

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.06.2017

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.917 of 2012
and
MP.Nos.1 & 2 of 2012

K.A.Prabhu

... Petitioner

Vs.

1. The Regional LPG Manager,
Bharat Petroleum Corporation Limited,
Southern Regional Office,
No.1, Ranganathan Gardens, 11th Main Road,
Anna Nagar West, Chennai - 600 040.
2. Mr.R.Kalirajan(CHPR37)
3. Mr.A.Murugan (CHPR21)
4. Mr.B.Vijay Kalimuthu(CHPR25)

... Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring that the action of the first respondent in placing the respondents 2 to 4 in the first, second and third position for award of Bharat Gas Distributorship for Porur Area as illegal and consequently direct the first respondent to place the petitioner in the first position and award the Bharat Gas Distributorship for Porur Area to the petitioner.

For Petitioner : Mr.D.Senthil Kumar
For M/s.J.Lakshmi Narayanan

For Respondent : Mr.O.R.Santhana Krishnan,
For R1

O R D E R

The petitioner has filed this writ petition with the prayer of writ of declaration declaring the action of the first respondent in placing the respondents 2 to 4 in the first, second and third position for award of Bharat Gas Distributorship, for Porur Area, as illegal and consequently direct the first respondent to place the petitioner in the first position, and award the Bharat Gas Distributorship for Porur Area to the petitioner.

2. The short facts leading to the filing of the writ petition are as follows:

2.1. The first respondent has issued a notice for appointment of LPG distributors under various categories in the State of Tamil Nadu and Puducherry on 15.10.2010 in "The Hindu Newspaper". The petitioner had applied for LPG distributorship, for the Porur area, under the open category. He was called for personal interview, which was held on 28.11.2011.

2.2. The very next day i.e., on 29.11.2011, the first respondent had published the list of empanelled candidates for Domestic LPG Bharat Gas Distributorship and as per the said list, one Mr.R.Kalirajan, who is the second respondent herein, and two others viz., Mr.A.Murugan and Mr.B.Vijay Kalimuthu, respondents 3 and 4 herein, were awarded 98.66, 97.83 and 93.83 marks respectively and accordingly, they were placed in the first, second and third position, respectively.

2.3. However, the petitioner was awarded 92.84 marks and was accordingly placed in the fourth place. Thereafter, the petitioner had made a representation on 13.12.2011 to the first respondent raising certain grievances against the manner of evaluation and awarding of marks, especially in respect of financial capability of the petitioner.

2.4. The grievance of the petitioner appears to be that the petitioner since was having enough financial sources, as per the guide lines issued in this regard by the first respondent, the petitioner ought to have been awarded full 35 marks for the category of "capability to provide finance".

3. In the above context Mr.D.Senthil Kumar, learned counsel appearing for the petitioner would draw the attention of this Court as to the method of awarding total 100 marks under various head given by the first respondent, which in fact has been extracted in paragraph 4 of the affidavit filed by the petitioner in support of the writ petition, which is extracted hereunder for better appreciation :

I submit that the LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters.

Sl. No.	Parameter	Individual including Partnerships
1	Capability to provide infrastructure & facilities	35
2	Capability to provide finance	35

Sl. No.	Parameter	Individual including Partnerships
3	Educational Qualifications	15
4	Age of individual	04
5	Experience	04
6	Business ability / acumen	05
7	Personality	02
	Total	100

4. The learned counsel appearing for the petitioner would further submit that the petitioner's main grievance is that in respect of "capability to provide finance category", though the petitioner is entitled to get full marks of 35, he was awarded only 29 marks. In this regard, the learned counsel drew the attention of this Court with regard to total marks awarded to the petitioner, which is at para 5 of the affidavit and the same is extracted hereunder:-

I submit that I was awarded with 92.84 marks out of 100 marks for the above said parameters and the particulars of the marks awarded under each parameters are as follows :

Sl. No.	Parameter	Marks Awarded
1	Capability to provide infrastructure & facilities	35
2	Capability to provide finance	29
3	Educational Qualifications	15
4	Age of individual	04
5	Experience	04
6	Business ability / acumen	04.17
7	Personality	01.67
	Total	92.84

5. The learned counsel for the petitioner submitted that in respect of "financially sound and funds category" full marks i.e. 18/18 was awarded to the petitioner. Regarding the ability to arrange loan also, full marks 7/7 was given to the petitioner. In the category of "Assets", though full marks of 5 to be awarded to the petitioner, he was awarded only 4/5 and in this regard, the petitioner does not have any grievance.

However, his grievance is that under the category of "Income", maximum marks of "5" had been awarded to others. Though the petitioner is having income sources and he would be entitled to get five full marks under the said category "income", but he was awarded nil. Therefore, the petitioner's grievance is that if the said 5 marks were added, the petitioner would surpass the candidates who are placed at second and third position, who are none other than the respondents 2 to 4.

6. Mr.O.R.Santhana Krishnan, learned counsel appearing for the first respondent submitted that in respect of awarding the marks to the petitioner for his "capability to provide finance", the maximum marks 29/35 was given to him. As he was not entitled to get 5 marks under the heading "income", he was not awarded any marks, and non-awarding of marks in the category of "income" was based on the criteria fixed by the first respondent. Therefore, he would submit that the petitioner may not be entitled to get any mark under the category of "income" correspondingly under the heading "finance capability to provide funds".

7. The learned counsel for the first respondent would also submit that since the second respondent being the person who got the highest marks of 98.66 out of 100, he was awarded the distributorship on 06.10.2012, pursuant to which, the second respondent has started and is running the distributorship for the Porur Area.

8. This Court has considered the said submissions made by both sides and perused the records placed before this Court.

9. According to the learned counsel for the petitioner the main grievance is that though the petitioner was eligible and entitled to get full "5" marks under the category "income", the same was not awarded and had the said 5 full marks been awarded, certainly, he would have surpassed the other candidates, especially the candidate who have been placed in the first place, i.e. the second respondent herein.

10. Though the said fact has been disputed by the learned counsel appearing for the first respondent by stating that the petitioner would not be entitled to get any marks under the category "income" for the heading "capability to provide finance", this Court is of the view that the said issue need not be dealt with at this stage. The reason being, assuming that the petitioner's case is accepted and even five full marks is given under the heading "income" and if it is added in the category of "capability to provide finance", even then, he would not surpass the marks obtained by the second respondent.

11. The petitioner has already been awarded 92.84 marks and if the five full marks for the category "income" is added, his total marks would be 97.84, whereas the second respondent obtained 98.66 marks. Therefore, still the second respondent has to be placed "first" and therefore, the petitioner cannot claim that the award of distributorship may be given to him.

12. Moreover, the second respondent has already been awarded the distributorship as early as on 06.10.2012 based on the marks awarded to him, as first among the candidates, and he has also started running the distributorship nearly for five years. The case of the petitioner cannot stand under the legal scrutiny, even assuming that his plea of giving full marks (5 marks) for the category of "income" under the head "capability to provide funds" is accepted.

13. Therefore, the petitioner has not made out any case for interference by this Court. Accordingly, the writ petition is liable to be dismissed and the same is dismissed.

14. It is needless to state that the dismissal of the writ petition will no way preclude the petitioner from participating in any future competition for getting distributorship from the first respondent/Corporation, if he is otherwise eligible for the same. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mk/ms

To

The Regional LPG Manager,
Bharat Petroleum Corporation Limited,
Southern Regional Office,
No.1, Ranganathan Gardens, 11th Main Road,
Anna Nagar West, Chennai - 600 040.

+1cc to Mr.O.R.Santhana Krishnan, Advocate in sr.no.44843

W.P.No.917 of 2012

VGII(CO)
NR 13/07/2017