(2012) 08 DEL CK 0147

In the Delhi High Court

Case No : WP (C) No. 7155 of 2011

Puneet Rao APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 DEL CK 0147

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : B.K. Singh and Mr. P.S. Bhullar, for the Appellant; Savita Rustogi, Advocate for Respondent no. 1 and 2, Mr. Gopal Jha and Mr. Rudreshwar Jha for Respondent no. 3 and Mr. Saqib, Advocate, for the Respondent

Judgement

Rajiv Shakdher, J.—The petitioner seeks to secure for himself distributorship of non-domestic LPG, in respect of which, offers were invited by respondent no. 1 (hereinafter referred to as HPCL) in March, 2011. The petitioner having failed to secure the distributorship has challenged in the present writ petition not only the result of the interview held by HPCL as being contrary to the rules prescribed by HPCL in its brochure for selection of HP Gas Distributors (hereinafter referred to as the brochure) but also the selection of respondent no. 3 who is the successful candidate. The challenge, shorn of verbiage is essentially based on the provisions of the brochure, in particular, clause 15 of the said Brochure which provides for a display of the results obtained by various applicants on the notice board of the interviewing office of the HPCL. The said Clause mandates giving names of those candidates who secured a place in the merit panel. The names, as per clause 15 of the brochure were required to be shown in order of merit alongwith detailed marks scored. The list was to contain names of all candidates who appeared for the interview in order of merit. The relevant clause of the brochure on which, in a sense, a substantial part of the petitioner''s case is pivoted reads as follows:

15. RESULTS OF THE INTERVIEW

After completion of the interviews for a location, results, giving names of the merit panel in the order of merit along with the detailed marks scored will be displayed on the notice board of the interviewing office. This list will contain the names of all the candidate who appeared for the interview (in order of interview). If no suitable candidate is available, the selection committee may recommend for re-advertisement.

2. This apart, the petitioner has challenged the eligibility and qualifications of respondent no. 3, who has been, as indicated above, declared a successful candidate. I shall elaborate on the same in the course of my judgment.

3. In this background, it may be relevant to briefly sketch out the brief facts, which led to the institution of the present petition.

3.1 On 17.03.2011 the HPCL issued an advertisement through its zonal office, at Delhi, for appointment of distributors vis-a-vis non-domestic LPG. The advertisement made it clear that the distributors were being appointed in order to market packed LPG to HPCL''s commercial and industrial customers, in various locations, indicated in the said advertisement. The advertisement referred to ten (10) locations, amongst which, one was to be appointed in Bawal, District Rewari in the State of Haryana. Importantly, the advertisement also made it clear that the applicants would not be allowed to enroll themselves for domestic LPG customers. The distributors selected were required to exclusively market non-domestic LPG, in the designated trading area, defined by HPCL.

3.2 It may noticed the advertisement also called upon the applicants to obtain the details of eligibility, evaluation of criteria for selection and, the format for the application either from, the HPCL website or, from the identified contact persons referred to in the advertisement. Various other aspects about processing fee etcetera, were also referred to in the advertisement. The advertisement also made it clear that for a candidate to be included in the merit panel he had to obtain 40% minimum marks, after the interview, out of a total of 100 marks. In the event of none of the candidates getting 40% marks, it was made clear that, that particular location would be re-advertised.

3.3 The petitioner applied against the aforementioned advertisement. The petitioner, apparently, appended documents in support of the claims made in the application.

3.4 Admittedly, pursuant to an invitation issued to the petitioner, vide communication dated 21.07.2011, the petitioner appeared for an interview before the selection committed constituted by the HPCL. The interviews were held on 09.08.2011; whereupon the results were declared on the same day. The result was admittedly displayed on the notice board of the HPCL. The result, evidently declared respondent no. 3 as the successful candidate.

3.5 Being dissatisfied, the petitioner took recourse to the provisions of the Right to Information Act, 2005 (in short RTI). The petitioner sought information with regard to the policy adopted for : selection procedure, attendance sheet of interviewed applicants, provisions of xerox copies of documents, marks obtained by each applicants with explanation, if any appended, the basis on which the marks had been awarded and the documents supporting the marking criteria, information with regard to position secured by each applicant, in order of merit, details with regard to the persons, who constituted the selection committee, and finally, the policy of HPCL regarding disclosure of candidates marks.

3.6 Since, the petitioner, did not receive any response to the information sought, he filed a complaint under clause 21 of the brochure on, 05.09.2011, to seek cancellation of the entire selection process, including the selection of respondent. no. 3. A prayer was made that a letter of intent (LOI) should not be awarded to respondent no. 3 or, any other person pending the decision on his complaint.

3.7 It appears that the petitioner did not have much confidence in HPCL disposing of his complaint in quick time, and hence approached this court by way of a petition under Article 226 of the Constitution of India. The petition was moved in this court on 27.09.2011. This court on a tentative perusal of the brochure came to the conclusion that its provisions were not limited to the appointment of LPG distributor (s) of one kind or other, therefore in view of clause 15 of the brochure a case for interim order was made out. Accordingly, HPCL was directed not to issue a LOI to respondent no. 3 provided the same had not been issued till then, and if LOI had been issued, further steps for confirming respondent no. 3''s appointment in terms of the LOI or otherwise were injuncted.

4. The HPCL since then has filed its counter affidavit, wherein it has taken various defences, which are broadly as follows:

(i) The appointment of "exclusive non-domestic LPG distributors" is a pure business proposition as indicated in clause 17J for Notice for appointment of such distributors and hence the challenge made is not amenable to the writ jurisdiction of this court.

(ii) The appointment of exclusive non-domestic LPG distributors is governed by "policy guidelines qua operations of ND, Distributor for ND packed LPG," and not by the brochure, on which, reliance has been placed by the petitioner.

(iii) The brochure on which reliance is placed by the petitioner, was brought into force w.e.f. 01.07.2007, but is currently "not in vogue".

(iv) The brochure, on which reliance is placed by the petitioner, is relatable to the selection of domestic LPG distributors and, furthermore, the said brochure stands substituted by HPCL brochure for selection of HP gas distributors, since October, 2010. Thus under the new dispensation candidates are selected by draw of lots from amongst those who are eligible.

(v) In view of the above clause 15 of the brochure, on which reliance is placed by the petitioner, has no applicability to the present case.

(vi) The petitioner, based on the eligibility criteria given in the notice for appointment of exclusive non-domestic LPG distributors (in short HPCL notice) has by a method of self-evaluation given himself marks, which have no relevance, in view of the fact that it is the selection committee which has to award marks to each candidates.

(vii) In the selection process respondent no. 3 has secured more marks than the petitioner and as per the policy guidelines for operation of ND distributors for ND packaged LPG (hereinafter referred to a Policy Guidelines), the selection committee prepared a panel of three candidates in order of merit and displayed one name, i.e., one of respondent no. 3, on the notice board. The names candidates who, in the order of merit, are in second and third position have been kept in a sealed cover, with the Regional Manager of the HPCL.

(viii) HPCL also denied the allegations that respondent no. 3 was not an income tax payee, or that he did not have the capacity to make provision for finances or, even that, he did not hold land for infrastructure, required for securing an appointment as a distributor. It was also denied that respondent no. 3 did not have the requisite experience for being appointed as a distributor.

(ix) HPCL also rebutted the charge that it had not replied to the petitioner''s letter of 16.08.2011, reference in this regard is given to letter dated 15.09.2011 sent by HPCL.

(x) As regards the queries raised by the petitioner via its letter dated 05.09.2011, HPCL relied upon its response dated 20.09.2011. It specifically denied the charge that instead of dealing with the petitioner''s claim dated 05.09.2011 made under clause 21 of the brochure a hurried field verification/ inspection was carried out in order to ensure issuance of LOI in favour of respondent no. 3. HPCL has contended that since the brochure is not applicable qua appointment of non-domestic LPG distributors, the question of maintaining a complaint under clause 21 of the said brochure did not arise. According to HPCL the appropriate grievance redressal system was one which was envisaged under clause 4.12 of the policy guidelines, which provided for complaints to be investigated by an officer of E-grade, nominated by a zonal head. On the basis of the investigation report the zonal head was to take a decision with regard to the petitioner''s claim.

5. Respondent no. 3 in its counter affidavit appears to have also taken an objection to the maintainability of writ petition against respondent no. 1 on the ground that it does not perform functions of a State. Apart from this, objections were also raised with regard to the self assessment made by the petitioner under various heads. The objections in this regard were as follows:

(i) The petitioner had accorded to himself 35 marks vis-a-vis his "capability" to provide land and infrastructure facility. The maximum marks were 35 under this head, out of which, a maximum of 25 marks could be given for suitable land for LPG storage godown and balance 10 marks could be allotted for suitable land/

shop for showroom. According to respondent no. 3, the petitioner was not entitled to the ten (10) marks allowable for the land/shop for showroom as, he himself had stated in his application that he did not possess any land suitable for a showroom. Therefore, allocating maximum marks to himself was an error.

(ii) In the context of the above, the petitioner accorded to himself 81 marks based on his self-assessment which is obviously wrong as the petitioner could not have been entitled to more than 71 marks, assuming without admitting that the entries under the other heads was correct.

(iii) If the above is taken as correct, then the marks as accorded by HPCL to respondent no. 3 which were posted on the notice board on 09.08.2011 were higher, even if marks for interview are excluded.

(iv) The petitioner has claimed that he was pursuing a full time course of bachelor of education from Maharshi Dayanand University, Rohtak in 2010; while for the same period (i.e., 06.11.2003 to 30.11.2010) he has claimed to have functioned as an executive direction with Delmos Aviation Pvt. Ltd.

(v) Respondent no. 3 also denied the averments of the petitioner that he is not an income tax payee, or that, he does not have the capacity of providing finances or, even that, he does not own land and infrastructure as required to secure distributorship. Copies of the application alongwith income tax returns, bank certificates and experience certificates have also been appended.

6. In the rejoinder, apart from reiterating the submissions made in the writ petition, the petitioner attempted to rebut the assertions of HPCL that the brochure was not applicable by referring to that part of the advertisement which required candidates to obtain 40% minimum marks in order to be included in the merit panel. It is averred that a similar clause 14 crafted in identical language, finds mention in the brochure, and therefore, clause 15 of the brochure would have applicability.

7. In so far as the respondent no. 3 is concerned, the petitioner in the rejoinder has questioned several aspects: firstly, that respondent no. 3 has made his application under the old format where several columns for declaration of information with regard to fixed and other assets, declaration of annual income etc., are missing. Secondly, in the column related to "applicant''s capability to provide land and infrastructure" respondent no. 3 had shown that he had taken lands on lease on 15.04.2011 and 29.04.2011 and against this parameter he was allotted 35 marks, whereas the maximum of 35 marks could only be allotted, in case, land was owned by the applicant, and not, when it was held on lease. Thirdly, under the head "capacity to provide finances" respondent no. 3 have given false information. Balances in the bank account of respondent No. 3, on various dates have been referred to. As regards information with regard to fixed and other assets, respondent no. 3 has been allotted five marks, whereas in the application form there is no declaration about fixed and other assets. Fourthly, even though the bank certificates were not in the format provided by HPCL,

respondent no. 3 was given the maximum marks. Fifthly, with regard to educational qualification respondent no. 3 seems to have declared that he had graduated as Bachelor of Arts from Osmania University and had also, acquired a LLB degree from Sahuji Maharaj University, Kanpur in 1996, which is apparently unbelievable. Lastly, it is contended that respondent no. 3 has been awarded 27.9 marks out of a total of 30 marks under the head ''capability to arrange finance'', when there are serious issues with regard to information qua balance money held in his saving bank account, certificate of credit worthiness not being in format and complete absence of declaration of fixed assets.

8. Based on the aforesaid pleadings, Mr B.K. Singh, Advocate, advanced his arguments on behalf of HPCL, while in rebuttal submissions were made by Ms Savita Rastogi. On behalf of respondent no. 3 Mr Gopal Jha, Advocate advanced submissions. The UOI, i.e., Respondent no. 4 was represented by Mr Saqib. The judgment in the matter was reserved on 17.07.2012. The parties were, however, asked to file their written synopsis in the matter.

REASONS

9. On perusing the record, and on consideration of the submissions made before me what has emerged is as follows:

(i) An advertisement was taken out by HPCL on 17.03.2011 for appointment of an exclusive non-domestic LPG distributor in the designated areas.

(ii) The petitioner applied against the said advertisement and was declared unsuccessful.

(iii) A merit panel was prepared by HPCL, in which according to HPCL respondent no. 3 held the first position in order of merit.

(iv) Applicants who held second and third positions in order of merit, have their names kept in sealed cover, which is available with the Regional Manager of HPCL.

(v) Admittedly, what was displayed on the notice board for each of the designated areas by HPCL, were the marks successful candidate (in the present case by respondent No. 3) obtained under various, defined criteria, for eligibility stipulated by HPCL, vide their Notice uploaded in that regard, on their website.

10. In the background of the above what needs to be considered are two aspects. First, whether there was an obligation undertaken by HPCL to display the names of the candidates who were included in the merit list alongwith the particulars of the marks obtained by each one of them. Second, whether respondent no. 3 ought to be issued LOI in view of various objections raised by the petitioner as regards his eligibility.

11. In so far as the first aspect is concerned, much would depend on as to whether, the brochure is applicable for appointment of non-domestic LPG distributors. There is undoubtedly no explicit reference to the brochures applicability to non-domestic LPG distributors. Therefore, one would have to look

at the intrinsic evidence available in the document itself. In doing so, it may be necessary to compare the particulars of the brochure with the Notice issued by HPCL, which is an admitted document. The Notice which was issued on the website clearly adverts to the fact that the selection criteria delineated therein, is applicable for appointment of exclusive non-domestic LPG distributors. In this context, let me first look at the marks which have been assigned qua various parameters which, a prospective applicant ought to have in place to secure selection for himself. Under clause 2 of the Notice qua the parameter: capability to provide finance, the maximum marks which can be assigned is 30 (see clause 2 of the notice). In contrast in clause 13 (b) of the brochure, under the heading capability to provide finance, the maximum marks which could be assigned is 35.

12.1 Under clause 12(a) of the Notice which relates to provision of basic infrastructural facilities required to be provided by an applicant, the minimum dimension of the plot for putting up a godown for storage of filled LPG cylinders is given as 19mtrs x 16, mtrs whereas in contrast under clause 7 of the brochure the minimum dimension of the plot is the given as 27 mtr x 26.15 mtr.

12.2 Similarly, under clause 12(c) of the Notice, which pertains to infrastructure for delivery of LPG cylinders, it is apparent on the reading of the clause that it relates to the requirement of an applicant to effect "free door delivery" in the area of operation, which when read in contrast with clause 7.3 of the Brochure makes it amply clear that the delivery spoken of in clause 12(c) of the Notice is to the commercial establishment of the recipient as, in clause 12(c) the applicant has been specifically asked to provide delivery vehicles "for effecting free home delivery of HP Gas cylinders", in the distributors area of operation.

12.3 Clause 16 of the Notice provides that the initial agreement would be for a period of five (5) years, renewable at the sole discretion of the HPCL, based on performance. On the other hand, clause 20 of the Brochure provides that the initial engagement will be for a period of ten (10) years, and thereafter, renewable for every five (5) years subject to performance and decision of HPCL in that regard.

13. With this intrinsic evidence in place, it is quite evident that, the Brochure applied to domestic LPG distributors and not to non-domestic LPG distributors as is contended by the writ petitioner. The argument of the petitioner that since, in the advertisement there is a reference to the fact that, in order to be included in the merit panel, a candidate will have to get a minimum of 40% (after the interview), is not in my view indicative of the fact that the Brochure was applicable for appointment of non-domestic LPG distributors, having regard to the clear intrinsic evidence available in the document itself. Since, ultimately, both documents speak about appointment of distributors, though in a different class, certain clauses are bound to overlap and being common.

13.1 There is another aspect to be noticed in this regard, which is the stand of HPCL that the brochure ceased to have any force w.e.f. October, 2010, when it was substituted by a new brochure, whereby candidates are selected by draw of lots from amongst those who are found eligible. HPCL, in its reply, has relied upon policy guidelines which they say were applicable to appointment of distributors of non-domestic packed LPG. HPCL in support of its actions relied upon clause 5(f), which mandated the Selection Committee to prepare a panel of three (3) candidates in order of merit and to display the name of only the first empanelled candidate. In so far as the names of the second and third empanelled candidates were concerned, they had to be kept in sealed cover The relevant clause 5(f) reads as follows:

5(f) Preparation of panel:

The Selection Committee will prepare a panel of 3 candidates in order of merit. Name of only first empanelled candidates will be displayed. The names of second and third empanelled candidates will be kept in a sealed cover with the Regional Manager.

13.2 The petitioner in rebuttal apart from reiterating that it is the Brochure which is applicable, and not, the policy guidelines, has not been able to repel the contentions of the HPCL in this regard with any substantive material, to support his argument. In these circumstances, on a consideration of the submissions of both sides, I am of the view that the stand taken by the HPCL would have to be accepted since there is nothing on record to indicate to the contrary that the policy guidelines placed on record by the HPCL did not apply to appointment of distributors for marketing non-domestic LPG.

13.3 It has been contended by learned counsel for the petitioner that a policy guidelines relied upon by respondent no. 1 cannot come to the rescue of the said respondent as it was not annexed to its counter affidavit. In support of this contention reliance is placed on the judgment of the Supreme Court in the case of Bharat Singh and Others Vs. State of Haryana and Others, . In particular, stress is laid on the observations made in paragraph 13 of the said judgment of the Supreme Court. I may only add that once again during the course of argument no such contention was raised by the petitioner that the policy guidelines could not be relied upon by respondent no. 1 in view of the fact that they were not filed with the counter affidavit. Be that as it may, as I have indicated hereinabove, the moot point in the matter is as to whether clause 15 of the Brochure is applicable in the instant case. Having already given my reasons that it is not applicable, it would make little difference to the outcome of this issue as to whether the policy guidelines can be relied upon since in such a situation what could be said at the highest in favour of the petitioner is that there was no provision by way of policy or otherwise as to the manner in which the results of the Selection Committee had to be displayed. This judgment of the Supreme Court which differentiates between pleadings filed in suit and a writ petition would not carry the cause of the petitioner any further, even if I were to accept that the said policy guidelines cannot be relied upon, since they were not filed with the counter affidavit of respondent no. 1.

13.4 The petitioner has also relied upon two other judgments of the Supreme Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, and Rajasthan Pradesh V.S. Sardarshahar & Anr. vs Union of India AIR 2010 SC 2221. There was once again no reference to the same in the written synopsis filed on behalf of the petitioner. If I were to hazard a guess the judgment of the Supreme Court in the case of National Insurance Co. Ltd. (supra) has been relied upon to buttress a point that a document which is in the possession of a party should be produced in court, if it is helpful in reaching justice. This is especially so when one of the parties is the government or an instrumentality of the State. If this dicta were to be applied them in my view whether or not the policy guidelines were appended to the counter affidavit by respondent no. 1, they can be looked at since they have been produced by respondent no. 1. The judgment rather than in my view rather furthering the cause of the petitioner helps the cause of respondent no. 1.

13.5 The last judgment relied upon by the petitioner is Rajasthan Pradesh V.S. Sardarshahar (supra) to perhaps drive home the point that bald dealings by itself cannot further the cause of a party unless supported by requisite evidence. One cannot quibble this proposition. The point in issue has essentially turned on admitted documents, which the petitioner himself has filed in court, i.e., the provisions of the Notice and the Brochure.

14. This brings us to the issue as to whether clause 15 of the Brochure would thus apply in the case of non-domestic LPG distributors. In view of the discussion above, I am of the opinion that clause 15 of the Brochure would not apply as the document itself is applicable to domestic LPG distributors. Having come to this conclusion, I must logically come to the other conclusion that there was no obligation on the part of the HPCL to display the result of all candidates whose names were included in the merit panel on the notice board of the interviewing office. I hold accordingly.

15. Having answered this question, the other question still remains to be examined; which is, whether HPCL ought to take the next step of issuing a LOI in favour of respondent no. 3. The petitioner in the rejoinder has adverted to various aspects, to which I have already made a reference. First and foremost, the application submitted by respondent no. 3 was preferred in an old format, and not in the format in which the applications were sought by the HPCL. Second, that the respondent no. 3 does not have the necessary wherewithal to provide land and infrastructure and also finances, as claimed by him. In this regard petitioner has adverted to the fact that the land obtained by respondent no. 3 was on lease and therefore he could not be assigned maximum marks i.e., 35 marks, under the said head. In respect of finances as well, doubts have been raised by the petitioner with regard to the balance in respondent no. 3''s account. There is the other aspect also, with respect to, respondent no. 3 being an income tax assessee, which has been refuted by respondent no. 3, by annexing his income tax returns. Therefore, a question mark has been raised as

to whether respondent no. 3 could have been given 27.9 marks against a maximum of 30 marks under the heading capability to arrange finances. More importantly, a doubt has been raised as regards the educational qualification of respondent no. 3. Respondent no. 3 claims to have obtained a graduate degree in bachelor of arts from Osmania university in 1995, and also secured a LLB degree from Sri Sahuji Maharaj University, Kanpur in 1996. It seems rather curious that respondent no. 3 was able to secure a LLB degree within one year of having completed his graduation.

15.1 These are issues which the HPCL will have to examine. This is specially so, as during the course of the arguments, it was categorically submitted by learned counsel for the HPCL, that the field verification in respect of respondent no. 3 has not taken place as yet. HPCL will not only carry out field verification, but also examine the anomalies pointed out by the petitioner qua respondent no. 3. This, of course, is notwithstanding the fact that the petitioner in his self-assessment has allotted to himself 35 marks under the criteria "capability to provide land and infrastructure facilities", when he himself has indicated that he does not have the facility for a show room available to him.

16. If on examination, HPCL finds that respondent no. 3 ought not to be issued a LOI, then it should proceed to open the sealed cover, which as per their own contention contains the names of the candidates who had attained the second and third position pursuant to the exercise carried out by the Selection Committee. In case none of the three candidates included in the merit panel, succeed in coming through, on a further examination; HPCL would be free to issue a fresh advertisement qua the site in issue.

16.1 The exercise pertaining to who ought to be declared, if at all, as the successful candidate should be completed as expeditiously as possible, preferably within two months from today. The order passed in that respect shall be placed on the record of this court.

17. In so far as HPCL''s objection to the maintainability to the writ petition is concerned, I may note that even though the said ground was raised in HPCL''s counter affidavit filed in this court, during the course of arguments, the counsel for HPCL made no submissions in that behalf. In any event, I am of the view that this objection of HPCL has no substance as HPCL is one of the oil marketing companies which are supplied, amongst other products, liquefied gas by a public sector enterprise. HPCL, is under the administrative control of the Government of India, Ministry of Petroleum and Natural Gas. It is in public domain that Government of India holds more than 51% of the shareholding in HPCL while banks and financial institutions hold another 24%; the annual report of HPCL for the year 2010-2011 uploaded on their website (www.hidustanpetroleum.com) bring to fore these facts. Therefore, the actions of HPCL qua appointment of distributors for marketing LPG to non-domestic consumers would fall within the realm of public law and hence would be amenable to review, though on a very limited ground, by superior courts while exercising powers under Article 226 of

the Constitution of India.

18. It is in this context that it may be perhaps advisable for HPCL to adopt provisions of clause 15 of the Brochure even qua appointment of distributors for non-domestic LPG; albeit prospectively in their current Brochure. Transparency with regard to particulars of those candidates who qualify for being appointed as distributors would help in strengthening the processes already put in place by HPCL. Entities, which deal with State largesse, need to adopt an approach which is imbued with transparency. The writ petition is thus disposed of with the aforesaid directions. The parties shall, however, bear their own costs. Having regard to the observations made in paragraph 19 above, a copy of this judgment be sent to the Chairman of respondent no. 1.