

GAHC010014712014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4537/2014

JYOTIKA ROY
D/O LT. BIRENDRA NATH ROY, R/O BANIAMARI, P.O. SAHEBGANJ, P.S.
GOLAKGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA and 8 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF PETROLIUM,
NEW DELHI

2:INDIAN OIL CORPORATION LTD.
REP. BY ITS CHAIRMAN CUM MANAGING DIRECTOR
HAVING ITS REGD. OFFICE AT GUWAHATI
ALL YAVAR JUNG MARG
BANDRA EAST
MUMBAI-51
INDIA

3:THE GENERAL MANAGER
IOC LTD.
SOUTH POINT TOWN
BAMUNIMADAM
DIST- KAMRUP METRO
ASSAM
GHY-21

4:THE CHIEF AREA MANAGER
IOC LTD.
INTEGRATED AREA OFFICE
DR. B.K. KAKATI ROAD
KACHARI BASTI
ULUBARI

DIST- KAMRUP METRO
ASSAM
GHY-7

5:SR. DIVISIONAL RETAIL SALES MANAGER
IOC LTD.
GUWAHATI INTEGRATED DIVISIONAL OFFICE
SECTOR-3
NOONMATI
DIST- KAMRUP METRO
ASSAM
GHY-20

6:DY. GENERAL MANAGER
LPG AND CPIO
EAST POINT TOWN
BAMUNIMAIDAM
DIST- KAMRUP METRO
ASSAM
GHY-21

7:DEEPSHIKHA SINHA
KHALILPUR
P.O. BIDYAPARA
DIST- DHUBRI
ASSAM
PIN-783324

8:MOUSUMI DAS
BHUMINAGAR
BYE-LANE NO.6
H/NO.4
P.O. UDALBAKRA
DIST- KAMRUP METRO
ASSAM
PIN-781034

9:PRATIBHA MAHANTA
VILL. JHARAPARA
P.O. BOKO
ASSAM
DIST- KAMRU

Advocate for the Petitioner : MR.A DAS

Advocate for the Respondent : ASSTT.S.G.I.

– BEFORE –

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing & judgment : 23.01.2024

JUDGMENT & ORDER
(ORAL)

Heard Mr. A. Das, learned counsel appearing on behalf of the petitioner. Also heard Mr. P. Bhardwaz, learned counsel appearing on behalf of respondent Nos. 2 to 6. Other respondents are not represented.

2. The instant writ petition had been filed by the petitioner challenging the decision of the respondent Nos. 2 to 6 in selecting the private respondent Nos. 7 to 9 for allotment of retail outlet dealership and also for setting aside the select list dated 14.05.2013.

3. The facts enumerated in the instant writ petition are that an advertisement was issued in the local dailies, including "The Assam Tribune" and "Asomiya Pratidin", whereby the respondent Indian Oil Corporation Ltd. (IOCL) invited applications from intending applicants for appointment of retail outlet dealers in various notified locations. For the purpose of the instant case, the location is Balijan NH-31. From the advertisement so issued, it reveals that the proposed retail outlet in the said location was reserved for woman. Pursuant to the said advertisement, the petitioner along with various other candidates submitted their applications. Thereupon, the respondent authorities held the selection and published a select list dated 14.05.2013 thereby short-listing respondent Nos. 7, 8 and 9. The petitioner herein is aggrieved by the action of the respondent IOCL authorities in making the selection without taking into consideration 60 marks which specifically dealt with "capability to provide infrastructure and facilities" and "capability to provide finance". It is the case of the petitioner that as the respondent Nos. 7, 8 and 9, who had been duly selected vide

the impugned select list dated 14.05.2013, did not opt for availing "corpus fund scheme", the petitioner's credentials in respect to "capability to provide infrastructure and facilities" and "capability to provide finance" ought to have been taken into consideration by the respondent authorities *vis-a-vis* respondent Nos. 7, 8 and 9. As the same having not been done, the petitioner therefore has assailed the impugned select list dated 14.05.2013 and has also challenged the selection process.

4. The instant writ petition was filed on 02.09.2014 and this Court, vide order dated 10.09.2014 issued notice to the respondents. Subsequent thereto, vide order dated 17.09.2014, this Court had directed maintenance of *status quo* on the allotment of Petrol pump till the next date. The record reveals that an affidavit-in-opposition was been filed by the respondent Nos. 2 to 6 on 31.10.2016, wherein it has been mentioned that as per Clause 9(b) of the Dealership Selection Brochure, in case of widows and unmarried women above 40 years of age, without earning parents, for locations reserved for women who opted for availing Corpus Fund, the marks on land and finance would not be considered. It is also mentioned that four applicants, out of the total ten applicants, had opted for availing the Corpus Fund Scheme and, as such, all the candidates were evaluated for 40 marks, because 60 marks under the head "capability to provide infrastructure and facilities" and "capability to provide finance" had to be excluded in terms with Clause 9(b). It was further mentioned that as the marks specified for land had not been considered for all the candidates, asking for fresh land documents from a particular candidate after the interview had got no meaning.

5. The record further reveals that an affidavit-in-reply was filed by the petitioner against the affidavit-in-opposition filed by respondent Nos. 2 to 6. In the said affidavit-in-reply, it was mentioned that the selection committee failed to evaluate the eligibility of the candidates strictly in conformity with the guidelines and also on proper evaluation of the land documents. It is mentioned that the selection committee had made the selection in an injudicious manner and allotted marks to the candidates

solely on pick-and-choose basis, that too, without actual evaluation of the documents as per the requirement and pre-conditions, as specified in the advertisement. It was further mentioned that the stand so taken by the respondent authorities that the remaining 60 marks under the head "capability to provide infrastructure and facilities" and "capability to provide finance" was excluded, was totally absurd and unreasonable in view of the fact that as per the guidelines and the Dealership Selection Brochure, the Corpus Fund Scheme meant only for those candidates who were either widow or unmarried and were of 40 years of age, without earning parents. However, the respondent Nos. 7, 8 and 9 did not fall in the said category availing the benefit of the said Corpus Fund Scheme.

6. In the backdrop of the above pleadings, the question therefore arises for consideration is as to whether there is any infirmity in the selection so made by the respondent authorities without taking into account the 60 marks under the head "capability to provide infrastructure and facilities" and "capability to provide finance". The answer to the above can be found from a perusal of Clause 9(b) of the Guidelines for Selection of Petrol/Diesel Retail Outlet Dealers dated 01.03.2012, issued by the IOCL. Taking into account the relevance of the said clause, the said clause is quote herein-under:

9(b) Subject to the application and request, widows and unmarried women above 40 years of age, without earning parents, for locations reserved for women will not be judged under the head "capability to provide infrastructure and facilities" and "capability to provide finance". These applicants will be required to indicate in the application form itself whether they will like to avail the Corpus Fund facilities. In case this is not indicated in the application form, it will be construed that such applicants would like to get evaluated in line with other applicants i.e. they should also be assessed under the heads "capability to provide infrastructure and facilities" and "capability to provide finance". For determining the priority to be given to such candidates over other women candidates, the marks secured by other women under these two parameters will be excluded from the total marks secured by them."

7. From a perusal of the above clause, it would be seen that widows and unmarried women above 40 years of age, without earning parents are required to file

application making a request in respect to the locations reserved for women and, in such circumstances, such applicants will not be judged under the head "capability to provide infrastructure and facilities" and "capability to provide finance". It is further mentioned that such applicants will be required to indicate in the application form itself whether they would like to avail the Corpus Fund facilities. It is also mentioned that if the applicants do not indicate the same in the application form, it would be construed that the said applicants would like to get evaluated in line with other applicants i.e. they should also be assessed under the heads "capability to provide infrastructure and facilities" and "capability to provide finance". It was also clarified that for determining the priority to be given to such candidates over other women candidates, the marks secured by other women candidates under these two parameters would be excluded from the total marks secured by them.

8. From the above, therefore, it would be seen that if a woman, who is a widow or unmarried woman above 40 years of age, without earning parents, applies for retail outlet dealership at a location reserved for women, then while evaluating her candidature, the marks secured by other woman candidates under the parameters "capability to provide infrastructure and facilities" and "capability to provide finance" would be excluded. In the backdrop of the above, if this Court takes note of the facts involved in the instant case, it would be seen that altogether ten applicants had duly applied for retail outlet dealership of the IOCL at Balijan NH-31. However, two of the applicants remained absent. Pursuant to the order passed by this Court on 09.01.2024, it has been brought to the notice of this Court by the respondent IOCL that three applicants had applied for availing Corpus Fund facilities, who were Smt. Madhumita Duara, Smt. Pratibha Mahanta and Smt. Urmila Rabha. However, out of total 40 marks Smt. Madhumita Duara secured 30.16 marks, Smt. Pratibha Mahanta secured 30.83 marks. The petitioner, on the other hand, secured only 26.18 marks out of 40 marks and the respondent Nos. 7 secured 38 marks, respondent No. 8 secured 32.58 marks and the respondent No. 9 secured 30.83 marks and the respondent No. 9

had opted for Corpus Fund Scheme. Having taken note of the said final mark-sheet, which has been annexed to the writ petition as "Annexure-K", it reveals that the petitioner had secured less marks than the woman candidate who had opted for Corpus Fund facilities. Further to that, taking note of Clause 9(b) of the guidelines, which has been already quoted herein-above, it would reveal that if there is any applicant who had opted for the Corpus Fund facilities and is in the fray, the marks secured in respect to the two parameters, namely, "capability to provide infrastructure and facilities" and "capability to provide finance" cannot be taken into consideration and, as such, in the opinion of this Court, the respondent IOCL had, therefore, rightly not taken into consideration the marks on the head "capability to provide infrastructure and facilities" and "capability to provide finance".

9. Taking into account the above, this Court finds no ground for interference with the impugned select list as well as the selection proceeding, for which the instant writ petition stands dismissed. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant