
(2012) 09 PAT CK 0092

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 4896 of 2011

Mahadeo Mahto

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: Sept. 21, 2012

Citation: (2013) 2 PLJR 808

Hon'ble Judges: S.N. Hussain, J

Bench: Single Bench

Advocate: Rajendra Pd. Singh and Mr. Rakesh Kr. Singh, for the Appellant; Raghib Ahsan (A.S.G.) and Mr. P.L. Jaiswal (C.G.C.), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.N. Hussain, J.

This writ petition has been filed by the petitioner for the following reliefs:-

(i) For issuance of appropriate writs/orders or directions for quashing letter dated 13.01.2011 issued by respondent no. 8 whereby and whereunder distribution of L.P.G. in the name of the petitioner's agency has been suspended.

(ii) Further after quashing of the above said letter dated 13.01.2011 the respondents may be directed to resume the distributorship of L.P.G. in the name of the petitioner's agency.

(iii) And further during the pendency of this writ application the above said letter dated 13.01.2011 may be stayed and the respondent corporation may be directed to return the articles and equipments (including L.P.G. Cylinders and Pressure Regulators) etc to the agency of the petitioner and also for resumption of supply to the petitioner's agency which has been stopped w.e.f. 13.01.2011.

Learned counsel for the petitioner stated that on 18.02.2002 an advertisement for distributorship of L.P.G. Gas was published by the Indane Oil Corporation Limited (hereinafter referred to as "the Corporation" for the sake of brevity) for Benipur

Block within the district of Darbhanga under reserved category of scheduled caste in response to which the petitioner, being scheduled caste, submitted his application form within the time allowed, whereafter interview of the petitioner was held along with other candidates, whereafter merit list was prepared in which the petitioner was at serial no. 1 and accordingly Letter of Intent (LOI) dated 08.11.2003 was issued in favour of the petitioner.

2. Learned counsel for the petitioner submitted that according to the aforesaid Letter of Intent dated 08.11.2003 arrangement of suitable plot of land with cylinder storage facility (godown), sales room in the trading area of distributorship, delivery vehicles in sufficient numbers, facility of telephones and working capital etc. were to be made by the Corporation, but even after two years of issuance of LOI the said facilities were not arranged by the Corporation and hence the petitioner was forced to enter into partnership with Khalid Saifullah Rahmani and Navin Kumar Jha vide partnership deed dated 11.06.2005 according to which Khalid Saifullah Rahmani was proposed to be a financing partner, whereas Navin Kumar Jha was proposed to be working partner but the said deed was never acted upon in reality and finally the power of attorney given in favour of Navin Kumar Jha by the petitioner was revoked by the said Navin Kumar Jha. Thereafter the petitioner vide letter dated 23.03.2006 informed the Corporation that he was not opting for the financial assistance offered by the Corporation vide LOI dated 08.11.2003 and requested the Corporation along with his proposal to accord permission for construction of show-room and godown at his own cost and in response to it the Corporation issued a fresh Letter of Intent dated 30.03.2006 in favour of the petitioner for the same distributorship in which certain conditions were enumerated.

3. Learned counsel for the petitioner averred that in the aforesaid circumstances the petitioner sent notice dated 24.07.2006 to Khalid Saifullah Rahmani and Navin Kumar Jha dissolving the partnership vide agreement deed dated 11.06.2005 and also revoking the power of attorney, thereafter the petitioner completed all the formalities himself by arranging capital, constructing godown after taking lease of land for ten years and also taking another premises on lease basis for ten years for show-room purpose. Only thereafter final dealership appointment letter dated 14.12.2006 was issued by the Corporation in favour of the petitioner, who started all the works of L.P.G. distributorship with effect from 22.12.2006 and an agreement was entered into between the petitioner and the Corporation on 06.05.2008 for the purpose of distributorship of L.P.G. for Benipur Dev Block within the district of Darbhanga.

4. Learned counsel for the petitioner claimed that the petitioner's partnership deed dated 11.06.2005 with Khalid Saifullah Rahmani and another was finally dissolved through notary on 08.08.2008 and through registry office on 02.02.2010 with consent. In the said deed of dissolution it was specifically mentioned that the said partners had no interest as the said earlier partnership agreement dated 11.06.2005

was never acted upon, thereafter power of attorney dated 11.06.2005 in favour of Navin Kumar Jha was also revoked and cancelled by the petitioner through registry office on 31.12.2009.

5. Learned counsel for the petitioner asserted that till 12.01.2011 the distribution agency of the petitioner was working properly as per the norms of the Corporation but all of a sudden on 13.01.2011 the impugned order was passed by the Corporation suspending the petitioner's distributorship of L.P.G. stopping supply of gas and taking away articles from the petitioner's agency. The said order was passed due to some complaint made against the petitioner alleging that the petitioner had entered into an unauthorized registered partnership agreement with Khalid Saifullah Rahmani and Navin Kumar Jha and had also executed an unauthorized power of attorney in favour of Navin Kumar Jha, which violated the terms and conditions of Letter of Intent without prior approval of the Corporation.

6. Learned counsel for the petitioner argued that the aforesaid impugned order was passed without any prior notice or show-cause to the petitioner, which was violative of the principles of equity and natural justice. He also argued that the said impugned order was totally arbitrary, erroneous, mala fide and based on nonest grounds. It was further argued that the petitioner had entered into partnership agreement with the said partners on 11.06.2005 and had issued power of attorney in favour of Navin Kumar Jha in June, 2005 when the respondents had failed to make arrangement as provided in Letter of Intent dated 08.11.2003 but the said partnership deed or power of attorney was never acted upon and finally the said partnership deed and the power of attorney were cancelled/revoked immediately after the petitioner entered into the agreement in question on 06.05.2008 with the respondents.

7. Learned counsel for the petitioner claimed that the aforesaid facts are clear from the auditor's report of the petitioner's agency for the year 2006-07 to 2009-10, but the petitioner was given no chance to place his case and relevant papers before the authorities of the Corporation as neither the copy of complaint was supplied to him nor any notice or show-cause was given.

8. The stand of the Union of India and its authorities (respondent nos. 1 and 2) is that the main contesting parties are Corporation and its authorities and they were entitled to take decision which they had taken and is under challenge before this court, hence the Union of India and its authorities (respondent nos. 1 and 2) have got no concern with the instant case.

9. On the other hand, learned counsel for the respondent-Corporation and its authorities (respondent nos. 3 to 9) stated that by the impugned order dated 13.01.2011 they had only asked show-cause from the petitioner and no order of termination had been passed by the authorities and hence the writ petition is pre-mature as the petitioner should have filed his show-cause before the authorities

of the Corporation, whereafter all the matters would have been considered by the Corporation and its authorities and final order passed.

10. Learned counsel for the respondent-Corporation and its authorities (respondent nos. 3 to 9) further submitted that entering into the facts and dealing with the allegation at this stage will not be proper as the distributorship has been suspended pending investigation, which is not concluded due to interim order of the High Court dated 18.03.2011, although the matter could have been decided within two months.

11. Learned counsel for the respondent-Corporation and its authorities (respondent nos. 3 to 9) averred that it was prima facie found from the complaint that registered partnership and power of attorney executed by the petitioner in favour of third person were never cancelled and they continued till 2009-10 and hence the impugned order of suspension was necessary as the matter will have to be investigated by the Corporation after hearing the petitioner also, hence he claimed that this writ petition is fit to be dismissed.

12. From the arguments of learned counsel for the parties and the materials on record, it is not in dispute that in response to advertisement dated 18.02.2002 the petitioner being a scheduled caste candidate filed his application for distributorship of L.P.G. gas of the Corporation and after interview etc. he was placed at serial no. 1 in the merit list and accordingly Letter of Intent dated 08.11.2003 was issued in favour of the petitioner for Benipur Dev within the district of Darbhanga.

13. From a bare perusal of Letter of Intent dated 08.11.2003 it was quite apparent that since the petitioner belonged to reserved category of scheduled caste, the respondent-Corporation had undertaken to develop the facilities required for enabling him to operate the distributorship and to provide suitable plot of land for cylinder godown, facilities for show-room in trading area of the distributorship, delivery vehicles in sufficient numbers, telephones and toilets etc., but it is not in dispute that more than two years passed and none of those facilities were provided by the Corporation to the petitioner. Hence, the petitioner was forced to enter into partnership deed dated 11.06.2005 with Khalid Saifullah Rahmani and Navin Kumar Jha and also executed power of attorney in favour of Navin Kumar Jha. Furthermore there is no material to show that the said partnership deed and power of attorney were ever acted upon and the petitioner had specifically stated on oath that the said partnership deed and power of attorney were never acted upon nor the said partners of the petitioner had taken any step with respect to the matter in question. This fact is also evident from report dated 24.04.2010 (Annexure-16) which was submitted after investigating the complaint by the Sales Officer, L.P.G., Begusarai of the Corporation.

14. It is also apparent from the records that power of attorney was revoked by Navin Kumar Jha on 23.03.2006 under notary and the Corporation issued a revised Letter of Intent dated 30.03.2006 in favour of the petitioner for the same place after

receiving a proposal from the petitioner not opting for any financial assistance offered to him vide earlier Letter of Intent dated 08.11.2003 seeking permission for construction of show-room and godowns at his own cost. It is also not disputed that immediately after receiving the second Letter of Intent dated 30.03.2006 the petitioner sent notice to Khalid Saifullah Rahmani and Navin Kumar Jha for dissolution of partnership agreement vide deed dated 11.06.2005 and finally the partnership deed with Khalid Saifullah Rahmani and Navin Kumar Jha was dissolved through notary on 08.08.2008 which was also incorporated subsequently through registry office on 02.02.2010, where as power of attorney had also been revoked/cancelled through registry office earlier.

15. It is also not in dispute that in between the petitioner himself arranged for capital, constructed godown after taking lease of land for ten years and also took another rented premises on lease for a period of ten years for show-room purposes and only thereafter the final dealership appointment letter dated 14.12.2006 was issued by the Corporation in the name of the petitioner, who started his work of L.P.G. distributorship from 22.12.2006 and the Corporation also started delivering gas supply to the petitioner's agency and subsequently an agreement was also entered into between the petitioner and the Corporation on 06.05.2008 for the aforesaid purpose, which peacefully continued.

16. In spite of the aforesaid facts, it transpires that when the authorities of the Corporation received some complaint from some one, they issued order dated 13.01.2011 i.e. several years after the cancellation/revocation of the deed of partnership and power of attorney, which had never been acted upon and furthermore the said order was passed after about five years of continuous functioning of the petitioner's distribution agency without any hindrance.

17. From a perusal of the impugned order dated 13.01.2011 it is quite apparent that it is not a plain and simple order for filing show-cause nor anywhere order of suspension pending enquiry had been mentioned therein, rather in the said letter it has been specifically stated that the complaint against the petitioner had been fully investigated by the Corporation, whereafter the petitioner had been found guilty of violation of the terms and conditions of the Indane distributorship agreement by entering into an unauthorized registered agreement of partnership and executing an unauthorized power of attorney with third party without prior approval of the Corporation. Thereafter the petitioner had also been directed to return back to the Corporation all the equipments (L.P.G. Cylinders and Pressure Regulators) lying with petitioner's distributorship with proper documentation and to handover all the relevant indsoft documents/stationery/copy of stock register/customers records and transfer all the Indane customers attached with his distributorship inline with the guidelines from the Corporation in this regard.

18. From the verdicts of the aforesaid impugned order dated 13.01.2011 it is quite apparent that without giving any notice and any opportunity to the petitioner to

submit his explanation the respondent-authorities had already held the petitioner guilty and had punished him by directing him to return back all the equipments, documents, materials and customers attached with petitioner's distributorship, which clearly means that the authorities of the Corporation made up their mind to end the distributorship with the petitioner, which is absolutely illegal and cannot be sustained in the eye of law.

19. The aforesaid facts and circumstances also reveal that the authorities of the Corporation have failed to discharge their duties as per the specific terms of Letter of Intent dated 08.11.2003 (Annexure-2) issued by the Corporation in favour of the petitioner for several years and when on the basis of the second Letter of Intent dated 30.03.2006 and dealership appointment letter dated 14.12.2006 the petitioner started his work from 22.12.2006 and continued it for several years, the impugned action had been taken by the authorities only for concealing their earlier laches which is quite evident from the record of this case. The said attitude of the authorities of the Corporation is also proved by the fact that even when vide order dated 18.03.2011 this court stayed the operation of the impugned order dated 13.01.2011 issued by the Deputy General Manager of the Corporation, the authorities did not pay any heed to it and did not start supply of the materials, which was stopped by the aforesaid impugned order.

20. In the aforesaid circumstances, the acts of the authorities in passing the impugned order dated 13.01.2011 and their subsequent acts cannot be held to be sustainable in law and accordingly the impugned order dated 13.01.2011 (Annexure-1) passed by the Deputy General Manager of the Corporation (respondent no. 8) is hereby quashed. The said authority is directed to return all the equipments, documents, records, etc. to the petitioner and to transfer back all the Indane Customers earlier attached to petitioner's distributorship and immediately start supply of L.P.G. gas cylinders for distributorship to the petitioner's agency. All the aforesaid acts should be completed within 15 days from the date of receipt/production of a copy of this order, failing which the petitioner will be entitled to file an M.J.C. case in this court for initiating a proceeding of contempt against the concerned authority. With the aforesaid observations/directions, this writ petition is allowed.