

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11358 of 2013
Date of Decision: 15.09.2015

Bimla Devi

. . . .Petitioner

Versus

Union of India and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.J.S. Saneta, Advocate,
for the petitioner.

Mr.Aashish Kapoor, Advocate,
for respondents No.2 & 3.

RAKESH KUMAR JAIN, J. (ORAL)

By way of an advertisement dated 18.9.2011, the Indian Oil Corporation [for short 'the Corporation'] invited application for allotment of the retail outlet dealership (petrol pump) at Kaithal between KM stone 39 to 40.

In the brochure, attached as Annexure P-2, for the selection of Petrol/Diesel Retail Outlet Dealers, various conditions were laid down including the condition of owning of land. The said condition in regard to the ownership of land is as under: -

“(a) Owned Land

*The following will be considered as
owned land: -*

*(i) Land owned by the applicant
exclusively.*

*(ii) Land owned by the “family”
members exclusively.*

- (iii) Land owned by the applicant exclusively with "family" members.
- (iv) Land owned by the applicant along with others provided share of applicant in the land meets IOC's requirement.

The land falling in category (ii), (iii) & (iv) will be considered as belonging to the applicant subject to applicant producing the consent on notarized affidavit signed by all other co-owners. The definition of "Family unit" will be as per para 6 of Brochure."

The petitioner also applied on the prescribed format for the allotment of dealership and declared that she had ₹16,06,203/- in her saving bank account. There was another candidate, namely, Suman Bansal, who was also in the race for the allotment of dealership. Their *inter se* merit was considered by a committee. The petitioner was awarded 71.97 marks and Suman Bansal was awarded only 49.50 marks. It is alleged that the petitioner being the only candidate, who had secured more than minimum marks of 50, was expecting the letter of intent which was to be issued by the Corporation, but in the meanwhile an enquiry was initiated by the Corporation on the complaint made by Yashpal s/o Dharam Pal, 595/14, Agarsain Colony, Kaithal, in which he has alleged that the land offered by the petitioner was not fully owned by her husband and there were other co-sharers also from whom consent was not taken at the time when documents were submitted. After the enquiry held in the complaint, the Corporation found that the petitioner was not the exclusive owner of the land in terms of Clause

14(a) of the guidelines provided in the brochure and had also furnished false information about the balance of ₹16,06,203/- in her saving bank account on the last date of application, which is a mandatory requirement.

It is alleged by the respondent that after investigation, it has been found that on the last date of application i.e. 15.10.2011, the petitioner had only ₹6147/- in her bank account. Thus, the matter was reconsidered, the *inter se* merit was again adjudged by the committee and 32.3 marks availed by the petitioner, on the basis of ownership of land, were deducted and the petitioner was thus left with 39.67 marks. Since, the minimum benchmark was 50 marks out of 100 marks, therefore, she was not found eligible for allotment. In this manner, there was no suitable candidate found by the Corporation, as earlier Suman Bansal was not found eligible as she had secured 49.50 marks as against minimum benchmark of 50. Aggrieved against this order, the present petition has been filed.

The petitioner has appended affidavits as Annexure P-5 (Colly) of all the co-sharers to the effect that the land, which is required for setting up the retail outlet of petrol pump, was owned by other co-sharers of the family members of the petitioner but they have given their consent to the petitioner for the purpose of setting up the retail outlet of the Corporation on the said land.

Learned counsel for the petitioner has also submitted that the investigation of the respondent is incorrect insofar as the last amount found in her saving bank account on the last date of application is concerned. It is also submitted that there is no such complaint even by the complainant on whose behalf the entire proceedings have been initiated by the Corporation. He has also

relied upon a judgment of the Supreme Court rendered in **“Smt. Moumita Poddar Vs. Indian Oil Corporation Limited and another”** 2010 (9) S.C.R. 905 and a judgment of Calcutta High Court rendered in **“Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc.”** 1990 AIR (Calcutta) 412, to contend that the duly notarized lease document could not be said to be a fake document in the absence of any other material and in the matter of dealership of petroleum products, re-appreciation of factors of selection is not permissible.

On the other hand, learned counsel for the respondents has submitted that the petitioner is guilty of *suppressio veri suggestio falsi* because she had not come to the Court with clean hands as the affidavits, which are made part of the record as Annexure P-5 (colly), do not talk of the consent of the other co-sharers given in her favour for contributing the land for the purpose of setting up the petrol pump. He has also submitted that the petitioner has made a false declaration about the cash in hand in her bank account as on the last date of the application, the amount in her bank account was found only ₹6147/-. He has also relied upon three judgments of this High Court rendered in **LPA No.866 of 2014** titled as **“Sunita Vs. Indian Oil Corporation Ltd. and another”** decided on 21.5.2014, **CWP No.23852 of 2011** titled as **“Sharda Devi Vs. Indian Oil Corporation Limited and others”** decided on 8.5.2012 and **CWP No.10957 of 2009** titled as **“Jagdish Prasad Vs. Indian Oil Corporation Limited”** decided on 27.9.2011.

I have heard learned counsel for the parties and have perused the record.

There is no dispute that the petitioner has to comply with guideline No.14(a) of the brochure with regard to owning of the land. The petitioner has admittedly not a co-sharer rather her husband was a co-sharer in the land offered by the petitioner and there are other co-sharers also. It is provided in the brochure that the land owned by the applicant falling in category (ii), (iii) and (iv) will be considered as belonging to the applicant subject to applicant producing the consent on notarized affidavit signed by all the other co-sharers.

The affidavits in this regard, forming part of the writ petition as Annexure P-5 (Colly), are not in that direction rather the affidavits are in regard to consumption of petrol for the purpose of milling. Besides this, the petitioner has failed to prove that on the date of application, the balance in her account was ₹16,06,203/- and the investigation made by the respondents in this regard is wrong. Insofar as the judgments, relied upon by the counsel for the petitioner are concerned, those are totally inapplicable to the facts and circumstances of the present case because in the case of **Smt. Moumita Poddar (Supra)**, the issue was with regard to the validity of lease. Here it is not a case of lease rather it is a case where the petitioner had to set up a petrol pump of the Corporation on the land owned by her, but she herself is not the owner of the land except that her husband is the co-sharer along with other family members, who had not furnished the required affidavits. In the absence thereof, the Corporation has rightly deducted 32.3 marks of the petitioner out of total marks secured by her while re-appreciating the *inter se* merit of both the candidates.

As regards, the other judgment i.e. in the case of ***Chinmoy Sarkar and etc. (Supra)*** is concerned, it is also not applicable because the petitioner cannot be allowed to play hide and seek with the Corporation by furnishing false documents.

In view of the aforesaid discussion, there is hardly any scope for interference and thus, the petition is hereby dismissed. No costs.

15.09.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**