

Sh. Jaimal Kumar Vs Hindustan Petroleum Corporation Limited and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 20, 2010

Citation: (2010) 2 ILR (P&H) 1005

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Judgement

K. Kannan, J.

The controversy in this writ petition is the choice of allotment of LPG distributorship under SC (Urban) Category. The

petitioner is locked up in a tussle through claim by the 3rd respondent, who has been favoured with allotment by respondent Nos. 1 and 2. The

selection is made through assessment of relative merit on five parameters for SC Category namely (i) educational qualification (15 marks), (ii) Age

(4 marks), (iii) Experience (4 marks), (iv) business ability/acumen (5 marks), (v) personality (2 marks), totalling in all 30 marks. The petitioner has

been assessed at 28.33 marks having tied with the 4th respondent mentioned in the petition, both of whom having placed beneath the 3rd

respondent, who has been awarded 29 marks. The difference has arisen by the fact that the petitioner has been assessed at 3 marks for experience

while the 3rd respondent has been assessed at 4 marks. This one mark difference steals the show for the 3rd respondent, when the difference in

mark allotted to the petitioner at 4.33 for business ability and the 3rd respondent having been assessed at 4 marks for business ability is not

sufficient to off-set the one mark difference for experience. The attention in this case will, therefore, be riveted only to these relative grading under

the column experience and business ability/acumen.

2. Conscious of the fact that the Court's area of intervention in the matter of award of marks by the Interview Committee shall be extremely

restricted, the attempt had been to point out that the marking has been so outlandish and arbitrary even within the limited area of traversal, it shall

become possible to set aside the selection. The 3rd respondent on the other hand was only to ensure that the Court adopts a hands-off approach

when the persons who had been making the selection knew their job well and the Court shall have no need for upsetting their choice. If the marks

are assigned only on the basis of a subjective satisfaction of the Selection Committee on the personality assessment or the way the candidate is

supposed to have answered the questions, they shall be absolutely no scope for intervention at all. There has been a consistent string of authorities

setting out the extent of interference that may be possible by the Court. The Hon"ble Supreme Court in Dalpat Abasaheb Solunke and Others Vs.

Dr. B.S. Mahajan and Others, observed thus:

It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not

assailable on the same grounds, the Court has also found it necessary to set in appeal over the decision of the Selection Committee and to embark

upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the

decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not

has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The

decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution

of the Committee or its procedure vitiating the selection or proved mala fide affecting the selection etc. It is not disputed that in the present case the

University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the

candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in sitting it aside on the ground

of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

The learned Counsel also refers to some decisions of the Calcutta High Court and this High Court to show how the Court shall not interfere with

the award of marks by expert selection bodies. I do not think it is necessary to dilate on them since they re-affirm the principle laid down by the

Hon"ble Supreme Court.

3. Learned Counsel appearing for the Corporation would point out to the composition of the Interview Committee as having been drawn from

senior officials of the Corporation namely the Senior Regional Manager, Hoshiarpur, LPG Regional Office, HPCL, Senior Manager, HPCL North

Zone, Delhi and Manager Commercial, HPCL North Zone, Delhi. These senior experienced officers of the Corporation, it is averred, were well

versed with the policies of the Corporation and were competent to assess the business ability/acumen, personality and experience of the respective

candidates being fully familiar with the trading and commercial activities conducted by the respondent-Corporation. The petitioner has been

assessed at 4.33 marks for business ability while the selected candidate has only 4 marks. With a better grading on that score, the petitioner could

have no grievance that a subjective assessment could still be not a matter for intervention by the Court. The case assumes acute appraisal only as

regards the experience factor. It is not so much a subjective assessment but is a matter of easy appraisal on the facts disclosed.

4. As regards the experience, the petitioner has given the following details:

12 Experience: Do you have experience of running or working in

any of the establishment dealing in the following for

minimum one year? Please give full details chronologically?

Type of Name & Address of the Period Number of years

experience establishment/institution

From To

Direct BPCL 1996 till

Sale/Home date

delivered

products

(including

LPG

Distributor

ship)

Other LPG, Retail, Direct Sales

Petroleum

products/

experience

Any other

trade

The 3rd respondent has on the other hand the details set out hereunder:

12 Experience: Do you have experience of running or

working in any of the establishment dealing in the

following for minimum one year? Please give full

details chronologically?

Type of Name & Address of the Period Number of

experience establishment/institution years

From To

Direct Sale/Home Bhagwaria Gas Agency, 1984-86 2 years

delivered Karnal

products

(including LPG

Distributorship)

Other Petroleum Marketing Household 2002-2005 3 years

products/ furnishing good

experience

Any other trade Practicing Advocate 2005-2008 1-1½ years

The petitioner's experience has been drawn from the fact that he was a permanent management staff of the Bharat Petroleum Corporation Limited

and working as such since September, 1996. Presently, he had been posted at Jammu and the petitioner has produced the certificate issued by the

Manager, Jammu Depot. For this the petitioner has been granted 3 marks. The 3rd respondent, the selected candidate has had three years

experience in marketing household furnishing goods and is reported to have had direct sale/home delivered products in Bhagwaria Gas Agency,

Karnal from 1984-86. She has also been a practicing advocate for 1½ years. Learned Counsel for the petitioner produces proof secured from

the Principal of the College for Girls, Chandigarh that the petitioner was a student at the relevant time and therefore, she could not have had any

experience. The document produced by the petitioner at the time of argument, though not referred to in the petition shows the following:

That M/s. Bhagwaria Gas Service at Karnal was an agency run by her father as an Indane Distributor. The 3rd respondent had been a regular

student of the Government Girls College, Sector 11, Chandigarh from April 1982 to May 1985 and a post-graduate student at Kurukshetra

University till 1987.

It is obvious that the experience certificate that the 3rd respondent produced on the basis of which she has been assessed marks at 4 has been on

the basis of certificate which her father could have easily given to the 3rd respondent, whether she had worked there or not. She had been a

practicing advocate and whether such an experience as an advocate is at all relevant is again a matter which the Interview Committee would know

better. She has also had experience in marketing household furnishing goods between the year 2002-2005. If the Interview Committee had to

assess marks for experience only for her alleged association with Bhagwaria Gas Agency, Karnal, the period when the 3rd respondent had been a

student in a college, the entire assessment would have been wholly suspect. Whether the experience as an advocate shall have any bearing for

assessment, there is no definite guidance. Learned Counsel appearing for the Oil Company has very strong objections to the petitioner relying on

the information obtained under RTI by the fact that it had not been made the subject of pleading. The 3rd respondent is also represented through

counsel and she has no explanation to offer as regards the claim by the petitioner that she could not have had worked in her father's gas agency at

that relevant time. It shall not become possible for the Court to undertake an examination whether the assessment had been made properly but I

still think that it is an issue which the Interview Committee shall definitely examine, having regard to the fact that the information has been brought

before this Court.

5. The selection that has been made would require to be set aside, even keeping in view the limited area of jurisdiction of the Court to make such

intervention since the issue is whether the Interview Committee had all the relevant details to examine the correctness of the information supplied by

the candidates. The information as regards the so-called experience of having worked in Bhagwaria Gas Agency is definitely open to doubt and the

matter shall be remitted to the Interview Committee for consideration only as regards the assessment of marks for experience. The Interview

Committee may be reconstituted, which shall examine only the records that have been placed so far namely of the petitioner's experience as

management staff with Bharat Petroleum Corporation Limited at Jammu and marks that have been assigned for the 3rd respondent's experience

under the three heads namely the alleged experience of working in Bhagwaria Gas Agency, experience in marketing household furnishing goods

and the experience as a practicing advocate. The reconsideration of the candidature of the petitioner and the 3rd respondent will stay confined to

the documents that had been brought before this Court for consideration. The decision shall be taken within 4 weeks from the date of receipt of

copy of the order.

6. The selection made already drawing up a panel of merit list placing the 3rd respondent as the highest in the order of merit list is set aside and a

fresh consideration shall be taken in the light of observations made above.

7. The writ petition is disposed of on the above terms.