
(2001) 03 MP CK 0051

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No"s. 219 and 227 of 1997

Dilip Kumar Sharma and another

APPELLANT

Vs

Indian Oil Corporation and others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2001 MP 218 : (2001) 2 J LJ 16 : (2001) 2 MPHT 315 : (2001) 2 MPLJ 205

Hon'ble Judges : S.P. Shrivastava, J;R.B. Dixit, J

Bench : Division Bench

Advocate : Shri N.K. Mody and Mr. Brijesh Sharma, for the Appellant; Shri C.R. Roman and Shri K.K. Lahoti, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the appellant.

Perused the record.

The petitioner-appellant had filed the writ petition giving rise to the present appeal praying for quashing of the allotment of the L.P.G. Distributorship in favour of respondent No. 3, Kamlesh Kumar and requiring the Indian Oil Corporation as well as the Oil Selection Board implicated as respondent Nos. 1 and 2 in the present appeal to reconsider his case for the grant of L.P.G. Distributorship in the light of his qualifications and long period of unemployment.

The aforesaid writ petition was dismissed by a learned Single Judge of this Court vide the impugned order.

Feeling aggrieved the petitioner has now come up in appeal seeking setting aside of the impugned judgment and order passed by the learned Single Judge and quashing of the selection/appointment of respondent No. 3 as a L.P.G.

Distributor. It has also been prayed that a direction be issued for holding a fresh selection/appointment in accordance with law and prescribed criteria and guidelines.

During the pendency of the writ petition pursuant to a direction issued by the learned Single Judge the respondent Nos. 1 and 2 had produced the entire record relating to the impugned selection proceedings for the allotment of the L.P.G. Distributorship in question.

Learned counsel for the aforesaid respondents have produced the aforesaid records during the course of hearing of this appeal which have also been perused.

The Indian Oil Corporation, respondent No. 1, had issued an advertisement inviting applications for the allotment of distributorship of Indane (LPG) in Sabalgarh, District Morena within the municipal limits of Sabalgarh. Various eligibility criteria had been prescribed which had to be satisfied by an applicant. One of the eligibility criteria so prescribed was that the applicant should have been residing in District Morena for a period of atleast five years anterior to the date of application. Another criteria was that the income of the family of the applicant as defined in the application should not have been above Rs. 50,000/- per annum in the preceding financial year. It was also prescribed that the applicant should not have any dealership or distributorship of any Oil Company and further none of his near relative as defined in the application should be dealer or distributor of any oil company.

It is not in dispute that the distributorship in question was of open category without any reservation. However, in the conditions regulating the allotment of the distributorship it had been specifically provided that other things being equal the Consumer Co-operative Societies will be given preference as compared to unemployed graduates and further the unemployed graduates will be entitled to preference as against other applicants.

The petitioner had asserted that the respondent No. 3 did not fulfil the minimum qualifications, and conditions and being ineligible could not have been allotted the distributorship in question. In the aforesaid connection what had been asserted was that the respondent No. 3 was neither a resident of Sabalgarh nor had any land at that place of his own for godown and showroom. It was also asserted that he was already having whole-sale agency of kerosene oil, agency of fertilisers and was also holding a Sher Bidi Agency and was a big businessman of Vijaypur.

The writ petition had been contested by respondent Nos. 1 and 2 as well as respondent No. 3, who have filed separate counter-affidavits/returns denying the allegations made in the writ petition. In the counter-affidavit/ return filed on behalf of respondent Nos. 1 and 2 it had been asserted that the selection for the allotment of the Distributorship in question was held by the Oil Selection Board through duly constituted Selection Committee, consisting of a Chairman and two members. The Chairman was a retired High Court Judge. Out of these two

members one was the representative of S.C./S.T. and other backward classes and the other was a prominent citizen. It had further been asserted that at the time of interview the committee thoroughly evaluates the candidates regarding their salesmanship and capability to arrange the required finances, full-time working dealer etc. and the Selection Committee recommends a panel of two candidates in order of merit in whose favour distributorship could be allotted. The proceedings relating to the selection, which has been produced, include the comparative statement of the performance of the candidates interviewed by the committee.

The Committee after evaluation of the merits and the suitability had placed the respondent No. 3 at serial No. 1. The marks allotted to the petitioner and the respondent No. 3 indicate that the petitioners had been able to secure lesser marks as compared to respondent No. 3. The committee had fixed a total of 100 marks for interview out of which 30 marks were allotted for personality, businessmanship and salesmanship, 20 marks were allotted for capacity to arrange finances and capacity to provide facilities, 30 marks were allotted for full-time working dealer and 20 marks were allotted for general assessment and extra curricular activities. The petitioners had been able to secure far less marks out of the total 100 marks as compared to respondent No. 3 who had been placed at serial No. 1 in the merit-list.

The learned counsel for the appellant has strenuously urged that respondent No. 3 had an income over Rs. 50,000/- per annum and, therefore, he was ineligible for being considered. As has already been noticed hereinabove the total amount of income had to be determined taking into account the family as defined in the application. The details furnished by the respondent No. 3, which had been verified by the Indian Oil Corporation, did not indicate that the said respondent had an income of more than Rs. 50,000/- as claimed by the petitioners. The petitioners themselves had appeared at the . interview alongwith the aforesaid respondent. No such objection had been raised at that stage. There is nothing on the record to indicate that any objection in regard to the ineligibility of respondent No. 3 as is now sought to be urged, had been raised or pressed or brought to the notice of the concerned authorities by the applicant. It may be noticed that advertisement had been published on 24-8-1993 and the interview was held on 21-12-1995.

It has been strenuously urged by the learned counsel for the appellants that in any view of the matter the petitioner, Dilip Kumar Sharma was entitled to preference/priority in the matter of allotment of distributorship in question as he was an unemployed graduate. In this connection suffice it to say that as has already been noticed hereinabove the question of preference/ priority could arise only in case other things were equal. The expression "other things being equal" is very significant. We are of the considered opinion that the preference or priority could only be granted if other things were the same or were equal. In ease, the petitioner had qualified in the selection and was placed at par with

respondent No. 3 having secured equal marks then alone the question of preference or priority could arise which could have weighed in his favour. Even this situation is not attracted in the case of the other petitioner Omprakash Verma, who did not claim to be an unemployed graduate. We are further of the opinion that where a petitioner is not even selected to be included in the select panel the question of giving priority or preference to such a person would not arise.

The learned Single Judge has clearly held that the petitioner had failed to establish that any irregularity in the selection or bias or mala fides which could have vitiated the selection. It has also been observed that there is nothing on record to demonstrate that there was any mala fide or malice on the part of the Selection Committee.

Taking into consideration the facts and circumstances as are evident from the record relating to the selection proceedings and the facts and circumstances as are evident from the pleadings of the parties we are not satisfied that the selection proceedings can be said to be vitiated in law or that the respondent No. 3 was ineligible as claimed so as to warrant an interference by this Court while exercising the extra-ordinary jurisdiction envisaged under Article 226 of the Constitution of India.

These appeals are devoid of merits which deserve to be and are hereby dismissed.

Letters Patent Appeals dismissed.