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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on :16.07.2015

Judgment Pronounced on :10.08.2015

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LPA 333/2014 & CM No.7281/2014

INDIAN OIL CORPORATION LTD. Appellant

Through: Ms. Mala Narayan, Adv. with
Ms.Vridhika Mayar, Advocate

versus

SH.KAPIL BAGRI

..... Respondent

Through: Mr.J.P.Sengh, Sr. Advocate with
Mr.Jagdev Singh and Ms. Sana
Ansari, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J

1. The present appeal is filed seeking to impugn the order dated 11.03.2014. The present writ petition was filed by the respondent which after amendment sought the following reliefs:-

“a) Issue a writ of certiorari or any other writ of like nature, quashing the impugned letter dated 15.02.2012 of the respondent as the same is bad in law, in the interest of justice.

b) issue a writ of mandamus directing the respondent to issue allotment letter to the petitioner in respect of the retail outlet dealership of Ms.Indian Oil Corporation Ltd. at Tikri Kalan, Rohtak Road, Delhi in the interest of justice.

c) issue a writ of mandamus directing the respondent to treat the unsigned affidavit as a valid document in view of law

laid down by the Hon'ble Supreme Court of India or alternatively allow the petitioner to cure the said alleged defect by submitting a fresh affidavit, in the interest of justice.”

2. The brief facts are that the appellant issued an advertisement on 15.10.2010 in leading newspapers inviting applications for allotment of various retail outlets in Delhi and Haryana.
3. The respondent, being an eligible scheduled caste candidate, applied for allotment of a retail outlet dealership at Tikri Kalan, Rohtak Road, Delhi. Along with the application, the respondent as per the terms specified in the advertisement filed five affidavits of five different individuals for “tied up business”. The affidavits were regarding generation of business from the retail outlet. The affidavit was sworn by the respective deponents and also attested by the notary public. The notary public put a seal and date on the said five affidavits but inadvertently, by omission he did not put his signatures on one of such affidavit.
4. The respondent received an interview call on 20.05.2011 for an interview on 17.06.2011. The respondent was awarded the highest marks pursuant to the selection process where 92 candidates were interviewed. Respondent was placed first on the merit list. The respondent states that the certificates and other documents were verified by the authorized field investigating officer on 27.06.2011 and were found to be in order. It is averred that the appellant assured the respondent that an allotment letter would be issued to the respondent within one month of declaration of the result. It appears that certain complaints were received by the appellant

which as per the respondent were received after the prescribed period. The complaints pertain to the absence of the signature of the notary in one of the affidavits filed by the respondent. The respondent made representations on 01.09.2011 and 28.09.2011 to the appellant. Subsequently, further representations were also made.

5. One of the applicants who had also filed a complaint Mr Shoydan Singh filed W.P.(C) 8042/2011 praying for a declaration that the merit panel declared by the appellant dated 17.06.2011, where the respondent was declared first on the merit panel be declared arbitrary, illegal and unlawful. The respondent also filed the present writ petition. On 15.11.2011 the writ petition filed by Shoydan Singh i.e. W.P.(C) 8042/2011 was dismissed by this court. The said Shoydan Singh filed L.P.A. No. 90/2012. However, in the meantime, the appellant cancelled the candidature of the respondent vide communication dated 15.02.2012 stating that the affidavit which was not signed by the notary public was invalid. The appellant also ordered revaluation of all eligible candidates. Pursuant to the said impugned communication dated 15.02.2012, this court disposed of the LPA filed by Shoydan Singh on 17.02.2012 holding that it was not necessary to examine the issue in the present appeal. However, the Division Bench clarified that no view had been taken on the communication dated 15.02.2012 issued by the appellant to the respondent. After receipt of communication dated 15.02.2012, the respondent amended the writ petition.

6. Before the learned Single Judge, the appellant filed a counter affidavit. It was reiterated in the counter that the Affidavit showing “maximum committed sales” filed by the respondent was defective, had

not been notarized and was contrary to Section 8 (2) of the Notary Act, 1952. Hence, the affidavit had to be ignored. It was also stressed that as per the terms of the advertisement inviting applications stipulations stated were mandatory. It was incumbent upon the respondent to ensure that his application was in accordance with the prescribed format. There was said to be no discretion with the appellant to selectively enforce the stipulations.

7. The learned Single Judge vide impugned order allowed the writ petition and set aside the impugned letter/order dated 15.02.2012. He directed the appellant to take a decision with regard to the retail dealership at Tikri Kalan, Rohtak Road, Delhi in accordance with law. The court relied upon the judgment of this court dated 15.11.2011 in W.P.(C) 8042/2011 filed by Mr.Shoydan Singh where this Court had noted the alleged deficiencies in one of the affidavits filed by the respondent but held that the inadvertent omission of the Notary Public is not fatal to the validity of the affidavit. The writ petition was dismissed. This court further noted that in LPA No.90/2012 which was filed against order dated 15.11.2011 in the writ filed by Mr.Shoydan Singh the Division Bench did not disturb the findings of the learned Single Judge. Hence, the impugned order held that it was bound by the said judgment of the coordinate bench dated 15.11.2011.

8. We have heard learned counsel for the parties and perused the record.

9. Learned counsel appearing for the appellant has reiterated its submissions stated above. It is urged that the affidavit in question was defective as it was not signed by a notary public. Hence, it is urged that

the appellant had no option but to reject the application of the respondent. It is pointed out that the appellant is a public sector undertaking and receives many voluminous applications. It is submitted that discretion cannot be given to condone these mistakes as any such condonation would lead to a flood of such similar requests.

10. Learned senior counsel appearing for the respondent has refuted the contentions of the appellant. He submits that there were five identical affidavits filed of different deponents before the appellant showing “Committed Sales”. Each of the affidavits is signed by the concerned deponent. The notary public has attested each of the affidavits. Unfortunately by inadvertence, he omitted to sign one affidavit i.e. the concerned affidavit which is filed by Sh.Sushil Singla though it is stamped by the notary public and the date of stamping is also stipulated i.e. 15.11.2010. He relies upon the two judgments of the Supreme Court, namely, *Sunita Gupta vs. Union of India & Ors.*, 2014(5) Scale 360 and *T.Phunzathang vs. Hangkhanlian and Ors.* (2001) 8 SCC 358 to contend that the defect was a curable defect and the application of the respondent could not be knocked out on such frivolous technical pleas. He also reiterates that the case of *T.Phunzathang vs. Hangkhanlian and Ors.(supra)* pertained to an election petition and the rigours of procedural law in election petitions are much more stringent.

11. The entire controversy centers around alleged non compliance by the respondent of one of the terms and conditions regarding filing of affidavits, as stipulated, showing “committed sales”. The stipulated terms envisage a criteria for evaluation of eligible applicants. There are stipulated parameters on the basis of which marks are allocated to

prospective dealers. One of the criteria stipulated relates to capability to generate business. The relevant portion of the stipulated terms reads as follows:-

Parameter	Sub-heads	Description	Max Marks	Evaluation
Capability to generate business (Max. 10 Marks for Individual and 25 for non-Individual)	Tapping of sales volume from family/firm business	Assessment on tie up with prospective customers (based on Affidavit in Appendix-A3 produced with the application). Tie UP of 1/3 rd or higher volume of the quantity indicated in the advertisement will qualify for full marks and proportionate for lower volume.- (i) For Individuals (ii) For non-individuals	5 12	Production of documents and based on the volume of tied up quantity as per affidavit from prospective customers.

12. Reference may also be had to another term in the prescribed procedure which is part of Clause 10 of the brochure which reads as follows:-

“i) Applications received after the cut-off date for any reason including postal delay and those without accompanying valid documents like Affidavits, Certificates etc. application fee or incomplete in any respect will not be considered and no correspondence will be entertained by IOC in such cases whatsoever.”

13. The relevant portion of the communication of the appellant dated 15.2.2012 rejecting the claim of the respondent reads as follows:-

“It is also pertinent to mention that as per advertised requirement for documents to be submitted by

applicants, it is clearly mentioned that signatures and seal of Magistrate/Judge/Notary Public are to be provided on the affidavit for tied up volume. Further, the advertisement also stipulates that no additional documents whatsoever will be accepted and considered after the cut-off date and, hence, your request for submitting a fresh affidavit cannot be considered. Considering the above facts, the Competent Authority has not accepted your claim for considering unsigned affidavit as valid and ordered for re-evaluation of all the eligible candidates. However, final action will be taken in the matter subject to the final outcome of the case.”

14. The defective affidavit stated to have been filed by the respondent is an affidavit of one Shri Sushil Singla stating that the deponent has an approximate consumption of 50 kl per month of diesel/petrol and that the deponent would be taking supplies to the extent of 40 kl subject to commercial terms and conditions agreed mutually. The affidavit is duly signed by the deponent. The Notary Public has affixed the notorial stamp on the affidavit but has forgotten to affix his signatures on the said affidavit. Learned senior counsel for the respondent has pointed out that five such affidavits were filed of which four were validly attested, but inadvertently by oversight the Notary Public has not signed this one affidavit. There is no denial to the facts as stated by the learned senior counsel for the respondent. The above facts clearly demonstrate that the error appears to have been by oversight. It cannot be termed to be a substantial mistake going to the root of the matter.

15. We may look at various pronouncements regarding technical/procedural defects. *Sunita Gupta vs. Union of India & Ors.* (*supra*) was a case relating to retail outlets which were to be given by

Hindustan Petroleum Corporations. There was a condition of submission of consent letters of all the co-owners of the land. The applicant had not submitted the complete consent letters. The Supreme Court in these facts held as follows:-

“7...The review committee, on a mere technicality, denied the Appellant her right to the dealership, after it was previously declared that she was selected for the same. It is evident that the documents of the Appellant provided at first were seen to be sufficient, and the fact that she chose to give some additional documents to buttress her application cannot be a ground to nullify her appointment, given that Clause 14, 'Preference for applicants offering suitable land' of the HPCL "Guidelines for Selection of Retail Outlet Holders" details that the land owned by the family members namely spouse/unmarried children will also be considered subject to the consent of the concerned family member. Since, in this case, the land was owned by her husband and father-in-law, she gave their consent letters along with the application form within the due date. We feel that the Appellant has sufficiently met the conditions of the application and the Respondent Corporation has erred in subsequently cancelling the appointment on a flimsy technicality and has acted in an arbitrary and unfair manner....”

16. Similarly in *Umesh Challiyill vs. K.P.Rajendran, (2008) 11 SCC 740* which pertained to a defect in an affidavit filed with the election petition the Supreme Court held as follows:-

“11. Here also the defect as pointed out by learned Single Judge was that the appellant had not signed and affirmed in the manner inasmuch as there is no certification of the Notary that it was solemnly affirmed by the appellant before him. This objection was based on the fact that

after the signature of the deponent the only words occurring before the signature of the Notary are, " Before me". The words, "Solemnly affirmed by Shri Umesh Challiyil at Ernakulam on this the 26th day of June, 2006." Occurred above the signature of the deponent. Therefore, it was contended that the affidavit does not bear the certification by the Notary as to the affirmation by the deponent since such certification ought to be by the Notary after the signature of the deponent. This affidavit was also found to be defective by the learned Single Judge. But in our view, this too is a defect of very minor nature. It may be a bona fide mistake on the part of the deponent as well as the Notary but basically it conveys the sense that the affidavit has been solemnly affirmed by Umesh Challiyil at Ernakulam. This affirmation also does not in any way go to the root of the matter so as to render the entire election petition not properly constituted entailing the dismissal of the same."

17. In *United Bank of India vs. Naresh Kumar and Others*, (1996) 6 SCC 660 the Supreme Court while dealing with filing of suits held as follows:-

"9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the CPC, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable."

18. The legal position is quite clear. Courts have repeatedly held that minor curable defects cannot be a ground to defeat the substantive rights of an applicant inasmuch as an applicant cannot be knocked out on

frivolous technical pleas. As already stated above in the facts of the present case, it is apparent that the absence of signatures of the Notary on one of the five affidavits was nothing but a procedural lapse which took place by oversight. It was a curable defect and the application of the respondent could not be knocked out on the said technical grounds.

19. We see no reason to differ with the view taken by the learned Single Judge. The present appeal is dismissed.

CM No.7281/2014 (stay)

In view of the dismissal of the appeal, the present application also stands dismissed.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

**AUGUST 10, 2015
rb/n**