

**(2013) 01 RAJ CK 0250**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 1932 of 2012 with Stay Application No. 8862 of 2012

Smt. Sumitra Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 22-01-2013

**Acts Referred:**

**Citation :** (2013) 4 CDR 1817

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Advocate :** Devendra Raghava, for the Appellant; J.P. Gupta, Counsel, for the Respondent

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## **Judgement**

Mohammad Rafiq, J.—This petition has been filed by petitioner, who is widow of an ex-army man. Her husband died in action, thus she was eligible to apply for allotment of petrol/diesel retail outlet. Respondent No. 2 - Bharat Petroleum Corporation Limited issued an advertisement dt. 17.09.2011 inviting application for allotment of retail outlet. It is contended that the respondents have awarded only 11.98 marks out of 100 marks to the petitioner and on that basis refused to allot her petrol/diesel retail outlet. The action of the respondents is arbitrary. Petitioner being a war widow, was entitled to 32 marks for defence category on the basis of defence eligibility certificate. If her case is considered on the basis of defence eligibility certificate, she will be entitled to 43.98 marks. Respondents have flouted their own scheme and guidelines. Learned counsel has argued that action of the respondents defeats the very purpose for which they have promulgated the policy of allotment of petrol/diesel retail outlet to war widows on priority basis. Respondent Bharat Petroleum Corporation Limited is a Government of India undertaking and it is expected from it to act in accordance with the policy of the Union Government, whereas it has acted arbitrarily and unreasonably, petitioner has relied on document (Annexure-6), which is a brochure for selection of petrol/diesel retail outlet dealers, issued by the respondents for evaluation of candidates for the purpose of allotment of retail

outlet and has submitted that relaxation has been granted to those falling in the defence category in the matter of financial assistance, educational qualification, land and infrastructure facility etc. and credit worthiness certificate was also not required for war widows. It was also argued that only application, that was received pursuant to advertisement dt. 17.09.2011 (Annexure-1) issued by the respondent, was of the petitioner and there was no reason not to allot aforesaid outlet to the petitioner. Learned counsel for petitioner cited result sheet/mark-sheet and argued that her case was required to be evaluated strictly in accordance with the policy contained in Annexure-6.

2. Learned counsel for the respondents contended that relaxation has been granted in the matter of educational qualification only. Referring to clause (4)(a)(iii) of Annexure-6, it is argued that minimum educational qualification required is matriculation or recognized equivalent for all categories except FF, PMP OSP & DC categories, therefore evaluation has correctly been made.

3. Perusal of clause 4(a)(iii) indicates that an exception has been made in the matter of educational qualification for those falling in reserved category. In other words, even if there is matriculation or possession of any other qualification equivalent thereto, they are still held eligible to apply for retail outlet of petrol/diesel. However, it has been directed that they will be evaluated under the criteria. There is apparent and inherent contradictions between what the respondent seeks to convey and the eligibility criteria contained in Sec. 4(a)(iii), where a relaxation is granted to those falling in the reserved categories. Even if they are not possessing matriculation, they are held eligible to apply for retail outlet, however on what basis, it is not clear under the guidelines. Award of zero put of 15 marks to the petitioner for educational qualification, therefore, cannot be approved. Clause 15 of aforesaid guidelines, inter-alia, provides that in case of inter-se priority for defence category and para military forces, candidates securing minimum qualifying marks will be eligible for inter-se priority marks as given therein. Such candidates will be selected after considering the inter-se priority marks as allowed by the competent authority. In that case, second priority is given to war widows/dependents of those who died in war and 32 marks are prescribed to be awarded to them. Respondents are seeking to justify their action in not awarding those marks to the petitioner contending that such marks can be awarded only if there are more number of applications. In other words, if there are two competitors of the same category, then comparative assessment of their merit would be made by award of such marks. It is surprising when maximum 32 marks are awardable for defence category candidates falling in priority-II, how the respondents altogether could have ignored this aspect. In fact, priority-I pertains to widow/dependents of posthumous gallantry award winners, and the candidates falling in that category, even if they are not having educational qualification, are awarded 40 marks. How the respondents could have not awarded any mark - whatsoever to the petitioner, who is war widow/dependent of an army man, who died in war. Relaxation has been granted to the war widows and those falling in defence

category, for the marks awardable for inspection by committee, marks awardable of interview committee. Then mere non-submission of project report by the petitioner for which three marks are awardable, should not have any adverse effect on her, what is more surprising is that the respondents have awarded 0.83 marks out of two marks made for personality. However, in what manner they came to the conclusion that she would be awarded only 0.83 marks, is not very clear. Maximum two marks were fixed for overall assessment and out of which the respondents have awarded 0.03 marks to the petitioner. For all these reasons, evaluation of the candidature of the petitioner by respondent cannot be said to be just and reasonable. Action of the respondents in not awarding her 32 marks for her falling in defence category, is not sustainable in the law and the same is set aside. The matter is remanded back to the respondents for re-evaluation of her candidature within a period of four months from the date a copy of this judgment is produced before them. Writ petition is allowed with the aforesaid direction. This also disposes of stay application.