

Md. Sazzad Hossain Vs Union Of India and Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 17, 2025

Hon'ble Judges: Partha Sarathi Sen, J

Bench: Single Bench

Advocate: Ambarnath Banerjee, Supratik Shyanal, Puspendu Chakraborty

Final Decision: Dismissed

Judgement

Partha Sarathi Sen, J

1. In this writ petition the writ petitioner has prayed for issuance of a writ of mandamus upon the respondents more specifically upon the respondent

Nos. 2 and 3 commanding them to appoint the writ petitioner as a distributor under the Rajiv Gandhi Gramin LPG scheme (herein after referred to as

the said scheme, in short) for Kojalsha G.P., Berugram, Block-Ketugram-1, District-Burdwan.

2. The writ petitioner was an aspirant to be appointed as a distributor however, his candidature was turned down by the respondent No.2 & 3 that is

the oil company and its functionaries.

3. In course of his Argument, Mr. Banerjee, Learned Advocate for the writ petitioner submits before this Court that pursuant to an advertisement

published in a daily newspaper, the petitioner on 06.06.2013 applied for a distributorship under the said scheme in respect of the abovementioned G.P.

and at that time the writ petitioner offered 0.15 decimal of land in plot no. 724 for his proposed godown space.

4. It is further argued by Mr. Banerjee that at the time of field verification it was noticed by the officer of the respondent oil company that in the

title deed of the petitioner in respect of the said plot of land, the plot no. of the approach road has been wrongly mentioned as Plot No. 761 which

should be 722.

5. It is further argued by Mr. Banerjee that soon thereafter the vendor of the petitioner had executed a deed of undertaking for execution of a deed of

rectification and the same was communicated to the respondent/oil company.

6. It is further submitted by Mr. Banerjee that admittedly on the day of submission of application(26.06.2013) by the petitioner, he has not sufficient

requisite balance of Rs. 4 lacs in his account as has been mentioned in the aforesaid advertisement but soon thereafter that is on 29.06.2013 the writ

petitioner had requisite balance in his account.

7. Drawing attention to page 19 of the writ petition being a copy of the letter of rejection as issued by the respondent/oil company, it is further

submitted by Mr. Banerjee that for no reason whatsoever the writ petitioner's candidature has been cancelled since the alleged non-fulfillment of

the criterion by the writ petitioner is not fatal as those criterion are mere directory and not mandatory and further such criterion can be fulfilled

subsequent to making the application and even after selection. In this regard Mr. Banerjee places his reliance upon two reported decisions namely; K.

Vinod Kumar vs. S. Palanisamy and Ors reported in (2003) 10 SCC 681 and Reeta Singh (Smt.) vs. Indian Oil Corporation Ltd. reported in ILR

(2017) M.P, 1656.

8. It is further submitted on behalf of the writ petitioner that the letter of rejection of the candidature dated 21/23.01.2014 is arbitrary, mala fide and

violative of principle of natural of justice and the same may be set aside by directing the respondent Nos. 2 and 3 to appoint the writ petitioner as a

distributor in the said G.P. since in the said G.P. no one has been appointed as a distributor as on this day under the said scheme.

9. Per contra Mr. Chakraborty, Learned advocate for respondents/oil company at the very outset draws attention of this Court to the writ petition. It is

submitted that in the writ petition the writ petitioner has not made out any case for obtaining any relief as prayed for. Drawing attention of this Court

to the affidavit-in-reply as filed by the writ petitioner it is argued that in such reply the writ petitioner has made out a completely new case.

10. It is further submitted by Mr. Chakraborty that the argument as advanced on behalf of the writ petitioner is totally beyond the pleading of the writ

petition.

11. In his next fold of submission, Mr Chakraborty draws attention of this Court to the various clauses of the brochure for selection of the distributors

under the said scheme which has been annexed with the affidavit-in-opposition as filed by the respondent/oil company. It is submitted that clause 6 (g)

of said brochure clearly indicates that on the last date of submission of application minimum closing balance of the prospective applicant should be

Rs.4 lacs which the writ petitioner could not fulfill. Drawing attention to the clause 6(h) of the said brochure it is further submitted that the writ

petitioner has also failed to fulfill the criteria in establishing that the approach road to plot of land meant for godown belongs to him and/or his family. It

is submitted that criterion of the said brochure cannot be held to be directory keeping in mind the provision of Article 14 of the Constitution of India

which guarantees equality before the law and equal protection of the laws. It is thus submitted by Mr. Chakraborty that the case of K. Vinod Kumar(

supra) is distinguishable from the facts and circumstances of the instant case since the said reported decision allotment of distributorship was under a

different scheme.

12. Drawing attention of this Court to the annexure-R2 of the affidavit in reply, it is argued by Mr. Chakraborty that from the said annexure being the

photocopy of a registered deed it would reveal that the writ petitioner became owner of the said approach road not by way of execution of a deed of

rectification but by a subsequent deed which has been executed and registered much later to the last date of submission of the application for

distributorship.

13. It is further submitted by Mr. Chakraborty that the decision as has been taken by the respondents/oil company while rejecting the application of the

writ petitioner cannot be said to be arbitrary in absence of any material to show that the decision making process of the respondent /oil company is

perverse. Mr. Chakraborty thus submits that this is a fit case for dismissal of the instant writ petition.

14. In course of his argument, Mr. Chakraborty places his reliance upon the following reported decisions namely; Caretel Infotech Limited vs.

Hindustan Petroleum Corporation Ltd and Ors reported in (2019) 14 SCC 81 and Jagdish Mandal vs. State of Orissa and Ors. and Laxman

Sharma Vs. State of Orissa and Ors. reported in (2007) 14 SCC 517: 2006 SCC Online SC 1373.

15. Before entering into the factual aspects of this case, this Court proposes to have a glance to the reported decisions as cited from the Bar.

16. In the reported decision of K.Vinod Kumar (supra) the Hon'ble Apex Court held the following :

“7. The proceedings of the Dealer Selection Board must satisfy the requirements of a bona fide administrative decision arrived at in a fair manner. There are no

mala fides alleged against the Dealer Selection Board or the President or any Member thereof. There is no specific plea raised impugning the manner of marking.

It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own

assessment of the merits of the applicants. The marks given by the three were then totalled and arranged in the order of merit. The appellant herein topped the list.

In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the

proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best suitable candidate and, so long as the power is exercised

bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the

procedure adopted by the Board was arbitrary, unfair or unreasonable.

8. So far as the requirement of instruction (g) as stated above is concerned, it does not appear to be mandatory. The purpose of furnishing particulars of land in

the application is to enable a determination as to whether the specific place would accommodate the godown facilities and distributorship arrangements from a

commercial angle. This requirement is mandatory but satisfying the requirement at the stage of making the application is only directory. The particulars of such

land can be made available even subsequent to the filing of the application, and may even be subsequent to the selection. The consequence of failure to make the

suitable land available within a period of two months from the date of selection is that the selection of such candidate would be liable to be cancelled.

17. In the reported decision of Reeta Singh (supra) the Hon'ble High Court of M.P. relied upon the principles of law as discussed in K. Vinod

Kumar (supra) and thus held that the conditions of the said Rajiv Gandhi Gramin LPG scheme are directory in nature.

18. In the reported decision of Jagdish Mandal (supra), the Hon'ble Supreme Court while examining the scope of judicial review over

administrative action held thus :

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check

whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters

relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and

awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is

bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or

prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to

decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with

imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self,

and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works

for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. 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.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a

tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they

may require a higher degree of fairness in action.

19. In the reported decision of Caretel Infotech Limited (supra) the Hon'ble Apex Court expressed the following view :

"37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by

their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and Public

Sector Enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this

approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has

been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the

efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An

unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a

cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in

private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and

the Public Sector.

38. In Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr. , this Court has expounded further on this aspect, while observing that the

decision making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision making process is arbitrary

or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been

cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute 3 (2016) 16

SCC 818 their view for that of the administrative authority. Mere disagreement with the decision making process would not suffice.

20. Coming to the factual aspects of this case, if I look to the writ petition, I find that there is practically no pleading that the writ petitioner has fulfilled

the criterion of the said brochure. On the contrary it is found that in respect of the approach road the writ petitioner had acquired ownership much

after submission of his application. It is also admitted position that as on the day of submission of application the requisite amount of money was not

lying in the account of the writ petitioner. This Court considers that in the event the conditions as mentioned in the various clauses of the said brochure

is not allowed to be strictly adhered to by the respondents/oil company, that would lead to clear violation of Article 14 of the Constitution of India since

there may be persons having similar footings who have not applied for the distributorship because of the rigor of the norms as set up by the

respondent/oil company. The same view was taken by a division bench of this Court in the judgement dated 08.05.2023 as passed in FMA 288 of

2022(Indian Oil Corporation Ltd and others -vs- Paromita Bag & others)

21. The facts involved in the reported decision of K Vinod Kumar (supra) is distinguishable from the case in hand in as much as in the said reported

decision the oil company initially selected the writ petitioner for distributorship and granted four months time for identifying the suitable land and having

the same approved by the oil company. It thus appears that identification/owning the land was not a pre-condition for grant of distributorship in the said

reported decision. However in the instant case it was the administrative decision of the oil company that an aspirant has to comply with the

parameters as mentioned in different clauses of the said brochure and thus the facts involved in the instant writ petition is distinguishable from the

facts as involved in the reported decision of K Vinod Kumar (supra).

22. In further considered view of this Court the reported decision of Reeta Singh (supra) as passed by the Hon'ble Single Bench of High Court of

Madhya Pradesh is not binding upon this Court since the same has only a persuasive value.

23. On perusal of the different clauses of the said brochure as has been annexed to the affidavit-in-opposition it does not appear to this Court that the

said clauses are in any way arbitrary in nature. The respondent/oil company in its administrative action had set up some guidelines for the aspirants

who desire to get distributorships.

24. As held in the reported decision of Jagdish Mandal(supra) in absence of any arbitrariness, irrationality, unreasonableness, bias and mala fide a

writ court is not expected to interfere with an administrative decision.

25. In course of his argument learned advocate for the writ petitioner had miserably failed to show any of the aforementioned ingredients of various

clauses of the aforementioned brochure as published by the oil company.

26. In a judicial review this Court is neither expected to go into correctness of the administrative decision unless it is shown that such decision is

otherwise perverse nor the Court can substitute its own view. No case has been made out on behalf of the writ petitioner that there is violation of

established procedure of Law on the part of the respondent oil company while rejecting the application of the writ petitioner.

27. This Court thus finds no merit in the instant writ petition and the same is dismissed.

28. There shall be, however, no order as to cost.

29. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

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