
(2005) 11 AHC CK 0040

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 51933 of 2002

Brij Lal Yadav

APPELLANT

Vs

Indian Oil Corporation
Ltd.

RESPONDENT

Date of Decision: Nov. 22, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 389
- Penal Code, 1860 (IPC) - Section 148, 149, 294, 302, 467
- Representation of the People Act, 1951 - Section 8(3)
- Uttar Pradesh Excise Act, 1910 - Section 60

Citation: (2006) 2 AWC 1623

Hon'ble Judges: Saroj Bala, J; R.K. Agrawal, J

Bench: Division Bench

Advocate: Ravi Kant and M.K. Pandey, for the Appellant; P. Padia, for the Respondent

Final Decision: Dismissed

Judgement

Saroj Bala, J.

Through this writ petition, the petitioner seeks an order or direction in the nature of Certiorari quashing the impugned order dated 21.10.2002 (Annexure-7 to the writ petition) passed by General Manager, U.P. State Office, Indian Oil Corporation Ltd., Lucknow, Respondent No. 1. The petitioner further seeks a writ in the nature of Mandamus commanding the respondents to revive the letter of appointment dated 10.05.2002 and to permit him to commence business of dealership of petrol/diesel at Ambari, Tehsil Phulpur, District Azamgarh.

2. The factual matrix emerging from the record of the writ petition is as follows:-

In pursuance of an advertisement, made sometime in the year 2001 for dealership of retail outlet of petrol/diesel at different places including Ambari, District Azamgarh, the

petitioner applied for dealership on the prescribed application form, which accompanied the copy of the brochure. After interview, the respondent Corporation issued a letter of intent dated 6.05.2002 for dealership of retail outlet at Ambari (Annexure-1 to the writ petition) subject to certain conditions. On 10.5.2002 vide letter (Annexure-2 to the writ petition), the petitioner was required to submit an affidavit stating that no criminal proceedings are pending against him in any Court in India and to submit a Character Certificate from not less than S.P. Police. On the same day i.e. May 10, 2002, a letter of appointment for dealership of retail outlet (Annexure-3 to the writ petition) was issued by the Corporation. On 29.05.2002 a show cause notice (Annexure-4 to the writ petition) was issued by the Corporation to the petitioner calling upon him to explain as to why letter of intent dated 6.5.2002 and letter of appointment dated 10.5.2002 be not withdrawn and cancelled for suppression of material information about conviction and sentence in Sessions Trial No. 391 of 1997 under Sections 302/149/148 and 506(ii), I.P.C., P.S. Pawai, District Azamgarh against which a Criminal Appeal No. 843 of 2000, Santosh Kumar Yadav and Ors. v. State of U.P. was preferred before the High Court and the petitioner was released on bail.

3. The petitioner submitted reply to the show cause notice together with an affidavit (Annexures 5 & 6 to the writ petition). The petitioner in the reply admitting his conviction in the aforesaid murder case stated that his involvement in the said offence does not amount to moral turpitude. After taking into consideration the reply of the petitioner, the respondents withdrew the letter of intent and cancelled the letter of appointment on the ground that Column Nos. 20 & 21 of the application form, wherein the petitioner had to make a disclosure about his conviction for any criminal offence, were deliberately and intentionally left blank. In the opinion of the Corporation, the criminal act attributed to the petitioner amounted to moral turpitude.

4. The order of withdrawal of letter of intent and cancellation of letter of appointment have been challenged by the petitioner on the grounds inter alia that conviction for the offence of murder does not fall within the definition of moral turpitude. According to the petitioner the disclosure about the conviction for the offence of murder, was not made by him, as it was not an offence involving moral turpitude. The contention of the petitioner is that his conviction not being for an offence involving moral turpitude, his case does not fall within the purview of Clause 10 of brochure and condition of column 20 of the application form.

5. We have heard Shri Ravi Kant, learned senior Counsel assisted by Shri M.K. Pandey, Advocate on behalf of the petitioner and Shri Prakash Padia, learned Counsel appearing on behalf of the respondents.

6. Learned Counsel for the petitioner stressed that conviction for murder is not an offence falling within the four corners of the definition of moral turpitude. The learned Counsel for the petitioner submitted that even otherwise, conviction and sentence of the petitioner in the criminal case having been stayed by an order of the High Court passed in a Criminal Appeal preferred against the said order, no disqualification operated against him. It was

submitted that the suspension of sentence by the High Court tantamounts to suspension of conviction. According to the learned Counsel the suspension of sentence amounted to suspension of disqualification. Learned Counsel in support of his submissions relied on the decisions in *Baleshwar Singh v. District Magistrate/Collector, Varanasi* and *Ors.* AIR 1959 Allahabad 77, [Mangali Vs. Chhakki Lal and Others,](#) , [Pawan Kumar Vs. State of Haryana and another,](#) , [Allahabad Bank and Another Vs. Deepak Kumar Bhola,](#) and [K.L. Narasimha Rao Vs. State of A.P. and Others,](#) .

7. Sri Prakash Padia, learned Counsel for the respondents, however, submitted that the Corporation has rightly withdrawn the letter of intent and cancelled the letter of allotment as the petitioner had deliberately suppressed/concealed the particulars of his conviction in the criminal case, as required under Column No. 20 and in view of Clause 10 of the brochure, a candidate who has been convicted for any criminal offence involving moral turpitude was not eligible for grant of dealership and even if such a person is allotted dealership by suppression of information, it was liable to be cancelled. According to him, the petitioner has been sentenced to life imprisonment u/s 302/149 of Indian Penal Code being a co-accused in a murder and for terrorising the public with a country made pistol, which offence does involve moral turpitude.

8. Column 20 of the application form for dealership of retail outlet required disclosure by the petitioner if he has ever been convicted for any criminal offence involving moral turpitude and/or economic offence (other than freedom struggle) or there are any charges framed by the court against him. Under this column the petitioner was required to give details of conviction and pending criminal cases. In case the answer to column No. 20 was in the negative, an affidavit had to be submitted. Under Column No. 21 of the application form, the petitioner was required to furnish any other information. The columns Nos. 20 & 21 of the application form were left blank. The petitioner submitted a false affidavit along with his application form. Clause 10 of the brochure accompanying the application form provided that candidates convicted for any criminal offence involving moral turpitude and/or economic offence (other than freedom struggle) and those against whom charges have been framed by the Court (other than freedom struggle) would not be eligible for dealership/distributorship and if such a person is allotted dealership/distributorship by suppression of information, it will be cancelled.

9. Having considered the rival pleas advanced at the bar and the material placed on record, we find that taking up the plea, as to whether stay of conviction and for sentence in the Appeal would amount to suppression of conviction or disqualification or not, we are of the view that admittedly, the petitioner was convicted and sentenced to life imprisonment and fine for the offences punishable under Sections 302/149/148/506(ii), I.P.C. vide Judgment and Order dated 17.4.2000 passed by the Additional Sessions Judge, Azamgarh in Sessions Trial No. 391 of 1997. The petitioner and two other convicts preferred an appeal before the High Court being Criminal Appeal No. 843 of 2000. The petitioner and two others were granted bail and realization of fine was stayed vide order dated 20.04.2000 passed by the High Court in the said Criminal Appeal.

10. The Apex Court in the case of B.R. Kapur v. State of T.N. (2001) 7 Supreme Court Cases 231, while considering the question of disqualification, u/s 8(3) of Representation of the People Act incurred by a candidate on account of conviction and sentence, has held that u/s 389 of the Code of Criminal Procedure an Appellate Court may order that "the execution of the sentence or order appealed against be suspended.... "It is not within the power of the Appellate Court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. It was further held that the suspension of the execution and sentence does not alter or affect the fact that the offender has been convicted of a grave offence and has attracted the sentence of imprisonment. The Apex Court further observed as follows:-

In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second respondent. Be/ore we advert to the four judgments relied upon in support of this submission, let us clear the air. When a lower Court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate Court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that is not to say that the presumption of innocence continues after the conviction by the trial Court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well.

11. Thus in view of the decision of the Apex Court in the Case of B.R. Kapur (supra), the grant of bail and stay of realisation of fine by the Appellate Court does not operate as suspension of conviction. The conviction of the petitioner for the offence of murder and unlawful assembly may still operate as a disqualification for the grant of dealership of retail outlet of petrol/diesel.

12. The next question for consideration before this Bench is whether the conviction of the petitioner for an offence of murder and unlawful assembly is covered within the scope and meaning of the definition of moral turpitude. The word "moral turpitude" as defined in the case of [Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others](#), means "anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of Character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty, which a person owes to his fellowmen or to the society in general. If therefore, the individual charged with a certain conduct owes a duty, either to another individual or to

the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

13. Following the aforesaid decision, in the case of [Mangali Vs. Chhakki Lal and Others](#), it was held as follows:

With great respect, it appears to me that some of the observations made in these decisions have been too widely stated and if followed literally may make every act punishable in law an offence involving moral turpitude, that, however could not be the intention with which those observations were made. From consideration of the dictionary meaning of the words "moral" and turpitude" as well as the real ratio decided of the cases the principle which emerges appear to be that the question whether a certain offence involves moral turpitude or not will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. Had that been so, the qualification "involving moral turpitude" would not have been used by the Legislature and it would have disqualified every person who had been convicted of any offence. The tests which should ordinarily be applied for judging whether a certain offence does or does not involve moral turpitude appear to be :[1] whether the act leading to a conviction was such as could shock the moral conscience of the society in general, [2] whether the motive which led to act was base one and [3] whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person, who was to be looked down upon by the society.

No absolute standard can be laid down for deciding whether a particular act is to be considered one involving moral turpitude, but the above are the general tests which should in most cases be sufficient for enabling one to arrive at a correct conclusion on the question.

14. In the aforesaid case Chakki Lal, the respondent No. 1 was found in possession of Bhang and was convicted for an offence u/s 60 of the U.P. Excise Act and had been sentenced to fine of Rs. 10 for the said offence. It was held that there was no base or motive leading to the crime.

15. In the case of Management of Tractors and farm Equipment Ltd. v. The Presiding Officer, 1st Addl. Labour Court and T.A. Doss reported in 1983 Labour and Industrial Cases-460, the Hon"ble Madras High Court had held as follows:-

From the above, it is clear that every act punishable in law would not amount to an offence involving moral turpitude. If that had been the intention, then there is no necessity at all for statutes to say that a person convicted of an offence involving moral turpitude would be exposed to certain consequences or disqualification. The Legislature would have merely stated that person who is punished for violation of any law would be exposed

to such consequences, or disqualification. The question whether conviction for a particular offence involves moral turpitude will depend upon the facts and circumstances of the case. However, in order to come within the scope of the phrase moral turpitude there must be an element of baseness and depravity in the act for which a particular individual has been punished. The act must be vile or harmful to society in general or contrary to accepted rules or rights and duties between man and man. Mere violation of a particular statute cannot amount to the commission of an act involving moral turpitude. I am in complete agreement with Srivastava, J. of the Allahabad High Court in [Mangali Vs. Chhakki Lal and Others](#), who has laid down the following tests :[1] Whether the act leading to a conviction was such as could shock the moral conscience of society in general, [2] whether the motive which led to act was a base one and [3] whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. Tested in the light of the above principles, the punishment of an individual for consuming liquor without permit in violation of the provisions of the Prohibition Act cannot be said to be an offence involving moral turpitude. It cannot be said that drinking is considered by society to be so base or vile as to characterise a man, who consumes liquor as one of depraved character or as one who is to be looked down upon by society. Further Prohibition Act itself provides permit to be granted by the state Government under certain circumstances. The question whether consumption of alcoholic liquor by itself makes a man to be ostracised by society on the ground that he is a man of depraved character has to be decided, in my opinion, not on the basis of a prohibition law prevalent in a particular State but on the basis of the situation in the country as a whole. No doubt, in the State of Tamil Nadu, there is a Prohibition Act, which at the relevant time was more stringent than what it is today. At the same time, there are States in India where there is no prohibition, at all. I am emphasising this aspect only to show that drinking as such is not considered as harmful to society in general or contrary to accepted rules of rights and duties between men and men. I am therefore, of the view that conviction for an offence for consumption of liquor under the Prohibition Act does not amount to an offence involving moral turpitude.

16. In the case of [Pawan Kumar Vs. State of Haryana and another](#), the Hon"ble Supreme Court has held that moral turpitude is an expression used in legal as well as societal parlance to describe the conduct which is inherently based vile depravity or having any connection showing the depravity. The Hon"ble Supreme Court held as follows:-

It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex facie it only shows that the entry concerns FIR No. 231 of 3.6.1980 u/s 294 IPC. Therefrom it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to the provision of the IPC or any other particular? Mere payment of the fine of Rs. 20 does not got to show that the conviction was validly and legally recorded. Assuming that the

conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three Courts below, even when invited to judge the matter in the said perspective, went on to hold that the acts involved in conviction u/s 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards, and its changing view of obscenity. The matter unfortunately was dealt with casually at all levels.

17. It further observed as follows :

Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousand of people throughout the country appearing before summary Courts and paying small amounts of fine, more often than not, as measure of plea-bargaining. Foremost among them being trafficked, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore, necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs. 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever.

18. The Apex Court in the case of [Pawan Kumar Vs. State of Haryana and another](#) , affirming the interpretation of expression moral turpitude given in the case of [Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others](#), has observed as follows:

The expression "moral turpitude" is not defined anywhere But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and weakness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty, which a person owes to his fellowmen or to the society in general. If therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accept customary rule and duty between man and man.

In our opinion the aforesaid observations correctly spell out the true meaning of the expression "moral turpitude." Applying the aforesaid test, if the allegations made against the respondent are proved, it will clearly show that he had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend him under the aforesaid Clause 19.3. The High Court observed that there was nothing on record to suggest that the management had formed an opinion objectively on the consideration of all relevant material available against the petitioner that in the circumstances of the case the criminal acts attributed to the petitioner implied depravity and vileness of character and are such as should involve moral turpitude. It did not regard entering into a criminal conspiracy to commit the aforesaid offences as being an offence involving moral turpitude. We are, to say the least, surprised at the conclusion, which has been arrived by the Allahabad High Court. There was material on record before the appellant, in the form of the report of the C.B.I./S.P.E., which clearly indicated the acts of commission and omissions, amounting to "moral turpitude" alleged to have, been committed by the respondent. Further more the respondent has been charged with various offences allegedly committed while he was working in the bank and punishment for which could extend upto ten years imprisonment [in case the respondent is convicted u/s 467 I.P.C.]

19. The decision of the Apex Court in the case of K.L. Narasimha Rao (supra), relied upon by Sri Ravi Kant does not advance the cause of the petitioner as in the aforementioned case the Apex Court had remitted the matter to the Commissioner to go into the aspect of moral turpitude and record his findings.

20. According to American Encyclopaedia of Law, anything done contrary to justice, honesty, principle or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or society in general, anything contrary to accepted and customary rule of right and duty between man and man involves moral turpitude.

21. Applying the aforesaid tests, we find that the learned VIIth Additional Sessions Judge, Azamgarh has found that the petitioner was firing in the air with a country made pistol at 10.40 A.M. in broad daylight with other co-accused and was involved in terrorising the public with a view to commit murder of one Surendra Kumar Singh. He has been sentenced with imprisonment for life and also fined. Thus the act of petitioner leading to conviction for murder and sentence of life imprisonment is shocking to moral conscience of the society in general and exposing depravity of character amounts to an offence involving moral turpitude and consequently a disqualification for allotment of dealership of retail outlet of petrol/diesel.

22. There is no denying the fact that the petitioner did not make the disclosure about his conviction and sentence for an offence of murder in Column 20 of the application form for dealership. Clause 10 of the brochure accompanying the application form provided that the candidates convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle) and those against whom charges have

been framed by the Court (other than freedom struggle) would not be eligible for dealership/distributorship and if such a person is allotted the dealership by suppression of information, it will be cancelled. The Corporation discovered by itself that the petitioner had suppressed the fact about his conviction for a / criminal offence. The contention of the petitioner that non-disclosure was due to the reason of stay of the operation of conviction by the Appellate Court is unacceptable.

23. The Hon"ble Supreme Court in the case of [Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav](#), has held that the requirement of filling columns 12 & 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

24. In the case of [A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others](#), , it has been held :-

As to the purpose for which information is called for, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence, which led the first respondent to leave the particulars in column II blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the first respondent inform the appellant Commission that there was a bona fide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant Commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the first respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

25. The Condition No. 1.8 of the letter of intent dated 6.5.02 (Annexure-1 to the writ petition) provided that the proposal will stand automatically withdrawn and cancelled on the happening of any of the following event namely- "(b) if it is found that you have suppressed and/or misrepresented any material facts in your application." According to the Clause 10 of the brochure, which accompanied the application form, a person convicted for any criminal offence and against whom charges had been framed by the

Court was not eligible for dealership and in case of procurement of dealership by suppression of information, the dealership was to be cancelled. The petitioner having suppressed the material information about his conviction for murder, the withdrawal of letter of intent and cancellation of letter of appointment by the respondents cannot be said to be arbitrary and against the law.

26. In the result, the writ petition fails and is dismissed with costs which we assess at Rs. 5,000/-.