

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

Civil Writ Petition No.2454 of 2013 (O&M)

Date of decision:13.02.2015

Smt. Anju wife of Shri Anand Kumar, resident of House No.20/3,
Subhash Nagar, Old Chhachhrauli Road, Jagadhri, District Yamuna
Nagar.

... Petitioner

versus

Hindustan Petroleum Corporation Limited, 17, Jamshedpur Tata
Road, Mumbai, through its Chairman, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Dinarpur, Advocate,
for the petitioner.

Mr. B.S. Jaswal, Advocate,
for Mr. G.S. Jaswal, Advocate,
for respondents 1 to 3.

Mr. Rajesh K. Nagpal, Senior Panel Counsel,
for Union of India.

Ms. Sonia Madan, Advocate,
for respondent No.5.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The writ petition challenges the holding of fresh interviews of the candidates vide communication dated 17.01.2013 for allotment of retail outlet at Village Parladhpur, District Yamuna

Nagar on the ground that the interview process which was concluded earlier on 03.02.2011 yielded to an appraisal which was successfully challenged by the petitioner in an earlier round. In that earlier writ petition, the petitioner contended that the allotments made on the basis of appraisals were wrong and the persons lined up in the order of merit Vinay Thapar and Neeru Bansal above the petitioner had been wrongly awarded with marks and she was entitled to consideration as a 3rd candidate in the order of merit. The Corporation itself admitted in CWP No.11434 of 2011 disposed of on 19.11.2012 that the appraisals were not properly done and they will therefore go through a fresh process and that the appropriate steps would be taken to remedy the process.

2. Instead of fresh appraisals of the candidates, who were already in the fray, they had called for fresh land and site inspection and fresh interviews vide communication dated 17.01.2013 which was made the subject of challenge. The respondents 1 to 3 have brought out information to the effect that Ministry of Petroleum & Natural Gas vide its letter dated 23.06.2014 has circulated new guidelines for selection and in that letter, it has been mentioned that the matter regarding process of allotment of retail outlet (RO) dealership/LPG distributorship had been examined by the Ministry and OMCs have been directed to cancel all cases of ROs/LPG distributorship allotments. In the cases where interviews are still

pending on the date of this letter, OMCs were advised that all such locations may be taken up afresh as per the extant policy under the new system of draw of lots by undertaking a fresh process of selection. This is brought out as a subsequent event which has taken place during the pendency of writ petition.

3. Under the normal circumstances, if the interviews held were shown to have been not properly done or the appraisals not correctly done, two options were open: (i) to conduct a fresh interview for all candidates and make fresh reappraisals and make allotment to the person, who would rank highest in the order of merit; (ii) the second option was to set aside the selection of candidates who had been wrongly awarded marks and select the candidate who was next highest in the order if his own selection otherwise could not be shown to be bad. When the petitioner was therefore pointing out earlier that the choice of candidates 1 and 2 was wrong and that he, as the next person in the order of merit, should be preferred, he could have secured the order even in the said writ petition if such a process was possible. However, the court chose to dispose of the writ petition and did not make possible for the petitioner to be awarded the allotment as the candidate next in the order of merit. This was so because the court was not undertaking an appraisal of whether the award of the marks only to the first and second candidate to be wrong and that the petitioner's

own grading was correctly done. When it had not undertaken such an exercise which allowed the respondents 1 to 3 to go through fresh selection, appropriate steps had to be taken to remedy the process in the light of new instructions. In other words, the appraisal already done to the petitioner being ranked as '3' was not subject to any judicial scrutiny at that time.

4. If, immediately after the filing of the writ petition, the case had also been decided, then probably there was some scope for an adjudication of looking for the purpose why the whole process should have been reopened and why the selection ought not to be confined only to the candidates who were already on the fray. The case has stood on for nearly 2 years since the filing of the writ petition, although not for any lapse or fault on the part of the petitioner. There has been a change of policy allowing for choice of candidates by draw of lots in the first phase and then restrict the competition from amongst the candidates who could be in a position to fulfill the necessary norms and who could be appraised in the order of merit. From the day when the selection process was started till now, more than 4 years have elapsed. It will be wholly inappropriate for the court to fetter the activities of an Oil Company which are governed through circular from time to time from the Ministry of Petroleum. Nobody can ask for allotment as a matter of right, for, there exists no vested right in any person before an allotment is

made. In the matter of grant of State largesse, there ought to be sufficient play in the joints for the State or its functionary to dictate its own policy which could be assailed only if they are arbitrary and wrong. I would find nothing arbitrary for a Petroleum Corporation to be driven through guidelines issued by the Ministry for a new system of picking up candidates by draw of lots and undertaking fresh appraisals. Since this has come about subsequently as an event after the institution of the writ petition, I will not find the adjudication sought through the writ petition as necessary. The petitioner shall subject himself to a new policy which has directed that where the interviews had not concluded and the selection and the allotment had not been made, there will be a fresh selection process in the manner indicated under the new policy. The petitioner may participate in the new advertisement issued for competitive selection in the manner that the new policy directs. The fervent plea by the counsel for the petitioner is that the property which was made available at the time previously may not be available for the petitioner any longer. The right will have to be redetermined in the manner that is possible presently and I cannot place the petitioner's own handicap to secure to him an advantage by the only fact that he had applied for allotment the previous time.

5. The writ petition is disposed of holding that there is no scope for an adjudication for the selection process which was

notified earlier through the impugned communication. On the showing of the respondent through the application filed in CM Nos.1990-92 of 2015, the selection will be through the new process in which the petitioner may also participate.

6. If the petitioner has not responded to the new advertisement on account of pendency of writ petition, I grant such liberty to the petitioner as a special case and if that application is submitted to the respondent within a period of 2 weeks, the petitioner will also be considered along with other applicants in accordance with law and procedure laid down. The 5th respondent, who was a candidate in the previous selection process, may also be not fettered for consideration of an application, if she files the application within the period stipulated for the petitioner as per new policy consideration.

7. The writ petition is disposed of on the above terms.

(K.KANNAN)
JUDGE

13.02.2015
sanjeev