

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

C.W.P.No.17672 of 2012 (O&M)

Date of Decision: January 25th, 2017

**M/s.Swastik Filling Station, Village Gudha, Tehsil Ladwa, District
Kurukshetra.**

...Petitioner

Versus

Indian Oil Corporation Ltd., Panipat & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.A.K.Chopra, Senior Advocate with
Mr.G.S.Bhandal, Advocate,
for the petitioner.

Mr.Ashish Kapoor, Advocate,
for the respondents.

AMIT RAWAL, J.

Civil Misc.No.3002 of 2016

Brochure Annexure R1/1 is taken on record.

CM stands disposed of.

CWP No.17672 of 2012

Petitioner-M/s Swastik Filling Station, Village Gudha, Tehsil
Ladwa, District Kurukshetra through its partner Balwinder Singh son of
Man Singh has invoked the extra-ordinary writ jurisdiction of this Court
seeking writ in the nature of certiorari for setting-aside and quashing the
advertisement dated 30.6.2012 (Annexure P-1), which has been caused for
inviting fresh applications for selection of Retail Outlet Dealers (for
Kisaan Sewa Kendra), location at Village Gudha, Tehsil Ladwa, District
Kurukshetra on the premise that no opportunity of hearing was given to the

petitioner and also the principles of natural justice have not been complied with as in the previous advertisement, the petitioner was placed highest in the merit/selection list.

Mr.A.K.Chopra, learned Senior Counsel assisted by Mr.G.S.Bhandal, representing the petitioner has submitted that the petitioner, while challenging the selection of one Rajiv Khatri, who was ineligible for the location in question for allotment of Retail Outlet, had earlier filed Civil Writ Petition No.7748 of 2011 as the petitioner had been wrongly placed at Sr.No.2. Under the directions of this Court, a fresh revaluation was ordered to be made and the petitioner was found to be successful and resultantly placed at Sr.No.1 and, therefore, the writ petition, vide order dated 2.3.2012 (Annexure P-3) was rendered infructuous. Instead of complying with the directions of this Court in letter and spirit and without passing any final order and affording opportunity of hearing to the petitioner, the respondents have issued the impugned advertisement (Annexure P-1) inviting fresh applications for the same selection.

He further urged that the petitioner submitted representation on 22.5.2012 (Annexure P-4), but the same remained undecided. The fact remains that the respondents issued the impugned advertisement for fresh selection in a totally malicious and malafide circumstances, being in contravention of the order of this Court. No reasoning has been assigned for causing the fresh advertisement once the petitioner has been selected at Sr.no.1 in the earlier process. He further submitted that the petitioner is a partnership firm consisting of three partners, namely, Balwinder Singh, Jasbir Singh and Narender Singh. All are income tax assesses and co-owners of the land.

Balwinder Singh was running a poultry farm with production of 70000 eggs per day and has sufficient and good business/sales experience as about 20 workers were/are working under him. He was/is also President of Ch.Matu Ram, College of Education and another Institute, namely, J.R.Institution of Education. In the said Colleges, he had the supervisory control of the work of entire administrative staff, including their appointment, disbursement of salary, control of admission and proper incurring of expenses for the effective running and managing of the family. Balwinder Singh also produced a certificate from the Haryana Auto Service Station, Ladwa, District Kurukshetra to the effect that for about six months, he managed the work of the petrol pump and also produced the detailed particulars of bank deposits, besides the copy of the deed of partnership firm. The other two partners are equally qualified and well experienced in every respect and both of them have sufficient finances and resources available with them.

He further submitted that there has been violation of doctrine of legitimate expectation. In support of his contention, he has drawn the attention of this Court to the selection list, whereby 100 points have been awarded under different heads, the detail of which is as under:-

1	Capability to provide land and infrastructure facilities	35 marks
2	Capability to provide finance	25 marks
3	Educational qualification	15 marks
4	Capability to generate business	10 marks
5	Age	4 marks
6	Experience	4 marks
7	Business ability/acumen	5 marks
8	Personality	2 marks.

The petitioner firm has been assigned 9.8 under the head “capability to arrange funds”. Advertisement (Annexure P-1) also prescribes

the eligibility condition of capability to provide finances, thus, the finance available in the bank account is not only to be seen but the documents also, which have been submitted with the application. The stand of the respondents in the written statement had been that on the basis of the field verification, it was found that petitioner, namely Narender Singh had submitted a bank statement upto 22.9.2010 showing the balance of Rs.2,87,233/-, whereas the last date of submission of the form was 25.9.2010 and on that date, the amount in his account was Rs.11,228/-. In case of Balwinder Singh, who had shown the balance of Rs.1,22,677/-, only a sum of Rs.6677/- has been observed. The aforementioned factum has been brought to the notice of this Court from the perusal of the file of the Indian Oil Corporation Ltd. (for short "Corporation"), which was ordered to be summoned vide order dated 21.1.2016.

He further submitted that in case the petitioners were ineligible, they could not have been considered by the Evaluation Committee for the purpose of awarding marks. No show cause notice was given before the respondents could cause advertisement for inviting fresh applications. Copy of the Brochure has been annexed by Mr.Ashish Kapoor as Annexure R1/1 and that has also been referred by both the parties, particularly by Mr.Chopra. Clause 13.1.1 of the Brochure deals with the norms for evaluating the candidates and the expression used in sub-clause (ii) (b) is "capability to provide finance". The parameters for allocation of marks have also been referred in Clause 13.1.1 of the Brochure (Annexure R1-1).

He further contended that it is not the liquid cash in the form of bank balance, fixed deposits, shares of listed companies etc. to be considered. Fixed and movable assets include own land, buildings, shops,

house, vehicles etc., much less income from other sources, like agriculture, business, interest, rent, royalty etc., supported by documentary was included, but the evaluation should be based on the documents submitted, but not on the basis of the field verification of bank account only. Not only this, even the letter ensuring credit from Banks/Financial Institutions is also one of the conditions for finding capability to provide finance. The alleged decision of the Corporation to invite fresh applications through advertisement is totally fallacious, arbitrary, illegal and for some other considerations and, thus, urges this Court for setting-aside the advertisement with a direction to the respondents to consider the claim of the petitioner for the purpose of issuance of Letter of Intent/dealership.

Per contra, Mr.Ashish Kapoor, learned counsel for the respondents submitted that there has been concealment on the part of the petitioner and, therefore, as per the provisions of Clause 19.2 of the Brochure, if the information provided by the applicant is found to be false at any point of time before or after the appointment as a dealer, the Corporation is empowered to cancel the allotment. Clause 19.2 reads as under:-

“19.2 FURNISHING OF FALSE INFORMATION:

If any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer, the allotment will be cancelled forthwith and dealership terminated in case commissioned.”

He has also drawn the attention of this Court to Clause 17.1 of the Brochure dealing with conducting field verification, to contend, that in case the candidate is not found suitable and fails to fulfill the terms and conditions of awarding dealership, the same is to be cancelled and offer

would be given to the 2nd candidate, but since in this case there was no second candidate, owing to such circumstance, the fresh advertisement was caused. The bank statement upto 25.9.2010, which was cut off date, was intentionally not enclosed, but a wrong figure was given, which was prior thereto and, therefore, it was assessed that the petitioner did not have the financial capacity. It is in this backdrop of the matter, the advertisement was caused, thus, the Corporation cannot be estopped from inviting fresh applications while rejecting the claim of the petitioner by taking the aid of the provisions of Clause 19.2 *ibid*. In support of his contention, relied upon the judgment rendered by the Division Bench of this Court in an identical matter, i.e., **L.P.A.No.866 of 2014 (Sunita Versus Indian Oil Corporation Ltd. & another)** decided on 21.5.2014 to contend, that where the information provided by the candidate was found to be incorrect, finding account statement appended thereto showed certain deposits, but the position was diluted as a consequence of major withdrawals, and also relied upon the judgment of the Hon'ble Supreme Court in **Shiv Kant Yadav Versus Indian Oil Corp.and others, 2007 (4) SCC 410** that where for the purpose of allotment of dealership, there is a mis-statement/mis-declaration of the income, the Corporation would be within its right to withdraw the letter of intent and on similar lines the judgment of the Division Bench in **Ramesh Kumar and another Versus General Manager, Hindustan Petroleum Corporation Limited and others, 2013 (1) R.C.R. (Civil) 233.**

I have heard the learned counsel for the parties, appraised the paper book and the annexures attached thereto and of the view that there is force and merit in the submissions of Mr.Chopra as the argument of Mr.Kapoor has not been able to cut an ice.

During the course of hearing the arguments, Mr.Kapoor had also given the original file containing the application form and all the documents attached thereto, much less Filed Investigation Report (FIR). I have seen the field investigation report. It only deals with investigation of the bank account. The report is dated 11.4.2012. The operative part of the same reads as under:-

“On investigation of a complaint from Sh.Balvinder Singh, the complaint got substantiated and re-evaluation of the KSK location Gudha had been done. In the re-evaluation, application submitted under partnership by Sh.Balvinder Singh, Narinder Singh & Jasbir Singh declared **as one and only empanelled** candidates.

FIR has not been found in order since variation has been observed in respect of finances claimed and finances available in case of 2 out of 3 partners i.e. Sh.Narinder Singh & Sh.Balinder Singh. In case of Sh.Balinder Singh only Rs.6677/- balance has been observed instead of Rs.122677/- on the date of application i.e. 25.09.10. In case of Sh.Narinder Singh only Rs.11228/- balance has been observed instead of Rs.287233/-.

Recommendation:- In view of details given above, it is recommended for cancellation of empanelment of Sh.Balvinder Singh, Narinder Singh & Jasbir Singh for the KSK location 'GUDHA' at Distt.Kurukshetra.”

On the next page of the report, it is found that the Commissioner or the Field Investigation Officer did not verify any other records, whereas on the contrary, while submitting the application by Narender Singh, Balwinder Singh and as well Jasbir Singh, various other documents were annexed, the detail of which is as under:-

Documents submitted by Narender Singh qua financial capability

a) Business/selling experience and experience of

supervision of personnel;

- b) Certificate from Haryana Auto Service Station, Ladwa;
- c) Statement showing gross commission, expenditure and profit;
- d) Source of funds (Financial Capability) by attaching the affidavit of Ramesh Kumar, Sole Proprietor of Raj Battery House at Ladwa and showing that he had immovable property, i.e., half share in shop/plot No.95 size 20ft x 50ft., deposits in the bank account= Rs.287,233/-, deposit with M/s Shiv Trading Co., Radaur=Rs.11,00,000/- and regarding immovable property Rs.13,50,000/-.
- e) Certificate from M/s.Shiv Trading Co., Radaur with regard to deposit of Rs.11,00,000/-;
- f) Certificate from Raj Battery House, Ladwa that Narender Singh along with other partners has equal share, the turn of which is about Rs.35,00,000/-; and
- g) Family annual income=Rs.6,39,500/-.

Documents submitted by Balwinder Singh other than bank statement:

- i) Source of Funds (Financial Capability);
- ii) Deposits with M/s Maan Singh Prem Singh Commission Agents, Ladwa= Rs.10,00,000/-;
- iii) President of J.R.Institute of Education and Ch.Matu Ram College of Education showing the deposits from the aforementioned Presidentship as Rs.3,87,890/-, bank deposit of Rs.1,22,677/-;
- iv) Certificate from M/s.Maam Singh Prem Singh Commission Agents, Ladwa;
- v) Certificate from Oriental Bank of Commerce, Ladwa showing that Balwinder Singh had been doing the business and that he had the capability of taking loan of Rs.10,00,000/-; and
- vi) Family annual income= Rs.17,34,000/-.

Documents submitted by Jasbir Singh

- a) Source of Funds (Financial Capability) showing income from J.R.Institute of Education and Ch.Matu Ram College of

Education=Rs.3,87,890/, bank deposits= Rs.2,01,112/- and deposits with M/s Maan Singh Prem Singh, Commission Agents, Ladwa= Rs.12,00,000/-.

b) Certificate from M/s.Maam Singh Prem Singh showing deposit of Rs.12,00,000/-.

All these factors/documents, while conducting the field investigation, have not been considered by the Corporation. In my view, the Corporation cannot press into service the provisions of Clause 19.2 of the Brochure by taking the aid of the judgment rendered by the Division Bench in **Sunita (supra)**. There could have been concealment had the aforementioned documents been not enclosed, except the bank statements.

Mr.Kapoor, during the course of arguments, also relied upon the ratio decidendi culled out by the Division Bench of this Court in **Jitender Kataria Versus Hindustan Petroleum Corporation Limited, Civil Writ Petition No.12247 of 2007**, decided on 3.4.2008 while relying upon the decision rendered in **Satyavir Singh Versus Union of India, (1985) 4 SCC 252** to contend that where there is material concealment of information, even opportunity of hearing should not have been given. In my view, the case of the petitioner does not fall within the expression “concealment of information” as per the provisions of Clause 19.2 of the Brochure. The original file reveals that the Field Investigation Officer did not examine the other documents, but only looked into the bank statements. Such an approach adopted by the Field Investigation Officer at the helm of affairs is not appreciated, *prima-facie*, is unacceptable. The approach has to be pragmatic and cannot be mechanical and sketchy, as noticed above.

To my mind, causing of the advertisement by inviting fresh applications was totally fallacious and repugnancy. In case the petitioner

was not eligible, the Evaluation Committee could have rejected his application instead of awarding 9.8 marks. Clause 19.2 of the Brochure empowers the Corporation to verify the documents even after the verification, but that cannot be exercised in above noted arbitrary manner. No reasons, much less cogent reasons have been assigned in not examining the other documents to assess the financial capability of the petitioners.

The ratio decidendi culled out in other judgments relied upon by Mr.Kapoor would not apply in this case as the officer of the Corporation failed to examine the other documents. No single instance of concealment of information on the part of the petitioner-firm has been proved.

Resultantly, I am of the view that causing of the advertisement was nothing but an outcome of some other considerations. Accordingly, advertisement (Annexure P-1) is set-aside.

Writ petition stands allowed.

Original file retained is ordered to be returned to the learned counsel for the Indian Oil Corporation.

January 25th, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No