
(2017) 02 RAJ CK 0131
In the Rajasthan High Court
Case No : 1442 of 2008

Mahendra Singh Bhati

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 02 RAJ CK 0131

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Pankaj Sharma, Manoj Bhandari, Vinay Jain

Judgement

1. By way of this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to question the legality and validity of the advertisement dated 3.11.2007 (Annex. 5) issued by the respondent No. 2 HPCL for grant of LPG distributorship in the location - Jaitaran Tehsil, District Pali while reserving the same for defence personnel (female). 2. Facts in brief are that the respondent HPCL issued an advertisement for allotment of LPG distributorship for the location Jaitaran District Pali in the year 2002. The Distributorship Scheme of 1996 was applicable for the said advertisement. A case has been set up by the petitioner that the said location was earlier advertised on 15.7.1998. However, on both occasions i.e. in 1998 & 2002, no suitable candidate could be selected to set up the distributorship. Having failed to select a suitable candidate in the category of defence personnel (female), the respondents re-advertised the location of Jaitaran in the open category as per the Distributorship Scheme 1996-98 through an advertisement dated 5.2.2004. The petitioner applied in pursuance of the advertisement of the year 2004 with all requisite documents and the demand draft of the stipulated application fee. However, without processing the matter any further, the respondents dropped the said selection process and again re-advertised the same in the category of defence personnel (female) through advertisement dated 3.11.2007 which is under challenge in the

instant writ petition. The petitioner has challenged the fresh advertisement dated 3.11.2007 by taking recourse of the selection procedure issued by the respondents particularly the proviso to Clause 2 thereof, which reads as below: "2. RESERVATION The location identified for setting up of LPG distributorship are reserved under various social objects categories. The percentage reservation are as under:-

Schedule Castes/Schedule Tribes	(SC/ST)	25.00%
Defence Personnel	(DC)]	8.00%
Freedom Fighter	(FF)	2.00%
Outstanding Sports Persons	(OSP)	2.00%
Paramilitary/Police/Govt. Personnel	(PMP)	8.00%
Physically Handicapped Persons	(PH)	5.00%
Open Category	(O)	50.00%

Reservation for distributorship in tribal areas in north eastern are as under :-

State Percentage of distributorship to be awarded to ST category
Balance % to be awarded to open category

Arunachal Pradesh	70	30
20 Meghalaya	80	20
Nagaland	80	20
Mizorm	90	10

In the above, 33% in each category stated above will be reserved for women in the respective category. Other things being equal, unmarried women above 40 years of age with out earning parents & Windows will be given preference over others in all women categories. In case of Widows a death certificate in respect of husband and an affidavit that she has not remarried will have to be submitted. In case no eligible/suitable women candidate is available after second advertisement, the location will be removed from the reserved category for Women and re-advertised under the respective categories with out reserving the location for Women only." [Emphasis supplied] 3. Taking recourse of the emphasized portion of the selection procedure, the petitioner has assailed the action of the respondents in re-advertising the distributorship in the reserved category for widow of defence personnel. 4. Initially, the writ petition was filed against the Union of India and the HPCL. Thereafter, an application was moved by one Sita Devi for being impleaded as party respondent in the writ petition on the ground that she was interviewed in the questioned selection process of year 2001 and stood first in merit. Therefore, this Court permitted the impleadment of Sita Devi as a party respondent in the writ petition. 5. In reply to the writ

petition filed on behalf of the respondents, a specific plea has been taken that the eligibility criterion regarding residence/proof of income was altered and thereafter, a policy decision was taken by all oil marketing companies to re-advertise the locations based on the relaxed eligibility criterion. Thus, the fresh advertisement was issued, under these relaxed eligibility criterion. The respondent Smt. Sita Devi being a widow of defence person, applied and succeeded in the selection process. It is also averred in reply to the writ petition that the application submitted by the petitioner pursuant to the advertisement of the year 2002 was cancelled way-back in the year 2004 and the application money was also refunded to the petitioner. It is alleged that the petitioner concealed this fact while filing the writ petition and thus is not entitled to equitable relief. 6. Shri Pankaj Sharma learned counsel for the petitioner vehemently urged that the respondents were not at liberty to re-advertise the same location while maintaining the reservation for women category. As per the applicable guidelines, the distributorship had to be re-advertised in the open category. He thus urged that the respondents were not at all justified in dropping the selection process started in the year 2004 and rejecting the application filed by the petitioner and initiating a fresh selection procedure through the impugned advertisement dated 3.11.2007 which deserves to be quashed and struck down while accepting the writ petition and that the respondents be directed to revive the selection procedure initiated through the advertisement issued in the year 2004. 7. Shri Manoj Bhandari learned counsel representing the oil company, by resorting to the averments made in the reply, has defended its action in re-advertising the disputed distributorship while reserving it for defence personnel (women) category in view of the changed norms. 8. Shri Vinay Jain, learned counsel representing the respondent No. 4 urged that Smt. Sita being a widow faced the due process of selection conducted by the respondents pursuant to the fresh advertisement dated 3.11.2007 and has been intimated that she stands first in merit. Thus, he urged that the petitioner has failed to make out any case of interference and the writ petition should be dismissed. 9. I have considered the arguments advanced by the learned counsel for the parties and have gone through the material available on record. 10. The basic bone of contention advanced by the petitioner's counsel Shri Pankaj Sharma is based on the above noted proviso to Clause 2 of the selection procedure. Suffice it to say that various categories of reservations are provided in the standard selection procedure to be specific for Scheduled Castes/Scheduled Tribes, Defence Personnel, Freedom Fighter, Outstanding Sports Persons, Paramilitary/Police/Govt. Personnel, Physically Handicapped Persons and Open Category. In each of these categories, reservation of 33% is provided to women. As per the petitioner's admitted case, the questioned distributorship was advertised for the defence personnel (women) category in the years 1998 and 2002. Both the procedures of selection failed owing to non-availability of a suitable candidate. Even if for arguments sake, the petitioner's contention that no third advertisement could be issued for women in such circumstances is accepted, then too as per the above quoted proviso of the selection procedure, the

distributorship would have to be re-advertised in the defence personnel category and not in the open category. The proviso clearly reads that in case of nonavailability of suitable women candidate, the location will be removed from the reserve category for women and re-advertised for the respective categories without reserving the location for women only. In this background, even if the said proviso was to be strictly adhered to, the distributorship would have to be re-advertised for defence personnel. Only reservation for women would be eschewed. The petitioner admittedly is not a defence category candidate and thus, can by no stretch of imagination, stake a claim for the distributorship. Having regard to the change in norms of evaluation introduced by the oil marketing company in the year 2007, the respondents were without any doubt justified in re-advertising the locations reserving them for defence personnel (women) on the basis of relaxed eligibility criterion because the purpose behind reserving the distributorships at particular locations for widows of war personnel is salutary and cannot be questioned. The petitioner's application was admittedly rejected in the year 2004 and he received refund of his application money way-back in the year 2004. If at all, he was aggrieved of the action of the respondents, then he could have challenged the same forthwith. 11. Having regard to the entirety of facts and circumstances noted above, I am of the firm opinion that no illegality or arbitrariness was committed by the respondents while re-advertising the distributorship for the location in question in the category of defence personnel (women). The impugned advertisement (Annex.5) dated 3.11.2007 does not suffer from any illegality, nor the same can be branded as arbitrary or unconstitutional so as to require interference in the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. 12. The writ petition thus fails and is hereby rejected. Stay application is also dismissed. No order as to costs. Writ Petition rejected.