

(2010) 11 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition 4340 of 2009

Amar Chand

APPELLANT

Vs

Hindustan petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0068

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J. 1. The petitioner is aggrieved by the action of respondents No.1 and 2 in selecting respondent No.3 Mukesh Sharma for grant of petrol pump at village Karsha, Tehsil Ani. The petitioner was one of the applicants for this retail petrol outlet. Notice of this petition was issued on 24.11.2009. By an order dated 2.6.2010 respondent No.3 was allowed to be impleaded as party respondent. The order directs:-

02.06.2010

Present: Mr.Sanjeev Bhushan, Advocate for the petitioner.

None for respondents No.1 and 2.

Mr.Vinay Kuthiala, Advocate, for
the proposed respondent/applicant.

Application for impleadment

taken on record. Allowed.

Post on 17.6.2010.

Sd/-

(K.J.),C.J.

Sd/-

(R.S.),J.

Reply to the petition and thereafter rejoinder have been filed.

2. The petitioner pleads that an advertisement was published in 'Amar Ujala' on 20.6.2009 for grant of retail outlet dealerships for the States of Punjab, Haryana and Himachal Pradesh. The petitioner had applied for retail outlet dealership at village Karsha, Tehsil Ani, District Kullu being resident of Ani. He submits that he is resident of Tehsil Ani and is a contractor. He submitted his application, fulfilling all the requirements of the advertisement and attached all the documents required, complete in all respects, as asked for in the advertisement, but was surprised to learn through a letter dated 16.11.2009 (Annexure P-4), which informed him that his application was found to be incomplete and that he was ineligible for the grant. Petitioner alleges that on making inquiries, he learnt that the interview has been fixed for 20th and 21st November, 2009 and the respondents acted in a manner which was against his interest. The pleading is that he was the most meritorious person with prime land owned by him for which he had made huge investments and was entitled to the maximum number of marks as detailed by the selection criteria.

3. The petition is resisted by respondents No.1 and 2 primarily on the ground of his eligibility. Respondent No.3 has challenged the maintainability of the writ petition on a number of grounds including the fact that the petitioner did not possess any land on the date when he made the application.

4. I have heard learned counsel for the parties and have gone through the record of the case.

5. Adverting to the conditions applicable as provided in Annexure P-1, which are guidelines for selection of Retail Outlet Dealers and which are the same as are contained in the advertisement, though not prejudiced by the petitioner but by the respondents, the essential conditions according to clause-9 are:-

(a) ...

(b) ...

(c) ...

(d) Filled and completed application

form along with relevant enclosures, complete in all respects, should be submitted so as to reach the office address mentioned in the advertisement for the location, before the due date and time.

(e) ...

(f) ...

(g) No addition/deletion/alteration will be permitted in the application form after cut-off date for submission of applications.

(h) No additional documents whatsoever will be accepted or considered after the cut off date for submission of application.

(i) Applications received after the cut-off date for any reason, including postal delay, and those without accompanying valid documents, Affidavits, Medical Certificates etc., application fee or incomplete in any respect will not be considered and no correspondence will be entertained by the oil company in such cases whatsoever.

(j) ...

(k) ...

(l) ...

6. At this juncture, I may also advert to eligibility criteria which are under clause-4 and providing that a person should be of Indian Nationality, not less than 21 years of age and should have minimum qualification of matriculate or an equivalent diploma for all categories except reserved categories.

7. These are similar to the conditions as contained in the advertisement Annexure R-1, which are not disputed clause-13, which provide:-

General Terms and Conditions:

(a) While any individual meeting the eligibility criteria as mentioned above can apply under Open Category, for any location reserved for a particular category the individual meeting all the eligibility criteria specified for the category only can apply.

(b) Filled application along with relevant enclosures complete in all respects to be submitted so as to reach the office address mentioned above on or before 4 p.m. (1600 hrs) on 24.7.2009. All the pages of the application along with enclosures should be serial numbered and total number of pages to be indicated on top of the application.

(c) ...

(d) No addition/deletion/alteration will be permitted in the application once it is submitted.

(e) ...

(f) Applications received after the cutoff date including postal delay and those without accompanying valid documents including application fee or incomplete in any respect will not be considered and no correspondence will be entertained by HPCL in such cases whatsoever.

(g) ...

(h) ...

(i) ...

(j) If any statement made in the application or in the document enclosed therewith or subsequently submitted in pursuance to the application by the candidate at any stage is found to be incorrect or false, the application is liable to be rejected without assigning any reason and in case the candidate has been appointed as a dealer, the dealership is liable to be rejected.

8. The letter conveying the rejection to the petitioner has been filed along with the application as Annexure P-4 which states that the education certificate has not been attached. With the reply the respondents have annexed Annexure R-3 which is the check list prepared at the time of scrutiny shows that (1) no land details given, (2) no finance details in application form, (3) educational qualification is not attached, (4) no experience certificate is attached.

9. Learned counsel appearing for the petitioner submits that these notings made on this form have been fabricated/forged with a view to harm this interest. According to learned counsel, the application form complete in all respects was submitted and copy thereof has been attached by the petitioner as Annexure P-2 to this petition showing his all the details as required.

10. The original record was called for and has been examined by the Court. I do not find that the submissions made on behalf of the petitioner, that his form has been tampered with/alterd, can be accepted. This is for the reason that there is no chronology/sequential numbering of the documents in the original application which has been submitted by the petitioner. There is a receipt for Rs.1,000/-, dated 23.7.2009. The application has been delivered by hand. The petitioner writes/discloses that his educational qualification is plus two, gross income for the last year is Rs.44,48,915/-. Against column No.12(a), asking for information as to whether a suitable site is readily available at the location for which dealership has been advertised, he ticks against the option 'Village', the land is supposed to be situated in Behna, District Kullu on the National Highway. There is no detail with respect to the area of the land, the nearest kilometer stones, site map with dimensions, name of the owner of the land, relationship of the owner and whether such owner is willing to transfer his land. Against column No.13, which says, "Give details of source of funds", all details have been left blank. Undertaking furnished in the application form itself is that the applicant undertakes to produce the originals of attachments enclosed with the application at the time of interview. Obviously, those of the documents which have not been attached/submitted with the application form including the proof of educational qualification could not and cannot be produced in original by the petitioner. Alongwith this application, there is an income tax return for the assessment year 2008-09, certificate of the revenue authority saying that the petitioner has 12-15 Bighas of land in his ownership in which there is an apple orchard two houses

and two motor vehicles, total valuing Rs.51 lacs. Interestingly, even this certificate does not detail the exact location of the land, survey and khasra numbers etc. The application is also accompanied by a copy of the Identity Card of Election Commission of India, PAN Card of the petitioner, duly attested affidavit on non-judicial stamp papers, attested character certificate issued by the Executive Magistrate and certificate of being a bonafide Himachali. This is the entirety of the application. Why the documents forming part of the application are not sequentially numbered or the application form has not been paged as required, is not explained.

11. On the question of the financial viability, I find that there is a report which has been filed with the writ petition which consists of a certificate issued by the Pradhan, The Seraj Truck Operator Union, Anni, District Kullu, stating that the Seraj Truck Operators Union is a resisted (sic registered) Union, and almost 100 Trucks, Tempo and other vehicles are resisted (sic registered). The certificate reads:-

"CERTIFICATE"

This is certified that "THE SERAJ TRUCK OPERATIONS UNION ANNI" is a resisted union. In our Union almost 100 Trucks, Tempo & other vehicles are resisted. The following "AMAR & COMPANY (REGD)" IS APPLYING FOR THE PETROL PUMP HERE AT "KARSHA". If the petrol pump is sanctioned for this society, our union vehicles will fill the fuel from this pump. It is beneficial for our Union & also for this area. I wish best of luck for this society for its future.

Sd/-

Pradhan

The seraj truck operator union Anni District Kullu Himachal Pradesh 172026."

Then there is a Techno Economic Feasibility Report prepared by Vashishth Associates, but this report does not bear any date. On the question of land, sale deed dated 8.10.2009 has been attached with the rejoinder to show that the petitioner had made all efforts to purchase this land.

12. At this juncture, it may be noted that these facts have been noticed to judge the submissions made by the petitioner that his application was complete in all respects and that there have been interpolations by the respondent-Board. There is no explanation as to why the original documents have not been numbered chronologically. There is also no explanation on the record as to why the report of the Chartered Accountant showing the financial viability is undated. Furthermore, it is in the pleadings of respondent No.3 that the land, which the petitioner submits is his, belonged to one Balbir Thakur and land was offered by its owner to Human Welfare and Educational Society which was also one of the applicants for the retail outlet. To this effect, affidavit of the owner Annexure R-3/ A has been appended wherein the owner states that he has no objection in case the retail outlet is sanctioned in favour of the Human Welfare Educational

Society and that such land would be transferred to them in case the allotment is made. It is undisputed that this Society was also one of the applicants for the grant.

13. Subsequent purchase of the land would not grant preferences for selection for the grant as it is the condition of the advertisement that he should be possessed of the land and such details should be supplied with the application.

14. On consideration of the entire record, I find that though the reason for rejection, which is communicated, is that the part of educational qualification has not been furnished, the original record also shows that the application is not accompanied by documents of a number of other requirements in order to enable the Board to judge the suitability of the petitioner.

15. Learned counsel appearing for the petitioner urges that the requirement of furnishing proof of the educational qualification is not mandatory but directory and that such requirement can be fulfilled later on.

16. Learned counsel places reliance to a decision of the Supreme Court in *Mrs. Seema Kumari Sharma vs. State of Himachal Pradesh and another*, AIR 1997 SC 1693, where the Supreme Court held that for those of the teachers who have not submitted their original mark sheet etc. could be allowed to do so and subsequently, though this submission was rejected by the High Court which was reversed by the Supreme Court. Even if this submission is accepted, all that I need say is that in the present case, it was an essential requirement that the application should be complete in all respects and that one of the conditions was that no additions, alterations will be allowed to be made in the application subsequent to its having been submitted. It does not comply with the conditions of the advertisement as it is not complete in all respects and there is nothing on record to establish that the educational qualification certificate even in the nature of a photocopy has been filed by the petitioner. The application and documents are not sequentially numbered. There is nothing on the record to show the financial viability as noticed above or any experience etc. There is nothing to establish that the rejection of the application of the petitioner is motivated. So far as the allegations with respect to tampering of the application of the petitioner are concerned, I cannot persuade myself to hold that there is any material on the record to substantiate this allegation.

17. In these circumstances, I do not find that there is any merit in this writ petition which is accordingly dismissed. All interim orders are vacated. All miscellaneous applications are disposed of.