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Court : Punjab and Haryana

Decided On : Feb-19-2013

Appellant : “...if a Comparative Assessment Made by a Selection

Respondent : Indian Oil Corp. Ltd.

Judgement :

CWP No.1993 of 2011 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH DATE OF DECISION :

19. 2.2013 Rakesh Chander Gupta ...Petitioner Versus Indian Oil Corp.

Ltd...Respondents CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA
PRESENT: Mr.Arjun Shukla, Advocate for the petitioner Mr.Ashish Kapoor,
Advocate for the respondent ...Notes:

1. Whether to be referred to the reporters or not?.

2.Whether the judgment should be reported in the Digest?...RAJIV NARAIN RAINA, J.

The claim in this petition is for award of Indane LPG distributorship for Phagwara-I advertised on 18.9.2006.

The petitioner was one of the applicants.

Interviews were held.

The result was declared.

The petitioner ranked second in the result declared on 13.3.2008.

Vivek Bajaj, being first in the merit list, was awarded LPG distributorship on 28.1.2009.

The petitioner made a complaint to the respondent-Indian Oil Corporation LTD.(for short the IOCL.) on 3.3.2009 against Vivek Bajaj that he was selected CWP No.1993 of 2011 (O&M) 2 on the basis of forged experience certificate.

As a result the distributorship awarded to Vivek Bajaj was terminated on 14.1.2010 on the ground of submission of false information in the application filed by him.

With the exit of Vivek Bajaj, the petitioner staked his claim for distributorship as the next candidate in the merit panel.

The petitioner's claim for distributorship was considered and rejected on the ground of complaint against the petitioner that he was not entitled to 2 marks which were wrongly awarded to him under the head experience.

because as a self-employed Chartered Accountant, he did not submit any supporting document in terms of the brochure.

In this writ petition, the petitioner has tried to justify that the two marks assigned for experience.

could not have been subtracted from his grand total.

As a result of the investigation, the petitioner's name was deleted from the merit list.

On his name being dropped from the panel, the petitioner made a complaint to Minister of Petroleum and Natural Gas, New Delhi on 8.2.2010 followed by

complaint before the Director (Vigilance).Ministry of Petroleum and Natural Gas on 11.2.2010.

He sought re- consideration of his name to be placed on the panel.

He received no response from the IOCL or from the Ministry.

He pleads that he filed application under RTI Act for supply of information which he thought relevant for his purpose.

In these circumstances, the petitioner approached this Court by filing the present petition.

The petitioner has relied on RTI response from the IOCL dated 27.5.2010 with respect to Query No.4 and its response.

The query and its answer reads as follows:- Query 4: As per copy of result supplied by you, I stood 2nd in merit panel for Phagwara-I and No.1 candidate for PGW-I, Mr.Vivek Bajaj's distributorship got terminated on 15.1.2010 which was commissioned on 28.1.2009, as per reply no.(H) of RTI reply PSO/LPG/RTI dated 16.4.2010 (Copy of the same attached).the company/IOCL had not amended the accepted & CWP No.1993 of 2011 (O&M) 3 Published result so far, in this regard.

Please inform me my present status/ranking in merit panel for PGW-I.

Reply:So far there is no change in status of published result of LPG distributorship at Phagwara-I.

On notice of motion having been issued, the IOCL has filed its response justifying its action of scrapping the entire selection to make way for fresh advertisement and fresh consideration of all eligible candidates.

To this end, a fresh advertisement dated 10.9.2011 has been issued jointly by Indian Oil Corporation Limited (IOCL).Bharat Petroleum Corporation LTD.(BPCL) & Hindustan Petroleum Corporation Limited (HPCL) for various LPG distributorships, including the one at Phagwara-I under the Open category.

The advertisement has been placed on record as Annexure P-19 with CM No.12944 of 2011, with a prayer for stay of the operation of the advertisement dated 10.9.2011 (P-19) for allotment of distributorship for Phagwara-I.

I have heard the learned counsel for both the parties on the stay application together with the main case.

Mr.Ashish Kapoor, learned counsel appearing for the respondent- IOCL has pointed out that the old advertisement has been scrapped.

Instead fresh advertisement has been issued changing the rules of the game.

LPG distributorship would hence forth be allotted on the non-arbitrary principle of draw of lots among the contesting eligible candidates.

Mr.Kapoor, points out that the son of the petitioner is an applicant under the new advertisement.

In view of the changed circumstances, the challenge to the impugned letter dated 28.1.2010 (P-10) which has removed the name of the petitioner from the merit list, is rendered academic, for the reason that the exercise under the 2006 advertisement did not fructify in issuing a letter of CWP No.1993 of 2011 (O&M) 4 intent to any party.

No accrued or vested right has come into existence which can be enforced through the judicial process.

In M/s Bharat Petroleum Corp.

LTD.and Anr.

versus Ramesh Chand Trivedi (Special Leave to Appeal (Civil) No.16474 of 2010 decided on 4.10.2010).the Supreme Court has considered a similar situation whether selection process for distributorship was held illegal and vitiated due to extraneous considerations.

It has been held as under:-If a comparative assessment made by a selection Board is vitiated, and the appellants decided to scrap the entire panel and readvertise the distributorship, the decision is not open to question.

It cannot be contended that when the allotment in favour of the fiRs.person in the panel is set aside, the distributorship should automatically be allotted to the eligible applicant who is shown as second in the panel.

Where the allotment was cancelled on account of irregularity in selection and preparation of panel, the decision to have a fresh selection instead of using the panel which was found to be vitiated, does not call for interference by courts.

In Sr.Divisional Retail Sales Manager, Indian Oil Corporation LTD.through Poa Holder and others versus Ashok Shankarlal Gwalani, MANU/SC/1114/2012, the Supreme Court has held as under:- 17.Generally, if an irregularity is detected in the matter of selection or preparation of a panel it is desirable to have a fresh selection instead of re-arranging the panel which is found to be vitiated.

The Authority empowered to appoint, is the competent authority to decide as to whether the panel should be discarded and there should be a fresh selection in view of the facts narrated above.

In such circumstances, the High Court under Article 226 of the Constitution of India ought to not have interfered with the decision of the competent authority in canceling the selection.

In view of the aforesaid pronouncements of law, and for the foregoing reasons no interference in proceedings under Article 226 of the Constitution of India with the decision of the competent authority in cancelling the CWP No.1993 of 2011 (O&M) 5 selection and ordering fresh selection on a entirely new non-arbitrary and reasonable principle of draw of lots, is called for in this petition.

The writ petition fails and is dismissed.

No order as to costs.

(RAJIV NARAIN RAINA) JUDGE 19 2.2013 MFK

