

(2015) 10 PAT CK 0006

In the Patna High Court

Case No : Letters Patent Appeal No. 757 of 2015 in Civil Writ Jurisdiction Case No. 19720 of 2014

Bajrang Prasad

APPELLANT

Vs

Bharat Petroleum Corporation Limited and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 10 PAT CK 0006

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Y.V. Giri, Senior Advocate, Uday Chand Pd. and Manoj Kumar, Advocates, for the Appellant; Madhuresh Prasad, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—Aggrieved by the judgment and order, dated 07.01.2015, passed by a learned Single Judge of this Court, in C.W.J.C. No. 19720 of 2014, the appellant has preferred the present appeal under Clause 10 of the Letters Patent of the Patna High Court.

2. The facts, which are not in dispute, may, in brief, be set out thus: Applications were invited, through advertisement, dated 28.06.2013, for appointment of "Rajiv Gandhi Gramin L.P.G. Vitrak" (hereinafter referred to as "RGGLV"), by various oil companies, namely, Bharat Petroleum Corporation Ltd., Indian Oil Corporation Ltd. and Hindustan Petroleum Corporation Ltd., for different locations in rural areas, including village Harlakhi, under Madhubani district. Clause 6.(b.) and 6.(h.) of the Brochure, for selection of RGGLV, applicable, with effect from April, 2013, lay down, inter alia, the following as the eligibility criteria for selection and appointment of RGGLV:--

"Applicant applying for RGGLV should

b. Be a resident of either of the Gram Panchayat (or the corresponding

administrative/revenue structure as applicable in the respective State/UT) of the advertised RGGLV location or of the Taluka/Tehsil (or the corresponding administrative/revenue structure as applicable in the respective State/UT) of the advertised RGGLV location. For selection of RGGLV, first preference will be given to the applicants residing in Gram Panchayat of the advertised RGGLV location, failing which applicants residing in the concerned Taluka/Tehsil of the advertised RGGLV location shall be considered.

h. (i) Should own:

a plot of land of minimum dimensions 21M x 26M for construction of LPG Godown for storage of 5000 Kg of LPG in cylinders at the advertised RGGLV location. The plot of land for construction of godown not meeting the minimum dimensions of 21M x 26M will not be considered.

Or

a ready LPG cylinder storage godown of 5000 Kg capacity at the advertised RGGLV location.

In case there are any state specific requirements/norms applicable for construction of LPG Godown, then the same will be applicable for the respective RGGLV locations and revised minimum dimensions of the plot of land will be required as specified in the advertisement of that respective State.

The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (road or private road connecting to the public road). In case of private road connecting to the public road, the same should be owned by the applicant/member of family as defined in h(iii) below in the ownership criteria for land. In case of ownership/co-ownership by family member(s) in respect of such private road, consent letter from respective family member(s) will be required.

(ii) The land should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals/Drainage/Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/Town and Country Planning Department etc.

(iii) Own means having clear ownership title of the property in the name of applicant/family member(s) of the "Family Unit" as defined in multiple dealership/distributorship norm or land belonging to parents & grandparents (both maternal and paternal) of the applicant as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required.

(iv) In case the land is jointly owned by the applicant/member of family Unit (as defined in multiple dealership/distributorship norm)/parents & grandparents

(both maternal & paternal) of the applicant with any other person(s) and the share of the land in the name of applicant/member of the family unit/parents & grandparents (both maternal and paternal) of the applicant meets the requirement of land including the dimensions required, then that land for godown will also qualify for eligibility as own land subject to submission of "No Objection Certificate" in the form of an Notarized Affidavit from other owner(s).

(v) In case an applicant has more than one suitable plot for construction of godown for storage of 5000 Kg of LPG in cylinders or ready LPG cylinder storage godown of 5000 Kg capacity available as one the last date for submission of application as specified in the advertisement or corrigendum (if any), then the details of the same can also be provided in the application."

3. The appellant, admittedly, is the resident of a village, namely, Virta, under the Gram Panchayat, Harlakhi. However, he did not own required plot of land as prescribed, under Clause 6.(h)(i), at the advertised RGGLV location, i.e., Harlakhi.

4. In response to the advertisement, dated 28.06.2013, the appellant submitted his application for appointment as RGGLV. There were two other participants, for the said appointment, namely, Vishwanath Prasad Gupta and Sanjay Paswan. The appellant was held to be qualified for the draw for selection of RGGLV and, on the basis of a draw held, he was declared successful. The admitted fact, which has emerged from the pleadings and records, is that the land, which the appellant had declared/offered to claim his candidature for his selection and appointment, was found to be located in village, namely, Virta, on the basis of field verification of such land done by the respondents.

5. The appellant was, accordingly, communicated through letter, dated 08.08.2014, that his candidature was being rejected on two grounds; firstly, that he was not a resident of the advertised location, i.e., Harlakhi and, secondly, he did not have own land at the said advertised location. As per the Land Possession Certificate, received from the Circle Officer, Harlakhi, dated 20.06.2014, it was found that the land, declared/offered in the application form by the appellant, fell in the village, Virta, and not at the advertised location, Harlakhi. The appellant preferred a representation before the Territory Manager (LPC), Patna LPG Territory and Bottling Plant, BPCL, Fatuah Industrial Area, seeking review of the said communication, dated 08.08.2004, on various grounds including the ground that his candidature ought not to have been rejected for his not being a resident of advertised location, since there was no such stipulation in the advertisement. According to him, he, being a resident of Gram Panchayat Harlakhi, fulfilled the eligibility condition of residence. The Territory Manager, through communiqu?, dated 12.11.2014, informed to the appellant that his candidature had been cancelled for the following reasons:--

"That you do not own land at Harlakhi. As per LPC and confirmation received from CO, Harlakhi dated 20.06.2014, the land declared/offered in the application form falls in village VIRTa not in the advertised location HARLAKHI".

With the aforesaid communication, the appellant's representation, seeking review of the rejection of his candidature, stood closed.

6. The appellant challenged the said communications, dated 08.08.2014 and 12.11.2014, in a proceeding, by filing an application, under Article 226 of the Constitution of India, before this Court, registered as C.W.J.C. No. 19720 of 2014. The said application having been dismissed by a learned single Judge, vide order under appeal, dated 07.01.2015, the present intra-Court appeal has been preferred.

7. Mr. Y.V. Giri, learned Senior counsel, appearing on behalf of the appellant, has submitted that admittedly, the land declared/offered by the appellant was located within the Gram Panchayat, Harlakhi, and, therefore, his candidature ought not to have been rejected on the said ground. He has submitted that there are only two villages under the Gram Panchayat, Harlakhi, viz., Harlakhi and Virta. He has attempted to persuade us to hold that even if it is accepted that for the purpose of fulfilling the eligibility criteria, an applicant must have owned land at the advertised location, it cannot be said that the land, which the appellant (petitioner) had declared/offered, was far away from the said advertised location, Harlakhi. He, therefore, submits that rejection of the appellant's candidature was illegal and learned single Judge ought to have taken into account these aspects of the matter. He has also submitted that after rejection of the appellant's candidature, the respondents are intending to appoint one Sanjay Paswan, who is not a resident of village, Harlakhi, and has also not offered/declared land at the advertised location.

8. Mr. Madhuresh Prasad, learned counsel, appearing on behalf of the respondent Nos. 1 to 4 (Bharat Petroleum Corporation Ltd.), on the other hand, has submitted that there was express requirement in the advertisement and the Brochure for a candidate to be eligible to apply that he must have owned plot of land of the required dimension, under Clause 6.(h.)(i), "at the advertised RGGLV location". He has submitted that village, Harlakhi, was the advertised location and, accordingly, in order to qualify for appointment, as RGGLV for the said location, one was required to declare/offer the land at the advertised location. He has placed reliance upon a Division Bench decision of this Court in case of M/s. Indian Oil Corporation Limited and Another Vs. Raj Kumar Jha and Others, , in order to contend that once the Corporation had set out, in the advertisement, the standard for appointment of RGGLV, no alteration from the said standard, on subjective approach, could have been permissible.

9. We have considered the rival submissions made on behalf of the parties and have perused the pleadings and materials available on the record. We have also perused the judgment under appeal. From the judgment, under appeal, we find that learned single Judge has refused to interfere with the impugned decision, dated 08.08.2014, which subsequently came to be modified by the respondents vide order, dated 12.11.2014, rejecting the appellant's candidature. It was found that the appellant did not own land at the advertised location. As has been noted

above, in the communication, dated 08.08.2014, addressed to the appellant, two reasons were assigned for rejecting his candidature. Firstly, that he was not a resident of the advertised location and, secondly, he did not own land at the advertised location, i.e., Harlakhi. By subsequent communication, dated 12.11.2014, made by the Corporation to the appellant, considering the petitioner's (appellant) representation, filed against rejection of his candidature, vide order, dated 08.08.2014, the ground for rejection of his candidature was modified and was confined to the fact that the appellant did not own land at the advertised location, i.e., Harlakhi. This fact is not in dispute. The learned single Judge, having taking into account this admitted fact, in the light of definite provision, under the Brochure and the advertisement, refused to interfere with the decision of the Corporation rejecting the appellant's candidature.

10. Submission made on behalf of the appellant by Mr. Y.V. Giri, learned Senior counsel, that the land, which the appellant had declared/offered, was quite near the advertised location and, on such ground, his candidature ought not to have been rejected, is not tenable. Mr. Madhuresh Prasad, learned counsel, appearing on behalf of the respondent Nos. 1 to 4, has rightly relied upon the Division Bench decision of this Court, in case of M/s. Indian Oil corporation Limited (supra), paragraph 9 whereof reads as follows:--

"9. We are of the opinion that the Corporation being the State within the meaning of Article 12 of the Constitution is supposed to act fairly, reasonably and uniformly and has to be objective in its approach. Once the standard is set out in the advertisement, the Corporation has to adhere to the said standard without any variation. In case, the Corporation allows any alteration the same will amount to subjective approach which is frowned upon by the Courts time and again. To remain objective the Corporation is required to adhere to the standards mentioned in the advertisement. In the present case, it is not in dispute that the application made by the writ petitioner was not in conformation with the requirement mentioned in the advertisement. In our opinion, the Corporation was justified in rejecting the application of the writ petitioner."

11. We do not find any reason to interfere with the judgment, under appeal, passed by the learned single Judge, by which he has dismissed the writ application after having found that the appellant (petitioner) did not fulfill the eligibility/criteria as per the standards set out in the Brochure/advertisement.

12. Responding to the submission, made on behalf of the appellant, by Mr. Y.V. Giri, learned Senior counsel, that the Corporation is going to appoint a person, who does not fulfill the eligibility criteria, in terms of resident/possession of land, Mr. Madhuresh Prasad, learned counsel, appearing on behalf of the respondent Nos. 1 to 4, upon instruction, has submitted that the Corporation has yet not completed the field verification as regards appointment of said Sanjay Paswan as RGGLV and the grievance, if any, raised by the appellant, would be dealt with by the Field Verification Team of the Corporation. He has also submitted that if the allegation, made against said Sanjay Paswan, is found to be correct, the

Corporation will conduct re-draw.

13. We do not intend to comment upon the submissions made by Mr. Y.V. Giri, learned Senior counsel, on the above because of the stand taken on behalf of the Corporation by Mr. Madhuresh Prasad, learned counsel.

14. In view of the facts and reasons, as discussed above, we do not find any merit in this appeal. This appeal is, accordingly, dismissed.