

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

CWP No.15091 of 2014

Date of Decision:15.11.2016

Kashmir Kaur

.....Petitioner

Vs.

The IOC Ltd. and another

.....Respondents

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

Present:- Mr. Vikas Singh, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for respondents No.1 and 2.

RAKESH KUMAR JAIN, J.(Oral)

The petitioner has challenged the validity of the order dated 13.5.2013 by which Letter of Intent issued to her has been withdrawn. In short, the respondent- Oil Company offered allotment of Kisan Sewa Kendra Dealership at Jagatpur Jattan, District Kapurthala under the Open (Women) Category. The petitioner applied on 27.9.2011 and submitted a duly notarised affidavit (Annexure 'A') dated 22.9.2011. Letter of intent was issued by the respondent on 4.2.2012 but it was lateron found that manual addition made by the petitioner in the affidavit was not signed by the notary. Vide letter dated 13.5.2013, the petitioner was advised not to start any development work at the site and after completion of the investigation, in which notary who had attested the affidavit Annexure A, denied that the manual addition in the said affidavit dated 22.9.2011 was made by the petitioner before him, the respondents found affidavit improper and hence the LOI issued in favour of the petitioner was withdrawn.

Counsel for the petitioner has submitted that the fact mentioned by way of addition is not incorrect and it is denied that the said addition was made after the affidavit was already attested by the notary. It is also submitted that the respondents have taken action against the petitioner on a complaint but the procedure prescribed in Clause 18 of the Brochure for Selection of Petrol/Diesel Retail Outlet Dealers dated 11.4.2011, of giving an opportunity of hearing has not been followed.

On the other hand, counsel for the respondents has submitted that the affidavit was attested by the notary on 22.9.2011. The petitioner has made the following addition after the attestation namely “That presently I am not having any contract with any oil marketing company as Service Provider/ Job Contractor/ Labour Contractor for any COCO RO.” The said affidavit was taken to the notary by the respondent- Company, during investigation, on which the notary has made the following endorsement:

“Note:- This affidavit is authentic and attested by me. The handwritten portion was not done in front of me as there is no signature of mine at the added portion. Sd/- 6th October, 2012.”

Counsel for the respondents has submitted that the addition made by the petitioner, if ignored in view of Section 8(2) of the Notaries Act, 1952 (for short, 'the Act') would make the petitioner ineligible in view of the fact that it was incumbent upon the petitioner to make the said averment in the affidavit. He has also made the reference to the proforma of the affidavit which is attached as Appendix 'A' with the Guidelines of 2011 and is also reproduced for ready reference as under:-

“APPENDIX A

**(to be submitted by individuals and partners of partnerships)
(TO BE TYPED ON APPROPRIATE NON-JUDICIAL STAMP
PAPERS OF REQUIRED VALUE AS APPLICABLE IN XXXXXXXX
STATE)**

AFFIDAVIT

I

_____ Son/daughter/wife _____ of
_____ Age _____ years
residing at _____ do hereby solemnly affirm
and say as under:

1. That I am an Indian National
2. That I am unmarried. That neither I nor my Father, Mother, unmarried brother(s), unmarried sister(s) have dealerships/ distributorships or hold Letter of Intent for Retail Outlet or SKO/LDO dealership or LPG distributorship of any Oil Company.

OR

That I am married. That neither I nor my spouse, unmarried son(s)/ unmarried daughters(s) have dealerships/ distributorships or hold Letter of Intent for Retail Outlet or SKO-LDO dealership or LPG distributorship of any Oil Company

3. * That I am an unmarried women above 40 years of age without earning parents
4. * That I am a widow and not re-married
(* delete these if not applicable)
5. That I have never been convicted for any criminal offences involving moral turpitude and/or economic offences (other than freedom struggle of India)
6. I hereby, confirm that I was never a signatory to a dealership/ distributorship agreement of any Oil company, which was terminated for proven adulteration/ malpractices.
7. *That against item No.13 of my application form details of various sources of funds required for setting up and operation of the dealership has been furnished. I undertake that these funds will be made available for the purpose stated above. In case it is found that the same is not made available as and when required, the offer of dealership, at any stage, can be withdrawn and that I will have no claim/ damage whatsoever against the Oil company.

8. That presently I am not having any contract with any oil marketing company as Service Provider/ Job Contractor/ Labour Contractor for any COCO RO.

OR

That, presently I am having a Contract with an oil marketing company as Service Provider/ Job Contractor/ Labour Contractor for one COCO RO (Name of COCO Location _____, Dist. _____, State _____, Oil Company name _____). I also know that, if I am selected as a dealer, I will have to terminate this contract before issuance of **Letter of Appointment**.

9. I hereby verify that what has been stated above is true to the best of my knowledge and belief and nothing material has been concealed there from. If any information/ declaration given by me in my application or in any document submitted by me in support of application for the award of the dealership or in this affidavit shall be found to be untrue or incorrect or false, Indian Oil Corporation Ltd. would be within its rights to withdraw the letter of intent/ terminate the dealership (if already appointed) and that I would have no claim, whatsoever, against Indian Oil Corporation Limited for such withdrawal/ termination.

Solemnly affirmed and declared before me

This _____ day of _____

Signature & Seal of
Magistrate/Judge Notary Public

Signature of person making affidavit
(Name in Block letters) ”

It is also submitted by the respondents that opportunity of hearing is not required even on a complaint because the notary has admitted by making an endorsement that the addition has not been signed by him which is also apparent from the affidavit.

I have heard both the learned counsel for the parties and perused the record with their able assistance. The allotment of dealership is governed by the guidelines (supra) in which it is provided that the application has to be submitted along with the affidavit as per the prescribed

proforma in which the applicant has to specifically mention the following:-

“8. That presently I am not having any contract with any oil marketing company as Service Provider/ Job Contractor/ Labour Contractor for any COCO RO.

OR

That, presently I am having a Contract with an oil marketing company as Service Provider/ Job Contractor/ Labour Contractor for one COCO RO (Name of COCO Location _____, Dist._____, State_____, Oil Company name_____). I also know that, if I am selected as a dealer, I will have to terminate this contract before issuance of **Letter of Appointment.**”

Admittedly, it was not typed on the affidavit submitted by the petitioner rather it is made part of the affidavit by writing in hand and signed by the petitioner only as there is no signature of the notary on this addition who has also appended a note that the hand written portion was not added in the affidavit in his presence and has not attested the hand written portion as well.

In these facts and circumstances, the simple denial of the petitioner that the hand written portion in the affidavit was made before the notary is inconsequential because it is not signed by the notary and cannot be accepted by the Court as stated.

The question would thus arise as to whether hand written averment made in the affidavit has to be considered in view of Section 8(2) of the Act?

In order to find answer to the question it would be relevant to refer to Section 8 of the Act which read as under:-

“8. Functions of notaries.-- (1) A notary may do all or any of the following acts by virtue of his office, namely:--

(a) verify, authenticate, certify or attest the execution of

any instrument;

(b) present any promissory note, *hundi* or bill of exchange for acceptance or payment or demand better security;

(c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, *hundi* or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (26 of 1881), or serve notice of such note or protest;

(d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;

(e) administer oath to, or take affidavit from, any person;

(f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;

(g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;

(h) translate, and verify the translation of, any document from, one language into another;

[(h-a) acts as a Commissioner to record evidence in any civil or criminal trial if so directed by any Court or authority;

(h-b) act as an arbitrator, mediator or conciliator, if so required;]

(i) any other act which may be prescribed.

(2) No act specified in sub-section (1) shall be deemed to be

a notarial act except when it is done by a notary under his signature and official seal.”

The object of the Act was to appoint notaries for attestation of negotiable instruments. Function of the notary is provided in Section 8 of the Act (supra) in which Section 8(1)(e) deals with administration of oath to, or taking affidavit from, any person; but Section 8(2) provides that no act specified in sub-section (1) including the affirmation of the affidavit shall be deemed to be notarised except it is done by the notary under his signature and official seal. Insofar as the other parts of the affidavit, which have been notarised by the notary by putting signatures and official seal are concerned, there is no dispute but the dispute is only with regard to the hand written addition in the affidavit which has been disowned by the notary stating categorically that the hand written portion was not written in his presence and he has not put his signature on the hand written portion. Thus, in the given facts and circumstances, there is no escape from taking a view that the petitioner had made the addition on the hand written portion of the affidavit after the said affidavit was notarised. The question again would be as to whether the petitioner would be entitled / eligible for letter of intent if hand written portion is not considered by the Oil Company. According to the respondents, as per Clause 21(c) of the guidelines, incomplete application has to be rejected and no correspondence in this regard shall be considered by the Oil Company whatsoever. Thus the averment if deleted or not considered from the affidavit, will render the affidavit incomplete and Clause 21(d) provides that no additional documents whatever would be accepted or considered after cut off date of the application. Meaning

thereby, the petitioner even cannot be permitted to file another affidavit making the averment about the portion which has been left out by her at the time when the application was made along with the affidavit as per the contents of Annexure 'A'. Insofar as the question of opportunity of hearing on the complaint is concerned, since the facts are clear before the Court as the affidavit which has been submitted by the petitioner is not signed by the notary on the portion which has been added by the petitioner, therefore, it has to be ignored in terms of Section 8(2) of the Act. Thus, in view of the aforesaid discussion, there is no fault on the part of the respondents in passing the impugned order. Hence, the present petition is hereby dismissed.

November 15, 2016
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(RAKESH KUMAR JAIN)
JUDGE

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