IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210 **LPA-1188-2015 (O&M)**
Date of decision : 18.08.2022

Indian Oil Corporation Limited and others

..... Appellants

VS

Smt.Mamta Devi Dadwal and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN

Present :- Mr.Ashish Kapoor, Advocate
for the appellants

Mr.K.S.Dadwal, Advocate
for the respondents

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ALOK JAIN, J. :

The instant Letters Patent Appeal has been preferred being aggrieved and raising challenge to the Judgment dated 15.01.2015 passed in CWP No.10305 of 2014 and the Order dated 23.02.2015 passed in the Review Application whereby the Learned Single Judge has set aside the communication dated 18.04.2013 wherein the appellant-Corporation had cancelled the candidature of the respondents. The learned Single Judge while considering the review application further reasserted that the impugned order of cancellation was not tenable and dismissed the Review Application.

Learned counsel for the appellants submits that the respondents while applying for allotment on 30.03.2010 had stated to be holding a sum of ₹ 5,15,501/- in one of the bank account as on 24.03.2010, however when the

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inspection was carried out, it was found that a sum of Rs. 2,00,000/- has been withdrawn on 25.03.2010 and therefore by invoking Clause 19.2 which relates to furnishing of false information, the appellants dislodged the claim of the respondents. Learned counsel for the appellants had asserted that as per Clause 19.2, if any information furnished by the appellants 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 in case commissioned.

Learned counsel for the appellants further relies upon Clause 13 of the Application Format appended with the Brochure, to say that the amounts given in the FDs, Bank Accounts and other financial documents as proof of financial capability ***should be valid on the date of application***. Therefore, since the respondents filed the application on 30.03.2010 and furnished false information, hence Clause 19.2 would come into play.

Learned counsel for the appellants has further argued that this being the second round of litigation, the appellants have complied with the directions issued in LPA No. 1475 of 2012 whereby the following order was passed:

> *"In these circumstances, instead of making any final declaration in favour of the appellants, which may then be quoted as a precedent, we deem it appropriate to allow this appeal, set aside the order of learned Single Judge as well as the order passed by the respondent-Corporation, and instead dispose of the writ petition with a direction to the respondent-corporation to reconsider afresh desirability of issuing LOI to the appellants in the light of observations made hereinabove. The appropriate order shall be passed within a period of one month from the date of receipt of certified copy of this order. If the Corporation*

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> *is still of the view that the alleged mis-statement of fact was fatal to the eligibility, in that event, we direct the Corporation to issue the fresh advertisement within one month thereafter, so that, subject site be allotted without further delay."*

The appellants have emphasized that since the said alleged mis-statement of fact was considered to be fatal and the appellants have passed the order dated 18.04.2013 (Annexure P-12) and further they have proceeded to issue a fresh advertisement on 28.06.2014 after filing of the writ petition. Learned counsel for the appellants also relies upon the order dated 07.03.2014 to contend that the Division Bench had granted extension of time and directed the appellants to do the needful including the issuance of advertisement before 30.06.2014.

Subsequent thereto the respondents filed CWP No. 10305 of 2014 and sought issuance of writ in the nature of certiorari for quashing of the order dated 18.04.2013. The bone of contention of appellants is that the order passed by the Division Bench in LPA No. 1475 of 2012 was twofold and since the appellant-Corporation had proceeded to issue fresh advertisement, the impugned order was not sustainable.

Learned counsel for the appellants has heavily relied upon the judgments titled as ***Shiv Kant Yadav Vs. Indian Oil Corpn. [(SC) 2007 AIR (SC)] 1534 AND Indian Oil Corporation Limited & Ors. Vs. Swastic Filling Station [MANU/PH/0167/2020)*** to substantiate his contentions.

Per contra learned counsel for the respondents has vehemently argued that in the application form dated 27.03.2010/30.03.2010, the statement of account upto 24.03.2010 had been appended but has further relied upon Clause 13 of the Brochure dealing with the interviews and a

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perusal of the said Clause shows that "The candidates will also have to submit a fresh affidavit as per Annexure A or Annexure A-1 as applicable **prior to the date of interview** failing which the candidate will be considered as in-eligible for the dealership". The respondents duly submitted the fresh affidavit before the date of interview and secured 85.27 marks out of 100 and in the said affidavit the anomaly of Rs.2,00,000/- withdrawal from one of the bank account, was duly clarified. More so, the net worth of the respondents was much more, hence it was further contended that there is no minimum requirement prescribed in the brochure and in the application form and therefore the amount withdrawn could not be fatal.

Learned counsel for the respondents further stated that there was no bar in the brochure to the effect that any minimum balance had to be maintained at all times. Learned counsel for the respondents has further contended that no illegality has been committed by the respondents. It has been further argued that the order dated 18.04.2013 is absolutely silent and does not disclose any cogent deliberation qua the alleged mis-statement of fact. It is not a case that any wrong statement of account was produced rather it is a case, where, after the statement of account was received from the Bank by the respondents on 24.03.2010, which was appended with the Application Form, thereafter on 25.03.2010, a sum of Rs. 2,00,000/- was withdrawn and the same was duly clarified before the interview which was taken by the appellants and a fresh affidavit by the respondents, before the date of interview was also filed, in which there was no concealment and the correct financial position had been explained.

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Learned counsel for the appellants further contented that the order dated 18.04.2013 was never communicated to the respondents and it was only when the respondents filed COCP No. 1274 of 2014 and in the said proceedings, the said order dated 18.04.2013 was brought to light. The COCP was disposed off with liberty to avail the remedies available under Law.

We have considered the contentions raised by the counsel for the parties and a perusal of the record clearly demonstrates two important factors; firstly there is no clause in the brochure or in the condition appended with the application form to say that the respondents should have any minimum amount always available in the bank accounts. Secondly, a perusal of Clause 13 of the brochure which related to the Interview, wherein a specific provision is there for submission of a fresh affidavit, clearly shows that the appellant-Corporation has kept a check and balance for arriving at correct decision at the time of selection. Therefore, the change in the balance in the bank account which was duly clarified by the respondents, absolves the respondents of the alleged mis-statement.

Thirdly, it is pertinent to mention here that this Hon'ble Court, during the pendency of the appeal, had sought categoric information from the appellants with regard to the response to the fresh advertisement by the appellants and following order was passed on 11.09.2018: -

> *"It is stated that even after fresh advertisement issued in compliance to the order dated 21.02.2013 passed in LPA No.1475 of 2012, no candidate came forward seeking allotment of the subject site. Prima facie, we see no reason to support the obstinate attitude of authorities of the appellant-Corporation for not allotting the site to the respondents. However, in the interest*

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of justice, one more opportunity is granted to the appellants to have fresh instructions and also to produce the original records.

List on 13.11.2018."

Considering the matter in totality and in the light of the fact that, although the appellant-Corporation is right in demanding the documents to examine the financial competence of the contender for the reason that its business is at stake, however, this object is served by examining the fresh affidavit submitted on the date of interview as the only thing which was to be considered was the financial competence & capability of the person applying for the outlet. That being the objective, the mere fact that some amount had been withdrawn after issuance of the statement of account from the bank and before the filing of the application form will be redundant as the appellant-Corporation had the latest position available at the time of interview.

The judgments relied upon by the appellants do not come to rescue of the appellants as the same do not consider Clause 13 of the brochure relating to the Interview, wherein a fresh affidavit had to be submitted prior to the date of interview which was done in the present case and hence changes the entire complexion of the matter.

Admittedly, no other candidate or contender has even applied for the said site and the object of the Kisan Sewa Kendra, which was reserved for Open (Women) Category, has to be seen in larger prospective whereby the development in the rural areas has to be seen. No other point was argued or raised by the appellants.

Therefore, finding no infirmity or illegality in the judgment dated 15.01.2015 passed by the learned Single Judge and in the order dated

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23.02.2015 passed in the review application and the same are affirmed and consequently the appeal is dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether Reportable : *Yes/No*

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