

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3233 of 2012 (O&M)
Date of decision: February 27, 2016

Nupur Aggarwal

.. Petitioner

v.

Bharat Petroleum Corporation Ltd. and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the petitioner.**

Mr. Raman Sharma, Advocate for respondents No. 1 and 2.

Ms. Balpreet Kaur Sidhu, Advocate for respondent No. 3.

...

Rajesh Bindal J.

1. An unsuccessful applicant for allotment of LPG Distributorship for village Piyala, District Faridabad, has filed the present petition.

2. Learned counsel for the petitioner submitted that the petitioner being fully eligible applied for LPG Distributorship in pursuance to the advertisement issued on 9.11.2007. The result was declared, in which the petitioner was at No. 1, whereas respondent No. 3 was at No. 2. The merit list was challenged by respondent No. 3 by filing CWP No. 7386 of 2009. The petitioner also filed CWP No. 22346 of 2010. Both the petitions were disposed of by this court vide order dated 5.5.2011 for re-evaluation on the basis of the material already on record. After re-evaluation, the result was declared. Respondent No. 3 was granted one mark extra, whereas one mark

already granted to the petitioner was reduced, as a result of which respondent No. 3 was ranked at No. 1 in the merit list.

3. While challenging the marks awarded to respondent No. 3, learned counsel for the petitioner submitted that in the criteria laid down in the advertisement, the marks were to be awarded for different types of qualifications, which a candidate possessed. The petitioner is MCA qualified. It is a professional and technical qualification, for which 15 marks were required to be given, however, wrongly she had been awarded merely 12 marks, considering the qualification to be simple Post-Graduation. He referred to the clarifications issued by various Universities and educational institutions and the prospectus in support of his argument that it is a technical qualification. He further submitted that in this category, even Bachelor of Engineering Graduates have been made eligible. B.E. qualification is one of the basic qualifications provided for admission to the course of Master of Computer Application, meaning thereby it is even higher to that. He further submitted that award of one extra mark to respondent No. 3 in the column of income was also un-called for. In support of his argument, reliance was placed upon judgments of Hon'ble the Supreme Court in M. P. Electricity Board and others v. Shiv Narayan and another, (2005) 7 SCC 283 and Orissa High Court in Puspak Behera and etc. v. Vice-Chancellor, Utkal University and others etc., AIR 2007 (Orissa) 58.

4. In response, learned counsel for Bharat Petroleum Corporation Ltd. (for short, 'the Corporation') submitted that respondent No. 3 has been awarded marks correctly in the column of capability to arrange finances. The requisite documents and affidavit were annexed. He further submitted that even if one mark awarded to respondent No. 3 in this column is reduced, still she will remain above the petitioner as she has secured 92.67 marks, as against 91.66 marks secured by the petitioner. As regards award of marks for qualification is concerned, it was submitted that MCA is not a professional qualification, hence, the same was considered in the category of Post-Graduate course. MCA is not specifically mentioned in the examples given in the criteria laid down for award of marks. Once the

qualifications have been specifically mentioned and the petitioner having not possessed any of those, MCA being not there, the petitioner was rightly not awarded marks in that category. He referred to the judgment of this court in LPA No. 1340 of 2011—Rahul Dhull and another v. Indian Oil Corporation and others, decided on 25.8.2011, to submit that even B. Pharmacy course, for which admission is taken after 12th class, was not held to be a professional qualification.

5. Learned counsel for respondent No. 3 submitted that all the Universities define MCA course to be a Post-Graduate course only and do not treat that to be a professional course. The petitioner had passed her B.Sc. Applied Electronics and thereafter passed her MCA examination from Guru Gobind Singh Indraprastha University. A professional course is such where one can carry on his/her profession in addition to employment. The Selection Committee has rightly awarded marks to the petitioner as well as respondent No. 3. There is no error in the process of selection, hence, the same does not deserve to be set aside.

6. In response, learned counsel for the petitioner submitted that the reply received by respondent No. 3 in response to the queries raised by her cannot be considered as these were with reference to the questions cleverly put by her. He referred to the response given by Kurukshetra University with reference to an application filed under the Right to Information Act, where MCA degree has been held to be professional.

7. Heard learned counsel for the parties and perused the paper book.

8. In the case in hand, the Corporation issued advertisement for calling applications for allotment of LPG Distributorship at village Piyala, District Faridabad. Besides other applicants, the petitioner as well as respondent No. 3 applied. In the first round, at the time of final selection, the petitioner got 92.67 marks, whereas respondent No. 3 got 91.67 marks. Respondent No. 3 challenged the result by filing CWP No. 7386 of 2009. Thereafter, even the petitioner also filed CWP No. 22346 of 2010 impugning award of marks to respondent No. 3. The plea raised by the petitioner was also that she deserves to be granted more marks in view of

her educational qualification, as MCA is a technical qualification. The writ petitions were disposed of by this court on 5.5.2011 directing the Corporation to consider the matter afresh. The result was thereafter declared, in which the petitioner secured 91.66 marks and respondent No. 3 secured 92.67 marks. One mark of the petitioner was reduced, whereas respondent No. 3 was granted one more mark. As a consequence, respondent No. 3 was issued Letter of Intent, which is under challenge in the present petition.

9. The primary issue raised by learned counsel for the petitioner is regarding award of marks to her for educational qualification. The criteria, as laid down in the Information Brochure, is extracted below:

“Sub total maximum marks 35

“EDUCATIONAL QUALIFICATION (AS ON DATE OF APPLICATION)	Basic	Matriculate/SCC/Xth pass	7	Based on information & documents given in the application
		XIIth pass	8	
		Graduates	10	
		Post graduates or higher qualifications	12	
		Additional qualification Any Diploma/Degree		Basic qualification plus 1 mark for additional qualification any diploma/degree
	Professional	Technical/Law/ Medical/ Management Graduate/ Chartered/ Cost Accountant or higher qualifications- B.E., B. Tech., MBA, CA or equivalent minimum 4 yrs post 12 th	15	

10. The qualifications of the petitioner, as mentioned in the application form, are extracted below:

“ 9. Educational Qualification* (s): (Attach copy of proof of Educational Qualifications).

(*)- Not applicable in case of Registered Societies, Corporates, Govt. Organisations etc.

Qualification	Certificate/Degree	Board/University	Year of Passing
SSC/ Matric or Equivalent	AISSCE	CBSE	1997
Graduate	B.Sc. Applied Electronics	Delhi University	2000
Post Graduate			
Professional Degree	M.C.A.	GGSSIP University	2003

Qualification	Certificate/Degree	Board/University	Year of Passing
Additional qualifications	Diploma in Multi Media	Arena Multi Media	1997

11. The issue sought to be raised by learned counsel for the petitioner is that she is entitled to get 15 marks for her qualification being in technical category, whereas the Corporation has treated the same simply to be a Post- Graduation qualification awarding her 12 marks. If three marks are awarded to the petitioner, she will certainly march over respondent No. 3, though learned counsel for respondents No. 1 and 2 has raised contention that MCA is not a professional qualification. For the purpose, he referred to the clarifications issued by various Universities and educational institutions. As against that, the petitioner has also placed on record the clarification issued by different University stating that MCA degree is a professional course. However, in my opinion, that will not be a hurdle for reaching to a conclusion as to whether the petitioner deserves to be granted 15 marks for educational qualifications by treating that to be technical or 12 marks by treating the same to be simple Post-Graduation. In the column of educational qualifications, there are two sub categories, one is basic and another is professional. The professional has further been defined to include technical.

12. The issue as to whether MCA is a technical qualification was considered by Hon'ble the Supreme Court in Association of Management of Private Colleges v. All India Council for Technical Education and others, 2013(3) SCT 195, wherein the question under consideration was “whether the MCA course be construed as technical education in terms of definition under Section 2(g) of the AICTE Act ?”

13. All India Council for Technical Education is a statutory body created under All India Council for Technical Education Act, 1987 for regulating technical education in the country. The aforesaid question was answered by Hon'ble the Supreme Court holding that MCA course is a technical education. The relevant part of the judgment is extracted below:

“42. The above meanings of the words 'technology' and

'engineering' as per the dictionaries referred to supra would clearly go to show that MCA also comes within the definition of technology. Therefore, the contention that technical education includes MCA as raised by the learned senior counsel on behalf of the AICTE stand to its reasoning and logic in view of the nature of MCA course which is being imparted to the students at post graduation level which is being conducted by the institutions, constituent colleges and affiliated colleges to the universities. The same is a technical education and therefore, it comes within the definition of technical education but for its proper conduct of course and regulation the role of AICTE must be advisory and for the same, a note shall be given to the UGC for its implementation by it but not the AICTE. Accordingly, point No. 3 is answered in favour of respondent AICTE.”

14. The contention raised by learned counsel for the respondents that MCA being not a professional qualification, hence, will not fall in that sub-category is to be noticed and rejected for the reason that only two sub-categories have been made in the column of qualifications for the purpose of award of marks. The term 'professional' has been further explained to include even technical qualification, besides Law, Medical, Management, Chartered Accountant, Cost Accountant, Bachelor of Engineering, Bachelor of Technology etc. or equivalent minimum 4 years post 12th. In that light, term 'professional' cannot be given restrictive meaning to include only the professional qualification. The petitioner in the present case has been awarded 12 marks by treating her qualification of MCA as Post-Graduate qualification, whereas being in the category of technical qualification, it will fall in the sub-category of professional and the petitioner would be entitled to 15 marks for her qualification. If she is awarded 15 marks for her educational qualification, she will secure 94.66 marks, as against 92.67 marks secured by respondent No. 3 and will rank at No. 1 in the merit list.

15. The issue regarding award of marks for capability to provide finance is not required to be gone into for the reason that even if one extra

mark awarded to respondent No. 3 is reduced, the same will not make any difference on the result, as still respondent No. 3 will secure 91.67 marks as against 91.66 marks secured by the petitioner, even if issue regarding educational qualification is ignored.

16. For the reasons mentioned above, the writ petition is allowed. The impugned orders dated 16.8.2011 (Annexure P-11) and 31.10.2011 (Annexure P-40) are quashed. The petitioner being more meritorious than respondent No. 3, the Corporation will take further steps in accordance with law.

(Rajesh Bindal)
Judge

February 27, 2016
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(Refer to Reporter)