

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

1. **CWP No. 10931 of 2016**
Date of Decision: 17.04.2018
KAMLA DEVIPetitioner

Vs.

INDIAN OIL CORPORATION LTD. AND OTHERSRespondents

2. **CWP No. 14547 of 2016**
SUSHMA DEVIPetitioner

Vs.

UNION OF INDIA AND OTHERSRespondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. H.N. Sahu, Advocate,
for the petitioners in both the petitions.

Mr. Ashish Kapoor, Advocate,
for respondents No. 1 to 4.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J. (Oral)

This order shall dispose of two writ petitions bearing CWP No. 14547 of 2016 titled as Sushma Devi Vs. Union of India and Others, and CWP No. 10931 of 2016 titled as Kamla Devi Vs. Indian Oil Corporation Ltd. and others as the issue involved in both the petitions is common. However, for the sake of convenience, the facts are being extracted from CWP No. 14547 of 2016.

The Indian Oil Corporation Ltd. (hereinafter referred to as “Corporation”), for the purpose of appointing dealers for the Kisan Seva Kendra (Rural Retail Outlet) in different categories at different places in the State of Haryana, had issued brochure dated 01.03.2012 called “Indian Oil Corporation Ltd. Brochure for Selection of Petrol/Diesel Kisan Seva Kendra (Rural Retail Outlet Dealers)” in which one of the conditions, for being eligible to apply for the said dealership, was that the applicant should be a

resident of the concerned District. The relevant Clause 4.1 of the Brochure in this regard is reproduced as under: -

“4.1 Nationality: Should be Indian national. The applicant should be resident of the concerned District under which the location has been advertised. The applicant should submit a Residence Certificate as per format given in Appendix C”

The dispute in the present petitions is regarding the retail outlet for the location of village Kherari, Dadri Road, District Rohtak, in the open (w) category.

There were 4 applicants, who were duly interviewed on 20.12.2012 and marks were given to them as per Clause 13.1.1 of the brochure which deals with the norms for evaluating the candidates. The Corporation has provided in the brochure dated 01.03.2012, the minimum qualifying marks as 50% of the total marks in case of women. The relevant portion in this regard is reproduced as under: -

“(e) Minimum Qualifying marks (for open category locations) – 60% of the total marks

Minimum qualifying marks (for all reserved locations including locations reserved for women) – 50% of the total marks.

As per marks sheet, respondent No. 6-Vidyawanti secured 71.2% marks and was placed at No. 1 in the merit. Sushma Devi, petitioner in CWP No. 14547 of 2016 secured 46.83% marks, Meena Kumari secured 47.42% marks and Kamla Devi petitioner in CWP No. 10931 of 2016 secured 14.50% marks. All the three applicants, who had scored less than 50% marks, were declared NQ (Not Qualified). Since respondent No. 6 was the only qualified candidate, therefore, a Letter of Intent (LOI) was issued to her on

23.03.2013 on the basis of which she had commissioned the said dealership w.e.f. 29.09.2015.

According to the petitioner, respondent No. 6 was not qualified for the reason that she was not a resident of the location i.e. District Rohtak for which she had applied for the dealership in question. Rather, his case is that respondent No. 6 is a resident of Rohini, Delhi and in this regard has referred to the voter list for the year 2012 in which respondent No. 6 has been enrolled as voter of the Assembly Constituency, 6-Rithala, (General NCT of Delhi, Block-B, PKT. 8, Rohini, Sector 5, House No. B-8/109). It is also alleged that the said house belongs to respondent No. 6 which has also been admitted by her. On this premise, the petitioner, when did not receive any response from the Corporation on his complaint, filed this petition on 22.07.2016. The second petition i.e. CWP No. 14547 of 2016 was also filed on this ground and both were ordered to be heard together.

Learned counsel for the petitioner has argued that since, respondent No. 6 has furnished the false information, therefore, the allotment of the dealership in question, made by the Corporation, in favour of respondent No. 6 deserves to be cancelled and has referred to Clause 19.2 of the brochure in this regard which read 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 dealer, the allotment will be cancelled forthwith and dealership terminated in case commissioned.”

In reply to Para-9 of the writ petition, learned counsel for respondent No. 6 has submitted that she is residing with her sons in Village

Kherari, District Rohtak from the last 65 years and occasionally visits Delhi to meet her grand-children residing there. It is submitted that she and her sons got 30-35 acres of land in Village Kherari, District Rohtak. The *Sarpanch* of the said village also notified her residence in the said village. It is submitted that the voter card issued in the year 2008 at Delhi was an error of omission and commission and in this regard, she has obtained an information under RTI Act 2005 from the office of Assistant Electoral Officer, who has testified that the name of respondent No. 6 is not included in the electoral roll as on date as per their office record. Learned counsel for respondent No. 6 further submits that in all her other documents i.e. Adhar Card, Ration Card etc., address of Village Kherari, District Rohtak is mentioned.

Learned counsel for the Corporation has also submitted that this petition deserves to be dismissed on the ground of delay and laches which has been filed almost after three years from the date of issuance of LOI dated 23.03.2013 to respondent No. 6. He has referred to a decision of the Supreme Court rendered in the case of Virender Chaudhary Vs. Bharat Petroleum Corporation and others [JT 2008 (12) SC 488].

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

The issue involved in these petitions is as to whether the LOI issued to respondent No. 6, on being successful on 20.10.2012, for the purpose of awarding of dealership of KSK retail outlet, should be set aside on the ground that she was not a resident of Village Kherari District, Rohtak at the time of filing an application for the same?

The other question would also arise as to whether the present petition deserves to be dismissed on the ground of delay and laches as it has been filed almost after three years from the date of issuance of LOI in favour of respondent No. 6?

It is a matter of fact borne out from the record, that the petitioner(s) in both the cases do not qualify as they have secured only 46.83% and 14.50% marks respectively whereas 50% is kept as the minimum benchmark for the purpose of awarding the dealership to a woman. In any case, the petitioner would not get the dealership even if the dealership allotted to respondent No. 6 is cancelled.

Be that as it may, the agitation of the petitioner is that respondent No. 6 was not the resident of Village Kherari, District Rohtak at the time of filing application because the advertisement was made on 30.06.2012 and at that time she had got her vote made at Delhi of Rithala Assembly Constituency. In this regard, sufficient material has been brought on record by respondent No. 6 to show that she has been residing in Village Kherari, District Rohtak throughout and used to visit Delhi to meet her grand children otherwise, she is a permanent resident of Village Kherari, District Rohtak as she has her landed property there.

In this regard, respondent No. 6 has also placed on record a certificate issued by the Tehsildar, on the verification of Village Patwari, which has been entertained by the Corporation for the purpose of treating her as a resident of Village Kherari, District Rohtak. Respondent No. 6 has also got Ration Card and other documents like Adhar Card etc. of village Kherari and not of Delhi. It appears that there was some mistake committed by the

Electoral Department or by the family members of respondent No. 6 that her name was put to the representative who visited their house for the purpose of making votes otherwise, on the information supplied to respondent No. 6 on 31.03.2018, the name of respondent No. 6 is not included in the electoral rolls as on date as per the record of the Election Department of Delhi. All these would show that respondent No. 6 is a resident of Village Kherari, District Rohtak and not of Delhi.

Insofar as the question as to whether the petition deserves to be dismissed on the ground of delay and laches is concerned, I am one with the contention made by the learned counsel for the Corporation that it would be late in the day to cancel the allotment because sufficient money must have been spent by respondent No. 6 for the purpose of commissioning the retail outlet. If the petitioners were aggrieved against the issuance of LOI, issued as far back as 23.03.2013, then they should have filed this writ petition immediately before this Court to challenge the LOI and should not have come to the Court even after one year of commissioning of the retail outlet.

In view of the above, I do not find any merit in the present writ petitions and the same are hereby dismissed, though without any order as to costs.

April 17, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned :

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Yes / No

Whether Reportable :

Yes / No