

2010 (24) GHJ 357

GUJARAT HIGH COURT

Hon'ble Judges:K.A.Puj, J.

Baria Hirasingh Raisingh Allapatella Versus Chairman

Special Civil Application No. 11077 of 2001 ; *J.Date :- MARCH 08, 2010

- [CONSTITUTION OF INDIA](#) Article - [226](#)

Constitution of India - Art. 226 - contract of kerosene dealership - application for dealership of kerosene pursuant to advertisement - first in merit list on selection - petitioner's case not considered as had not filed requisite undertaking - held, opportunity should be given to candidate to rectify any deficiency noticed in the application - application cannot be rejected for not filing undertaking in requisite Form prescribed for the purpose - directions given to execute necessary agreement of allotment of dealership - petition allowed.

Imp.Para: [[14](#)]

Cases Referred To :

1. Mukund Swamp Mishra V/s. Union Of India & Ors., 2007 2 SCC 536
2. Onkar Lal Bajaj Etc. V/s. Union Of India & Anr., AIR 2003 SC 2562

Equivalent Citation(s):

2010 (24) GHJ 357 : 2010 GLHEL_HC 223680

JUDGMENT :-

K.A.Puj, J.

1 The petitioner has filed this petition under Article 226 of the Constitution of India praying for direction to the respondents not to enter into Field Investigation Report or any contract for the dealership with any other person except the petitioner. By way of amendment, the petitioner has also prayed for the directions to the respondents to complete the Field Investigation Report in the case of the petitioner and to execute the contract of dealership for SKO/LDO kerosene in favour of the petitioner.

2 This Court has issued notice on 26.11.2001 and the respondents were restrained from entering into any contract for the dealership with any other person except the petitioner. On service of notice Mr.G.N.Shah, learned advocate appeared and placed on record an affidavit in reply filed on behalf of Dealers Selection Board on 04.12.2001. The petitioner filed affidavit in rejoinder on 08.07.2002. M/s.Nanavati Associates appeared on behalf of the respondent nos.2 and 3 - Indian Oil Corporation and its General Manager and placed on record an affidavit of reply dated 07.08.2002. Additional affidavit is filed on behalf of the respondent nos.2 and 3 on 30.09.2003. The petitioner has also filed further affidavit on 17.12.2009.

3 Case of the petitioner is that an advertisement was issued in the daily newspaper namely Gujarat Samachar dated 17.10.2000 for the dealership of SKO/LDO for village Piplod. The petitioner made an application since the relevant criteria for making such an application was that the applicant should be a person, who belongs to the category of schedule tribe. Along with the said application, the petitioner has supplied all necessary documents such as affidavit, undertaking, residential certificate, certificate of schedule tribe, certificate of income and other relevant documents. Thereafter, the petitioner appeared at the interview on 14.10.2001 and the petitioner was declared as selected for the dealership in the merit list as number first.

4 Despite the fact that the petitioner was declared as number first in the merit list, nothing has happened even after a lapse of considerable time. The petitioner, therefore, approached the Dealers Selection Board i.e. the respondent no.1 herein on 24.10.2001. On 29.10.2001, the petitioner came to know that though the petitioner was selected as number first in the merit list, the respondents were trying to select either second or third number of the merit list and not to consider the petitioner's case only on the ground that the petitioner has not filed the requisite undertaking.

5 The case of the respondent no.1 as per the first affidavit in reply was that the petitioner was not even selected or to be included in the panel and, hence, no preference could ever be given to the petitioner. It was, therefore, contended in this affidavit that the petitioner could have no right to claim the distributorship. It was further contended that the undertaking which was required to be filed in Form A-2 was not filed by the petitioner and that the petitioner was aware about the fact that he was likely to be bypassed on account of not supplying the undertaking.

6 The petitioner has immediately filed affidavit in rejoinder disputing the fact that the petitioner was not selected number first and requested this Court to direct the respondent no.1 to produce the merit list before the Court. The petitioner produced copy of the merit list displayed on the notice board dated 14.09.2001, wherein the petitioner's name was shown at number first in order of merit list. Even with regard to non-filing of undertaking in the requisite form,

it is contended that filing or non-filing of such undertaking is not a material irregularity particularly when the petitioner has already filed another letter disclosing the availability of fund from the Co-Operative bank.

7 On behalf of the respondent no.1, further affidavit was filed on 08.08.2002 correcting the mistake that the petitioner was selected and was put at Sr. No.1 on the merit panel.

8 In an affidavit in reply filed on behalf of the respondent nos.2 and 3 on 07.08.2002 it was reiterated that the undertaking in Form A/2 which was required to be submitted along with the application, was not submitted by the petitioner. Even at the time of interview conducted by the Dealers Selection Board, the said undertaking was not submitted to the board. The xerox copy of the undertaking was submitted by the petitioner only during the course of Field Investigation but not prior thereto. On behalf of the respondent nos.2 and 3, further affidavit was filed on 08.09.2003. wherein it is alleged that one. complaint dated 12.12.2001 was made by Ms. Geetaben R. Bhill of Village Panchelato the Central Bureau of Investigation (CBI), New Delhi alleging that the petitioner did not belong to schedule tribe and has misled the Selection Committee into believing that he is of scheduled tribe.

9 In the meantime, news item appeared on front page of news paper 'Indian Express' about allotment of public sector undertaking to the near and dear ones of the Political Functionaries attributing the same on account of Political considerations. By the order of the Government of India dated 09.08.2002, all allotments with respect to retail outlets, LPG distributorship and SKO/LDO dealership on the recommendations of the Dealer Selection Board since 1-January 2000 were decided to be cancelled. This order has been challenged before the Apex Court. The said action was sought to be justified as being in larger public interest, as well as in order to uphold probity in governance and to ensure fair play in action. The Apex Court vide its judgment and order in the case of ONKAR LAL BAJAJ ETC. V/S. UNION OF INDIA & ANR. REPORTED IN AIR 2003 SC 2562, quashed the cancellation of order in respect of non-controversial, allottees and appointed committee comprising of one retired Judge of Supreme Court and the retired Judge of Delhi High Court to examine cases which appeared in news-paper.

10 The Committee so constituted submitted its report to the Apex Court and several interim implications were filed challenging the findings recorded by the Committee. While disposing of all these applications by its order and judgment in the case of MUKUND SWARUP MISHRA V/ S. UNION OF INDIA & ORS. REPORTED IN 2007(2) SCC 536, the Apex Court held that the Committee had considered in detail individual cases and submitted the report. The Court, therefore, considered the various complaints of allottees, who can successfully put toward their complaints and satisfied the Court that in the facts and circumstances of the case, the finding of the Committee that the allotment was

not on merits was not correct. The Court, however, held that the report of the committee cannot be said that it was without power, authority or jurisdiction or was uncalled for and liable to be ignored.

11 So far as the petitioner's application for impleading him as party in the proceedings before the Apex Court is concerned, it is observed in Para D 33 of the said judgment that it was not the case of cancellation as he was not an allottee. It was also stated that a petition is pending and matter is subjudice in this Court. The Court, therefore, rejected the said application reserving liberty to pursue the matter before this Court

12 It is in the above background, the petition is taken up for final hearing. Heard Mr.N.D. Nanavati, the learned Senior Counsel with Mr.Amar D. Mithani for the petitioner and Mr.Nandish Chudgar the learned Advocate from M/s.Nanavati Associates for respondent nos.2 and 3. Mr.G.N. Shah is no longer appearing for the respondent no.1 and even otherwise, the respondent no.1-board is no longer in existence. The real contesting parties are the respondent nos.2 and 3 and they are being represented by Mr.Chudgar. After the above developments, an additional affidavit along with several documents, is filed by the petitioner on 17.12.2009 to which no affidavit-in-rejoinder is filed on behalf of the respondents.

13 As far as dispute regarding genuineness of Caste Certificate is concerned, detailed inquiry-investigation-proceedings were initiated for verification of petitioner's caste certificate. The Deputy Director, Tribal Development Department, State of Gujarat, Gandhinagar on 13.11.2003 has issued a show cause notice to the petitioner with regard to the examination/verification of the caste certificate mentioning Hindu Patelia, being issued by the District Social Welfare Officer. The petitioner has participated in the said proceedings and has filed the reply, produced evidence. The Secretary, Verification Committee and Deputy Commissioner, Tribal Development Department, State of Gujarat, vide communication dated 06.02.2004 has called upon the petitioner to remain present for hearing before the Verification Committee on 19.02.2004. The said Verification Committee has also called upon the various school authorities, wherein the petitioner has studied, so as to verify the school records, whereby the said school authorities were directed to remain present along with the school records. The school records indicate that in Dudhiya Primary School, Dudhiya and Gyandip High School, Dudhiya the caste of the petitioner at the relevant point of time is recorded as "Hindu Patelia (Pachhhat)". The petitioner was issued the caste certificate by the District Social Welfare Officer recording that the petitioner belongs to "Hindu Patelia Pachhat". The father of the petitioner belongs to a backward caste and is resident of Village : Dudhiya. The mother of the petitioner belongs to the scheduled tribe, who is the resident of Village : Lavariya. The distance between Dudhiya and Lavariya is of 2 kms. only and both the villages are under Dev Gadh Bariya. Thus, all throughout, the petitioner was treated as a person of Hindu Patelia Caste, which is the

scheduled tribe. However, the IOCL raised doubt and, hence, at the instance of IOCL, the petitioner's caste certificate was reverified by the competent authority-Verification Committee. After detailed scrutiny and verification of evidence, the Competent Authority - the Deputy Commissioner, Tribal Development has found that the caste certificate of "Hindu Patelia"- scheduled tribe issued to the petitioner is genuine. The said decision dated 20.09.2004 was taken after extensive personal hearing and based on documentary evidence.

14 Considering the record of the petitioner, the merit list produced by the Dealer Selection Board making the petitioner at serial number first in merits list is not at all under challenge and the only other contention raised by the respondent is alleged non-submission of the undertaking. According to the petitioner, the undertaking in Form No.A/2 was duly submitted along with the application and the petitioner was issued the call letter thereafter by the Dealer Selection Board. Even if, it is believed that the petitioner at the time of filing of the application, has not submitted the undertaking in Form A/2, in that case also, in view of the guidelines issued by the Government of India, Ministry of Petroleum and Natural Gas dated 05.01.2001, the same would be a negligible lapse. The said guidelines provide that 'it should be ensured that the applications are not rejected on flimsy and technical grounds. An opportunity should be given to the candidate to rectify any deficiency noticed in the application. Thus, the aspect of non-submission of undertaking in Form A/2 along with the application is insignificant and application cannot be rejected on that ground.

15 In the above view of the matter, the petitioner deserves allotment of dealership in his favour. The respondents are hereby directed to execute necessary agreement allotting the dealership in favour of the petitioner as expeditiously as possible, preferably within a period of one month from the date of the receipt of the writ from this Court or certified copy of this order, whichever is earlier.

16 With this directions this petition is allowed. Rule is made absolute without any order as to costs.

