

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.16204 of 2021 (O&M)
Date of Decision : April 08, 2022

Wing Cdr. (Retd.) Satish Kumar Sharma

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sunil Panwar, Advocate with
Mr. Gopal Sharma, Advocate,
for the petitioner.

Mr. Ankur Sharma, Sr Panel Counsel,
for respondent No.1-UOI.

Mr. Raman Sharma, Advocate,
for respondents No.2 to 6.

Mr. Sandeep Punchhi, Advocate,
for respondent No.7.

SUDHIR MITTAL, J.

The only question for decision in this case is whether the provisional result declared on 05.08.2021 for selection of service provider was biased against the petitioner and thus, liable to be set aside?

2. The petitioner is an ex-serviceman. Vide communication dated 26.07.2012, he was selected as service provider for a retail outlet of respondent No.2 at BP-Bilaspur being an ex-serviceman and having been nominated by the Directorate General of Resettlement. As a service provider, the petitioner was required to provide adequate and trained manpower for providing services at the retail outlet. According to the petitioner, the services provided by him were

excellent as was found in third party periodical inspections. Agreement dated 22.09.2012 valid for a period of three years was executed between the parties and a copy thereof is Annexure P-5 on record. At request of the petitioner, the agreement was extended from time to time. In the year 2017, the outlet concerned was opened to all categories and accordingly, an advertisement dated 28.02.2017 was issued inviting applications for engagement of service provider. The petitioner also applied and after interviewing the candidates, a provisional result dated 18.08.2017 was notified. One Yad Ram was declared selected. Aggrieved, the petitioner submitted a complaint dated 08.09.2017 whereupon respondent No.2 conducted inquiries and found that the documents submitted by said Yad Ram were fabricated. Thus, his selection was cancelled. The petitioner was appointed as service provider vide letter of appointment dated 15.05.2018. A fresh agreement was also executed which was for another period of three years. A three month extension was granted vide communication dated 28.06.2021. Meanwhile, advertisement dated 04.02.2021 was issued for engagement of service provider. The petitioner applied vide application dated 05.03.2021. A communication dated 09.06.2021 was addressed to the petitioner based on sales performance review from April, 2019 to May, 2021. It was noticed that the growth in sales was less than other petrol pumps in the area and accordingly, the petitioner was directed that sales in the month of June, 2021 shall be minimum 1300 Kilolitres. Certain suggestions were also given. It may be noticed that this communication was not addressed to the petitioner by name or as service provider. It was addressed to the retail outlet. It may also be noticed that the service provider was not responsible for sales performance. The petitioner responded vide communication dated 20.06.2021 addressed to respondent No.4 (Territory

Manager, Retail) mainly complaining against the objectionable and unreasonable conduct during a surprise inspection on 16.06.2021. It was also stated that analysis of sales for the period April, 2019 to May, 2021 should not have been done as Covid-19 pandemic had struck in March, 2020. Thereafter, the petitioner was called for interview on 04.08.2021 pursuant to his application dated 05.03.2021. On 21.07.2021, the petitioner submitted a representation to the Hon'ble Petroleum Minister with copy to the Secretary, Ministry of Petroleum and Natural Gas, requesting for timely and appropriate intervention as Sh. Vikram Singh Thakur, Territory Manager (retail) was inimical towards him and he did not expect a fair appraisal during the interview. Respondent No.2 responded vide communication dated 03.08.2021. The allegation of the interview committee being biased was denied and the representation was rejected. This communication is signed by respondent No.4. Interview was held according to schedule and provisional result was declared on 05.08.2021. The petitioner found his name at the end of the list amongst 07 applicants.

3. Detailed written statement on behalf of the respondents has been filed. It has been submitted therein that three candidates were empanelled vide result dated 05.08.2021 but none of them has been impleaded as a party and thus, on this ground alone, the writ petition is liable to be dismissed. It has also been submitted that scope of interference in matters of appointments and selection is extremely limited. The High Court cannot sit in appeal over a decision of the selection committee. Regarding the averments relating to outstanding performance of the petitioner, it has been stated that the concerned outlet is a company operated and company owned outlet (COCO). The answering respondents have invested a huge sum of money for setting up the

retail outlet. It is the responsibility of the answering respondents to ensure that the performance thereof is good. The petitioner has been appointed as service provider only and is required to carry out the duties mentioned in the agreement in accordance with the laid down norms. Thus, the petitioner cannot claim the entire credit for the outstanding performance. There are other COCO outlets in the country which have performed equally well if not better. These outlets have been set up as part of an image building exercise. With respect to the selection of Yad Ram vide provisional result dated 18.08.2017, it has been averred that the selection was based purely upon the documents submitted by the applicant along with his application and followed by interview. No bias was involved. The interview committee did not commit any wrong and the decision was purely objective. The selection of said Yad Ram was cancelled after it came to light that he did not possess the necessary qualifications. Allegations of bias made against members of the interview committee are patently incorrect and without any basis. Had there been bias, the various applications submitted by the petitioner for extension of agreement dated 26.07.2012 would not have been allowed. Three requests for extension were accepted. Further, the petitioner was appointed as service provider for the second time vide communication dated 15.05.2018 after aforementioned Yad Ram was found ineligible. The petitioner was also appointed ad-hoc dealer for another retail outlet at Bawal on 25.07.2019. All these facts cumulatively show that the petitioner was being considered on merits. Sh. Vikram Singh Thakur, the then Territory Manager (Retail) against whom allegations of bias have been made was the person who had extended the contract of the petitioner and had also appointed him as ad-hoc dealer. Thus, allegations of bias made against him do not carry any weight. In addition, it has been stated that said Sh. Vikram Singh Thakur had already been

replaced by Sh. Neeraj K. Jaria in April, 2021 i.e. much before the interview was conducted. Simply saying that he was a friend of Sh. Vikram Singh Thakur was not sufficient to establish bias. There is also no proof that the two were on friendly terms. The allegation of bias made on the basis of letter dated 09.06.2021 is misplaced. The said letter was issued to COCO and not to the service provider. Similar letters were issued to a large number of other outlets also as part of a routine exercise of evaluation of performance. Finally, it has been submitted that the petitioner has been evaluated objectively and no bias is involved.

4. Learned counsel for the petitioner has stressed upon the academic and professional qualifications mentioned in the body of the writ petition to submit that none of the other applicants possessed comparable qualifications. This is evident from the fact that averments in this regard have not been denied. In addition, the excellent past performance of the petitioner has also been admitted by implication. Yet, the petitioner has been placed at the end of the list vide result date 05.08.2021. In fact, there has been an attempt to displace the petitioner since the year 2017 which is evident from the fact that pursuant to advertisement dated 28.02.2017, aforementioned Yad Ram was selected even though he was ineligible. The respondents were forced to cancel his selection only after a complaint was made by the petitioner. Bias is thus evident on the record. To buttress the submission, reliance has been placed upon ***Dr. A.K. Bakhshi vs. Panjab University, passed in CWP No.18781 of 1997 decided on 22.12.1999***, wherein it has been observed that bias is a state of mind inferrable from the facts and circumstances of a particular case. Judgment in ***T.B. Venugopal vs. TMP Cooperative Societies Union Ltd. and others, passed in***

CWP No.52059 of 2017 decided on 19.08.2021 has also been relied upon wherein similar observations have been made.

5. On behalf of the respondents, it has been argued that the writ petition deserves to be dismissed on the sole ground that the selected candidate has not been impleaded. Subsequent impleadment of the concerned candidate on an application filed by her would not cure the defect. On merits, it has been argued that being a COCO outlet, a Sales Officer is appointed by the oil company to ensure quality. He is instrumental in ensuring good performance and therefore, the petitioner cannot take entire credit for the past performance. Moreover, performance evaluation is on the basis of a proforma. The parameters mentioned therein are similar to the duties to be performed by a service provider as mentioned in the agreement and thus, if the performance of the service provider is good he cannot claim that his performance deserves to be appreciated because he is only performing his duty. There was no bias in the selection of Yad Ram as the same was based upon the documents submitted by him as well as on the basis of personal interview. On finding that he had submitted false documents, his selection was cancelled. Bias cannot be inferred on the basis of communication dated 09.06.2021 as similar letters have been sent to other COCO outlets also as part of a routine analysis of performance. Moreover, the said letter was not addressed to the service provider but to the COCO outlet. Had there been any bias against the petitioner, his previous contract would not have been extended nor would he have been granted a fresh contract after the selection of Yad Ram was cancelled. Sh Vikram Singh Thakur erstwhile Territory Manager (Retail) against whom allegations of bias have been made had in fact favoured the petitioner as is evident from the factum of repeated extension of contract as well as appointment as ad-hoc dealer.

Moreover, said Sh. Vikram Singh Thakur was not the Territory Manager (Retail) when the interview in dispute was conducted. He had been transferred four months earlier and merely saying that he was a friend of the present incumbent would not establish bias especially when there is no proof of friendship. The request of the petitioner for reconstitution of the interview committee was rightly rejected by the Territory Manager as baseless allegations had been made therein. Respondent No.4 was competent to reject the representation of the petitioner. The candidature of the petitioner has been considered dispassionately and objectively and on the basis of personal interview in addition to other documents submitted by him. Just because the petitioner is more qualified academically than the other candidates, it cannot be inferred that he was a better candidate.

6. The selected candidate has got herself impleaded as respondent No.7 and has adopted the written statement filed on behalf of respondents No.2 to 6.

7. Although, the selected candidate was not impleaded as a party, she has got herself impleaded by filing an application in this regard. A written statement has also been filed on her behalf and thus, the objection that writ petition was not maintainable in the absence of the selected candidate is rejected.

8. It is settled law that bias is difficult to establish as documentary proof regarding the same is seldom available. However, it can be inferred on the basis of the facts and circumstances of a particular case. It has been so held in ***Dr. A.K. Bakhshi (supra)*** a judgment rendered by a Division Bench of this Court and keeping this legal principle in mind, I am proceeding further.

9. Bias has been alleged on the basis of selection of Yad Ram vide result dated 18.08.2017. Issuance of communication dated 09.06.2021 regarding sales performance review for the period April, 2019 to May, 2021 has also been cited as an example of biased behaviour. Specifically, Sh. Vikram Singh Thakur, the then Territory Manager (Retail) was statedly inimical towards the petitioner and respondent No.4 was allegedly under his influence being a close friend. Thus, a representation dated 21.07.2021 was submitted for reconstitution of the interview committee and the factum of rejection thereof vide communication dated 03.08.2021 signed by respondent No.4 himself allegedly completes the chain of bias. In response, it has been argued that the result dated 18.08.2017 was objective and was not biased in any manner. Allegations of bias made against Sh. Vikam Singh Thakur have been denied. It has been submitted that the said officer in fact favoured the petitioner. During his tenure, the petitioner was granted three extensions and was also appointed as ad-hoc dealer. Issuance of communication dated 09.06.2021 is statedly part of a routine exercise and was issued to a large number of outlets apart from the petitioner. Moreover, the same was addressed to the COCO outlet and not to the petitioner and thus, bias cannot be inferred by issuance of the said communication. Rejection of the representation dated 21.07.2021 has been supported on the ground that no material was available to infer bias.

10. Undoubtedly, the communication dated 09.06.2021 was addressed to the COCO outlet and the fact that a large number of such communications were issued to other outlets also has not been controverted. It is also not in dispute that three extensions were granted to the petitioner when Sh. Vikram Singh Thakur was the Territory Manager (Retail) and the petitioner was also granted an ad-hoc dealership during the said period. Thus, allegations of bias

made against the said officer cannot be accepted. The submission that respondent No.4 was influenced by the said officer also carries no weight. For the same reason, rejection of the representation dated 21.07.2021 by respondent No.4 cannot be said to be a biased act.

11. Yet, a perusal of the provisional result dated 18.08.2017 as well as that dated 05.08.2021 is revealing. A comparative statement of marks in the provisional result dated 18.08.2017 is on record as Annexure P-18 and it shows that 30 marks have been allocated under the sub-head of Managerial Experience in working in any sector and 25 marks have been provided under the sub-head of Capability to provide suitable manpower. Both these sub-headings are under the main heading Entrepreneurial Capability. A maximum of 25 marks have been provided under the heading of availability of capital of Rs.15 lacs to Rs.25 lacs. The same is extracted below:-

COMPARATIVE STATEMENT OF MARKS GIVEN TO PROVISIONAL SELECT CANDIDATES

			Entrepreneurial Capability		Ma x marks for Rs. 15 lacs to 25	Business Environment (Labour laws, ESIC, EPF, Shop & Establishment Act, Factories Act, Contract Labour (R&A) Act, Local Laws such as Trade/Municipal Laws, safety and Environment and other statutory Rules etc.		Work Experience, Communication Skill Presentability Level of Education etc.		Customer Service		Total Marks Scored by the candidates
			Manag erial Experie nce in workin g in any sector	Capabi lity to provid e suitabl e manpo wer								
Ra nk	Name	Applica tion No.	MAX (30)		MA X (25)	MA X (10)	Qualifica tion (Professi onal)	MA X (5)	Qualificati on (Academic)	MA X (5)	Experien ce (Professi onal)	=(100)
I	Yadram	17/35	30	25	25	8.50	NIL	4.00	Sr. Sec. School certificate 2009 (at 39 years of age)	4.00	NIL	96.50

II	Satyadeep	1/35	30	25	25	8.33	NIL	4.00	Diploma (1 year) Journalism & Mass Communication with 42.4% marks	4.00	NIL	96.33
III	Satish Kumar Sharma	29/35	30	25	25	8.33	1. Master of Commerce 2. Master Diploma in Personnel Management & Industrial Relations (MDPM & IR) 3. Commercial Laws Course 4. AAOC (Advance Accountant Officer Course) 5. Diploma in Industrial Security Management (NISM) 6. Five years in Labour laws ESIC, EPF and GST.	4.33	1. Master of Arts 2. Advanced intelligence & security officer course (ASICO) 3. Junior Commander Course (Officers) 4. Programming in Computer Applications. 5. 23 ½ years experience as IAF Officer including UN Headquarter, New York (USA)	3.50	100% marks 19 times in five years as Existing COCO Service Provider.	96.16

All candidates have been given equal marks i.e. 30 each under Managerial Experience, 25 each under Capability of provision of manpower and 25 each under financial capability. Award of identical marks regarding financial capability is understandable but award of identical marks under the other two sub-heads is arbitrary as Managerial Experience as well as Capability to provide manpower would depend upon the experience of a candidate in the field of work. Annexure P-18 itself shows that Yad Ram (selected candidate) and Satyadeep Singh (candidate at Sr. No.2 in the list) did not possess any past

experience in the concerned field of work nor did they have any experience in a related field of work. Thus, award of identical marks to all candidates is patently arbitrary. The other three sub-headings are of Business Environment, Work Experience and Customer Service. They come under the main head of Personal interview implying that the said points were to be evaluated in the interview. Under Business Environment, knowledge of Labour Laws, other related laws, Municipal Laws and knowledge of environment and other statutory rules has been provided for whereas under work experience, level of education, communication skill and presentability has been mentioned. The petitioner possesses qualification of M.Com., Diploma in Master of Personnel Management and Industrial Relations, Course done in Commercial Laws, Diploma in Industrial Security Management etc. whereas the word 'NIL' has been mentioned against Yad Ram and Satyadeep Singh. Yet, they have been awarded 8.50 and 8.33 marks respectively out of a maximum of 10 marks whereas the petitioner has been granted 8.33 marks. Under work experience, the petitioner has listed his various educational qualifications such as Master of Arts, Programing in Computer Applications, Advanced Intelligence & Security Officer Course, Junior Commander Course (Officers) apart from 23 and a half years experience as Officer in Indian Air Force including a tenure at UN Headquarter at New York (USA). In comparison, Yad Ram was the holder of Sr. Secondary School Certificate, which was later on proved to be fake. Satyadeep Singh has one year diploma in Journalism & Mass Communication with 42.4% marks. Yet, they were granted four marks out of a total of 05 marks whereas the petitioner was granted 4.33 marks only. Under the head of Customer Service, even though Yad Ram and Satyadeep Singh had 'NIL' experience as compared to the petitioner's experience of COCO Service

Provider, they were given 04 marks each out of a maximum of 05 marks as compared to 3.5 marks awarded to the petitioner. The award of marks is sought to be explained by learned counsel for the respondents on the basis of communication skills. The argument is that mere qualifications do not make a person and that performance during interview is very material. The argument is appreciated but cannot be accepted as a person who is not even Class XII pass and a person who is a Diploma Holder in Journalism & Mass Communication cannot be expected to perform better than a person like the petitioner during an interview. Being an ex-serviceman and having done a stint abroad, it can be inferred as a matter of law that the petitioner would have better presentation, communication skills and knowledge as compared to Yad Ram and Satyadeep Singh and thus, award of higher marks to them smells foul. A perusal of the result dated 05.08.2021, leads to a similar conclusion. The same is also extracted below:-

COCO Service provider interview Mark Sheet
Marks allotted to candidates as per interview at Rewari for COCO service provider for BP BILASPUR
Bharat Petroleum Corp. Ltd. at Location : BILASPUR. NH-8, Distt. Gurgaon

Territory/Region/Division REWARI TERRITORY State: HARYANA

Name of Candidates	Entrepreneurial Capability		Financial Capability	Personal Interview			Total marks scored by the candidate	Remarks
	Managerial experience in working in any sector	Capability to provide suitable manpower	Max marks for Rs.15 lac -25	Business Environment (Labour laws, ESIC, EPF, Shop & Establishment Act, Factories Act, Contract Labour (R&A) Act, Local Laws such	Work Experience, Communication Skill, Presentability Level of Education etc.	Customer Service		

				as Trade/Mu nicipal Laws, safety and Environm ent and other statutory Rules etc.				
	Max (30)	Max (25)	Max (25)	Max (10)	Max (5)	Max (5)	Max (100)	
Ms. Kapila Sherawat	30	25	25	7	3.33	2.83	93.17	
Sh. Anubhav Dubey	30	25	25	6.50	3.50	2.67	92.67	
Sh. Rohit Rathi	30	25	25	6	3.33	3.17	92.50	
Lt Col Shiv Kumar	30	25	25	6.33	3.50	2.50	92.33	
Rajesh Kumar S/o Rama Nand	30	25	25	6.50	3.33	2.00	91.83	
Madan Mohan Yadav	30	25	25	6.33	2.83	2.50	91.67	
Wg Cdr Satish Kumar Sharma	30	25	25	6.50	2.83	2.17	91.50	

In the writ petition, the petitioner has listed out his academic qualifications as well as other achievements and has specifically stated that selected candidate is a young lady who does not possess similar qualifications. This averment has not been controverted either by the selected candidate or by respondents No.2 to 6 and thus, the averment deserves to be accepted. Award of 07 marks out of a maximum of 10 marks to respondent No.7 as against 6.5 marks to the petitioner even though there is nothing on record to indicate that she has any knowledge of the various labour laws and related enactments and rules cannot be understood. Under Work Experience and Customer Service also respondent No.7 has been granted 3.33 marks and 2.83 marks respectively as against 2.83 marks and 2.17 marks respectively awarded to the petitioner. It is thus evident that the result declared by the interview committee is not objective. The result dated 18.08.2017 when seen in conjunction with the present result leaves no manner of doubt that the petitioner's candidature has not been evaluated objectively.

This alone is sufficient to return a finding of bias even though the reason therefor are not forthcoming.

12. The writ petition is accordingly allowed and provisional result dated 05.08.2021 is quashed. It is directed that all interested candidates be evaluated afresh after issuing notice to them. It is further directed that the Interview Committee be handpicked by the Chairman/Managing Director of respondent No.2. Till the exercise is completed, the petitioner shall continue to perform the duty of service provider.

CM-14964-CWP-2021

Since the main case stands allowed, the present application stands disposed of.

April 08, 2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned ***Yes***

Whether Reportable ***Yes***