

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22776 of 2013

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Poonam Devi, W/O- Shri Santosh Kumar Gupta, R/o- Village Manjhagarh, Purani
Bazar, P.O+ P.S- Manjhagarh, District - Gopalganj Petitioner

Versus

1. The Indian Oil Corporation Ltd. through its Senior Divisional Retail Sales
Manager, Marketing Division, Muzaffarpur Divisional Officer.
2. The Senior Divisional Retail Sales Manager, Indian Oil Corporation Ltd.
Marketing Division, Muxaffarpur Divisional Officer Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Senior Advocate
Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, Advocate
Mr. Amlesh Kumar Verma, Advocate
Mr. Abhimanyu Deo, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: -05-2017

The petitioner herein, while assailing the order dated 04.10.2013 issued by the respondent Senior Divisional Retail Sales Manager, Muzaffarpur Divisional Office for the Indian Oil Corporation, seeks a writ of certiorari for setting aside the order by which the merit panel of the petitioner (first empanelled applicant) for award of petrol/diesel, Kishan Seva Kendra at Bakhraur has been cancelled. The petitioner further seeks a mandamus commanding the respondents to award the dealership to the petitioner in relation to petrol/diesel Kissan Seva



Kendra for the location Bakhraur (within 500 mtrs. from Bishunpura Bazar Chowk, Sidhwalia Road) in the district of Gopalganj.

The challenge to the aforementioned order is in the background of the following facts, briefly stated hereunder:-

1. In response to an advertisement issued by the respondent Indian oil corporation on 19.08.2011 issued in the local newspaper, for the purpose of selection of petrol/diesel for the Kishan Seva Kendra retail outlet, the petitioner applied under the open category (women).

2. The Brochure, as per the advertisement Clause 1 (Gha) provided for the availability of Rs. 10 lacs for the purpose of proper regulation of the said outlet. The award of the dealership and the marking criteria is as per the brochure dated 28th of July, 2011.

3. The respondents, having found the petitioner's application correct and eligible, invited the petitioner for an interview on 15.01.2013 and the petitioner obtained 71.32 marks as against the other candidate namely, Sangam Gupta, who was found to have obtained 36.57 marks. Another candidate namely, Pratibha Kumari was held to be ineligible.



4. Since as per Clause 13.1.2(e), the minimum qualifying marks for the reserve category for women was 50 per cent of the total marks, the petitioner emerged as the only eligible candidate as she has obtained 71.32 marks. The said facts are explicit from Annexure-3 which is the final list of candidates published on 15.01.2013.

5. However, while the petitioner was waiting for issuance of Letter of Intent for award of dealership, an order dated 04.10.2013 was instead served on the petitioner by the respondent no. 2 by which the merit panel of the petitioner was cancelled on the ground that during the field investigation, it was discovered that the amount shown as available in the panel in the application form was Rs.10,15,483/- only but the balance found on the date of application i.e. 19.09.2011 was merely Rs. 3,15,483/-. Thus the shortage of fund affected the award of marks under the finance sub-head (liquid cash in schedule bank in form of fixed deposit).

6. Thus, the petitioner's application was held to be containing mis-representation/suppression of information for enhancing the merit and the selection of the petitioner was cancelled by the competent authority of the Corporation.

7. Being aggrieved by the order of cancellation



dated 04.10.2013 (Annexure-4) which is under challenge, the petitioner then preferred a representation dated 15.10.2013 in terms of Clause-18 of the Brochure, seeking to setting aside of the cancellation order and praying for issuance of the letter of intent for award of dealership as according to the petitioner the cancellation order was on grounds wholly nonest and purely hyper technical. The said application failed to evoke any response from the respondents which led the petitioner to approach this Hon'ble Court for appropriate remedy on the grounds detailed hereunder.

Sri. Y.V. Giri, learned Senior counsel for the petitioner submits that the ground of cancellation of the merit list is wholly illegal and arbitrary and nonest as Clause 10(K) of the brochure read with clause -13 of the application form and Clause 7 of the affidavit at appendix –A makes it evident that the requirement of the brochure is not of keeping the amount so disclosed available in the bank during the time of field verification, but only willingness to get the same available as and when required by the IOC.

It was further contended that in the light of clause 13.1.1 and Clause 13.1.2(c) of the Brochure the petitioner was rightly granted 12 marks under the heading liquid cash as the



availability of fund so disclosed ought to have been adjudged on the basis of the date of declaration in 09.09.2011 and not on the date of application i.e. 19.09.2011 or field verification.

He further submitted that even if the amount was not so found on the date of verification, the marks could have been scaled down to zero under the heading liquid cash and yet the merit position of the petitioner would remain unchanged as the first panelist with 59.32 marks as against the earlier 71.32 marks obtained by her. It was contended by the petitioner that the application was to be considered on the basis of the document submitted by her. Learned senior counsel further contended that clause 10K of the brochure was also not attracted in the case of the petitioner as on the said date the petitioner had the requisite liquid cash so as to enable her to make the declaration valid.

Clause 10.K reads as hereunder:-

“If any statement made in the application or in the document enclosed therewith by the candidate at any stage is found to be incorrect or false and/or the applicant conceals any information, which if declared, would have made in/her ineligible for dealership, the application is liable to be rejected without assigning any reason and in case the application has been appointed as a dealer, the dealership is liable to be terminated. In



such, cases the candidate/dealer shall have no claim whatsoever against IOCL.

Learned counsel for the petitioner submits that clause 13 of the Brochure was not mandatory rather regulatory in nature and the application was to be assessed on the basis of documents submitted at the time of application.

It was submitted that Clause 13.1.1. deals with norms for evaluating the candidate and the note under the “capability to provide finance” provides that the marks will be awarded to capability/availability of funds as compared to the requirement (as indicated in advertisement). With regard to the source of fund declared by the applicant in the application form, it is necessary that the same would be made available for the RO development purposes as and when required. In case, the candidate fails to make available the funds committed at the time when it is actually required or could not substantiate during the interview/at a later date, the candidature/dealership is liable to be cancelled. Clause 13.1.2(e) also provides for proportionate mark based on the amount indicated therein taking into account the total amount required for the location in the advertisement.

It was thus contended that the disclosure of the amount is only for the purpose of showing the capability to



develop the R.O. as and when required and the evaluation criteria does not provide that the amount so mentioned is required to be maintained in the account for any number of days. All the requirement is that when the petitioner is asked for providing such kind of amount, the same should be done. Thus, before issuance of the letter of cancellation if the petitioner was asked to show its capability, the same would have been provided and rectified again and only if the petitioner would have failed in doing so, the question of cancellation of selection would arise. Thus, granting of 12 marks to the petitioner under the heading liquid cash was correct.

Referring to appendix –A accompanying the application form, counsel for the petitioner submitted that clause 13 of the application form is to be read with clause -7 of the affidavit in appendix –A which provides for an undertaking that the funds shown in Item no. 13 of the application form will be made available for the purpose stated above and in case it is found that the same is not made available as and when required the offer for dealership can be withdrawn at any stage. It was reiterated by the petitioner that she would make available the amount of Rs. 10 lacs at the time it would be so required. It was contended that at the time of Appendix-A was prepared that is 09.09.2011 the



information provided therein is correct and therefore the petitioner was not guilty of any mis-representation as on.. The documents which have been submitted alongwith the application contained the declaration dated 09.09.2011.

Therefore, it was incorrect on the part of the respondents to say that there has been mis-representation on the part of the petitioner. It was consistently averred by the petitioner during the course of arguments that from a bare reading of the clauses, it is evident that the disclosure of the amount is only for the purpose of showing the capability to develop the RO as and when required and the evaluation criteria does not provide that the amount so mentioned is required to be maintained in the account for specified number of days. The entire requirement, in fact is that when the petitioner is asked for providing the amount the same should be made available by him. However, in any view of the matter before issuance of the letter of cancellation, the petitioner was never called upon to show clause regarding its capability to provide the finance. It was contended that if the same opportunity would have been provided, the petitioner could have rectified his capability for providing liquid cash and was only after failing to do so, could the respondent proceed to cancel the selection. Thus, granting of 12 marks to the petitioner under



the heading liquid case was wholly correct. It has also been submitted that even if the finance provided was less, the petitioner would be entitled to proportionate marks out of the 12 marks, and still be liable to get into the merit panel for being selected as the total marks would be above 50 per cent and she would still remain as the first selected candidate. Moreover, it was categorically asserted that she is still willing to provide the amount of Rs. 10 lacs as stated in the application, as and when required and in that view of the matter, the respondents may issue the letter of intent in favour of the petitioner. Accordingly, the petitioner further prayed for issuance of appropriate direction to the respondent to proceed further with the award of Letter of Intent and award of the retail outlet in favour of the petitioner.

Per contra the respondent IOC has stated in its counter affidavit that the impugned order as contained in Annexure-4 is wholly legal and valid and in accordance with the prevailing policy of the Corporation. The cancellation order of the petitioner has been issued for the subject KSK location. It was submitted that in response to an advertisement dated 19.08.2011 (Annexure-1), the petitioner alongwith others had applied for KSK (retail outlet) under open category (women) at location Bakhraur (within 500 meters from Bishunpura Bazar Chowk on Ssidwalia Road) District



Gopaloganj. The petitioner was selected as the first empanelled candidate but during the investigation, it was found that the amount standing in her Central Bank Of India, Majhagarh Branch which was stated to be Rs. 10,15,483/ in the application form was only Rs. 3,15,483/- . Thus the total availability of fund was Rs. 3,15,483/- against the claim of the applicant Rs. 10,15,483/- as on the date of application which is less than the working capital of Rs. 9 lacs in the subject location as per the terms of the advertisement. Thus, it was discovered that such deviation affected the marks allotted to the petitioner under the sub head “Liquid cash in the form of bank fixed deposit” which also enhanced the merit of the application in lying with the Policy Reference No. 6069(DSG)-42/12 dated 21.12.2012. Hence, the petitioner’s selection was cancelled which was approved by the competent authority and communicated to the petitioner. The respondent further contended that the petitioner is guilty of *superesio veri and suggestion falsi* as in the writ application the petitioner have created an impression that the date of submission of application the funds were available. They have created the impression that the date of application form was 09.09.2011 (page 62 of the writ) whereas the original application form submitted before the respondent was 19.09.2011 and not 09.09.2011. At the time of argument, the counsel for the respondent



has produced the original records in support of the same.

Learned counsel for the respondents submits that the interview was conducted on 15.01.2013 and Smt. Poonam Devi was selected as first empanelled candidate. However, during the field investigation the deviation with regard to total availability of fund was discovered. Though, in the application dated 19.09.2011, the applicant had claimed liquid cash to the tune of Rs. 10,15,483/-, the total availability of fund as on the said date was only Rs. 3,15,483/-. The above deviation affected the award of marks under the sub-head "liquid cash in the form of fixed deposit", and was aimed to enhance the merit of the applicant is line with the policy of the corporation being reference 6069(DSG)-42/12 dated 21.12.2012. The details of the policy have been annexed as Annexure-PR/4 also annexed by the petitioner as Annexure-7. Counsel for the respondents thus contended that it has clearly mentioned in the application format that the information given in the FD'/Bank Accounts/other financial instrument has proof of financial capability should be valid as on date of application. Therefore, since funds were found short during the field investigation report (FIR) the candidature of the first empanelled applicant (petitioner) was cancelled and the letter of intent (LOI) was not to be issued in her favour. It was further



contended by the respondents that since selection are made in terms of the brochure, there is no provision of giving show cause notice to any applicant in such cases. Moreover, the petitioner having given false information has not come to this Court with clean hands, the writ application is wholly devoid of merit and fit to be dismissed.

I have heard learned counsel for the petitioner and learned counsel for the State. On consideration of the rival submissions as well as document annexed by the parties, it appears that in pursuance of the advertisement, the petitioner had applied on the basis of a bank certificate which was prepared on 09.09.2011 but the application was submitted by her before the respondent on 19.09.2011. On the said date of submission of application form, the petitioner had already withdrawn the amount on three occasions between 09.09.2011 and 19.09.2011 which is evident from IOC documents (Annexure-4) as also the petitioner's own bank statement dated 21.04.2017 issued from Central Bank of India (Annexure-8) appended to the supplementary affidavit filed by the petitioner. It appears from the said bank statement that on 08.09.11 an amount of Rs. 1,20,000 was credited to the account of the petitioner on 08.09.2011 which became Rs. 10,15,483/- as on the said date an amount of Rs. 8,15,483/- was



already standing in this account. However, on four subsequent dates being 10.09.2011, 14.09.2011, 16.09.2011 and 19.09.2011 a total amount of Rs. 7 lacs was withdrawn and paid to “self”. It thus, implies that on the date of application itself, the petitioner had withdrawn and given to herself the amounts standing in her name. It was under such circumstances that the IOC came to the conclusion that the higher amount shown in the application form was made to enhance the merit of the petitioner as a candidate vis-à-vis the other applicants, which amounted to false representation/mis-representation, attracting the rigors of clause 18K of the Brochure. Admittedly, the petitioner was not having the amount so stated in her account on the date of application as was noticed on 04.10.2013 the date of filing of the field investigation report. As such, the appropriate authority came to the conclusion that since the application form of the petitioner had been evaluated according to the submitted documents, the shortage/less availability of fund as on date of application affected the award of marks under the finance sub-head “liquid Cash in schedule bank in the form of FD”. The subject deviation amounted to misrepresentation/suppression of information for enhancing merit. Accordingly, the authorities rejected the selection of the petitioner which is wholly in line with the terms



of the advertisement as contained in note 'Gha' and 'Anga' . In the advertisement the said notes clearly stipulated that the expected working capital of the applicant ought to be Rs. 10 lacs or not less than Rs. 9 lacs. However, though stated to be such, by the petitioner in her affidavit annexed to the application form the actual position as on date of the application was not Rs.10,50,483/- but on 19.09.2011, the amount was found to be Rs.3,15,438/- . It is evident from the banks statement that the petitioner had herself withdrawn the amount after taking the banks statement and adduced the same to enhance a merit as it was to her full knowledge on the date of application, she had already withdrawn the amounts. Thus, this court is of the considered opinion that the petitioner being guilty of misrepresentation, Clause 18K of the Brochure stands invoked and the respondents have rightly rejected the selection of the petitioner for grant of Letter of Intent for award of dealership of the Kishan Seva Kendra, retail outlet. The decision cited by the petitioner before this Court in the case of *M/S Yoshoda Bhart Gas, Ekma Saran Bihar & Anr. Vs. Bihar Petroleum Corporation Ltd & Ors. (CWJC NO. 15150 of 2012)* in which this court has allowed the case of the petitioners, stands on a different footing and there was no allegation against the



petitioner of the said case that in the course of cumbersome selection process the petitioner had manipulated the same or any undue favour was **bestowed on them**. In a similar case however, i.e. *CWJC 13113 of 2010 (Neelam Devi Vs. Union of India & Ors)*, this court noticed that the applicant had shown/declared in the application itself that she had a sum of Rs.21.03,580.67/- deposited in the saving bank account standing in the Punjab National Bank and Central Bank of India. On verification, it was found that on the date of application the savings accounts was to the tune of 14,53,580/- and during the period of three months from the date of application, only a sum of Rs.5,45,018.67/- was maintained in the said account. This was found to be in violation of Clause 14.2 of the application of the said case. The declaration/undertaking was found to be false and the writ petition was dismissed.

The instant case is of the said nature and falls prey to the mischief that was sought to be perpetuated by the petitioner, as three days after the petitioner obtained a certificate from the bank for the purpose of filing her application for grant of retail outlet, she withdrew a sum of Rs. 7 lacs from the same, even before she had filed her application form. Further withdrawal of



money pursuant to obtaining a certificate from the bank amounted to a deceitful act. Under such circumstances this court finds that the action of the petitioner was clearly made to enhance her merit at the time of evaluation and the respondents have rightly rejected her selection after due enquiry. The action of the respondents in terminating her selection is fully in tune with Clause 10K of the Brochure which provides for cancellation/termination in the given facts and circumstances of the case and cannot be faulted.

Learned counsel for the petitioner has also sought to place reliance on a judgment of the Apex Court *reported in 2014(15) SCC, 601 Sunita Gupta Vs. Union of India & Ors.* In the said case, the Apex Court has referred to the cancellation of selection by reducing marks for “land and infrastructure” on the ground that the consent letter of other co-owners were not submitted before due date along with application and that no addition, deletion or alteration was permissible after submission of application is a case in which the facts and circumstance are at variance. It was a case where the appellant had sufficiently met the condition of the application and it was found that the respondent corporation had canceled the appointment on flimsy consideration. Thus, this case cannot step to the rescue of the petitioner who had clear made a



misrepresentation in his application, which obviously was for securing more marks in the category “liquid cash” as stated in the Brochure. Such misrepresentation by the petitioner having been noticed, this court would but restrain itself from interfering in the contractual transaction entered into between the parties especially an instrumentality of the State which is required to adhere strictly to the terms of the advertisement and the Brochure. As such, the ratio of the said case does not fall within the facts and circumstances of the present case which is a clear case of misrepresentation by the petitioner.

Counsel for the respondents has further stated that the claim of the petitioner that clause 13.1.1. as well as 13.1.2 which deal with the norms for evaluating the candidates and the note under the capability to provide finance provides that the marks will be awarded to capability/availability of funds as compared to the requirement (as indicated in the advertisement). In the said clauses the source of funds to be declared by the applicant in the application form was solely for the purpose that the same would be made available at the time the RO was to be developed and it could not be so arranged at the time it is actually required, the dealership is liable to be cancelled is also wholly untenable. This argument could only be invoked after the issuance of Letter of Intent but the mischief



having been detected much prior to the Letter of Intent, the respondent Corporation was fully entitled to cancel the selection of the petitioner in accordance with clause 10K of the Brochure. Upon consideration, this Court finds itself in agreement with such a submission and as such holds the case of the petitioner to be devoid of merit.

Thus, for the reasons stated above and after due consideration of all facts and circumstances, this court is not inclined to invoke the extra ordinary jurisdiction of the court under Article 226 of the Constitution. The impugned order of cancellation of selection as contained in Annexure -4 in pursuance of the advertisement is upheld.

The writ petition being devoid of any merit is dismissed.

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	NAFR
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