IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1182 of 2014
IN
Civil Writ Jurisdiction Case No. 463 of 2013

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Mirtunjay Kumar Singh son of Sri Krishna Mohan Singh resident of village - Devipur, P.O. Muradpur, Kurshela, P.S. - Kurshela, District - Katihar.

.... Appellant

Versus

1. The Union of India through the Secretary, Department of Petroleum, New Delhi.
2. The Managing Director, Bharat Petroleum Corporation Ltd. New Delhi.
3. The Area Marketing Manager, 3rd Floor, Ashiana Chamber, Exhibition Road, Patna - 800001.
4. The Co-Ordinator, Bharat Petroleum Corporation Ltd. 3rd Floor, Ashiyana Chamber, Exhibition Road, Patna - 800001.
5. The Territory Manager (Retail), B.P.C.L., P.O. Paproor, Distt. Begusarai.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Siya Ram Shahi, Advocate
		Mr. Indu Bhushan, Advocate
For the BPCL	:	Mr. Madhuresh Prasad, Advocate
		Mr. Abhay Shankar, Advocate
		Mr. Om Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 19-04-2017

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The appellant had to file the writ application namely C.W.J.C. No. 463/2013, because the respondent Bharat Petroleum Corporation Limited (hereinafter referred to as the "Oil Company") reduced the total marks awarded to the appellant from 64.5% to 52.52% and held him to be disqualified for allotment of a Retail Outlet Dealership.

3. In terms of the advertisement and the brochure issued by the Company, the various details were required to be provided by an applicant. This appellant had also filed an application giving the details of his resources and capability, and, based on the declaration, marks were awarded to the appellant and he was even found fit. Subsequently, on field verification, it emerged that the so-called credit balance or financial liquidity, which the petitioner had shown at the time of application, was not available in the accounts. The Balance available was only Rs. 31,511.79. The Company, therefore, decided to scale down the marks awarded under the financial capability, which, in turn, had the effect of ousting the appellant from the zone of consideration.

4. The requirement etc. and the methodology for evaluation was dealt with by the learned Single Judge in following manner: -

> *"Learned counsel also refers to clause 14 (ii) of the Brochure laying down the Procedure for Selection of the Petrol/ Diesel Retail Outlet Dealers issued on 15.09.2008 and*

updated as on 25.12.2008, under which it was provided that for finance the maximum marks is 25 which has further been sub-divided into 12 marks for liquid cash in the form of bank balance, fixed deposits, shares of listed companies, etc.; four marks for fixed and movable assets including own land, buildings, shops, house, vehicles, etc.; four marks for income including agricultural income, business income, interest, rent, royalty, etc. and five marks were for credit worthiness certificate from scheduled bank/financial institutions and/or expressing willingness to extend credit, if required.

Learned counsel further points out that the same has to be read along with the further clarification in Clause 14 of the Brochure that the maximum marks, i.e., 25 under the parameter "Finance" would be proportionately distributed in the ratio of maximum marks of 12, 4, 4, 5, under each sub-parameter and this ratio will be applied on the total finance requirement advertised for each location and the applicant will qualify for full marks if the actual fund available based on the documents submitted by the applicant is either equal to or more than the proportionate maximum fund requirement worked out as above under each sub-parameter and pro rata for lower availability of fund.

It is submitted by learned counsel for the Corporation on the basis of the aforesaid clauses, that in view of the total requirement of finance being given in the advertisement at Rs.15,00,000/- and under Finance the maximum marks, which could be allotted, was 25; thus, the requirement of liquid finance pro rata for 12 marks would come to

Rs. 7.2 lacs, whereas the petitioner had only shown at Rs. 31,511.79 as credit balance. The rest of the balance being debit balance in different accounts, thus on the reallocation of marks as has been done the petitioner becomes disqualified since he has obtained less than 60% marks in terms of clause 16 of the Brochure.

In reply, learned counsel for the petitioner submits that the said things ought to have been clearly stated in the advertisement and the Brochure itself and such calculations based on different clauses do not appear to be proper.

This Court finds sufficient force in the submissions of learned counsel for the respondent Corporation.

On a consideration of the facts and circumstances of the case and the various provisions of the advertisement as also the Brochure laying down the Procedure for Selection issued by the respondent Corporation, it is evident that a streamlined system of marking for the purpose of selection of Retail Outlet dealer has been provided which applies to all the cases. The fact that the petitioner had a little over Rs. 31,000/- in his Bank Account is not denied by learned counsel for the petitioner, but he submits that the petitioner has sufficient assets, including bank guarantee and he has a good financial status for running the Retail Outlet of petrol and diesel."

5. In the opinion of this Court, a very objective and a fair adjudication has been made by the learned Single Judge keeping in mind the parameters of award of marks and the requirement which emerged from the brochure issued by the Company in such application which have been reproduced in the earlier part of the order. The Court did not want to dilute on what the learned Single Judge had said while dismissing the writ application.

6. As a parting effort, learned counsel for the appellant submits that there is no provision in the advertisement of the Corporation to show that an applicant has to continuously maintain a minimum balance of Rs. 7.2 Lacs, before he can be finally appointed as a Dealer. The balance was available at the time of application, and, therefore, in absence of such a provision the decision of learned Single Judge, whatever be the reason, should be set aside.

7. In the opinion of this Court, there is basic fallacy in the submission of learned counsel representing the appellant because by virtue of the nature of business availability of liquidity to the extent of Rs. 7.2 Lacs, before embarking upon the business is integral. Further, when a declaration was made by the appellant that he had such a balance, then on actual verification that fact should have emerged, otherwise, only showing balance at the time of consideration and the same balance vanishing, when it came down to final selection, will be surely detrimental to the commercial interest of the Oil Company in selecting the candidates and judging his capability.

8. In the aforesaid view of the matter, this Court does not find any merit in this appeal, accordingly, this appeal stands dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Rajeev/-

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