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**Sl. No. 231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 1866 of 2011(O&M)
Date of decision:17.11.2016**

Ram Singh**Petitioner**

versus

Union of India and others**Respondents**

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Dr. Surya Parkash, Advocate and
Mr. Varlin Garg, Advocate for the petitioner.

Mr. K.S.Chahal, Advocate
for respondent No. 1/UOI.

Mr. Raman Sharma, Advocate
for respondents No. 2 to 6.

Mr. K.S.Lakhanpal, Advocate
for respondent No. 7.

Ms. Charu Sharma, Advocate
for respondent No. 9.

Rakesh Kumar Jain, J.(Oral)

M/s Bharat Petroleum Corporation Limited issued notice for appointment of retail outlet dealers at various places in the State of Punjab, Haryana and Himachal Pradesh including Baddi, District Solan in the category of Scheduled Castes. The estimated sale potential of MS/HSD of the site was fixed at 30/250 KL per month. The appointment of the dealer was to be governed by the procedure for selection of diesel petrol retail outlet dealers on 15.09.2008(for short, 'the guidelines') in which the criteria for allocation of marks on various parameters in respect of individual applicants was laid down which is reproduced as under:-

Allocation of marks on various parameters in respect of individual applicants

Parameter	Sub-heads	Description	Marks	Evaluation
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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(i) 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 assets 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	
	Note: (1) Cash, Jewellery and instruments where the ownership can not be established will not be considered as “Liquid cash” of “Assets”.			
	(2) With regard to source of funds declared by the applicant in the application form, it is necessary that the same would be made available for the RO development purpose as and when required. The applicant should submit an affidavit(Appendix A or A1) in this regard. In case the applicant fails to make available the funds committed at the time when it is actually required or could not substantiate at a later date, the candidature/dealership is liable to be cancelled.			
	Credit worthiness	Letter ensuring credit: Bank/Financial Institution/individuals/party's letter ensuring credit/Credit worthiness certificate from scheduled Bank/Financial institutions. However, in case of Rural Ros, such certificate issued by any bank can also	5	Credit worthiness certificate(Appendix-A2) from scheduled bank/financial institutions and/or expressing willingness to extend loan if required

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		be considered.		
			Marks	
Educational Qualification(Max 15 marks)	Para no.	Based on the educational qualification proof provided by the applicant, the following marks will be awarded.		Based on documentary evidence by furnishing certificate/mark sheet from Board/University/recognized institution as applicable
	-1	(i) Post Graduation in Management (ii) Diploma in Management from Indian Institute of Management (iii) Graduation in Engineering (iv) Graduation in Law (v) Chartered Accountant	15	
	-2	(i) Post Graduation in any other field not covered in para(1) above. (ii) Graduation in any other field not covered in para(1) above. (iii) Cost Accountant (iv) Company Secretary (v) Diploma in Engineering	12	
	-3	Matriculation	10	
			Marks	
Age(Max.4 marks)	(Comple ted in years as on date of	Marks will be awarded on the following basis:		Based on documentary evidence(Affidavit, school leaving certificate, Passport,

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	applicati on)	21 years and more but less than 26 years	2	PAN card)
		26 years and more but less than 46 years	4	
		46 years and more but less than 56 years	2	
		56 years and more but less than or equal to 65 years	1	
			Max Marks	
Capability to generate business(MAx 10 marks)	Tapping of Sales potential	Tie up of sales volume with prospective customers (Based on Affidavit in Appendix-A3) produced with the application. Tie up of 1/3 rd or higher volume of the quantity indicated in the advertisement will qualify for full marks and proportionate for lower volume)	5	Based on the volume of tied up quantity as per Affidavit from prospective customers.
	Project report	Project Report for realizing sales potential submitted by the applicant	3	The committee members will satisfy themselves based on the project report submitted by the candidate and assess him accordingly.

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	Assessm ent by intervie w committ ee	On the overall judgment of candidates ability to generate business including future plans	2	As per the assessment of the committee based on leading questions.
	Note: States potential, as estimated by Oil Companies will be indicated in the advertisement against each location. The candidate, while applying, will have to submit an affidavit(Appendix-A3) from the prospective customers, in support of his claim with regard to his ability to tap the sales potential. The indicative parameters in this regard are as under: Tied up volume with transporters/Taxi/Rickshaw Operators/Transport Association/private cars/agricultural equipment/mining/earth moving equipment/Own Vehicles/equipments/machinery, tie up with Industries regarding requirement or power generation etc.			
			Max. Marks	
Experience(Max.4 marks)	Business experien ce	Retail trade of Petroleum produces	4	Based on furnishing of documentary evidence to establish the relevant service. Managerial/superviso ry experience of one year will qualify for full marks and proportionate for lesser experience.
		Related petroleum/trade/transport/aut omobiles	3	
		Hospitality/Service industry/FMCG	2	
		Others	1	
			Marks	
Business ability/ acumen	Assessm ent by intervie w	Marks will be awarded based on project report as also earlier experience of Management of people	5	Based on project report/leading questions with regard to earlier handling

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There were many applicants in the fray. They were interviewed on 26/27.07.2010 & 4.08.2010, in which respondent No. 8 was at Sr. No. 1 and petitioner was at Sr. No. 2, having scored 90.58 and 89.63 marks respectively. Respondent No. 8 was awarded 15 marks for the educational qualification. Petitioner was awarded 4.82 marks in the tied up volume whereas respondents No. 7 and 9 were awarded 1.86 and 3.21 marks in the tied up volume respectively and as such their total marks were 85.07 and 87.86. The petitioner made a complaint in respect of '*Educational qualification*' of the Ist candidate i.e. Suman Rai whereas respondent No. 7 made a complaint about the marks awarded on account of '*Tied up volume*'.

The case set up by the petitioner was that Suman Rai (respondent No. 8) was wrongly given 15 marks because she was not a post graduate in the discipline mentioned in clause 1(i) rather she was a graduate only, therefore, she should have been awarded 12 marks. On the other hand, complaint of respondent No. 7 was that tied up volume has not been properly assessed. Thus, keeping in view the respective complaints, the company constituted a new L2 Committee with members namely, Subhash Bhakta, Manoj Chawla and Anoop Saxena and High Level Review committee was constituted comprising members V.N.Tandon and R.D.S.Dhillon. In the proceedings of the L2 Committee it was held that respondent No. 8 had wrongly been given 15 marks though she was entitled to 12 marks and the marks in respect of tied up volume were wrongly calculated because the candidates had to be given full 5 marks in case of tied up volume if it was upto 1/3rd or higher. According to the said provision, the tied up volume in this case was above 93 kilo litres being 1/3rd of 280 kilo litres i.e. 30 kilo litres of petrol and 250 kilo litres of diesel together. Accordingly, the selection list was made in which respondent No. 7 was brought at Sr. No. 1 with 92.92%, respondent No. 9 at Sr. No. 2 with 92.33% and the petitioner at Sr. No. 3 with 90.08% after giving 5 marks in the Tied up Volume. The said decision of the L2 Committee was upheld by the High Level Review Committee on 7.10.2010.

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Still aggrieved, the petition has been filed to challenge the select panel of 3.12.2010(Annexure P-6) and 7.10.2010(Annexure P-7) i.e. marks given by the L2 Committee and approved by the Review Committee. During the course of hearing, it transpired that respondent No. 7 is not in contest as he has not been considered by the Oil Company because of a CBI case registered against him and even otherwise, it is stated, that respondent No. 7 has expired. Be that as it may, the contest is now between the petitioner and respondent No. 9.

Counsel for the petitioner has submitted that as per the noting sheet dated 14.05.2010, in regard to the complaints handling in selection of dealers/distributors, the following procedure has been prescribed:-

“2. In cases where complaint is substantiated due to error in evaluation of documents by L-1 committee(LPG) or L1 Committee(Retail), the modified procedure is as under:

*2.1 In cases where error is established in document based evaluation(by L-1/L2 Committee), re-evaluation of all the applicants by a **fresh** L-1/L2 committee nominated by Regional Head will be arranged. During re-evaluation, L-1/L2 committee will record justification for any change in marks(for every candidate under any parameter).*

2.2 There will be no-re-interview and the marks awarded by the interview committee(on interview based parameters) i.e. L-2 in case of LPG and L3 committee in case of Retail will be considered for revised result.

2.3 A High Level committee of two members not below the rank of JG 'E' nominated by Regional Head with one member from Regional office and one Territory Manager other than the Territory to whom the complaint pertains will examine the re-evaluation by the resh L-1/L2 committee. This Committee will review reasons/justification for every change from the declared

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mark sheet and submit recommendations to Regional Head for taking a decision to rectify the marks and/or revise the merit panel. For this purpose, if required, this High Level Committee may interact with the Committee members involved in re-evaluation”.

It is submitted that in case any complaint is substantiated due to error in evaluation of documents by L1 Committee, the L2 Committee has to be appointed by the Regional Head who would justify the change in the marks and then the said decision is to be reviewed by the High Level Review Committee giving reasons.

Counsel for the petitioner has submitted that L2 Committee has not given any justification for change of marks of respondent No. 9 who is the contesting respondent at present while increasing his mark in the tie up sales from 3.21 to 5. It is further submitted that if the marks are retained as 3.2 instead of 5 which has been given by the L2 Committee then the petitioner would be at Sr. No. 1 and shall be entitled for the allotment of retail outlet. It is further argued that L2 Committee has erred in considering the affidavits filed by respondent No. 9 on the performa prescribed in the advertisement as appendix A-3 of the persons/consumers who were in Rajasthan whereas the outlet is located at Baddi in Himachal Pardesh.

On the other hand, counsel for the respondents has submitted that in the note appended to the qualification with regard to Tie Up Sales Volume, there is no requirement of the affidavits to be filed of the area concerned because the only eligibility criteria for the individual is that he should be Indian national. It is also submitted that the petitioner has also given the affidavit of the consumers of Panchkula in the State of Haryana which has been considered by the Oil Company while awarding him 5 marks. It is further submitted by counsel for the respondent company that the matter is yet to be examined in the filed verification and in case respondent No. 9 is not found suitable then automatically the candidature of the petitioner would be considered as he is at Sr. No. 3 at present.

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I have heard learned counsel for the parties and perused the available record from which I have found that the only dispute between the parties is about the marks given in the Tie up Sales Volume of the prospective customers. Both the petitioner and respondent No. 9 have been equally awarded 5 marks on this account and in the note appended to the tie up of sales volume it is nowhere mentioned that the affidavits have to be filed of the consumers living in the vicinity of the petrol pump. Affidavits filed by respondent No. 9 are of the persons who have claimed that they would take the oil/petrol from the retail outlet to be allotted to respondent No. 9 which satisfies the clause of sales potential i.e. tie up sales volume with the prospective customers. The argument raised by counsel for the petitioner is that the affidavits have to be of the area where the petrol pump is situated can not be accepted as it does not find mention in the note appended to the relevant guidelines. Consequently, the argument raised by learned counsel for the petitioner in this regard is not accepted. In so far as, the question of justification is concerned, L2 Committee has given reasons in its decision in considering the application of the petitioner while rejecting the claim of respondent No. 8 and also in accepting the claim of respondent No. 7 for giving 5 marks to all the 3 candidates on the basis of 1/3rd consumption. Therefore, this argument is also not accepted.

In view of the aforesaid discussion, I do not find any merit in the present petition and the same is hereby dismissed.

17th November, 2016

Shivani Kaushik

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No

[Rakesh Kumar Jain]

Judge