

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

CWP No.11924 of 2014

Date of Decision:23.11.2016

Amarjit Singh **.....Petitioner**
Vs.
I.O.C. and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. R.K. Jindal, Advocate and Mr. Ajaiveer Singh,
Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for the respondents
No.1 to 3.

Mr. Himanshu Raj, Advocate for respondent No.4.

RAKESH KUMAR JAIN, J.(Oral)

This order shall dispose of three petitions bearing CWP No.11924 of 2014 – Amarjit Singh v. I.O.C and others (hereinafter referred to as the first petition), CWP No.6337 of 2014 – Mrs. Kamini v. I.O.C and another (hereinafter referred to as the second petition) and CWP No.21261 of 2016 – Rana Partap Singh v. I.O.C and others (hereinafter referred to as the third petition) as the issue involved in all three cases is common pertaining to the allotment of LPG distributorship.

However, for the sake of convenience, the facts have been extracted from the first petition.

The Indian Oil Corporation Limited, (for short, 'the Corporation') issued an advertisement dated 18.9.2006 for the allotment of Indane LPG Dstributorship under various categories at various locations in

the State of Punjab from amongst the candidates belonging to different categories. In the present case, the distributorship pertains to Khamano, District Fatehgarh Sahib in the Open Category of Urban/Rural. The last date for submission of the application was 17th October, 2006. Attracted by the advertisement, 67 applications were filed including the petitioners in these petitions. The eligibility criteria for all the categories was provided in the brochure of the selection of LPG distributors of June, 2006 in which norms for evaluating the candidates was also provided which read as under:-

“NORMS FOR EVALUATING THE CANDIDATES

The LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters:

(a)	Capability to provide infrastructure	35 marks
(b)	Capability to provide finance	35 marks
(c)	Educational qualifications	15 marks
(d)	Age**	4 marks
(e)	Experience	4 marks
(f)	Business ability/acumen	5 marks
(g)	Personality	2 marks

TOTAL MARKS**100 marks**

The evaluation on the parameters (a) to (e) above will be done on the basis of documents submitted with the application. The evaluation on the parameter (f) & (g) will be done based on the interview.”

The marks were to be awarded as per the application of allocation of norms which is also reproduced as under:-

Allocation of marks on various criteria parameters based on attested copies of documents attached along with application				
Criteria	Sub Head	Description	Ma x Mar ks	Evaluation
Capability to provide infrastructure and facilities (as on date of application)	Suitable land for LPG storage godown/constructed godown	Owns@ Having clear title/Registered Sales Deed of the suitable land/godown	25	Based on documents
		Or Firm offer @@-Having agreement to purchase suitable land/godown	18	Based on documents
		Or Can arrange	10	Based on documents and or leading questions
	Suitable land/shop for showroom	Owns @-Having clear title/Registered Sales Deed of the suitable land/shop for showroom	10	Based on documents
		OR Firm offer-@@Having agreement to purchase suitable land/shop for showroom	7	Based on documents
		Or Can arrange	5	Based on documents and or leading questions
		Sub total maximum marks	35	
Capability to provide finance	Financially sound Funds(as on date of advertisement)	(a) Free and un-encumbered fixed deposits in scheduled banks or any other document/resource which can be readily converted to liquid cash to cover working capital/infrastructure requirements.	18	FD/NSCs/Shares/any other investments bonds in the name of self for family members as defined above under relationship clause. Award 0.1 mark for every Rs.10,000/-(ten thousand) Maximum marks-18 (e.g. Value is Rs. Marks Rs.10,40,000 10.4 Rs.10,49,999 10.4 Rs.10,50,000 10.5 Rs.18,00,000& above 18.0
	Ability to arrange loan	(b)Bakers/Financial Institution certificate for credit worthiness and willingness to extend loan, if required	7	7 marks in case no Credit worthiness certificate from bankers but Funds are more than 20 lakhs as mentioned at (a) above. In case of production of certificate for credit worthiness and willing to extend loan marks to be awarded as under:- Range of loan Rs. Marks to be awarded >=2 lac to <4 lac 1 >=4 lac to <6 lac 2 >=6 lac to <7 lac 3 >=7 lac to <8 lac 4 >=8 lac to <9 lac 5 >=9 lac to <10 lac 6 >=10 lac 7

Criteria	Sub head	Description	Max Marks	Evaluation
	Assessment(as on date of advertisement)	(c) Fixed and moveable assets	5	5 marks in case no immovable and movable property but funds are more than 20 lakhs as mentioned at (a) above. Otherwise marks be awarded as under:-
				Range of Assets Value Marks to be awarded
				>=3 lacs<6 lacs >=6 lacs <9 lacs 1mark 2 mark
				>=9lacs<12 lacs 3 mark >=12lacs<15lac 4 mark >=15lacs 5 mark
	Income	(d) Income from business, agricultural, Interest/rent earning royalty etc. per annum		Income as per Income tax return of the last financial year and or affidavit on income
		>=2 lakh	5	
		>=1.5<2 lakh	4	
		>=1<1.5lakhs	3	
		>=1<1 lakh	2	
		Sub total maximum marks	35	
Educational Qualification	Basic	Matriculate/SSC/Xth Pass XII pass Graduate/ Post graduate or higher education	7	Based on documentary evidence by furnishing certificate/ mark sheet from Board/ University
			8	
			10	
			12	
		Additional qualification Any Diploma/Degree	Basic Qualification marks+1	Based on documentary evidence by furnishing certificate/ mark sheet from recognized Institution.
	Professional	Technical/Law/Medical/ Management Graduate/Chartered/Cost Accountant or higher qualification (BE.B. Tech, MBA, CA or equivalent, minimum 4 years post 12th	15	- do -
		Sub Total maximum marks	15	
AGE		Marks will be awarded on the following basis		Based on documentary evidence.
		>=21<26	2	
		>=26<46	4	
		>=46<55	2	
		>=56<65	1	
		>65	0	
		Sub Total maximum marks	4	

14.2 Allocation of marks on various criteria				
Criteria	Sub head	Description	Max Marks	Evaluation
Experience		Direct Sale/Home Delivered products (including LPG distributorship or)	4	Marks to be awarded based on the documentary evidence that establishes experiences of running or working in an establishment for minimum one year
		Other Petroleum Products or	3	
		Others Traders	2	
		Sub Total	4	
14.2 Evaluation based on Interview				
Business ability/accumen		Assessment will be done on the following:- -Project report -Management of people -Management of finance -Management of material & infrastructure -Trade related	5	Marks will be awarded based on response to specific situation related queries/questions on the following:- -Project report -Management of people -Management of finance -Management of material & infrastructure -Trade related
Personality		Assessment on the following parameters communication / articulation skill, Polite, presentable and well mannered. Enthusiasm/energetic/medical/ history/ Self-confidence convincing power.	2	Assessment based on observations and leading questions.
		Grand Total	100	

At the initial appraisal of marks, the following decision was taken:-

- “1st Uma Goel & Anish Gupta (P) (Marks-91.92) (Resp No.-5)
- 2nd Kamini & Sanjeev K Bathala (P) (Marks-90.17) (Resp No.-6)
- 3rd Rana Partap Singh (Marks-89.10) (Resp No.-4)
- 4th Amarjit Singh (Marks-88.30) (Petitioner)”

However, the applicants who had obtained the first position

have to be disqualified by order dated 24.4.2012 because their relative was working in the Corporation. Consequently, the petitioner in the second petition came at No.1. Petitioner in third petition was at No.2 and petitioner in first petition was at No.3. The petitioner in the second petition, i.e. Kamini was also disqualified vide order dated 20.2.2014. The petitioner in the first petition challenged the selection by way of writ No.17774 of 2009 in which he alleged that he should have been awarded more marks than the candidate who had come at No.1 but the said writ petition was dismissed on 22.3.2011. Aggrieved against that order, the petitioner in the first petition preferred an intra court appeal bearing LPA No.665 of 2011 which was dismissed on 27.8.2013 but in that appeal, the following observations were made:-

“12. Learned counsel for the appellant, faced with the aforesaid position, made a valiant attempt to save the day for his client by making a submission that since valuation report was not a mandatory requirement, let the same be ignored and only the sale deeds, as they stand, be taken into account. If it is so, the total value of the land as per the three sale deeds, which are undisputed, is 5,95,000/- being the consideration shown as paid. Even if this process is adopted, the appellant would get one mark as per the table referred to aforesaid, this benefit can be made available to the appellant.

13. However, the aforesaid also would not ultimately result in a different conclusion for the reason that in the meantime, respondent No.4 was disqualified and now respondents No.5

and 6 have been given the dealership being a partnership. The said partnership has got a total marks of 90.17 while the appellant has got total marks of 88.30. If one mark is added to this, the appellant's total marks would come to 89.30 which should be below the marks of respondents No.5 and 6 (Respondents No.5 & 6 and respondent No.7 being the two other candidates in panel were subsequently impleaded).

14. Thus, giving the benefit in terms aforesaid will not entitle the dealership to the appellant qua respondents No.5 and 6.”

Till this time, the petitioner in the second petition i.e. Kamini was at No.1 but she was also disqualified vide order dated 20.2.2014 on the ground that she had given false information in her application form about her marital status as she had mentioned herself as unmarried whereas she had already got married on 7.10.2006 i.e. much before the last date of submission of application on 17.10.2006. After the exit of petitioner in second petition, i.e. Kamini only two candidates were left in fray, i.e. petitioner in the first petition and petitioner in third petition. However, Kamini, the petitioner in second petition had also filed the second writ petition in order to challenge the order dated 20.2.2014. I will advert to her contentions later on. In the meantime, I will proceed to give the facts in respect of other two candidates. The petitioner in the first petition, filed an application to the Corporation for award of one more mark in view of the observations made by the Division Bench in LPA No.665 of 2011. The said application was declined by the Corporation vide order dated 10.2.2014.

The petitioner again filed a representation to the higher authority which met

the same fate vide order dated 23.3.2014. The petitioner in the first petition has challenged the said two orders dated 10.2.2014 and 23.3.2014. The petitioner in the third petition has also approached by way of third petition for enhancing his marks on the ground that the respondents have misread the documents attached with the application form as according to him he should have been awarded one mark for being a diploma holder and four marks for direct sale.

Now I will take all the three petitions, one by one. Learned senior counsel appearing for the petitioner in the second petition has submitted that the candidature of Kamini has been wrongly rejected as she was actually got married on 3.9.2007 and her marriage on 7.10.2006 had to be declared because her fiancée was going abroad and had to apply for her visa. It is further submitted that her selection was defended by the Corporation for a long time. In this regard, Mr. Ashish Kapoor appearing on behalf of the Corporation has submitted that the Corporation is not concerned as to whether Kamini was married in 2007 as the evidence brought before the selection committee is that she declared her marriage on 7.10.2006 and had concealed this fact in the application form and, therefore, in view of clause 23 of the Brochure, her application had to be cancelled.

I have heard learned counsel for the parties in respect of the second petition and perused the record. In order to appreciate their rival contentions, it may be relevant to refer to clause 23 of the Brochure which read as under:-

“23. FURNISHING OF FALSE INFORMATION

If any information furnished by the applicant is found to be

false at any point of time before or after appointment as a dealer, the allotment will be cancelled forthwith and distributorship terminated in case commissioned.”

According to the aforesaid, if the information furnished by the applicant is found to be false at any point of time before or even after the appointment as a Dealer , the allotment has to be cancelled. There is no escape to this fact that Kamini was already married on 7.10.2006 as declared by her but this fact was concealed in the application form as she recorded her marital status as 'unmarried'. This fact is sufficient for rejection of her claim. The second writ petition is hereby dismissed.

Now reverting back to the first petition of Amarjit Singh. Learned counsel for the petitioner has submitted that the petitioner deserves to be awarded one mark in view of the observations made in the appeal already been mentioned in the earlier part of this order, as the value of the sale deeds submitted by him along with application form was between ₹3 lacs to ₹6 lacs. Shri Kapoor has submitted that this petitioner is guilty of 'suppresso veri and suggesto falsi' as he deliberately concealed the relevant facts from the Corporation and from the Court as well because in the column other assets/ property, the application form provides that “in case of married person, applicant shall consist of individual concerned, his/her spouse and their unmarried son(s), daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s).” It is submitted that the requirement of submission of valuation certificate from Government Approved Valuer has not been followed by the petitioner as he

had submitted the valuation report from a Bank Approved Valuer and not Government Approved Valuer. In this regard he has relied upon a decision of the Patna High Court rendered in the case of **Nutan Kumari v. The Bharat Petroleum Corporation Limited and others,** MANU/BH/0518/2016 in which the following observations have been made:-

“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 a petitioner inasmuch as the valuation certificate dated 25.06.201 (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.”

To counter this argument, counsel for the petitioner submitted that the respondent- Corporation cannot take this plea at this stage when it had already appeared before the appellate Court and contested his appeal tooth and nail. It is also submitted that this argument was available to the Corporation even at that time but they chose not to press this plea before the LPA Bench because his appeal was going to be dismissed. It is further submitted that the reading of para Nos.12 to 14 of the order of appeal

indicates only one thing that had the private respondent in that case did not get more marks than him then he would have definitely been given a one mark to have an edge over him and to get the LPG distributorship.

I have heard both learned counsel for the parties in this petition and perused the record.

There is no doubt that the petitioner was required to attach the valuation report by the Government Approved Valuer but once the respondent- Corporation was there before the Appellate Court who had categorically observed that even if one more mark is given to the petitioner, he would not be able to come at No.1, therefore, this objection raised by the respondent- Corporation cannot be sustained in the given facts and circumstances. Otherwise, it is held that the Government Approved Valuer report has to be submitted if it is so provided in brochure. Consequently, the petitioner is awarded one more mark to his credit which increases his total marks from 88.30 to 89.30. With these observations, the writ petition is disposed of by giving one mark.

Insofar as the third petition is concerned, counsel for the petitioner has submitted that petitioner has been awarded 89.10 marks. He had submitted attested diploma certificate of Computer Web Designing (Annexure P.4) for which the Corporation has not awarded any mark though as per the criteria for allocation of marks, the candidate who has additional qualification of any diploma/degree then he has to be awarded one mark. The petitioner has appended the attested Business Experience Certificate of direct sale (Anneuxre P.5) but no marks in that regard has been awarded by the Corporation. It is thus submitted that if $4+1=5$ marks are awarded to

the petitioner then his marks would score to 94.10 which would make him eligible for the allotment of LPG distributorship. Mr. Kapoor could not dispute the allotment of one mark to the petitioner on account of his being a diploma holder. However, he has strongly opposed to the award of 4 marks on the ground that the petitioner should have been in the business of direct sale/home delivered products of LPG distributorship or other petroleum products. It is also submitted by him that he has to show his experience of running or working in an establishment for a period of minimum one year. In this regard, he has referred to the certificate of his employer in which it is stated that the petitioner has got the experience from November, 2005 to October, 2006 which is less than one year.

I have heard learned counsel for both the parties in this writ petition and perused the record.

Insofar as the allotment of one mark to the petitioner on account of being a diploma holder is concerned, the same has to be awarded to him in view of the documentary evidence attached with the petition as Annexure P.4.

The argument raised by the learned counsel for the Corporation that the direct sale/ home delivered products would only refer to LPG distributorship or other petroleum products is concerned totally fallacious because the word used in the Brochure is including LPG or other petroleum products or other trades. Thus the direct sale of the petitioner by way of online sale falls within the criteria of other trades. The next question would be as to whether the petitioner has sufficient experience of minimum one year for the purpose of claiming four marks? The certificate attached by the

petitioner given by his employer is of November, 2005 to October, 2006 which is in any case less than one year and does not comply with the minimum requirement of one year experience. Thus, on this account, in my opinion, the petitioner does not deserve award of four marks under the clause of experience but shall definitely have the advantage of one mark which will increase his tally from 89.10 to 90.10. Thus, the score of the petitioner soars to 89.10 to 90.10 and brings him at No.1 in the list of selected candidates. Consequently, the petitioner in third petition is awarded one more mark and his writ petition is disposed of.

Though I have disposed of all the writ petitions but the result has to be announced about the allotment of LPG distributorship which is pending since 2006.

Thus, in view of the aforesaid discussion, the petitioner in third petition is held to be at No.1 after scoring 90.10 marks over and above the petitioner in the first petition who has scored 89.30 marks. The Corporation is directed to complete the process of distributor of LPG expeditiously preferably within a period of three months.

November 23, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No