

CASE NO.:
Appeal (civil) 1844 of 2007

PETITIONER:
Shiv Kant Yadav

RESPONDENT:
Indian Oil Corporation and Ors

DATE OF JUDGMENT: 09/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1844 OF 2007
(Arising out of SLP (C) No. 3938 of 2006)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is the order passed by a Division Bench of the Allahabad High Court dismissing the Writ Petition filed by Shiv Kant Yadav, the appellant herein.

Background facts in a nutshell are as follows:

Indian Oil Corporation (in short the 'Corporation') invited applications from desirous persons by offering advertisements through publication in newspapers to select suitable persons and grant Letter of Intent (in short 'LOI') to award dealership of SKO/LDO at Jaleshar, Dist. Etah. Appellant and several others applied for the same. The Selection Board scrutinized the applications on 28th and 29th November, 2003. Names of the applicants in order of preference were indicated in the panel of selected candidates, on the basis of which the Corporation proposed to award dealership. They are as follows: (i) appellant- Shiv Kant Yadav; (ii) respondent No.4- Smt. Usha Sharma and (iii) Hari Om Singh who was not impleaded in the writ petition. Usha and Hari Om Singh filed complaints inter-se between themselves against aforesaid selection contending that candidates did not disclose the correct information in their applications and, therefore, were not qualified to get dealership. The Corporation held an enquiry on the basis of the complaint made against the appellant and relying on the report received after enquiry passed the order cancelling the selection of the appellant. Consequently, the Head Office of the Corporation directed the concerned authority to cancel the selection of the appellant and to issue LOI in favour of respondent No.4 after ensuring that there was no complaint/court case pending against the proposed allottee.

The order was challenged by the appellant by filing a writ petition.

Appellant in the Writ Petition took the stand that as per

the enquiry report the total income of the appellant had been fixed at Rs.1,64,000/- per annum vis-à-vis Rs.84,000/- as disclosed in his application form. The discrepancy has no bearing as the eligibility criteria was that the income should not be above rupees two lakhs in the last financial year. The complaint made by Hari Om Singh against Smt. Usha was pending and no LOI could be issued without holding an enquiry.

The Corporation took the stand that the Executive Summary report discloses that incorrect information had been given and it has been specifically made clear that any concealment of facts/mis-information would result in rejection of the application.

The decision not to allot the dealership to the appellant was on account of the fact that he did not correctly disclose the income and thus violated his own declaration in his undertaking incorporated in the application.

With reference to the application form and the undertaking the High Court held that it was obviously clear that the income was not fully disclosed. The plea that the income was less than rupees two lakhs, did not materially affect the eligibility of the appellant was not accepted and accordingly, the writ petition was dismissed.

In support of the appeal, it is submitted that there was no mens rea and mere mistake and unintended omission cannot be a ground for cancellation. The income of S.K. Fertilizers was not necessary to be disclosed. In the affidavit before the Selection Board it was clearly stated that S.K. Constructions may have come into existence in 2002-2003.

Learned counsel for the respondents on the other hand supported the order saying that once there is suppression in view of the undertaking the allotment was to be cancelled.

The fact of making a wrong statement in the application form and the effect of the undertaking though rendered in different context in *Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav* (2003 (3) SCC 437), *State of A.P. and Anr. v. T. Suryachandra Rao* (2005 (6) SCC 149) and *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.* (2005 (7) SCC 605) need to be noted.

In *Kendriya Vidyalaya's* case (supra) it was noted as follows:

"11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of BA, BEd and MEd degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11

correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 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.

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after

due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

It is to be noted that the enquiry report relates to S.K. Fertilizers whereas the affidavit alleged to have been filed where reference was made to S.K. Construction has no relevance. It is not in dispute that in the affidavit the appellant had stated about the inheritance of income yielding property. In the report after taking note of the appellant's stand it was concluded as follows:

"Comments: Sh. Shiv Kant Yadav has admitted through affidavit that he has inherited two houses from his father, which is being used for personal use only and as such there is no income in the year 1999-2000 on this account (Annex-c). He has also admitted to be the owner of two shops which are currently not in use and lying vacant. With regard to three vacant shops, I do not agree since all the nine shops, which he has shown me at the time of my visit comes under the joint property and since six shops have been given on rent, automatically Sh Shiv Kant Yadav gets one third share of the joint property. However, complainant has produced a letter issued by Nagar Panchayat Jaithra dated 26-03-04 (Annex-H) stating that Sh Shiv Kant Yadav, s/o Veri Singh Yadav has Rs.14,000/- per month towards rental from shops and Rs.3,000/- per month towards rental from house. Thus, the income for the year 1999-2000 works out to be approximately Rs.68,000/- towards his share from the joint property. Enclosed annexures. The allegation stands proved and the incomes from house and shops have not been shown in the

application."

There was a requirement to disclose the true and correct fact which does not appear to have been done.

The undertaking reads as follows:

"That I am fully aware that Indian Oil Corporation (name of the Oil Company) under its policy will not appoint me as their dealer/distributor, if I am employed. I shall have to resign from the service and produce proof of acceptance of my resignation by my employer to Indian Oil Corporation Ltd. (Name of the Oil Company) before issuance of Letter of Appointment for the dealership/distributorship.

That if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of SKO/LDO dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false Indian Oil Corporation (name of the Oil Company) would be within its rights to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that, I would have no claim, whatsoever, against Indian Oil Corporation (name of the Oil Company) for such withdrawal/termination."

In view of the undertaking that if any factual mis-statement or declaration is made that permits cancellation of the allotment. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed with no order as to costs.