

(2012) 01 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 2031 of 2001

Amit Agrawal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 3 ALLMR 670

Hon'ble Judges : P.B. Majmudar, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : S. C. Mehadia, for the Appellant; Jayant Mokadam, Advocate and Shri D. K. Dubey, Advocate, Respondent No. 2, Shri V. V. Bhangde, Advocate, Respondent No. 3 and Shri R.L. Khapre, Advocate, Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—By way of this petition, the petitioner challenges the selection of respondent No. 4 who is having more than 50% disability as he is paralytic and his both legs are affected by paralysis. The petitioner and respondent No. 4 both had applied in "Handicapped" quota. So far as the petitioner is concerned, it is an admitted fact that he is having 45% disability due to congenital deformity of the finger. It is argued by the learned Counsel for the petitioner that the Chairman of the Dealer Selection Board, at the relevant time, was authorized to give maximum 200 marks and other Members were authorized to give 100 maximum marks to each candidate. The learned Counsel for the petitioner submits that the provision which give authority to give more marks than other Members, is arbitrary. It is submitted that the Chairman has arbitrarily given more marks to respondent No. 4. It is also submitted that the financial condition of the petitioner is much better as compared to respondent No. 4 and the financial condition of respondent No. 4 is not proper and sound.

2. In order to find out whether the marks given by the Chairman is taken out

from consideration, respondent No. 4 has still secured more marks than the petitioner. We called out for relevant record and the particulars about allotment of the marks. Even perusing the marks given by two other members, it is clear that respondent No. 4 has secured 1 mark more than the petitioner. The record of the Dealer Selection Board is now kept with respondent No. 2 as the Board is now abolished. Learned Counsel for respondent No. 2 produced the sealed cover of the marks allotted to the candidates. On opening the sealed cover, we have seen the relevant marks given by the Dealer Selection Board to the petitioner and respondent No. 4. After perusing the marks given by the Board, the relevant document in sealed cover has been handed over to the learned Counsel appearing for respondent No. 2.

The Board allotted the marks as follows.:

Dealer Selection Board

Marks obtained by the petitioner

Marks obtained by respondent No. 4

Chairman, D.S.B.

100

170

Dy. General Manager (Admn.) IOC

83

83

D.G.M.

Operation, HPCL

62

63

Even if the marks allotted by the Chairman are taken out from consideration, then also respondent No. 4 has secured one more mark as compared to the petitioner. So far as the Chairman of Dealer Selection Board is concerned, at the relevant time the retired District Judge was qualified in the Board of the Selection Committee.

3. The aforesaid chart is also shown to the learned Counsel for the petitioner and he is also satisfied about the concerned marks given by the Dealer Selection Board. The learned Counsel appearing for respondent No. 4 has relied upon the decision of Orissa High Court in the case of Om Prakash Agrawal Vs. Bharat Petroleum Corporation and Others, , wherein it is observed in para Nos. 14 and 19 as under:

14. A selection committee should essentially be an independent and impartial body constituted for selection of candidates for a particular post or particular vacancy and so while making the selection it must adopt procedural fairness. Once such Committee adopts a mode of selection, which is fair and transparent, procedural fairness can be inferred. In the case of *K. Vinod Kumar Vs. S. Palanisamy and Others*, , it was said that when a procedure or guideline is provided for making the selection, the Selection Board has to follow the procedure or guideline. If no procedure has been prescribed, then the Selection Board is free to devise its own procedure, which satisfies the test of reasonableness. In the instant case, clear procedure and guidelines have been issued by the Ministry of Petroleum and Natural Gas, Govt. of India for selection of dealer for the retail outlets and in the guideline it has been categorically indicated that the Chairman would have the power of awarding maximum 200 marks as against the power of each member to award maximum 100 marks. The Selection Board followed this guideline while making the selection of dealers. Clause 3.5.2 of the memorandum provides that a retired Judge would be the Chairman and two Senior Officers of Oil Companies would be the members. Since the Chairman is a total outsider and independent person having a judicial background, the Ministry probably thought it proper to give him the power of awarding more marks than the members to ensure fair selection of the dealers. It is to be noted that the same guideline was followed for all the candidates facing the interview and the Chairman and each of the members awarded highest marks to opposite party No. 4. So the guideline empowering the Chairman with the power of awarding more marks cannot be termed as ultra vires or unfair.

19. We are therefore of the considered opinion that the selection process adopted by the Board was neither illegal nor violative of Article 14 of the Constitution and that the decision of the Board was not tainted with any prejudice or mala fide. We are also of the opinion that the interview and selection were done by adopting fair procedure. We, therefore, do not find any good reason either to quash the appointment of opp. Party No. 4 or to direct appointment of the petitioner as dealer of the Attabira outlet. Consequently, the writ application fails and is dismissed and the interim order dated 6-5-2004 also stands vacated.

4. The petitioner, having appeared before the Dealer Selection Board and having secured less marks, has subsequently raised his grievance. The learned Counsel for respondent No. 4 also pointed out that the SLP against the aforesaid judgment of Orissa High Court has also been dismissed by the Supreme Court.

5. So far as the qualification is concerned, it is not in dispute that respondent No. 4 is qualified as per the condition prescribed by the advertisement. It is submitted by the learned Counsel for respondent No. 4 that respondent No. 4 is Matriculate having Diploma in Computer Technology. Considering the said aspect regarding qualification, we do not find any merits in the contention raised by the petitioner. With regard to the financial condition, learned Counsel appearing for

respondent No. 2-the Indian Oil Corporation Ltd. submitted that they have verified the financial aspect and they are satisfied that respondent No. 4 is financially well and on that basis letter of indent in favour of respondent No. 4 was issued, but because of pendency of this matter, they could not proceed further. It is pointed out by the learned Counsel for respondent No. 4 that his client is unable to walk and he is required to move through wheel chair. He is having total disability to the tune of 50% as his legs are totally useless. As against this, the petitioner is having disability of 45% only in connection with one of the fingers. It is not in dispute that physically, respondent No. 4 is more handicapped person as he is unable to move freely because of unfortunate disease of Paralysis. It is because of the pendency of this case, a selected candidate could not get benefit for more than ten years. Except the points discussed above, since no other points have been raised by the petitioner, we do not find any substance in the present petition, the petition is, therefore, dismissed. Interim stay, if any, stands vacated. Respondent No. 2 to allot dealership to respondent No. 4, forthwith.

Rule discharged. No order as to costs.