
(2012) 06 MAD CK 0140

In the Madras High Court

Case No : W.A. No. 2220 of 2011 and M.P. No. 1 of 2011

Indian Oil Corporation Ltd.

APPELLANT

Vs

J. Ranjith

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Citation : (2012) 5 CTC 577

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : Abdul Saleem for Anand, Abdul and Vinoth Associates, for the Appellant; P. Mani, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—This Writ Appeal is directed against the order dated 22nd January 2011 in W.P. No. 33430 of 2010, whereby and whereunder the learned Single Judge directed the Appellant to accept the alternative site suggested by the Respondent for construction of LPG godown, in spite of the mandatory condition that the site once indicated would not be permitted to be changed at a later point of time. The background facts :

The Appellant issued a Notification on 6th February 2008 calling for Applications for appointment as LPG distributor at Kaveripattinam in the District of Krishnagiri under open category. The Appellant in the said Notification very clearly indicated that the Applicants, who readily have suitable godown/land for construction of godown for storage of filled LPG cylinders and shop/land for construction of shop for showroom for setting up of LPG Distributorship or have a firm commitment from the land owner for purchase/lease would be given marks. There was a further stipulation that after the selection, if the Applicant, for any reason, is unable to construct the godown duly approved by the Chief Controller of Explosives, on the land/godown indicated in the Application, then the allotment of LPG Distributorship made to him would automatically stand cancelled.

2. The Respondent submitted an Application on 10th March, 2008 for the subject location. The Respondent has given a declaration that he has taken a suitable land on lease as per lease agreement dated 5th March 2008. The Application submitted by the Respondent contains the Survey Number of the land as 125/1E, Erramalli Village, measuring about 40 cents. The land was taken on lease for a period of fifteen years by way of a registered Lease Deed.

3. The Respondent was called for an interview by the Selection Committee and ultimately he was placed as No. 1 in the panel, based on his performance in the interview and his capability to procure the land for LPG godown and showroom. The Appellant issued a Letter of Intent to the Respondent on 18th February 2010 directing him to commission the distributorship by constructing the godown in the land indicated in the Application. The Respondent after accepting the Letter of Intent submitted a representation to the Appellant on 30th April 2010 requesting for permission to substitute another land purchased by him subsequently. According to the Respondent, the property shown in his Application was subsequently sold in favour of third parties resulting in filing a Suit for injunction in O.S. No. 71 of 2010 restraining the purchasers from dispossessing him until the expiry of lease period.

4. The Application dated 30th April, 2010 was considered by the Appellant on merits and ultimately the request was rejected as per proceedings dated 29th May, 2010. The Appellant informed the Respondent that he has been awarded marks in the selection of distributorship for LPG, based on the documents submitted. Since the property in Survey No. 125/1E, Erramalli Village, Krishnagiri Taluk was shown as the location of LPG godown, the Corporation would not be in a position to permit him to change the site subsequent to the selection. Accordingly, the Appellant informed the Respondent about their inability to consider his request.

5. The proceedings dated 29th May 2010 was challenged by the Respondent before the Writ Court in W.P. No. 22320 of 2010.

6. Before the learned Single Judge the Respondent contended that the site shown by him earlier was sold to third parties and in view of the pending litigation, he would not be in a position to construct the godown there and to do business peacefully. It was further contended that the condition with regard to possession of land is not mandatory and the Selection Committee was required only to consider the capability to procure land. Therefore, the Corporation was not justified in rejecting his request for change of site.

7. The learned Single Judge by placing reliance on the judgment in K. Vinod Kumar Vs. S. Palanisamy and Others, , opined that in case the godown is constructed in the new site purchased by the Respondent, both the Corporation and the distributor would be benefited and there would not be any problem in future. The learned Judge after quashing the impugned communication directed the Corporation to accept the alternative site. Feeling aggrieved by the said

order, the public sector Oil Company is before this Court.

Summary of submissions :

8. The learned Counsel for the Appellant contended that the Corporation very specifically stated in the Notification that the land once shown cannot be changed at any cost and in case the selected candidate is not in a position to construct the godown in the place indicated in the Application Form, the Letter of Intent would be withdrawn summarily. The Respondent was well aware of the said condition and accordingly, he submitted his Application indicating a particular site. The Selection Committee awarded marks on the basis of his claim with regard to the possession of subject land. The Letter of Intent also contains an indication that the construction of godown should be in the very same property. It was not open to the Respondent to suggest an alternative site. Therefore, his request was rightly rejected by the Corporation.

9. The learned Counsel for the Respondent by placing reliance on the judgment of Supreme Court in K. Vinod Kumar Vs. S. Palanisamy and Others, and the order passed by a learned Single Judge of Andhra Pradesh High Court dated 25th November, 2011 in P. Prathima and another v. Indian Oil Corporation Ltd. & others, W.P. No. 31328 of 2010, contended that the Corporation was expected only to see as to whether the Applicant was capable of arranging a site. Marks were given only for the capacity to arrange the site and it has nothing to do with a particular site. According to the learned Counsel, the circumstances were beyond the control of the Respondent and as such he purchased a new site and offered the same for construction of LPG godown. The Respondent never anticipated that the lessor would sell the property to third parties after executing the Lease Agreement. It was further contended that the non-selected candidates were behind the scene and the Respondent was a victim of circumstances. The learned Counsel, therefore, wanted this Court to confirm the order passed by the learned Single Judge.

Discussion and conclusion :

10. The Appellant is a Public Sector Oil Company. The case relates to grant of LPG Distributorship, which is nothing but a state largesse. The Corporation has to follow certain guidelines in the matter of award of distributorships. The Ministry of Petroleum have evolved guidelines governing the selection of dealers and distributors of petroleum products.

11. The Appellant in their Notification dated 6th February 2008, calling for Applications for appointment as LPG Distributor at Kaveripattinam very clearly mentioned that the Applicant has to indicate as to whether he is in possession of the land or he would be in a position to acquire the land in case the distributorship is awarded to him. The relevant part of the Notification reads thus:

14. Construction of Godown/showroom on the site as mentioned in Application form:

The Applicants who readily have suitable godown/land for construction of godown for storage of filled LPG cylinders and shop/land for construction of shop for showroom for setting up of LPG distributorship or have a firm commitment from the land owner for purchase/lease or can arrange it are awarded marks. The details given in the Application alone will be considered for this purpose and the Applicant will not be given any opportunity to offer any other land subsequently (Even at the time of interview). For this purpose, the land owned by the family members as defined in eligibility criteria would also be considered as belonging to the Applicant. In case the land is owned by the family members, an Affidavit for giving consent has to be given by the family member(s) as per the format given in the Application Form.

However, after selection of the Applicant, physical verification of the godown land/ godown as well as the showroom will be undertaken. In the event it is found that there is variance in the details submitted with the Application form and or the plot is not found suitable for construction of godown or the godown is not approved by Chief Controller of Explosives the allotment of the distributorship will stand automatically cancelled.

Or after selection, if Applicant for any reason is unable to construct Godown duly approved by the Chief Controller of Explosives on the land/godown indicated in the Application and or showroom as per the oil Company's standard layout on the land/shop indicated in the Application, then the allotment of LPG distributorship made to the Applicant will automatically stand cancelled.

If the candidate has expressed that he can arrange for the land for godown/showroom, then if selected, the same has to be arranged within two months from date of issue of LOI failing which the LOI may be cancelled.

12. The Notification contains a prescribed format of Application. The candidate was expected to give a declaration with regard to possession of land, which reads as follows:

16. Declaration by the Applicant :

I am aware that inter se suitability of candidates will be decided by evaluation of candidates on the document based marks and interaction (interview). Evaluation on document based marks will be done based on the information given by me/us in this Application. On verification by the Oil Company if it is found that the information given by me/us is incorrect/false/misrepresented then my/our candidature will stand cancelled and I/We will be declared ineligible for LPG Distributorship. I also confirm that I am in possession of the supporting documents in original for the information given by me in this Application and if selected, failure to present these documents in original will result in cancellation of selection due to submission of false/unsupported information in documents. I am fully aware that if I am unable to make godown duly approved by the Chief Controller of Explosives on the land/godown indicated in the Application and or showroom as per the Oil Company's standard layout on the land/shop indicated

in the Application herein above after selection then the allotment of distributorship made to me will automatically stand cancelled.

13. The Respondent is stated to be a qualified Medical Practitioner. The Respondent having noticed the Notification issued by the Appellant, submitted his Application on 10th March 2008 for the subject location. The Respondent in his Application indicated that he has taken the land in Survey No. 125/1E of Erramalli Village, measuring about 40 cents on lease for the purpose of construction of LPG godown. The Respondent has also given a declaration in terms of Clause 16 of the Application form indicating that in case he is not in a position to construct the godown in the land indicated in the Application, the allotment of distributorship would be cancelled automatically. Therefore, even before the submission of Application Form the Respondent was aware of the mandatory condition that construction should be made only in the land shown in the Application Form.

14. The Respondent and other Applicants were called for interview by the Selection Committee. The Selection Committee appears to have awarded marks under various counts, which includes capability to provide infrastructure. The note appended to the Application Form itself contains a statement that capability to provide infrastructure and finance would be considered on the basis of the documents filed by the Applicant and in case it is found that the information is incorrect or false, the candidature of the Applicant would stand cancelled.

15. The Respondent was placed first in the panel. The Appellant issued a Letter of Intent to the Respondent on 18th February 2010 offering the Indane Distributorship at Kaveripattinam. Even in the said Letter of Intent the Appellant very clearly indicated that the Respondent should construct the godown in the very same land shown in his Application. Clause 1 of the Letter of Intent reads as under:

7. LPG Godown:

In the Application you have stated that you are in possession of land for construction of LPG Godown. The same has also been considered while evaluating your candidature during the interview for allotment of Indane Distributorship. You are required to construct godown on the same land, after obtaining necessary statutory approvals, for storing LPG filled in cylinders. If you fail to construct the LPG storage godown on the same site as mentioned in the Application, this offer will stand withdrawn.

16. The Respondent accepted the Letter of Intent including the condition regarding construction of godown on the same site as mentioned in his Application. It was only thereafter the Respondent approached the Corporation with a request to change the location. Even in his representation dated 30th April, 2010, the Respondent very clearly admitted that by changing the location of the land, he is making a deviation.

17. The request made by the Respondent was turned down by the Corporation on the basis of the mandatory condition as contained in the selection Notification.

18. The only question that arises for consideration is as to whether the Appellant was bound to consider the request for change of location subsequent to the selection.

19. The condition regarding capability to arrange the site was made with a specific purpose. The Applicant, who is in possession of the suitable godown or land for construction of godown for storage of filled LPG Cylinders would be given marks, meaning thereby, the Applicant who is not in possession of land or has not made any arrangement to take the land would not be given marks on that count. Since the Selection Committee will be awarding marks to a candidate on the basis of his declaration that he is in possession of a particular land for construction of godown, there is no question of permitting him to change the site subsequent to the selection. In the event the selected candidate is not in a position to construct the godown on the land indicated in his Application, it is as if he is not in possession of land. The Selection Committee awarded the marks only on the basis of his possession of land. In case he is not in a position to construct the godown on the said land subsequent to the selection, he is not entitled for the marks on the ground that he is in possession of land. In case, permission is given to a selected candidate to change the land, necessarily such indulgence should also be given to other candidates. There should be a level playing field in such cases.

20. While considering the challenge made to the selection of LPG Distributorship by Hindustan Petroleum Corporation at the instance of a non-selected candidate, who failed to indicate in the Application about her possession of land, the Supreme Court in *Smt. Monika Gupta Vs. Union of India (UOI) and Others*, considered the very same clause regarding capability to provide infrastructure and the mandatory condition that in case, after selection, the candidate is unable to make available the land indicated in the Application for construction of LPG Godown which would result in cancelling the distributorship and indicated that the Selection Committee was expected to award marks as per criteria embodied in paragraph 13 of the brochure which deals with norms for evaluating the candidates.

21. When the selection is made on the basis of a prescribed procedure made known to the candidates sufficiently earlier it is not open to the Corporation to make a deviation at a later point of time.

22. Even in the proceeding impugned before the learned Single Judge, the Corporation very clearly stated that the Respondent has obtained an order of injunction on the strength of his registered Lease Deed and as such, there is no hindrance to enjoy the land by constructing the godown. The Appellant has not cancelled the Letter of Intent. The direction was only to construct the godown on the very same land shown in his Application Form. The request made to change

the site alone was rejected by the Appellant.

23. The Application submitted by the Respondent was considered on merits in accordance with the Notification. The selection Notification does not contain any element of discretion to be exercised by the Corporation by permitting the selected candidate to change the location subsequent to the award of Letter of Intent. In case the first empanelled candidate is not in a position to construct the godown on the site shown in his Application, ordinarily option should be given to the second empanelled candidate. That is the scheme evolved by the Ministry of Petroleum. In case Application of this nature is entertained later for change of location, there would be no sanctity for the guidelines regarding such selection notified by the Public Sector Oil Corporation.

24. The learned Single Judge placed reliance on the judgment of Supreme Court in K. Vinod Kumar Vs. S. Palanisamy and Others, to arrive a finding that the requirement regarding suitable site is not a mandatory condition.

25(a). The selection challenged in K. Vinod Kumar Vs. S. Palanisamy and Others, was on the basis of the regulations then in force. The Letter of Intent issued by the Corporation to the selected candidate contained a mandate that he has to procure a suitable plot of land measuring 32m x 29m for storage of LPG cylinders either purchased by him or leased by him initially for a period of ten years for construction of godown preferably in a prominent locality within the area of operation of distributorship, within a period of four months. The Supreme Court found that there was no pre-condition regarding possession of land for submitting an Application. The Corporation wanted the selected candidate to procure the land within a period of four months and the same was an indication that the possession of land by the Applicant is not a mandatory requirement. It was only under such circumstances, the Supreme Court observed that possession of land by the Applicant is not a mandatory requirement to award him the distributorship.

(b). The facts of the subject case is entirely different. In the Notification itself the Corporation indicated that the Applicants have to state the details of land and a declaration to the effect that the godown would be constructed in the said land and in case of inability, the very appointment would be cancelled. The Letter of Intent issued to the Respondent would show that the Appellant wanted him to construct the godown on the very same site as mentioned in his Application as otherwise, it was indicated that the offer will stand withdrawn. There is no statement in the Letter of Intent, as contained in the offer given to the selected candidate in K. Vinod Kumar's, that the selected candidate has to procure the site in a prominent locality within the area of distributorship within a period of four months. Therefore, the judgment of the Supreme Court in K. Vinod Kumar Vs. S. Palanisamy and Others, has no application to the facts of the present case.

26(a). The learned Counsel for the Respondent by placing reliance on the judgment of a learned Single Judge of Andhra Pradesh High Court in P. Prathima

and another v. Indian Oil Corporation Ltd., & others, W.P. No. 31328 of 2010, dated 25th November, 2011, contended that in similar circumstances M/s. Indian Oil Corporation permitted the selected candidate to change the site on account of the acquisition of site originally shown by him and as such, the same indulgence should be shown to the Respondent also.

(b) It is true that in the case before the Andhra Pradesh High Court, taking into account the subsequent events regarding compulsory acquisition of land by Government, M/s. Indian Oil Corporation Limited permitted the selected candidate to change the location. It was nothing but a concession given by the Corporation on the facts and circumstances of the said case.

27(a). The learned Counsel for the Respondent by placing reliance on an unreported judgment of a learned Single Judge in M. Vijaya v. Indian Oil Corporation Ltd, and two others, W.P. No. 9036 of 2007, dated 30th April 2010 contended that under similar circumstances a Writ Petition challenging the change of site was rejected by this Court.

(b) We have perused the order passed by the learned Single Judge. The selection in the said case was made pursuant to the Notification dated 16th July, 2000 and ultimately a candidate by name Mrs. G. Nallammal was selected. The selection was set aside by this Court at the instance of an aggrieved non-selected candidate and a direction was issued to consider the inter se merit once again. The very same candidate was once again selected by the Oil Corporation. Since considerable delay had occurred and with a view to open the distributorship early, she took a readymade godown and approached the Oil Corporation. The Oil Corporation granted permission subject to the condition that the site shown in the Application Form should not be sold or otherwise encumbered and if required, the godown should be constructed in the said land. When a challenge was made to this action once again by the non-selected candidate, the learned Judge observed that the contention regarding the location of place has been sufficiently met in the Counter and there is no illegality on that score. The said Judgment is not an authority for the proposition that the site indicated in the Application Form can be changed later.

28. The learned Single Judge proceeded on the basis that the construction of godown on the site owned by the Respondent would be in the interest of the Corporation and the distributor and the selected candidate would be in a position to do the business peacefully without any problem in future.

29. We are called upon to test the legality and correctness of the decision taken by a Public Sector Oil Corporation on the basis of the selection criteria and guidelines governing the field. The Corporation was not expected to flout the selection norms indicated in the Notification. The norms are applicable equally to the Corporation and the Applicants. The Courts cannot direct the State or its instrumentalities to violate their own regulations. The Respondent is not a layman. He is a qualified medical practitioner and he has made the Application

after reading the Notification. He has given a declaration that in case he is not in a position to construct the godown on the site mentioned in the Application, his candidature could be rejected and in case the selection is made, the Letter of Intent could be withdrawn. Having accepted such a condition and made an Application, it is not open to the Respondent to make a Complaint that the Corporation erred in rejecting his request to accept the alternative site. We do not find any error or illegality in the order passed by the Corporation. The mandatory condition incorporated in the Notification was not taken note of by the learned Single Judge. Therefore, we are constrained to set aside the order passed by the learned Single Judge. Accordingly, the order dated 22nd January 2011 in W.P. No. 22320 of 2010 is set aside. In the upshot, we allow the Writ Appeal. Consequently, the connected MP is closed. No costs.

After the judgment was pronounced, the learned Counsel appearing for the Respondent made a request to extend the time for completion of the construction of godown on the property indicated in the Application Form submitted by the Respondent.

Considering the fact that the Corporation itself has extended the period by another three months, we deem it fit and proper to grant three more months from today, to complete the construction of the godown, as per the terms and conditions indicated in the Letter of Intent issued by the Appellant.