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**(2013) 05 MP CK 0068**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 678 of 2012**

Santosh Kumar Singhai (Jain)

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

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**Date of Decision : 02-05-2013**

**Acts Referred:**

**Citation : (2013) 05 MP CK 0068**

**Hon'ble Judges : Sujoy Paul, J**

**Bench : Single Bench**

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## **Judgement**

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution, the petitioner has challenged the action of the respondent in treating him as ineligible and issuing Letter of Intent (LOI) in favour of the intervenor. Admitted facts between the parties are that an advertisement, Annexure P-1, was issued by the respondent-Corporation. Petitioner and intervenor along with other candidates submitted their candidature. In the advertisement under clause 7(a), it is made clear that for the purpose of other details, candidates are required to examine the "brochure" published by the Corporation. As per the selection process, a spot inspection is carried out before the date of interview. The inspection was carried out on 16.11.2011. The inspecting team found that there is a high-tension light going above the land offered by the petitioner. The petitioner submits that the said high-tension line was removed on his application on 13.12.2011. Shri Roman submits that the interview took place on 13.12.2011 itself and Annexure P-5 was submitted before the competent officer to inform him that the high-tension line is already removed on 13.12.2011 and in support thereof the photographs were also annexed.

2. A merit list was prepared. Petitioner received zero mark on the head "capability to provide land and infrastructure". Shri Roman criticizing the said action submits that the petitioner on the date of interview removed the said high-tension line and, therefore, the action of the respondent is bad in law inasmuch as he has been given zero mark on the aforesaid head. He submits that the

petitioner should have received total 35 marks on this head.

3. Per Contra, Shri A.K. Jain, learned counsel for the Corporation, submits that the eligibility of a candidate is to be seen on the date of submission of the application and on the date of inspection. Admittedly, there was a high-tension line over the petitioner's land on those dates and, therefore, by no stretch of imagination, he can be said to be eligible. In reply to the argument of Shri Roman that there was no mention about the brochure and therefore petitioner was not aware about the conditions of brochure, Shri Jain submits that it is very much mentioned in the advertisement itself that conditions of brochure are required to be seen. In addition to that, he submits that brochure is available on the website of the Corporation and in the present era of information technology when it was made known to the petitioner that for other conditions he is to examine brochure, nothing precluded him to examine the brochure from the net nor he asked to the Corporation for the same. He had not made any effort to obtain the brochure. In addition, Shri A.K. Jain, learned counsel submits that there is yet another petroleum outlet in the name of the petitioner and, therefore, he is even otherwise ineligible. He quoted clause 6(ii)(ii) which reads as under:-

(ii) If any individual, partnership firm, company, organized body, trust or society already holding RO/SKO-LDO dealership/LPG distributorship acquire controlling stake in a company having RO/SKO-LDO dealership/LPG distributorship, then the RO/SKO-LDO dealership/LPG distributorship of the acquirer would be liable to be terminated.

On the strength of this, he submits that there is no flaw in the action of the respondent-Corporation and petition is devoid of merits.

4. Shri Vivek Jain, learned counsel for the intervenor, in addition to the aforesaid stand, submits that the maximum marks prescribed on the head of "capability to provide land and infrastructure" are 35. However, the petitioner received 53.74 marks in total, whereas the intervenor received 91.48 marks. He submits that even if full 35 marks are given in the head of "capability to provide land and infrastructure", the petitioner will get less marks than the selected candidate and, therefore, petitioner has no case.

5. I have heard learned counsel for the parties and perused the record.

6. This is settled in law that eligibility of a person is to be seen as per the conditions mentioned in the advertisement and based on governing provisions. Although Shri Roman heavily relied on a Division Bench judgment of this Court, reported in Indian Oil Corporation Ltd. and One Another Vs. Gurmeet Singh, , in my opinion, the said judgment will have no application in the present case. In the said case of Gurmeet Singh (supra), this Court interfered because it was not made known to the candidate about the brochure/policy circular which governs the conditions. The brochure/policy circular was strictly kept confidential and, therefore, this Court opined that those conditions will not govern the selection

but the conditions mentioned and disclosed in the advertisement will govern the selection. The said case is distinguishable for the simple reason that in the present case with full transparency the Corporation intimated that brochure will apply. The brochure was available on the website of the Corporation and petitioner made no effort to obtain the brochure. In my opinion, petition is liable to be rejected on the singular reason that the eligibility and condition of the land is to be seen on the date of submission of the application and on the date when inspection took place. Admittedly, on both the dates there was a high-tension line running over the land of the petitioner. The relevant clause in the brochure reads as under:-

If high-tension overhead line passes over the plot, the same will be disqualified. The offered land should also meet norms for statutory bodies like forest, explosive etc. and land should be convertible for commercial, diesel and petrol sales.

Further note appended to this clause reads as under:-

During the interview, the site selection report in respect of the site offered by an applicant will be shown to the concerned applicant and signature obtained for having "seen" the report.

The site selection report is filed by the Corporation which contains petitioner's signature on it, which shows that on the date of selection the high-tension line was running over the plot of the petitioner. Thus, he is clearly ineligible to get marks on account of the said head.

7. I find no flaw in the action of the respondent in not granting marks against the said head to the petitioner. I am not inclined to enter into the controversy whether petitioner had another petroleum outlet in his name because the rejection of petitioner's candidature is not on that ground. On the basis of aforesaid analysis, I find no reason to grant relief claimed by the petitioner. Petition has no force and is hereby dismissed. No costs.