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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15284 of 2013 (O&M)
Date of decision:17.03.2016

Rajinder Kumar ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. N.S.Shekhawat, Advocate, and
Mr. Amit Choudhary, Advocate, for the petitioner.

Mr. Ashish Kapoor, Advocate,
for the respondents.

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Rakesh Kumar Jain, J. (Oral)

This petition is filed to challenge the validity of order dated 26.03.2013 passed by respondent No.4 whereby the Retail Outlet Dealership in favour of the petitioner has been cancelled and he has been declared as "not qualified".

In short, the Indian Oil Corporation Limited (hereinafter referred to as the "Corporation") issued an advertisement on 18.09.2011 for the selection of Petrol/Diesel Kisan Seva Kendra (Rural Retail Outlet) Dealers (hereinafter referred to as the "retail outlet dealer") at various places in Delhi and Haryana. Presently, the outlet in question is at village Hanspur, District Fatehabad under the open category. There were two persons who had applied for appointment of retail outlet dealer on the aforesaid site. They were interviewed on 28.12.2011 at the Hisar Divisional

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Office and the petitioner was awarded 79.01 marks, whereas the other candidate, namely, Ravinder Kumar, secured 74.15 marks. On 25.06.2012, the Corporation issued a Letter of Intent to the petitioner. Thereafter, the petitioner applied for NOCs from the various departments and the District Revenue Officer issued the NOC on 19.07.2012, District Town Planner on 06.08.2012, Fire Brigade on 25.07.2012, Food and Civil Supplies Controller on 26.07.2012, DHBVNL on 27.07.2012 and on 13.08.2012, the Sub Divisional Officer (Civil) submitted a detailed report to the District Magistrate, Fatehabad in regard to ownership of the land in question measuring 06 Kanal 19 Marlas. On 17.01.2013, the District Magistrate, Fatehabad issued the NOC for installation of a retail outlet. According to the petitioner, the entire process was over with the issuance of NOC by the District Magistrate, Fatehabad on 17.01.2013. On 26.03.2013, respondent No.4 conveyed to the petitioner that he has been declared as "not qualified" with 56.51 marks on the basis of the revised mark sheet, which was sent to the petitioner as well. It is also alleged that in the meantime, Balwinder Kumar and Bhupender Kumar both sons of Gian Chand, residents of Hanspur, District Fatehabad filed a suit for permanent injunction against the petitioner and the Corporation. In that suit, the Corporation filed an application under Order 7 Rule 11 CPC for dismissal of the suit on the ground that there was no cause of action. The said suit was ultimately withdrawn by the said Balwinder Kumar and Bhupender Kumar. It is also pleaded that before the interviews were held, field verification was conducted by the Corporation and found the petitioner to be the owner in regard to the land in question offered by him as a "firm offer".

In the background of the aforesaid facts and circumstances narrated in the petition, counsel for the petitioner has argued that once the interview was held on 28.12.2011 in which the petitioner secured 79.01 marks over and above the other candidate who had secured 74.15 marks and the interview was held after the field verification of the land and the NOC was issued by the District Magistrate, a complaint filed after six month could not have been entertained in view of Clause 18(A) of the brochure issued by the Corporation for selection of the retail outlet dealer. Clause 18 (A) of the brochure reads as under:-

> "18. GRIEVANCE/COMPLAINT REDRESSAL SYSTEM:
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> (A) An aggrieved person may send his/her complaint to IOCL at the address of the customer service cell displayed at the nearest retail outlet of IOCL. Complaints can also be lodged on the website of IOCL. Complaints against dealer selection received after 30 days from the date of declaration of the result of the interview will not be entertained under any circumstances."

It is further argued that there is no provision in the brochure that the dealership offered to the petitioner could not have been cancelled after the issuance of Letter of Intent and after obtaining various NOCs by the petitioner thereafter.

Counsel for the petitioner has also submitted that the respondents have violated the principles of *audi alteram partem* inasmuch as no opportunity of hearing was given before the revised mark sheet was sent to the petitioner. It is also his case that in the revised mark sheet, marks of personality test of the petitioner has been changed without appearance of the petitioner before the interview board.

On the other hand, counsel for the respondents has submitted that there is no dispute about the provisions contained in Clause 18(A) of the brochure that the complaint has to be made within 30 days. However, in this regard he has submitted that the complaint has actually been made by Ravinder Kumar on 20.01.2012, which was within the period of 30 days as the interview itself was held on 28.12.2011. It is further submitted that even otherwise as per Clause 19.2 of the brochure, in case of furnishing of false information by an applicant at any point of time before or after appointment as a dealer, the Corporation has a right to terminate the dealership even after its commencement. Clause 19.2 of the brochure reads as under:-

> **"19.2 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 dealership terminated in case commissioned."

He further submitted that the field verification is conducted in terms of Clause 17.1 of the brochure, which reads as under:-

> **"17.1 FIELD VERIFICATION:**
> * The dealership will be offered to the No.1 candidate in the merit panel on the basis of the interview after necessary field verification and Letter of Intent (LOI) will be issued.
> * If the no.1 candidate is not found suitable/fails to fulfill the terms and conditions of the award of

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dealership or the award is to be cancelled for any reason whatsoever, the dealership will be offered to the 2nd candidate in the merit panel after necessary field verification.

* If the 2nd candidate also fails to fulfill the terms and conditions of offer or found unsuitable for any reason whatsoever, then the dealership will be offered to the 3rd candidate in the merit list.

* If the 3rd candidate also fails to fulfill the terms and conditions of offer or found unsuitable for any reason whatsoever, or in case where no 2nd or 3rd candidates are available in the "merit panel" as explained above, the location may be re-advertised at the discretion of IOCL.

* A person who has been issued the LOI would be required to fulfill the terms and conditions of the same within the specified time period for issuance of letter of appointment and commissioning of the dealership."

He has further submitted that in Clause 18(ii)-Established Complaint, it is provided that (a) in case the selection process for a location is found to be not in accordance with the laid down guidelines, the re-evaluation, based on documents available on record, will be carried out and wherever there will be a change of rankings in merit panel, the revised result will be displayed on the notice board/IOC website besides separate communication to all empanelled candidates and (c) in case of established complaint against all the merit panel candidates, the merit panel will be cancelled and the location will be re-advertised, if found feasible by IOC. It is the case of the respondents that the action on the complaint made by

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Ravinder Kumar on 20.01.2012 was triggered off by his reminder dated 07.06.2012 and, thereafter, a senior officer of the Corporation was appointed as the investigating officer to find out the truth in the complaint as to whether the "firm offer" made by the petitioner by offering the land in which he has shown his interest as a prospective vendee is without any encumbrance or not? However, it is admitted case that the land which was offered by the petitioner as a "firm offer" was ultimately purchased by the petitioner on 16.01.2012.

Counsel for the respondents has further submitted that the status of the petitioner/applicant has to be seen on the date of advertisement dated 18.09.2011 and on that date as the land in question, offered by the petitioner as A-Site having "firm offer" for which he was granted 22.5 marks out of the total 25 marks as per various parameters for allocation of marks, was encumbered and the said marks have been deducted from the total marks of the petitioner awarded on 28.12.2011 and as a result thereof, it was reduced to 56.51 marks, which were less than 60% of the total marks for the open category as per Clause 13.1.2(e) of the brochure, which reads as under:-

> (e) Minimum qualifying marks (for Open category locations) - 60% of the total marks.
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> Minimum qualifying marks (for ALL RESERVED LOCATIONS INCLUDING-LOCATIONS RESERVED FOR WOMEN) – 50% of the total marks."

Since the allotment of the retail outlet was for the open category, the petitioner was to secure minimum 60% of the total marks for the purpose of competing with the other candidates.

Counsel for the respondents has also produced before the Court record of this case, in which in the jamabandi for the year 2005-2006, Gian Chand S/o Veer Bhan has been shown as one of the co-sharers from whom the petitioner is stated to have purchased the land in question but the remarks column of that jamabandi shows that the land is un-partitioned and has been mortgaged with the State Bank of India, Haroli. It is also found from the record that the affidavit was filed by Balwinder Kaur instead of Balbir Kaur, which is at page 84/109 of the record maintained by the Corporation.

It is argued by learned counsel for the respondents that even Balbir Kaur has not given the NOC as the tone and tanner of the affidavit also shows that it has been sworn by some male instead of female. In support of his arguments, counsel for the respondents has relied upon a judgment of the Supreme Court of India in the case of **Sr. Divisional Retail Sales Manager, Indian Oil Corporation Ltd. through Poa Holder and Ors. vs. Ashok Shankarlal Gwalani,** (2012) 13 SCC 260.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The facts are not much in dispute as the petitioner had applied for selection as a retail outlet dealer and was adjudged No.1 with 79.01 marks as against his competitor Ravinder Kumar who had secured 74.15 marks. The allocation of marks were depending upon various parameters as provided in Clause 13.1.1 of the brochure. Since the land in question is `A' site for which the petitioner made the "firm offer", whereas at that time the land was not sold to him by way of registered sale deed and was lateron found to be an un-partitoned land. The petitioner was not having clear title over the land when the land was agreed to be sold to him. I have also found from the record much-less from the jamabandi for the years 2005-2006 that the land in question offered by the petitioner was encumbered on account of a loan obtained by the co-sharers in it. It is altogether different thing that the land which is alleged to have been purchased by the petitioner from Gian Chand was not mortgaged but the very fact that the land has not been partitioned would make all the difference.

Insofar as the question of 30 days' limitation for the purpose of making a complaint as provided in Clause 18A of the brochure is concerned, the complaint has been made by the other candidate well within time and, thus, the argument raised by counsel for the petitioner that the action has been taken by the respondents after a period of six months is without any consequence. Even otherwise, Clause 19.2 of the brochure provides that 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 can be cancelled forthwith and even the dealership, which has commenced, can be terminated. Here is a case where the petitioner has not been found to be in possession of the unencumbered land much-less un-partitioned land, therefore, it has rightly been kept out of the purview while granting marks for the "firm offer".

Insofar as the arguments raised by counsel for the petitioner

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that there is a change in the mark sheet without there being an opportunity of hearing is concerned, it is apt to mention that as per Clause 18(A)(ii)(a) and (c) of the brochure, the marking has to be done once again by taking out the marks which have been wrongly awarded in the first meeting. The marks under the head "capability to provide finance", which were earlier awarded to the petitioner and the other candidate, is also a matter of concern raised by the petitioner, regarding which counsel for the respondents has referred to Clause 13.1.1 of the brochure, in which the "capability to provide finance" has been specifically mentioned as (a) ready availability of finance, (b) liquid cash, (c) Fixed and movable assets and (d) Income includes agricultural income etc. These are the four heads under which the capability to provide finance should have been assessed, in which the petitioner was adjudged as No.1 in the first meeting.

The change of marks of personality test is of course there but it hardly makes any difference because earlier 1.37 marks were granted to the petitioner and 0.92 marks to the other candidate, which has now been reduced to 1.17 marks, which does not change the result of the petitioner in any manner.

Looking from any angle, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

March 17, 2016 **(Rakesh Kumar Jain)**
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