
(2017) 07 GAU CK 0012
In the Gauhati High Court
Case No : 6602 of 2010

Mukul Borah

APPELLANT

Vs

The Union of India, & Ors.

RESPONDENT

Date of Decision : 19-07-2017

Acts Referred:

Citation : (2017) 07 GAU CK 0012

Hon'ble Judges : A.M. Bujor Barua

Bench : SINGLE BENCH

Advocate : M.K. Sharma, G.P. Bhowmik, S.S Roy

Judgement

1. Heard Mr. M.K. Sharma, learned counsel for the petitioner and Mr. G.P. Bhowmik, learned senior counsel assisted by Mr. S.S Roy, appearing for the respondent Hindustan Petroleum Corporation Limited (HPCL). None appears for the respondent No.1 being the Union of India.

2. The respondent HPCL had issued an advertisement, as published in the local daily newspaper namely The Assam Tribune dated 24.12.2009, inviting applications for appointment of retail outlet dealers for dealing with petroleum products. The petitioner accordingly submitted his application for being considered for the retail outlet to be located in the Rangia town. Column-F of the said notice for appointment indicates that the retail outlet for the Rangia town was proposed to be developed on company own basis.

3. It is the submission of the respondent HPCL that the aforesaid requirement indicates that the proposed retail outlet dealer would mandatorily have to lease out or transfer the concerned land in the name of the respondent HPCL.

4. The petitioner in this writ petition is aggrieved by a communication dated 09.07.2010 of the General Manager (EZ) of the respondent HPCL, by which the petitioner was informed that although as per the result declared on 26.05.2010, the petitioner was the first empanelled candidate, but later on, after scrutiny as per Clause 18(C) of the Dealership Selection Guideline, it was revealed that the

selection of the petitioner was not in accordance with the laid down guidelines and that it had resulted in a wrong selection. Accordingly, the petitioner was informed that the merit empanelled which was declared earlier, stood cancelled. The communication also provides that as there was no second empanelled candidate, the allocation would now be put up for re-advertisement.

5. The petitioner served a legal notice dated 23.08.2010 on the respondent authorities requiring the authorities to provide the petitioner with reasons for his empanelment being cancelled.

6. The respondent HPCL by their reply dated 03.09.2010 in paragraph-5 had stated as under:-

"Your client's candidature was rejected as the following was observed during the scrutiny of the selection process:

The land offered by your client was his late father's property which still lies in his late father's name. Furthermore, we have found that your client has not submitted any consent letter from his unmarried sisters and brothers for offering the said land to the Corporation. He has only submitted an affidavit stating that he is presently holding the right over the said land and that he has applied for the mutation of the same to his name.

The said location has been advertised for opening a company owned retail outlet, whereas your client has categorically mentioned "NO" to the question as to whether he is offering the land on lease to the corporation in the application submitted by him."

7. The reason stated by the respondent HPCL is two fold. The first reason is that the land offered by the petitioner is a joint ownership land of the petitioner as well as two other unmarried sisters inasmuch as, it is an inherited land from their deceased father and there being no partition in the land, the respondent authorities require a No Objection Certificate from the said two unmarried sisters, which in fact, had not been provided by the petitioner in his application.

8. The second reason stated by the respondent authorities is that under the requirement of the advertisement, the petitioner has to transfer the land in question in favour of the respondent HPCL. But, in the instant case, as against the relevant clause, the petitioner had stated that he would not transfer the land in favour of the respondent HPCL by stating a "NO" against the said clause.

9. The learned counsel for the petitioner submits that the bid submitted by the petitioner was a responsive bid in all respect and he has submitted all the documents that are required. But to a pointed query, as to whether the concerned No Objection Certificate was submitted or not, the learned counsel for the petitioner could not point out any material on record, which would indicate that such certificate was submitted along with the application form. The respondent authorities have made available the application submitted by the petitioner in original and allowed the learned counsel for the petitioner to inspect

the same. But in spite of such inspection, it is found that the required two certificates were not provided along with the application form.

10. On the other hand, the learned counsel for the petitioner submits that the two unmarried sisters of the petitioner are not against issuing any such No Objection Certificate and therefore, if the petitioner is given an opportunity, such certificate can be produced even as of now.

11. Against the said proposal, the respondent authorities have raised an objection by referring to the guidelines for selection of retail outlet dealers, wherein in Clause-9, sub clause-g and h, it had been stated that no addition/deletion/alteration will be permitted in the application form after the cut-off date for submission of applications and that no additional documents whatsoever will be accepted or considered after the cut-off date for submission of application.

12. On a perusal of the said two provisions of the guidelines, this Court is of the view that the said guidelines are to be read from the point of view that in the event, the applicant intends to submit a document, which would be within the realm of a curable defect, acceptance of such documents cannot be refused by referring to clause-9 (g) and (h) of the guidelines. Clause-9 (g) and (h) refers to, in the view of this Court, any such additional documents, which were otherwise not available with the proposed applicant at the time of making the application, but subsequently such lacuna is sought to be corrected by submitting documents at a later stage. But in the event, the nature of the document is such that the document was otherwise available with the applicant, but because of either wrong understanding of the clauses of the advertisement or for some other unavoidable reason, the applicant could not submit the document, it cannot be held that by invocation of Clause-9(g) and (h), such document can never be produced by the applicant at a subsequent date. The true purport of Clause-9(g) and (h) is that the applicant should not subsequently improve his case beyond what was available at the time of submission of the application.

13. But, be that as it may, the respondent authorities have also rejected the bid of the petitioner on the ground that in the application form relating to the Clause "are you willing to transfer the land on sale/long lease to the Oil Company", the answer given by the petitioner is "No."

14. As already noticed, it is a requirement of the advertisement itself that in respect of the proposed dealership outlet in Rangia, there is a mandatory requirement that the applicant would have to transfer the land to the respondent Oil Company in order to be eligible for the retail outlet dealership. In such view of the matter, the answer "No" given by the petitioner against the clause "are you willing to transfer the land on sale/long lease to the Oil Company" makes the application of the petitioner a non-responsive bid.

15. In such view of the matter, the respondent Company cannot be faulted with for cancelling the earlier selection made in favour of the petitioner. In such view of the matter, as the petitioner had categorically stated in his application that the

petitioner does not intend to transfer the land in question to the respondent HPCL as required in the advertisement, this Court is of the view that the subsequent cancellation of the selection of the petitioner by the respondent HPCL on a further scrutiny cannot be faulted with.

16. In such view of the matter, this writ petition is devoid of any merit and the same is accordingly dismissed, without any order as to cost.