

(2019) 12 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 8665 Of 2012

Kanwal Preet Singh

APPELLANT

Vs

Indian Oil Corporation Ltd And Others

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Citation : (2019) 12 SHI CK 0027

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : B.C. Negi, Pravesh Negi, K.D. Sood, Sanjeev Sood, Rajnish K. Lall, Nitin Thakur, Ajay Sharma, Ajay Thakur

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has prayed for the following substantive reliefs:-

"It is, therefore, most respectfully prayed that this petition may kindly be allowed and following orders may kindly be passed:-

i) Issue a writ of certiorari to quash Annexure P-6 i.e. registered letter dated 18-09-2012 whereby the redraw is to be held at 10:00 AM on 11-10-2012 and similar letters issued to the other private respondents.

ii) Issue a writ of mandamus directing the Respondent authorities not to implement Annexure P-6 i.e. registered letter dated 18-09-2012 whereby the redraw is to be held at 10:00 AM on 11-10-2012 and similar letters issued to the other private respondents.

iii) Issue a writ of mandamus directing the respondent authorities to issue the letter of intent qua the LPG distributorship in question and further grant suitable time to the present petitioner to comply with the terms and conditions of the letter of intent specially the condition qua existence of a registered lease deed

with respect to the lands sought to be provided for setting up a storage godown and a shop.

iv) issue a writ of Certiorari to Call for the records pertaining to the case at hand.

v) Direct the Respondent authorities to pay the cost of the petition.

vi) Such other order, which this Hon'ble Court deems fit and proper, may also be passed in favour of the petitioner, in the interest of justice and fair play."

2. Brief facts necessary for the adjudication of the present petition are that respondent-Corporation invited applications for appointment of LPG distributorship vide advertisement Annexure P-1. By way of this advertisement, one of the locations identified for the said purpose in the State of Himachal Pradesh was at Dadasiba (District Kangra), which was reserved for Scheduled Caste category in Rural area. It was mentioned in the said advertisement that detailed guidelines on eligibility and selection process were contained in the Brochure so issued by the respondent-Corporation. Last date for submission of application was 10.10.2011.

3. Petitioner applied for the allotment of the said dealership. His grievance is that despite the fact that he was initially conveyed on 03.02.2012 that he stood selected for the purpose of allotment of the said distributorship, however, subsequently, the dealership rather than being allotted to him was put to re-draw of lots, as is evident from Annexure P-6 issued by the respondent-Corporation, dated 18.09.2012. The contention of the petitioner is that despite the fact the he was fulfilling the eligibility criteria, as was contemplated in the advertisement as also the Brochure, which was issued by the respondent - Corporation, yet his candidature was arbitrarily rejected by the respondent-Corporation. It is in these circumstances that the present petition has been filed with the prayers detailed above.

4. Respondent-Corporation while denying the claim of the petitioner has put forth its stand that in terms of the advertisement and Brochure, which stood issued by the respondent-Corporation, in order to be eligible for being selected for the distribution of the dealership in issue, a party either ought to own the land in terms of the Brochure and advertisement or it should have been in possession thereof by way of a registered lease deed. As per the respondent-Corporation, the land on the basis of which, the petitioner applied for allotment of the dealership in dispute, was neither owned by him nor he submitted alongwith his application a registered lease deed pertaining to the said land.

5. The contesting private respondents have also made their submissions on the same lines as the respondent-Corporation.

6. Learned Senior Counsel appearing for the petitioner has argued that as per the Brochure issued by the respondent - Corporation, there was no requirement of submitting a registered lease deed in case of a person who was not the owner of the land. He has further argued that rejection of the claim of the petitioner is

in violation of the provisions of Clause 7, 9, 11 and 13 of the Brochure.

7. On the other hand, learned Senior Counsel appearing for the respondent-Corporation while drawing the attention of this Court to the contents of the Brochure (Annexure P-2), has argued that contents thereof have been misinterpreted by the petitioner because contents thereof are explicitly clear that either the land has to be owned by the applicant or the applicant must be possessing a registered lease deed with regard to the land in issue for a minimum period of 15 years.

8. I have heard learned Counsel for the parties and gone through the documents appended with the petition as well as with the replies.

9. The Brochure of guidelines for selection of regular LPG Distributorship so issued by the respondent-Corporation inter alia provides for eligibility criteria for an individual applicant. Same is contained in Clause 7 thereof. Clause 7.1 (vi) and (vii) of the Brochure provides as under:-

"vi. 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 800 Kg of LPG in cylinders or ready LPG Cylinders storage godown as on the date of application. As per Gas Cylinder Rules 2004, the floor area of the storage shed for storing 8000 kg LPG in cylinders should be 80 sq meters. 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 meters by 27 metre is adequate. It should be freely accessible through all weather motorable approach road (public road or private road of the applicant connecting to the public road) and 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.

In case an applicant has more than one suitable plot for construction of god own for storage of minimum 8000 kg of LPG in cylinders or ready LPG cylinder storage god own as on the date of application, the details of the same can also be provided in the application.

vii. Own a suitable shop of minimum size 3 meters by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3 metres by 4.5 metre at the advertised location or locality as specified in the advertisement as on the date of application. It should be easily accessible to general public through a suitable approach road.

In case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3

metre by 4.5 metre at the advertised location or locality as specified in the advertisement as on the date of application, the details of the same can also be provided in the application."

10. The following is also mentioned in the Brochure:-

"Reference vi & vii above:

'Own' means having ownership title of the property or registered lease agreement of minimum 15 years in the name of applicant/family member as defined in multiple distributorship norm of eligibility criteria.

In case the land is jointly owned by the applicant/member of 'Family Unit' (as defined in multiple dealership/ distributorship norm) with any other person(s) and the share of the land in the name of applicant /member of the 'Family Unit' meets the requirement of land including the dimensions required, then that land for godown/showroom will also qualify for eligibility as own land subject to no objection from other owner(s)."

11. According to the petitioner, the interpretation of this clause is that if a person applies for dealership by holding out that he is owner of the land in question, then, he either has to have title over the same or he must have a registered lease deed of minimum 15 years qua the land in issue. However, if a person is not applying as a owner, then, there is no necessity for the applicant to possess a registered lease deed of minimum 15 years of the property in issue.

12. On the other hand, contention of learned Senior Counsel for the respondent-Corporation is that word "own" mentioned in the Brochure cannot be confused with words "registered lease deed". These words have to be read by giving simple meaning to them and word "own" contemplates an applicant who applies on the basis of title and words "registered lease deed" contemplate an applicant who applies on the strength of a registered lease deed for a minimum 15 years.

13. In my considered view, there is no ambiguity in the Brochure as to what is the meaning of word "own" and "registered leased deed". In fact, there are two distinct categories who can apply for the dealership in question, i.e. (a) an individual, who owns the land/property, meaning thereby that he is possessing title over the same; and (b) a person who otherwise may not be owning the property but he has a valid registered lease deed qua the land in his favour for minimum 15 years.

14. A person who is owner of the property cannot be treated with same yardstick as a person who may be having a registered lease agreement qua a property for a minimum period of 15 years. These are two distinct categories and distinction between the two has to be maintained.

15. Further, in my considered view, there is a valid reason as to why the respondent-Corporation has called upon the applicants who do not own the land to submit a registered lease agreement of the land in their favour for a minimum

period of 15 years. Same is that if there is a valid registered lease deed in favour of a person for a minimum period of 15 years, then at least said person will have possession for a minimum period of 15 years over the land in issue where dealership has to be set up. Besides this, even under the provisions of the Registration Act, it will be only on the strength of a duly registered lease deed that a party can approach the respondent-Corporation for the purpose which is envisaged in the advertisement and the Brochure.

16. At this stage, another important fact needs mention and the same is that as I have already stated hereinabove the last date for submission of application in terms of the advertisement Annexure P-1 was 10.10.2011. The lease agreement which has been appended with the petition by the petitioner as Annexure P -5 has been entered into by the petitioner with one Shri Parmeshwari Dass on 14.02.2012. Incidentally, the same is not a registered lease deed. Be that as it may, as cut of date mentioned in the advertisement was 10.10.2011, then but obvious, the petitioner was to append with the application a lease deed which obviously was executed before 10.10.2011. There is no lease agreement placed on record by the petitioner preceding the last date of submission of the application. In other words, the lease deed which might have been appended by the petition alongwith his application has not seen the light of the day. Annexure P-5 being a lease deed having entered after the last date of submission of the application, has been specifically mentioned in the reply which has been filed by the Corporation to the writ petition and no rejoinder to the same has been filed by the petitioner. This demonstrates that the petitioner has not approached the Court with clean hands.

17. Now, this Court shall also deal with the contention so raised by learned Senior Counsel for the petitioner with regard to the application format appended with the petition as Annexure P-4. On the strength of Clause 9 thereof, learned Senior Counsel for the petitioner has argued that said Clause though contemplates the premises to be either owned or leased but the same does not contains rigours of lease being registered lease deed only. In my considered view, this particular clause as provided in the application format has to be harmoniously read with the provisions of the advertisement and the Brochure because the Brochure provides that lease deed has to be registered. Terms of the advertisement provided that detailed guidelines of eligibility and selection process are given in the Brochure, therefore, the Brochure is also to be treated as part and parcel of the advertisement. In my considered view, the word 'registered' has to be read alongwith the word 'lease' mentioned therein.

18. Another point raised by learned Senior Counsel for the petitioner with regard to the non-compliance of the conditions contemplated in Clause 9, 11 and 13 of the Brochure also deserves dismissal. In my considered view, there is no violation of the provisions of Clause 9 of the Brochure as Clause 9 of the same in general and Clause 9.5 in particular thereof deals with receipt of the application or deficiency mentioned therein. Similarly Clause 11 deals with field verification

of credentials and Clause 11.2 thereof provides that if during field verification, it is found that the information given in the application by the applicant is at variance with the original documents and that information affects the eligibility of the candidate, then a letter would be sent to the candidate concerned pointing out the discrepancy. Record demonstrates that vide letter dated 26.11.2011, the petitioner was called upon to supply a registered lease deed of the land in issue which was never supplied by him. Though this fact during the course of the arguments is disputed by learned Senior Counsel for the petitioner, however, record demonstrates that there is no rejoinder filed to the reply of the Corporation by the petitioner to rebut these pleadings. I reiterate that incidentally and interestingly, in terms of Annexure P-1, i.e. advertisement, which was issued by the respondent-Corporation, last date of submission of the applications, complete in all respects, was 10.10.2011, whereas Annexure P-5 which has been appended by the petitioner to demonstrate that there was a lease agreement in his favour entered into with one Parmeshwari Dass, was executed on 14th February, 2012.

19. Coming to clause 13 of the Brochure, in my considered view, this particular clause has no bearing as far as the factual matrix of the present case is concerned because this clause would come into picture only if there is some discrepancy vis-a-vis the land in issue as compared to the original documents in terms of the conditions contemplated in the advertisement and the Brochure. Therefore, this Clause has no application as far as the claim of the petitioner in this case is concerned because herein the candidature of the petitioner has been rejected as he failed to append with his application a registered lease deed for a minimum period of 15 years as was the condition precedent for applying for dealership in issue.

In view of above discussion, as this Court does not find any merit in the present petition, the same is accordingly dismissed. Pending miscellaneous application(s), if any, also stands disposed of. No order as to cost.