

SUPREME COURT OF INDIA

Monika Gupta

Vs.

Union of India

C.A.No.4456 of 2010

(G.S.Singhvi and Asok Kumar Ganguly JJ.)

13.05.2010

JUDGEMENT

G.S.SINGHVI, J.

1. Leave granted.

2. Having failed to convince the Division Bench of Allahabad High Court that order dated 29.7.2008 passed by respondent No.3 - Chief Regional Manager, Hindustan Petroleum Corporation Limited, Regional Office Loni, District Ghaziabad (U.P.) cancelling the panel/merit-list prepared by the Selection Committee on 29.8.2007 for appointment of LPG distributor at Nawabganj, District Farukhabad (U.P.) is vitiated by an error of law, the appellant has filed this appeal.

3. In response to advertisement dated 9.2.2004 issued by respondent No.3, ten persons including the appellant and respondent No.4 submitted applications for appointment as LPG distributor at Nawabganj. The Selection Committee interviewed the eligible candidates on 29.8.2007 and awarded marks in accordance with the criteria specified in paragraph 13 of the brochure issued by respondent No.2 - Hindustan Petroleum Corporation Ltd. The appellant was placed at No.1 in the panel/merit-list prepared by the Selection Committee. Smt. Anjali Gangwar and Smt. Ragini Bhardwaj were placed at Nos.2 and 3 respectively.

4. Smt. Ragini Bhardwaj filed Writ Petition No.43531 of 2007 and prayed for issue of direction to respondent Nos.2 and 3 to prepare fresh panel/merit list by asserting that the Selection Committee had not awarded the marks as per the criteria specified in the brochure. The same was disposed of by the Division Bench of the High Court on 17.9.2007 by taking note of the statement made by counsel appearing for respondent No.2 that the grievance of the writ petitioner will be considered and her representation will be decided within four weeks after giving opportunity of hearing. Writ Petition No.48817 of 2007 filed by respondent No.4 was also disposed of in similar terms.

5. In furtherance of the orders passed by the High Court, respondent No.3 issued notices to the selected candidates and respondent No.4, who filed their respective claims. After giving them opportunity of personal hearing, respondent No.3 passed an order dated 29.7.2008 whereby he cancelled the panel/merit-list and decided that fresh list will be prepared after interviewing the candidates and evaluating their inter-se merit. The relevant portions of that order, as contained in Annexure P.5 filed with SLP (C) No.228 of 2009, are reproduced below:

“Such investigation revealed that as regards the complaints made by Smt. Anjali Gangwar and Smt. Ragini Bhardwaj, the said complaints do not attract any change in the merit panel based on the contents of the complaints made by Smt. Meena Gangwar revealed that there was an anomaly in the award of marks whereby Smt. Meena Gangwar should have been given 30 marks in respect of 'infrastructure'.

However, considering that such erroneous evaluation at the level-1 committee in the interview and selection made 29.8.2007 itself, such erroneous evaluation calls for cancellation of the merit panel itself which thereby results in the cancellation of the entire selection. Accordingly, the higher management had considered cancellation of the entire selection panel and thereby hold a fresh evaluation and interview whereby proper scrutiny of all applications shall be ensured towards which all those eligible candidates would face a fresh interview and a new selection panel thereby awarding a fresh opportunity to all such eligible applicants.

Thus in compliance of the orders dated 17.9.2007 and 11.10.2007 passed by the Hon'ble High Court of Allahabad in the above mentioned writ petitions, this speaking order is hereby pronounced and the three complaints made by Smt. Anjali Gangwar, Smt. Ragini Bhardwaj and Smt. Meena Gangwar dated 6.9.2007 nip sent NZ on 9.9.2007 and 3.9.2007 respectively are hereby finally disposed of.”

6. The appellant challenged the aforementioned order in Writ Petition No.39842 of 2008 by contending that in view of the provisions of the brochure issued by respondent No.2, the documents allegedly filed by respondent No.4 after submission of the application form were rightly not considered by the Selection Committee for the purpose of assessing her merit. The Division Bench of the High Court dismissed the writ petition with an observation that the documents submitted by respondent No.4 before the date of interview ought to have been considered for the purpose of award of marks and respondent No.3 was justified in cancelling the panel/merit list because the assessment made by the Selection Committee was not correct.

7. Shri M.N. Krishnamani, learned senior counsel appearing for the appellant argued that the impugned order is liable to be set aside because the Division Bench of the High Court failed to notice that in terms of paragraph 8 of the brochure issued by respondent No.2, the details given along with the application form about the availability of suitable godown/land for construction of godown for storage of LPG cylinders and shop/land for construction of shop

for gas showroom or a firm commitment from the land owner for sale/lease could only be taken into consideration for the purpose of award of marks and as respondent No.4 had not furnished the necessary details along with the application form and the required documents, her grievance against the award of marks by the Selection Committee was totally misconceived. Learned senior counsel submitted that respondent No.3 committed serious error by cancelling the panel/merit list ignoring that the application form submitted by her was defective on more than one count.

“He then argued that the Selection Committee had rightly not taken into consideration affidavit dated 8.3.2004 of Ramnath son of Janki Singh Yadav and copy of registered sale deed dated 9.3.2004 executed by Shri Shivnath Singh in favour of Rajesh Kumar Gangwar (husband of respondent No.4) because the very filing of these documents was shrouded with mystery. Shri Mani emphasized that copy of the registered sale deed dated 9.3.2004 executed by Shri Shivnath Singh in favour of Shri Rajesh Kumar Gangwar (husband of respondent No.4) could not have been submitted to the competent authority because it was presented before Sub-Registrar, Kayamganj for the purpose of registration between 2 to 3 p.m. and the place where it was required to be filed is at a distance of 200 kms. Learned senior counsel also invited the court's attention to the copies of affidavit dated 25.11.2008 and representations dated 29.11.2008 and 5.12.2008 submitted by Ramnath son of Shri Janki Singh Yadav, resident of Nawabganj to various functionaries of respondent No.2 to show that respondent No.4 had furnished a fake affidavit of Ramnath wherein he is said to have given an undertaking to make available his shop to respondent No.4 on rent for the purpose of showroom.”

8. Shri Gopal Subramaniam, learned Solicitor General appearing for respondent No.2 fairly stated that in her application form, respondent No.4 had not indicated the availability of godown or land for godown and the showroom but submitted that it will be in the interest of justice if respondent No.2 is allowed to issue a fresh advertisement for allotment of LPG distributorship because no defined procedure was followed by the authorities for entertaining the applications. Learned Solicitor General pointed out that even though the applications and documents produced by the candidates contain particular dates, no record is available evidencing the actual receipt thereof on the particular date and this is likely to give rise to a suspicion that the documents were accepted after the last date fixed for receipt of application.

9. Smt. Rekha Pandey, learned counsel for respondent No.4 argued that the panel/merit-list prepared on 29.8.2007 was rightly cancelled because her client was not awarded marks under the heading 'infrastructure' in accordance with the criteria specified in paragraph 13 of the brochure.

10. We have considered the respective submissions and carefully scanned the records including the files made available by the learned Solicitor General, which contain the applications and documents of the appellant and respondent No.4.

11. Paragraphs 8 and 13 of the brochure issued by respondent No.2, which have bearing on the decision of this appeal are as under:

“8. CONSTRUCTION OF GODOWN/SHOWROOM ON THE SITE AS MENTIONED IN APPLICATION FORM The applicant who readily has suitable godown/land for construction of godown for storage filled LPG cylinders and LPG cylinders and shop/land for construction of shop for HP GAS showroom for setting up of HP GAS Distributorship or have a firm commitment from the land owner for purchase/lease or can arrange it are awarded marks. The details given along with the application alone will be considered for this purpose and the applicant will not be given any opportunity to offer any other land subsequently even at the time of interview. For this purpose, the land owned by the family applicant subject to attaching the consent of the concerned family members. LPG will decide the suitability of the land on the basis of the documents submitted along with the application. However, after selection of the applicant, physical verification of the godown land/godown as well as the showroom will be undertaken. In the event it is found that there is variance in the details submitted with the application form and or the plot is not found suitable for construction of godown or the godown is not approved by CCOE the allotment of the distributorship will stand automatically cancelled.

If an applicant, after selection of the above basis, is unable to available make godown duly approved by the Chief Controller of Explosives on the land/godown indicated in the application and/or showroom as per the oil company's standard layout on the land/shop indicated in the application, then the allotment of HP GAS Distributorship made to the applicant will automatically stand cancelled.

13. NORMS FOR EVALUATING THE CANDIDATES The LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters.

a) Capability to provide infrastructure* 35 marks b) Capability to provide finance* 35 marks c) Educational qualifications** 15 marks d. Age** 4 marks e. Experience 4 marks f. Business ability/acumen 5 marks 9 g. Personality** 2 marks Total marks 100 The evaluation on the parameters a to d above will be done on the basis of the information given in the application. The evaluation on the parameter e, e and g will be done based on the interview.”

12. We shall decide this appeal by assuming that the applications of all the candidates had been received by the competent authority before the last date because it is not the case of either party that the applications were submitted by the candidates after the last date fixed for receipt thereof i.e. 9.3.2004. In clauses (a) and (b) of paragraph 17 of the application form, the candidates were required to indicate in yes/no, the availability of land/plot for godown and the showroom. While the appellant had scored out 'No' in both the clauses and thereby

indicated that land was available for godown and she also had a showroom, respondent No.4 did not score out 'Yes' or 'No'. This is sufficient to give rise to a presumption that the date on which respondent No.4 is said to have submitted the application, she did not have land for godown or showroom. It is borne out from the files produced by the learned Solicitor General that along with her application form, the appellant had annexed various documents showing her financial status and copies of the sale deeds and site plans showing the availability of land for godown and showroom. As against this, respondent No.4 did not annex any document along with the application form to show that land was available for godown or showroom. Later on, she is said to have submitted two affidavits which are shown to have been notarized on 8.3.2004. The stamp papers on which the affidavits were prepared bear the dates of purchase as 4.3.2004 and 5.3.2004. One of these affidavits is of respondent No.4 herself.

“The other is the affidavit of Ramnath son of Shri Janki Singh Yadav resident of Jaisinghpur, Tehsil Kayamganj, District Farrukhabad, who is said to have agreed to provide his shop for the purpose of showroom to respondent No.4 in case she was selected for LPG distributorship. The file of respondent No.4 also contains photostat copy of the sale deed executed by Shri Shivnath Singh son of late Shri Makrant Singh, resident of village Bhatasa Pargana Shamshabad, West Tehsil Kayamganj, in favour of Rajesh Kumar Gangwar (husband of respondent No.4). The sale deed is shown to have been presented before Sub-Registrar, Kayamganj between 2 to 3 p.m. on 9.3.2004 and was registered on the same day. However, the two affidavits and the photostat copy of the sale deed do not contain any endorsement showing the date of receipt.”

13. The application of all the candidates are shown to have scrutinized on 18.7.2004. In clause 13 of the scrutiny form, which enables the Scrutiny Officer to record his observations, the following note was recorded in respect of the application form of respondent No.4: Columns 11 and 17 not filled.

- “1. LIC and other assets shown but no relevant documents attached.
2. There is one affidavit for showroom but no other details.
3. Sale deed for the land is there but no other details about the size, location etc.

The applications were again scrutinized on 5.1.2007. This time no observation has been recorded in column 12 of the application form of respondent No.4.”

14. The Selection Committee awarded marks to the candidates as per the criteria embodied in para 13 of the brochure. The details of the marks awarded to the candidates have been incorporated in a tabular form in the impleadment application (IA No.5/2010) filed by Smt. Anjali Gangwar, who was placed at No.2 in the panel/merit-list prepared by the Selection Committee on 29.8.2007. The same are extracted below:

“S. Name of the Candidate to provide land Capability Educational Age Experience Business Personality Total No. candidate infrastructure to provide qualification ability/ Marks finance acumen Godown Showroom Max Marks 25 10 35 15 4 4 5 2 100 1 Ragini 10 0 0.6 10 4 0 3 1 28.60 Bhardwaj 2 Kamlesh 0 0 4.22 10 4 0 2 1 21.22 Yadav 3 Monika 18 0 5.2 7 2 0 5 2 39.20 Gupta 4 Meena 0 0 6.73 10 4 0 3.33 1.66 25.72 Gangwar 5 Om Wati 0 0 6.2 8 4 0 1.33 1 20.53 6 Seema 10 0 5 7 4 0 1 1 28.00 Yadav 7 Kanti Devi 0 0 3 7 4 0 2.33 1.33 17.66 8 Anjali 10 5 0 7 4 0 2.66 1.33 29.99 Gangwar 9 Sudha ABSENT Gangwar 10 Urmila INELIGIBLE”

15. Since the appellant secured highest marks (39.20), her name was placed at No.1 in the panel/merit list. The names of Smt. Anjali Gangwar and Smt. Ragini Bhardwaj, who secured 29.99 and 28.60 marks respectively, were placed at Nos.2 and 3. Respondent No.4 secured 25.72 marks and, therefore, her name did not figure among the first three candidates.

16. While awarding marks to the candidates, the Selection Committee must have taken note of the condition enshrined in para 8 of the brochure by which it was made clear that the details given with the application alone will be considered. At the cost of repetition, we consider it necessary to observe that respondent No.4 had neither given any indication in the application form about the availability of land for godown and/or showroom and nor she annexed any document to show that she had secured lease of land or the godown and the showroom necessary for operating LPG distributorship, therefore, the Selection Committee had rightly awarded zero marks to her under the heading 'infrastructure'. The file of her application does contain an affidavit dated 8.3.2004 of Ramnath, who is said to have agreed to provide his shop for the purpose of godown. Respondent No.4 is also shown to have submitted photostat copy of the sale deed executed by Shivnath Singh in favour of her husband, Shri Rajesh Kumar Gangwar, which was registered on 9.3.2004. However, as mentioned above neither of these documents bears the date on which the same were actually filed/received by the competent authority. The stamp paper on which the affidavit of respondent No.4 has been recorded bears the date of purchase as 4.3.2004 and the stamp paper on which the affidavit of Ramnath son of Shri Janki Singh has been recorded bears the date of purchase as 5.3.2004. If the stamp papers had been purchased well before the last date fixed for the submission of application form, it is extremely difficult if not impossible to fathom any reason why the affidavits were not prepared and notarized before 7.3.2004 and filed along with the application form and why in para 17 (b) of the application form, respondent No.4 had not written the word 'Yes' indicating the availability of shop for the purpose of showroom. The submission of the copy of sale deed dated 9.3.2004 before the last date specified in the advertisement is highly improbable. Undisputedly, the sale deed was presented before Sub-Registrar, Kayamganj on 9.3.2004 between 2-3 PM.

“The registration of the document must have taken some time (at least half an hour). Therefore, it was impossible for respondent No.4 to file/submit the document before the competent authority at Farrukhabad before the close of the office hours because the distance between the two places is 200 kms.”

17. From the above analysis of the application forms and documents filed by respondent No.4, it is clear that the Selection Committee did not commit any error by awarding `zero' marks to her under the heading "Capability to provide land and infrastructure for godown and showroom". As a corollary, we hold that the decision of respondent No.3 to cancel the panel/merit list on the ground that the Selection Committee had erred in not awarding 30 marks to respondent No.4 under the heading `infrastructure' was legally unsustainable. Unfortunately, the Division Bench of the High Court failed to notice that in para 17 of the application form, respondent No.4 had not indicated the availability of land for godown and/or showroom and that in view of the language of para 8 of the brochure, the Selection Committee had no option but to ignore affidavit dated 8.3.2004 of Ramnath son of Shri Janki Singh and copy of sale deed dated 9.3.2004 executed by Shri Shivnath Singh in favour of Shri Rajesh Kumar Gangwar (husband of respondent No.4) for the purpose of awarding marks. We have no doubt that if the Division Bench had summoned the relevant records and perused the same, it would have discovered that the application of respondent No.4 was laconic in material respects and the Selection Committee had rightly awarded zero marks to her under the heading `infrastructure'. In any case, we are convinced that respondent No.3 committed serious error by recording a finding that respondent No.4 was entitled to 30 marks under the heading `infrastructure'.

18. The submission of the learned Solicitor General that the Court may allow respondent Nos.2 and 3 to re-advertise the LPG distributorship in question because no discernible method was followed by the concerned authorities for receiving the applications and documents sounds attractive but in the facts of this case we are not inclined to accept the same because that would cause serious prejudice to appellant who was duly selected and placed at No.1 in the panel/merit list.

19. In the result, the appeal is allowed. The impugned order of the High Court as also order dated 29.7.2008 passed by respondent No.3 are set aside and respondent Nos.2 and 3 are directed to take necessary steps for allotment of distributorship in accordance with the panel/merit-list prepared by the Selection Committee on 29.8.2007. The needful should be done within a period of one month from the date of production/receipt of copy of this order. The parties are left to bear their own costs.

20. In view of the disposal of the main appeal, I.A. No.5 of 2010 filed by Smt. Anjali Gangwar for impleadment as party is disposed of.