
(2008) 02 MP CK 0086
In the Madhya Pradesh High Court

Smt. Shobha Jaiswal

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2008) 02 MP CK 0086

Hon'ble Judges : Shahi Kant Kulshreshtha, J; Manjusha Namjoshi, J

Bench : Division Bench

Judgement

S.K. Kulshrestha, J.—By this appeal u/s 2 of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal), Adhiniyam, 2005, the appellant assails the order dated 16.11.2006, passed by the learned Single Judge in W.P. No. 4748/2005, by which the appeal filed by the appellant has been dismissed and the interim order passed in favour of the appellant has been vacated.

2. On 28/8/2005, respondent No. 1 published an Advertisement inviting applications for allotment of Retail Outlet dealership for various areas including Gautampura. It is not disputed that the appellant and respondent No. 2 alongwith other candidates applied for the said Retail Outlet and were called for interview and on the basis of the criteria laid down in this behalf, appellant secured 79.83% marks while respondent No. 2, 81.63%. The other candidates secured lower marks. Since, according to the procedure adopted by the Selection Committee, the respondent No. 2 secured more marks than all other competing candidates, she was selected for appointment. However, the said appointment was challenged before the learned Single Judge on the ground that the selection process was replete with favouritism and nepotism, the time was extended for submission of application forms to accommodate respondent No. 2 and, in view of the predisposition of the committee, the respondent No. 2 was declared as having secured maximum percentage of marks. The respondents did not approach the grievance Committee but before the petition was decided by the learned Single Judge, a notice was sent to the said Committee, but on account of

the pendency of the petition, the Committee declined to entertain the complaint.

3. Be that as it may, after hearing the learned Counsel for the parties, the learned Single Judge has dismissed the petition of the appellant against which the present appeal has been filed.

4. The selection of the candidates is made in accordance with instructions contained in document Hindustan Petroleum Corporation Limited, Brochure, Selection of Retail Outlet Dealers, 1st November, 2004.

5. The criteria for selection has been laid down in paragraph 16.1 of the Guidelines. The said Guidelines read as extracted herein below:

Guidelines for Selection of Retail Outlet Dealers:

16.1 NORMS FOR EVALUATING CANDIDATES FOR RETAIL OUTLET DEALERSHIPS:

16.1.1 Each candidate(individuals and partners of a partnership firm) during the interview will be assessed by the Selection committee broadly under the following parameters:

a. Capability to provide land and infrastructure/facilities - 35 marks b. Capability to provide finance - 25 marks c. Educational qualifications - 15 marks d. Capability to generate business - 10 marks e. Age - 4 marks f. Experience - 4 marks g. Business ability/acumen - 5 marks h. Personality - 2 marks

Allocations of marks on various parameters(as applicable to individuals/partnerships)

Applicants owning/arranging suitable land and willing to transfer the same on ownership/long lease basis to the oil company at the rates acceptable to the oil company and subject to suitability of the same from technical and commercial angle, will be given preference while awarding marks under the head land and infrastructure. For this purpose, land belonging to the family member(s) i.e. spouse and unmarried son(s)/daughter(s) shall also be treated as "owning" subject to their written consent.

Parameter

Subheads

Description

Marks

Evaluation

Land & infra-structure

Suitable land for retail outlet

Having clear title to the land/Registered Sales Deed and willing to give to the company on long term lease at rental acceptable to HPCL or purchase basis

35

Based on leading questions and also verifying the documents submitted

Maximum marks 35

Having agreement to purchase and willing to give to the company on long term lease or purchase, or legal documents from the land owner committing for transfer of land to company on direct or sub-lease at rental acceptable to HPCL.

25

Having clear title to the land/Registered Sales Deed and not willing to give to the company but willing to use the same for development of a retail outlet

20

Having agreement to purchase and not willing to give to the company but is willing to use the same for development of a retail outlet

15

Finance Maximum marks 25

Financially sound

Ready availability of Finance (20 marks)

*Liquid cash in the form of bank Fixed Deposits etc.

Rs. 10 to 15 lakhs -12 marks

Rs. 7 to 10 lakhs ? 10 marks

Rs. 5 to 7 lakhs ? 5 marks

Rs. 3 to 5 lakhs ?

2 marks

Fixed and movable assets Value of assets of Rs. 10 lakhs and above will be awarded full marks and for lesser values, the marking will be done proportionately

*Income An income of Rs.3 lakhs per annum and above will fetch full marks and for lesser incomes, the marks will be awarded proportionately

Note: With regard to source of funds declared by the applicant in the application form, it is necessary that the same would be made available for the RO development purpose as and when required. The applicant should submit an affidavit in this regard. In case the candidate fails to make available the funds committed at the time when it is actually required or could not substantiate during the interview/at a later date, the candidature/dealership is liable to be cancelled.

Based on leading questions and also verifying the documents submitted

Credit Worthiness

Letter ensuring credit Bank/Financial Institution/ individuals/ Party's letter ensuring credit, credit worthiness certificate from scheduled Bank/Financial institutions

Submitting Credit worthiness certificate from scheduled bank/financial institutions and also expressing willingness to extend loan if required.

The applicant on selection should be capable to raise necessary funds for effectively operating the dealership to the satisfaction of the oil company. The estimated requirements of funds expected to be made available by the applicant excluding the cost of land for the setting up/operation of the dealership will be indicated in the advertisement for any location.

EDUCATIONAL QUALIFICATION

Basic

Based on the educational qualification proof provided by applicant, the following marks will be awarded.

Based on documentary evidence, by furnishing certificate/ mark sheet from Board/ University as applicable.

Maximum marks

Matriculate /SSC/Xth pass. XIIth pass Graduate Post graduates or higher qualifications

7

8

10

12

Professional

Any Diploma

Basic Qualification marks +1

Degree excluding Technical/ Law/Medical/Management Graduate/Chartered / Cost Accountant

Basic Qualification marks +1

Technical/ Law/ Medical/ Management Graduate/ Chartered/ Cost Accountant or higher qualifications

15

Age

Marks will be awarded on the following basis.

Based on documentary evidence

Maximum marks 4

$\geq 21 < 26$

2

4

2

1

$\geq 26 < 46$

$\geq 46 < 56$

$\geq 56 \leq 65$

Capability to generate business.

Tapping of sales potential

i) Assessment by Committee on tie up of sales volumes with prospective customers.

5

i) Committee will assess the applicant's ability to tap the sales potential for both MS & HSD through leading questions and Production of documents including affidavits from prospective customers in support of claim.

ii) The committee members will satisfy themselves through leading questions on the project report submitted by the candidate and assess him accordingly

iii) As per the assessment of the committee based on leading questions

Maximum marks 10

Project report

ii) Based on project report for realizing sales potential submitted by the applicant.

3

Assessment of committee

iii) On the overall judgment of candidate's ability to generate business including

future plans. Note: Sales potential, as estimated by HPCL will be indicated in the advertisement against each location. The candidate, while applying, will have to submit an affidavit in support of his claim with regard to his ability to tap the sales potential from the prospective customers. It will be clearly indicated in the affidavit that such prospective customer has not given similar consent to any other applicant for the concerned location. The indicative parameters in this regard are as under: Tied up volume with transporters/ Taxi/ Rickshaw Operators/ Transport Association /private cars/fleet/ agricultural equipment/ mining/ earth moving equipment/ Own Vehicles/ Fleet/ equipments /machinery tie up with Industries regarding requirement for power generation etc. In case the affidavit is not factual or not substantiated during interview/ at a later date, the candidature/dealership is liable to be cancelled.

2

Sub Total

10

Experience

Retail trade of petroleum products

4

Based on furnishing of documentary

evidence to establish of the relevant service of minimum 1 year.

Maximum marks 4

Other/ related petroleum trade/ transport/ automobile

3

2

Hospitality/Service industry/ FMCG

Others

1

Business ability/ acumen Maximum marks 5 Personality

(i) Marks will be awarded based on project report/ leading questions with regard to earlier handling of business as well as response to specific situation related queries as under: -Management of people-Management of finance/ infra-structure -Trade related.

3

Based on project report/ leading questions with regard to earlier handling of business & specific situations based on leading questions.

(ii) Based on proven ability/acumen as in earlier/ existing business

2

Personality

Assessment of the committee on the following parameters. Communication/ articulation skills Polite, presentable and well mannered Enthusiasm/ energetic/ medical history Self confidence/ convincing power.

2

Assessment based on observation and leading questions.

Grand Total

100

6. It is not disputed that the candidature of the appellant and respondent No. 2 was tested on the anvil of the above guidelines, but the grievance of the appellant is that appellant has been awarded only three marks as against the respondent No. 2, who has secured 15 under the caption "tide up volume" and has been awarded zero marks for "experience" as against 12 marks awarded to respondent No. 2.

7. The core question that falls for consideration is as to whether the method of making assessment with regard to the "tide up volume" to adjudge the capability to generate business, is just and proper or it has the tendency to lead to anomalous results.

8. Learned Counsel have not disputed that the eligibility/suitability of a candidate seeking Retail Outlet is just for the purpose of ensuring his capability to generate business, called a "tide up volume." It is also not disputed for the purposes of adjudging the suitability, "tide up volume" is considered on the basis of the affidavits of the persons in the vicinity of the proposed Retail Outlet and on that basis the Committee arrives at the conclusion about the capacity of the particular candidate to generate business, in addition to the suitability adjudged on the anvil of the other criteria. From the criteria, it is clear that capability to generate business and of sales potential is assessed on the applicants ability to tap the sales potential for both MS and HSD through interview and production of documents including affidavits from prospective customers in support of the claim.

9. According to the learned Counsel for the respondent No. 1, while the petitioner produced an affidavit about the estimated sale of one Kilolitre, respondent No. 2 produced a number of affidavits to the effect that there were buyers for 40 Kilolitres of the fuel.

10. The case of the appellant and the respondent No. 2 was considered on the basis of the Site Inspection, the weightage awarded by Interview Committee, in liquid cash in the form of Bank Fixed Deposit fixed and movable asset, income,

letter ensuring loan/credit worthiness, educational qualifications, capability to generate business, i.e; tide up volume, project report, over all assessment age, experience, business acumen and personality. Though the other criteria for achieving the highest percentage of marks as per the bench mark fixed by the Corporation appears reasonable and proper and relevant for adjudging suitability of the candidate, any weight given on the basis of the affidavits produced from the inhabitants in the area in which the outlet is proposed, cannot furnish a rationale basis having nexus to the object to be achieved and, therefore, procedure of selection suffers from the irrelevant basis on which decision is taken.

11. We may add that the affidavits filed from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and, therefore, apart from being a mere promise, no credence can be given to such affidavits which do not bind the persons who have sworn them. This apart, the affidavit produced by the candidates would enure to the credit of all candidates as they show that there is assured sale. Therefore, the selection has been made on the criteria which cannot be sustained.

12. Accordingly, this appeal partly succeeds. Respondent/Corporation is directed to call the appellant and respondent No. 2 for interview afresh and subject them to the selection criteria laid down except that no weightage shall be given to the affidavits filed by the candidates but the documents filed in support of the claim for capability to generate business shall duly be taken into consideration.

13. We expect that the Committee shall take a decision within 45 days from the date of this order. There shall be no order as to costs.