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

CWP-7590-2015

Date of Decision:27.03.2018

Anita Sood and another ... Petitioners

Vs.

Union of India and others ... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present : Mr. S.S. Narula, Advocate for the petitioners.

Mr. Namit Kumar, Advocate for respondent No.1.

Mr. Ashish Kapoor, Advocate for respondent No.2.

Mr. S.K. Garg, Narwana, Sr. Advocate with
Mr. Kshitij Bharti, Advocate
for respondent No.4.

RAKESH KUMAR JAIN, J. (Oral)

The petitioners have challenged the order dated 23.01.2015 by which their candidature as a partnership firm for allotment of distributorship of LPG at Chunni, District Fatehgarh Sahib has been rejected.

In brief, the Indian Oil Corporation (for short "the Corporation") issued an advertisement in the daily newspapers dated 18.09.2006 inviting applications for LPG Distributorship in Open Category (W) at Chunni, District Fatehgarh Sahib.

Both the petitioners, who though are individual, had applied as partners in terms of the provisions of the BROCHURE, SELECTION OF LPG DISTRIUBUTORS, JUNE 2006 (for short "the Brochure") in which it is provided that in case of partnership, each partner should individually meet the specified eligibility criteria, should also submit separate application form along with separate application fee and submit a copy of the partnership deed along with the application. The petitioners filed their respective applications.

The Brochure further provide the norms for evaluating the merit of candidates for which certain parameters were laid down which are as under:

a)	Capability to provide infrastructure	35 marks
b)	Capability to provide finance	35 marks
c)	Educational qualifications	15 marks
d)	Age	4 marks
e)	Experience	4 marks
f)	Business ability/acumen	5 marks
g)	Personality	2 marks
Total Marks		100 marks

Though, total 35 marks are provided in respect of capability to provide finance but these were further divided into various heads, like Financially sound Funds (as on date of advertisement) (max. 18 marks); ability to arrange loan (max. 7 marks); Assets (as on date of advertisement (Fixed and moveable assets) (max. 5 marks) and income i.e. income from business, agriculture, interest/rent earning royalty etc. per annum (max 5 marks). It would be better explained by drawing the following table which itself is provided in the brochure:

Criteria	Sub head	Description	Max. Marks	Evaluation
Capability to provide finance	Financially sound funds (as on date of advertisement)	(a) Free and un-encumbered fixed deposits in scheduled banks or any other document/resource which can be readily converted to liquid cash to cover working capital/infrastructure requirements.	18 marks	FD/NSCS/Shares/any other investment bonds in the name of self for family members as defined above under relationship clause. Award 0.1 mark for every Rs.10,000/- (ten thousand) Maximums marks-18 (e.g. Value is Rs. Marks Rs.10,40,000 10.4 Rs.10,49,999 10.4 Rs.10,50,000 10.5 Rs.18,00,000 & above 18.0
	Ability to arrange loan	(b) Bankers/Financial institution certificate for credit worthiness and willingness to extend loan, if required	7 marks	7 marks in case no Credit worthiness certificate from bankers but funds are more than 20 lakhs as mentioned at (a) above. In case of production of certificate forcredit worthiness awarding to extend loan marks to be awarded as under: Range of loan Rs — Marks to be Awarded > = 2 lac to < 4 lac 1 > = 4 lac to < 6 lac 2 > = 6 lac to < 7 lac 3 > = 7 lac to < 8 lac 4 > = 8 lac to < 9 lac 5 > = 9 lac to < 10 lac 6 > = 10 lac 7

Criteria	Sub head	Description	Max. Marks	Evaluation
	Assets (as on date of advertisement)	(c) Fixed and moveable assets	5 marks	5 marks in case no immovable and moveable property but funds are more than 20 laks as mentioned at (a) above. Other wise marks to be awarded as under Range of Assets-value / Marks to be Awarded >=3 lacs< 6 lacs 1 >=6 lacs< 9 lacs 2 >=9 lacs< 12 lacs 3 >=12 lacs< 15 lacs 4 >=15 lacs 5
	Income	(d) Income from business, agricultural, interest/rent earning royalty etc. per annum >=2 lakh >=1.5 < 2 lakh >=1 < 1.5 lakh >=1 < 1 lakh Sub total maximum marks	 5 4 3 2 35	Income as per income tax return of the last financial year and or affidavit on income

The averments made in the application by the petitioners were considered by the committee who awarded 83.13 marks jointly to them and were placed at No.2 in the merit list. Whereas, one Neena Goyal and Renu Bansal who are awarded 87.07 marks and 81.43 marks were placed at serial Nos.1 and 3 respectively. Admittedly, the candidature of Neena Goyal, who was placed at serial No.1 was rejected. Consequently, petitioners who are placed at serial No.2 moved up at serial No.1 for the purpose of claiming distributorship. However, the report reveals that during the FVC, it was found that petitioners have been wrongly awarded 5 marks each in regard to their claim for immovable and movable assets. Besides this it has also been found that the petitioners have given incorrect and false information in the application and further variation was found during the FIR and hence their application was rejected.

Learned counsel for the petitioners vehemently argued that regarding the financial capability of the petitioners, the Brochure itself provides that in case of a married person, clause 4.4 of the Brochure would deal with the Multiple Distributorship Norm (Relationship Clause) and has referred to the definition of “Family Unit” to contend the married person/applicant, would consist of individual concerned, his/her spouse and their unmarried son(s)/daughter(s). It is submitted that since both the petitioners are married women, therefore, their spouse would be included in the family unit and the total income in respect of unit has to be seen as per which petitioners had rightly depicted their worth in their applications as in the case of Harminder Kaur (petitioner No.2), she has mentioned FDs amounting to ₹ 27,00,000/- having been purchased on 25.08.2006 which is more than ₹ 18,00,000/- to get max. 18 marks.

Learned counsel for the respondents has submitted that the petitioners have given false declaration in the application as she has mentioned about the FDs as 'self' instead of being 'jointly held' by her and her husband. In this regard, learned counsel for the respondent-corporation has referred to clause 23. relating to Furnishing of False Information in which it is provided that “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 distributorship would be terminated in case commissioned". Thus, he has submitted that marks awarded by the committee are not as per the norms mentioned in the Brochure because during the field verification it has been found that there is some deficiency/discrepancy in the documents in relation to the averments made in the application form. Learned counsel for the respondents has rather submitted that the petitioners have not filed any affidavit of her husband while she has declared that the FDR belongs to her and further submitted that though Harminder Kaur has filed the affidavit but she has changed the language and in this regard he has drawn the attention of this Court to the language used in the affidavit which read as under:

> *"1. That Anita Sood and Harminder Kaur are the partner of the firm M/s Chunni Gas Centre.*
>
> *2. That if the distributor ship will be given to Smt. Anita Sood and Smt. Harminder Kaur I will support the same by financially."*

He has further referred to the format of the affidavit which is attached as Annexure-C with the application form which read as under:

> *"* *<u>Affidavit</u>*
>
> ***(****To be given by the family member other then applicant)*
> *I,........................ Son/wife of .... Age.......... years resident of .... do hereby solemnly affirm and say as under:*
>
> *1. That my father/mother/son/daughter/wife/husband (Mr/Ms)........(name)has applied for LPG Distributorship of IOC at ..... (location) under .... category against the advertisement made in .... news paper dated ....*

> *2. That in case he/she is selected for LPG Distributorship I will provide financial assistance to the extent of Rs .... which is mentioned at item No.12 under my name in the application submitted by (Mr/Ms)..........for LPG distributorship of IOC at ....*
>
> *I hereby verify that what has been stated above is true to the best of my knowledge and belief and nothing has been concealed therefrom.*
>
> *Solemnly affirmed and declared before me*
> *This-------------------- day of--------------*
>
> | | |
> |---|---|
> | *-----------------------* | *------------------------* |
> | *Signature and seal of Magistrate/Judge/Notary public* | *Signature of persons making affidavit (Name in block letters) "* |

Learned counsel for the respondents has also submitted that the petitioners have been erroneously given 5 marks for fixed and immovable assets because as per the application form, in case of assessment of the assets of property, valuation certificate of Govt approved Valuer is to be attached. The relevant contents of the application form are thus:

> *"(c) OTHER ASSETS / PROPERTY (in case of married applicant-self spouse unmarried son (s) daughters); in case of unmarried applicant-self parents and unmarried brothers)/ unmarried sister (s).) Valuation certificate of Govt approved Valuer to be attached."*

There is no denial to the aforesaid point raised by the learned counsel for the respondents that valuation certificate of Govt. approved valuer has not been attached. The, question would arise as to whether in the absence of such certificate, valuation given by the petitioners in regard to fixed immovable assets can be considered?

The parties are bound to follow the provisions of the Brochure, having regard to the fact that the distributorship is to be awarded by way of competition between the parties who are being awarded marks on every issue and a candidate may win or lose by a small margin. Since the petitioners have not filed valuation certificate of Govt approved Valuer, therefore, marks awarded in this regard to the extent of 5 marks to both of them by the committee are patently illegal and erroneous.

Now the question would be that if the marks which have been illegally and erroneously awarded to the extent of 5 marks to each of the petitioners are deducted from their total marks then whether the petitioners would still be in the race or not? In this regard, learned counsel for the respondents has submitted that if 5 marks are deducted from the marks awarded to both the petitioners then they would be at serial No.2 in the merit list.

After hearing learned counsel for the parties and taking into consideration the above facts and circumstances, I am of the considered opinion that the petitioners have been illegally and erroneously awarded 5 marks in respect of the fixed and immovable assets. Therefore, the matter is remanded back to the Corporation to examine the matter and re-calculate their marks after deducting 5 marks each of the petitioner and declare the result accordingly. Needful shall be done within a period of one month from the date of receipt of a certified copy of this order.

Petition stands disposed of accordingly.

27.03.2018 **(Rakesh Kumar Jain)**
rajeev **Judge**

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**