

(2010) 04 P&H CK 0153
In the Punjab And Haryana At Chandigarh

Sh. Jaimal Kumar

APPELLANT

Vs

Hindustan Petroleum Corporation Limited and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 2 ILR (P&H) 1005

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The controversy in this writ petition is the choice of allotment of LPG distributorship under SC (Urban) Category. The petitioner is locked up in a tussle through claim by the 3rd respondent, who has been favoured with allotment by respondent Nos. 1 and 2. The selection is made through assessment of relative merit on five parameters for SC Category namely (i) educational qualification (15 marks), (ii) Age (4 marks), (iii) Experience (4 marks), (iv) business ability/acumen (5 marks), (v) personality (2 marks), totalling in all 30 marks. The petitioner has been assessed at 28.33 marks having tied with the 4th respondent mentioned in the petition, both of whom having placed beneath the 3rd respondent, who has been awarded 29 marks. The difference has arisen by the fact that the petitioner has been assessed at 3 marks for experience while the 3rd respondent has been assessed at 4 marks. This one mark difference steals the show for the 3rd respondent, when the difference in mark allotted to the petitioner at 4.33 for business ability and the 3rd respondent having been assessed at 4 marks for business ability is not sufficient to off-set the one mark difference for experience. The attention in this case will, therefore, be riveted only to these relative grading under the column experience and business ability/acumen.

2. Conscious of the fact that the Court's area of intervention in the matter of award of marks by the Interview Committee shall be extremely restricted, the attempt had been to point out that the marking has been so outlandish and arbitrary even within the limited area of traversal, it shall become possible to set

aside the selection. The 3rd respondent on the other hand was only to ensure that the Court adopts a hands-off approach when the persons who had been making the selection knew their job well and the Court shall have no need for upsetting their choice. If the marks are assigned only on the basis of a subjective satisfaction of the Selection Committee on the personality assessment or the way the candidate is supposed to have answered the questions, they shall be absolutely no scope for intervention at all. There has been a consistent string of authorities setting out the extent of interference that may be possible by the Court. The Hon''ble Supreme Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, observed thus:

It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to set in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that 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 fide affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in sitting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

The learned Counsel also refers to some decisions of the Calcutta High Court and this High Court to show how the Court shall not interfere with the award of marks by expert selection bodies. I do not think it is necessary to dilate on them since they re-affirm the principle laid down by the Hon''ble Supreme Court.

3. Learned Counsel appearing for the Corporation would point out to the composition of the Interview Committee as having been drawn from senior officials of the Corporation namely the Senior Regional Manager, Hoshiarpur, LPG Regional Office, HPCL, Senior Manager, HPCL North Zone, Delhi and Manager Commercial, HPCL North Zone, Delhi. These senior experienced officers of the Corporation, it is averred, were well versed with the policies of the Corporation and were competent to assess the business ability/acumen, personality and experience of the respective candidates being fully familiar with the trading and commercial activities conducted by the respondent-Corporation. The petitioner has been assessed at 4.33 marks for business ability while the selected

candidate has only 4 marks. With a better grading on that score, the petitioner could have no grievance that a subjective assessment could still be not a matter for intervention by the Court. The case assumes acute appraisal only as regards the experience factor. It is not so much a subjective assessment but is a matter of easy appraisal on the facts disclosed.

4. As regards the experience, the petitioner has given the following details:

12 Experience: Do you have experience of running or working in any of the establishment dealing in the following for minimum one year? Please give full details chronologically? Type of Name & Address of the Period Number of years experience establishment/institution From To Direct BPCL 1996 till Sale/Home date delivered products (including LPG Distributor ship) Other LPG, Retail, Direct Sales Petroleum products/ experience Any other trade

The 3rd respondent has on the other hand the details set out hereunder:

12 Experience: Do you have experience of running or working in any of the establishment dealing in the following for minimum one year? Please give full details chronologically? Type of Name & Address of the Period Number of experience establishment/institution years From To Direct Sale/Home Bhagwaria Gas Agency, 1984 86 2 years delivered Karnal products (including LPG Distributorship) Other Petroleum Marketing Household 2002 2005 3 years products/ furnishing good experience Any other trade Practicing Advocate 2005 2008 1- ? years

The petitioner's experience has been drawn from the fact that he was a permanent management staff of the Bharat Petroleum Corporation Limited and working as such since September, 1996. Presently, he had been posted at Jammu and the petitioner has produced the certificate issued by the Manager, Jammu Depot. For this the petitioner has been granted 3 marks. The 3rd respondent, the selected candidate has had three years experience in marketing household furnishing goods and is reported to have had direct sale/home delivered products in Bhagwaria Gas Agency, Karnal from 1984-86. She has also been a practicing advocate for 1 ? years. Learned Counsel for the petitioner produces proof secured from the Principal of the College for Girls, Chandigarh that the petitioner was a student at the relevant time and therefore, she could not have had any experience. The document produced by the petitioner at the time of argument, though not referred to in the petition shows the following:

That M/s. Bhagwaria Gas Service at Karnal was an agency run by her father as an Indane Distributor. The 3rd respondent had been a regular student of the Government Girls College, Sector 11, Chandigarh from April 1982 to May 1985 and a post-graduate student at Kurukshetra University till 1987.

It is obvious that the experience certificate that the 3rd respondent produced on the basis of which she has been assessed marks at 4 has been on the basis of certificate which her father could have easily given to the 3rd respondent,

whether she had worked there or not. She had been a practicing advocate and whether such an experience as an advocate is at all relevant is again a matter which the Interview Committee would know better. She has also had experience in marketing household furnishing goods between the year 2002-2005. If the Interview Committee had to assess marks for experience only for her alleged association with Bhagwaria Gas Agency, Karnal, the period when the 3rd respondent had been a student in a college, the entire assessment would have been wholly suspect. Whether the experience as an advocate shall have any bearing for assessment, there is no definite guidance. Learned Counsel appearing for the Oil Company has very strong objections to the petitioner relying on the information obtained under RTI by the fact that it had not been made the subject of pleading. The 3rd respondent is also represented through counsel and she has no explanation to offer as regards the claim by the petitioner that she could not have had worked in her father's gas agency at that relevant time. It shall not become possible for the Court to undertake an examination whether the assessment had been made properly but I still think that it is an issue which the Interview Committee shall definitely examine, having regard to the fact that the information has been brought before this Court.

5. The selection that has been made would require to be set aside, even keeping in view the limited area of jurisdiction of the Court to make such intervention since the issue is whether the Interview Committee had all the relevant details to examine the correctness of the information supplied by the candidates. The information as regards the so-called experience of having worked in Bhagwaria Gas Agency is definitely open to doubt and the matter shall be remitted to the Interview Committee for consideration only as regards the assessment of marks for experience. The Interview Committee may be reconstituted, which shall examine only the records that have been placed so far namely of the petitioner's experience as management staff with Bharat Petroleum Corporation Limited at Jammu and marks that have been assigned for the 3rd respondent's experience under the three heads namely the alleged experience of working in Bhagwaria Gas Agency, experience in marketing household furnishing goods and the experience as a practicing advocate. The reconsideration of the candidature of the petitioner and the 3rd respondent will stay confined to the documents that had been brought before this Court for consideration. The decision shall be taken within 4 weeks from the date of receipt of copy of the order.

6. The selection made already drawing up a panel of merit list placing the 3rd respondent as the highest in the order of merit list is set aside and a fresh consideration shall be taken in the light of observations made above.

7. The writ petition is disposed of on the above terms.