

CWP-23603-2021 (O&M)

-1- 2023:PHHC:117103

203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23603-2021 (O&M)

Date of Decision:05.09.2023

MANPREET KAUR

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Rupinder K. Thind, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for respondents No.2, 3 and 7.

Ms. Lavanya Paul, DAG, Punjab.

Mr. Jagdish Manchanda, Advocate
for respondent No.6.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking cancellation of letter of intent (LOI) dated 20.05.2020 (Annexure P-12), No objection certificates (for short 'NOC') dated 11.09.2020 (Annexure P-13) and 14.09.2020 (Annexure P-14) whereby respondent No.6 has been allotted retail outlet and District Administration has granted permission to set up the same.

2. The petitioner pursuant to an advertisement for allotment of retail outlet filed an application dated 19.12.2018. The application was filed under SC category and Group-1. The petitioner was sole candidate in Group-1, thus, petitioner was selected and was asked to submit documents with respect to offered land. During the course of scrutiny of

documents, the respondent-Corporation formed an opinion that offered land is a leased property and there are more than one owners of the land. The petitioner has not submitted NOC from all the owners. It was further noticed that advocate's certificate in Appendix III-B is post date of application. In view of these deficiencies, the petitioner was transposed from Group-1 to Group-3 and was kept alongwith other candidates. The petitioner was informed vide email dated 06.02.2019 that she has been shifted from Group-1 to Group-3. The petitioner did not challenge decision of respondent-Corporation of shifting her from Group-1 to Group-3.

3. The respondent-Corporation considered all the candidates of Group-3 and asked them to offer land within 90 days. Only one candidate offered land i.e. respondent No.6. She was issued LOI on 20.05.2020 (Annexure P-12). The respondent-Corporation in terms of Rule 144 of Petroleum Rules, 2002 applied for NOC and District Magistrate issued NOC dated 27.08.2021. The respondent No.6 has not commenced operation of petrol pump on account of pendency of present petition though he is having LOI from respondent-Corporation and NOC from District Magistrate.

4. Learned counsel for the petitioner *inter alia* contends that defect of consent of all the owners of the land as well as defect in the date of advocate's certificate are curable defects. The respondent-Corporation could give an opportunity to petitioner to cure the defects, whereas, respondent acting in a mechanical manner and adopting hyper technical approach rejected application of the petitioner. The respondent-Corporation in the case of respondent No.6 accepted alternative land

whereas petitioner was neither given opportunity to offer alternative land nor her case was sympathetically considered especially when she had applied under Group-1 and offered leased land. The father-in-law of the petitioner is one of the owner of the land. The petitioner was quite competent to get NOC from co-owners. The certificate of advocate was required to be furnished at the time of scrutiny of documents. The intent of the policy is to furnish certificate of advocate confirming ownership as well as nature of the land. The candidature of the petitioner could not be rejected merely on the ground that certificate of advocate bears date post date of application.

5. Per contra, learned counsels for the respondent-Corporation submit that petitioner was shifted from Group-1 to Group-3 on 12.01.2019 and she was duly informed vide email dated 06.02.2019. The petitioner opted to remain silent for 2 years and thereafter filed writ petition before this Court on 23.11.2021. The conditions enumerated in the brochure are very much clear and petitioner as well as respondents are bound by terms and conditions adumbrated in the brochure. As per the terms and conditions of the policy, the petitioner was required to have NOC from all the co-owners of the land and NOC must be of the date or prior to date of filing of application. The petitioner was further required to have advocate's certificate of the date or prior to date of application. Advocate's certificate could not be of a date post date of application.

6. A Coordinate Bench of this Court vide judgment dated 03.03.2020 in ***CWP No.28939 of 2019*** titled as '***Pushpinder Marya and another Vs. Bharat Petroleum Corporation Ltd. and another***' has decided a bunch of petitions wherein similar claim has been rejected. The

Court has held that condition of furnishing advocate’s certificate is a mandatory condition and it must be available on the date of filing application.

7. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

8. The conceded position emerging from the record is that the petitioner submitted application under Group-1 and she belongs to SC category. The petitioner was sole candidate in Group-1. The application of the petitioner under Group-1 was rejected as she was not having advocate’s certificate on the date of filing of application and NOC from all the owners of the land. The petitioner was shifted from Group-1 to Group-3. She was duly informed vide email dated 06.02.2019. The petitioner preferred writ petition before this Court in November’ 2021. The petitioner was shifted to Group-3 in 2019, however, she opted to abstain from participating for consideration under Group-3.

9. The petitioner as well as respondent-Corporation are relying upon following terms and conditions of the advertisement. The terms and conditions read as:

S. No.	Situation of ownership	Share of applicant in land	Additional documents required	Evaluation as
Group 1				
1	Self	Full	Nil	Owned
3	.Self with other owners .Family members with other owner(s) .Self with family members & other owners	Part Nil Part	If the share of the applicant and/or family members is more than or equal to land required by the company. Consent letter on stamp paper or an affidavit or Power of	Owned

			Attorney from all Co-owner(s) should be provided- Appendix IIIA.	
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*K) Each applicant will have to declare, in the application form, the category under which offered land falls. Supporting the above, confirmatory letter from an advocate (Appendix III B) giving details of the current ownership, documents relied upon and the category under which the land falls (Group1 or Group 2), **as on date of application**, is also to be furnished as and when advised. The Group under which the applicant’s land falls, would be determined based on the declaration given in the application and confirmatory letter from the advocate regarding the same.*

“ Note: With regard to submission of documents by selected candidates:

1. All certificates/documents required for meeting Eligibility/Specific eligibility criteria should be in possession of the applicant and valid as on date of application.

However, certificates issued by Directorate General of Resettlement (DGR), Ministry of Defence, Government of India for Defence personnel can be of a date after the date of application but should be submitted within 10 days of intimation by Oil Company.

Wherever Caste Validity certificate is required, the same shall be submitted by the selected candidate within additional 10 days of stipulated time specified by the concerned State Govt. for issuance of such certificate (from the date of intimation to the selected candidate by the OMC).

2. In case certificates submitted by the applicants

issued by various Govt. Officials are not as per the given formats, the applicants would not be made ineligible if the contents are as per Corporation's requirements.

3. Applicable certificates/documents for Eligibility/Specific eligibility criteria would be required to be submitted by the selected candidate within 10 days of intimation (after draw of lots/bidding process).

Additional 10 days' time shall be given in case the selected candidate fails to submit the applicable certificates/documents. In case the selected candidate fails to provide applicable certificates/documents within this time period, his/her candidature would be rejected under intimation through SMS/e-mail.

4. The selected candidate would be given opportunity to provide the rectified/corrected documents under rectifiable deficiency within 21 days' time. If the selected candidate fails to provide the required corrected/rectified certificates/documents, within 21 days, his/her candidature would be rejected under intimation through SMS/e-mail.

10. The respondent is further relying upon a declaration made by the petitioner in the application form. The relevant extracts of the application are as below:

*“That as per documents and report from advocate, available with me/us, my/our offer qualifies for being considered under “Group-1” as defined in clause 4(v) of the Brochure for retail outlet dealer selection by the Oil Company **Hindustan Petroleum Corporation Ltd.***

Note: In case land belongs to member of Family/Others, notarized affidavit as per Appendix-III A should be available which is to be submitted when asked by Hindustan Petroleum Corporation

Ltd.. Each applicant should have a confirmatory letter from an advocate (Appendix-III B) giving details of the current ownership, documents relied upon and the category under which the land falls (Group-1 or Group-2) before submitting the application.

15. UNDERTAKING BY THE APPLICANT

a. I am aware that eligibility for Retail Outlet Dealership will be decided based on the information given in the application above. On verification by the Oil Company if it is found that the information given by me is incorrect/false/misrepresented then my candidature will stand cancelled and I will be declared ineligible for the Retail Outlet Dealership.

b. I also confirm that I am in possession of the supporting documents in original in respect of the information given by me in this application and if selected, failure to present these documents in original will result in cancellation of selection due to submission of false/unsupported information in this application.”

11. A Coordinate Bench of this Court has considered the issue involved and concluded that Appendix-III B of a later date may not per se be illegal so long as the same certifies that the land offered by an applicant fulfilled the criteria laid down in Brochure as on the date of the application yet various declaration contained in the application form leave no manner of doubt that same must be of the date of application or a date prior but not of a later date. The relevant extracts of the judgment read as:

“9. Clause 4 (v) (k) reproduced above stipulates that the category in which the land offered by him is covered, must be declared in the application form. The

declaration should be supported by Appendix-IIIB issued by an advocate. This confirmatory letter must show that the land offered was available 'as on date of application'. There is no requirement that the confirmatory letter also should be of the date of the application.

10. However, para No.9 of the application states that the applicant must identify his group on the basis of the letter of an advocate available with him. The declaration aforementioned further provides that information contained in the application is on the basis of inter alia report of an advocate. The applicant also gives an undertaking that he is in possession of supporting documents in original and that the information given in the application is on the basis of the said documents. Appendix-IIIB is included in the said supporting documents. Thus construed, the group for which the applicant submits his application can be identified only on the basis of the letter issued by an advocate because he certifies therein that the requirements of land as given in the Brochure are fulfilled. Thus, a logical corollary thereof is that Appendix-IIIB must be available with an applicant when he files the application. It may be of the date of application or may be even of an earlier date.

11. Appendix-IIIB of a later date may not per se be illegal so long as the same certifies that the land offered by an applicant fulfilled the criteria laid down in the Brochure as on the date of the application. Yet, various stipulations contained in the application form, leave no manner of doubt that the same must be of the date of application or a date earlier but not of a later date. These terms must be kept in mind while scrutinizing an application. All applications have been

uniformly scrutinized and there is nothing unreasonable in the procedure adopted.”

12. In the case in hand, concededly the Appendix-III B certificate was of a date post date of application. It is apt to notice that petitioner submitted NOC of co-owners in Appendix-III A and these were also post date of application.

13. In the wake of afore-cited judgment of a Coordinate Bench of this Court, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

05.09.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>