

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2378 of 2011

Nutan, Kumari W/o Sri Binay Kumar Choudhary, resident of At & P.O.-Ballipur, P.S.-Hathauri Via Elmas Nagar, Block Shivaji Nagar, District Samastipur.

..... Petitioner

Versus

1. The Bharat Petroleum Corporation Limited through its Chairman-cum-Managing Director, having its Registered Office at Bharat Bhawan, 4 & 6th Currimbhoy Road, Ballard Estate, Mumbai-400 001.
2. The Chairman-cum-Managing Director, Bharat Petroleum Corporation Limited, Bharat Bhawan, 4 & 6 Currimbhoy Road, Ballard Estate, Mumbai-400 001.
3. Area Marketing Manager, Bharat Petroleum Corporation Limited, 3rd Floor, Ashina Chamber, Exhibition Road, Patna-1
4. Dealers Selection Committee of Bharat Petroleum Corporation Limited, 3rd Floor, Ashiana Chamber, Exhibition Road, Patna-1
5. Kajal Kiran, W/o Sri Pawan Kumar Singh, resident of Village-Ballipur, P.S.-Hathauri Distt.-Samastipur, at Present Residing At Mohalla Kasipur, P.S.-Town P.S.-Samastipur, Distt.-Samastipur.

..... Respondents

Appearance:

For the Petitioner : Mr. Anil Kumar Sinha, Advocate
Mr. Ankit Katriar, Advocate

For the BPCL : Mr. Madhuresh Prasad, Advocate
Mr. Abhay Shankar, Advocate

For the Resp. No. 5 : Mr. Choudhary Shyam Nandan, Advocate
Mr. Krishna Kumar Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-07-2016

Heard learned counsel for the petitioner, learned counsel for the respondent Corporation and learned counsel for the respondent no. 5.

2. The present writ petition has been filed for quashing the selection of respondent no. 5 for the dealership of Gramin Petrol Pump



at Ballipur, Samastipur as well as the result/panel prepared by the respondent Corporation to the extent that the respondent no. 5 has been placed at sl. no. 1; and for a direction to the Corporation to award the prescribed marks to the petitioner on the basis of the parameters given in the advertisement and brochure published by the Corporation under the heads of capability to provide land and infrastructure/facilities, capability to provide finance, and other heads; and thereafter to declare the petitioner as the successful candidate at sl. no. 1 in the panel for award of the petrol pump dealership in question.

3. According to the petitioner, the brief facts of the case are that pursuant to an advertisement dated 30.05.2010 for selection of retail outlet dealerships, the petitioner participated by applying for the location Ballipur, village Ballipur (sl. 63 of the advertisement) under the Open Women category. The respondent Corporation however, empanelled the respondent no. 5 at sl. no. 1 and the petitioner at sl. no. 2 after awarding them 96.78 marks and 92.71 marks respectively.

4. Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the petitioner submits that the respondent Corporation has acted arbitrarily in not awarding full marks under the heading “capability to arrange finance”, as well as under the heading “capability to provide land and other facilities”. He invites attention to Clause 14 of the brochure which deals with the parameters prescribed for evaluating the applications, sub clause (ii) whereof lays out the allocation of

marks on various parameters as follows :-

ii) Allocation of marks on various parameters in respect of individual applicants.

Parameters	Sub-heads	Description	Marks	Evaluation
Land and infrastructure (Max. 35 marks)	Suitable land for retail outlet	Having “own land” or having land on long lease(registered) for a minimum period of 15 years as on date of application.	35	Based on the evaluation of the Committee as explained in 14(1) above.
		Having “firm offer” of land	25	
			Max. Marks	
Finance (Max. 25 marks)	Financially sound	Ready availability of Finance (20 marks)		Based on verifying the documents submitted. Valuation report duly certified by Govt. Approved Valuers in support of asset is necessary.
		Liquid cash in the form of bank balance, Fixed deposits, shares of listed companies etc.	12	
		Fixed and movable assets includes own land, buildings, shops, house, vehicles etc.	4	
		Income includes agricultural income, business income, interest, rent, royalty, etc. duly supported by documentary evidence.	4	

5. It is submitted that as regards “liquid cash”, the petitioner has provided the details of various savings accounts, fixed deposits and life insurance policies held either in her own name, her spouse’s name or variously in joint names with other family members including her husband Binay Kumar Choudhary (page 60). Despite sufficient fund of Rs. 24,46,100/- being shown as available, the petitioner had been granted only 6.53 marks out of the total of 12 marks under this head. With regard to “fixed and movable assets”, the petitioner had duly furnished a valuation certificate for land at Mahadeo Math standing in the name of her husband (page 82) but, however, she has been



awarded '0' marks for the same out of the total 4 marks. Similarly, for the requirement of "income", she has been awarded only 1.85 marks against the full 4 marks, despite having furnished a certificate dated 17.06.2010 (page 83) from the Circle Officer, Samastipur showing an aggregate income of Rs. 1,11,000/- from land.

As regards "land and infrastructure" as against the full 35 marks, the petitioner was allotted only 30.8 marks, even though the land offered in terms of a registered lease deed dated 23.06.2010 executed in her favour (page 149) adequately fulfilled the requirements for purposes of the retail outlet.

6. Learned counsel for the petitioner has further submitted that the candidature of respondent no. 5 ought to have been cancelled as she was not the resident of village Ballipur and hence she was not eligible for being considered for dealership in terms of clause 5 of the advertisement. It is submitted that the respondent no. 5 was in fact a resident of Samastipur town being a place far away from the advertised location, where she has been residing for many years with her husband and children.

7. Learned counsel for the Corporation on the other hand submits that no fault can be found with the action of the Corporation which has acted fairly and in a completely transparent manner.

8. As regards "liquid assets", it is submitted that a substantial part of such liquid assets offered by the petitioner were held in joint



names of the petitioner variously along with other family members including her husband Binay Kumar Choudhary. Some of such liquid assets were also shown to be held in the single name of her husband. In this connection, learned counsel for the Corporation refers to the provisions contained in the brochure (page 32) which reads as follows:-

"In respect of "Land and Finance" parameters as indicated above the ownership of land/finance by any member of the "family unit" will be considered as owned/belonging to the applicant subject to producing consent letters as applicable from the concerned member of the "family unit". In case the land/finance is owned by the applicant or members of "family unit" jointly with third person, the consent letter on stamp paper or an Affidavit or POA of such third person is required to qualify for marks. Land procured on long lease (registered) for more than 15 years will be considered as "own land".

Learned counsel for the Corporation refers to the consent letter dated 29.06.2010 (page 77) provided by the petitioner in compliance of the above requirement, but however, it transpires that the signature of the petitioner's husband has been struck off which thus signifies that her husband had not given his consent for offering the joint fixed deposits in question. In that view of the matter, the petitioner was not entitled to any marks relating to "liquid assets" offered in the joint names with her husband or in the sole name of her husband, despite which the Corporation has taken a lenient view and granted 6.53 marks out of a total 12 marks under this head.

9. With regard to "fixed and movable assets", Clause 14.2 of the



brochure (page 30) required a valuation report duly certified by a Government Approved Valuer in support of the assets. This condition was not fulfilled by the petitioner inasmuch as the valuation certificate dated 25.06.2010 (page 82) offered by the petitioner was issued by a Valuer who was merely recognized by the Government of India and not one who was a Government Approved Valuer. Moreover, the requirement of furnishing a consent letter was applicable in respect of fixed and movable assets as well, which was however not furnished by the petitioner from her husband. The Corporation is therefore justified in awarding '0' marks to the petitioner under this head.

10. As concerns the head "income", the petitioner's claim based on the income certificate issued by the Circle Officer (page 83), the petitioner has rightly not been awarded full marks in view of the annual income from the land which has been shown as Rs. 1,11,000/- only. The minimum annual income of Rs. 2,40,000/- was required, calculated on a proportionate basis of 4 marks allocated for this head out of the maximum 25 marks allocated for Finance, with reference to the total of Rs. 15,00,000/- required to be invested in relation to location Ballipur as stated in the advertisement(Sl. No. 163 at page 23). This duly accords with Clause 14 of the brochure (at page 33) which reads as follows :-

"The maximum marks i.e. 25 under the parameter "Finance" will be proportionately distributed in the ratio of maximum marks of 12, 4, 4, 5 under each sub-parameter and this ratio will be applied on the total finance requirement advertised for each location. The applicant will

qualify for full marks if the actual fund available based on the documents submitted by the applicant is either equal to or more than the proportionate maximum fund requirement worked out as above under each sub-parameter and pro-rata for lower availability of fund."

Moreover, the income certificate relied upon by the petitioner certifies the annual income of Rs. 1,11,000/- to be the family income of the petitioner and not of the petitioner alone. Furnishing the requisite consent letters from the remaining family members of the petitioner was a mandatory condition, despite failure in compliance of which, the petitioner has been awarded proper marks.

11. With regard to "land and infrastructure", learned counsel for the Corporation submits that the Corporation has acted fairly in awarding 30.80 marks keeping in mind the 14 evaluation parameters spelt out in Clause 14.1 (page 30 of the brochure). Admittedly, the facility of power was not available on the land itself and the land had to be evaluated on the basis of the petitioner's claim that power would be made available in view of an electricity line running within a distance of 250 metres from the land. It is submitted that the award of maximum marks under a particular head is not automatic, and the Selection Committee at Level-1 stage has awarded proper marks to the petitioner on the basis of assessment made in terms of the procedure for selection.

12. Learned counsel for the respondent no. 5 submits that the allegation levelled by the petitioner with regard to the residence of the



respondent No. 5 being at Samastipur town and not within the advertised location, is wholly baseless and incorrect. A counter affidavit has been filed, *inter alia*, enclosing therewith a residence certificate dated 26.06.2010 (page 141) showing her to be a resident of Ballipur Revenue Village as also an authentication certificate dated 07.04.2011 from the Circle Officer, Shivajeenagar (page 142) confirming that the respondent no. 5 is a resident of village Ballipur. A copy of the Voter List (page 143) has also been annexed in support of the claim of her residence at village Ballipur. It is further pointed out that as a matter of fact, on the complaint of the petitioner, the marks of both candidates were reviewed and recalculated, after which the aggregate marks of the petitioner came to be reduced to 90.71 marks as against 96.76 marks maintained by the respondent No. 5, in terms of the revised statement of performance of candidates for retail outlet dealership issued on 30.12.2011. It is stated that none of these facts have been controverted as no rejoinder to the counter affidavit of the respondent no. 5 has been filed by the petitioner.

13. Having heard the parties and on careful consideration of the materials on record, this Court finds the writ petition to be devoid of any merit. It cannot be said that the respondent Corporation has acted arbitrarily or in a perverse manner in not granting full marks to the petitioner under the heading “capability to arrange finance”, and “capability to provide land and other facilities” as sought to be claimed



by the petitioner. As rightly pointed out on behalf of the Corporation, the procedure under the brochure and guidelines appear to have been substantially observed in the matter of evaluation and award of marks to the petitioner under various heads. The parameters of evaluation provided for the maximum marks which may be allotted to a candidate, by their very nature, require assessment with respect to the suitability of the land or other assets offered by a candidate. Such assessment would naturally entail some amount of subjectivity on the Corporation's part in arriving at its satisfaction while testing suitability in relation to the purpose to be achieved. Mere furnishing of land or other assets cannot automatically entitle a candidate to full marks allotted under the relevant head. Were it so, there would be little need for evaluation at all and the very object of the assessment would be rendered nugatory.

14. In the instant case it would transpire that the petitioner has in fact been allotted 30.80 marks for "land and infrastructure", which was higher than the 28.40 marks allotted to the respondent no. 5. The Corporation on the face of it therefore, cannot be said to have acted in a prejudiced manner against the petitioner. With regard to the other parameters relating to "finance", the reasons for not awarding full marks to the petitioner owing to the defects and shortcomings pointed out by the Corporation appear quite fair and sound.

15. As regards the challenge to the candidature of the

respondent no. 5, the petitioner has not questioned the correctness or genuineness of the residence certificates and other materials brought on record in the counter affidavit of the respondent no. 5 and hence, the same must be taken as admitted to be correct.

16. In the above view of the matter therefore, this Court is not inclined to interfere in the matter.

17. The writ petition stands dismissed.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26.07.2016
Transmission Date	N.A.