NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2195 of 2012

Jainendra Kumar Baghel S/o K.R. Baghel Aged About 47 Years 77, Krishna Nagar Colony, Tilda, Dist. Raipur C.G.

---- Petitioner

Versus

1. Indian Oil Corporation Limited Thru Senior Divisional Retail Sales Manager, Raipur Division, Indian Oil Bhawan, Rajiv Gandhi Marg, Vip Road, Telibandha, Raipur C.G.

2. Wajir Singh S/o Omprakash Jat Jota, Tah. Tilda Dist. Raipur C.G.

3. Manoj Kumar Verma S/o Prem Lal Verma Vill. Jota Post Tandwa, Dist. Raipur C.G.

---- Respondents

For Petitioner	:	Shri Bharat Rajput, Advocate
For Respondent No.1	:	Shri Anand Shukla, Advocate
For Respondent No.2.	:	Shri Parag Kotecha, Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/04/2016

1. By this petition, the petitioner has challenged preparation of merit list/select list by respondent No.1 whereby the respondent No.2 was awarded the highest marks as amongst three candidates including the petitioner and respondent No.3. During the pendency of the petition, the respondent No.1 has issued a letter of appointment in favour of respondent No.2. The aforesaid letter has been brought on record by the petitioner as well as respondent No.2.

2. Award of 76.05 marks has been challenged by the petitioner on the ground

that on various attributes of merits viz- fixed and movable assets/source of income/experience and business acumen, either no marks has been awarded or less marks has been awarded. In addition to this challenge, the petitioner has also raised challenge to selection of respondent No.2 on the ground that respondent No.2 was disqualified as he is not the resident of the local district -Raipur and the certificate issued in his favour was liable to be rejected as the petitioner does not fulfill the requirement of domicile of State of Chhattisgarh.

3. Learned counsel for the petitioner submits that even though the petitioner submitted documentary evidence of fixed and movable assets which included agricultural land admeasuring 16 acres, no marks have been awarded. As far as source of income is concerned, the petitioner submitted before the authority income tax return for the assessment year 2009-10 as also letter issued by various banks regarding his credit facility and capacity to generate funds by taking loan from the Bank. On this count also, no marks have been awarded. It is next contended that though the petitioner had submitted before the authority that he had gained experience by running a rice mill, on that head also, 3 out of 4 marks have been awarded whereas according to the petitioner, he should have awarded full marks. In respect of the marks required to be awarded on business acumen, only 2 out of 5 marks have been awarded. It is submitted that though the petitioner submitted certificates that he has the capacity of sale of 50 thousand liters of oil, same has been ignored. Lastly it is submitted that respondent No.2 is not permanent resident of State of Chhattisgarh. The certificate of residence was wrongly issued in his favour because he had not completed 5 years of residence in the State of Chhattisgarh though he may be possessed of 15 acres of land in village- Jota.

4. On the other hand, learned counsel for the respondents submits that the assessment has taken place in an objective manner and on the basis of identified parameters in various heads by respondent No.1 after careful scrutiny and perusal of the document filed by both the parties. The petitioner failed to submit valuation report duly certified by Govt. approved valuer. As far as source of income is concerned, income tax return for the financial year 2008-09, relevant assessment year 2009-10, was submitted. Advertisement required income source for the financial year 2009-10 which could be proved

only by submitting IT return for the year 2010-11. No certificate of any revenue authority was submitted to show income from the agricultural land. Except this, no other source of income was proved by the petitioner by submitting any clinching document, therefore, no marks could be awarded. As far as experience is concerned, out of 4, 3 marks have been awarded taking into consideration that the petitioner had the experience of running rice mill. As far as business acumen is concerned, marks has been awarded on the basis of interview and the background of the nature of business of the petitioner which is more in the realm of subjective satisfaction. Lastly, it is submitted that as far as residence requirement is concerned, neither the advertisement nor the application requires the applicant to be permanent resident. Appendix- “C” only requires a residence certificate. Respondent No.2 has immovable property. Tahsildar has issued a certificate in favour of respondent No.2 .

5. I have considered the rival submissions made by learned counsel for the parties and perused the records.

6. As far as source of income is cornered, the petitioner did not submit any income tax return in respect of income for the financial year 2009-10. The income tax return which has been submitted by him relates to financial year 2008-09 whereas, as per the requirement of the advertisement, the income for the financial year 2009-10 was required. No certificate of any revenue authority has been submitted with regard to agricultural income. Except this, the petitioner did not submit any other document of clinching nature to claim marks on the head “source of income”. The capacity to generate fund, liquid cash by way of loan or credit facility has been considered under a separate head “Credit worthiness- Letter ensuring loan/credit worthiness certificate”, for which the petitioner has been awarded full 5 marks. Therefore, the award of zero marks under the head source of income appears to be well justified.

7. As far as award of 3 out of 4 marks for experience is concerned, again, it is a matter of subjective satisfaction of the authority. The award of marks would depend upon the nature, length and quality of experience gained by a particular candidate and no straitjacket formula can be laid down for award of particular marks. The petitioner seems to be aggrieved because under the

head “experience”, respondent No.2 has been awarded full marks, whereas petitioner has been awarded only 3 marks. The experience of the petitioner did not relate to running a petrol pump outlet whereas respondent No.2 submitted certificate of experience of having operated petrol pump. Thus, the deference in the marks is quite obvious and relevant and calls for no interference.

8. How much marks should be awarded for “business acumen” is a matter of subjective satisfaction, which is clear from the provision in the guidelines (Annexure P-6) under clause 13.1.1- Norms for Evaluating The Candidates, it has been clearly provided therein that as far as business ability/acumen (carrying marks 5 marks for individual and 7 marks for non-individual), marks will be awarded based on leading questions with regard to earlier handling of business as well as ideas for improvement of sales and generation of finance/Management of people/ Management of finance/infrastructure- Trade related. Reading of provision shows that under this head, for individual, 5 marks are bifurcated under two sub-heads i.e. “leading question on project report” (3 marks) and “proven ability/acumen in earlier/existing business” (2 marks).

9. Taking into consideration the subjective nature of assessment prescribed under the guidelines, award of 2 out of 5 marks to the petitioner, given the background and the details of the petitioner and that it depended on personal interview, no interference is called for. The advertisement, condition of residence, read with prescribed Form-C for residence certificate, does not require the applicant to be permanent resident of State of Chhattisgarh. The submission of learned counsel for the petitioner is that respondent No.2 not being a permanent resident of State of Chhattisgarh, was wrongly issued residence certificate and on that basis awarded contract, cannot be accepted because the only requirement is that the petitioner should be resident. A perusal of residence certificate prescribed under Appendix-C itself shows that there is no requirement that the person should have resided for a minimum prescribed years. In this case, the respondent No.3 has been found to be possessed of immovable property in the area and certificate in his favour has been issued by the revenue authority. Therefore, the argument that the respondent No.2 was disqualified cannot be accepted.

10. As far as fixed and movable assets are concerned ,the petitioner claims that he was entitled to some marks under this head even though he had not submitted any report of Govt. approved valuer, because the petitioner was possessed of immovable property, FD receipts and the sale deed relating to house. At the most, the petitioner could be awarded only 4 marks even if entire case is accepted. If 4 marks are added to the total marks which has been awarded it would still be less than total marks which has been awarded to respondent No.2. In this manner, no difference would made out in the matter of empanelment and the respondent No.2 would remain placed at Sr. No.1 on the basis of suitability for award of contract.

11. Reliance placed by learned counsel for the petitioner in the case of **Sham Lal Vs Union of India** (AIR 1995 Punjab & Haryana 147) and **Senior Law Manager, Indian Oil Corporation Ltd. & Anr. Vs. Guru Shakti Singh & Anr.** (AIR 2011 S.C. 1207) is misconceived as both the judgments are completely distinguishable on facts. No relief can be granted to the petitioner.

12. In the result, the petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen