

(2018) 08 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ No. 4338 of 2016

Kanta Chouhan @APPELLANT@Hash Indian Oil Corporation Ltd

Date of Decision : 14-08-2018

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 90A
Rajasthan Tenancy Act, 1955 — Section 251

Citation : (2018) 08 RAJ CK 0080

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Ravi Bhansali, Prashant Tatia, Manoj Bhandari, LR Bishnoi, Sandeep Shah

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. Brief facts as noticed by this Court are that an advertisement for awarding of regular LPG Distributorship was published on 31.12.2012. The site in question was published at S.No.182 for awarding the distributorship of Indian Oil Corporation at Sojat, Pali under OBC category. The procedure for selection of candidates, determining the eligibility criteria of applicants, carrying out the draw of lots, conducting the Field Verification of Credentials (FVC), dealing with the grievances and complaints etc. was provided in the Guidelines for Selection of Regular LPG Distributors (for short â??Guidelinesâ??) published in December, 2012. The petitioner and private respondent no.5 both applied for the same and participated in the process.

The petitioner, however, raised an issue regarding the land offered by the private respondent for construction of the godown, pointing out that it did not meet the requirements as laid down by the Guidelines as the way connecting the land in question with the road was not available with the private

respondent. The petitioner sought information regarding the same under RTI Act but the same was not given. However, the private respondent was

selected by draw of lots being conducted by the respondent Corporation on 20.11.2014 and a letter of intent was issued in his favour on 19.10.2015.

3. Counsel for the petitioner has demonstrated from trace map Annex.8 that the land offered by the private respondent for construction of godown

does not have any approach road. Counsel for the petitioner has further drawn the attention of this Court to the report issued by the Patwari, Sojat on

15.1.2016 in which it was recorded that the land situated in khasra nos.1853 and 1852 were not connected with public road. The Patwari further

recorded that in between the petitioner's land and the public road, there is a land of khasra no.1855 which has been recorded in the name of

another khatedar. Counsel for the petitioner has also shown that the issue was brought to the knowledge of the respondent authorities but an illegal

FVC was conducted by the authorities and NOC was issued in favour of the private respondent for constructing a godown on the land offered by him

contrary to law. Counsel for the petitioner has also shown that the controversy regarding Section 90A of the Act of 1956 was put in abeyance by the

Municipal Council and the license was suspended by the D.S.O. while recording that the license was issued in gross violation of Rajasthan Petroleum

Product (Licensing and Control) Order, 1990. Counsel for the petitioner has further shown that since there was no free accessibility to the land in

question, therefore, the respondent Corporation ought to have cancelled the LOI granted in favour of the private respondent. Counsel for the petitioner

has further submitted that in similar circumstances, the candidature of another candidate was rejected by the respondent Corporation which is

reflected at Annex.12 dated 14.1.2015. Counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court in B.R. Chowdhury.

vs. Indian Oil Corpn. Ltd. And others reported in (2004) 2 SCC 177, the relevant para no.9 reads as follows:-

9. The appellant gave an affidavit for securing the dealership. In paragraph 10 of the affidavit, which is reproduced in the impugned order, it is

clearly stated that if any information given by the appellant in any application or in any document submitted by him in support of his application for the

award of dealership is found to be untrue or incorrect or false, the Corporation would be within its rights to withdraw the letter of intent, terminate the

dealership/distributorship (if already awarded) and that he would have no claim whatsoever against Indian Oil Corporation Ltd. For such

withdrawal/termination. Further paragraph 56 of the memorandum of agreement, as indicated in the impugned order, gave liberty to the Corporation to terminate the agreement on finding that any information given by the dealer in his application for appointment was found to be untrue or incorrect in any material respect.â??

Counsel for the petitioner has also relied upon the judgment of this Court in Ram Lal vs. Jagannath & Ors. Reported in 2016(2) DNJ Raj. 478 wherein

this Court has laid down the law that right of way cannot be permitted by the Tehsildar as per Section 251 of the Rajasthan Tenancy Act, 1955.

4. Counsel for the respondent Corporation refuted the submissions and submitted that the letter of intent in favour of the private respondent was

justified and lawful as he was fully eligible and has been selected by draw of lots. Counsel for the respondent Corporation further states that the

private respondent was selected and thereafter FVC was conducted by respondent Corporation wherein the candidature of the private respondent

was found to be suitable. Counsel for the respondent Corporation further states that the petitioner has submitted a complaint on 15.1.2015 upon which

an enquiry was done and a satisfaction was arrived at by the respondent Corporation that the complaint was without any basis. Counsel for the

respondent Corporation however, pointed out that the earlier complaint was qua some other deficiency whereas this writ petition has been filed on

totally different grounds while trying to show some other deficiency. Counsel for the respondent Corporation refers to para 9 of the reply, which reads

as follows :-

â??9. That the averments contained in para 9 of the writ petition are emphatically denied. It is submitted that as per Guidelines applicable, the piece of

land for the purpose of godown should be freely accessible through all weather motorable approach road (public road or private road connecting public

road). In the present case, the FVC Committee had physically inspected the site offered by the fifth respondent for godown in the presence of fifth

respondent and the concerned Patwari who had also fortified the fact of existence of road since last many years. The offered road as seen by the

FVC Committee had a mud approach of adequate measures connecting to

asphalt road to the godown land. On an enquiry, it was informed that the road under consideration was being utilized by the public for accessing their agricultural fields. The true and correct copy of the trace map as secured at the time of FVC, from the patwari concerned, showing existence of road is annexed herewith and marked as Annexure-R-1/3. Furthermore, actual inspection of the site had left no iota of doubt that there exists a right to way/road which was being used by the general public for having access to their agricultural fields. In this regard it is also pertinent to note that the purpose of Guidelines and Policy is to ensure that proper and uninterrupted supplies can be maintained to the godown of the distributor, once commissioned. As a matter of fact, identifying a need for further clarification on the topic, the industry (All Oil Marketing Companies) under the aegis of MOP & NG (Ministry of Petroleum and Natural Gas) has circulated a change in the requirement of approach road and the same has been made effective to all pending LOI cases.

The changed guidelines states :

“MOP & NG has advised that multiple applications received with the same land for godown/showroom and same financial instrument(s) for a particular Regular LPG distributorship location should not be considered. Further, based on the suggestions made by MOP & NG on certain selection

aspects and deliberations held among the Industry members, following amendments are also being incorporated in the selection guidelines :

“The selected candidate is now allowed to make available the approach road for the godown within time frame as specified in the L.O.I. Rejection

will not be made on this account at the time of FVC.”

Thus, it is clear that the spirit of the Policy is only to ensure un-interrupted supplies and not to cause cancellation on this account. It may also be noted

that the candidate selected (Respondent no. 5), has also managed to secure consent from all the co-owners of Khasra No.1855 for provision of an

alternative route, in addition to the route as available before. Thus, it is evident that the supplies to godown of the fifth respondent can be made without

the risk of hindrance.”

Counsel for the respondent Corporation further refutes the submission of the petitioner regarding rejection of candidature of similarly situated

applicant. He submits that such parity cannot be drawn by the petitioner as the

facts and circumstances of that case were different.

5. Counsel for the private respondent no.5 also refuted the submissions and has shown an order passed by the Additional Collector, Pali in Revenue

Case No.11/16 dated 19.6.2017 which was an appeal filed by the present petitioner against the way in question whereby, the competent authority has upheld the right to way and relevant portion of the said order is reproduced as follows:-

â??i=koyh ds layXu nLrkostkr dk voyksdu ls ;g Liâ??V gksrk gS fd xzke /khukokl ds [kljk uEcj 1855 ds [kkrsnkjku }kjk Hkh 0-09 gsDVs;j Hkwfe

jkLrk iz;kstukFkZ jkT; ljdkj ds i{k esa leiZ.k dh xbZ gS] ftls jktLo uDâ?kk VÂasI esa rjehe fd;k x;k gSA bl izdkj izdj.k esa of.kZr izâ?uxr Hkwfe rd

igqWp ekxZ miyC/k gSa] tks jktLo uDâ?kk esa nfâ?kZr gSA bls vfrfjDr jsLiksMsUV la[;k 2 }kjk tSj vihy vknsâ?k ikfjr djus esa fdlh izdkj dh fof/kd

=qVh ugha ikbZ tkrh gSA ifj.kke Lo:i vihykaV }kjk izLqr vihy lkjghu gksus ls [kkfjt dh tkrh gS rFkk izkf/kd`r vf/kdjh uxjikfydk lkstr }kjk izdj.k la[;k

36@2015&16 varxZr /kkjk 90&d jktLFkku Hkw jktLo vf/kfu;e 1956 esa ikfjr vknsâ?k fnuakd 15-12-2015 dks ;Fkkor j[kk tkrk gSA bl fu.kZ; dh

izekf.kr izfrfjih ds lkFk vf/kuLFk U;k;ky; dk jsdMZ ykSVk;k tkosAâ??

Counsel for the private respondent has relied upon the judgments passed by this Court in :-

(I) D.B. Civil Special Appeal (W) No.209/2013 (Surendra Kumar Surana vs. Union of India & Ors.) decided on 10.12.2015 ;

(II) D.B. Civil Special Appeal (Writ) No.1354/2013 (Vikram Manda Bishnoi vs. Indian Oil Corporation Ltd. & Ors.) decided on 27.1.2016 ; and

(III) S.B. Civil Writ Petition No.339/2013 (Rajendra Prasad Pancharia vs. Union of India & Ors.) decided on 29.11.2016.

By these judgments, counsel for the private respondent has pointed out that this Court in various judgments has left it to the satisfaction of the

company concerned for considering the compliance of the policy.

6. After hearing learned counsel for the parties and perusing record, this Court finds that the respondent Corporation has taken a categorical stand that

the selected candidate was allowed to make available the approach road for the godown within time frame as specified in the LOI and the rejection of

the claim of the selected candidate will not be made on this count at the time of FVC. Counsel for the respondent Corporation has sufficiently

demonstrated that these are the guidelines issued by the Ministry of Petroleum and Natural Gas and are in vogue. This Court also finds that the

Corporation has expressed its satisfaction upon the land in question and as the Corporation has taken a categorical stand that other parameters of the

policy prescribed by them for grant of distributorship issued in 2012 has been validly followed by the selected candidate i.e. respondent no.5. This

Court finds that the precedent law cited by counsel for the petitioner is not applicable to the present case as there, the satisfaction of the company in

question was not with the selected candidate whereas in the present case the satisfaction of the company in question is in favour of the selected

candidate. Moreover, this Court also finds that the judgment passed by the Additional Collector on 19.6.2017 decides the right of way in question in

favour of the private respondent and, therefore, since the way is upheld and the respondent Corporation is satisfied that it is a fit case for issuing LOI

and permitted the private respondent to function, then no interference is called for in this writ petition. The private respondent is already function as a

distributor of LPG for last 2 years since the allotment was made and LOI was issued by the respondent Corporation.

7. In light of the aforesaid the present writ petition, being devoid of any force, is hereby dismissed.