IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

LPA No.459 of 2018 (O&M)
Date of decision: February 18, 2020

Indian Oil Corporation Limited & another ...Appellants

Versus

M/s Swastic Filling Station ...Respondent

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Ashish Kapoor, Advocate and
Mr. Shantanu Bansal, Advocate for the appellants.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Ashutosh Jerath, Advocate for the respondent.

Rakesh Kumar Jain, J.(oral)

CM-1236-LPA-2018:

This application is filed under Section 151 of the Code of Civil Procedure (for short "CPC"), seeking condonation of delay of 148 days in re-filing of the appeal.

Notice in the application was issued on 15.11.2018 to which reply has been filed.

Counsel for the applicants has submitted that the appeal was filed on 01.09.2017 but since there were some objections raised by the Registry, therefore, the paper-book of the appeal was returned. It is further submitted that inadvertently, the paper-book of this appeal was tagged with the decided cases at the time when counsel for the appellants had shifted his office from 1st floor to the ground floor. The paper-book of this appeal was searched by the clerk of the counsel but the same could not be traced. But ultimately, with the best efforts made by the counsel himself the paper-book was traced in the month of February, 2018 from the bundle of decided cases and in this process a delay of 148 days had caused. It is also submitted that the delay was not intentional but due to the reasons beyond their control. The counsel has filed his own affidavit in support of this application.

On the other hand, counsel for the non-applicant/respondent, while contesting the application has submitted that the applicant has coined this story for the purpose of giving an explanation to this court for condoning the delay in re-filing of the appeal.

We have heard counsel for the parties and after examining the averments made in the application, we are of the considered opinion that the reasons given in the application for condonation of delay in re-filing the appeal are sufficient to condone the delay. Thus, the application is accepted and delay in re-filing of this appeal is hereby condoned.

CM-1237-LPA-2018:

This application is filed under Section 5 of the Limitation Act, 1963 seeking condonation of 186 days delay in filing of the appeal.

Notice in the application was issued on 15.11.2018 to which reply has been filed.

Counsel for the applicants has submitted that the writ petition was allowed by the learned Single Judge on 25.01.2017. Certified copy of the order was applied on the same day and it was made available on

27.01.2017. The writ petitioner made two prayers in the writ petition i.e. a writ in the nature of certiorari for quashing the order dated 30.06.2012 and also for the issuance of a writ in the nature of mandamus to declare the writ petitioner as a selected candidate for retail outlet for the KSK at village Gudha, Tehsil Ladwa, District Kurukshetra and further to direct respondents to award the said dealership to it.

Learned senior counsel appearing on behalf of the applicants, while explaining the delay caused in filing of the appeal has submitted that the learned Single Judge had passed a specific order in the nature of writ of certiorari in setting-aside the order dated 30.6.2012 but in-so-far as the writ in the nature of mandamus is concerned, no specific order was passed, but otherwise the writ petition was allowed. It is alleged that the applicants understood that since the writ petition has been allowed, therefore, the second prayer has also been granted. Thereafter, applicants had sent a letter dated 27.2.2017 to the writ petitioner for a personal hearing. The writ petitioner filed a reply on 25.3.2017, seeking time to provide the documents to the applicants but at the same time on 27.02.2017 the writ petitioner filed an application bearing CM-4338-CWP of 2017 in this court for seeking clarification of the order dated 25.1.2017. It is submitted that on 18.8.2017, while the application for clarification was pending, the Corporation decided to withdraw the letter dated 27.02.2017. It is further submitted that in the meantime on 18.8.2017, the application bearing CM-4338 of 2017 was disposed of by this court by passing the following order:-

"CM-4338-2017

Prayer in the application under Section 151/152 CPC is for clarification of the order dated 25.01.2017 passed by this Court in the aforementioned writ petition.

Mr. Ashish Kapoor, learned counsel appearing on behalf of the non-applicant/respondent(s) has brought the attention of this Court the contents of paragraph 4 of the affidavit, aforementioned, stating that the Corporation has decided to withdraw the letter dated 27.02.2017, which was the main bone of contention in the application seeking clarification of the order dated 25.01.2017. For the sake of brevity, the paragraph 4 of the affidavit reads as under:-

> *"40. That now the Corporation has decided to withdraw the letter dated 27.02.2017 without prejudice to its rights."*

In view of such situation, I am of the view that the grievance of the applicant/petitioner, at the moment stands vindicated and accordingly, the present application has been rendered infructuous.

The present application stands disposed of as such.

The presence of Mr. Narpal Singh, Senior Divisional Retail Sales Manager, Panipat Divisional Office, is ordered to be dispensed with."

It is further submitted that immediately thereafter, within a period of 30 days, which is provided for filing the appeal, the present LPA was filed on 01.09.2017. It is, thus, submitted that there was no intentional or deliberate delay on the part of the applicants, rather the delay has been caused on account of the aforesaid circumstances, which compelled the applicant/appellants to give a personal hearing to the writ petitioner.

In support of his contentions that sufficient cause enshrined in Section 5 of the Act should be adequately elastic to enable the Courts to apply the law in the meaningful manner, counsel for the appellants has referred to the decisions rendered in the case of ***Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, 1987 AIR***

(SC) 1353, Indian Oil Corporation Ltd. and others Vs. Subrata Borah Chowlek etc. 2010 (14) SCC 419, State of Nagaland Vs. Lipok AO & Ors., 2005 (3) SCC 752 and N. Balakrishan Vs. M. Krishnamurthy, 1999 (2) R.C.R. (Civil) 578, to contend that the acceptability of the explanation is the only criteria for condonation of delay.

On the other hand, senior counsel appearing on behalf of the respondent, while vehemently opposing the application for condonation of delay, has submitted that the applicant/appellants was arbitrary in the matter of allotment of this outlet as they have had ignored the claim of the respondent at the time of consideration of their application at the first instance when one Rajiv Khatri was declared as L-1 despite the fact that the respondent was having 19 marks more than him. It is also submitted that the application under Section 5 of the Act is not to be allowed mechanically until and unless the court finds sufficient cause to serve the purpose of condonation of delay. It is further submitted that there was no occasion for the appellants herein to have issued a notice to the non-applicant for his personal hearing especially when the petition was allowed, which means that all the prayers made in the writ petition were granted and therefore, the appellants were supposed to challenge the order of the learned Single Judge immediately within the period prescribed and the correspondence started by the applicants w.e.f. 27.2.2017 is a made up story.

We have heard counsel for the parties and after examining the averments made in the application, are of the considered opinion that the reasons explained in the application for condonation of delay in filing the appeal are sufficient to condone the delay. Section 5 of the Limitation Act, 1963 is an enabling provision which extends the period of limitation in case sufficient cause is shown to the court for not filing the appeal or application in time. In this case, the impugned order was passed on 25.01.2017. Copy thereof applied on the same date was supplied to the applicant/ appellants on 27.01.2017. Since the applicant/appellants have given an explanation that there were two prayers made in the writ petition, specifically for issuance of a writ in the nature of certiorari and mandamus and only the writ of certiorari was categorically allowed and there was no mandamus issued to the respondent, therefore, in order to be on the safer side, the applicant/ appellants had asked the respondent/non-applicant to submit necessary documents to it by serving upon it a letter, to which they had actually replied also. The non-applicant filed an application for seeking clarification of the order dated 25.1.2017. In any case, the time was then consumed in disposal of the application for clarification, which was ultimately decided on 18.8.2017 and the appeal was filed on 01.09.2017 thereafter.

To our mind, the explanation given by the applicant/appellants is sufficient to condone the delay and therefore, application deserves to be allowed. Even otherwise, various judgments of the Hon'ble Apex Court, cited by counsel for the applicants, says that ordinarily a litigant does not stand to be benefited by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The Hon'ble Supreme Court has also held that the length of delay does not matter, acceptability of the explanation is the only criteria, on the basis of which the period of delay has to be considered.

In view of aforesaid discussion, the instant application is allowed and delay in filing the appeal is hereby condoned.

LPA-459-2018:

This appeal is directed against the order dated 25.01.2017, passed by the learned Single Judge, by which the writ petition filed by the respondent herein has been allowed.

In brief, the Indian Oil Corporation (for short "the Corporation") issued an advertisement dated 27.8.2010 inviting applications to allot retail outlet in the category of Kisan Sewa Kendra (for short "KSK"). In the said advertisement, the applications were filed by respective candidates, in which the respondent, which is a partnership firm, comprising of three partners, was held as L-2. The said decision of the Corporation was challenged by the respondent, vide Civil Writ Petition No.7748 of 2011, which ultimately became infructuous and withdrawn on 2.3.2012, because in the meantime, the Corporation had revaluated the marks allotted to all the parties, in which it was found that the respondent should have been L-1 instead of L-2. Thereafter, a Field Investigation Report (FIR) was conducted on 11.4.2012 in respect of the particulars furnished by the respondent in its application, in which it was found that the application suffers from vice of clause 19.2 of the brochure called "Selection of

Petrol/Diesel Kisan Seva Kendra (Rural Retail Outlet) Dealers dated 2nd November, 2011". As a result thereof, the retail outlet was again advertised on 30.6.2012. This advertisement was challenged by the respondent by way of Civil Writ Petition No.17672 of 2012, which was filed on 29.08.2017. The writ petition was allowed by the learned Single Judge, vide order dated 25.01.2017 on the ground that the respondents could not have denied retail outlet on the basis of Field Verification Report, in which it has been found that on the last date of the application, the amount in the saving accounts of the two partners, namely, Narinder Singh and Balwinder Singh were different from the statement of accounts attached with the application form. The learned Single Judge has observed that over all financial capacity of the candidates has to be seen and not merely the amount lying in the accounts of the candidates or the partners, which may be an irregularity.

Counsel for the appellants has submitted that the Single Judge has committed an error of law in not giving weightage to the report dated 11.4.2012 of the FIR and has also not considered the binding nature of clause 19.2 and 21 (h) of the Brochure. According to him, the respondent was guilty of providing false information in the application form in regard to the amount lying in their accounts and therefore, as per clause 19.2 of the brochure, the Corporation was well within its right to cancel the allotment forthwith, even if it is also commissioned and no reasons thereafter were to be assigned. In support of his contention, he has relied upon the following decisions of this court:-

1- CWP No.12577 of 2012 Sh. Pardeep Singh Vs. Indian Oil

Corporation Ltd. and another, decided on 15.02.2018.

2- CWP No.1304 of 2014 Rajiv Sihag Vs. Union of India and others, decided on 17.04.2018.

3- LPA No.866 of 2014 Sunita Vs. Indian Oil Corporation Ltd. and another, decided on 21.5.2014.

Counsel for the respondent has submitted that there is no error in the order of the learned Single Judge because there is no concealment or any misstatement on the part of the respondent or the partners. He has referred to clause 13.1.1 of the brochure pertaining to the norms for evaluating the candidates and further referred to the method of allocation of marks on various parameters. According to him, 12 marks were assigned for liquid cash in the form of bank balance, fixed deposits, shares of listed companies etc., whereas the marks are given on various other factors as well. It is though not admitted but argued that in case it is found to be a lapse on the part of the partners in not maintaining the same amount in each account, as per the statement attached with the application form as on 20.9.2010 and 22.9.2010, it would be just a case of irregularity on their part, for which marks must have been deducted or could have been deducted, but the candidature of the respondent could not be entirely rejected on this ground alone. It is further submitted that the case of concealment would have arisen had the account statements were not annexed with the application form.

We have heard counsel for the parties and perused the records with their able assistance.

The issue involved in this case is as to whether the application form of a candidate, applying for allotment of retail outlet, can be rejected in case it is found that the particulars given in the application form are not the same when the Field Verification Report is made?

In the present case it is an admitted fact that the last date for submission of application form was 26.9.2010. It is also an admitted fact that the respondent firm had filed the application on the last date i.e. 26.9.2010. It is also not in dispute that two partners of the firm, namely, Narinder Singh and Balwinder Singh had attached their account statements, with the application form, as on 20.9.2010 and 22.9.2010, in which the balance amount was shown as 1,22,677/- in so far as Balwinder Singh is concerned and Rs.2,87,233/- in respect of Narinder Singh. However, at the time of enquiry, by way of Field Investigation Report, the amount in the account statement of Balwinder Singh was found as Rs.6677/- and the amount in the account statement of Narinder Singh as Rs.11228/- on 25.9.2010 i.e. the last date of application. According to the appellants, they have taken the action for not accepting the candidatures of the respondent in view of clause 19.2 and 21 (h) of the brochure, which reads as under:-

> "**19.2** **<u>FURNISHING OF FALSE INFORMATION:</u>**
> If any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer, the allotment will be cancelled forthwith and dealership terminated iln case commissioned."

> "**21 (h).** If any statement made in the application or in the document enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to be incorrect or

false, the application is liable to be rejected without assigning any reason and in case the applicant 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."

Clause 13 of the Brochure further provides that the amount given in the bank account should be valid as on the date of application, which is reproduced as under:-

"**13.** Give details of source of funds: (to be provided by all applicants)
The details of cover free & unencumbered Bank accounts/Govt. Securities/Fixed Deposits, bankers/financial institution certificate for credit worthiness (in the enclosed **Appendix A2)**/loans, NSC, Bonds, Shares of Public Limited Companies (with valuation report) etc., details of other assets (with valuation report) like immovable property (land, building etc.)/ movable properties like vehicles etc., any other sources of income like from interest, rent, business etc. (please attach documentary proof in all cases). The details under 'Finance 'may be provided in the following format (Attach **separate sheet as required)**

Type of Fund	Details of A/c No. etc.	Name of the holder	Relationship with applicant	Amount (Rs.)

Amount given in FDs, Bank Accounts/and other financial documents as proof for financial capability should be valid as on date of application."

From the facts and circumstances, it is evident that the amount in the bank account, provided by two partners i.e. Balwinder Singh and Narinder Singh as on 20th and 22nd September, 2010 was altogether different from the amount, which was found in the Field Verification Report on

25.9.2010. In view thereof, the provisions of clause 19.2 and 21 (h) of the brochure are applicable. In this regard the decision relied upon by the appellant in *Pardeep Singh's* case (supra), *Rajiv Sihag's* case (supra) *and Sunita's* case (supra) are all in their favour as in the aforesaid cases, the same issue was involved and decided in favour of the Corporation. On the other hand, no judgment to the contrary has been cited by the counsel for the respondent. All that has been argued by the counsel for the respondent, is that there is no dispute with regard to the law but the respondent was not guilty because there is no concealment. We are afraid that the arguments of counsel for the respondent cannot be accepted in view of law laid down by this Court in the aforesaid cases.

Thus, in view of the aforesaid discussion, the present appeal is hereby allowed and the order dated 25.01.2017 passed by the learned Single Judge is set-aside.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

February 18, 2020
'Rajpal'

Whether speaking / reasoned Yes / No

Whether Reportable: Yes / No