
(2010) 03 AHC CK 0086
In the Allahabad High Court

Ramawati Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Citation : (2010) 3 AWC 2924

Hon'ble Judges : Yogesh Chandra Gupta, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prakash Krishna and Yogesh Chandra Gupta, JJ.—Challenging the legality and validity of the order dated 7.9.2009, passed by the respondent No. 2 whereby it has been held that petitioner does not qualify for empanelment on merit panel, the present writ petition has been filed.

2. The facts of the case lie in a narrow compass and are almost undisputed. An advertisement dated 7.9.2007 was published in the newspaper Dainik Jagran inviting application forms to provide distributorship of L.P.G. for different districts including the district Rampur. Distributorship at Milak district Rampur was reserved for defence category (woman). The petitioner is widow of Captain Ramesh Singh who is an awardee of shaurya chakra by the President of India. Besides the petitioner. Smt. Kamlesh Kumari, respondent No. 3 herein also applied for the same. The dispute is in between the petitioner and the respondent No. 3 on the other hand. An application was filed by a 3rd woman but she was not even found qualified to be called for interview. Initially a merit list was prepared placing the petitioner at Sl. No. 1 and the respondent No. 3 at Sl. No. 2. The respondent No. 3 herein challenged the said order by means of the Writ Petition No. 26135 of 2008 which was disposed of by the judgment dated 6.5.2009 without deciding the lis on merits by providing that the representation of Smt. Kamlesh Kumari, respondent No. 3 herein may be disposed of, if possible, within a period of one month. As a consequence of the aforesaid judgment, the matter was reconsidered by the respondent No. 2 and on a

reconsideration, this time, the merit list was changed and it was found that the petitioner is not entitled for empanelment on the merit list as she has not secured 40% marks which is pre-requisite condition for empanelment in view of condition number 14.2 as contained in the brochure for selection of "H.P. Gas Distributors." The principal controversy involved herein centers round the interpretation of the said clause.

Heard Shri R.N. Ojha, learned Counsel for the petitioner and Shri Vikas Budhwar, learned Counsel for respondent No. 2. It may be noted that notices were issued by the order dated 28.10.2009 to the respondent No. 3 who is represented by Shri R.K. Vaish, advocate.

3. The sole contention of the petitioner is that on a true and correct interpretation of aforesaid Clause 14.2, the order impugned in the writ petition cannot be allowed to stand. The submission is that for the purposes of consideration for selection of H.P. Gas Distributors in respect of "P.M.P." category (Para Military Post), with which we are presently concerned, it is not necessary for a candidate for distributorship to obtain 40 minimum marks out of 100 marks. In other words, Clause 14 and last sentence of Clause 14.1 in particular has no relevancy for the consideration of application for allotment of distributorship for "D.C." and "P.M.P." categories. The Clause 14.1, is applicable to only for general category applicants and not otherwise. In contra, Shri Vikas Budhwar, learned Counsel on behalf of Hindustan Petroleum Corporation Ltd., submits that in any case a candidate for "D.C." and "P.M.P." categories have to qualify by obtaining 40% marks as required by Clause 14 and only then such candidate will be considered under Clause 14.2 for allotment under "D.C." and "P.M.P." categories.

4. Considered the respective submissions of the counsel for the parties and perused the record.

5. As noticed hereinabove, the only question for consideration is with regard to the interpretation of Clauses 14.1 and 14.2 of the said brochure and their inter se effect, if any. For the sake of convenience, the relevant portion of Clauses 14.1 and 14.2 referred by the counsel for the parties are reproduced below:

14.1. Allocation of marks on various parameters by Level-I Committee based on the information/statements given in the application

...

...

A candidate has to get minimum 40% marks after interview for being included in the merit panel. In case no candidate gets 40% marks, then the location will be re-advanced.

14.2. Inter-se-Priority for "D.C." and "P.M.P." categories

In respect of Defence (D.C.) and P.M.P. categories where the inter se priority is

given by the competent authorities like D.G.R. etc. the evaluation as per our spelt out norms as above will be carried out simultaneously considering the following marks in addition to the 100 marks mentioned above based on the certificate produced by candidate from the appropriate authorities. In other words these persons will be evaluated on a total marks of 140.

(a) For Defence Category (D.C.)

...

(b) For P.M.P. Category (P.M.P.)

Priority I Widows/dependants of posthumous Gallantry Award Winners 40 Marks
Priority II Widows/dependants of persons having died in action 32 Marks
Priority III Persons disabled on duty 24 Marks
Priority IV Widows/dependants of persons who died while in service 16 Marks
Priority V Disabled in peace due to attributable causes 8 Marks

6. Before advertizing to the interpretation of the above clauses, it may be noted that the attention of the Court was also invited towards the advertisement as published in the newspaper for appointment of L.P.G. Distributor (Annexure-1) to the writ petition, Clause 11 in particular. It was submitted by the learned Counsel for the respondent that it is specifically mentioned in the advertisement that "a candidate has to get minimum 40% marks after interview", to buttress the view taken in the impugned order. Undoubtedly, the said fact finds mention in the said clause but the fact remains that advertisement was issued in respect of number of sites which includes general category candidate as well as reserved category candidate. In any view of the matter, the said clause in the advertisement will not control the clear language of the brochure in question.

7. On an examination of the scheme as contained in the brochure, it would be apparent that the Scheme envisages different considerations for different category of persons. For example in the case of scheduled caste and scheduled tribe people, clauses of capabilities to provide land and infrastructure facility and finance have not been made applicable. 35% marks have been allocated under the item of infrastructure and finance. Thus, marks of these category of persons are to be evaluated only out of 30 marks. Now coming to the Clauses 14.1 and 14.2, it may be noted that the general heading of Clause 14 is "Norms for evaluating the candidates." Under the above heading, Clauses 14.1 and 14.2 have been provided. The heading of Clause 14.1 reads as follows:

Allocation of marks on various parameters by Level-I Committee based on the information/statements given in the application.

While the heading of Clause 14.2 with which we are concerned, is as follows:

1. "Inter-se priority for "D.C." and "P.M.P." categories."

Thus, sub-categorization is also indicative of the fact that Clause 14.2 deals exclusively for "D.C." and P.M.P." categories. At this juncture, the learned

Counsel for the contesting respondents submit that the provisions of Clause 14.1 have not been excluded. In support of the above submission, he has laid emphasis on the words "the evaluation as per our spelt out norms as above will be carried out simultaneously considering following marks in addition to 100 marks mentioned above based on certificate produced by the candidate from appropriate authorities. In other words these persons will be evaluated on a total marks of 140.

8. Laying emphasis on the words "spelt out norms as above", refers to the requirement of getting minimum 40% marks after interview is essential submits the learned Counsel for the respondent.

9. On a careful consideration of the matter, we are of the opinion that the aforestated words cannot be read out of context or in isolation. These words will have to be read with the subsequent words "carried out simultaneously." The words "carried out simultaneously" clinches the issue. On a plain reading of the first sentence of Clause 14.2, it is axiomatic that the allotments of marks shall be done under the different heads such as capability to provide infrastructure, capability to provide finance, educational qualification etc. as provided in Clause 13. The total of which comes to 100 marks. Instead of bodily lifting to the said Clause 13, it has been referred by words "as per our spelt out norms." The norms for evaluating the candidates as reproduced below is given in Clause 13.

13. Norms for evaluating the candidates.--The L.P.G. distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters:

(a) Capability to provide infrastructure* 35 marks (b) Capability to provide finance* 35 marks (c) Educational qualifications** 15 marks (d) Age** 4 marks (e) Experience 4 marks (f) Business ability/acumen 5 marks (g) Personality** 2 marks Total marks 100 marks

10. Clauses 13 and 14 operates in different fields. Clause 14 provides the procedure for allotment of the marks under the particular category. The words "will be carried out simultaneously" mean that the allocation of the marks shall be done as per the norms spelt out in the earlier part of the brochure. It will not refer to the minimum marks to be obtained by the candidate so far as it relates to "D.C." and "P.M.P." category candidates. The "D.C." and "P.M.P." category candidates is a class in themselves and have been given differential treatment under the brochure so far as allotment is concerned by providing that due weightage shall be given to such candidate depending upon whether such candidate is widow/dependants of posthumous Gallantry Award Winners, Widows/dependants of persons having died in action/ persons disabled on duty, Widows/dependants of persons who died while in service, Disabled in peace due to attributable causes. The top priority is given to the widows/ dependants of posthumous Gallantry Award Winners by awarding 40 marks out of 40. The idea to give preferences to such widows/dependants is loud and clear. Such candidates need not necessarily have to obtain 40% marks out of 100 which is a

sine qua non for general category candidates.

"Simultaneous" word has been defined in Black's Law Dictionary, Fifth Edition as- A word of comparison meaning that two or more occurrence or happenings are identical in time.

11. Similarly in the New Lexicon Webster's Dictionary of the English Language page 927 "simultaneous" means being or occurring at the same time.

In Law Lexicon by P. Ramanatha Aiyar 2nd Edition 2007 also says that "simultaneous" means two or more things at the same time.

Which means that while calculating the 140 marks, the 100 marks obtained by the candidate out of 100 marks also be taken into consideration. Our above conclusion also finds support from the contemporaneous conduct of the respondent corporation. As noticed hereinabove, when the merit list was prepared earlier, the name of the petitioner was placed at SI. No. 1. No such plea which has been sought to be raised now was put forward by the respondent corporation. It is only after the order for reconsideration having been passed it re-looked the matter to arrive at a different conclusion Annexure-4 to the writ petition is the list of empanelled candidates for H.P. Distributorship which shows the statement of marks obtained by each candidate interviewed. There is no such column therein to calculate the marks out of 100 first then to take into consideration the marks out of 140. The said list contains various heads such as name of candidate, capability to provide land and infrastructure facilities, capability to provide finance, age, experts, business ability/acumen and personality marks for "D.C." and "P.M.P." category and then total marks. Our above view further finds supports from the second sentence of Clause 14.2. Although there appears to be no ambiguity in the first sentence of Clause 14.2 but even then, precaution has been taken to clarify the position further by mentioning that "in other words these persons will be evaluated on a total marks of 140." They very use of word evaluation on a total marks of 140 show that the evaluation has to be done on a total marks of 140 and not first on 100 marks and then on 140 marks. The above clause puts the thing beyond pale of any doubt and it in no uncertain terms lays down that a candidate will be evaluated on a total marks of 140 and not otherwise. The only reason given in the impugned order that the petitioner has obtained 39.73 marks out of total 100 marks under the heading of capacity to provide land and infrastructure etc. meaning thereby that she did not obtain minimum 40% marks and become ineligible is based on misconstruction and misinterpretation of Clause 14.2 of the brochure. Neither the scheme as contained in the brochure nor the plain language of Clauses 13, 14.1 and 14.2 do support the view taken by the authority in the impugned order. Not only this, on the earlier occasion even the respondent authority interpreted the aforestated clause in the manner in which it has been read by us in the judgment.

12. Viewed as above, we find sufficient force in the submission of the learned

Counsel for the petitioner and thus the impugned order holding that as the petitioner has not got minimum 40% marks out of 100 is not qualified for empanelment in the merit list cannot be allowed to stand. Indisputably, the petitioner has got more marks out of 140 than the contesting respondent No. 3 herein, there being no other candidate entitled for the allotment of the distributorship of L.P.G. at Milak district Rampur, the petitioner is held entitled for the allotment of the distributorship.

13. In the result, the writ petition succeeds and is allowed. The impugned order dated 7.9.2009 Annexure-8 to the writ petition is hereby quashed with cost of Rs. 5,000 payable by the respondent No. 2 to the petitioner.