

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

LPA No.183 of 2015 (O&M)

Date of decision: 01.04.2016

Indian Oil Corporation Limited and another

----Appellants

Versus

Veenu Malhotra

----Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Kanwaljit Singh, Sr.Advocate with
Mr. Ashish Kapoor, Advocate for the appellants.

Mr. Pawan Kumar, Sr. Advocate with
Mr. R.K. Aggarwal, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 18.11.2014 of the learned Single Judge, whereby, CWP No.4417 of 2012 filed by the respondent was allowed.

The appellant - Indian Oil Corporation along with other Public Sector Oil Companies issued an advertisement inviting applications for allotment of LPG Distributorships at various locations including at Gurdaspur (Open) at Sr. No. 24.

The respondent being fully eligible applied for the same on 12.01.2008, well before the last date for submission of applications. As per clause 14 of the Brochure for Selection of LPG Distributors, the candidates were to be evaluated under various heads as under:

“14. 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) | <i>Capability to provide infrastructure</i> | <i>35 marks</i> |
| b) | <i>Capability to provide finance</i> | <i>35 marks</i> |
| c) | <i>Educational qualifications</i> | <i>15 marks</i> |
| d) | <i>Age</i> | <i>4 marks</i> |
| e) | <i>Experience</i> | <i>4 marks</i> |
| f) | <i>Business ability/acumen</i> | <i>5 marks</i> |
| g) | <i>Personality</i> | <i>2 marks</i> |

The interviews were held from 21.12.2009 to 23.12.2009. The respondent was placed in merit panel (Annexure P-4) at serial No.2 with 96.5 marks . The candidate at Sr. No.1 in the merit panel Sh.Navneet Dogra had secured 98.3 marks. The candidate at Sr. No.3 Sh. Narinder Singh Sandhu had secured 96.1 marks.

The first candidate in the merit panel gave up his claim. Thereafter, on conducting detailed field investigation which included verification of all the documents submitted by him and after seeking legal opinion, the name of the respondent was cleared and he was issued Letter of Intent dated 20.09.2011 (Annexure P-5) and offered the Indane distributorship.

About a week thereafter a letter dated 27.09.2011 (Annexure P-6) was addressed to the respondent intimating him that because of a complaint received from Sh.Narinder Singh Sandhu, challenging his selection, the letter of intent was being kept in abeyance. Sh.Narinder Singh Sandhu, however, did not corroborate the complaint and submitted an affidavit dated 1.10.2011 that he had not made any complaint and that the complaint in his name had been forged by using a different email ID. Though copy of the complaint was not supplied to the respondent despite his request, he submitted a detailed representation dated 18.2.2012 (Annexure P-9) in which he explained and justified his claim with regard to experience claimed in the application form.

Despite that, the order dated 28.2.2012 (Annexure P-1) was passed cancelling the LOI issued to him which he impugned in the writ petition which has been allowed.

In the impugned order the following points were concluded against the respondent :

- “1. You did not make available the registered copy of partnership deed & Registration certificate of your firm M/s Shiraz from registrar of firms either at the stage of filing your application or at the stage of FIR, in order to establish that your firm M/s Shiraz existed at the time you applied for the LPG distributorship.*
- 2. The partnership deed dated 09.01.2008 executed between yourself and your mother Smt. Kanta Malhotra indicates that M/s Shiraj Medicine Company & M/s Shiraj are not one and the same company and that you have become partner in M/s Shiraj only on 09.01.2008.*
- 3. On the strength of documents of two different firms to two different periods you have mislead the Corporation into accepting that you have 13 years of experience.*
- 4. By not informing Bar Council of Punjab & Haryana about your partnership in M/s Shiraz Medicine company since 1994, you have also misled the Bar Council and flouted its membership conditions.”*

Reference was made to clause 19(g) of the advertisement as per which, if any statement made in the application or any document enclosed therewith or subsequently submitted is found to be incorrect, the application was liable to be rejected and distributorship terminated and Clause 16 of the application form which contained a similar declaration by the applicant (respondent) of his candidature being liable to be cancelled for any misrepresentation on his part. Taking it that he had deliberately misled the Corporation, the LOI issued to him was annulled.

representation dated 18.02.2012 (Annexure P-9) of the respondent, wherein, he gave details about his experience w.e.f. 01.04.1994 as a partner in the partnership firms. It was stated in the representation that the firm M/s Shiraz Medicine Co. Post Office Chowk, Gurdaspur initially constituted on 01.04.1977 by Kanta Malhotra, mother of the respondent, Suman Khosla and Rajiv Malhotra. In the year 1991, Suman Khosla and Rajiv Malhotra withdrew their names from the said firm and thereafter, respondent joined as partner in the ancestral business. In the year 1994, new partnership deed was executed between the respondent and his mother. This partnership deed had already been submitted with the application form. Another partnership deed was executed in 2002 due to change in the name of the firm from M/s Shiraz Medicine Co. to M/s Shiraz with mutual consent of both the partners. A copy of this deed was enclosed with the representation. On 08.01.2008, the said firm was dissolved. The very next day i.e., 09.01.2008, a fresh partnership deed was executed, showing the petitioner as a 'Dormant Partner.' Sales tax record of the firm and Permanent Account Number (PAN), allotted by the Income Tax department, were submitted in support. It was submitted that as M/s Shiraz Medicine Company, Post Office Chowk, Gurdaspur and M/s Shiraz, Post Office Chowk, were one and the same business establishment legally, the experience mentioned in the application form was correct.

Ld. Single Judge also noticed that the respondent in his replication had referred to numerous documents, which showed that as per partnership deed 31.03.1994 (Annexure P-14), he was introduced as a partner in the family business along with his mother. After being enrolled with Bar Council of Punjab and Haryana on 31.01.1995, he never practiced as an Advocate nor appeared in the Courts till 1998. Being a partner of M/s Shiraz Medicine Company, he was allotted PAN number under the Income Tax Act, details of

which had been mentioned in the replication. Copies of income tax returns from 1994 to 2007 had been annexed as Annexure P-15 (Colly.) Certificates of the Income Tax Department (Annexures P-17 and P- 18) were annexed to substantiate that he was holding PAN card in respect of the firm M/s Shiraz Medicine Company which clearly indicated that he had income from the firm in his capacity as a partner thereof and did not have any professional income as Advocate from 1994 to 1998. Moreover, in his application dated 17.05.2011 (Annexure P-16) to the Field Investigation Report (FIR) Committee of the Indian Oil Corporation the respondent had given an undertaking that if he is allotted the LPG distributorship, he would surrender his Advocate's license issued by the Bar Council. It was noticed that in any case, the respondent had got experience of one year w.e.f. 1994 being an active working partner in M/s Shiraz Medicine Company along with his mother.

Ld. Single Judge further held that as per clauses 22.1 and 22.2 of the brochure the complaint had to be made within 30 days of the declaration of result. Hence, the complaint dated 21.09.2011 having been made after more than 30 days of the declaration of result on 23.02.2009, could not have been entertained. Also, as Narinder Singh Sandhu had denied sending the complaint, it had to be treated as anonymous, which was additional reason for not entertaining the same. Additionally, till the filing of the complaint on 21.09.2011, the respondent had made substantial investment in the business. For all these reasons, the impugned order was quashed.

Sh. Kanwaljeet Singh, Ld. Sr. Counsel for the appellant has argued that the Ld. Single Judge has erred in not taking into consideration the fact that the assertion of the respondent in his application form that he had 13 years experience of direct sales being a partner of M/s Shiraz w.e.f., 01.04.1994, is wholly belied by his own letter dated 10.01.2008 (Annexure R-

1/1) to the Chairman Bar Council of Punjab and Haryana, wherein he states that the firm is being run by his mother and he is not an active partner in the business. He relies on decisions of the Supreme Court in **B.R. Chowdhury v. Indian Oil Corpn. Ltd., (2004) 2 SCC 177**, and **Shiv Kant Yadav v. Indian Oil Corpn., (2007) 4 SCC 410**, to contend that any misrepresentation in the application is sufficient ground to terminate the dealership.

Ld. Counsel has further argued that the reliance by the Ld. Single Judge on clauses 22.1 and 22.2 of the brochure to hold that a complaint filed beyond 30 days of the declaration of result cannot be entertained, is misplaced, because as per clause 19(g) of the brochure, if any information furnished by an applicant is found to be false at any time, the allotment is liable to be cancelled. As the information submitted by the respondent about his experience was found to be false, the LOI was rightly cancelled.

Ld. Counsel for the respondent on the other hand has argued that there is no concealment on his part. He stated that in his detailed representation dated 18.2.2012, it had been clearly explained that his experience commenced from 1.4.1994, when he joined as a partner in the ancestral business and a new partnership deed was executed between him and his mother Kanta Malhotra. Another partnership deed was executed in 2002 due to change in name of the firm from M/s Shiraz Medicine Co. to M/s Shiraz with mutual consent of both the partners since business of sale of medicines was closed and retail business of sale of general items was started. On 8.1.2008 the firm was dissolved and the very next day on 9.1.2008 fresh deed of partnership was executed showing the respondent as 'Dormant Partner'. Therefore, the respondent had remained associated since 1994 with the ancestral business as a partner. The sales tax record, the PAN Nos and

the income tax returns fully supported this claim. He argued that merely because the respondent informed the Bar Council about his ancestral business only in 2008 cannot detract from the factum of his experience as a partner of the firm which is clearly borne out from the record. He further argued that change in the name of the firm from M/s Shiraz Medicine Co. to M/s Shiraz in 2002 would make no difference to the experience of the respondent especially when the partners in both remained the same. Therefore, there was no concealment or misrepresentation on his part. The requirement of experience as per the brochure was for one year only, whereas he had 13 years experience.

Having heard Ld. Counsel for the parties, we are of the view that there is merit in the argument of the Ld. Counsel for the appellant that the Ld. Single Judge has wrongly held that the complaint could not have been entertained in view of Clauses 22.1 and 22.2 of the brochure for having been filed more than 30 days after the declaration of result. Clause 19(g) of the brochure clearly provides that if any information furnished by an applicant is found to be false at any time, the allotment is liable to be cancelled and this clause would apply in the event of any misrepresentation by an applicant.

But the question is, was there any misrepresentation on the part of the respondent justifying cancellation of the LOI?

It has come on record that the respondent has been a partner from 1.4.1994, when he was inducted as a partner in M/s Shiraz Medicine Company, to 8.1.2008, when the firm M/s Shiraz was dissolved. It was only in the fresh partnership deed executed on 09.01.2008 that the respondent had joined as sleeping partner. The documents referred to by the Ld. Single Judge indicate that the firms had been filing income tax returns from 1994 to 2007

which had been annexed as Annexure P-15 (Colly.) Certificate of the Income

Tax Department, Annexure P-17 also confirmed that the firm earlier named as M/s Shiraz Medicine Company, Post Office Chowk, Gurdaspur and later named as M/s Shiraz, Post Office Chowk, Gurdaspur had been regularly and without fail filing Income Tax returns since their existence. The documents annexed also substantiated that the respondent was holding PAN card in respect of the firm M/s Shiraz Medicine Company which clearly indicated that he had income from the firm in his capacity as a partner thereof and did not have any professional income as Advocate from 1994 to 1998.

As per the brochure of June 2007 for selection of LPG Distributors the evaluation for the sub- head experience is to be done as under:

Experience	Direct sale/Home delivered products (including LPG distributorships)	4	Marks to be awarded based on the information in the application for experience of running or working in an establishment for minimum one year. Marks will be awarded on the quality rather than amount of experience. The quality of experience will be judged based on the response to the questions related to experience in Direct Sales, Home delivered products, Trade of petroleum products hospitality service industry etc. by the candidate in interview.
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	Other petroleum products	3	
	-----	----	
	Any other trade	2	
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	Sub Total Maximum Marks	4	

For experience of direct sale in respect of any trade other than LPG distributorship or other petroleum products, two marks could be awarded. The respondent has been awarded two marks under this head. The marks were to be awarded based on the information in the application for experience of running or working in an establishment for minimum one year. It is further specified that marks will be awarded on the quality rather than amount of experience. The quality of experience will be judged based on the response to the questions related to experience in Direct Sales, Home delivered products, trade of petroleum products hospitality service industry etc. by the candidate

in interview. Thus, as per the evaluation criteria the emphasis is not on the length of experience but on the quality of experience.

In our view, the documents on record amply substantiate the claim of the respondent regarding his experience of 13 years. That the name of the firm in the partnership deeds of 1994 and 2002 is different, would not detract from the factum of the respondent being a partner therein as per the recitals in the deeds and consequently having the requisite experience as partner.

Any lapse by the respondent in informing the Bar Council about his being a partner, also cannot lead to any adverse inference about his claim of being a partner.

Thus, in our view there has been no misrepresentation by the respondent in his application form regarding his experience, warranting cancelling the LOI issued in his favour.

Accordingly, we find no merit in the appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

01.04.2016
Atul