(2013) 08 P&H CK 0898

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 769 of 2012

Navdeep Kaur — APPELLANT

Vs

Indian Oil Corporation and Others — RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0898

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : Ashwani Kumar Chopra and Ms. Rupa Pathania, for the Appellant; Ashish Kapoor, Advocate for Respondents Nos. 1 to 4, Mr. Arun Jain and Mr. Amit Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—This appeal has been preferred challenging the judgment of the learned Single Judge dated 17.05.2012 whereby the writ petition of the appellant, who had unsuccessfully competed for allotment of LPG Distributorship to be located at Batala, District Gurdaspur in the open category challenging the revised empanelment of the successful candidates declared on 24.01.2011 (Annexure P-7) placing respondent No. 6 (hereinafter referred to as ''private respondent'') at No. 1 in the empanelled list of candidates and resulting in placing the appellant at No. 2 from her earlier empanelment No. 1, which was challenged by her, stands dismissed. The challenge to the judgment is primarily based upon non-compliance of the principles of natural justice as it is asserted that the appellant has not been given an opportunity of being heard prior to changing her empanelment No. 1 to No. 2 as no show cause notice was given to her nor was she given an opportunity to explain her stand. The second ground taken is that the private respondent was not entitled to the marks granted to him in the revised merit panel for the income of his wife as there was no documentary proof on the last date of submission of the application about the income of his spouse and mere reliance upon the notarized affidavit submitted by the private respondent is in violation of Clause 19(h) of the Advertisement/ Application Form.

2. On the other hand, the submission of the respondents is that the requirement, as per Clause 14.1 of the Brochure issued by respondent No. 1, is Notarized Affidavit as per Annexure-B. It has further been stated that it has been clarified in Annexure-B that the documents in support of the income are to be of the applicant alone, which condition stands fulfilled. In any case, it has been stated that prior to the last date of receipt of the application according to the advertisement as also the date of submission of the application of the private respondent, advance income tax return of the wife of the said respondent had been filed with the income tax authorities, which shows compliance of the requirement of the application as also the prospectus. It has further been stated that the appellant was not required to be heard while re-evaluation of the candidates and in this regard, reliance has been placed upon a Division Bench judgment of Orissa High Court in the case of Gangamati Patel Vs. Indian Oil Corporation Ltd. and Others , in which it has been held that where marks awarded to an applicant are not changed to his/her prejudice, there is no reason to give an opportunity of hearing to such an applicant and the question of violation of principles of natural justice does not arise. Reliance has also been placed upon the Policy dated 29.06.2007, Clause 6.2.4 thereof.

3. We have considered the submissions made by the counsel for the parties and have gone through the judgment passed by the learned Single Judge and also the records of the case.

4. For decision of this case, certain facts are required to be noted and the same are that in December, 2007, respondents No. 1 to 4 issued an Advertisement calling for applications from the eligible candidates for allotment of LPG distributorship at different places in Punjab and the Union Territory of Chandigarh. One of the locations declared was Batala, District Gurdaspur. The appellant as also the private respondent applied for allotment of the distributorship. As per the procedure laid down, appellant was empanelled at No. 1 in the merit. A complaint was preferred by the private respondent, which, when was not decided, led to the filing of CWP No. 17291 of 2009 in this Court, which was disposed of with directions to the respondent-Corporation to dispose of the pending complaint by passing a speaking order within a period of four months of receiving a certified copy of the order. The said complaint, as per the procedure prescribed for consideration of such complaints as provided under Clause 21 of the Brochure, was considered and it was found that there was an error in evaluation by the L-I Committee and accordingly, all candidates were re-evaluated afresh by a new committee. On re-evaluation, marks of appellant were enhanced to 5 from 3.4 and that of the private respondent also enhanced to 5 by taking into consideration the income of his spouse. On this re-evaluation, the private respondent was empanelled at No. 1 relegating the appellant to No. 2, which resulted in filing of the writ petition challenging the re-evaluation and

revised empanelment of successful candidates declared on 24.01.2011 (Annexure P-7).

5. The grounds, as have been taken and referred to above, have to be considered and decided and for the said purpose, reference to the relevant clauses would be essential. The primary grievance of the appellant is that the selection process and evaluation criteria, as laid down in Clause 14 and Clause 19(h), has not been followed by the respondents. The main thrust of the arguments of the learned senior counsel for the appellant is that the requirement, as contained in Clause 19(h), has not been fulfilled by the private respondent and, therefore, re-evaluation and the resultant re-empanelment is not sustainable. His contention is that as per the said clause, applicants were mandated to provide only that information against various items of application, of which supporting documents were in their possession as on the date of submission of application. On non-submission of the documents in original and failure to do so would result in cancellation of selection treating it to be submission of false/unsupported information. It has been asserted that as on the date of submission of the application by the private respondent i.e. 12.01.2008, there was no documentary proof in possession of the applicant regarding the income of his spouse except for submission of an advance income tax return filed on 08.01.2008 for the financial year 2007-08. If the said income of the private respondent is not taken into consideration i.e. Rs. 1,45,600, the marks assigned to him under the head of ''income'' cannot be granted to him and was thus, earlier rightly not granted the benefit of the same.

6. This contention of the counsel for the appellant cannot be accepted in the light of Clause 14.1 of the Brochure which requires notarized affidavit as per Annexure-B appended in the Brochure to be submitted along with the application. In the performa, it has been specifically mentioned that copy of the income tax return be attached of the applicant, in case he is an income tax payee. For convenience, Clause 19(h) of the advertisement and Clause 14 and 14.1 of the Brochure, Clause 14 and 14.1 of the application as also the relevant portion of the performa of the notarized affidavit (Annexure-B), on which reliance has been placed by the counsel for the parties, are reproduced herein below:

Clause 19 of the Advertisement

GENERAL

(a) to (g) xxx xxx xxx xxx

(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 informally in documents.

Clause 14 of the Brochure:

NORMS FOR EVALUATING THE CANDIDATES

The LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters.

The parameter ''a'' to ''d'' above are document based and will be done on the basis of information given in the application. The evaluation on the parameter ''e'' to ''g'' will be done based on the interview.

Clause 14.1 of the Brochure:

Allocation of marks on various parameters based on documents will be carried out as per the information given in the application.

Clause 14.1 dealing with General Instructions to the applicant for making LPG Distributorship Application.

Clause 14. Capability to Arrange Finance of the applicant.

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 this 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.

Annexure-B (NOTARIZED AFFIDAVIT)

(TO BE TYPED ON APPROPRIATE NON-JUDICIAL STAMP PAPER OF REQUIRED VALUE)

DECLARATION OF ANNUAL INCOME

Please give details of income of the last financial year (20../..) Gross income should be indicated and not net income

Details of Gross Annual Income in Rupees

In case Applicant is unmarried parent income can be given subject to enclosing affidavit as per format given in Annexure-C.

Solemnly affirmed and declared before me

This ---------------------------- day of -------------------------------

1. It is important to give precise information under each head i.e. I to VII, if

income under any head is NIL, then it should be indicated specifically as NIL and not left blank.

2. If the applicant is payee of Income Tax, a copy of Income Tax Return should be attached.

7. A perusal of the above would clearly depict that the evaluation of the candidates was to be done on the basis of the information supplied in the application.

8. As regards the plea of the appellant with regard to the capability to arrange the finance being based on documents is concerned, when seen in the light of criteria for allocation of marks, as provided in Clause 14.1, the same is based on information of applicant''s income as per income tax return of the last financial year and or affidavit on income. It is further clarified in Annexure-B, relevant portion whereof has been re-produced above, that where the applicant is an income tax payee, it is mandated that the income tax return be attached. But for the income from others, there is no such mandate and in fact the notarized affidavit is required to be submitted, as has been done by the private respondent. Clause 14.1 of the Brochure would show that the income tax return or affidavit on income would be taken into consideration for evaluation and granting the marks. It may be added here that in any case, wife of the private respondent had filed her advanced income tax return on 11.01.2008, which was attached along with the application dated 12.01.2008 and was prior to the last date of receipt of the applications i.e. 14.01.2008. Taking into consideration the income of the spouse of the private respondent, the assessment and evaluation, cannot, thus, be said to be illegal and violative of any of the conditions, as contained in the Advertisement, Application or the Brochure. The action of the private respondent, thus, cannot be said to be illegal.

9. As regards the contention of the counsel for the appellant that the principles of natural justice have been violated as the appellant has not been given an opportunity of being heard nor any notice has been issued to her, the same also cannot be accepted in the light of Clauses 21 and 22 of the Brochure, which read as follows:-

21. GRIEVANCE/COMPLAINT REDRESSAL SYSTEM

An applicant who has appeared for the interview and is aggrieved by selection may send his/her complaint to the Area Office/State Office in which the interviewed LPG distributorships location is located.

21.1 A representation/complaint shall be entertained only if it is received by the office concerned within a month from the date of declaration of result.

21.2 Efforts would be made to ensure that the representation/complaint is disposed of within 3 months from the date of receipt of response of the complainant.

21.3 Pending disposal of complaint, Letter of Intent if issued will be kept in abeyance.

22. Disposal of Complaint: The disposal of complaints shall be as under:-

22.1 Anonymous/pseudonymous complaints will normally not be investigated.

22.2 On receipt of a complaint a letter will be sent by the oil company to the complainant through Registered Post, asking him to submit details of allegation with a view to prima facie substantiate the allegations along with supporting documents, if any, within 30 days. Response of the complainant will be examined by the concerned oil company and if it is found that the complaint does not have specific and verifiable allegations, the same will be filed.

22.3 The complainant will be clearly advised that the complaint will be examined by the oil company and if it is established that the complaint does not have any substance, the complainant will be liable for legal action.

22.4 When a decision is taken to investigate the complaint, one Senior Officer will do the investigation. Thereafter, decision on the complaint will be taken as under:

22.4.1 Complaints not substantiated:

The complaint will be filed and the complainant will be advised accordingly.

22.4.2 Established complaint:

In case of established complaint against the empanelled candidate, action will be taken with regard to appointment of the next candidate in the merit panel. In case of established complaints against oil company officers action will be taken against the concerned officials as per the conduct rules.

10. For dealing with the established complaints detailed procedure has been prescribed and the policy applicable is dated 29.06.2007 which did not provide for any opportunity of hearing. However, in the present case, on the receipt of the complaint, the same was considered and it was found that on the basis of the existing documents, the L-I Committee had committed an error in granting marks to the candidates. The final capability, on the basis of the documents on record, was considered of all the candidates. Appellant was also benefited in the said process as her marks have been increased from 3.4 to 5 and similarly, marks of the private respondent were also increased. As a matter of fact, change effected in the criteria was applied uniformly to all the applicants. It cannot, thus, be said that any prejudice has been caused to the appellant or that she has been placed at a disadvantageous position especially when it has been found that the marks awarded to the private respondent were in accordance with the provisions, as contained in the Advertisement/Application/Prospectus.

11. It is, by now, well settled that every violation of principles of natural justice could not result in negating a decision unless grave prejudice is shown to have

been caused to a party because of non-observance of the principles of natural justice. As a matter of fact, appellant has been benefited and so as the private respondent. The comparative assessment of the appellant and the private respondent, as has been culled out in the judgment of the learned Single Judge, would indicate that under the other heads, the private respondent scored a march over the appellant, which has resulted in placing the private respondent at impaneled candidate No. 1 relegating the appellant to No. 2 position. In view of the above, we do not find any reason to interfere with the order passed by the learned Single Judge, which has been impugned and thus, dismiss the appeal leaving the parties to bear their own costs.