

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.11.2014

+ **W.P.(C) 5238/2012 & CM 10704/2012**

SANJEEV KUMAR

..... Petitioner

versus

INDIAN OIL CORPORATION LTD.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Kirti Uppal, Sr. Advocate with
Mr Badar Mahmood.

For the Respondent : Ms Mala Narayan.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present petition has been filed by the petitioner challenging the decision dated 16.07.2012 of the Re-evaluation Committee of respondent whereby the re-evaluation of all eligible candidates was carried out and a fresh Merit Panel list was prepared wherein the petitioner was moved from 3rd to 4th position. The petitioner has also challenged the letter dated 07.08.2012 of respondent whereby the above said decision was communicated to the petitioner.

2. Brief facts of the case are that respondent issued an advertisement dated 15.10.2010 inviting applications for allotment of dealerships of Indian Oil petrol pumps at various sites. The petitioner herein applied for dealership of respondent's retail outlets at two sites; Palam on NH-8, Delhi

and Tikri on Rohtak Road, Delhi. As per the results declared on 08.04.2011 and 17.06.2011 for dealership of retail outlets at Palam and Tikri respectively, the petitioner stood 2nd in Merit Panel list for the Retail Outlet at Tikri and 3rd in the Merit Panel list for the Retail outlet at Palam. Subsequently, respondent issued to the petitioner a Letter of Intent (LOI) dated 29.11.2011 allotting the dealership for the retail outlet at Palam. On 02.12.2011, a Dealership Agreement was also executed between the petitioner and respondent.

3. Thereafter, a RTI application was filed by Mr. Rajendra Rajora whereby it came to the notice of respondent that marks had been wrongly awarded to the petitioner for the parameter of 'tied-up volume'. Respondent conducted an investigation on the complaint received and it was found out that in one of the affidavits of potential customers submitted by the petitioner, the quantity towards commitment given for tied-up volume had been left blank. Therefore, on 16.07.2012, Re-evaluation Committee of respondent carried out re-evaluation of all eligible candidates and it was found out that some marks were wrongly awarded to the petitioner. Therefore, a fresh Merit Panel list was prepared in which the petitioner was moved to the 4th position and one Ms. Kirti Joshi Kumar was advanced to be the 3rd position. Respondent, by its letter dated 07.08.2012, intimated the above decision to the petitioner.

4. Aggrieved by the letter dated 07.08.2012 informing the petitioner that he was "*no more empanelled candidate for the above location*", the petitioner preferred the present petition impugning the Re-evaluation Committee's decision dated 16.07.2012. Thereafter, respondent issued a

show cause notice dated 01.11.2012 to the petitioner for cancellation of the dealership awarded and termination of the Dealership Agreement dated 02.12.2011. The petitioner was given 15 days to respond to the said show cause notice.

5. The controversy to be addressed is whether in the given circumstances the decision to cancel the allotment made to the petitioner is arbitrary and unreasonable. The applicants had been evaluated by assigning marks on objective criteria and the affidavit of one Kuldeep Gautam was taken into account in awarding the marks to the petitioner. In the event the marks allocated on the basis of the said affidavit are excluded, the petitioner's marks fall short of those allotted to the candidate placed in 4th position. Resultantly, the petitioner's position drops by one rank and the retail outlet in question is to be allotted to the 3rd position holder.

6. Before proceeding further it is relevant to examine the affidavit submitted by Kuldeep Gautam. Paragraph nos. 2 & 3 of the said affidavit are relevant and are quoted below:-

- “2. I am having approx. consumption of 6 kl per month of HSD (name of product) required for Turck and Bus (purpose)
3. I hereby confirm that in case the dealership is awarded to above applicant, I will be taking my supplies through him to the extent of _____ kl subject to the commercial terms and conditions agreed mutually.”

7. It is evident from the above that an error had crept in, inasmuch as the blank in paragraph 3 was not filled up. Indisputably, the affidavit was

furnished to indicate a commitment for purchasing high speed diesel (HSD) from the outlet in question and leaving the quantity blank at paragraph 3 was, clearly, an inadvertent error.

8. In the given circumstances, if the said affidavit was excluded by the respondent at the material time its decision cannot be faulted as it is well settled that the conditions of application/offers can be rigidly enforced by the party inviting such applications/offers. The Supreme Court in the case of **G.J. Fernandez v. State of Karnataka & Ors.:** (1990) 2 SCC 488 had stated the principle in the following words:-

“Thirdly, the conditions and stipulations in a tender notice like this have two types of consequences. The first is that the party issuing the tender has the right to punctiliously and rigidly enforce them. Thus, if a party does not strictly comply with the requirements of para III, V or VI of the NIT, it is open to the KPC to decline to consider the party for the contract and if a party comes to court saying that the KPC should be stopped from doing so, the court will decline relief.”

9. The learned counsel for the respondent has drawn the attention of this Court to two conditions stated to be contained in the advertisement dated 15.10.2010 which read as under:-

“10(a) Applicants are advised to fill the checklist given as Appendix C and put it on top of application form. Filled applications along with relevant enclosures complete in all respects to be submitted so as to reach the office address mentioned above on or before 4 P.M. (1600 IST) on 16/11/2010.

- (e) Application received after the cut-off date including postal delay, and those without accompanying valid documents including application fee or incomplete in any respect will not be considered and no correspondence will be entertained by IOC in such cases whatsoever.”

10. The learned counsel contended that respondent is entitled to insist that only those enclosures which were complete in all respects be taken into account and, thus, the decision to cancel the allotment of the petitioner cannot be faulted.

11. Although, respondent would be well within its right to not accept the affidavit as submitted by the petitioner, the question to be addressed is whether it is open for respondent to cancel the dealership after having awarded the same on account of an inadvertent error which had been either overlooked or condoned by respondent while evaluating the application earlier.

12. Before proceeding to consider the controversy it is essential to note that there is no allegation of undue favouritism or malafide on the part of the Evaluating Committee or the petitioner in securing the allotment of the dealership in question. Thus, undisputedly, the additional marks awarded to the petitioner on account of the affidavit of the prospective customer (Kuldeep Gautam) was by overlooking the error in the affidavit and/or condoning it.

13. The learned counsel for the respondent drew the attention of this Court to a Policy letter dated 29.04.2010 issued for ‘Handling complaints in

Selection of Dealers/Distributors’. Clause 2.2 of the said letter is relevant and is quoted below:-

“2.2 In other cases where complaint is substantiated due to error in evaluation by L-1 Committee:

The modified procedure is as under:

- a) In cases where error is established in document based evaluation (by L-1 committee), re-evaluation of all the applicants by L-1 committee will be arranged. During re-evaluation, L-1 committee will record justification for any change in marks (for every candidate under any parameter).
- b) There will be no re-interview and the marks awarded by L-2 Committee (on interview based parameters) will be considered for revised result.
- c) A committee of State Retail and State LPG Head will examine the re-evaluation of L-1 committee. For this purpose, if required, committee may interact with L-1 committee (involved in re-evaluation). This Committee will review reasons/justification for every change from the declared mark sheet and submit recommendations to State Head for taking a decision to rectify the marks and/or revise the merit panel.
- d) Where there is CHANGE OF RANKINGS IN MERIT PANEL, revised mark sheet and panel will be displayed on the notice board/IOC website besides separate communication to all empanelled candidates (pre-revised and revised empanelled candidates) by the DRSM/AM within 7 days from receiving the decision from State Office. State Office should also communicate the decision to the

complainant by way of speaking order, as is being done presently.

- e) Where this is NO CHANGE OF RANKINGS IN MERIT PANEL, the decision should be conveyed by way of speaking order to the complainant by the State Office.”

14. The aforesaid letter indicates that where an error in evaluation is established by documents, the respondent would rectify the same and not proceed with re-interviews and the marks considered would be final. The learned counsel further stressed that in view of this letter, the marks awarded to a candidate could be altered at any stage and even after the dealership had been awarded.

15. In my view, Clause 2.2 of the said letter has to be read in conjunction with Clause 2.5 of the letter and paragraph 18 of the brochure circulated by the respondent. Clause 2.5 of the aforementioned letter reads as under:-

“**2.5** In all cases, existing practice of issuing LOI only after 30 days of declaration of results and when no complaint is pending for disposal, will continue.”

16. The above Clause becomes more meaningful when read in conjunction with paragraph 18(A) of the brochure, which reads as under:-

“18. GRIEVANCE/COMPLAINT REDRESSAL SYSTEM:

- (A) An aggrieved person may send his/her complaint to IOC at the address of the customer service cell displayed at the nearest retail of IOC. Complaints can also be lodged on the website of IOC. Complaints against dealer selection received after 30 days from the date of declaration of the result of

the interview will not be entertained under any circumstances.”

17. It is apparent from the conjoint reading of paragraph 18(A) and Clause 2.5 of the letter, as quoted above, that the respondent was provided a period of 30 days for receipt of complaints and also ensured that the LOI is issued after this period is over. This, apparently, is to eliminate uncertainty with regard to finalisation of allotment. The petitioner was issued a LOI dated 29.11.2011 and had had the retail outlet for over 9 months before the dealership was sought to be terminated. In my view, the termination of dealership on account of an apparent error that was overlooked at the time of initial evaluation cannot afford reasonable grounds for termination of a dealership several months later. Particularly, when there is no allegation of malafide or undue influence on the part of the petitioner or in the conduct of the evaluation exercise. The respondent's action in entertaining a complaint after a lapse of 30 days also appears contrary to its letter and I am not inclined to accept the respondent's contention that a complaint based on documents could be entertained at any stage much beyond the period of 30 days.

18. There is yet another aspect that needs to be considered and that is whether the commitment intended to be reflected by the affidavit of Kuldeep Gautam was, in fact, met. The affidavit in question was only to affirm a commitment that Kuldeep Gautam would accept supplies through the petitioner. The details as to the supplies effected to Kuldeep Gautam would now be available and it would be unreasonable to ignore the same.

19. The learned counsel for the petitioner had contended that in fact Kuldeep Gautam had lived up to its commitment to purchase 6kl per month of HSD from the outlet managed by the petitioner. The respondent could verify this fact and if it is found that an average of 6kl of HSD per month had been supplied to Kuldeep Gautam the same would establish his commitment as was purportedly intended to be reflected by the affidavit in question.

20. The petitioner has accepted the dealership and is stated to have employed his efforts in developing the same. It would be now inequitable if the dealership is cancelled on account of an obvious error in the affidavit without any further verification. Once an application of the petitioner had been accepted and a contract has been entered into, the same ought not to be interfered with lightly. It would be manifestly unjust if the respondent is permitted to terminate the contract on account of an inadvertent error on the part of the respondent in evaluating the petitioner's application, which may have been rendered as inconsequential.

21. In the given circumstances, the decision dated 16.07.2012 of the Re-evaluation Committee and letter dated 07.08.2012 are set aside. It is further directed that; (a) the respondent shall examine the offtake of Kuldeep Gautam from the retail outlet in question after handing over the management of the outlet to the petitioner. (b) the petitioner would fully cooperate to provide all necessary documents and material to evidence the purchase of HSD by Kuldeep Gautam during the relevant period. (c) if it is found that on an average 6kl of HSD per month had been purchased by Kuldeep Gautam then the petitioner's would be given an opportunity to

furnish a rectified affidavit within a period of two weeks from the conclusion of the inquiry. (d) if it is found that Kuldeep Gautam had not purchased 6kl of HSD or more per month during the said period the petitioner's dealership may be cancelled as that would indicate that the error in affidavit was not inconsequential and may not have been inadvertent.

22. The petition and pending application are disposed of with the aforesaid directions. No order as to costs.

NOVEMBER 03, 2014
RK/MK

VIBHU BAKHRU, J

