

(2011) 07 P&H CK 0073
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13615 of 2010

Pushvinderjit Singh

APPELLANT

Vs

Indian Oil Corporation Limited and others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 164 PLR 630

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The writ petition is filed at the instance of a person, who sought for selection as a LPG Distributor for Zirakpur Division but he lost out in a race with the 3rd respondent, who secured higher marks in the selection process. The brochure of the respondent-Corporation had provided for allotment of marks for various educational qualifications and the manner of assessment of these marks for the respective qualifications of the petitioner and the 3rd respondent, cost the petitioner dearly to lose the candidature.

2. The focus for adjudication is whether a Post-Graduate qualification in M. Pharmacy would qualify for treatment as a professional course in a technical subject. If it did, the marks assigned ought to have been 15 but if it was not a professional course in a technical education, then the marks of 12 awarded to the petitioner taking him to be merely a Post-Graduate was appropriate and the choice of the 3rd respondent would have been correct. The petitioner points out that in a communication sent to the All India Council for Technical Education, the Regional Officer had clarified that B. Pharmacy and M. Pharmacy are technical educational qualifications. To an information sought for with the University Institute of Pharmaceutical Sciences, Punjab University, Chandigarh, in the communication dated 24.05.2010, it has also clarified that B. Pharmacy is a technical professional course regulated both by AICTE and Pharmacy Council of India. A certificate was also issued by the Chairman of the University Institute of

Pharmaceutical Sciences that the B. Pharmacy Course is a four year degree course imparted after 10+2 and was covered under the Engineering and Technology subject and the Course was regulated by All India Council of Education norms. The letter also gives information that the Master of Pharmacy is a two years Post-Graduate Course after B. Pharmacy.

3. Learned counsel appearing for the Indian Oil Corporation as well as the candidate, who had been selected would argue that at the relevant time, when the petitioner had completed the B. Pharmacy, it was only three years course and the requirement for professional course was that it should be a course equivalent to a minimum four years course post 12th standard. It is also contended that the requirement in the brochure gives out the category of course, which would qualify for being treated as a professional course and the actual specifications are "Technical/Law/Medical/Management Graduate/Chartered/Cost Accountant or higher qualification (BE, B.Tech, MBA, CA or equivalent, minimum 4 years post 12th standard)." As regards the contention that the professional courses must be for a minimum period of four years post 12th standard, the candidate has no doubt gone through a course after 12th standard at a time when it was less than four years. It would be worthwhile to notice that in this case he has done Post-Graduate Course and at the relevant time when his application came for consideration, he surely had a qualification, which was more than 4 years after his 12th standard. The only issue would be whether it is Professional Course and it was technical education. It can be noticed that the categories mentioned (BE, B.Tech, MBA, CA or equivalent) are not exhaustive, but, they are merely illustrative of the nature of a technical education. This is seen from the fact that although the categories includes Law and Medicine as well while referring to the degrees, there is no reference at All to LLB or MBBS in parenthesis. When a reference is merely a technical education, B. Pharmacy and M. Pharmacy are courses, which are recognized by the All India Council of Technical Education. That itself would be sufficient to show that it is a technical education in professional course. He ought to have been, therefore, awarded 15 marks. It is not now in denial that if he had been awarded 15 marks instead of 12 marks, the petitioner would secure a tally of 99.75 against 98.6, which has been awarded to the 3rd respondent. He would definitely, therefore, qualify for being chosen as a successful candidate.

4. Learned counsel appearing for the 3rd respondent refers me three decisions including one decision of this Court rendered by me to say that the limit of interference in Article 226 of the Constitution of India for the marks awarded by Corporations for choice of candidates cannot be easily interfered with in the writ jurisdiction. In *Bharat Gupta v. Indian Oil Corporation Ltd.*, Chandigarh and another, in C.W.P. No.2096 of 2009 decided on 22.03.2011, the issue was award of marks on the capability to provide infrastructure. In *M/s Shree Gomukh Marketing Pvt. Ltd. v. Hindustan Petroleum Company Limited*, Panipat and another, C.W.P. No.15681 of 2007 decided on 16.09.2008, the marks awarded was for the same issue of land and infrastructure. In *Sachin v. Union of India* and

others, in C.W.P. No.12511 of 2009 decided on 05.02.2010, the issue was again regarding the marks awarded for land where one candidate had been awarded 34.76 marks while yet another was awarded 35 marks. Where the issue of marks relates to assessment of some subjective criteria, there are bound to be variance and Court's interference would not be possible. However, in a case, where there is no element of subjectivity but a sure guidance set through the brochure itself as to what shall be the marks for various types of qualification, the failure to assign a proper category for a qualification means a clear violation of the rules of the game that the State functionary itself has set out. Consequently, if there is an error, it is bound to be interfered with. In this case, the error was Egregious in taking a Post-Graduate course in Pharmacy as a non-technical course when it surely was and asserted as such, by both the Pharmacy Council and the Director of Technical Education.

5. The writ petition is, therefore, affirmed to the benefit of the petitioner to return a finding that the Post-Graduate Course in Pharmacy is a technical education in professional course and the petitioner was bound to have been awarded 15 marks and selected as a candidate if he was otherwise not disqualified. The selection made by the respondent-Corporation is quashed and the petitioner's candidature is directed to be considered afresh and the selection finalized by the respondent Nos.1 and 2 in accordance with law.