

CWP Nos.24031 of 2012 and 1825 of 2013

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

**(1) CWP No.24031 of 2012 (O&M)
Date of decision:17.10.2016**

Rajender Kumar Kairon ...Petitioner

Versus

Hindustan Petroleum Corporation Ltd. and others ...Respondents

**(2) CWP No.1825 of 2013
Date of decision:17.10.2016**

Sunil Kumar ...Petitioner

Versus

M/s Hindustan Petroleum Corporation Ltd. and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Parveen Sharma, Advocate, for
Mr. Arvind Singh, Advocate, for the petitioner
in CWP No.24031 of 2012.

Ms. Akanksha Nayyar, Advocate, for
Mr. Amar Vivek, Advocate, for the petitioner
in CWP No.1825 of 2013.

Mr. A.K.Bansal, Advocate,
for the Union of India.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP No.24031 of 2012 titled as “Rajender Kumar Kairon vs. Hindustan Petroleum Corporation Ltd. and others” (hereinafter referred to as the “first petition”) and CWP No.1825 of 2013 titled as “Sunil Kumar vs. M/s Hindustan Petroleum Corporation Ltd. and another” (hereinafter referred to as the “second petition”) as both the petitions are inter-connected.

In brief, the Hindustan Petroleum Corporation Ltd. (hereinafter referred to as the “Corporation”) issued an advertisement for allotment of retail outlet/dealership in village Deoban, District Kaithal on 30.04.2010. The interview was held on 10.08.2010 in which, out of total five candidates, the petitioner in the second petition was initially placed at Sr. No.1 having been awarded 80.4% marks and the petitioner in the first petition was placed at Sr. No.2 with 59.5% marks. The petitioner in the first petition made a complaint against the selection of the petitioner in the second petition, *inter alia*, on the ground that the site offered by the petitioner in the second petition does not meet the guidelines of Indian Road Congress-12-2009 (hereinafter referred to as the “guidelines”). After considering the complaint, vide letter dated 30.08.2012, the petitioner in the first petition was informed that the total marks of the petitioner in the second petition has been reworked and reduced from 80.4% to 57.4% and, thus, his ranking was changed from “first” to “second” but it was ordered that the fresh selection would be made from amongst the candidates who had earlier appeared in the interview.

Aggrieved against the aforesaid order/letter dated 30.08.2012, the first petition has been filed to challenge the said order only to the extent by which fresh selection was ordered to be held for appointment of retail outlet/dealership on the ground that the petitioner in the first petition is now at Sr. No.1 after reduction of marks of the petitioner in the second petition.

While the first petition was pending, the second petition was filed to challenge the order dated 30.08.2012 by which rank of the petitioner in the second petition was reduced from Sr. No.1 to Sr. No.2 by reducing his

marks from 80.4% to 57.4%.

Basically, in both the petitions, order dated 30.08.2012 is under challenge but the prayer made in both the petitions are different because in the first petition, the petitioner has prayed that the interviews may not be held again and he should be declared as the first empanelled candidate on the basis of the previous interview and the marks awarded to him and in the second petition, the petitioner has prayed that the order dated 30.08.2012 be set aside and *status quo ante* may be maintained as the reason given for reducing the marks is illegal.

Counsel for the petitioner in the second petition has submitted that the only dispute is as to what should be the distance of the fuel station from the road intersection as per the guidelines. According to the petitioner, such distance is 300 meters and it is reported by the Executive Engineer, Provincial Division No.1, PWD, Kaithal, that the distance of the site in question from the junction of the Assandh Road is 345 meters and is as per the guidelines. In this regard, counsel for the petitioner in the second petition has referred to Clause 4.5.1 of the guidelines, which is reproduced as under:-

“4.5.1 Non-urban (Rural) stretches

1) **Plain and Rolling Terrain**

- | | |
|--|-------|
| (i) Intersection with NHs/SHs/MDRs/City Roads | 1000m |
| (ii) Intersection with Rural Roads/approach roads to private and public properties | 300m |

2) **Hilly/Mountainous Terrain**

- | | |
|---|-------|
| (i) Intersection with NHs/SHs/MDRs | 300m |
| (ii) Intersection with all other roads and tracks | 100m” |

On the other hand, counsel for the respondents has submitted

that the guidelines were enforced w.e.f. 28.02.2012 in which Clause 4.5.1 provides that the outlet for petroleum products should be at minimum distance of 1000 meters from intersection of two State Highways/National Highways and the proposed site belonging to the petitioner in the second petition is at a distance of 300 meters from intersection of State Highway No.11 and State Highway No.11A and, thus, the same was rejected, due to which marks allotted to Sunil Kumar were reduced from 80.4% to 57.4%. It is further submitted that para no.19(b)(ii)(a) of the Guidelines for Selection for Retail Outlet Dealers provides that *“in case a selection process for a location was found to be not in accordance with the laid down guidelines resulting in wrong selection of first empanelled candidate, the merit panel will be canceled and all the candidates who have appeared for the original interview only will be called for the re-interview.”* Therefore, the fresh selection is ordered to be made on the basis of re-interview of the candidates who had appeared in the earlier interview.

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

There is no dispute about applicability of Clause 4.5.1 of the guidelines in which it is categorically provided that the distance in the case of non-urban/rural stretches should be 1000 meters if it pertains to plain and rolling terrain intersection with NHs/SHs/MDRs/City Roads and if the intersection is with Rural Roads/approach roads to private and public properties, then it is 300 meters.

Counsel for the petitioner in the second petition has relied upon Clause 4.5.1(ii) of the guidelines to contend that the distance required is 300

meters and as per the report of the Executive Engineer, it is 345 meters, therefore, it was meeting the criteria but as per the counsel for the respondents, the site offered by the petitioner in the second petition is on the intersection of State Highway No.11 and State Highway No.11A and fall within Clause 4.5.1(i) and not 4.5.1(ii) of the guidelines.

Interestingly, no replication has been filed by the petitioner in the second petition to the written statement filed by respondents No.1 and 2 to deny the averments made therein.

Thus, in view of the fact that the parties are governed by the guidelines and Clause 4.5.1(i) of the guidelines require 1000 meters distance from intersection of the State Highway, which is actually admitted by the petitioner as 345 meters and not 1000 meters, no error can be found in the action taken by the respondents in this regard and Clause 4.5.1(ii) would not be applicable.

Counsel for the respondents has also referred to a decision of the Supreme Court in the case of **Indian Oil Corporation Ltd. and Ors. vs. Arti Devi Dangi and Anr.**, SLP (C) No.22012 of 2014, decided on 14.10.2015, in which the Supreme Court has observed as under:-

“8. If the clauses in the advertisement required a tenderer to fulfill all requirements under the rules and sub-rules of P.W.D. and if what was suggested/recommended by the I.R.C. has been adopted by the State P.W.D. and the said norms are in the interest of public safety and would facilitate smooth movement of traffic, it will be difficult to hold that the rules and sub-rules of P.W.D. contemplated in the advertisement do not embrace the I.R.C. Guidelines either because there was no specific mention thereof in the tender documents or the same do not have a statutory flavour. We, therefore, hold that the fulfillment of the requirements spelt

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out by the I.R.C. Guidelines relevant to the present cases to be a mandatory requirement of the tender conditions.”

Thus, in view of the afore-stated position, the second petition is hereby dismissed being denuded of any merit.

As regards the prayer made in the first petition that interview should not be held again after cancellation of first empanelled candidate and the petitioner in the first petition be declared as the first empanelled candidate being second in rank to the petitioner in the second petition, it would be suffice to note that para 19(b)(ii)(a) of the Guidelines for Selection for Retail Outlet Dealers specifically provides that in case a selection process for a location was found to be not in accordance with the laid down guidelines resulting in wrong selection of first empanelled candidate, the entire merit panel has to be cancelled and all the candidates who had appeared for the original interview only are to be called for the re-interview.

Hence, the action taken by the respondents is in conformity with the provisions made in the Guidelines for Selection for Retail Outlet Dealers and there is no fault on their part.

Consequently, I do not find any merit in the first petition as well and hence, the same is hereby dismissed.

October 17, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No