

IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA  
Civil Writ Petitions No.249 of 2002 and 1231 of 2001.

Judgment Reserved on: 25<sup>th</sup> June, 2007.

Date of decision: 31<sup>st</sup> July, 2007.

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1. CWP No.249 of 2002.

Shagun Sethi		...Petitioner
	Versus	
Union of India & Others		...Respondents

2. CWP No.1231 of 2001.

Indu Bhatia		...Petitioner
	Versus	
Union of India & Others		...Respondents

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*Coram*

**The Hon'ble Mr.Justice Dev Darshan Sud,J.**

*Whether approved for reporting ?<sup>1</sup>*

**CWP No.249 of 2002**

For the petitioner:	Mr.Sanjeev Kuthiala, Advocate.
For Respondents 1 to 3:	None
For Respondent No.4:	Mr.K.D. Sood, Advocate.
For Respondent No.5:	Mr.Ramakant Sharma, Advocate.

**CWP No.1231 of 2001.**

For the Petitioner:	Mr.Sanjeev Kuthiala, Advocate.
For Respondent No.1:	None.
For Respondents 2 to 4	Mr.K.D. Sood, Advocate.
For Respondent No.5:	Mr.Ajay Sharma, Advocate.

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**Dev Darshan Sud,J.**

Both these Writ Petitions involve a common question of law though slightly different facts and are being taken up together for disposal.

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgement?*

The petitioner Shagun Sethi, in Writ Petition No.249 of 2002, has challenged the selection of respondent No.5 who has been selected for grant of a retail outlet by respondent No.4 Indian Oil Corporation to be set up at Nagrota Bagwan. According to the petitioner, she was qualified to be considered for the selection and ultimate award of the retail outlet, however, she was surprised to learn that respondent No.5 had been selected and recommended. The petitioner has alleged malafide in selection of respondent as aforesaid and submitted that the selection procedure was not fair. A number of allegations have been made by the petitioner, which of course have been denied by the respondents. When the Writ Petition was taken up for hearing, the records of the Selection Committee were summoned by this Court in order to prima facie ascertain as to whether the selection procedure was fair or not.

A few averments may be noticed before the fairness in the marking is considered in its entirety. The petitioner has alleged in para-8 of the writ petition that respondent No.5 is only a Matriculate, with Diploma in Pharmacy, whereas the petitioner holds B.Sc.(Medical), M.A.(English), Diploma in Journalism and has considerable experience in Management and Administration including the managing and running a retail outlet for the past about five years. It is further alleged that respondent No.5 has no previous experience of any sort for managing or running of retail

outlet. It is also alleged that the petitioner had offered land for dealership/distributorship at Nagrota Bagwan alongwith all the relevant details. Lastly, it has been averred that respondent No.5 was running a Chemist Shop at Droh from which he was having substantial income in excess of Rs.two lacs which is over and above the income he was having from agricultural land.

Interestingly, respondent No.4, Indian Oil Corporation, in reply to these allegations has adopted a vague stand by submitting that the eligibility of candidates is determined on the basis of the Policy Guidelines and the information placed before them.

Respondent No.5 has, of-course, denied these allegations and has also submitted that the petition is not maintainable because the mother of the petitioner is already having a retail outlet in the name and style of M/s.Dhauladhar Service Station, Birta, District Kangra, since the year 1981. So far as the other allegations in para-8 of the writ petition are concerned, a vague denial has been made by this respondent.

Coming to the eligibility of the petitioner, the submission made by the learned counsel for respondent No.5, needs to be rejected out-rightly. Clause-2 of the advertisement (Annexure P-1), specifically provides that in case mother or father of a daughter has any retail outlet, they would not debar the daughter for applying a retail outlet.

In this background, it is necessary to consider the marks which have been awarded, prima facie to judge the fairness of the marking. The record shows that the petitioner has been awarded 164 marks and ranked second, respondent No.5, 242 marks and ranked first and Kanika Bagla, 159 marks and ranked third. When the individual award of marks is seen, the Chairman has awarded 122 marks out of 200 to respondent No.5 and 48 marks to the petitioner. The two Members have awarded 60 marks each to respondent No.5, whereas 59 and 57 marks have been awarded to the petitioner. It would, thus, be seen that it is the award made by the Chairman which has given respondent No.5 a giant leap over the petitioner. If the marks awarded by the Chairman are reduced to half which would be the award out of 100, the respondent No.5 gets 61 and petitioner 24. Under the category of marks awarded for personality, business ability and salesmanship awarded by the Chairman, respondent No.5 has been awarded 38 and the petitioner 10. This is despite the fact that admittedly the petitioner has had experience of working in the petrol pump. The yardstick used for awarding these marks is not clear. On the question of educational qualification, respondent No.5 gets 38 marks and the petitioner gets 20 marks. How this was possible when the petitioner was admittedly more qualified is not at all clear. The marking by the other Members does not show a significant difference. I would close the matter

here without making reference to other points which have been made. These awards were referred to only for the purpose of ascertaining as to whether there has been a fair marking by the Chairman. Ex-facie, the award is not fair and objective and is arbitrary and deserves to be set aside. Admittedly, the petitioner is alleged to have experience of working in a retail petroleum outlet and how her business capability is judged, is not clear. If she is more qualified how she gets lesser marks is a mystery. The method of evaluation, coupled with the fact that the Chairman is vested with the power of awarding marks out of 200, makes the selection unfair granting the Chairman a practical veto.

In the second case of Indu Bhatia, it has been alleged that the award made in favour of respondent No.5 Gurbachan Singh discloses a bias in his favour. In the category of educational qualification, it is alleged that the petitioner possesses a degree of B.A.LLB., whereas respondent No.5 is only a Matriculate. In this case also, the award of mark shows that Gurbachan Singh has been awarded 88 marks by the Chairman and 50 to the petitioner. The marking of the other Members, does not disclose any great disparity. Prima facie, looking at the marking in this case also, respondent No.5 has been awarded 36 marks out of 40 for educational qualification and general level of intelligence, whereas the petitioner has been awarded 20. Without considering anything more, this marking betrays marked bias in

favour of respondent No.5 or a total non-application of mind. How, in what situation and in what circumstances lesser marks have been awarded to the petitioner is not clear.

Learned counsel for the petitioners has placed reliance on the judgment of this Court in ***CWP No.276 of 1997, titled: Balbir Singh and Another vs. Union of India and Others, decided on 5<sup>th</sup> June, 1998***, which has considered in detail the procedure for allotment of retail outlet. There is no dispute regarding the applicability of these principles.

Learned counsel for the respondents submit that this Court cannot act as an Appellate Authority over a Selection Authority to substitute its views for those of the conditions which are composed by the expert. This submission made by the learned counsel for the respondents is rejected as the court can always look into the decision making process if it is found that such decision is arbitrary. This Court has powers under Article 226 of the Constitution of India to quash the selection and issue appropriate directions for consideration in accordance with law.

I have deliberately refrained from expressing any opinion on the suitability of each of the candidate as that would affect the final outcome. The intention of looking into the record is to prima facie ascertain as to whether the marking had been fair or not. The record does not disclose this.

In these circumstances, both these writ petitions are accepted. The allotment to the respondents in each of the writ petition is quashed and set aside. The prayer of the petitioners that as a consequence, direction be issued that the allotment of the retail outlets be made in favour of the petitioners, is rejected as this is the function of the respondents to do so after following the prescribed procedure in accordance with law.

It has been submitted that during the pendency of the writ petition, the entire selection process has undergone a change and that a new policy is applicable for selecting candidates. In these circumstances, it is directed that Indian Oil Corporation will initiate action in accordance with law for the selection of eligible candidates, of-course, after advertising the same in accordance with the new policy. This Court was informed that retail outlets at both these sites are being managed by the Company as COCO (Company owned Company operated Pumps). Till fresh selections are made in accordance with law, the Indian Oil Corporation shall continue to operate these Pumps as any other order passed would not be in the public interest. These writ petitions are accordingly allowed with these directions. There shall be no order as to costs.

**July 31, 2007.**  
**(aks)**

**(Dev Darshan Sud)**  
**Judge.**