
(2006) 11 P&H CK 0096
In the Punjab And Haryana At Chandigarh

Renu Chaudhary	Vs	APPELLANT
Hindustan Petroleum Corporation and Others		RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2007 P&H 114

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.S. Bhalla, J.—Whether the selection of respondent No. 3 Asha Rani for the allotment of L.P.G. Dealership/Distribution at Dhinanagar district Gurdaspur is tainted by arbitrariness and mala fides and whether the petitioner is entitled to be allotted dealership in place of respondent No. 3 are the questions which arise for determination in this writ petition filed under Article 226 of the Constitution of India.

2. For the purpose of deciding this controversy, it is necessary to peep through the relevant facts, which are noticed as under:

Respondent No. 1 advertised a notice in the newspaper vide annexure P-1 for L.P.G. Distributorship for HP Gas for Dhinanagar, Gurdaspur and other places under open category, reserved for women only. The petitioner, respondent No. 3 and others submitted applications along with required documents. The petitioner was called for interview at 9.30 a.m. by the respondent through letter dated 6-1-2001 for 31-1-2006. After this interview on the same date, award list was also declared in which respondent No. 3 was placed at serial No. 1 on merit, whereas petitioner was shown at No. 2 on merit. The petitioner learnt about this selection and decided to question the selection of respondent No. 3 mainly on the ground that the recommendations made by the Board are wrong and are vitiated by arbitrariness, bias, and mala fides. It was further pointed out that her claim

has been wrongly ignored and in fact, petitioner is a student of M.Sc. and completed her B.Sc. (Hons.). She is unemployed, unmarried and her parents can afford and invest the amount for carrying the dealership of LPG. She has further disclosed that in comparison to respondent No. 3 even if it be presumed that he has qualification equal to the petitioner, he cannot be equated with her for the simple reason that the petitioner is more qualified and in fact, the petitioner was to get more marks in totality. It is further categorically pleaded that the benefit of clause 8, which has been reproduced in para 7 of the petition is only to be given to respondent No. 3 in case other things are equal and in fact, respondent Nos. 1 and 2 have misinterpreted the clause and while calculating the qualification marks has given preference of age, which is totally unwarranted and illegal and against the provisions of clause 8. A representation was also filed in this regard but to no effect and finally, it was prayed that the award list dated 31-1-2001 whereby respondent No. 3 was shown at No. 1 on the merit list and petitioner at No. 2 on the basis of clause, is totally wrong, against well settled principle of law in allotment of LPG Dealership/Distribution and all this necessitated the filing of the writ petition.

3. On the other hand, the petition has been contested by the respondents. Respondent Nos. 1 and 2 filed joint written statement, whereas respondent No. 3 filed separate written statement. All the respondents by denying most of the assertions raised in the petition prayed that the petition, be dismissed. However, I find that it has been categorically pleaded by respondent Nos. 1 and 2 that the petitioner had only a limited right of consideration alone and in pursuance to her application, her candidature was duly considered and on a comparison of inter se merit, respondent No. 3 was found more meritorious and selected for appointment. Selection was strictly in accordance with the guidelines and criteria laid down by the Ministry of Petroleum in the Policy Guidelines for section of Dealership and Distributorship. It is further pointed out that no superior vested right was acquired by the petitioner by possessing better educational qualifications. The minimum educational qualification prescribed is matriculate as a condition of eligibility. The merit for selection and appointment further is to be adjudged by respondent No. 2 on the basis of the criteria for selection laid down by the uniformly applied policy guidelines and the very basis of the petitioner's claim is wholly misconceived, erroneous and unfounded in law. It is further pointed out that the petitioner is 24 years old. She has done her B.Sc. (Hons.) and is still a student of M. Sc, whereas respondent No. 3 Asha Rani is more than 41 years of age and is working as a teacher for the last 15 years after doing her Matric/Higher Secondary education. Petitioner's father is a Sub-Divisional Engineer in the Punjab PWD and is drawing salary of Rs. 14,552/- per month; whereas father of respondent No. 3 expired 30 years ago in 1971 and as per application submitted by respondent No. 3, her mother has no source of income and she could not pursue her studies further, whereas mother of the petitioner was herself a candidate for the allotment of LPG Distributorship at Qadian. It is further pointed out that according to the guidelines issued by the Ministry of

Petroleum and Natural Gas regarding the eligibility criteria, an applicant must be an Indian between 21 and 60 years of age, having Matric as minimum qualification, be resident of district concerned, should be having gross income of the family not exceeding Rs. two lacs and in fact, in view of the guidelines, unmarried women/widows above 40 years of age without earning parents and widows form a class/category by themselves have to be given priority over all other candidates not falling in this category provided they fulfil other conditions of eligibility. Moreover, it has been categorically pleaded that paramount consideration for selecting a Dealership/Distributorship is, ability, salesmanship, maturity, capability of providing infrastructure for running the business and not academic qualifications alone. The method of evaluation as per marks is to be awarded under different heads to the candidates by the Board and any independent head like better educational qualifications or financial resources alone will not determine superior merit of a candidate. It is finally prayed that selection was in accordance with the guidelines and does not suffer from any infirmity. Respondents prayed for dismissal of the petition.

4. I have heard the learned Counsel for the parties on either side and have also gone through the record carefully.

5. At the very out-set, learned Counsel appearing for respondent Nos. 1 and 2 raised a preliminary objection that the writ petition is liable to be dismissed because the petitioner has failed to avail an alternative remedy by making representation to the Board, but this contention of the learned Counsel is liable to be noticed only for the sake of rejection since it is well settled law that Article 226 of the Constitution does not contain any express bar to the maintainability of the writ petition on the ground that the petitioner has got an alternative remedy. To my mind, the rule that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner is only one of the several rules of self imposed restraint evolved by the superior Courts for exercise of writ jurisdiction. However, the availability of alternative remedy has never been treated as an absolute bar to the entertaining of writ petition and in appropriate cases, the Courts have exercised writ jurisdiction for grant of relief to the aggrieved parties despite the availability of alternative remedy. In Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, , the Supreme Court examined this issue and laid down the following proposition:

When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds there for. But it should be remembered

that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted.

6. In *Ram and Shyam Company Vs. State of Haryana and Others*, , their Lordships of the Supreme Court overruled the objection of alternative remedy and held as under:

Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the Court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits.

7. In the present case, selection of respondent No. 3 has been challenged on the ground of arbitrariness, mala fides and in view of the law discussed above, I do not consider it appropriate to non-suit him on the ground, of his failure to avail remedy by making representation to the Board.

8. It is crystal clear that the petitioner has challenged the selection of respondent No. 3 by (submitting that the Award List is against the, norms fixed by the respondents with regard to marks to be given by each point of consideration and the decision of the respondents is totally illegal, against principles of natural justice and fair play. After having gone through the record, I find that the decision of the Board is not hit by Clause 8 which deals with priority and facilities to women and is applicable for location reserved for women only and in fact, unmarried women/widows above 40 years of age without earning parents have to be given priority over all other candidates provided they fulfil other conditions of eligibility and the basis for selection adopted by the Board is a maximum score of the total marks awarded under all the heads. Out of total marks of 40 to be awarded by the Chairman for educational qualifications and general level of intelligence, in the present case, 15 marks were kept for "educational qualification" and 25 marks were kept for "general level of intelligence". In the case of other members of the Board, the break up was 7 and 13 respectively out of total of 20 marks for the above described heads. The Chairman has awarded 12 out of 15 marks for "educational qualifications" and 8 out of 25 marks for "general level of intelligence", whereas in the case of respondent No. 3, 10 marks have been awarded out of 15 for "educational qualifications" and 20 marks out of

25 for "general level of intelligence". As against this, under this head, by the other member, the petitioner has been awarded 12 out of 20 marks and respondent No. 3, Smt. Asha Rani, has been awarded 11 out of 20 marks. The petitioner was awarded a total 100 marks out of 200 marks under all heads by the Chairman of the Board and the other member awarded the petitioner 33 out of 100 marks under all the heads. Respondent No. 3 was awarded 135 out of 200 marks by the Chairman under all heads and 56 out of 100 marks by the other member of the Board, meaning thereby that respondent No. 3 secured 191 out of 300 marks and in this manner, respondent No. 3, being higher in merit, was shown at serial No. 1. Similar proposition was examined by the Apex Court with regard to the decision of the Selection Committee on comparative merits of the candidates in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, the relevant portion thereof, is reproduced as under:

It is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.

9. In view of the law laid down by the Apex Court, it is crystal clear that the Court is not to interfere in the decisions of the Selection Committees in order to scrutinise the relative merits of the candidates and to my mind also, this is the function of the constituted Selection Committee, who has the expertise on the subject and the selection process cannot be questioned in the manner it has been challenged by the petitioner. The petitioner has not been able to point out any arbitrariness on the part of the Selection Committee. Moreover, the selection of respondent No. 3 is by the Board and is not by an individual, who can have an interest in the particular person and in fact, the case of the mala fides, arbitrariness is not made out against the Selection Committee in any manner.

10. In view of what has been discussed above, no case is made out to allow this petition. There is nothing to be set right and in the final analysis, the petition is dismissed, leaving the parties to bear their own costs.