

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE ANIRUDDHA ROY

MAT 949 OF 2022
with
I.A. No. CAN 1 of 2022

Sadhana Singh

vs.

Union of India & Ors.

For the Appellant : **Mr. Debabrata Saha Roy, Adv.**
Mr. Pingal Bhattacharyya, Adv.
Mr. Subhankar Das, Adv.
Mr. Neil Basu, Adv.

For the Respondents : **Mr. Manwendra Singh Yadav, Adv.**
Ms. Satabdi Naskar Kundu, Adv.

Heard on : **06.07.2022, 29.07.2022,**
11.08.2022 and 25.08.2022.

Judgment on : **28.09.2022.**

CHITTA RANJAN DASH, J.:-

1. This appeal is directed against order dated 06.06.2022 passed in WPA No. 10894 of 2011 dismissing the writ petition filed by the present appellant.
2. The present appeal involves appointment of outlet dealer (petrol pump) by the Indian Oil Corporation Limited (**'Oil Company'** for short) at location between Bagha Jatin & Ganguly Bazar on Raja S.C. Mallick Road. The aforesaid outlet is an existing outlet and reserved for woman open category.

In response to advertisement dated 30.12.2009 issued by the Oil Company for appointment of retail outlet dealer in respect of the captioned location, the present appellant filed her application. Interview of the short listed applicants was held on 13.05.2010. Result was declared on 14.05.2010 and admittedly this appellant was not selected. Three (3) persons who were selected have not been made parties to the writ petition as fairly submitted at the bar. The panel prepared on 14th May, 2010 came to be revised on 12th November, 2010.

It is alleged by the appellant that the evaluation carries 100 marks out of which 35 marks is assigned under the head **"capability to provide infrastructure and facilities"** and 25 marks have been assigned under the head **"capability to provide finance"**.

3. It is fairly submitted at the bar that as the captioned dealership is in respect of an existing petrol pump, 35 marks assigned under the head capability to provide infrastructure and facilities have been deducted from the total marks

of 100 (100 - 35) = 65 is the total marks for evaluation of applicants. On the basis of total marks of 65 the first panel dated 14.05.2010 was prepared.

4. In the first panel so prepared the appellant having not got a berth, she lodged complaint before the competent authority of the Oil Company to provide her the break up of marks given to her under each head. She has also made allegation so far as marking of some other candidates are concerned and it is asserted by her that candidates who have secured higher percentage of marks have been overlooked and candidates who have secured lower percentage of marks have been empanelled.

5. When the matter stood thus a revised list was prepared on 12th November, 2010 by the Oil Company in which also the appellant could not find a place. She filed representations before the authorities concerned for due consideration. The appellant went on asserting that she should have been given proper weightage under the head “capability to provide finance”, which, according to the guidelines carries 25 marks. To her representation dated 14.02.2011, the Oil Company gave reply on 09.03.2011 to the effect that the revised empanelment has been prepared on the basis of marks secured by the applicants out of total marks of 40, excluding the parameter “ capability to provide infrastructure and facilities” and “ capability to provide finance” . This letter dated 09.03.2011 issued to the appellant by the Oil Company was impugned in the writ petition.

6. It is the case of the Oil Company that one Smt. Archana Singh, an applicant for the captioned location submitted a complaint with the Oil Company claiming that she should be considered as an applicant under the scheme of

Corpus Fund facility for woman since she was a widow above 40 years of age without earning parents. One Smt. Manju Gupta, one of the applicants also opted for Corpus Fund Scheme later on. The complaint of Smt. Archana Singh was duly investigated and on the basis of the finding of the Investigating Officer, it was decided to consider her application under Corpus Fund Scheme (**'CFS'** for short).

7. Accordingly, the merit panel was prepared revising the first panel by awarding marks to the applicants from maximum marks of 40. The revised panel was published on 12.11.2010. It is the case of the Oil Company that two of the candidates i.e. Smt. Manju Gupta and Smt. Archana Singh having opted for CFS, the first panel was revised in compliance of the selection guidelines.

8. Hon'ble Single Judge on going through the records and hearing learned Counsel for the parties negated the contention raised by learned Counsel for the petitioner and dismissed the writ petition directing the Oil Company to take step afresh to fill up the vacancy strictly in accordance with law, at the earliest. The panel prepared by the Oil Company on 12.11.2010 was also cancelled.

9. Mr. Debabrata Saha Roy, learned Senior Counsel appearing for the appellant with all the vehemence at his command submits that the panel could not have been prepared from maximum mark of 40 and it should have been prepared from maximum mark of 65 and full marks should have been awarded to the present appellant under the head "capability to provide finance" as she had sufficient income in the relevant year and she had filed her income tax return etc. to show her credentials.

10. It is also submitted by Mr. Saha Roy, learned Senior Counsel appearing for the appellant that relying on a subsequent internal communication dated 01.03.2011, the result of the candidates having been revised, though the first panel was prepared awarding marks to each applicant from total mark of 65 who had not availed CFS and awarding marks to those applicants who had availed CFS from total marks of 40. Mr. Saha Roy, learned Senior Counsel appearing for the appellant relying on a decision of Hon'ble Supreme Court reported in **Bishnu Biswas & Ors. Vs. Union of India & Ors.** [(2014) 3 WBLR (SC) 455] submits that the rule of game could not have been changed on the basis of subsequent internal communication dated 01.03.2011.

11. Mr. Yadav, learned Counsel appearing for the respondent Oil Company submits that all the exercise have been taken up in accordance with the provision contained in Clause 9(b) of the brochure and there has been no departure from the brochure condition. It is there in paragraph 9(b) of the brochure that if any one of the applicants applies under CFS, all the applicants should be awarded marks from maximum mark of 40. Some other arguments were advanced by Mr. Yadav, learned Counsel for the respondent Oil Company to the effect that though the appellant should have approached the competent authority of the Oil Company by filing a complaint about her grievance within a specified time before approaching this Court, the appellant having not done so, the writ petition should also have been dismissed on the ground of non-availing of alternative remedy by the appellant.

12. Having heard the learned Counsel for the parties we think it apposite to reproduce Clause 9(b) of the brochure for our understanding –

*“Subject to the application and request, widows and unmarried women above 40 years of age, without earning parents, for locations reserved for women will not be judged under the head “capability to provide infrastructure and facilities” and “capability to provide finance”. These applicants will be required to indicate in the application form itself whether they will like to avail the facilities. In case this is not indicated in the application form, it will be construed that such applicants would like to get evaluated in line with other applicants i.e. they should also be assessed under the heads “capability to provide infrastructure and facilities” and “capability to provide finance”. **For determining the priority to be given to such candidates over other woman candidates, the marks secured by other woman under these two parameters will be excluded by the total marks secured by them.**”*

(emphasis supplied by us)

From the above Clause it is clear that if any applicant has opted under CFS the marks secured by other women candidates under the parameters (i) capability to provide infrastructure and facilities and (ii) capability to provide finance will be excluded. Table-1, Serial No.-(a) of Clause 13.1.1(II) of the brochure provides that 35 marks have been fixed under the head “capability to provide infrastructure and facilities and Serial No.-(b) of the table indicates that 25 marks have been allotted under the head “capability to provide finance”.

13. From the above conditions in the brochure, it is clear that if any candidate has opted for CFS then 35 + 25 marks are to be excluded from the total marks of 100 as per Clause 9(b) of the brochure and all applicants irrespective of their status are to be evaluated from total marks of 40. In the present case, no doubt, the first panel might have been prepared from total marks of 65 as asserted by the appellant. We do not want to go to find that out inasmuch as the appellant was not an empanelled candidate in the first list and secondly we do not find it proper to adjudge the award of marks by the competent authority of the Oil Company in course of an interview as that is not a question within the scope of judicial review of this Court under Article 226 of the Constitution of India. Admittedly also the appellant was not a successful candidate in the revised list.

14. As found from the submission advanced by Mr. Yadav, learned Counsel for the respondent Oil Company two applicants opted for CFS after preparation of first panel on 14.05.2010. Thereafter those two applicants have given their option under CFS. The respondent Oil Company in accordance with Clause 9(b) has revised the marking by deducting the marks obtained by candidates under the

head “capability to provide finance” and the revised list was published on 12.11.2010. There is nothing on record to show that there has been any revision of list after 12.11.2010. In view of such fact the assertion by the appellant to the effect that rule of game has been changed on the basis of an internal communication dated 01.03.2011 cannot be accepted. Therefore, the judgement relied on by Mr. Saha Roy, learned Counsel for the appellant has also no application on the fact of the present case.

15. We having confined the argument in the appeal to the extent as to whether rule of game has been changed in our earlier order dated 29.07.2022, we do not deem it just and proper to delve into any other contention raised by Mr. Yadav, learned Counsel appearing for the respondent Oil Company at this stage.

16. Before parting with the order we feel it expedient and proper to observe here that unless a decision rendered by an Hon’ble Single Judge is not vitiated by perversity and is not substantially wrong, the appeal does not interfere to correct a judgement otherwise not wrong and not perverse. In view of our discussion *supra*, we do not find any infirmity in the impugned judgement and the appeal is accordingly dismissed.

17. In view of dismissal of the appeal, the I.A., being numbered CAN 1 of 2022 also stands dismissed.

18. There shall be no order, however, as to cost.

19. Pronounced in open Court on this day i.e. 28th day of September, 2022.

20. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Aniruddha Roy, J.)

(Chitta Ranjan Dash, J.)