

25.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12968/2009

%

Date of decision: 6th November, 2009

DEEP MEHTA

..... Petitioner

Through Mr. Raman Duggal, Advocate.

versus

I.O.C LTD

..... Respondent

Through Mr. Rajat Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. This is the second round of litigation. The petitioner had earlier filed W.P. (C) No. 7721/2008 and vide order dated 3rd November, 2008, the writ petition was directed to be treated as a representation and the petitioner was granted right of hearing. The respondents were directed to decide the representation of the petitioner and not issue letter of intent with regard to LPG distributorship in favour of a third party till then.

2. Pursuant to the said directions, the respondents have passed order dated 9th October, 2009 rejecting the representation of the petitioner.

3. The petitioner after public notice dated 9th November, 2007 had applied for LPG distributorship. It is the contention of the petitioner that the selection committee had awarded 99.5% marks to the petitioner in terms of

the norms for evaluating the candidates as prescribed. It is submitted that the marks awarded to the second highest candidate were 91.5%.

4. In the impugned order dated 9th October, 2009 it has been recorded that the petitioner was wrongly awarded 35 marks under the column 14.1. The impugned order records that the petitioner had a notarized lease deed, which was not registered at the time when the petitioner's case was examined by the selection committee. It is further recorded in the impugned order that as per the criteria prescribed, the petitioner could have been awarded only 25 marks on the basis of the unregistered document.

5. Learned counsel for the petitioner has drawn my attention to the norms. The relevant portion of the said norms read as under:-

“14. NORMS FOR EVALUATING THE CANDIDATES

The LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters.

a. Capability to provide infrastructure*	35 marks
b. Capability to provide finance*	35 marks
c. Educational qualifications**	15 marks
d. Age **	4 marks
e. Experience	4 marks
f. Business ability/acumen	5 marks
g. Personality**	2 marks
Total marks	100 marks

The evaluation on the parameters 'a' to 'd' above will be done on the basis of the information given in the application. The evaluation on the parameter 'e' 'f' & 'g' will be done based on the interview.

14.1 Allocation of marks on various parameters based on documents will be carried out as per the information given in the application.

Parameter	Sub Head	Description	Max Marks	Evaluation
*Capability to provide Infrastructure and facilities (as on the date of	Suitable land for LPG storage godown /godown	Owens @ - Having clear title/Registered Sales Deed of the suitable land/godown	25	Based on the information & statement given in the application.

application)		OR Firm offer @-Having agreement to purchase/lease suitable land/godown	18	Based on the information & statement given in the application.
		OR Can arragne	10	Based on the information & statement given in the application.
	Suitable land/shop for showroom	Owns@-having clear title/Registered Sales Deed of the suitable land/shop for showroom	10	Based on the information & statement given the application.
		OR Firm offer @-Having agreement to purchase suitable land/shop for showroom	7	Based on the information & statement given in the application.
		OR Can arrange	5	Based on the information & statement given in the application.
		Sub total maxim marks	35	

”

6. The term ‘owns’ used in clause 14.1 has been further explained as under:-

“@ Own means having clear ownership title of the property or on long leased (minimum 15 yrs) in the name of family member as defined in eligibility criteria/multiple distributorship norm duly supported by documents.

@@ Firm offers means an agreement on stamp paper for sale or lease (minimum 15 yrs) between the applicant and the owner duly supported by documents.”

7. The term 'owns' in Clause 14.1 to get 25 and 10 marks as explained in the said guidelines means a clear ownership of title in the property or long lease of minimum 15 years. Similarly, for obtaining 18 and 7 marks under the heading 'firm offer', the guidelines stipulate that the applicant should have an agreement on a stamp paper for sale or lease of minimum 15 years. The norms further stipulate that the evaluation of parameters 'a' to 'd' would be done on the basis of information given in the application. In the present case, the petitioner did not have a registered lease deed on the date when he had made the application and on the date when the application was considered by the selection committee. The petitioner accordingly is not a person, who owns land as defined in the said norms. It is well settled that under Transfer of Property Act, 1882 lease deed for a period of 15 years or more is required to be registered. Unregistered lease deed, creates only month to month tenancy. In the present case, therefore, the petitioner was entitled to 18 and 7 marks under clause 14.1 and the selection committee had wrongly allotted 25 and 10 marks, i.e., 35 marks. The said error was corrected by the respondents and has been duly noticed in the impugned order dated 9th October, 2009. In case the petitioner is allotted 25 marks, he will be below the second highest candidate.

8. Learned counsel for the petitioner submitted that the unregistered lease deed was subsequently registered before the impugned order was passed. It is, however, accepted that this registration was done after the proceedings before the selection committee were over. The selection committee could not have presumed that the lease deed would be registered subsequently. In the present case the doctrine of relating back cannot be applied. The selection committee was required to allot marks on the basis of the factual position as it existed and not on any presumption. The norms stipulated that evaluation of parameters was to be done on the basis of the application i.e. the factual position as it actually existed.

9. In these circumstances, I see no reason to interfere with the impugned order dated 9th October, 2009 and the writ petition is dismissed.

NOVEMBER 06, 2009
VKR/NA

SANJIV KHANNA, J.