

K. Vinod Kumar vs S. Palanisamy And Ors. on 28 August, 2003

Equivalent citations: AIR2003SC3171, 2004(1)AWC173(SC), 2004(1)CTLJ436(SC), JT2003(8)SC100, (2003)3MLJ173(SC), 2003(6)SCALE753, (2003)10SCC681, 2003(2)UJ1480(SC), AIR 2003 SUPREME COURT 3171, 2003 (10) SCC 681, 2003 AIR SCW 4519, 2004 (1) CTLJ 436, 2003 (4) LRI 963, 2003 (5) SLT 82, 2003 (6) SCALE 753, (2003) 10 ALLINDCAS 79 (SC), (2004) 1 ALLMR 76 (SC), (2003) 8 JT 100 (SC), 2003 (2) UJ (SC) 1480, 2003 UJ(SC) 2 1480, (2003) 11 INDLD 606, (2003) 3 MAD LJ 173, (2003) 4 PAT LJR 175, (2003) 6 SUPREME 471, (2003) 4 RECCIVR 542, (2003) 6 SCALE 753, (2003) 4 JLJR 132, (2003) 53 ALL LR 182, (2004) 1 ALL WC 173

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Bench: R.C. Lahoti, Ashok Bhan

JUDGMENT

R.C. Lahoti, J.

1. Leave granted.

2. Bharat Petroleum Corporation Limited, a Government of India Enterprise, issued an advertisement on 16.8.2000 inviting applications for appointment as LPG distributors for Bharat Gas at several locations mentioned in their advertisement, one of them being Palladam. One of the conditions of eligibility, as contained in the advertisement, was:-

"(g) The applicants should furnish, along with the application, details of land for godown facilities which he/she may make available for the Distributorship. Considering the location of the land from the point of view of commercial angle, applicants willing to transfer the land/facilities on ownership/long lease to BHARAT PETROLEUM CORPN. LTD. , at the rate acceptable to BHARAT PETROLEUM CORPN. LTD. , would be given preference. if an applicant, after selection, is unable to provide the land indicated by him/her earlier, within a period of 2 months, the allotment of the BHARAT GAS Distributorship made to him/her would be cancelled."

The controversy in the present case centers around the abovesaid eligibility requirement and it is, therefore, not necessary to notice other eligibility requirements.

3. The appellant herein, who was the respondent No. 5 in the High Court, was one of the applicants who made an application seeking such appointment. The Dealer Selection Board scrutinized all the applications and also invited the applicants for interview. As noted by the High Court in its impugned judgment the Dealer Selection Board consisting of the Chairman and two Members gave the marks as under:-

(appellant in this Court) The appellant herein was recommended for appointment.

4. One of the aspirants, the respondent No. 1 before us, filed a writ petition laying challenge to the selection made as above. A learned single Judge of the High Court set aside the selection made by the Board on the ground that there was a failure on the part of the appellant herein to give particulars of the land to be given for the dealership and, therefore, he could not have been selected. The learned single Judge also called for the record of the proceedings held by the Board, and after scrutinizing the same observed that there was no transparency in awarding marks inasmuch as excepting the act of awarding the marks, there was no other decision or finding with respect to the basis for awarding of such marks. As one place, during the course of his judgment, the learned single Judge of the High Court observed that there was no speaking order to show on what basis the said marks were awarded.

5. The appellant preferred an inter-court appeal which has been dismissed by a Division Bench. The aggrieved appellant has preferred this appeal by special leave.

6. Having heard the learned counsel for the parties, we are satisfied that the two judgments of the High Court cannot be sustained and are liable to be set aside.

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.

9. The above conclusion stands reinforced by the contents of the letter dated 5.1.2001 issued by BPCL to the appellant herein which states inter alia :-

"CBE: LPG" PALLADAM

05.01.2001

Sri K. Vinod Kumar,
S/o R. Krishnan,
7/77, East Street, Pongalur,
Triput,
Coimbatore-641667

Dear Sir,

LPG: PROPOSED BHARATGAS
DISTRIBUTORSHIP AT PALLADAM DIST.
COIMBATORE, UNDER 'OPEN' CAT. MKTG.

PLAN 1994-96

We refer to your application for the subject distributorship and the subsequent interview held at Coimbatore.

It is intended to offer you the distributorship at PALLADAM on the condition that you will:

(a) LAND Procedure a suitable plot of land measuring (32M x 29M) for storing LPG in cylinders either purchased by you or leased to you initially for a period of 10 years with a renewal option thereafter for a minimum period of 5 years, for construction of a godown and a showroom, with telephone connection, preferably in a prominent locality within your distributorship's area of operation, within a period of 4 months

from the date of this letter, after getting clearance from our office in writing for the particular godown site and the showroom. The godown site should also be as close as possible to the showroom and the godown should have Mastic Flooring.

xxx xxx xxx xxx"

10. It is clear that in spite of having been selected, the appellant was granted four months' time by the employer Corporation for identifying a suitable plot of land and having the same approved by the employer. If availability or identification of the land would have been a pre-condition to the filing of the application itself, BPCL, by its letter dated January 5, 2001, would not have given the appellant an opportunity for the same, nor would it have allowed him four months' time for the purpose.

11. The law is settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process. The capability of the appellant herein to otherwise perform as an LPG distributor is not in dispute. The High Court was not, therefore, justified in interfering with the decision of the Selection Board and the decision of the BPCL to issue letter of allotment to the appellant herein.

12. The appellant is allowed. The impugned judgments of the High Court are set aside.