
(2016) 10 AHC CK 0118
In the Allahabad High Court
Case No : Writ-C No. 66549 of 2010

Km. Indu Bala Bansal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 ADJ 480 : (2017) 120 ALR 858

Hon'ble Judges : Arun Tandon and Naheed Ara Moonis, JJ.

Bench : Division Bench

Advocate : V.K. Maheshwari and Ajay Kumar Goel, Advocates, for the Petitioner; A.S.G.I., P. Padia, S.C., S.K. Pal and Y.S. Sachan, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Arun Tandon and Naheed Ara Moonis, JJ. - This writ petition has been filed by one of the applicant for allotment of the dealership of retail outlet to be established in Heempur Deepa, district Bijnor with reference to the advertisement published in the newspaper dated 11.9.2009. This dealership of retail outlet was reserved for handicapped women category.

2. The petitioner before this court made an application for benefit of Clause 9 of the brochure published by the Indian Oil Corporation laying down the parameter for selection of the suitable candidates.

3. Clause 9 provides that if the female applicant is widow or unmarried women aged above 40 years without earning parents then on an application being made by her she shall not be evaluated under the head "capability to provide infrastructure and facilities" and "capability to provide finance". It is then submitted that the petitioner had made such an application and, therefore, she was required to be considered on the parameters excluding the aforesaid two heads. According to the petitioner she had secured 58.94 marks after she was evaluated on the aforesaid two parameters also.

4. So far as the respondent no. 5 who has selected with reference to the aforesaid advertisement, had not made any application for being provided the benefit of Clause 9. Therefore, she had to be considered under all the parameters specified for the purpose.

5. Reference is made to Clause 13.2.1 (e), which provides that the minimum qualifying marks for all reserved location including location reserved for women will be 50% of the total marks. It is the case of the petitioner that from the tabular chart prepared by the Indian Oil Corporation the respondent no. 5 had secured only 48.48 marks, which was below the 50% of the total aggregate of 100 provided for under different heads for evaluation. Therefore, she stood disqualified under Clause 13.2.1 (e) and her candidature could not have been considered after such disqualification.

6. Counsel for the respondents on the contrary submitted before us that since one of the candidate, namely, the petitioner who had made an application for being provided the benefit of Clause 9 i.e. for the exclusion of consideration under the parameter of infrastructure and finance respectively in order to adjudge the inter se merit of all the candidates who had applied under the same advertisement itself the marks secured by other women candidates under the two parameters had to be excluded from the total marks secured by them, meaning thereby that the petitioner with other female candidates had to be evaluated after excluding two parameters pertaining to finance and the provision of infrastructure. On such evaluation respondent no. 5 secured 25.28% marks while the petitioner could achieve 20.59.

7. In rejoinder the counsel for the petitioner points out that exclusion of the marks achieved under the two parameters of finance and capability to provide infrastructure would not mitigate against the requirement of Clause 13.2.1 (e) in respect of other candidates who had not applied for the benefit of Clause 9 and disqualification which would be attracted if such candidate failed to achieve 50% marks of the total aggregate provided for under various parameters.

8. We have heard the learned counsel for the petitioner and the learned counsel for the respondents.

9. It is not in dispute that under Clause 13.2.1 (e) the minimum qualifying marks reserved for location for women is 50% of the total marks. It is also not disputed that the respondent no.5 had not applied for any benefit under Clause 9 of the brochure for not being considered against the parameter the provision of infrastructure and finance. She has been considered under all the ten parameters and had achieved only 48.54 marks, which were much below the 50% and therefore on simple reading of Clause 13.2.1 (e) she stands disqualified.

10. Since interpretation of Clause 9, which has been referred to by both the parties before us is involved. We reproduce Clause 9 of the brochure herein below;

"9 . CORPUS FUND FACILITIES FOR WOMEN

(a) War widows will be eligible for the facilities as mentioned under column 8 above.

(b) Subject to the application and request, widows and unmarried women above 40 years of age, without earning parents, for locations reserved for women will not be judged under the head "capability to provide infrastructure and facilities" and "capability to provide finance". These applicants will be required to indicate in the application form itself whether they will like to avail the corpus fund facilities. In case this is not indicated in the application form, it will be construed that such applicants would like to get evaluated in line with other applicants i.e. they should also be assessed under the heads "capability to provide infrastructure and facilities" and "capability to provide finance". For determining the priority to be given to such candidates over other women candidates, the marks secured by other women under these two parameters will be excluded by the total marks secured by them.

(c) On their application and subject to satisfaction of IOCL, unmarried women above 40 years of age without earning parents and widows, selected for dealership in all categories including those which are not reserved for women will be entitled to financial assistance under the Corpus Fund as mentioned under Para 8 above."

11. From a simple reading of the aforesaid clause it is apparent that it is only on making of an application by a candidate who is either a widow or unmarried above the age of 40 years without earning parent that she becomes entitled for not being evaluated under the head of capability to provide infrastructure facility and capability to provide finance.

12. Admittedly, the respondent no. 5 had not made any such application and therefore she was not entitled to the benefit of Clause 9.

13. The relevant sentences of clause 9, which has been relied upon by Sri Prakash Padia and the learned counsel for the respondent no.5 provides that for determining the inter se merit of a female candidate who had applied for benefit of Clause 9 being provided to her and other women candidates, the marks secured by other women candidates under two parameters of capability to provide infrastructure and capability to provide fund would be excluded.

14. Such clause is only for purposes of adjudging inter se merit of a candidate who has opted for benefit of Clause 9 vis-a-vis the candidates who have not opted for the benefit under Clause 9. This method of inter se merit shall not in any way diluted the rigours of Clause 13.2.1 (e) i.e. the candidate who has not secured 50% of parameter prescribed would stand disqualified.

15. The disqualification which is attracted under Clause 13.2.1 (e) and inter se evaluation of the candidates under Clause 9 operate in different fields.

16. The selection of respondent no.5 cannot be legally sustained is set aside and it is open for the respondents to re-examine the matter in accordance with law and to determine the merits of the candidates strictly in terms of the brochure and the observations made herein above.

17. At this stage Sri S.K. Pal, counsel for the respondent no.5 pointed out that respondent no. 5 has not been awarded full marks under the head for infrastructure. It is left open to the respondent no. 5 to agitate the claim afresh before the authority concerned on remand as directed herein above.

18. Writ petition is allowed subject to the observations made.