

CWP-23772-2013

Date of Decision : 30.01.2015

SOUMYA SHARMA

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

CORAM HON'BLE MR. JUSTICE K.KANNAN

1. Whether reporters of local newspaper may be allowed to see judgment?

2.To be referred to reporters or not?

3. Whether the judgment should be reported in the digest?

Present: Mr. Sameer Sachdeva, Advocate
for the petitioner.

Mr. Vibhor Bansal, Advocate
for respondent No.1.

Mr. Ashish Kapoor, Advocate
for respondent Nos.2 and 3.

Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for respondent No.6.

K.Kannan, J (Oral)

The petitioner was an applicant for being awarded dealership to a petroleum outlet. The 5th respondent was selected on being awarded higher marks for her alleged experience in automobile company. The petitioner was aggrieved by the selection and had given a complaint on 27.07.2012 to the Senior Divisional Retail Sales Manager of Indian Oil Corporation Limited that the experience certificate provided by the winning candidate, namely, the 5th respondent was not genuine and that IOCL should get it properly verified.

The IOCL was reported to have carried on an investigation and found that the experience certificate said to have been issued by M/s Mehra Motors was genuine and on verification reiterated its decision that her attendance with M/s Mehra Motors on honorary basis as a Manager from January, 2011 was genuine.

The petitioner had not been favoured with any decision of the nature of investigation but she had elicited through an inquiry under RTI Act, the decision taken by the IOCL upholding the decision already made and responding also to an inquiry as to why the petitioner was not joined in any form of investigation, by stating that it was not feasible for security reasons.

The petitioner makes a challenge to the decision and brings before the Court intrinsic material to show that the certificate which is reported to have been found genuine must have been an interpolation and the marks awarded on the basis of such certificate could not be justified. The further contention is that the manner of disposal of a complaint as contemplated under the brochure was also not complied with, in that the requirement is that the complainant must be joined in such an investigation process and informed about the outcome of such an inquiry. The counsel would make reference to Clause 8(B) of the

Brochure which reads as under:-

"When a decision is taken to investigate the complaint, the investigation will be done by a Senior Official of Oil Company and will pass speaking order after giving due opportunity to the complainant etc. Copy of the speaking order will be given to all concerned".

The petitioner would point out to the certificate alleged to have been issued by M/s Mehra Motors that contains a signature of not merely the proprietor but also the alleged signature of respondent No.5 and that the signatures found in admitted documents were different from the one contained in the experience certificate. It was to show that this document must have been an interpolation done to award higher marks.

I noticed that the signature found in the certificate issued by M/s Mehra Motors could not that of the respondent No.5 in comparison with the other signatures and conscious of the limitations of an examination on a point of fact in writ jurisdiction, I asked, counsel appearing on behalf of respondent No.5, if he would confirm that the signature found in the document in the certificate issued by

M/s Mehra Motors was that of respondent No.5. I put him on notice that if he would not be in a position to confirm the contention, I will have a document examined by FSL. The counsel after taking instructions from the party in Court states that the signature is not that of respondent No.5. He, however, explains that there is no need of a signature since it was a certificate issued by the proprietor of the M/s Mehra Motors.

The counsel appearing on behalf of the corporation would submit that there was simply no scope for such an interpolation and all the documents were page marked, after receipt of the application in the reverse order and the index accompanying the application and the documents clearly revealed that the copy of experience certificate as having been submitted by the applicant and therefore, the document found in the records which were verified later after a complaint received from the petitioner vouched for the fact that the certificate was genuine and she had actually worked in M/s Mehra Motors. The counsel would also refer me to the decision of the Supreme Court in "Sajeesh Babu Vs. N.K. Santosh [2012] 12 SSC [106]" where the Supreme Court intervened on an issue of fact entered by the High Court through a Single Judge and a Division Bench and restored the decision of the oil company

while assessing the genuineness of an experience certificate such as obtained in this case. The Supreme Court was holding that the inquiry made by the oil company that the experience certificate was genuine was to be supported and the intervention made by the High Court was not appropriate. The counsel would, therefore, argue that the decision taken on investigation by the Oil company must be accepted and there is no scope for intervention by this Court.

Normally, an issue of fact and, more so, on an issue of genuineness of documents, cannot be examined by the High Court exercising its jurisdiction under Article 226. It is only undisputed questions of facts giving rise to a legal tussle that would require to be adjudicated by this Court. Even, as I am aware of the Court's limitation on factual matters, if the Court will not interfere even when a brazen attempt to fabricate documentary evidence, it would amount to abdication of Court's duty. I undertake this exercise to vindicate what the petitioner's averments are as regards the manipulations made by the 5th respondent. In the application referring to the present occupation, respondent No.5 has stated her position as Sales Manager. Admittedly in the undisputed documents filed by respondent No.5 along with the application, she is described as a Sales

Manager of *Vishranti* and the salary certificate states that she has been working as a Sales Manager from April, 2002 till the date of issue of the certificate, namely, 30.04.2012. This certificate also contains the signature of Malika Garg. I am stating this because respondent No.5 was aware that though it may not be necessary for an employee to secure the affixation of her signature in a salary certificate but that is the way that she has herself presented the document along with the application.

In the experience certificate which is given by the petitioner along with application also contains her signature where she says that she has been working along with her husband in real estate business in the name of Sai Apartments & Infrastructures. The experience certificate alleged to have been issued by M/s Mehra Motors contains different details. The doubt about the certificate obtains by two factors: one, if the undisputed documents of a salary certificate issued by Sai Apartments & Infrastructure shows that she was earning Rs.10,000/- per month as "Sales Manager" from April 2002 till date on 30.04.2012, the question of respondent No.5 being also employed as a Manager on honorary basis for the same period with M/s Mehra Motors does not arise. Two, the important aspect is that the experience certificate alleged to have been

issued by M/s Mehra Motors describes her as "a Manager", when the applicant describes herself as a Sales Manager which is in sync with what is stated in the salary certificate issued by M/s Sai Apartment & Infrastructure where she is described as a Sales Manager. Evidently if her own gradation obtains higher marks only by reference to M/s Mehra Motors' certificate by virtue of the fact that it was a dealer in IOC products, then the manner in which she has been described in that certificate alone would have been mentioned in the application filled in by her. She has also purported to affix her signature in the certificate. There has been surely an attempt to give it a colour of plausibility by introducing the signature to the document also. If it was merely to indicate the name, it would have been written either in block letters or ordinary letters which would become easy to read the name. On the other hand, the document bears an attempt to make a signature of a distinct style to make it seem like a genuine one and when the duplicity is exposed, the attempt is now made that the signature is not after all necessary in the document. The issue just is not whether the signature was necessary or not. The issue is whether this document could have been a part of the file and submitted along with the application at that time. I have no doubt in my mind that this has been a

crafty interpolation but a clumsy one at that.

The Indian Oil Corporation ought to have come with grace and carried out an investigation which was proper and carried out a public duty of what its own brochure enjoined. If an investigation is to be made and a decision is taken, an honest attempt would have made possible what the brochure required it to do. If the genuine investigation was that the document was already there in the file and they had also vouched for 5th respondent's job as a Sales Manager in M/s Mehra Motors, they would have involved the petitioner in the investigation in the manner that the relevant clause directs. Even the copy of the speaking order is required to be given to all concerned and it could have been done, after giving due opportunity to the complainant. It was only because the Corporation was trying to collect documents in collusion with respondent No.5, after the initial submission of documents, they did not have the courage to come clean and involve the complainant with the investigation. It is strange that even when queries were raised under RTI Act to be informed why the complainant himself was not involved and to give him a copy of the investigation report, an evasive and untenable response is given that it involved security issues. The so-called inquiry file has not filed with the response. Any

modicum of decent and fair inquiry would have shown the need for making reference to all the details of such investigation and the outcome of investigation that was required to be supported through a speaking order ought to have been filed along with the reply. The same has also not been done.

The Supreme Court in the decision cited by the learned counsel was not dealing with the case of fraud. It had reason to believe that the petroleum company had acted with grace and carried out investigation properly, the features which are sadly lacking in this case. On the other hand, the action of the corporation betrays the people's trust in public organization, that they could adopt nefarious deeds in collusion with the private individuals and allow for document to be interpolated only to favour a private individual.

I thought for a while on a submission made by counsel appearing on behalf of respondent No.3 that even if the marks awarded were to be denied to her and marks were to be given for an experience which he had from a real estate company, she would have had still higher marks but it would mean granting on a silver platter a reward of a State largesse to an undeserving manipulant. I would, therefore, deny to her that benefit.

It has been held in the decision of the Supreme Court in "Maumita Poddar Vs. Indian Oil Corporation Limited and another (2010) 9 SCC 291" that if a selection of candidate is annulled, it is not necessary to start a fresh selection process but a candidate next in the order of merit should be preferred. I mandate the Corporation to issue the necessary orders of allotment to the petitioner, as a candidate who is in the next order of merit, if the 5th respondent is displaced. Having regard to the fabrication of the document by respondent No.5 in collusion with the 2nd respondent, I impose a cost of Rs. 25,000/- jointly and severally against the respondents and to be payable to the petitioner.

The writ petition is allowed on the above terms.

(K. KANNAN)
JUDGE

January 30, 2015

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