IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 CWP-6948-2020 (O&M)
Date of Decision : 12.07.2023

Anish Kumar Jindal .... Petitioner

Versus

Bharat Petroleum Corporation Ltd. and others .... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Vikas Mohan Gupta, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for the respondents.
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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of revised selection list dated 25.10.2019 (Annexure P-10) to the extent respondents No.4 to 6 have been awarded 50 marks under heading “Infrastructure”.

2. The respondent No.1 is a Government Company. The respondent-Corporation is engaged in the business of refining and distribution of petroleum products. The Corporation is selling its products through distributors/dealers.

3. The respondent No.1 in its ordinary course of business issued advertisement inviting applications for appointment of non-domestic LPG distributorship for SAS Nagar, Mohali. The petitioner as well as respondents No.4 to 6 pursuant to aforesaid advertisement applied for distributorship. The petitioner applied as an “individual” whereas respondents No.4 to 6 applied as “partnership firm”. On 25.10.2019, the

petitioner was called for interview. The petitioner appeared in the interview and submitted all documents. The respondents No.4 to 6 who are partner of a partnership firm also appeared for interview. The petitioner was awarded 72.76 marks whereas partnership firm of private respondents secured 85.39 marks. The petitioner made a representation seeking correction of his marks. The respondent corrected marks of the petitioner and increased from 72.67 to 82.67. Similarly, the marks of partnership firm were reduced from 85.39 to 84.72. The petitioner is disputing award of 50 marks to partnership firm under heading "infrastructure".

4. Learned counsel for the petitioner *inter alia* contends that as per brochure of respondent-Corporation, every partner of partnership firm was required to fulfill eligibility criteria, thus, 50 marks could be awarded to respondent-partnership firm, had all the partners been owner of land as well as godown constructed thereon. In the present case, the respondent No.4 is owner of the land and godown constructed thereon, thus, partnership firm could be awarded 30 marks instead of 50. The respondent has acted contrary to its brochure. The respondent in the brochure of 2021 has clarified its position and clarification cannot be made applicable to the case in hand.

5. Per contra, Mr. Raman Sharma, Advocate *inter alia* contends that as per brochure; age, educational qualification, experience, business ability/acumen and personality of the partners of the partnership firm is considered whereas infrastructure is not considered on individual basis because all the partners need one land/godown for the storage of material. The brochure is intentionally silent about infrastructure and all other parameters of partners are individually scrutinized. The Corporation in its

subsequent brochure has clarified the confusion. The clarification is not directly applicable to case in hand, however, matter needs to be examined in the light of clarification.

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

7. The conceded position emerging from the record is that petitioner as well as private respondents applied for allotment of distributorship of non-domestic LPG. The petitioner applied as an individual whereas respondents No.4 to 6 applied as a partnership firm. Respondent No.4 is owner of land as well as godown constructed thereon. The respondents No.5 and 6 are partners of the firm, however, they are not owner of land and godown constructed thereon. The petitioner has been awarded 40 marks under the heading "infrastructure" and private respondents have been awarded 50 marks. The distributorship stands allotted to respondents and at present, they are running the agency. The allotment was made during the pendency of present writ petition.

8. Before dwelling into controversy, it would be apt to notice relevant clauses of the broucher which read as under :-

> ***"SELECTION GUIDELINES FOR APPOINTMENT OF NON- DOMESTIC LPG DISTRIBUTORS***
>
> ***ELEIGIBILITY CRIETERIA***
>
> *The applicant should:*
>
> *(I) to (v)* X X X X
>
> *VI. Candidate should provide details of Godown/land for Godown (on ownership/Registered Lease for a minimum period of 5 years) in his/her name or in the name of Family Unit/Offer letter for godown land on applicant's name for minimum period of 5 years at the*

time of submission of application. The LPG Godown should be of minimum of 2000 Kg capacity (and to be located within 25 kms from municipal/town/village limits of location advertised.

The Own/registered lease deed for minimum 5 years of Godown/land for construction of Godown includes ownership of the "Family Unit"/parents (includes Step Father/Step Mother), Grandparents (Both Maternal and Paternal), Brother/Sister (including Step Brother & Step sister), Son/Daughter (including Step Son/Step Daughter), Son in-law/Daughter in-law of the applicant or the spouse (in the case of married applicant) as on the last date of application as specified in the advertisement or corrigendum if any.

In case of offered land for godown/constructed godown, the same has to be registered on sale deed/lease deed on candidate name/family unit, before issuance of the LOI. The candidate who has submitted LAND ON OFFER in the application has to be intimated, for registration of the land after successful completion and appeal of FVC.The registration of land has to be completed within two months of intimation.

X X X X

PARTNERSHIPS:

In case of partnership, each partner should individually meet the specified eligibility criteria and should also submit separate application forms along with separate application fee. However, the applications should be clubbed together. If called for interview, all of them must appear for interview. They also have to submit a copy of the partnership deed along with the application.

SELECTION PROCESS & EVALUATION CRITERIA

The LPG Non Domestic distributor for the advertised location will be selected on the basis of interview of all eligible applicants. The date of interview will be individually informed to the eligible applicant by an interview call letter. Each candidate appearing in the interview will be assessed by the selection committee broadly under the following parameter,

NORMS FOR EVALUATION FOR NON-DOMESTIC LPG DISTRIBUTORS

Sr. No.	Parameter	Description	Max Marks	Evaluation
3	Infrastructure	Godown -Owned (Constructed Godown meeting eligibility criteria). Own Land for Godown (clear title of ownership) or Registered Lease. Offer for constructed godown/land for godown meeting eligibility criteria	50 40 30	Marks will be awarded based on information provided in the application

X X X X

<u>In respect of partnerships, all partners will have to attend the interview and they will be evaluated as under:-</u>

<u>Under parameters age, educational qualification, experience, business ability/acumen and personality, partners parties will be evaluated individually. Marks obtained by each partners in these parameters will be added an averaged to arrive at the marks obtained by the partnership firm.</u>”

[Emphasis supplied]

9. It is settled law that the Court while exercising power under Article 226 of Constitution of India can interfere in contractual matter though contract is not a statutory contract. The advertisement/tender in

question which was followed by a contract, was not statutory in nature. It was a purely commercial transaction between two parties. The respondent-Corporation being public sector undertaking is amenable to writ jurisdiction of this Court. It is further settled proposition of law that scope of interference in contractual matter is very limited. The Hon'ble Supreme Court time and again has held that in economic matters Court should normally refrain from interfering and authorities must be permitted some play in the joints.

10. A two Judge Bench of Hon'ble Supreme Court in ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.*, (2023) 2 SCC 703** has adverted with ambit and scope of interference in contractual matters. The Court has held :

> *"82. We may cull out our conclusions in regard to the points, which we have framed:*
>
> *82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.*
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> *82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v.*

Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651].

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of *the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.*

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

11. In the case in hand, the dispute lies in narrow compass. As per petitioner, respondent could grant 50 marks to private respondents had all the partners been owners of the godown. The respondents No.4 to 6 had applied as partnership firm and only respondent No.4 is owner of godown, thus, respondent as partnership firm is entitled to 30 marks. The Corporation has pleaded that in the brochure, it has been specifically mentioned that parameters qua age, educational qualification, experience, business ability/acumen, personality of partners shall be individually evaluated and there is no requirement to individually evaluate infrastructure facility of the partnership firm.

12. There seems force in the contention of the Corporation. In the brochure, it has been specifically mentioned that in respect of partnership firm, all partners have to attend the interview and they will be evaluated individually. The relevant clause of the brochure, as reproduced above, has enjoined that all parameters of partners would be evaluated individually. There is no requirement to evaluate infrastructure capability of partners individually. The respondent-Corporation in its subsequent brochure has

clarified its position. The subsequent brochure though cannot be considered as sacrosanct, however it needs to be prima facie considered in view of issue raised by the petitioner. It is corporation who has to frame policy and thereafter determine parameters. By subsequent brochure, the corporation has clarified its position. Even otherwise, age, educational qualification, experience, personality etc. of partners deserved to be considered individually and infrastructure facilities especially godown which needs to be one for all purposes could not be considered individually. It is apt to notice that there is no allegation of malafide against the officials of the corporation.

13. In view of judgments of Hon'ble Supreme Court, the scope of interference in contractual matters is very limited and Government authorities should be permitted greater play in the joints. The Court is not supposed to substitute opinion of the authority by its opinion. The Corporation by not making it mandatory to evaluate infrastructure capability of the partners individually has made it clear that infrastructure facility of one partner is sufficient.

14. In view of above facts and findings, this Court does not find any substance in the contention of the petitioner. The present petition being devoid of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

12.07.2023
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Whether speaking/reasoned	Yes
Whether Reportable	*Yes*