

(2021) 11 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 441 Of 2018

Kounsir Yousuf

APPELLANT

Vs

Bharat Petroleum Corporation And Another

RESPONDENT

Date of Decision : 10-11-2021

Acts Referred:

Citation : (2021) 11 J&K CK 0027

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. A. Wani, Mohsin Qadiri, Saba

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) Petitioner has thrown challenge to the communication dated 20.02.2018 issued by respondent Corporation, in terms whereof the petitioner's allotment of LPG Distributorship of BPC at Lalpora District Kupwara has been cancelled.

2) The facts which emerge from the pleadings of the parties are that respondent Corporation issued an advertisement notice inviting applications for allotment of LPG Distributorship for various locations in Jammu and Kashmir which included the location at Lalpora District Kupwara. The advertisement notice was published in the newspaper Daily Excelsior dated 14th of August, 2017. Petitioner responded to the said advertisement notice for allotment of distributorship of Lalpora area of District Kupwara and after fulfilling all the requirements and depositing the application fee of Rs.8000/, the respondent Corporation vide its letter dated 08.11.2017, informed the petitioner that she has qualified to be included for selection of distributorship to be held through draw of lots. She was asked to be present in the office of Deputy Commissioner, Srinagar, on 15.11.2017 for draw of lots. The respondents carried out the draw of lots and on 16.11.2017, petitioner was informed by respondent Corporation about her selection and she was asked to deposit an amount of Rs.40,000/ as confirmation

fee and to file original documents like ID Proof, date of birth proof, proof of educational qualification, land documents, lease deed and other documents. The petitioner is stated to have complied with all the requirements including deposition of requisite fee.

3) It is the further case of the petitioner that Field Verification was conducted by the officials of respondent Corporation and the petitioner was directed to keep funds available for future course of action. However, to the utter surprise of the petitioner, the impugned letter came to be issued by respondents whereby she was informed that due to wrong advertising of Block and Gram Panchayat in the advertisement notice, her selection has been cancelled.

4) Petitioner has challenged the cancellation of her selection for LPG Distributorship of BPC at Lalpora District Kupwara on the grounds that the impugned communication has been issued without any reason and justification; that the action of respondents is actuated with malafides, inasmuch as they wanted to accommodate some other blue eyed person; that due to the representation of the respondents, the petitioner was made to raise loans by selling her ancestral property and she had to change her position to her detriment; that the petitioner had to make huge investment on the basis of the promise and assurance extended to her by the respondents and that the respondents cannot be allowed to take undue advantage of their dominant position and exploit the petitioner.

5) The respondents have filed their reply to the writ petition wherein they have, more or less, admitted the factual assertions made by the petitioner so far as the same pertain to issuance of advertisement notice, fulfilling of requirements by the petitioner and her eventual success in draw of lots, in consequence whereof she was, in terms of communication dated 16.11.2017, informed that she has been declared successful in draw of lots for selection to LPG Distributorship at Lalpora District Kupwara. The reason given by the respondents for not finalizing the process of allotment of LPG Distributorship in favour of the petitioner is that in the advertisement notice a mistake had crept in whereby applications were invited for appointment of LPG Distributorship for various locations. According to respondents, the name of Gram Panchayat and Block in respect of location Lalpora was mentioned as Wavoora whereas the fact of the matter is that the location Lalpora falls in Gram Panchayat Lalpora Block Lalpora. According to respondents, because incorrect particulars of the location Lalpora were published in the notice inviting applications, as such, it was decided that a fresh advertisement notice incorporating correct particulars of the location be issued. It is claimed by respondent Corporation that it has a right to cancel, withdraw or amend the advertisement notice or to extend the due date of submission of application forms at its sole discretion without assigning any reason. It is contended that none of the legal rights of the petitioner has been violated by the action of respondents.

6) I have heard learned counsel for the parties and perused the record.

7) Since most of the facts urged by the parties are not in dispute, the only controversy which is required to be determined is as to whether, on the basis of the information regarding success of the petitioner in the draw of lots and deposition of requisite fee of Rs.4000/ by her, a legally enforceable right accrues in favour of the petitioner on the basis of which she can seek a direction against the respondents compelling them to issue allotment letter of LPG Distributorship in her favour.

8) So far as the selection of LPG Distributorship is concerned, the same is required to be made in accordance with the Unified Guidelines under Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak policies. Instant case relates to LPG Distributorship in Durgam Kshetriya Vitrak i.e. difficult and special areas. Guideline No.9 provides for inviting applications for locations falling in different types of schemes of LPG Distributorship. As per Guideline No.10 in the case of Durgam Kshetriya Vitrak policy, applicants have to deposit a non-refundable application fee of Rs.8000/. Guideline No.15 provides for holding of draw of lots in respect of eligible applicants whereas Guideline No.16 provides for the procedure for holding draw of lots. According to Guideline No.17, a successful candidate in the draw of lots has to submit an amount equivalent to 10% of the security deposit which amounts to Rs.40,000/ in respect of Durgam Kshetriya Vitrak category. Besides this, the candidate selected in the draw of lots has to submit certain documents, details whereof are given in the said Guideline. After completion of formalities prescribed under Guideline No.17, verification of the information given in the application form and the documents submitted by the selected candidate has to be conducted in terms of Guideline No.18 of the Guidelines. After completion of all the aforesaid processes, a letter of intent is issued in favour of the applicant whose application is found correct and the land offered is found suitable. The final letter of intent has to be issued with the approval of competent authority in terms of Guideline No.19, which reads as under:

"19 LETTER OF INTENT (LOI):

If in the FVC, the information given in the application by the applicant is found to be correct and the Land offered for Godown and Showroom are found to be suitable, final Letter of Intent (LOI) will be issued with the approval of competent authority. The selected candidate after receipt of LOI should fulfil the conditions specified in the LOI within a period of four months from the date of LOI or the time limit given by the OMC, failing which the LOI is liable to be withdrawn along with forfeiture of the amount remitted by the selected candidate before FVC.

If in the FVC it is found that information given in the application is at variance with the original documents and that information affects the eligibility of the candidate, then the LOI holder would be intimated through email, pointing out the discrepancy /discrepancies through Email. If it is established that false/incorrect/misrepresented information has been given in the application, candidature of selected candidate will be cancelled, the status of the LOI would

become null and void and the amount remitted by the selected candidate before FVC will be forfeited. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, an opportunity will be provided to the LOI holder to offer an alternate land for godown/ showroom as per eligibility criteria, as specified in the advertisement, except for the date of ownership of the land. This alternate land will be considered on the grounds of enhanced security / safety, better title (owned instead of leased), convenient location, lower operating cost etc."

9) A perusal of the aforesaid scheme of the Guidelines, particularly Guideline No.19, which is reproduced hereinabove, it is clear that it is only upon issuance of final letter of intent that a legitimate expectation would arise in favour of an applicant that he/she may be allotted LPG Distributorship by the Corporation. Even the final letter of intent, in fact, does not give rise to a concluded contract as it provides for fulfilling of conditions specified in the said letter within a period of four months from the date of issuance of said letter or within a time limit that may be given by the OMC failing which even the final letter of intent is liable to be withdrawn. Thus, the letter of intent which is issued by a Corporation in terms of Guideline No.19 of the Guidelines is only a conditional acceptance of offer made by an applicant.

10) In the instant case, the process of allotment of LPG Distributorship has not traversed beyond the stage of Field Verification of credentials which is provided under Guideline No.18 of the Guidelines. It is at this stage that the Field Verification Committee of respondent Corporation pointed out that the Gram Panchayat and Block for location Lalpora is not Wavoor but it is Lalpora only. The Committee has opined that the Gram Panchayat and Block have wrongly been advertised with a proposal for re-advertising of location Lalpora with the changes in Gram Panchayat and Block and refund of application fee of all the candidates as well as 10% Field Verification Credential amount submitted by the selected candidates.

11) In the instant case even the final letter of intent in terms of Guideline No.19 has not been issued in favour of the petitioner. As already noted, even the issuance of final letter of intent is only a conditional acceptance of offer which does not give rise to a concluded contract in favour of a selected applicant. Had the letter of intent been issued in favour of the petitioner, at least it could have been said that a legitimate expectation of allotment of LPG Distributorship would arise in her favour but in this case the process has not reached even that stage. Thus, no legally enforceable right or even a legitimate expectation has arisen in favour of the petitioner.

12) The contention of petitioner that respondents were not justified in cancelling the selection of petitioner is also without any merit for the reason that there was, admittedly, an error in the advertisement notice with regard to location, which is subject matter of the present case, and, as such, respondents were well within

their rights and fully justified in cancelling the process and issuing a fresh advertisement notice by incorporating the correct particulars of the location.

13) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.