IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.01.2022

Pronounced on : 15.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 34807 of 2022
And
W.M.P.No. 34234 of 2022

R.Nagappan ... Petitioner

..Vs..

Indian Oil Corporation Ltd.,
Rep. by its Chief Manager-Marketing
Chennai Divisional Office
500, Anna Salai,
Tenyampet, Chennai – 600 018. ... Respondent

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the respondent to reevaluate the petitioner's Financial Capability as on 30.08.2022 and consequently, issue the Letter of Intent to the petitioner for its Corporation Owned Corporation Operated (COCO) Maraimalai Nagar, Retail Outlet.

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For Petitioner :: Mr. Ashwin Shanbhag

For Respondent :: Mr. Mohammed Fayaz Ali

ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction to the respondent / Indian Oil Corporation Ltd., represented by its Chief Manager – Marketing, Chennai Divisional Office, Chennai, to reevaluate Financial Capability of the petitioner as on 30.08.2022 and to issue Letter of Intent to the petitioner for Retail Outlet at Corporation Owned Corporation Operated (COCO) Maraimalai Nagar.

2. In the affidavit filed in support of the Writ Petition, the petitioner stated that he had applied for selection for Corporation Owned Corporation Operated (COCO) Maraimalai Nagar, Retail Outlet for the respondent pursuant to an advertisement. The last date for submitting the bills was 30.08.2022.

3. One of the relevant clause was that the Financial Capability should be Rs.30/-lakhs or more. Marks were awarded accordingly.

4. It is the case of the petitioner that he had actually applied for the selection process in August 2021 and had secured the first rank by scoring 97.8. He was selected as the Service Provider. However, the Letter of Intent was not issued and he was informed that fresh selection guidelines had been formulated by all the public sector undertakings and therefore, the on going appointment process has been cancelled.

5. The petitioner had filed W.P.No. 21986 of 2021 questioning that particular decision taken by the respondent. At that time, the respondent issued a revised guideline dated 09.05.2022. The petitioner then withdrew the earlier Writ Petition seeking liberty to apply afresh. He participated. The petitioner was informed at the interview stage on 11.11.2022 that he was awarded 8^{th} rank with a score 81.9 out of 100. He had however secured the highest mark in all other categories. In the Financial Capability category, he had been awarded only 14.2 marks. He had stated that he had submitted that the application form given by him on 30.08.2022, though it was dated 29.08.2022. It contained the Net worth certificate for Rs.35,54,104.44 in his saving bank account as on 30.08.2022. However, holding that on the date of the application /

29.08.2022, his financial capability was only Rs.22,10,104.44. The petitioner was not granted the full marks under the category financial capability. Questioning that particular decision taken, the present Writ Petition has been filed.

6. A counter affidavit had been filed by the respondent wherein they stated that an advertisement was published in the Hindu Newspaper on 30.07.2022 for the Retail Outlet. There were several criteria like age and educational qualification and also financial capability. It was stated that for financial capability, documentary proof such as bank statement should be filed along with the application form. It was stated that clause 5.2.1 relating to financial capability stated that the funds should be available as on the date of application. It was also stated that no alteration / addition / deletion in the application form will be permitted. It was stated that the applicant had submitted his application dated 29.08.2022 on 30.08.2022. It was stated that as on 29.08.2022, funds amounting to Rs.22,10,104.44 alone were available. It was stated that on the next date, namely, 30.08.2022 additional funds of Rs.13,54,000/- were made available. It was stated that therefore on the date of the application, the petitioner did not have the requisite financial capability of Rs.30/- lakhs and the marks were accordingly given. It was therefore stated that the mere fact that the application was submitted on 30.08.2022 would not come to the rescue of the petitioner herein. It was stated that the Writ Petition should be dismissed.

7. Heard Mr. Ashwin Shanbhag, learned counsel appearing for the petitioner and Mr. Mohammed Fayaz Ali, learned counsel appearing for the respondent.

8. The facts are not in dispute.

9. It is a fact that the petitioner applied for a Retail Outlet at Maraimalai Nagar pursuant to an advertisement issued by the respondent. It is a further fact that the respondent expected financial capability to Rs.30/- lakhs. It is a further fact that the said capability should be on the date of the application. It is a further fact that the last date for submission of application was 30.08.2022. It is a further fact that the petitioner applied for grant of the said Retail Outlet. It is a further fact that the application of the petitioner was dated 29.08.2022. It is also a further fact that the application was submitted on 30.08.2022. It is also a fact that on 29.08.2022, the availabile balance in the account of the petitioner was Rs.22,10,104.44. It is also an admitted fact that on the next date when the application was submitted, the balance in the saving bank account of the petitioner was Rs.35,54,104.44.

10. The application of the petitioner was rejected on the ground that on the date of the application, namely, 29.08.2022, the available balance was less than Rs.30/- lakhs and therefore he was awarded 14.2 marks out of 30 marks towards financial capability. The other marks obtained by the petitioner were 25 out of 25 with respect to age evaluation, 25 out of 25 with respect to educational qualification and 17.6 out of 20 marks for personal interview. The petitioner had fallen short only in the financial capability.

11. The issue which now has been raised by the learned counsel for the petitioner is that though the application was signed on 29.08.2022, it was actually submitted to the respondent on 30.08.2022 and on 30.08.2022, the petitioner had a balance of Rs.35,54,104.44. It was therefore contended that the said balance should have been taken into consideration. It was further contended that if that balance had been taken into consideration, the petitioner would have obtained the full marks for financial capability and would have stood automatically ranked at No.1 for award of the tender for Retail Out.

12. On the other hand, it is the contention of Mr.Mohammed Fayaz Ali, learned counsel for the respondent that the terms of the application were clear. It stated that the financial capability would be evaluated as on the date of the application. The learned counsel stated that as on the date of the application, the petitioner had a balance of Rs.22,10,104.44 in his account. Therefore, proportionally 14.2 marks out of 30 had been granted. The contention that the application was submitted on 30.08.2022 was irrelevant and it is contended by the learned counsel that the only criteria was the financial capability as on the date of the application. It was further stated that opportunity had been granted to correct mistake but the petitioner did not take up such an opportunity. It was therefore contended that the Writ Petition should be dismissed.

13. In this connection the learned counsel relied on ***(2001) 2 SCC 451 [W.B.State Electricity Board Vs. Patel Engineering Co. Ltd., and Others].*** The Hon'ble Supreme Court had held as follows:-

*"**27.** Exceptions to the above general principle of seeking relief in equity on the ground of mistake, as can be culled out from the same para, are:*

***(1)** Where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder; but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake.*

***(2)** Where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids.*

(3) Where the bidder fails to follow the rules and regulations set forth in the advertisement for bids as to the time when bidders may withdraw their offer; however where the mistake is discovered after opening of bids, the bidder may be permitted to withdraw the bid."

14. The learned counsel also relied on ***2018 (5) CTC 387 [Tamil Nadu Police Housing Corporation Ltd., Vs. P&C Projects (P) Ltd.,].*** A Division Bench of this Court had held as follows:-

*"**36**. In the light of the above law, laid down by the Hon'ble Supreme Court, in various decisions cited supra we are constrained to conclude that the learned Single Judge was not right in going into the nature of the conditions and the violations. We are of the considered opinion that whether the bidder/ tenderer should be given an opportunity to correct the mistakes or the bid should be rejected at the stage of technical evaluation itself for non-compliance with the tender conditions is a*

matter which is solely within the purview of the Tender Evaluation Committee and this Court cannot substitute its own reasons.

***39**. We therefore, find that the reasons that prevailed upon the Tender Evaluation Committee for rejecting the tenders cannot be interfered with unless it is shown that they are not bonafide. The learned Single Judge had taken into account, the price bid and had after noticing the fact that the price bid of the respondent tenderer is less than the L1 tenderer, had concluded that it will be in the public interest to give an opportunity to the respondent tenderer to participate in the further process. As already pointed out, while discussing the scope of judicial review of such actions the Honble Supreme Court had pointed out that the Court cannot go into the merits or otherwise of the decision, but it is the decision making process which will have to be looked into. "*

15. The learned counsel also relied on ***2019 (2) CTC 413 [K.M.Mustafa Vs. Indian Railway Catering & Tourism Corporation (IRCTC) Ltd.,],*** wherein a Division Bench of this Court had followed the ratio laid down in ***2018 (5) CTC 387*** referred supra.

16. I have carefully considered the arguments advanced.

17. The petitioner had applied for grant of Retail Outlet at Maraimalai Nagar, pursuant to an advertisement issued by the respondent. The only issue now is with respect to the financial capability of the petitioner herein. The respondent expected that the financial capability of any perspective bidder should be minimum of Rs.30/- lakhs. The petitioner submitted his application form and dated it 29.08.2022. In the application form, he had enclosed his bank statement. Though the application form was dated 29.08.2022, the bank statement reflected that as on 30.08.2022, the available funds for the petitioner was Rs.35,54,104.44/-. Naturally even if application form is dated 29.08.2022, it refers to the bank statement for the next date namely, 30.08.2022. The application form was actually submitted on 30.08.2022. As on the last date of submitting application forms, 30.08.2022, the bank balance was Rs.35,54,104.44/-.

18. It is contended by the learned counsel for the respondent that time was given to correct mistakes and the petitioner could very well have corrected the date of the application from 29.08.2022 to 30.08.2022. However, the date 29.08.2022 was not a mistake. It does not require any correction. The petitioner did not also change the date to 30.08.2022. On 30.08.2022, when the respondent had received the application form, the balance was Rs.35,54,104.44/-. They had closed their eye to that obvious fact. The balance stared on their face. They went on the date which in the application form, namely 29.08.2022.

19. It is also one of the condition that if in the application form, no date is given then the date of submission of the application form will be taken into consideration. For all practical purposes, it is the date on which the respondent receives the application which is the crucial date. On that date, it must be seen whether a prospective bidder had the necessary financial capability. The ratio in the above decisions are binding. It is stated that if opportunity is granted to correct mistakes and if that exercise is not done, then the prospective bidder cannot turn around and complain at a later stage.

20. The petitioner herein did not even envisage that the date 29.08.2022 was a mistake. He had filled the form on that date. He had signed it on that date. He had further documents to show that of the next date 30.08.2022 when he actually submitted the application form, he had the financial capability as required.

21. Judicial review lie on very narrow scope. It has been held in ***(2012) 8 SCC 216 [Michigan Rubber (India) Ltd., Vs. State of Karnataka and Others]***, by the Hon'ble Supreme Court as follows:-

> *"**24.** Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*
>
> ***(i)*** *Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary*

> *and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? And*
>
> ***(ii)*** *Whether the public interest is affected?*
>
> *If the answers to the above questions are in the negative, then there should be no interference under Article 226."*

22. It is seen that one of the question which the Court should pose to itself is whether the decision made is so irrational that a Court can say that the decision is such that no responsible authority acting reasonably could have reached.

23. In the instant case, the respondent had received the application form on 30.08.2022. On that date they knew that the petitioner had a balance of Rs.35,54,104.44/-. That is the balance which they should take while evaluating the capability of the petitioner herein.

24. It is no doubt true that the petitioner had signed the application form on 29.08.2022 but with the application form which had been signed on 29.08.2022 he had enclosed a bank statement dated 30.08.2022. That bank statement should have been taken into consideration. It was enclosed only it to be taken into consideration. It was hoped that it would be taken into consideration. Rejection of the same is extremely irrational. The respondent should take the responsibility of acknowledging the date on which they receive the application form. It is that date which is crucial. If on that date, the applicant did not have the financial capability, then the applicant automatically stands disqualified or the marks given are reduced. But here the petitioner had the necessary funds. I hold that the question which this Court should pose to itself is whether that decision is irrational. The only answer is that the decision is extremely irrational.

25. The facts stare in the face of the respondent. The bank statement showed that the petitioner had a balance of Rs.35,54,104.44/-. That is the balance which should have been taken into consideration. The petitioner had enclosed the bank statement dated 30.08.2022 in his application form dated dated 29.08.2022 for the respondent to examine the said statement. The respondent had not exercised their discretion judiciously. They appear to be satisfied to find some reason to reject an application.

26. It is seen that even otherwise the petitioner had got exceptionally good marks in all the other aspects, such as age and educational qualification. With respect to personal interview, the petitioner had obtained 17.6 out of 20. Therefore, he had also impressed upon those, who interviewed him. The evaluation of his financial capability defies logic. It was extremely irrational. This principle has been in vogue atleast from 1948, ***Associated Provincial Private Houses Ltd., Vs. Wednesbury Corp [1948)1 KB 223***. The Principle is as follows:-

> *"A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it."*

27. In the instant case, the respondent should have examined the bank statement of the petitioner as on 30.08.2022. I hold that the petitioner has made out a case for issuance of a Mandamus and accordingly, the Writ Petition stands allowed and a Mandamus is accordingly issued directing the respondent to take into consideration the financial capability of the petitioner as on 30.08.22022, the date of submission of his application form and issue a Letter of Intent to the petitioner for its Corporation Owned Corporation Operated (COCO) Maraimalai Nagar, Retail Outlet, if he is otherwise qualified. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.02.2023

Index :Yes/No
Internet:Yes/No
vsg

C.V.KARTHIKEYAN, J.

vsg

To

The Chief Manager-Marketing
Indian Oil Corporation Ltd.,
Chennai Divisional Office
500, Anna Salai,
Tenyampet, Chennai – 600 018.

Pre-Delivery Order made in

W.P.No. 34807 of 2022
And
W.M.P.No. 34234 of 2022

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