

Virender Chaudhary vs Bharat Petroleum Corp. & Ors on 7 November, 2008

Equivalent citations: AIR 2008 SC (SUPP) 1160, 2009 (1) SCC 297, (2009) 1 CLR 294 (SC), (2009) 1 CAL HN 66, (2009) 73 ALLINDCAS 123 (SC), (2008) 15 SCALE 67, 2009 (74) ALR SOC 55 (SC)

Author: S.B. Sinha

Bench: Cyriac Joseph, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6567-69 OF 2008
(Arising out of SLP (C) Nos.3456-3458 of 2008)

Virender Chaudhary

... Appellant

Versus

Bharat Petroleum Corporation & Ors.

... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Respondent No.1 is a company incorporated under the Indian Companies Act, 1956. It is a State within the meaning of Article 12 of the Constitution of India. Its function, inter alia, is allotment of grant of LPG distributorship.

3. An advertisement was issued by the first respondent inviting applications for grant of LPG distributorship for different areas including the one for Ballabgarh district, in terms whereof a person convicted for commission of any offence involving moral turpitude/economic offence and those against whom charges had been framed by the court were ineligible therefor. In the said advertisement dated 18.7.1998 published in a daily newspaper 'The Tribune' and 'Dainik Tribune' it was stated :

"2. Eligibility : The applicant should be :

XXX XXX XXX

5. Candidates convicted for any criminal offence involving moral turpitude/economic offences and those against whom charge has been framed by the Court (other than Freedom Struggle) are not eligible to apply."

However, no distributorship was granted pursuant to the above advertisement. Later, advertisements were published in the year 002 for the purpose of grant of LPG dealership in Ballabhgarh district. The advertisement dated 23.3.2002, published in `Navbharat Times' reads thus :

"6. Candidates convicted for any criminal offence involving moral turpitude/economic offences and those against whom charge has been framed by the Court (other than Freedom Struggle) are not eligible to apply."

Clauses 6 and 9 of the advertisement published in `The Tribune' and `Dainik Tribune' on 23.3.2002 read as under :

"6. Candidates convicted for any criminal offence involving moral turpitude/economic offences (other than Freedom Struggle), are not eligible to apply.

XXX XXX XXX

9. The candidate selected for dealership shall be a full time working dealer.

Further details of the eligibility criteria and conditions as mentioned in the application form shall apply."

4. Several criteria were laid down in the application form, paragraph 20 whereof reads as under :

"Have you ever been convicted for any criminal offence involving moral turpitude and/or economic offence (other than freedom struggle)? If so, please give details thereof, if not please attach affidavit as per appendix `A'."

5. In the manual issued by the respondent No.1, it was stated :

"12.Conviction: (i)Candidates convicted for any criminal offence involving moral turpitude and/or economic offence (other than freedom struggle) would not be eligible for dealership/ distributorship and if such a person is allotted the dealership/distributorship by suppression of information, it will be cancelled."

6. Indisputably, Respondent No.5 was proceeded against in a criminal case for alleged commission of offences under Sections 452, 323, 506 and 34 IPC in the year 1999. Another First Information Report was lodged against him on or about 9.7.2001 under Sections 147, 148, 353, 186, 341 and 506 of the Indian Penal Code.

7. Both the appellants as also the respondent No.1 applied in response to the advertisement.

In his application the 5th respondent did not mention that he had been proceeded against in a criminal case and charges were framed against him. Interviews were held for the candidates on or about 25/26.11.2003. Respondent No.5 was found to be the most suitable candidate by the Selection Committee. The name of appellant also figured in the select list. Empanelment of the 5th respondent was, however, cancelled in view of his involvement in the criminal case. A field investigation was furthermore carried out in respect of the appellant.

8. Fifth respondent filed a writ petition questioning the decision of the first respondent herein in not awarding the dealership in his favour. A letter of intent was issued in favour of the appellant in May 2004 whereafter he started his business. In his writ petition, however, the 5th respondent did not make any prayer for setting aside the allotment made in favour of the appellant. On that ground, the writ petition was adjourned sine die by an order dated 23.11.2004. Only on 16.3.2006, an application for amending the writ petition was filed. However, the said writ petition was dismissed as withdrawn with liberty to file a fresh writ petition on the same cause of action.

9. Thereafter, the second writ petition was filed in October 2006 which has been allowed by the High Court by reason of the impugned judgment dated 15.11.2007.

10. Mr. K.K. Venugopal, learned senior counsel appearing on behalf of appellant, submitted that although in the advertisement issued for grant of allotment of the LPG dealership, lodging of a first information report or framing of charge were not stated to be the relevant factors for the purpose of disqualifying a candidate, in all fairness, the 5th respondent should have mentioned thereabout in his application for grant of LPG dealership. In any event, as the writ petition suffered from delay and laches, the impugned order should be set aside.

11. Mr. Mahabir Singh, learned counsel appearing on behalf of the 5th respondent, on the other hand, would contend that as the case of the 5th respondent had not been considered at all, there is no infirmity in the impugned judgment.

12. It is not in dispute that whereas in the advertisement issued in the year 1998 and the advertisement issued on 23.3.2002 in 'Navbharat Times', framing of charges in any criminal case was considered to be a disqualification. But in the advertisement issued on 23.3.2002 in 'The Tribune and the 'Dainik Tribune, framing of charges in a criminal case was not considered to be a disqualification. Only conviction in a criminal case was considered to be a disqualification.

13. After the interviews were held and before the letter of intent could be issued, field investigation was carried out. It is during the field investigation, the officials of respondent No.1 came to learn

about the fact that two first information reports had been lodged against respondent No.5 and in one of them he had also been charge-sheeted. It is on that basis, a decision was taken to cancel the empanelment of the 5th respondent on or about 10th March, 2004. Field investigation in respect of the appellant, however, proceeded. Letter of intent had been issued in his favour on 6.5.2004. It is difficult to comprehend that the 5th respondent was not aware of the issuance of the letter of intent to the appellant herein.

14. He, however, filed a writ application only on or about 23rd November, 2004. The High Court may be correct in its view that the purported cancellation of empanelment of the 5th respondent was made on a wrong premise. Though the advertisement published in 'Navbharat Times' mentioned 'framing of charge in a criminal case' as a disqualification, the advertisement published in 'The Tribune' and the 'Dainik Tribune' framing of charge in a criminal case was not mentioned as a disqualification. In the application form also, the applicant was not required to furnish any information regarding any framing of charge in a criminal case. It was neither necessary nor possible for the 5th respondent to disclose the fact that two first information reports had been lodged against him and in one of them he had been charged sheeted. The purported disqualification attributed to him, therefore, led to an unjust decision. The High Court, however, in our opinion failed to take into consideration the effect of delay and laches on the part of the appellant in approaching the High Court. A writ remedy is a discretionary remedy. The court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so. Delay and/or laches, indisputably, are the relevant factors.

15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasize is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches.

16. In *Uttaranchal Forest Development Corporation & Anr. v. Jabar Singh & Ors.* [(2007) 2 SCC 112], this Court held :

"It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches."

In *New Delhi Municipal Council v. Pan Singh & Ors.* [(2007) 9 SCC 278], this Court held :

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their

grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy, U.P. Jal Nigam v. Jaswant Singh and Karnataka Power Corpn. Ltd. v. K. Thangappan.)

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India and M.R. Gupta v. Union of India.) In Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel & Ors. [(2006 (8) SCC 726], it was held :

"Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights for trade mark, trade name, etc."

Recently in Khoday Distilleries Limited (Now known as Khoday India Ltd.) v. The Scotch Whisky Association & Ors. [2008 (9) SCALE 40], this Court applied the principle of waiver and acquiescence being a case involving equity and justice. Conduct of the parties has also been considered to be a ground for attracting the doctrine of estoppel by acquiescence or waiver.

17. The 5th respondent did not acquire an indefeasible right. He was selected by the Oil Selection Board. The said selection was subsequently cancelled and a letter of intent was issued in favour of the appellant in May 2004. It was not questioned immediately after issuance of the letter of intent in favour of appellant in May 2004. In his writ application, the 5th respondent did not question the grant of dealership in favour of the appellant. He was afforded an opportunity to amend the writ petition. He filed such an application only after 16 months. However, the writ petition itself was withdrawn and only in October 2006, the present writ application was filed. From the facts as noticed hereinbefore, there can, therefore, be no doubt that from May 2004 to October 2006, the respondent did not take any step to challenge insurance of the letter of intent granting dealership in favour of appellant.

18. Considering the fact that starting of a business in LPG dealership requires a huge investment and infrastructure therefor is required to be provided and a large number of employees are to be appointed therefor, we are of the opinion that the High Court committed a serious error in not taking these factors into consideration in proper perspective. The impugned judgment, therefore, cannot be sustained and is set aside accordingly.

19. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J. [S.B. Sinha]J. [Cyriac Joseph] New Delhi;

November 7, 2008