

**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT GWALIOR**  
**BEFORE**  
**HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**  
**WRIT PETITION No. 1794 of 2013**  
***SMT. SARITA SAHU***  
***Versus***  
***UNION OF INDIA AND OTHERS***

**Appearance:**

*Shri Siddarth Sharrma - Advocate appeared for petitioner.*

*Shri A.K.Jain – Advocate for the respondent .*

*Shri Praveen Kumar Newaskar – learned DSG for the R-1.*

*Shri S K Sharma – Advocate appeared for respondent.*

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Reserved on	01/04/2025
Delivered on	17/04/2025

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**ORDER**

The present petition under Article 226 of the Constitution of India is preferred seeking following reliefs:-

*“(i)The order impugned Annexure P/1 may kindly be quashed.*

*(ii)Respondents may kindly be directed to recalculate the marks as per their policy and since the petitioner is most meritorious, therefore, the retail outlet of Kisan Sewa Kendra for*

*Deepankheda be awarded to the petitioner.*

*(iii) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner."*

2. Short facts of the case are that respondents had issued an advertisement inviting applications for retail outlet of Kisan Sewa Kendra in the newspaper dated 22.11.2012, for appointment of dealership for diesel, petrol, lubricant oil and for delivery of other agricultural and non-agricultural products.

3. At serial no.272 the location of Deepankheda, Tehsil Sironj, District Vidisha was advertised for female category candidates with the anticipated capacity of 46 kilo liter and working capacity of Rs.6 lakh. The petitioner had applied under the said category along with the other candidates which included respondent no.4. The petitioner also submitted objections over the allocation of marks to respondent no.4 under various parameters as provided under the browser for selection of petrol/diesel of Kisan Sewa Kendra issued on 01.03.2012. In the objections, it was alleged that mis-statements were made by respondent no.4 and certain material information has been concealed, also in the affidavit appended along with the form and which was made one of the basis for allocation of marks was not as per the proforma yet, the marks were allotted. The petitioner was awarded 77.50 marks and respondent no.4 was awarded 80.99 marks, thus, there was difference of 3.99 marks. For the business acumen, respondent no.4 was awarded 3 marks though she had no

experience for conducting any business, was not doing any agricultural work and was just of the age of 22 years and just had cleared her studies, therefore, awarding three marks for experience without any reason was not justified.

4. Second head under which the marks were granted to respondent no.4 was with regard to tide-up volume. Under that head respondent no.4 was granted 3.59 marks while for the tide-up volume, affidavits were required to be submitted, but if the affidavits filed by respondent no.4 were seen therein the name of father, age and other relevant details were not mentioned at all nor there was any mention with regard to the ownership of the vehicle, therefore, the documents filed along with the affidavits were false and fabricated, but those affidavits were taken into consideration.

5. With regard to the marks awarded for ready availability of finance, respondent no.4 had submitted FDRs and other liquefied amount to the tune of Rs.6.50 lakhs while the petitioner had submitted FDRs to the tune of Rs.24 lakhs, but the petitioner was awarded only 20 marks and the respondent no.4 was awarded 16 marks though there was no rationale behind giving such heavy marks to respondent no.4.

6. Further, taking into consideration the income certificate, whereby the income has been shown to be Rs.5 lakh out of the land of 25 bighas which was not proper because Government norms clearly indicates that per bigha income could be at the most

Rs.5000/-. Thus, awarding of 4 marks in the said head is not sustainable in the eyes of law.

7. So far as granting of the marks for availability of land, total 35 marks had been awarded to respondent no.4 and the bifurcation of these 35 marks had been done under various sub-heads, but the photographs of the said land indicates the land is requiring filling, there is a culvert and there is also presence of divider and apart from this the availability of water is also scares there. Since there is a tube-well over the land and the trees were standing over it for which permission was required for cutting them if the project was to be implemented which was not there and in such circumstances lands under the said head were not proper.

8. Further for the purpose of elevating the status of respondent no.4, 99 marks out of 100 were given to her over the site inspection by the Committee and the petitioner was only awarded 90 marks, but the certified copies obtained by the petitioner indicates that the petitioner was only awarded 94 marks by the Committee for site inspection which would definitely reduce her percentile, but just to give her advantage, 99 marks have been shown in the calculation sheet and advantage has been tried to be given to respondent no.4 which requires investigation as it points out malafides and manipulation. It was thus, prayed that the present petition deserved to be allowed and while setting aside the allotment of dealership of Kisan Seva Kendra in favor of respondent no.4 the matter is required to be relegated back to the

authorities to recalculate the marks as per policy and allocate the said outlet in favor of the petitioner.

**ARGUMENTS.**

9. Learned counsel for the petitioner has argued before this Court that though the application preferred by respondent no.4 was itself defective, but the authorities have awarded marks, thus, have committed grave illegality since in the application it was written that it was for highway retail outlet without mentioning that she had applied for Kisan Sewa Kendra. Thus, the authorities have erred in forwarding the application preferred by respondent no.4.

10. It was further argued that there is clear illegality committed by the respondents by awarding marks to respondent no.4 for land, as out of 35 percentile 34.65 percentile have been awarded under that head though there were trees standing over the said land, filling was required, there was no availability of water and there was culvert nearby coupled with that there was a divider.

11. It has further been argued that the award of 99 marks under the head of land which was not fulfilling the standard required by the respondents, was per se illegal and with regard to tide-up volume also award of 3.59 marks was perverse as the affidavits filed in support thereof did not match the requirements and did not contained the relevant information.

12. It was further argued that as per information given by respondent no.4, she stated her and her family's income to be Rs.5

lakhs out of 25 bigha of land which was not as per the Government norms and as per the standards prescribed by the Government 25 bigha do not generate an income of Rs.5 lakhs. Further in that regard no income tax returns were filed, in such circumstances, awarding of 16 marks under the income head was not sustainable and the said certificate should not have been taken into consideration.

13. It was lastly argued that infact for the site respondent no.4 had only secured 94 marks, but to give her advantage 99 marks were shown to have been awarded in the final list which had increased her percentile over and above the petitioner which amounts to malafide intention of the respondents in not awarding the retail outlet to the petitioner. Thus, it was submitted that the present petition be allowed and while setting aside the allotment of Kisan Sewa Kendra in favor of respondent no.4, re-consideration be done and more meritorious be awarded the Kendra (centre).

14. On the other hand, learned counsel for the respondent no.2 and 3 while placing reliance in the matter of **Prasanna Kumar Vashishtha vs. Indian Oil Corporation Ltd and Ors** reported in **2007 (I) MPJR 202** had argued that interference in the matters pertaining to appointment of dealer and grant of license for carrying out business activities can be made while exercising jurisdiction in a petition under Article 226 of the Constitution in case it is found that grant of dealership is made in violation of any

statutory provisions or the grant made is vitiated by malafide, arbitrariness or other external consideration being made by persons responsible for grant of dealership and as it is not the case of the petitioner that the grant made to the respondent no.4 is vitiated by malafide nor in any manner is biased, prejudiced or arbitrary, the present petition deserves to be dismissed on this count alone.

15. It was further argued that so far as merits of the matter is concerned, the contention of the petitioner that for business acumen award of 4 marks to respondent no.4 were exaggerated is wholly mis-conceived as the interview committee had awarded the said marks after respondent no.4 was interviewed and looking to her acumen the said marks were awarded and they were not based on documents, therefore, the said contention has no force. The aforesaid fact can be reflected from the chart allocation of the marks as in the head of experience respondent no.4 has been awarded zero marks.

16. With regard to allegation that proper marks were not allotted to respondent no.4 for tie-up volumes as the affidavits submitted in support thereof were not in proper format and did not disclose relevant information is concerned, nowhere in the advertisement it was directed to provide documents regarding ownership of vehicle, only affidavits for tie-up volumes were required to be considered for awarding marks which were rightly considered. Further the investigation officer has collected the

copies of all the customers which clearly showed that they were resident of Tehsil Sironj, thus, this allegation has no force.

17. With regard to allocation of marks to respondent no.4 for the working capital required being not proper, it was submitted that the requirement for setting up Kisan Sewa Kendra retail outlet dealership, the working capital required was only Rs.6 lakhs and when the petitioner herself has stated in the petition that the liquified amount shown by respondent no.4 was to the tune of Rs.6.50 lakhs, in a way she had fulfilled the basic norm, therefore, she was awarded marks accordingly which also cannot be faulted with.

18. Regarding the filling of the plot as offered by respondent no.4, it was argued that the aforesaid contention was found to be correct and it was observed that 1.5 meters filling was required of the plot so offered, hence marks were proportionally awarded in “earth filling” parameters.

19. It was further argued that competent authority of the respondent department had appointed one investigating officer to investigate the complain made by the petitioner and the allegations made therein were not found to be substantiated and the petitioner in that regard was informed by a speaking order, therefore, the allegation so leveled being false and frivolous, needs no consideration.

20. It was also argued that as per the policy, land exclusively owned by applicant and is of joint ownership with the family



members (subject to their consent) was to be considered for awarding maximum 35 marks and as the land offered by respondent no.4 belonged to her father (i.e. family unit as per policy) who had given his consent vide notarized affidavit dated 25.08.2012 and had offered land for his unmarried daughter for Kisan Sewa Kendra, therefore, she had been awarded 35 marks and the Committee had visited the site on 22.12.2012 and had weighted 94 marks out of 100 (wrongly mentioned as 99 in the chart) and the land which was offered by the petitioner was a firm offer, therefore, she was only given 25 marks and accordingly, weighted marks in "Capability to provide infrastructure and facilities" to the respondent no.4 even if taken as 32.90 marks instead of 34.65 after proportionally reducing the marks to 94, would make her total as 79.24 and even then the marks obtained by the respondent no.4 would be more than the petitioner and the merit penal would not be affected or changed. Thus, it was submitted that the present petition has no sum and substance, therefore, it be dismissed.

21. Heard the counsels for the parties and perused the record.

22. From the record this Court finds that on the complaint so made by the petitioner against the allocation of marks to respondent no.4, a field investigation was conducted against her by Field Officer, Vidisha sales area, who vide FIR report (Field Investigation Report) dated 18.06.2013 had found that there was no variance in the claimed fact in the application dated

27.08.2012 of respondent no.4. During the FIR facts mentioned in the application and documents were verified by the officer of the sale area and the said parameters were found O.K and, thereafter, LOI was issued to respondent no.4 subsequent to approval of competent authority for issuance of LOI, thus, the complaint made by petitioner since was not found to be substantiated, the LOI was issued in favor of respondent no.4. Though in the field investigation the allegations which were akin to the contentions raised in the present petition were found to be frivolous and also when the said field investigation report has not been challenged nor the fact of field investigation report which was brought to the knowledge of the petitioner vide letter 07.06.2013 has also not been challenged, raising similar grounds before this Court appears to be of no consequence.

23. Even otherwise from the contents of the reply filed on behalf of respondents no.2 and 3 wherein all the individual allegations leveled against respondent no.4 by the petitioner had been controverted like allegation of marks for business acumen of the respondent no.4, after interview, allocation of zero marks to her for experience, allocation of marks for tide-up volumes based upon the affidavits which contained the requisite information, proportionately reducing the marks for the site due to want of filling of the plot offered by respondent no.4 and accepting the calculation mistake in awarding 94 marks instead of 99 as shown in the final calculation chart and proportionately

reducing the percentile and even then the petitioner did not get more marks than respondent no.4, this Court finds that the allegations leveled of disproportionate marking by the respondents in favor of respondent no.4 appears to be made out of frustration as except for balled allegations with regard to malafide, there is no concrete proof placed before this Court which could compel this Court to accept the allegations constituting malafides.

24. Under the heads of capability to provide land and infrastructure facilities since the land which was offered by respondent no.4 was belonging to family unit defined as per para 6 of the policy and also capability to provide finance included the finance owned by the family unit, the respondent no.4 was rightly awarded 35 marks and 16 marks respectively whereas the petitioner was awarded only 25 marks with regard to capability to provide land and infrastructure facilities as the land offered by her was the firm offer of land, which could only have earned 25 marks, as per parameters for allocation of marks as provided under the policy and since the petitioner was having a better capability to provide finance was awarded 20 marks which was more than that awarded to respondent no.4. Thus, this Court in the obtaining facts and circumstances of the case doesn't find any ground for interference.

25. In that regard it would be profitable to quote paragraph 7 of judgment passed by Coordinate Bench of this Court in the matter

of Prasanna Kumar Vashishtha vs. Indian Oil Corporation Ltd and Ors (supra):-

*“7. In matters pertaining to appointment of the dealer and grant of license for carrying out business activities interference can be made by this Court exercising jurisdiction in a petition under Article 226 of the Constitution in case it is found that grant of dealership is made in violation of any statutory provision or the grant made is vitiated by malafide, arbitrariness or other external consideration being made by persons responsible for grant of dealership. In the present case it is not the case of the petitioner that the grant made to the respondent no. 6 is vitiated by malafide nor is any bias, prejudice or arbitrariness pleaded or established against the Dealer Selection Board or any of its members, that being so this Court cannot sit over the decision of the Dealer Selection Board as if it is exercising appellate jurisdiction, it is the Dealer Selection Board which has conducted the interview and has taken a decision after evaluating the applications submitted by various persons and in the absence of any material produced by the petitioner to demonstrate that the decision taken by Dealer Selection Board is illegal or unsustainable no interference can be made by this court. Having considered the fact and circumstances of the case this court does not find any infirmity the procedure followed for grant of dealership to respondent no. 6.”*

26. Though in the present case balled allegations have been leveled against the respondents/authorities of malafide that too of mentioning of 99 marks in the final calculation sheet instead of 94 marks as obtained by respondent no.4 with regard to site/land

proposed, which even respondents no.2 and 3 has controverted by accepting that the said marking was wrongly done and themselves had proportionately reduced the percentile by 1.75 marks, even then the petitioner could not secure more marks then respondent no.4. Thus, this Court finds that no prejudice is caused to the petitioner due to wrong mentioning of the marks in the final calculation list which has already been corrected. Thus, according to this Court the petitioner could not make out the case of malafide or biasness or prejudice or any arbitrariness on the part of the respondents which could make the allotment of the retail outlet of Kisan Sewa Kendra to be vitiated.

27. Having considered the facts and circumstances of the case this Court does not find any infirmity in the procedure followed for grant of dealership to respondent no.4, accordingly, no merits is found to interfere in the matter, the petition stands **dismissed** without cost.

chandni/

(Milind Ramesh Phadke)

Judge

17/04/2025