

(2019) 08 RAJ CK 0270
In the Rajasthan High Court
Case No : Special Appeal Writ No. 49 Of 2019

Kanta Chouhan

APPELLANT

Vs

Indian Oil Corporation Ltd And Ors

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Right To Information Act, 2005 — Section 8(1)(e), 8(1)(j)
Rajasthan Land Revenue Act, 1956 — Section 90A
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 RAJ CK 0270

Hon'ble Judges : Sangeet Lodha, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Sanjeet Purohit, Hemant Balani, Sandeep Shah, Puneet Parihar,
Manoj Bhandari, Rajesh Parihar

Final Decision : Allowed

Judgement

Sangeet Lodha, J

1. This intra court appeal is directed against the order dated 14.8.18 passed by the learned Single Judge of this court, whereby the writ petition preferred by the appellant, questioning the legality of Letter of Intent (LoI) dated 19.10.15 issued in favour of the fifth respondent-Girdhari Lal offering him LPG Distributorship at Sojat, has been dismissed.

2. The facts relevant are that the oil companies including respondent-Indian Oil Corporation Limited (IOCL) issued an advertisement for awarding LPG Distributorship at various places in the State of Rajasthan. The appellant as also the fifth respondent applied for award of LPG Distributorship of IOCL at location Sojat City, District Pali under OBC category. The award of Regular LPG Distributorship was to be governed by the Guidelines issued by the oil companies as laid down in the Brochure published in the month of December, 2012. As per sub clause (vii) of clause 6.1 an individual applying for the distributorship was required to own a plot of land of adequate size (within 15 kms. from municipal/

town/village limits of the location offered in the same State) for construction of godown, for storage of 8000 kg. of LPG in cylinders or ready LPG storage godown as on the last date for submission of application as specified in the advertisement or corrigendum issued, if any, which is freely accessible through all weather motorable approach road (public road or private road connecting to the public road). In case of private road connecting the public road, the same should belong to the applicant/member of Family Unit as defined in multiple distributorship norm of eligibility criteria. Further, in case of ownership/co-ownership by the family members in respect of such private road, consent letter from respective family member was required.

3. The appellant came to know that the fifth respondent has offered the land for construction of godown which did not meet the requirements as laid down by the guidelines and he had submitted forged documents to establish his eligibility for grant of distributorship. The appellant by way of an application filed under Right to Information Act, 2005 ('RTI Act') to IOCL to furnish the details of the land and other documents submitted by the fifth respondent. The application of the appellant was rejected by IOCL vide communication dated 10.2.15 while referring to provisions of Section 8(1)(e) and 8(1)(j) of RTI Act. The appeal preferred by the appellant against the order rejecting the application was also dismissed by the Appellate Authority by passing a non speaking order.

4. Pursuant to the draw of lot conducted, the fifth respondent was selected for award of distributorship in question. On the basis of the document produced by the fifth respondent, Field Verification of Credentials (FVC) was conducted for assessing his eligibility. The IOCL found the fifth respondent eligible and accordingly, issued an LoI in his favour on 19.10.15.

5. On the basis of the application filed by the fifth respondent under Section 90A of Rajasthan Land Revenue Act, 1956 (for short "the Act of 1956") seeking the change of the land use for construction of godown, the appellant came to know that the land offered by him for construction of the godown does not meet the criteria laid down under the Guidelines inasmuch as, the land offered was not connected with the public road as required.

6. As a matter of fact, the concerned patwari after site inspection submitted the report clarifying that the land comprising khasra no.1852, which was offered by the fifth respondent for the purposes of godown was not connected with the public road. The patwari reported that in between the land offered by the fifth respondent and the public road comes a land which has been recorded in the name of an independent khatedar falling under khasra no.1855. It is submitted that for this reason, the application preferred by the fifth respondent under Section 90A of the Act of 1956 was kept in abeyance.

7. The appellant represented to the IOCL to withdraw the LoI issued in favour of the fifth respondent but to no avail. In these circumstances, the appellant preferred the writ petition before this court, which stands dismissed by the

learned Single Judge by the order impugned. Hence, this appeal.

8. The learned Single Judge has dismissed the petition preferred by the appellant while accepting the contention of the IOCL that the candidate selected was allowed to make available the approach road for godown within time frame as specified in LoI and therefore, the claim of the selected candidates was not rejected at the time of FVC being conducted. The learned Single Judge observed that the IOCL has expressed its satisfaction upon the land in question and other parameters of the policy prescribed for grant of distributorship have been validly followed by the selected candidate. The learned Single Judge observed that vide order dated 19.6.17, the issue with regard to right to way in question has been decided by the Additional Collector in favour of the fifth respondent and therefore, no interference is called for in exercise of the writ jurisdiction.

9. Learned counsel appearing for the appellant contended that learned Single Judge has failed to examine the issues raised in correct perspective, which has resulted in erroneous findings being arrived at. Learned counsel submitted that as per the Guidelines issued, the plot of land offered by the candidate for godown was required to be freely accessible through all weather motorable approach road as on the last date of submission of application as specified in the advertisement. That apart, in case of a private road connecting to public road, the same should belong to the applicant/member of family unit as defined in multiple distributorship norm of eligibility criteria and thus, admittedly when the fifth respondent was not having the approach road to godown as mandated, he being ineligible for consideration of award of distributorship, no LoI could have been issued in his favour. Learned counsel submitted that as per the report of patwari submitted under the directions of the Tehsildar, in the application filed, the fifth respondent, shown his land to be connected with the main road from khasra no.1853 and 1852 whereas the patwari categorically observed that there is no way connecting the land comprising khasra no.1853 and 1852 with the main road and thus, since the fifth respondent was lacking in eligibility criteria regarding the land proposed for godown, his candidature was liable to be rejected. Learned counsel submitted that in reply to the writ petition filed, the fifth respondent claimed that he was using the way passing through khasra no.1854 whereas, the land comprising khasra no.1854 is categorised in the revenue record as 'gair mumkin nada', which cannot be even used as approach road. Learned counsel submitted that strangely enough the fifth respondent relied upon a mutual agreement entered into with the khatedar of the land comprising khasra no.1855, consenting for providing part of his land for the purpose of the way which was executed and acted upon on 10.5.16 and thus, apparently, no way connecting the land offered from main road was available as on the last date fixed for submission of the application for award of distributorship. Accordingly, it is submitted by the learned counsel that viewed from any angle, the fifth respondent being not eligible for award of distributorship in question, his candidature was liable to be rejected. Learned counsel submitted that the learned Single Judge has even ignored the document

Annexure 12 placed on record whereby the respondent IOCL on similar set of circumstances denied to issue LoI to a person who was though declared successful in the draw of lot was lacking in eligibility criteria regarding the requisite approach road to the site offered for showroom. Learned counsel submitted that the eligibility criteria laid down by way of the Guidelines has to be followed strictly and the IOCL cannot be permitted to pick and choose in the matter of grant of LPG distributorship violating the norms laid down and therefore, the LoI issued in favour of the fifth respondent deserves to be quashed.

10. On the other hand, the counsel appearing for the fifth respondent while reiterating the stand taken before the learned Single Judge, submitted that after selection of the fifth respondent in draw of lot, FVC was conducted by IOCL wherein he was found fulfilling the eligibility criteria in respect of the land offered for the godown and therefore, the decision of the IOCL in issuing LoI in his favour cannot be faulted with. Learned counsel submitted that the khatedar tenant of the land comprising khasra no.1855 had surrendered 0.09 hectare land for the purpose of way, to the State Government, which stands fortified from order dated 19.6.17 passed by the Additional Collector, Pali in Revenue Case No.11/16. Learned counsel submitted that the said land was approachable also from the way passing through khasra no.1854 and thus, it cannot be said that the fifth respondent was lacking in eligibility criteria with regard to the land offered for godown. Learned counsel submitted that the fifth respondent is operating LPG distributorship already installed at the location in question, for last two years and thus, at this belated stage, the award of distributorship in favour of fifth respondent even otherwise cannot be interfered with by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

11. Learned counsel appearing for IOCL submitted that LoI was issued in favour of the respondent after conducting FVC wherein it was found that the land offered by the fifth respondent for godown meets the requirement as provided under the Guidelines inasmuch as, the same was connected with all weather motorable approach road for ingress and outgress. Drawing the attention of this court to trace map obtained at the time of FVC from patwari concerned, learned counsel submitted that FVC Committee found that a mud approach road to the godown, connecting to asphalt road was in existence. Learned counsel submitted that the approach road was being used by the general public for having access to their agriculture fields. Learned counsel submitted the purpose of Guidelines and the Policy is to ensure that proper uninterrupted supplies can be maintained to and from the godown and thus, the fifth respondent fulfilling the eligibility criteria was rightly issued LoI. Learned counsel submitted that the fifth respondent has also managed to secured consent from all co-owners of khasra no.1855 for the provision of alternative route, in addition to route as available before and thus the objections sought to be raised by the appellant was absolutely baseless.

12. We have considered the submissions of the learned counsel for the parties

and perused the material on record.

13. Indisputably, the controversy raised rolls around the eligibility criteria for individual applicants laid down under clause 6.1 (vii) of the Guidelines, issued by the oil companies for selection of regular LPG Distributorship, which may be beneficially quoted:

"6.1 The applicant shouldxxxxx.....xxxx....

vii. Should own a plot of land of adequate size (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of godown for storage of 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown as on the last date for submission of application as specified in the advertisement or corrigendum (if any). As per Gas Cylinder Rules 2004, the floor area of the storage shed for storing 8000 kg LPG in cylinders should be 80 sq metres. The length of the storage shed should not be more than 1.5 times of width of storage shed. There should be clear minimum safety distance of 7 meters between storage shed and the boundary wall/fencing. The plot of land with minimum dimension of 26.15 metres by 27 metre is adequate. It should be freely accessible through all weather motorable approach (public road or private road connecting to the public road). In case of private road connecting to the public road, the same should belong to the applicant/member of Family Unit as defined in multiple distributorship norm of eligibility criteria, 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.

The land should be plain, in on 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.

In case an applicant has more than one suitable plot for construction of godown for storage of minimum 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown as on the last date for submission of application as specified in the advertisement or corrigendum (if any), the details of the same can also be provided in the application." (Underlines Added)

14. A perusal of Clause 6.1 (vii) makes it abundantly clear that the land proposed for construction of the godown besides being of adequate size, should be:

(i) accessible through all weather motorable approach;

(ii) the approach road may be a public road or private road connecting the public road;

(iii) in case of private road connecting to public road, the same should belong to the applicant/member of family unit as defined in multiple distributorship norms

of eligibility criteria; and

(iv) 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.

15. Further, it also cannot be disputed that in terms of the Clause 6.1 (vii), the adequate size of plot of land owned by the applicant proposed for godown connected with the all weather motorable road as aforesaid, must be available with the applicant as on the last date for submission of application as specified in the advertisement or corrigendum, if any.

16. Admittedly, the fifth respondent offered the land comprising khasra no. 1852 ad measuring 1803.86 sq. meters i.e. 0.1804 hectare out of his khatedari land of the said khasra admeasuring 2.2700 hectare, for establishment of godown.

17. It is noticed that in the first instance, the fifth respondent had taken the stand that the land owned by him proposed for establishment of godown is connected with the public road by an approach road passing through khasra no.1854. But then, a map produced on record reveals that in between the land comprising khasra no.1852 and 1854, there exists the land comprising khasra no.1853 and 1853/1. There was no revenue record produced showing that there is an existing way passing through khasra no.1854. Rather, as per the report of the Patwari prepared during the consideration of the application of the fifth respondent for proposed conversion/ surrender of the land, on the directions of the Tehsildar, Sojat, placed on record as Annexure-9, the land comprising khasra no.1853 and 1852 was not connected with any public way. It was specifically recorded in the said report that between the public way and the land comprising khasra no.1852 and 1853, there exists private khatedari land comprising khasra no.1855. The trace map of the land comprising khasra no.1850, 1851, 1853 also does not reflect that the said lands were directly connected with the public way.

18. It is true that as per the report submitted by the Revenue Inspector, at the instance of Sub-Divisional Officer, Sojat City, there exists old way passing through khasra no.1854 which is being used as approach road for khasra no.1853 but a perusal of the trace map annexed with the said report clearly reflects that there was no such way existing in the revenue record, rather, the existence of the way was attempted to be shown by using the red line, which is apparently, not part of the revenue record. Thus, the acceptance of the IOCL of existence of the old way passing through khasra no.1854 is apparently contrary to the revenue record and existence thereof appears to have been projected so as to extend favour to the fifth respondent. In any case, the existence of the approach road to khasra no.1853, in no manner, could be construed to be all weather motorable road available as on the date of the last date fixed for submission of the application form. Thus, the contention sought to be raised by the IOCL and fifth respondent that the land offered by the fifth respondent for establishment of the godown was connected with all weather motorable road cannot be accepted.

19. Obviously, the fifth respondent proposed yet another land i.e. land comprising khasra no.1855 for the purpose of establishing approach road, for the reason that there was no approach road existing passing through khasra no.1854. Admittedly, the land comprising khasra no.1855 was sought to be acquired by the fifth respondent by way of mutual agreement entered into with the khatedars of the land for establishing 40 ft. wide way, on 10th May, 2016, which clearly indicates that as on the last date of the submission of the application form, the land proposed by the fifth respondent was not connected with the public way directly or by way of public road or private road connecting to public road.

20. In our considered opinion, the requirement of the availability of the land of the adequate size connected with the all weather motorable road, an eligibility condition being not fulfilled by the fifth respondent, his candidature was liable to be rejected for lacking in eligibility criteria and no LoI could have been issued in his favour though he was selected by way of draw of lot.

21. It goes without saying that IOCL, a State undertaking, is under an obligation to act fairly and reasonably and maintain complete transparency in the matter of award of LPG Distributorship. Once the eligibility criteria is laid down in the Guidelines published for selection of LPG Distributors, the IOCL was under an obligation to adhere to the same strictly. Keeping in view the terms of the eligibility criteria regarding the land for godown as prescribed under clause 6.1(g) of the Guidelines, the IOCL could not have relaxed the same and permit the fifth respondent to provide all weather approach road to the godown at the later stage. It is quite possible that many persons who were otherwise eligible to apply for the LPG Distributorship in question, might not have even applied for the reason that they were not fulfilling the eligibility criteria in respect of the land for the godown as on the last date of submission of the application. Thus, the action of the IOCL in relaxing the eligibility criteria for the respondent dehors the Guidelines issued, apparently, lacks in transparency, which cannot be countenanced by this court. Admittedly, as per clause 12 of the Guidelines, in case of rejection of the selected candidates due to findings in the FVC or in case of withdrawal of LoI of the selected candidates, draw for selection would be held again and thus, on account of the action of the IOCL in not rejecting the candidature of the fifth respondent on account of his lacking in eligibility criteria, apparently, the right of the appellant and her likes of participation in the draw of lot afresh for the award of distributorship in question, is adversely affected.

22. In view of the discussion above, we are not in agreement with the view taken by the learned Single Judge and therefore, the impugned order deserves to be set aside and the writ petition preferred by the appellant deserves to be allowed.

23. In the result, the special appeal is allowed. The order impugned dated 14.8.18 is set aside. The writ petition preferred by the appellant is allowed. The LoI issued in favour of the fifth respondent for award of LPG Distributorship for the location Sojat is quashed. The LPG Distributorship awarded in favour of the

fifth respondent shall stand cancelled. The respondent IOCL is directed to conduct re-draw for the award of LPG Distributorship in question as per clause 12 of the Guidelines, obviously, after exclusion of the candidature of the fifth respondent. The re-draw shall be conducted within a period of four weeks from the date of of this order. No order as to costs.