precedent about who would be competent to decide on mis-statement or otherwise in the application. In the impugned order passed, therefore, the Corporation was required to make the assessment of the so-called mis-statement on the basis of observations made by the Court. The observations made by the Division Bench was that there was no deliberate mis-statement. The Corporation was required to show any specification that debarred a person who had made the application to withdraw the money which was shown as deposited in the account. I have seen through the brochure and there is no reference to any fact that the amount which is deposited in bank cannot be permitted to be withdrawn after the filing of the application. On the other hand, the brochure itself indicates that at the

time of interview fresh affidavit as detailed in Appendix A was to be given. Appendix A contains in clause 7 as follows:-

> "That against Item No.13 of my application form details of various sources of funds required for setting up and operation of the dealership has been furnished. I undertake that these funds will be made available for the purpose stated above. In case it is found that the same is not made available as and when required, the offer of dealership, at any stage, can be withdrawn and that I will have no claim/damage whatsoever against the oil company."

6. Item No.13 referred above is the column relating to the details of source of funds. The column indicates that the amount given in the FD bank account and other financial accounts as proof of financial capability should be valid as on the date of application. The application had been filed on 30.03.2010. The bank account furnished was only upto 24.03.2010. On 25th March, 2010 the account ledger submitted by the petitioners itself would indicate that on 25.03.2010, there had been a withdrawal of ₹ 2 lacs which was reflected in the accounts submitted by the petitioners. I find that the amount of withdrawal of ₹ 2 lacs ought to have been reflected in the account submitted by the petitioners but in my view, it really assumes no significance for the reason that there was no immediate amount prescribed as eligibility criteria as the amount that a person must retain at the time when the application was made. On the other hand, clause 13 of the brochure required that the candidates would have to submit a fresh affidavit as per Appendix A as applicable prior to the date of interview. On that day, an affidavit had been given that surely made a reference also to the withdrawal of ₹ 2 lacs. There was, therefore, no running away from the situation that at the time when the interview was conducted, there was an affidavit of disclosure of all the

assets that revealed the petitioners' financial status and the withdrawal of ₹ 2 lacs itself had no bearing to discredit the status of the petitioner to install the outlet. I do not find that there is any mis-statement or undue advantage which the petitioner was trying to take. If there was no requirement of filing an affidavit of assets at the time of interview, it could be probably stated that the petitioner had concealed an important element of withdrawal of some amount before the date of filing of application. There is no warrant for such a conclusion in this case. Before the date of application on 30.03.2010, there had been a withdrawal which had really no bearing to the overall assets or to a situation where an affidavit was necessary to be given at the time of interview which disclosed all the deposits and withdrawals correctly and there was no scope for deception by the petitioner or any prejudice to the Corporation. There is no other candidate anywhere close in range to the petitioner as observed by the Division Bench and the petitioner cannot be taken to steal a march over any other near rival by making a false disclosure. The impugned order is untenable and it cannot be supported. Accordingly it is quashed.

7. The writ petition is allowed with costs of ₹ 10,000/- against the Corporation. The Corporation shall proceed to issue an appropriate order of allotment and if there has been any subsequent advertisement or selection process, that would be rendered nugatory by virtue of this order.

(K. KANNAN)
JUDGE

January 15, 2015
Pankaj*