

LPA No.926 of 2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.926 of 2021 (O&M)

Date of decision : 07.03.2022

Gouravdeep & another

.....Appellants

VERSUS

Indian Oil Corporation Limited and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Anu Chatrath, Senior Advocate with
Ms. Divya Sharma, Advocate
for the appellants.

Mr. Ashish Kapoor, Advocate
for respondents No.1 and 2.

AUGUSTINE GEORGE MASIH, J.

This intra-court appeal has been preferred by the appellants, who had approached by way of writ petition challenging the communication received by them, copy of which has been appended as Annexure P-14 informing the appellants that there candidature stands cancelled for award of Retail Outlet Dealership at village Saniana on Sh-02, District Fatehabad, under the Scheduled Castes category advertised on 25.11.2018, which writ petition stands dismissed by the learned Single Judge vide the impugned order dated 31.08.2021 on the ground that both the applicants of a partnership firm, who had applied for Retail Outlet Dealership under the

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Scheduled Castes category, were required to be belonging to Scheduled Castes category, whereas one of them, namely, Iqbal Singh Toor, belong to the General category. The stand of the appellants before the learned Single Judge was that the requirement of the Regulations did not mandate so, as it required one of the candidates to be belonging to the Scheduled Castes category, whereas the other could be of the General category but fulfills the general conditions for being eligible for applying for allotment of the Retail Outlet Dealership, which, admittedly, petitioner No.2 – Iqbal Singh Toor fulfilled qua the General category. The said stand of the appellants was rejected by the learned Single Judge leading to the filing of the present appeal.

2. Learned Senior Counsel for the appellants has referred to the Brochure (Annexure P-2), which deals with the guidelines for selection of dealers for regular and rural retail outlets. Reference has been made to Regulation 4 of the said Brochure which deals with the eligibility criteria for individual applicants of the proprietorship/partnership. The common eligibility criteria for all categories has been mentioned there and with reference thereto, she has referred to sub-clause (vi) of the said Regulation 4, which deals with specific eligibility criteria for applying in different reserved categories. Sub-regulation (a) thereof deals with the Scheduled Castes/Scheduled Tribes categories, where the candidates belonging to this category will only be eligible and the applicants will be required to submit copy of the caste certificate issued by the Competent Authority. The candidate could even be called upon to submit the validity certificate

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wherever applicable. Further reference has been made to sub-regulation (vii), which deals with specific requirement of applicants applying under the partnership. In this sub-regulation, it has been specified that each partner should individually meet the eligibility criteria for applying as an individual and the land owned by the partner(s) will be treated as owned by the proposed firm as a whole for the purpose of eligibility. Each partner was required to submit separate application form along with separate non-refundable application fee. It would be clubbed together online along with the copy of the proposed partnership deed.

3. The first submission on the part of the learned senior counsel for the appellants is that in these clauses, which would be relevant for the purpose of this case, do not require both the partners to be eligible under the category for which they are applying. In case one of the applicants belong to the Scheduled Castes category, the requirement of sub-regulation (vi) of Regulation 4 would stand fulfilled. It would not make any difference as to whether other partner(s) belong to the same category of Scheduled Castes or not. However, the other partner(s) will/would be required to fulfill the basic eligibility conditions as have been laid down under Regulation 4. In support of this contention, she has referred to and had taken recourse by relying upon the policy guidelines for reconstitution of Retail Outlet Dealership which has been appended as Annexure P-16. In para 4 thereof, which deals with induction of outside category partner in SC/ST dealership, it has been mentioned that for dealership belonging to SC/ST category, induction of a minority partner from outside his/her category was permitted

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and on this basis, it is submitted that the interpretation, as projected by respondent – Indian Oil Corporation Limited (hereinafter referred to as 'Corporation'), is unsustainable.

4. On the other hand, Mr. Ashish Kapoor, learned counsel for respondents No.1 and 2, with reference to the application form submitted by appellant No.2 – Iqbal Singh Toor (Annexure P-4), submitted that had it not been for the mis-information provided by the said appellant, where in the option relatable to the category, he had mentioned as Scheduled Caste (SC) instead of General, the application of the appellants would have been rejected at the very first stage of scrutiny. It is because of this misleading information in the application which has been filed by appellant No.2, the Corporation had requested the appellants to supply the caste certificate of appellant No.2. When no such certificate was filed, candidature of the appellants was rejected and a communication was sent, copy of which has been appended as Annexure P-14 and is under challenge. His further submission is that the provisions, as contained in Regulation 4 (vi) and (vii), make it abundantly clear that each of the partner is mandated to fulfill the requirement under the category for which a dealership has been applied for. He, therefore, contends that the appeal deserves to be dismissed.

5. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through pleadings and the records of the case including the relevant regulations, on which reliance has been placed by them.

6. Since the facts are not in dispute, we would briefly refer to the

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same. Appellants applied for Retail Outlet Dealership under the Scheduled Castes category in pursuance to an advertisement issued by the Corporation on 25.11.2018. Being successful in the Draw of Lots, they were called upon to submit their documents vide communication dated 26.05.2021. Some documents were submitted by them by communication dated 14.06.2021 but that did not satisfy the Corporation and another letter dated 17.06.2021 seeking some more documents was received by the appellants which was responded to vide communication dated 18.06.2021 by them. Thereafter, a letter/communication was received by the appellants, copy of which has been appended as Annexure P-14, whereby application form No.15456445750857 for award of Retail Outlet Dealership under the Scheduled Castes category stood cancelled as the required documents had not been submitted by the appellants, which led to the filing of the writ petition.

7. The relevant regulations on which reliance has been placed are being reproduced herein below for reference:-

“4. Eligibility Criteria for Individual Applicants – Proprietorship/Partnership:

- (i) XXXX XXXX XXXX
- (ii) XXXX XXXX XXXX
- (iii) XXXX XXXX XXXX
- (iv) XXXX XXXX XXXX
- (v) XXXX XXXX XXXX

(vi) Specific eligibility criteria for applying in different reserved categories is as under:-

a) Scheduled Caste/Scheduled Tribe category (SC/ST):

The candidates belonging to Scheduled Castes/Scheduled Tribes (SC/ST) recognized under the Constitution of

India will be eligible. The applicants will be required to submit a copy of the certificate issued by the competent authority, notified by Govt. of India, certifying that the candidate belongs to Scheduled Caste/Scheduled Tribe as per Appendix – VI.

Note : Wherever applicable, the applicants would be required to submit Caste validity certificate.

XXXX XXXX XXXX

(vii) Specific Requirement of applicants applying under Partnership:

In case of partnership, each partner should individually meet the eligibility criteria for applying as an individual. However, the land owned by partner(s) will be treated as owned by the proposed firm as a whole for the purpose of eligibility.

Each partner should submit separate application form along with separate non-refundable application fee. However, the applications should be clubbed together (on-line). They also would be required to submit a copy of the proposed partnership deed.”

8. Reliance has also been placed by the learned senior counsel for the appellants upon policy guidelines for reconstitution of the Retail Outlet Dealership (Annexure P-16), relevant para 4 thereof reads as follows:-

“4. Induction of outside category partner in SC/ST dealership

4.1 For dealerships belonging to SC/ST category, depending upon the requirement of the finance/expertise in order to meet the Competition/growth, the dealer may require to induct a minority partner from outside his/her category. In such cases, the SC/ST dealer may induct a minority partner(s) from outside his/her category. However at any point of time i.e. before or after re-

constitution, the shareholding of persons belonging to the category under which the subject dealership was allotted should be at least 75% of the total shares. If non SC/ST spouse of SC/ST dealer is inducted as partner in the dealership, his/her share in the dealership shall be counted as SC/ST share.”

9. Perusal of the criteria for eligibility for applying under the category of Scheduled Caste would show that the candidate applying under the said categories must belong to this category and would append a copy of the certificate issued by the Competent Authority as mandated under the said regulation. Regulation (vii) deals with the specific requirement of applicants under the partnership. In this clause, each of the partners is required to individually meet the eligibility criteria for applying as an individual which obviously means to the category under which such an application has been submitted. Meaning thereby, each of the applicants who are partner(s) in the partnership firm must belong to the same category for which they had applied i.e. all the applicants must belong to the same category. In the present case, since the applications were called for and submitted under the Scheduled Castes category, both the appellants were required to belong to the Scheduled Castes category. This is so apparent from the fact that applications were required to be clubbed together after the applicants have individually applied.

10. It would not be out of to mention here that when this appeal came up for hearing before the Court on 30.09.2021, following order was passed:-

“It is the contention of learned senior counsel for

the appellants that Iqbal Singh-appellant No.2 is eligible for applying as an individual as per the requirement of clause 4 in the brochure (Annexure P-2) and there is no requirement that all the partners should belong to the same category under which the application has been filed. This is contended by her in reference to clause 4 (vii) which deals with the requirement of applicants applying under partnership. Counsel contends that the interpretation of the said clause which had been given by the learned Single Judge cannot be said to be correct.

Learned counsel for the contesting respondents No.1 and 2 states that each partner has to be individually eligible for the category under which the application form has been submitted. Elaborating this aspect, he has pointed out that in case of a scheduled caste category as in the present case where the claim has been put forth, both the partners are required to belong to the scheduled caste category. He states that a specific affidavit to that effect would be filed by him in this regard.

Let the said affidavit be filed. The respondents should further make a specific averment as to whether this is the criteria which is being followed consistently and there has been no other case where both the partners were not belonging to the scheduled caste category who have been selected and allotted the outlet.

List on 08.10.2021.”

11. In pursuance to the said order, an affidavit dated 05.10.2020 was filed. Thereafter, the case came up for hearing on 08.10.2021 when following order was passed:-

“In compliance with the order dated 30.09.2021 affidavit dated 05.10.2020 of the Manager (Retail Sales)

with Indian Oil Corporation Limited, Hisar Divisional Office, Hisar, stands filed, which is taken on record. In the said affidavit in paras 6 and 7 it has been stated as follows: -

“6. That it is stated that in case of candidates applying under partnership (for location advertised under reserved category) each partner has to individually meet the eligibility criteria for applying as an individual. For example in case of locations advertised under the SC category, in case applicants have applied under partnership then both the partners are required to belong to the scheduled caste category.

7. That the above criteria is being followed strictly and consistently by the Corporation. It is further stated that in case of locations advertised under the SC category there has been no other case, where both the partners were not belonging to the scheduled caste category but were selected and allotted the retail outlet.”

There is a written request for adjournment on behalf of the counsel for the appellant.

In the interest of justice, adjourned to 2.11.2021.”

12. In view of the above, it is clear that the respondent – Corporation has been consistently following and interpreting the above referred to provisions in the manner, for which it was intended to by the framers of the Regulations.

13. As regards the reliance of the learned Senior Counsel for the appellants upon para 4 of the policy guidelines for reconstitution of the Retail Outlet Dealership (Annexure P-16) is concerned, suffice it to say that

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it does not deal with the initial allotment of the dealership but pertains to a situation where reconstitution of the Retail Outlet Dealership is required because of certain exigencies as have been spelt out in the above reproduced para 4. These guidelines would, therefore, not be of any help to the appellants.

14. Finding no merit in the present appeal, we dismiss the same.

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In the light of the disposal of the main Letters Patent Appeal, no order is required to be passed in the present application for staying the operation of the impugned order as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

07.03.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No