
(2011) 05 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18607 of 2009

Sanjay Kumar Duhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2011) 05 P&H CK 0079

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The Respondent/Hindustan Petroleum Corporation Limited had issued advertisement on 13.07.2009 inviting the application for allotment of retail outlet (Petrol Pump) dealership (Rural) at village Jasiya Tehsil and District Rohtak under open category. The Petitioner being eligible submitted an application form alongwith the requisite fee. As per the Petitioner, there was no discrepancy and after scrutiny the Petitioner was called for interview on 19.11.2009. The result of the interview was declared on the same day.

2. It is alleged that the merit list has been wrongly prepared and Respondent No. 5 selected for allotment of retail outlet ignoring the rightful claim of the Petitioner. The main grievance of the Petitioner is that he has been awarded "zero" marks in the column of land infrastructure notwithstanding the fact that he had appended jamabandi, Annexure P-6 and mutation, Annexure P-7 of the land in question alongwith the application form. This land is stated to be ancestral land being purchased by his wife Smt. Reena from the father of the Petitioner in whose hand this land had come as ancestral property. The Petitioner would also claim his right over the land and, thus, would state that he was required to be allotted 35 marks in this category. Besides, the Petitioner would impugn the selection of Respondent No. 5 on the ground that he was wrongly assessed and given 25 marks in the column of category to provide infrastructure

for land to which he was not entitled to.

3. Notice of motion was issued and the reply has been filed. Number of preliminary objections have been raised. It is stated that the writ court has no jurisdiction to re-appreciate the fact and then to order allotment in such like cases by ignoring marks awarded and assessed by the Respondent/Corporation. Reference is made to para 19 of the guidelines to say that the Petitioner had a right to make complaint before the redressal system in case, he was aggrieved against the selection. It is also stated that the Petitioner has also raised disputed question of fact, which appropriately cannot be gone into by this Court while exercising writ jurisdiction.

4. As per the Respondents, the Petitioner has been awarded marks according to guidelines for selection of retail outlet. It is stated that there is no infirmity in the allotment of marks. Reference is made to para 12 of the guidelines, where method of awarding marks for availability of suitable land is provided. In respect of the Land and Finance parameters as indicated in para 16 of the guidelines are to be followed. The ownership of land/finance of any member of the family unit is also defined. In case of land/finance owned by the applicant or members of the family unit jointly with third person, the consent letter on stamp paper or an affidavit or POA of such third person is required to become entitled for marks as applicable for own land and finance. The land procured on long lease (registered) for more than 15 years with a renewal option of 15 years would be considered as own land. In case of married person/applicant, the family unit consists of self, spouse and unmarried sons(s)/unmarried daughter(s) and in case of unmarried person/applicant the family unit consists of self, father, mother, unmarried brother(s) and unmarried sister(s). It is stated that in case of land owned by the family unit, a consent letter from the concerned family member is mandatory. In case of the Petitioner neither any lease nor any consent letter of the wife of the Petitioner was attached with the application form. The alleged General Power of Attorney dated 26.11.2007, which is now appended as Annexure P-9 with the writ petition was neither appended with application form nor produced by the Petitioner at the time of interview. Only documents on record with the application form were to be considered by the Selection Committee. In the list of 12 documents appended by the Petitioner alongwith his application form, there is no mention of any consent letter or affidavit of power of attorney for considering the land said to be owned by his wife for setting up of the retail outlet. Hence, the Petitioner has been awarded "zero" marks in this category.

5. Counsel for the Petitioner has emphasized that the Power of Attorney, Annexure P-9 has been annexed with the application form. This fact has specifically been denied by the Petitioner, which cannot be appropriately gone in exercise of writ jurisdiction. I would have been inclined to relegate the Petitioner to invoke his alternative remedy of filing a civil but from the reply filed on behalf of Respondent No. 5, it is noticed that the Petitioner is being accused of indulging in forum shopping. It is pointed out that the Petitioner through his paternal uncle

(Chacha) had filed a civil suit for permanent injunction in the court of Civil Judge (Senior Division), Rohtak for restraining the Hindustan Petroleum Corporation Ltd. for allotting Retail Outlet Dealership to the answering Respondent. The application under Order 39 Rule 1 and 2 has also filed, which was dismissed on 11.02.2010. Copy of the civil suit is also annexed with the reply. No useful purpose would now be served by relegating the Petitioner to invoke alternative remedy for proving the factual assertions made by the Petitioner. There is no merit in the writ petition. The assessment has been properly and fairly made. The writ petition is, accordingly, dismissed.