

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 18361 of 2014 (O&M)
Date of Decision: 22.9.2016

Rajesh Kumar

.....Petitioner

Vs.

Union of India and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for respondents No. 2 and 3.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned orders/letters of even date, i.e. dated 7.7.2014 (Annexures P-4 and P-5), whereby application forms of the petitioner for allotment of retail outlet-dealership of LPG Distributorship were rejected, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the orders/letters.

When this case came up for hearing on 29.9.2014, following order was passed by this Court:-

“ Notice of motion for 4.12.2014.

The petitioner shall also be considered on his application along with respondents and if he is not selected

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on his own merit, the same may be informed to him. If he is found otherwise eligible and he is entitled to be considered for allotment, the same be not passed without express orders are secured from this Court.”

In compliance of the abovesaid order, written statement has been filed.

Learned counsel for respondents No.2 and 3 filed C.M. No.10567 of 2016, seeking preponement of date of hearing, contending that because of the abovesaid interim order dated 29.9.2014 passed by this Court, further process has been held up and the matter requires urgent hearing.

Notice of the application was issued vide order dated 5.9.2016 for 15.9.2016. When the case came up for hearing on 15.9.2016, following order was passed by this Court:-

“Heard at some length.

The only issue involved herein is whether the petitioner, as a matter of fact, was having the requisite amount of Rs.15 lacs in his bank account on the date when he submitted his application for LPG distributorship in question, which was admittedly a pre-condition for establishing his eligibility for distributorship.

Learned counsel for the petitioner submits that the petitioner was having the amount of Rs.15 lacs in his bank account. He also submits that on 29.09.2014, when notice of motion was issued, he shown a copy of FDR of Rs.15 lacs to this Court.

Learned counsel for the respondents fairly states that if the petitioner, as a matter of fact, was having the amount of Rs.15 lacs or more in his bank account on the date of his application for each of the advertised location, then he would be eligible for the distributorship.

In view of above, learned counsel for the petitioner

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seeks short adjournment to bring the authentic copy of bank statement of his bank account to show that on the date of his application, the petitioner was having the amount of Rs.15 lacs in his bank account.

List on 22.09.2016.”

Application for preponement of date of hearing, in the circumstances of the case, is allowed, as prayed for, preponing the date of hearing from 1.2.2017 to today, i.e. 22.9.2016. CM stands disposed of.

Learned counsel for respondents No. 2 and 3 also filed CM No. 11887 of 2016, seeking permission to place on record documents in the form of Annexures R-2/1 to R-2/3, which also deserves to be allowed and the same is allowed, as prayed for. CM stands disposed of.

During the course of resumed hearing today, learned counsel for respondents No.2 and 3, reiterated his earlier stand taken before this Court on 15.9.2016, contending that candidature of the petitioner was rejected, because he was not found eligible, for want of requisite amount of ₹15 lacs per distributorship, in his bank account, on the date when he submitted his applications for LPG distributorship in question. He further submits that it was a pre-condition for establishing eligibility of every candidate, however, the petitioner was not fulfilling this condition, therefore, his candidature was rightly rejected. He also submits that since the petitioner has misled this Court, by making false statement with a view to obtain favourable interim order, at the time of issuance of notice of motion, present writ petition is liable to be dismissed with exemplary costs.

When confronted with the abovesaid fact situation, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It has gone undisputed before this Court that petitioner was not

having requisite amount of ₹15 lacs in his bank account on the date when he submitted his application. Thus, it has been duly established on record that petitioner was ineligible for awarding the distributorship in question. Despite knowing fully well that he was not eligible, petitioner tried to over-reach this Court by withholding this material fact at the time of filing the present writ petition. In fact, petitioner has made an attempt to mislead this Court, with a view to get favourable orders, by concealing material fact from the notice of this Court.

In the abovesaid circumstances of the case, principle of suppressio veri; suggestio falsi, is clearly attracted against the petitioner and the writ petition is liable to be dismissed with costs. So far as merits of the case is concerned, the abovesaid view taken by this Court also finds support from the judgment of Hon'ble Supreme Court in Civil Appeal Nos. 6928-6929 of 2015 (**Bharat Petroleum Corporation Limited and others Vs. Swapnil Singh**), wherein it was held that any such applicant, as in the present case, is required to fulfill the conditions incorporated in the brochure of the petroleum company. The relevant observations made by the Hon'ble Supreme Court in **Swapnil Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

"We have gone through the records of the case along with the assistance of learned counsel for the parties and we find that the brochure read with the application form is absolutely clear in the sense that the applicant must be the owner of the specified area of land or must have a registered lease deed of the specified area of land on the date of application. The admitted position (which is also clear from the counter affidavit filed by the respondent in this Court) is that on 13th September, 2011, when the

application for allotment was made, the respondent was neither the owner of any land nor had any registered sale deed/lease deed in her name. In fact, the lease deed came into existence only on 20th December, 2012 and that was registered on 21st, December 2012. Clearly, on the date of the application, the respondent was not eligible in terms of the brochure and the application form.

The Calcutta High court has proceeded on the basis of a notarized lease agreement which appears to have been produced by the respondent before the High court. A photocopy of the notarized lease agreement has been shown to us and that document is dated 13th September, 2011. Learned counsel for the respondent has relied upon this document to contend that the respondent was eligible as on 13th September, 2011 in terms of the notarized lease agreement.

We are unable to accept this contention of learned counsel for the respondent. The brochure and the application form clearly require the applicant to have a registered lease deed in her name. What is shown to us is a notarized document and admittedly this document, even though it may have been in existence, was formalised into a lease agreement only on 20th December, 2012 and that was registered on 21st December, 2012. The notarized document, therefore, does not advance the case of the respondent any further. Therefore, it is quite clear that the respondent was not eligible on the date of application, i.e., 13th September, 2011.”

The Hon'ble Supreme Court in catena of judgments has suggested the hike in the quantum of costs, on the persons indulging in filing frivolous and fictitious litigation which are clogging the justice delivery system in the country. On the issue of dismissal of a frivolous litigation like the present one, the view taken by this Court also finds support from the

judgment the Hon'ble Allahabad High Court in WRIT- C No. 32661 of 2014, (*Smt. Poonam and Another vs. State Of U.P.*), decided on 18.06.2014, referring to numerous judgments of the Hon'ble Supreme Court.

The relevant observations made by the Hon'ble Allahabad High Court in *Poonam' case* (supra), which aptly apply to the facts of present case, read as under:-

XX XX XX XX

“7. Both the aforesaid paras have been sworn on the basis of personal knowledge and interestingly, the affidavit is sworn by both the petitioners, therefore, it is clear case where petitioners have sworn a false affidavit.

8. However, when enquired as to why this writ petition has been filed, learned counsel for the petitioners could not give any effective reply and it appears to this Court that just to get a certificate to the alleged marriage, this writ petition has been filed on the pretext as if there is an apprehension of life and liberty to the petitioners from respondents no.6 to 9 but in respect of substantial aspect regarding apprehension of life and liberty, appropriate pleadings are almost absent, which shows that real objective is something else than what is attempted to be shown by way of arguments. I am clearly of the view that this writ petition is nothing but a totally vexatious and frivolous litigation. It is really unfortunate that such frivolous litigation is consuming a lot of time of this Court depriving other substantial matters to be conducted within reasonable time.

9. Stressing upon the ways to discourage filing of vexatious and frivolous cases against all kinds of orders or at every stage of proceedings, irrespective of the fact whether petition like the present one would be permissible in law or not, Apex Court in the context of practice of filing SLPs against all kinds of orders of High Court or other

authorities, came heavily in Mathai @ Joby vs. George and Anr, 2010 (4) SCC 358 and said that if all such sundry kinds of cases are allowed, the Court will soon be flooded with a huge amount of backlog and it will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done. The Court has limited time at its disposal and the Judges are struggling with unbearable burden with zeal to dispense justice to whom it is highly needed yet being obstructed by such frivolous and vexatious matters, a trend is developing to bring all kinds of trivial and flimsy matters to Court causing wastage of not only public money, but also precious time of the Court, which can be used for other substantial matters.

10. The Apex Court in **Crl. M.P. No.25683 of 2013 in Special Leave Petition (Crl.) No. 2448 of 2014 (Phool Chandra & Anr. Vs. State of U.P.)**, decided on 10.3.2014, observed:

“..the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned Counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.”

11. The Court in **Phool Chandra & Anr. (supra)** referring to earlier decisions in **Varinderpal Singh Vs.**

Hon'ble Justice M.R. Sharma and Ors., 1986 Supp SCC 719; Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors., (2011) 8 SCC 249; and Gurgaon Gramin Bank Vs. Khazani and Anr., AIR 2012 SC 2881 has said: "It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned Counsel who act in an irresponsible manner."

12. I may also repeat here [the] observation made by the Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, JT 2005 (6) SC 486** stating that award of costs must be treated generally as mandatory. It is the liberal attitude of the Courts in not awarding costs which has led to frivolous points or litigation before the Courts. Costs should invariably follow the event and reasons must be assigned for not awarding costs.

13. In view of aforesaid, this petition has to be dismissed with costs.

14. It is accordingly dismissed with costs, which I quantify to Rs.2,500/-."

Neither any contrary judgment was brought to the notice of this Court, nor any other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the present writ petition is a frivolous litigation at the hands of a dishonest litigant, who has no respect for the justice delivery system, it is bound to be dismissed with costs, which are quantified @

₹30,000/-.

The costs shall be deposited by the petitioner with Secretary, District Legal Services Authority, Palwal, within a period of three months from the date of receipt of certified copy of this order, failing which, District Collector, Palwal, shall recover the same from the petitioner, as arrears of land revenue and deposit the same with Secretary, District Legal Services Authority, Palwal,

With the abovesaid observations made and direction issued, present writ petition stands dismissed with costs, as indicated above.

Office is directed to send a copy of this order to the Secretary, District Legal Services Authority, Palwal.

(RAMESHWAR SINGH MALIK)
JUDGE

22.9.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No