IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.559 of 2020

==

M/s Gauri Shankar Indane Service, Kuchaikote, District-Gopalganj through its Proprietor Ravi Pandey, male, aged about 34 years, S/o Late Gauri Shankar Pandey, R/o Flat No. 201, Sindhu Nilay Apartment, Yaduvansh Path, Nageshwar Colony, P.S.-Buddha, Colony, District-Patna.

... ... Petitioner/s

Versus

1. Indian Oil Corporation Ltd. through the Executive Director (ED), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5^{th} Floor, Dak Bungalow Chowk, Frazer Road, Patna-800001.
2. The General Manager I/c. (LPG), Indian Oil Corporation, Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5^{th} Floor, Dak Bungalow Chowk, Frazer Road, Patna-800001, P.S.-Kotwali, Distt.-Patna.
3. The Dy. General Manager (LPG), Area Office, Patna under Bihar State Office, Indian Oil Corporation Ltd., Sahi Bhawan, Exhibition Road, P.S. Kotwali, Patna.
4. Mr. Udai Kumar, Son of Not Known General Manager, I/c. (LPG), Indian Oil Corporation, Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5^{th} Floor, Dak Bungalow Chowk, Frazer Road, Patna-800001, P.S.-Kotwali, Distt.-Patna.
5. Mr. Arun Prasad, Son of Sri R.N. Prasad, the then Chief Area Manager, LPG, Indian Oil Corporation, Patna Area Office, at present General Manger, I/c. LPG, UPSO-1, Lucknow, Resident of 402, Maa Sharde Complex, East Boring Canal Road, P.S. Budha Colony, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Vinod Kanth, Sr. Adv.
		Mr. Y.C. Verma, Sr. Adv.
		Mr. Ranjan Kumar Srivastava, Adv.
For the Respondent/s	:	Mr. Anil Kumar Jha, Sr. Adv.
		Mr. Sanat Kumar Mishra, Adv.

==

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 22-05-2020

The petitioner, which is a Gas Agency since 2009 and is being run under the name and style of M/s

Gauri Shankar Indane Service, Kuchaikote in the District of Gopalganj for the respondent/Indian Oil Corporation *(in short the Corporation)*, has approached this Court for the following reliefs:

> (A) A writ in the nature of Certiorari or any other appropriate writ/s, order/s, direction/s quashing the following:
>
> **RELIEFS**
>
> (i) Letter of Termination dated 30.12.2019 (hereinafter referred as 'impugned order') issued by Respondent No. 2 whereby and whereunder the distributorship of the Petitioner has been terminated with immediate effect without considering the fact that earlier in 2009, the inspection of bank statement of the Petitioner has already been done by two senior officers before issuance of LOI and the issues raised in reply dated 18.10.2019 filed by the Petitioner.
>
> (B) A writ in the nature of mandamus or any other appropriate writ/s, order/s, direction/s commanding the Respondents for the following:
>
> (i) To restrain the Respondents from giving effect to the Order contained in Annexure-20 to the petition.
>
> (ii) To restrain the Respondent from interfering with running of M/s. Gauri

Shankar Indane Services (229618) at Kuchaikot, Gopalganj by the Petitioner and by commanding the Respondents to discharge all duty enjoined upon them which the Respondents are under obligations to discharge the duties for running of their agencies.

(iii) To hold the Order of Termination to be nullity and non est in the eye of law.

(C) To any other relief/s to which the Petitioner is found entitled to.

2. During the pendency of the aforesaid writ petition, an interlocutory application *vide* I.A. No. 1 of 2020 was filed seeking, if at all it were required by this Court, an inquiry by a neutral body which is neither associated with the respondent/Corporation nor with the Siwan Co-operative Bank.

3. This Court, while hearing the writ petition, had passed detailed orders on 17.01.2020 and 21.01.2020 respectively, which incorporate the submissions advanced on behalf of the parties. In order to avoid any repetition of facts, the orders referred to above are being extracted hereinbelow for the sake of completeness:

17.01.2020: Heard Mr. Binod Kanth, learned senior advocate for the petitioner and Mr. Anil Kumar Jha, learned senior advocate for the respondent/Indian Oil Corporation Ltd.

The agreement between the petitioner and the respondent/corporation has been terminated on the charge of the petitioner having given a wrong information at the time of grant of Letter of Intent (LOI) in the year 2009 about his financial strength. Against an advertisement which was issued sometimes in the year 2007 asking for such applicants who fulfilled necessary conditions for being chosen as Retail Outlet Dealers with a premium to freedom fighters, the father of the petitioner applied and his candidature was accepted. However, a day after the Letter of Intent was granted to Late Mr. Gauri Shankar Pandey, freedom fighter of his times, he died on 31.10.2008.

In accordance with the guidelines of the I.O.C.L., in case of death of a licensee, the provision for making inquiries about the heir of such licensee was invoked. Though the petitioner who is the son of the original licensee wanted the license to be transferred to him but he was subjected to the rigors of an inquiry with respect to other technical qualifications for which he had to be responsive. One of the conditions was that he, too, at the relevant time had sufficient financial strength for being chosen as a concessionaire.

The petitioner claimed that he had an amount of Rs. 20,40,000/- parked in a cooperative bank on the day of the advertisement. This statement was verified through a procedure which is known as “field investigation” whereafter the “field investigation” report was submitted.

Mr. Kanth, learned senior advocate has shown to this Court that the “field investigation” report confirmed in no uncertain terms the requisite bank balance of the petitioner. After the petitioner was found to be responsive at all fronts, license was granted to him to run the outlet, which he has successfully carried on for five years.

The license was renewed for a further period of five years.

It has been submitted that during the currency of the first contract, a burglary took place at the instance of one of his employees, who took away the passbook and other important documents for which FIR was lodged by the petitioner and in which the concerned employee was sent to jail, who is now on bail. During the course of investigation, it further came to light that the aforesaid employee also had an associate, who too was an employee of the petitioner. Sometimes later, the aforesaid employee viz. Mr. Rajesh Pandey was also thrown out of the employment of the petitioner. Nursing the aforesaid grudge, it has been urged, he made a complaint to the management of the I.O.C.L. alleging that the petitioner had been able to bag the license on a wrong statement regarding his financial strength and his educational qualifications. This complaint led to an inquiry and issuance of show cause notice to the petitioner to which the petitioner has replied but the reply has not found favour and the license of the petitioner has been cancelled and the agreement with him has been terminated.

Hence, the present writ petition.

One of the major grounds on which this petition rests is that the desired document viz. the current statement from the concerned bank about the petitioner not having sufficient amount of money at the time of interview for the first contract, has not been supplied to him. It has been urged by the petitioner that only a statement has been given that on inquiry from the cooperative bank, the respondent/corporation has been informed that on the relevant day when the petitioner had said that he had Rs. 20,40,000/- in his account, he had only Rs. 2,40,000/- in that account. It has therefore been submitted that without giving any reason by the corporation for doubting the report of the field investigation and relying on a statement from the bank authority which has not been supplied to the petitioner, his agreement has been terminated. The other document which was demanded by the petitioner and which was not provided to him is the recommendation of the I.O.C.L. authorities on the basis of such "field investigation report".

Apart from this, additionally, it has been argued that the clause in the agreement requiring the petitioner to furnish his bank account to show his financial strength was for the purposes of testing the liquidity/financial strength of the petitioner so that he could be entrusted with the task of running the retail outlet. This is necessary for assuring the oil company that the licensee would be able to put up the infrastructure which is required for running such outlet. That the outlet was run for five years in the first instance and thereafter was renewed for another five years is a good indicator of the fact that the petitioner has sufficient liquidity and that no good purpose would be served in terminating the agreement of the petitioner on a complaint made by a person who has definite enmity against the petitioner.

The two grounds noted above viz. non-supply of relevant material viz. the recommendation of the I.O.C.L. on the basis of "field investigation report" regarding the liquid reserve of the petitioner and invoking a clause of the agreement which has been tested and the significance of which has now been relegated to the back-burner, the right to livelihood of the petitioner has been completely disrupted.

As opposed to the aforesaid contentions, Mr. Jha, learned senior advocate has submitted that for a contract to subsist, there has to be uberrima fides between the parties. If license has been obtained on wrong information, it is a good ground for terminating the agreement, notwithstanding the passage of time and the outlet having been run successfully for more than one term. Apart from this, it has been urged that the documents which were demanded by the petitioner and which were relevant for the purposes of replying have been provided. The demand of the petitioner for producing the two officers of the I.O.C.L., one of whom has left the company but the other is still serving, is not necessary and therefore the same has not been provided. It has been submitted that in an inquiry, while appreciating the show cause reply, the rules of evidence which is observed in courts of law are not to be followed but has to be applied only mutatis mutandis to ensure that sufficient opportunity has been given to the licensee for him to explain his cause.

However, from a perusal of the records, it appears that the current certificate from the bank that the petitioner did not have sufficient reserve in his account at the relevant time has not been brought on record by the petitioner on the ground of his not having been supplied with the same or by the respondent/corporation because of inadvertence.

Let a copy of such document be furnished by the I.O.C.L. by the next date by way of supplementary affidavit, a copy of which shall be handed over to the counsel for the petitioner.

Re-notify on 20th of January, 2020 at 11:00 O' clock.

21.01.2020: Mr. Ranjan Kumar Srivastava, learned counsel for the petitioner submits that in the event of the claim of the petitioner about his financial strength at the relevant time having been disputed by the Bank authorities, as well as the averment of the respondent / Corporation that the concerned Bank had never issued any certificate which was produced by the petitioner, a thorough verification is required.

If what the petitioner has suggested is correct, then the concerned Cooperative Bank is not being run properly. Simultaneously, the functioning of the respondent / corporation would also be put to question, especially when two of the officers of the constituted team have, in the past, certified that the statement made by the petitioner regarding his financial health has been verified and found to be correct.

> If the statement of the petitioner is found to be incorrect and he is not in a position to prove that he had sufficient amount in his Bank account for him to have become technically responsive to the advertisement, it would definitely amount to making a false assertion before a Court of Law and in that case, he can be saddled with an intention to make such wrong statement.
>
> With the aforesaid fact being noted by this Court, learned counsel for the petitioner, and rightly so, seeks an adjournment to verify and assure whether such assertion on the part of the petitioner could be proved by pitching in additional evidence / documents in support of his claim.
>
> Re-notify this case on 29th of January, 2020.

4. From the perusal of the orders referred to above as also the averments made on behalf of the parties, there does not appear to be any dispute regarding the petitioner running the Gas agency since 2009.

5. What is now being questioned and doubted is whether the information provided by the petitioner regarding the amount of money parked in his bank account was incorrect, rendering the licence of the petitioner liable to be

cancelled and the contract agreement to be rescinded as a consequence thereof.

6. As has already been noted by this Court, the arguments for and against the parties are only to the extent that the information regarding the financial strength of the petitioner at the relevant time was verified by the officers of the respondent/Corporation, who found the assertion of the petitioner to be correct and that the petitioner has been able to run the agency without any complaint whatsoever for two consecutive terms. The contra arguments are that running an agency without any complaint is not relevant, when a decision is required to be taken on finding that the very grant of licence at the relevant time was flawed because such licence was granted on an information which was not correct.

7. Perused the records.

8. The field verification report appears to have been submitted without physically verifying the amount parked in the bank account of the petitioner. It further appears that the certificate issued by the Co-operative Bank

that the petitioner has rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in his account is also not without doubt as the Bank has now certified that such a certificate was never issued by the Bank. The amount available in the Bank account of the petitioner at the relevant time was only rupees Two Lacs Forty Thousand (Rs. 2,40,000/-)

9. Great efforts have been undertaken by the learned Senior Counsel for the petitioner to impress upon this Court that in the absence of an opportunity to the petitioner to question the two officers of the Corporation who had conducted the field verification and in the absence of the concerned Bank as a party/respondent in the present writ petition, it would not be advisable to accept the statement of the respondent/Corporation that the letter issued by the Bank disclosing rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in the bank account of the petitioner is not correct and that such certificate had never been issued. It was urged that once such information [petitioner having rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in his bank account] was found to be correct and the

respondent/Corporation had every wherewithals to test its correctness and such factual position was never countered, it cannot now be questioned as being incorrect statement having been made deliberately for bagging the contract.

10. As noted earlier, the argument of the respondent/Corporation is that fraud vitiates everything and, therefore, the decision of the Corporation ought not to be tinkered with.

11. In support of the aforesaid contentions, learned counsel for the petitioner has drawn the attention of this Court to a judgment of the Supreme Court in ***Sajeesh Babu K. Vs. N.K. Santhosh & Ors.; (2012) 12 SCC 106***, wherein it has been held that in matters of appointment/selection by an Expert Committee/Board, consisting of qualified persons in a particular field, normally, the Courts should be slow to interfere with the opinions by the experts, unless there is an allegation of *mala fides* against the experts who were part of the selection committee. In the aforesaid case, the appellant was selected as a licensee of LPG Distributorship on the basis of other

qualifications including experience as he had disclosed that while studying for M.Tech., he had worked as a Marketing Manager and an Insurance Consultant and had relied upon such experience. The High Court of Kerala found it to be totally unacceptable that the appellant could have gained such experience while studying for M.Tech. The licence of the appellant therein was, therefore, cancelled and such decision of the learned Single Judge of the High Court was affirmed by the Division Bench. It was in that context that the Supreme Court had opined that when an expert body had accepted the correctness of the certificate of experience of the appellant therein, the High Court ought not to have doubted the same.

12. The issue at hand does not get resolved by the dictum of the Supreme Court that normally in matters of opinion rendered by an expert body, there should be minimal interference by the Courts of law. The field officers of the respondent/Corporation are no experts, but were only assigned with the task of verifying factual aspects regarding the candidature of the petitioner. Any opinion of the field

officers or any certificate of the Bank cannot be said to be an "expert's opinion".

13. Learned counsel further relied upon ***Shri Krishan Vs. The Kurukshetra University, Kurukshetra; AIR 1976 SC 376*** and ***Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur; 1982 BBCJ 302***. In the former, it was held by the Supreme Court that once the appellant therein was allowed to appear at an examination, the respondent/University had no jurisdiction to cancel the candidature of the appellant for that examination. Relying upon the decision rendered in the former case, a Division Bench of this Court, while dealing with cancellation of admission of a candidate in MBBS course on the ground of providing wrong caste certificate, had held that if a person on whom fraud is committed is in a position to discover the truth by due diligence and which is not done, then fraud is not proved. The basis for saying so for this Court was that it would neither be a case of *suggestio falsi* or of *suppressio veri*. As has been noted, the certificate of caste furnished by the petitioner therein was found to be false after verification.

In that case, it was held by the Division Bench that once the petitioner had completed his MBBS examination, on the ground of production of a false certificate at the time of admission, the candidature of the petitioner could not have been cancelled.

14. There could be some reservation of this Court in accepting this principle without any caveat. But assuming the aforesaid position of law to have remained valid till today, it does not at all impact the facts of this case. Be it noted that the current proposition of law with respect to fraud is rather unambiguous. Anything which is invested with fraud is vitiated *void ab initio*. In any view of the matter, in the present case, the judgment cited by the counsel for the petitioner does not have any application.

15. It was next contended that any order which does not reflect application of mind on the part of the authority concerned to the materials placed before it, cannot be sustained. There has to be an application of mind on such material facts and evidence which is placed before the authority in question. If such application of mind does not

get reflected from the order, it is not a valid order in the eyes of law. ***[Refer to M/S Dharampal Satyapal Ltd. Vs. Dy. Commissoner of Central Excise, Gauhati & Ors.; (2015) 8 SCC 519]***.

16. The learned counsel for the respondent/Corporation has however referred to various case laws, *viz.*, ***Tata Cellular Vs. Union of India: (1994) 6 SCC 651***; ***Jagdish Mandal Vs. State of Orissa & Ors.: (2007) 14 SCC 517; Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.: (2016) SCC On-Line SC 940 and Jsw Infrastructure Ltd. Vs. Kakinada Seaports Ltd.: 2017 (0) AIJEL-SC 59825/AIR 2017 SC 1175***. The substratum of his argument is that a Court, while exercising its power of judicial review, has to act with judicial restraint, especially in matters of contract as Courts do not usually have necessary expertise to correct/supplement any such technical decisions. There could be disagreement with the decision making process or the decision of the administrative authority, but that may not be the reason for a Constitutional Court to interfere with such decisions. The threshold of *mala fides*, *viz.*, intention to favour someone or

arbitrariness or irrationality or perversity could only be the grounds for judicial interference.

17. Apart from the above, it has been urged by the learned counsel for the respondent/Corporation that unless it is found that there is a *mala fide* on the part of the authority to cancel the contract of the petitioner, the decision of the Corporation to terminate the contract with the petitioner ought not to be interfered with. No *mala fides* could be attributed to the respondent/Corporation when the petitioner was chosen as a concessionaire and his term of contract was renewed without any condition. The adequacy or the reliability of the grounds pressed into use by the respondent/Corporation ought not to be gone into by the Court as it would amount to interference with the functioning of the Corporation.

18. With respect to the principle of natural justice in conducting the proceedings, the submissions urged on behalf of the petitioner is that in the absence of any opportunity to the petitioner to cross-examine the two officers of the respondent/Corporation who had submitted

the verification report, the decision/order could not be sustained, is not acceptable. The report is in the positive and it is only because of such report that the petitioner was chosen as a licensee. However, the foundation of the report being ultimately found to be incorrect, the decision of the respondent/Corporation cannot be questioned. The petitioner has not been able to deny categorically or assert positively that the allegation of lesser amount in the bank account at the relevant time is incorrect or that the petitioner had rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in his bank account on the day the application form was filled by him.

19. Now the question arises whether the aforesaid incorrect information, *viz.*, the petitioner having the said amount in his bank account at the relevant time can be said to be an instance of fraud. “Fraud” is a conduct, either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. It is also well settled that negligence is not fraud and can

only be treated as one of the incidence/evidence of fraud.

20. The application form of the petitioner has been brought on record, which indicates that in Column 14.2 thereof, the petitioner has disclosed that on the day of making the application form, he had rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in the Central Co-operative Bank, Siwan in his bank account No. 014111 and rupees Sixty Thousand (Rs. 60,000/-) in State Bank of India, Gardanibagh Branch, in his account No. 20011249138. In view of such categorical assertion of the financial strength and such statement having been found to be incorrect on the reckonable date, it would be nothing less than making a false statement by the petitioner. Whether the licence was obtained on such statement or on other factors may not be required to be gone into as a wrong statement with respect to a very material particular fact amounts to fraud. No Court would unnecessarily find fraud unless it is distinctly pleaded and proved. However, if once it is proved, it vitiates the decision and the Court has no option but to sustain an order doing away with or setting-

aside such decision.

21. That the petitioner has been able to run his agency successfully and that in the past, there were no infrastructural deficiency, would not cure the defect of a wrong averment in an application form. Whether the respondent/Corporation has found such wrong statement having been made by the petitioner on the complaint of one of its employees or of its own is not a question which is relevant. Once the issue was raised, it was only the petitioner who could have categorically denied such assertion or proved that his statement in the application form was correct at the relevant time. Not having done so and only nitpicking on the issue of not having been given an opportunity of cross-examining the two officers of the Corporation who had furnished a positive field verification report, the petitioner has done no good to his cause.

22. From the letter of termination dated 30th December, 2019, it would appear that a show-cause notice was issued to the petitioner for two allegations; one being the submission of fabricated bank statement to show his

financial stability and the other, submission of false educational certificate. After perusing the show-cause reply of the petitioner, the respondent/Corporation was of the view that the petitioner had only rupees Two Lacs Forty Thousand (Rs. 2,40,000/-) balance in his bank account which too was withdrawn on 07.04.2009. The allegation with respect to submission of false educational certificate could not be substantiated and, therefore, it was not taken into account. The letter of termination further indicates that Clause 11 of the Selection Guidelines of 29.06.2007 is applicable to the case of the petitioner as fresh evaluation of the proposal of the petitioner was done as per the applicable reconstituted policy. Clause 11 of the 2007 Guidelines clearly stipulate that the evaluation of the parameters would be done on the basis of information given in the application. On verification, if it is found that the information given in the application is incorrect/false/misrepresented, then the applicant's candidature will stand cancelled and he will not be eligible for distributorship.

23. With the aforesaid position of facts, it would

be difficult for this Court to interfere with the decision/order of the respondent/Corporation of terminating the contract with the petitioner; notwithstanding that the petitioner has successfully run the agency for so many years. Any consideration over any other extraneous fact would amount to perpetuating a position where a false statement would be given a premium.

24. For the aforesaid reasons, this writ petition is dismissed.

25. However, this Court is of the view that in case no fresh contract for such dealership has been entered into by the respondent/Corporation with any third party up-till-now, it would be open for the petitioner to approach the concerned authority again and seek a renewal of the contract on sympathetical considerations, keeping in mind that the petitioner has carried on the obligation of a licensee with due diligence for about a decade by now and for one mistake, he ought not to be thrown out of the distributorship.

26. Should such a request be made by the petitioner within a reasonable period of time, it is only

expected that the same shall be considered by the respondent/Indian Oil Corporation, if permissible under the Rules.

Re. I.A. No. 2 of 2020 :

Since the main writ petition has been disposed off, there does not appear to be any necessity of passing a separate order in the aforesaid interlocutory application.

The I.A. No. 2 of 2020 also stands disposed off in the light of the judgment passed in the aforementioned writ petition.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.05.2020
Transmission Date	N/A