(2012) 01 GAU CK 0039

In the Gauhati High Court

Case No : WP (C) No. 1208 of 2011

Muktar Hussain (MD.) APPELLANT

Vs

Indian Oil Corporation Ltd. and Ors RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Citation : (2012) 3 GLT 267

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A.K. Sharma, Mr. A.D. Choudhury, Mr. N. Sarmah, Ms. C. Kalita, Mr. S. Deka and Mr. D. Choudhury, for the Appellant; M.K. Choudhury, Standing Counsel IOC, Mr. A.C. Das, M.K. Sarma and Mr. P. Khataniar, for the Respondent

Judgement

B.P. Katakey, J.—The writ petitioner, who was one of the applicants for awarding the LPG Distributorship under Indian Oil Corporation Limited (IOCL) at Lahorighat in the district of Morigaon, Assam, has filed this application praying for a direction to the respondent/IOCL to issue the letter of intent in his favour pursuant to the select list/evaluation statement dated 17th July, 2009 prepared and published by the Selection Committee constituted for selection of candidate for appointment of LPG Distributorship and not to accept the bank statement as well as other bank documents submitted by the respondent No. 5 and reevaluate the marks allotted by the first L-1 Committee and also not to declare the result of selection on the basis of the re-evaluation made pursuant to the complaint dated 28th July, 2009 lodged by the respondent No. 5. The facts relevant for the purpose of disposal of this writ petition may be noticed as under: -

(a) An advertisement was issued in a local English daily (Assam Tribune) on 26th February, 2008 inviting applications for appointment of LPG Distributors in various categories under IOCL, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited and in various locations specified in the said advertisement, in the State of Assam, including in Lahorighat location in the district of Morigaon, which is under open category. Pursuant to the said advertisement, the petitioner, the respondent No. 5 and others submitted their applications for appointment as LPG Distributor at Lahorighat. The applications filed by the applicants including the petitioner and the respondent No. 5 were scrutinized by the officer appointed by the IOCL and having found to be in order and eligible, those were placed before the L-1 Committee. The said Committee (L-1 Committee) constituted for the purpose of awarding marks on document based evaluation awarded 77.1 and 71.8 to the petitioner and the respondent No. 5, respectively. The petitioner, the respondent No. 5 and other candidates were then called for interview to be conducted by the L-2 Committee scheduled on 17th July, 2009 and accordingly they appeared before the L-2 Committee on that day. The L-2 Committee, which is required to award marks on the interview segment had awarded 5.7 and 9.0, to the writ petitioner and the respondent No. 5, respectively. The list of empanelled candidates for Indain Distributorship under IOCL was thereafter, prepared and published on 17th July, 2009, wherein the writ petitioner was placed at first as against the respondent No. 5, who was placed at second in the merit list, they having secured in total 82.8 and 80.8 marks, respectively.

(b) A complaint was, thereafter, lodged by the respondent No. 5 on 28th July, 2009 addressed to the General Manager of IOCL, contending that though, as per the advertisement, a candidate is not required to enclose with the application the bank statement and supporting documents relating to the bank deposit etc. against item Nos. 14.2 and 14.3 of the prescribed format of application, the respondent No. 5 was not awarded the adequate marks, in terms of the guideline issued for that purpose, by the authority on the ground that bank statement etc. were not submitted by him alongwith the application, which, though, were submitted before the L-2 Committee (interview board), on the day of interview.

(c) The authority of the IOCL in terms of the guideline dated 29th April, 2010 issued stipulating the procedure in handling the complaints against the selection of dealers/distributors, which are in addition to the policy guideline issued on 11th February, 2004, appointed the Investigating Officer, on the basis of the recommendation of the Screening Committee recommending that the complain filed has merit. A L-1 Committee consisting of Shri B.C. Das, Manager (LPG-S); Shri Pankaj Samuah, Deputy Manager (LPG-O) and Shri Bobby Prasad, Deputy Manager (LPG-S) was constituted for reevaluation of the marks allotted by the earlier L-1 Committee, as the complain of the respondent No. 5 was relating to the award of marks by the L-1 Committee only. The said L-1 Committee on 13th January, 2011 re-evaluate the marks of all the candidates including the petitioner and the respondent No. 5, on the basis of the information furnished by them in the applications filed and enhanced the marks from 77.1 to 77.3 in respect of the writ petitioner and from 71.8 to 85.8 in respect of the respondent No. 5. The L-1 Committee recorded the following remarks as against the writ petitioner and the respondent No. 5:-

Md. Muktar Hussain

(Writ petitioner) :- "Marks allotted as per the declaration given in the application, but brothers are married or unmarried is not known/declared. To be verified.

Sri Nipun Ch. Bora

(Respondent No. 5) :- "Supporting documents for item Nos. 14.2 and 14.3 not submitted. Marks allotted as per declaration give in the application to be checked at the time of interview."

(d) The revised final select list, taking into account the marks secured by the respective candidates, after re-evaluation by the L-1 Committee and the marks earlier awarded by the L-2 Committee, however, has not been published, as the writ petitioner, in the meantime, approached this Court, wherein an interim order dated 1st March, 2011 has been passed directing the respondents not to proceed with the proposed evaluation sought to be made in respect of the respondent No. 5.

2. I have heard Mr. AD Choudhury, learned counsel for the petitioner; Mr. MK Choudhury, learned senior counsel appearing for the respondent Nos. 1 to 4 and Mr. P Khataniar, learned counsel appearing for the respondent No. 5.

3. It has been submitted by the learned counsel for the petitioner that the respondent IOCL having formulated the policy circular dated 11th February, 2004 stipulating the time limit for dealing with the complain, if any, lodged by any candidate relating to the selection of any candidate for appointment as the Distributor, the same has to be adhered to, as they cannot allowed to be deviated therefrom. According to the learned counsel, in the case in hand, the complain by the respondent No. 5 was lodged on 28th July, 2009 and though under the policy circular dated 11th February, 2004, the investigation is required to be made by the Investigating Officer within 7(seven) months from the date of nomination, the Investigating Officer submitted the report much beyond the period prescribed, thereby violating Clause-3.4 of the said policy circular. It has also been submitted that Clause-5.0 of the said circular also provides for deciding the complain within 3(three) weeks from the date of receipt of the report of investigation and in the instant case, the re-evaluation having been made on 13th January, 2011, the time limit has not been adhered to, though required. The learned counsel, therefore, submits that there is infraction of the policy circular relating to the time limit fixed for disposal of the complain and hence, the process for revaluation, on the basis of the complain filed by the respondent No. 5, needs to be interfered with. 5. Mr. A.D. Choudhury, learned counsel for the petitioner further submits that the process for re-evaluation of the marks awarded by the L-1 Committee has been initiated by the respondent authorities on the basis of the complain filed by the respondent No. 5 on 28th July, 2009 alleging non awarding of marks under the head "capability to provide finance" for non submission of statement of accounts and other bank documents. According to the learned counsel, the advertisement dated 26th February, 2008 as well as the guideline to the applicants and also the declaration required to be

signed by an applicant clearly provides for furnishing the required bank statement and banks document in support of the information furnished by the applicant relating to "capability to provide finance", which documents, in the event of non furnishing alongwith the application, cannot be accepted after submission of such application, as has been done in the instant case. It has been submitted that since the respondent No. 5 did not submit the bank statement as well as other bank documents in support of the information furnished under the head "capability to provide finance", the L-1 Committee had rightly not awarded the marks under the said head to the respondent No. 5 and the defect of non furnishing the document entails rejection of the application filed by the respondent No.

4. According to the learned counsel, such defect cannot subsequently be cured by submitting the bank statement and other bank documents. The learned counsel, therefore, submits that the entire process of re evaluation of the marks awarded by the L-1 Committee, on the basis of the complain filed by the respondent No. 5, is contrary to the advertisement and guidelines issued.

5. Mr. M.K. Choudhury, learned senior counsel appearing for the respondent Nos. 1 to 4, on the other hand, has submitted that non adherence of the time limits stipulated in the policy circular for reevaluation of the marks earlier awarded to various applicants would not vitiate the reevaluation, as it would not create any right in favour of the writ petitioner, when the mistake in awarding marks by the L-1 Committee has to be rectified under the policy circular issued by the authority. It has also been submitted that the time limit fixed by the policy circular is directory and not mandatory. The learned senior counsel further submits that by advertisement dated 26th February, 2008, the candidates were informed about the documents required to be annexed to the application and accordingly, the respondent No. 5 enclosed the documents as required, which does not include the bank statement and other bank documents in support of the information furnished by him under the head "capability to provide finance". According to the learned counsel, the respondent No. 5 furnished the information relating to the amount in bank and fixed deposit/NSC/Share etc. of family, as required under Clause-14.2 and 14.3 of the prescribed format of the application in Annexure-C enclosing therewith notarized affidavit as required under Clause-14. It has been submitted that since the L-1 Committee did not award the marks to the respondent No. 5, in terms of the guideline issued for that purpose, under the head "capability to provide finance", on the ground that he did not enclose the bank statement and other bank documents, decision was taken to reevaluate the marks awarded to the applicants by the earlier L-1 Committee, on the basis of the complain filed by the respondent No. 5 on 28th July, 2009, as the advertisement does not require furnishing of those documents by an applicant alongwith the application but requires submission at the time of verification, which the respondent No. 5 did by producing those documents before the L-2 Committee at the time of interview. The learned senior counsel, therefore, submits that the process of reevaluation initiated does not require any

interference.

6. Mr. P Khataniar, learned counsel appearing for the respondent No. 5 supporting the argument advanced by the learned senior counsel appearing for the respondent Nos. 1 to 4 also submits that the authority cannot refuse to reevaluate the marks awarded by the L-1 Committee on the ground that the time limit fixed by the policy circular dated 10th February, 2004 has not been adhered to by the respondent authorities. The learned counsel submits that for the inaction on the part of the respondent authorities, the respondent No. 5 cannot be allowed to suffer. In any case, according to the learned counsel, prescription of such time limit is directory and not mandatory. Referring to Clause-17 of the prescribed format for submission of the application, it has also been submitted by the learned counsel that the documents which are required to be submitted are mentioned, which does not include the submission of the bank statement and other bank documents in support of the information furnished under the head "capability to provide finance" and as such, the respondent No. 5 cannot be penalized for non submission of the bank statement as well as other bank documents. It has also been submitted by the learned counsel that Clauses-14; 14.1; 14.2 and 14.3 clearly stipulate furnishing of the information in the tabular form accompanied by the notarized affidavit, as per the format given in Annexures-B and C to the said prescribed format of application and does not provide for submission of any bank statement or bank documents in support of such information furnished. Referring to the General Instruction to the applicant forming part of the aforesaid advertisement, it has been submitted by Mr. Khataniar that the said instruction clearly provides that in support of the information furnished under Clauses-14.2 and 14.3 the applicant is required to submit the bank statement and other bank documents only at the time of verification and not at the time of filing the application.

7. I have considered the submissions of the learned counsel for the parties and also perused the records produced by Mr. MK Choudhury, learned senior counsel appearing for the respondent Nos. 1 to 4.

8. The IOCL issued the policy circular dated 11th February, 2004 relating to the procedure for handling of grievances/complaints with regard to selection of dealers/distributors. Under the said policy circular, on receipt of a complaint/ grievance, with regard to the selection, a Screening Committee consisting of State Retail Head and the State LPG Head is required to be constituted to screen the complaints. The Screening Committee is required to categorize such complaint broadly under three heads, namely, anonymous complaint, complaints having names and addresses but not having verifiable supporting documents/ issues and the complaints having verifiable supporting documents/issues, which can be verified. The Screening Committee, thereafter, is to submit the report to the State Head. In case of the complaints having specific and verifiable allegation, the Investigating Officer is required to be appointed, if the Screening Committee recommends for investigation. The Investigating Officer, thereafter, is

to submit the report alongwith finding and the specific recommendation, which ultimately is to be put up for final decision before the State Head.

9. Another guideline dated 29th April, 2010 was issued by the IOCL stipulating the procedure in handling the complaints against the selection of dealers/ distributors, which is in addition to the aforesaid policy guideline issued on 11th February, 2004. Clause 2.2 of the policy guideline dated 29th April, 2010 provides that where there is complaint relating to the error in evaluation by the L-1 Committee, which error is established in document based evaluation by L-1 Committee, re-evaluation of all the applicants by L-1 Committee is to be arranged. It also provides that during reevaluation, L-1 Committee will record justification for any change in marks for every candidate under any parameter. The result of the re-evaluation is thereafter, required to be examined by a Committee of the State Retail Head and State LPG Head, for which the said Committee may interact with the L-1 Committee involved in reevaluation. It further provides that when there is an allegation of error in evaluation by L-1 Committee only, there will be no re-interview and the marks allotted by L-2 Committee (on interview based parameters) will be considered for revised result. In case there is change of ranking in merit panel, revised mark-sheet and the panel is to be prepared and published thereafter.

10. A guideline laying down the norms for evaluating the candidates, both by L-1 and L-2 Committee, under different parameters for distributorship, was framed on 29th June, 2007, on the basis of which the L-1 and L-2 Committees are required to allot the marks out of total marks of 100. Out of the said total marks of 100, 35 maximum marks is allotted for "capability to provide infrastructure facilities", 35 marks for "capability to provide finance", 15 marks for "educational qualification" and 4 marks for "age" to be awarded by the L-1 Committee. The maximum marks that can be awarded by the L-2 Committee, out of 100, is 11. The aforesaid 4 parameters, in which the L-1 Committee is to award marks, is sub-divided into different sub-heads. In the instant case, the re-evaluation having been done in respect of the parameter "capability to provide finance", the sub-head under the said parameter are only taken note of. 35 marks for the parameter "capability to provide finance" is sub-divided to 18 marks for "financially sound-funds", 7 marks for "ability to arrange loan", 5 marks for "assets" and 5 marks for "income".

11. The L-1 Committee, which is not required to interview the applicants but to award marks on the basis of the aforesaid parameters and the information furnished by different applicants, initially awarded 77.1 and 71.8 to the writ petitioner and the respondent No. 5, respectively, including 27.1 and 17.8 marks awarded to the petitioner and the respondent No. 5, respectively, under the head "capability to provide finance", which includes the sub-heads-funds, ability to arrange loan, fixed/movable assets and income.

12. The respondent No. 5 thereafter, lodged the complaint on WP(C) No. 1208/2011 Page 11 of 20 28th July, 2009 alleging that he has not been awarded

the adequate marks under the head "capability to provide finance" by the L-1 Committee on the ground that he did not file copies of the bank statement and other documents in support of the information furnished under Clauses-14, 14.1, 14.2 and 14.3 of the prescribed format of application, though copies of those documents were furnished at the time of interview. The authority being satisfied about the genuineness of the complaint, appointed an Investigating Officer, who submitted the report of investigation, though belatedly and thereafter, another L-1 Committee was constituted, which re-evaluated the marks of all the candidates on 13th January, 2011. Upon such revaluation, the petitioner was found to have secured 77.3 as against the 77.1 and the respondent No. 5, 85.8 as against 71.8 awarded by the earlier L-1 Committee.

13. Clause 3.4 and Clause 5.0 of the guideline dated 11th February, 2004 though provides for the time frame for investigation by the Investigating Officer and for disposal of the complaints, nonadherence of such time limit would not defeat the right of an applicant to have the re-evaluation and to get the marks to which he/she is entitled to, in terms of the norms fixed by the authority for evaluating the candidates. Such non-adherence of the time limit also does not create any right in favour of an applicant, who has been selected based on error in evaluation. The time limit is stipulated in the said guideline to facilitate prompt action on the complaint so that the grievance of a complainant is redressed early. Delay in disposal of the complaint and non adherence of time limit by the respondent authority cannot defeat the right of an applicant for re-evaluation. That being the position, the first contention of the learned counsel for the petitioner that non-adherence to the time limit stipulated in the guideline dated 11th February, 2004 vitiated the revised list of empanelled candidates, cannot be accepted and hence rejected. Moreover the earlier guideline dated 11th February, 2004 has been modified by the subsequent guideline dated 29th April, 2010, which does not stipulate any time frame.

14. In the advertisement dated 26th February, 2008 issued for appointment of LPG Distributors, the documents, which are required to be attached to an application are specifically mentioned, those are:-

(i) Certificate from the competent authority for the eligibility of category, i.e. Scheduled Caste, Scheduled Tribe, Physically Handicapped etc.

(ii) Demand draft number and date;

(iii) Proof of age;

(iv) Proof of educational qualification;

(v) Affidavit as per format in Annexure-A or A1;

(vi) Affidavit as per format in Annexure-B;

(vii) Affidavit as per format in Annexure-C;

(viii) Letter from bank/financial institution as per format in Annexure-D; and

(ix) Draft of Partnership Deed- as applicable.

15. Clause-14 of the prescribed format of application stipulates that the applicant shall be awarded marks for capability to arrange finance based on the information given by him/her on the Gross Annual Income, amount in savings bank account, value of investments in FD/Shares/MF etc., value of assets and liability to get loan from the banks/financial institution. It has also been mentioned that on verification, if it is found that the information given by the applicant is incorrect/false/misrepresented, then the applicant''s candidate would stand cancelled and will be ineligible for his LPG Distributorship. Clause-14.1 provides for finishing the information relating to the Gross Annual Income of the last financial year. It also requires that the applicant is to attach notarized affidavit as per format given in Annexure-B. Clause-14.2 provides for supply of the information relating to the amount in bank in respect of the applicant, his or her spouse, unmarried son(s)/daughter (s), parents etc. The applicant is also required to attach an affidavit as per the format given in Annexure-C. It also requires that the amount mentioned should remain in the bank for a minimum period of 3(three) months from the date of the application or the date of interview, whichever is earlier. Similarly under Clause-14.3, the information relating to the fixed deposits/NSC/Shares/MF etc. of family are required to be given alongwith the affidavit as per format given in Annexure-C.

16. For better appreciation, Clauses-14, 14.1, 14.2 and 14.3 of the prescribed format of application are reproduced below:-

14. Capability to Arrange Finance

Please note that marks will be awarded to applicant on capability to arrange finance based on the information given by the applicant on the Gross Annual Income, Amount in Savings Bank Account, Value of Investments in FD/Shares/ MF etc., value of assets and ability to get loan from Banks/Financial Institution. On verification if it is found that the information given by the applicant is incorrect/false/misrepresented then the applicant''s candidature will stand cancelled and will be ineligible for the LPG distributorship.

14.1 Gross Annual Income of Last Financial Year: Rs. Amount in words Income pertaining to last Financial Year. Attach notarized affidavit as per Annexure-B.

14.2 AMOUNT IN THE BANK (in case of married applicant family is - self, spouse unmarried son(s)/daughter(s); in case of unmarried applicant family is - self, parents and unmarried brother(s)/unmarried sister(s).) *Attach affidavit as per format given in Annexure-C. The amount mentioned should remain in the bank for a minimum period of three months from the date of application or the interview date whichever is earlier.

Sl. No.

Name of Bank

SB A/C No.

Name of Account Holder

Relation with applicant

Amount as on date of application

1.

Rs.

2.

Rs.

3.

Rs.

4.

Rs.

Total

Rs.

Total amount in words.

14.3 FIXED DEPOSIT/NSC/SH ARES/MF ETC. OF FAMILY (in case of married applicant family is - self, spouse unmarried son(s)/daughter(s); in case of unmarried applicant family is - self parents and unmarried brother(s)/unmarried sister(s).) * Attach affidavit as per format given in Annexure-C.

Sl. No.

Type of Investment FD/NSC/Shares/MF etc.

Document Reference No.

Name of Holder

Relationship with applicant

Initial investment amount

Value (Amount) as on the dale of advertisement

1.

Rs.

2.

Rs.

3.

Rs.

4.

Rs.

Total

Rs.

Total amount in words.

17. Annexure-B and Annexure-C to the said prescribed format are the affidavits, wherein also no stipulation for enclosing the bank statement or any other documents from the bank, has been made.

18. Clause-19(h) of the prescribed format provides that the applicants should supply only that information against various items of the application, for which they are in possession of supporting documents in original as on the date of submission of application. The applicants are also warned that failure to present these documents in original will result in cancellation of selection due to submission of false/unsupported information in documents. Sub-Clause (h) of Clause-19 is reproduced below:-

(h) Applicants should provide only that information against various items of application for which they are in possession of supporting documents in original as on the date of submission of application. Failure to present these documents in original will result in cancellation of selection due to submission of false/ unsupported information in documents.

19. The General Instructions issued to the applicants, which is part of the aforesaid advertisement dated 26th February, 2008, stipulates which of the supporting documents the applicants are to provide at the time of verification. Against Clauses-14.2 and 14.3, the applicants were informed that apart from the original notarized affidavit as per Annexure-C, they are also required to produce the statement of accounts and the letter from the bank relating to the amount in savings bank and the amount in FD/Term Deposits etc. on the date of application and the date of advertisement, respectively, at the time of verification.

20. Reading Clauses-14, 14.1, 14.2 and 14.3 of the prescribed format and the General Instructions issued to the candidates together, it is, therefore, evident that the statement of accounts and other documents from the bank relating to the amount in the savings bank and/or in fixed deposits etc. are not required to be submitted alongwith the application, except supplying the information in the tabular form alongwith the notarized affidavit in support of such information. A candidate cannot be penalized for non submission of the statement of accounts, bank statement or other documents from the bank in support of the information furnished under Clauses-14.1, 14.2 and 14.3, when there is no clear stipulation to that effect in the said advertisement. The documents to be enclosed with the application as mentioned in the list of enclosure in the advertisement also does

not stipulate furnishing of such documents alongwith the application. Those, however, are required to be submitted for verification on the date of interview or before that.

21. As discussed above, the respondent No. 5 did not submit the statement of accounts, bank statement and other bank documents relating to the amount in the savings bank and fixed deposit etc. alongwith the application filed by him pursuant to the advertisement dated 26th February, 2008. Since those documents were not required to be submitted, the L-1 Committee ought not to have refused to award the mark, in terms of the guideline issued for that purpose, under the head "capability to provide finance". Such mistake sought to rectify by the respondent authorities on the basis of the complaint filed by the respondent No. 5 on 28th July, 2009. The contention of the writ petitioner that the applicant must submit those documents alongwith the application for awarding the marks by the L-1 Committee, in view of the aforesaid discussion, cannot be accepted.

22. In view of what has been discussed above, I am of the view that no illegality has been committed by the respondent authorities in initiating the process for re-evaluation. As noticed above, the second L-1 Committee has in the remark column mentioned about the requirement of verification of the information submitted by the respondent No. 5 under the head "capability to provide finance". The authority, therefore, now shall verify the original documents furnished by the respondent No. 5 and thereafter, to decide the matter in terms of the policy circulars and if required, publish a fresh list of empanelled candidates in order of merit. The writ petition is accordingly disposed of. No costs.

