

(2014) 08 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : CWP No. 3745 of 2011

Capt. H.C. Chandel

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2014) 08 SHI CK 0012

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Sandeep Sharma, ASGI, K.D. Sood, Sr. Advocate, Rajnish K. Lall, Advocate Surinder P. Sharma, Advocate, Vandana Misra, Advocate, vice, B.N. Misra, Advocate, Neeraj K. Sharma, Dy. AG and Janesh Gupta, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J.—The petitioner as an ex-serviceman submitted an application to the Ministry of Defence, Directorate General Resettlement, Ministry of Petroleum and Natural Gas on 28.2.1997 for allotment of petrol pump. The petitioner also submitted an application in the month of August, 2001. The petitioner approached the Hon"ble Delhi High Court by way of CWP No. 6359 of 2002. The case of the petitioner was rejected on 28.1.2002. In view of this, the petitioner had withdrawn CWP No. 6359 of 2002 on 15.2.2006.

2. In the reply filed to CWP No. 6359 of 2003 by the Union of India, it was averred that the Public Sector Oil Marketing Companies release advertisement, invite applications for selection of retail outlet dealerships (Petrol Pumps), LPG distributorships (Cooking Gas Agencies) and SKO-LDO dealerships (kerosene agencies) in respect of locations where these dealerships are to be set up. However, after the dismantling of the Administered Pricing Mechanism (APM) in the petroleum sector w.e.f. 1.4.2002, the Oil Marketing Companies were making selections as per the guidelines adopted by the respective Oil Marketing

Companies. There was also reference to the allotment of retail outlet dealerships/ LPG distributorships to the widows/next kin of the defence personnel killed in action in "Operation Vijay" (Kargil). Under this scheme, no advertisement was required to be released and the allotments were made solely on the recommendations of the Director General Resettlement (DGR). The allotments under the discretionary quota of dealerships/distributorships were also made on genuine compassionate grounds, to the deserving persons for the following two categories:

a) Dependants of defence/paramilitary/police personnel, who are killed in action or persons permanently disabled while performing their duties and have not been suitably rehabilitated.

b) Dependants of Central/State Government employees, who are killed or permanently disabled while performing their duties and have not been suitably rehabilitated.

3. The petitioner has approached this Court seeking direction for allotment of petrol pump at Matiana and also to quash the order of allotment of petrol pump by respondent No. 3 in favour of respondent No. 9.

4. The case of the petitioner, in a nut shell, is that as per the norms published on 14.5.1997, his case was required to be considered under discretionary quota. Para 2 of Annexure A-4 dated 14.5.1997 reads as follows:

"2. Reservation for Defence Personnel.

With effect from 1st April, 1985, 7 and 1/2 % quota of these oil product agencies have been reserved for the following categories of defence personnel vide Ministry of Petroleum letter No. D.O. No. P-19011/19/83-IOC/193-F dated Feb. 1985:-

(a) Defence personnel who are permanently and severely disabled either in war or on military duty during peace time.

(b) Widows and motherless dependents of defence personnel whose husbands/guardians are killed while on military duty either in war or peace.

(c) Extremely deserving cases of ex-servicemen who have no means of livelihood."

5. The petitioner, since he was not getting any pension after employment, applied under category "c" of para 2 of the Scheme. The petitioner also placed on record a copy of the advertisement dated 4.9.2009, issued by the Indian Oil Corporation and at page 145 of the paper book by Hindustan Petroleum, at page 146 by Bharat Petroleum. He has also made representations against the issuance of these advertisements vide Annexure A-13 and A-14, respectively. The petitioner was informed by the Indian Oil Corporation on 17.12.2010, that his case was pending with Government of India, whereby he has requested for allotment under discretionary quota of the Government of India. He was

informed that Ministry of Petroleum and Natural Gas, Government of India vide letter dated 26.12.2006 had decided to disband the Discretionary Quota Scheme with immediate effect, as all eligible candidates falling under DQS categories could also apply under normal selection process for RO/SKO-LDO dealerships/LPG distributorships wherein a reservation of 8% was kept for the defence category. He was also informed regarding cancellation of advertisement for the location at Matiana, as the selection against the advertisement has been made in line with prevalent policy guidelines. The principal stand of respondent No. 3 is that as per the Policy, it prepares 100 point roster location-wise and category-wise. The stand of respondent No. 4 is that the petitioner could apply as and when the advertisement is issued for setting up petrol pump at Matiana. The fact of the matter is that the Indian Oil Corporation has reserved Matiana as open (women) category. Respondent No. 9 had participated in the selection process and letter of intent was issued in her favour. The petitioner has not earlier challenged the selection of respondent No. 9. He moved an application bearing CMP No. 1901 of 2012 for amendment of the Writ petition, which was allowed on 25.7.2012. The petitioner also filed CMP No. 12962 of 2012 for placing of additional material on record. The petitioner has placed on record communication from the Solicitor General of India dated 15.3.2001, copy of letter dated 5.5.2000 from the Prime Minister's Office, Annexure A-22 dealing with discretionary quota, copy of Special Scheme for allotment of retail outlet dealerships and LPG distributorships to widows/next of kin of defence personnel killed in action in "Operation Vijay" in Kargil dated 26.11.2001, copy of the proceedings of the meeting taken by Addl. Secretary, Ministry of Petroleum and Natural Gas on 25.9.2001 and also Special Scheme for direct allotment of dealership/distributorship of petroleum products to the next of kin of Mumbai Martyrs dated 2.2.2009 including letter dated 25.5.2001, addressed by Under Secretary to the Government of India to Chief Secretaries of all the States/Union Territories.

6. The petitioner, as noticed hereinabove, has submitted an application(s) on 28.2.1997 and in the month of August, 2001. The rejection has been conveyed to the petitioner vide communication Annexure A-10 dated 28.1.2002 at page 136 of the paper book. It was not borne out from the contents of Annexure A-10 that why the case of the petitioner has been rejected for allotment of petrol pump under the discretionary quota. The Court passed an order on 3.12.2012 directing the respondent No. 3 to produce the record which led to the issuance of Annexure A-10 dated 28.1.2002 by the next date. On 9.1.2013, Mr. Rajnish K. Lall, Advocate, appearing on behalf of respondent No. 3 informed the Court that record pertaining to Annexure A-10 dated 28.1.2002 was with respondent No. 2. Consequently, respondent No. 2 was directed to produce the records by the next date of hearing. On the next date of hearing i.e. on 12.3.2013, Mr. Ravinder Thakur, Central Government Counsel, has placed on record a copy of letter dated 13.2.2013, received from the Ministry of Petroleum and Natural Gas, Government of India. According to this communication, the entire record had

been forwarded to the Executive Director (Sales), Indian Oil Corporation Ltd. Mumbai, after the closure of office of Oil Coordination Committee (OCC). In view of this, the Indian Oil Corporation, was again directed to produce the entire records on the next date of hearing. Respondent No. 3 has filed affidavit(s) at pages 402 and 404 of the paper-book, pursuant to the directions issued by this Court on 9.4.2013. According to the affidavit at page 402 of the paper-book dated 8.1.2013, the list of ineligible applicants relating to the discretionary allotment of RO/SKO/LDO dealership as per Annexure A-10 dated 28.1.2002, was with the Oil Co-ordination Committee, New Delhi, respondent No. 2 i.e. Oil Co-ordination Committee was an independent body and Indian Oil Corporation had no concern and record was not available with the Indian Oil Corporation. It was also averred in the affidavit dated 11.5.2013 (p. 404 of the paper book) that except Annexure X-1 dated 28.1.2002, no record was available with Indian Oil Corporation.

7. It is evident from the contents of letter dated 13.2.2013, sent by Joint Director (Mktg.) to Sh. Ravinder Thakur, Central Government Counsel, that as per the records of Oil Coordination Committee (OCC), available in Petroleum Planning and Analysis Cell (PPAC), the application of the petitioner for allotment of dealership/distributorship under Discretionary Quota Scheme was forwarded in original to the Executive Director (Sales), Indian Oil Corporation Ltd. Mumbai vide OCC letter dated 20.9.2002, for scrutiny and further necessary action by the Committee constituted by the Ministry of Petroleum and Natural Gas, as per the procedure. Further, no other information could be located from the record of Petroleum Planning and Analysis Cell (PPAC). It is clear from the communication dated 13.2.2013, that the case of the petitioner was forwarded in original to the Executive Director (Sales), Indian Oil Corporation Ltd., Mumbai on 20.9.2002. However, surprisingly, the Indian Oil Corporation has taken the stand that it has not received the letter and has placed on record the copy of Photostat letter dated 28.1.2002. The case of the petitioner was forwarded as per letter dated 13.2.2013 for scrutiny and further necessary action by the Committee constituted by the Ministry of Petroleum and Natural Gas vide its letter dated 20.9.2002. This letter dated 20.9.2002 is subsequent to the letter dated 28.1.2002. It was expected from the Indian Oil Corporation to produce the records before this Court and since the Indian Oil Corporation has failed to do so, this Court is inclined to draw an adverse inference against the Indian Oil Corporation. The petitioner has been informed as per Annexure A-15 dated 17.12.2010, that the policy has changed. However, the fact of the matter is that as per this Annexure A-15 dated 17.12.2010, the Ministry of Petroleum and Natural Gas has decided to disband the Discretionary Quota Scheme with immediate effect on 26.12.2006. The case of the petitioner was being considered, purportedly under this Schemes in vogue before 26.12.2006, including the Scheme to which the Company has made reference dated 14.5.1997 for allotment of petrol pumps under discretionary quota. The petitioner has submitted application(s) on 28.2.1997 and in the month of August,

2001. The norms, as per the stand of the Union of India, in CWP No. 6359 of 2003, have only been changed on 1.4.2002. Thus, the case of the petitioner was required to be considered on the basis of the prevalent instructions/schemes/guidelines at the time of submission of the application(s) on 28.2.1997 and in the month of August, 2001. The petitioner is a helpless ex-serviceman. He has served the Indian Army with honours for 14 years. He is not getting any pension. It is a very deserving case. The respondents have not shown any sensitivity to redress the genuine grievance of the petitioner.

8. Now, the Court will advert to the challenge laid by the petitioner to the allotment of petrol pump at Matiana in favour of respondent No. 9. The allotment of petrol pump in favour of respondent No. 9 has been made in conformity with law and the prescribed procedure. All the petroleum Companies are preparing 100 point roster whereby special quota is prescribed for defence personnel. It was always open for the petitioner also to apply for the allotment of petrol pump falling in defence category. The petitioner could not insist for the allotment of a petrol pump at a particular place i.e. Matiana. It is a policy decision taken by the Oil Companies and the scope of judicial review in these matters is very limited. Respondent No. 9 has participated in the selection process pursuant to an advertisement dated 4.9.2009 i.e. open (women) category.

9. The Indian Oil Corporation is State within the meaning of Article 12 of the Constitution of India. It is expected from the Government undertaking to preserve and keep the record in a safe custody. It cannot be permitted to take a stand that the records were not available despite communication dated 13.2.2013 at page 401 of the paper-book as it was specifically stated in letter dated 13.2.2013, that the case of the petitioner was sent to Indian Oil Corporation on 20.9.2002 for scrutiny and further necessary action by the Committee constituted by the Ministry of Petroleum and Natural Gas as per the procedure.

10. The petitioner has not sought a specific relief of quashing of Annexure A-10 dated 28.1.2002, however, this Court is of the considered view that since the petitioner has appeared in person and is not conversant with the technicalities of law involving pleadings, the Court can always mould the relief in the interest of justice.

11. Accordingly, the writ petition is allowed and Annexure A-10 dated 28.1.2002 is quashed and set aside. Respondents No. 1 and 3 are directed to re-consider the case of the petitioner in view of the instructions/guidelines/schemes, which were prevalent for allotment of petrol pump under discretionary quota at the time of submission of the application(s) by the petitioner i.e. on 28.2.1997 and in the month of August, 2001, within a period of eight weeks from today, as a special case, outside the 100 point roster. Since the petitioner has appeared in person, he be informed of the judgment by the Registry.

12. With the above observations, the Writ Petition is disposed of, so also the

pending application(s), if any.