
(2016) 03 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 6744 of 2013

Seema Raju Pol

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Citation : (2016) 2 ALLMR 887 : (2016) 5 BCR 569 : (2017) MCR 95 : (2016) 3 MhLJ 471

Hon'ble Judges : S.S. Shinde and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : Shedge Ranjit A., Advocate, for the Appellant; Sanket S. Kulkarni, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—1. Rule, returnable forthwith. By consent of the parties, taken up for final hearing at admission stage itself.

2. This petition has been filed being aggrieved by the impugned action of the respondents dated 6th July, 2013 of cancellation of the selection of the petitioner for MS/HSD retail outlet dealership on Lasur to Sultanabad new Mumbai Highway, District Aurangabad. The respondent - Bharat Petroleum Corporation Ltd. Issued an advertisement in the newspaper Daily Lokmat on 13th March, 2012 inviting applications for the allotment of retail outlet dealership for MS/HSD. In the said advertisement, one retail outlet which is to be set up at Lasur Station to Sultanabad new Mumbai High Way was advertised. In the said advertisement, it was mentioned that, the said location is reserved for "Open category for Woman". In pursuance to the said advertisement, the petitioner filed an application along with necessary documents. It is further case of the petitioner that, pursuant to receipt of the said application, the respondents verified the documents, carried out spot verification of the proposed site, approved the site and were satisfied on verification that, the said site is a proper place for allotment of outlet dealership. Upon satisfying themselves, the

respondents called the petitioner for interview on 26th October, 2012. All the applicants including the petitioner appeared for the interview along with original documents and all the enclosures as stipulated in the application form. It is the case of the petitioner that, the respondents were satisfied with the documents submitted by the petitioner along with the application and upon verification and after satisfying themselves that there is compliance of the requirements, the Selection Committee evaluated performance of the petitioner and other applicants for the said location and the said committee after minute and detailed interview of the petitioner and others, declared selection of performance of the candidates and in the said statement, level-1, level-2 and level-3 committee has ranked and placed the petitioner in the first place in Open Category for Woman at Lasur to Sultanabad on New Mumbai Highway location. It is the case of the petitioner that, the petitioner was allotted 83.47 marks which were based upon the capability to provide infrastructure and facility, capability to arrange finance, capability to generate business as well as other criteria. It is further case of the petitioner that, during the interview, the site selection report in respect of site offered by the petitioner was also shown. According to the petitioner, the petitioner has secured 16% more marks compared to the candidates at Sr.No.2. The petitioner has secured 16 to 17 marks ahead than its second empaneled candidate Mrs. Farzana Badshah Patel. In spite of selection of the petitioner, it is the case of the petitioner that, the respondents delayed the allotment of letter of intent without any reason. The candidate at Sr.No.2 namely Mrs. Farzana Badshah Patel filed an objection on the ground that, the petitioner has mentioned the relationship with owner of land as "spouse" in the application, which amounts to deliberate attempt on the part of the petitioner to conceal the important information which would attract the provisions of Clauses 10(K) and 21 of the Brochure for Selection of Petrol/Diesel Retail Outlet Dealers. The respondents on 6th July, 2013 cancelled selection of the petitioner Hence, this petition.

3. The learned Counsel for the petitioner invited our attention to various documents which are placed on record and submits that, inadvertently the petitioner, while filling in the Clause 11(c) i.e. "Relation of the landlord with the applicant", has written "Spouse". He further submits that, in fact, in clause 11(b), name of the owner of the land has been written as Pol Ravindra Bansidhar (Proof to be attached). He invited our attention to the affidavit filed by the said Pol Ravindra Bansidhar and submits that said Ravindra has mentioned in the affidavit the relationship with the petitioner that, she is his sister-in-law. Learned Counsel for the petitioner has further invited our attention to various documents which would show that, husband's name of the petitioner is "Raju". Therefore, learned Counsel for the petitioner submits that, when the documents placed on record unequivocally indicate that name of husband of the petitioner is "Raju", there is no question of intentionally mentioning relationship with the landlord as "spouse". It is submitted that, even if the contention of the respondents is accepted without admitting but assuming that, the petitioner secured some more

marks since the assessment was out of 35 for filling in the incorrect information in the form and even if the assessment is considered to be out of 25 marks, the petitioner has secured 16 to 17 more marks than the candidate at Sr.No.2. It is submitted that, it is only in case of deliberate suppression or concealment, the provisions of clauses 10(K) and 21 of the said Brochure can be invoked. At the cost of repetition, it is submitted that, it is sheer inadvertent mistake to mention "spouse" in column 11(c) of the application and it is because, the petitioner is not conversant with the English language.

4. Therefore, relying upon the pleadings in the petition, annexures thereto, learned Counsel for the petitioner submits that, the petition deserves to be allowed.

5. On the other hand, learned Counsel for the respondents, relying upon the averments in the affidavit-in-reply filed on behalf of respondents 1 and 2, submits that, the contention of the petitioner that, inadvertently "spouse" was written in clause 11(c) of the application, cannot be accepted. Even though, for the sake of argument it is accepted that it was a mistake committed by the petitioner, relying upon the information given by the petitioner in her application, marks are allotted to the petitioner. Accepting the statement of the petitioner that the owner is spouse, marks have been allotted out of 35. However, if the land belongs to brother-in-law, then the petitioner may get 25 or less than 25 marks for the land which is offered by her. Therefore, according to the learned Counsel for the respondents, allotment of 35 marks to the petitioner is incorrect assessment and the petitioner, will get either 25 marks or less than that. The learned Counsel for the respondents invited our attention to the Clause 21 of the said Brochure and submits that, if any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer or conceals any information which if declared would have made him/her ineligible for dealership, the allotment will be cancelled forthwith and dealership terminated. It is submitted that, the petitioner has got more than 10 marks because of the mistake and hence, the entire process of selection will have to be reopened, which is not permissible under the law. It is submitted that, the second impaneled candidate has given complaint to the Grievance Cell and requested that, Level-1, Level-2 and Level-3 committee should review the earlier decision regarding the assessment of marks and hence, in view of the complaint, the grievance cell has re-considered the application of the petitioner and rejected the selection of the petitioner for the above location. He invited our attention to Clauses 13 and 21 of the said Brochure and submits that, after the cut off date, no addition, alteration or modification is permissible as per rules. Therefore, relying upon the averments in the affidavit-in-reply and the aforesaid provisions of the Brochure, he submits that, the petition deserves no consideration. Hence, the same may be rejected.

6. We have given careful consideration to the submissions of the learned Counsel or the petitioner and the respondents. With their able assistance, perused the

pleadings in the petition, grounds taken therein, annexures thereto and the reply filed on behalf of respondents No. 1 and 2 as also the judgment of the Apex Court cited across the Bar by the learned Counsel for the petitioner in case of Sunita Gupta Vs. Union of India & Ors. in Civil Appeal No. 4681 of 2014 delivered on 22nd April, 2014.

Upon careful perusal of the copy of the application, which is placed on record at Exh.A page 17 of the compilation, it shows that in Clause 1 while filling in the individual information, the petitioner has written name of her husband as "Pol Raju Bansidhar". The other details have also been mentioned. Therefore, it is abundantly clear that, name of the husband of petitioner is "Raju". Upon careful perusal of the Clause 11(b) of the said application, it appears that while writing name of the owner of the land, it is written as "Pol Ravindra Bansidhar" and in bracket it is written as proof to be attached. However, while writing relationship of the land owner, "spouse" is written. There is no slightest doubt that, when the very same applicant has written name of her husband as Pol Raju Bansidhar, will not deliberately fill in the wrong information in clause 11(c) as "spouse" and it appears to be a sheer mistake committed by the petitioner. We have carefully perused the contents of the affidavit filed by said Pol Ravindra Bansidhar, which was submitted by the petitioner along with the application, wherein while mentioning relationship with the petitioner, "Bhavjai" (sister-in-law) is written. Even, in the affidavit filed by husband of the petitioner dated 12th April, 2012, it is clearly mentioned that, applicant is his wife. There are copies of other documents including 7/12 extract, which would unequivocally indicate that name of petitioner's husband is Raju. There are also documents relating to land wherein, name of Ravindra Bansidhar Pol is written. There is overwhelming evidence placed on record which would unequivocally indicate that, Ravindra Bansidhar Pol is brother-in-law of the petitioner. At only one place in clause 11(c) of the application, inadvertently, it is written as "spouse" instead of "sister-in-law".

7. Admittedly, before cancellation of the selection of the petitioner, the petitioner was not heard by the respondents; no principles of natural justice were followed by the respondents and action of the respondents in cancellation of selection of the petitioner was unilateral.

8. Upon careful perusal of the material placed on record, it is abundantly clear that, the respondents after following proper procedure including evaluation of the site offered by the applicants, conducting interviews of the petitioner along with other applicants and after verification of all the documents, selected the petitioner.

9. Even if, the respondents were to consider the complaint of the candidate at Sr.No.2 namely Mrs. Farzana Badshah Patel that, by virtue of mentioning incorrect information in Clause 11(c) of the application, the petitioner has received more marks compared to said Mrs. Farzana, in that case, also the petitioner has secured 16 to 17 more marks compared to the candidate at

Sr.No.2 Mrs. Farzana Badshah Patel. If the complaint was filed with the allegation of filling in the incorrect information, and if the respondents were of the opinion that there is substance in the said allegation, the same set of rules, on which respondents have placed reliance, provides for mechanism for redressal of the grievance / complaint under Clause 19 of the said Brochure. Clause 19 of the Brochure provides for Grievance / Complaint redressal system. Upon perusal of the said provision, it is provided that, whenever there is transcribing or totalling error (in scrutinizing committee's marks), a committee of two members not below the rank of JG "E" nominated by Regional Head with one member from Regional office and one Territory Manager other than the concerned territory will prepare revised result based on evaluation by original scrutinizing committee and marks on interview based parameters awarded by original interview committee. Therefore, it was open for the respondents to adhere to the said procedure and not to take drastic action of cancellation of selection of the petitioner without hearing the petitioner. The learned Counsel for the petitioner is right in placing reliance on the decision of the Apex Court in case of Sunita Gupta (supra) wherein, in somewhat similar fact situation, the Apex Court considered the prayer of the appellant therein and allowed the appeal and directed the respondents therein to issue appointment letter in favour of the appellant therein. It is not necessary for us to elaborate on the said judgment. Suffice it to say that, the Supreme Court, after considering the facts and hearing the Counsel for the parties therein, has taken a view that, the review order passed by the respondents is bad in law as the appellant was originally found to have fulfilled all the criteria for the land offered which was greater in area than the land required as per the rules and guidelines of the respondent Corporation. The review committee, on a mere technicality, denied the appellant her right to the dealership, after it was previously declared that she was selected for the same.

10. Keeping in view the exposition of the Supreme Court in case of Sunita Gupta (supra) and the discussion in the foregoing paragraphs, in our opinion, the respondents have committed an error in cancellation of the selection of the petitioner.

11. In the result, petition is allowed in terms of prayer clause (B). We direct the respondents to re-assess / evaluate the marks of the petitioner keeping in view Clause 19 of the said Brochure, after hearing the petitioner and original complainant. We make it clear that, the entire exercise is to be done by the respondents, as expeditiously as possible; however, within twelve weeks from today and communicate the decision to the petitioner and the complainant. We make it clear that, the respondents shall not raise the ground of mentioning incorrect information in clause 11(c) as "spouse" in the application and it will not be open for the respondents to raise the said ground and also to reopen all other issues except the error in the allotment / assessment of the marks.

Petition is partly allowed. Rule is made absolute in the above terms with no order as to costs.

Parties to act upon authenticated copy of this judgment.