

(2003) 11 DEL CK 0044
In the Delhi High Court
Case No : CW No. 5919 of 2001

Subhash Chandra Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Citation : (2004) 1 CTLJ 205 : (2004) 72 DRJ 195

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Vikram Kumar and S.C. Paul, for the Appellant; Anjana Gosain, for Respondent No. 1, M.M. Kalra, for Respondent Nos. 2-4, Dinesh Yadav and Devinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—Rule. With the consent of the parties, the matter is taken up for final disposal.

2. The present petition pertains to the LPG distributorship for Dayalpur which was granted to the respondent No.5 on 13.10.2001 when the Letter of Intent was issued in his favor. The petitioner was also an aspirant for the said LPG distributorship. The petitioner as well as respondent No.5 and some 55 others responded to an advertisement which was issued by the Indian Oil Corporation in newspapers on 21.8.2000 inviting applications for, inter alia, LPG distributorship in various areas in Delhi including Dayalpur.

3. The petitioner as well as respondent No.5 responded to the same. The petitioner's case is two-fold. First of all the petitioner submits that he was a graduate having obtained the degree of B.Com. (pass) whereas the respondent No.5 was only a matriculate. The second contention of the petitioner is that in any event, the petitioner ought to have been given preference over the respondent No.5 inasmuch as the petitioner purportedly owned land and was willing to transfer the same to the Indian Oil Corporation and in accordance with

the note contained in the advertisement dated 21.8.2000, preference ought to have been given to him over the respondent No.5.

4. The learned counsel for the petitioner pointed out the aforesaid advertisement as well as the relevant notes which are set out herein below:

"Note : For locations for Retail Outlet Dealerships and LPG Distributorship The applicant should furnish, along with the application, details of land/land for godown which he/she may make available for the dealership/distributorship. Considering the location of the land from the point of view of commercial angle, applicants willing to transfer the land on ownership/long lease to the Oil Company at the rates acceptable to the Oil Company would be given preference. If an applicant, after selection, is unable to provide the land indicated by him/her earlier, within a period of 2 months, the allotment of the dealership/distributorship made to him/her would be cancelled."

2. Eligibility : Applicant (s) should be :

- a)
- b)
- c) Minimum matriculate or recognized equivalent
- d)
- e)

(underlining added)

5. The learned counsel for the petitioner contends that if an applicant was willing to transfer the land on ownership/long lease to the Oil Company at the rate acceptable to the Oil Company then such applicant would be given preference. He stated that he fulfilled this condition and Therefore he ought to have been given preference over respondent No.5. In this regard, learned counsel for respondent No.5 submits that he was also eligible for this preference on account of the fact that he was also willing to transfer the land on ownership to the Oil Company at the rates acceptable to the Oil Company. In both cases, neither the petitioner nor respondent No.5 had a sale deed or a document of title in their favor. In both cases, the petitioner as well as respondent No.5 had only sale agreements or powers of attorney in their favor. As such, it can not be stated as to whether they were both entitled to preference or not. In any event, it is clear that they were both equally situated in this regard.

6. Insofar as the eligibility condition of the applicant being a matriculate in the minimum is concerned, the petitioner can not derive any benefit from this condition inasmuch as respondent No.5 fulfills the same. This condition merely prescribed the minimum and not the maximum or nor does it speak of any preference to be granted to anybody who is more qualified. Thus, since both the petitioner as well as respondent NO.5 fulfill the minimum qualification of being

matriculates, they were both eligible to apply and, indeed, they both did. Both were considered and respondent No.5 was selected whereas the petitioner was not.

7. The learned counsel for the petitioner next pointed to the guidelines issued by the Government of India, Ministry of Petroleum and Natural Gas on 9.10.2000 for the selection of, inter alia, LPG distributors. In particular, he referred two paragraphs 3.10 and 3.10.1 thereof which are set out herein below :-

"3.10 Norms for Evaluating the candidates:

3.10.1 The DSB will judge the inter-se suitability of the candidates for all the categories, except defense Personnel (DC) for whom the criteria is given in para 3.10.2 on the following basis:

a) Personality, Business ability and Salesmanship 20 marks b) Capability to arrange finances 15 marks c) Educational Qualification & general level of intelligence 20 marks d) Capability to provide infrastructure and (land, godown, showroom etc) 35 marks e) General Assessment 10 marks

Total Marks 100 marks

8. From the above, it is clear that the marks for each candidate are to be allotted for five different categories : (a) Personality, business ability and salesmanship; (b) Capability to arrange finances; (c) Education qualification & general level of intelligence; (d) Capability to provide infrastructure and (land, godown, showroom etc); and general assessment. In this petition we are concerned with categories 'c' and 'd'. It is the learned counsel for the petitioner's apprehension that the petitioner was not marked appropriately under these categories vis-a-vis respondent No.5. In this context, this court by an order dated 25.3.2003 had directed the respondent No.2 to bring the records relating to the allotment of LPG distributorship to the respondent No.5. The records have been produced in a sealed cover by Mr. Kalra who appears for respondents 2 to 4. The sealed cover was opened and the file contained therein was examined by me. It contained a letter addressed by the Chairman of the Dealer Selection Board, Delhi to the General Manager of the Delhi State Office of M/s Indian Oil Corporation indicating that the Selection Board held interviews from 10.9.2001 to 13.9.2001 at New Delhi in which 47 of the 57 of the candidates who had been called for interview, appeared. The final recommendation was indicated in the said letter dated 13.9.2001. Three names have been indicated in the list. Respondent No.5 has been placed at Serial No.1 and the petitioner at Serial No.2 and one Shri Fateh Singh Choudhary at Serial No.3. The file also contains the marks given by the interview panel in respect of each of the candidates who appeared for the interview. It is interesting to note that the Chairman is entitled to give 200 marks for each candidate whereas a member of the selection board is entitled to give only 100 marks for each candidate. The total marks given by the members as well as the Chairman are totaled and then according to such total the ranking is done. In the present case, we are only concerned with the

marks given to the petitioner and the respondent No.5. The total marks given by the Dealer Selection Board which was attended only by the Chairman and another Member are as under:

Chairman Member Total Petitioner 126 57 183 Respondent-5 128 58 186

9. The individual marks given by the Chairman and the Members for each of the five categories mentioned above in respect of the petitioner and respondent No.5 are as under:

Marks given by the Member

Candidate `a" `b" `c" `d" `e" Total Petitioner 12 10 10 20 5 57 Respondent - 5 12 12 8 20 6 58

Marks given by the Chairman

Candidate `a" `b" `c" `d" `e" Total Petitioner 25 25 25 35 16 126 Respondent - 5 26 26 26 35 15 128

10. In this petition we are concerned with categories "c" and "d " only. According to the learned counsel for the petitioner, the petitioner being more qualified than respondent No.5 ought to have been given higher marks. Unfortunately, such a conclusion can not be arrived at because category "c"not only speaks of educational qualifications but also speaks of general level of intelligence which may not have anything to do with the educational qualifications. In any case, looking at the marks given by the Chairman as well as the Member, it can not be clearly said as to whether there is anything wrong with the same. The Member has given higher marks to the petitioner under this category whereas the Chairman has given 1 mark less to the petitioner under this category. Insofar as category `d" is concerned, both the Member as well as the Chairman have given the same marks to the petitioner and the respondent No.5. From a perusal of the marks given, it can not be said that there has been any untoward marking or any arbitrariness which is ex facie apparent in the marking. As such no interference with the decision of the Dealer Selection Board is called for.

11. Learned counsel for the petitioner also submitted that while the guidelines only speak of 100 marks, the Chairman has been given the power to allot 200 marks. Even if it is, for argument's sake, considered that this has been done incorrectly, it appears that on facts the petitioner does not have a case. This can be easily sorted out by dividing the marks given by the Chairman by two. Thus, the total marks granted by the Chairman would become 63 and 64 in respect of the petitioner and respondent No.5. Even then, it is clear that respondent No.5 would have higher marks. Only the difference in the marks would be reduced from 2 to 1. Therefore, this argument, in this particular case, would be of no relevance.

12. In view of the aforesaid discussion, the writ petition has no merit and is dismissed as such. No order as to costs.