

(2016) 01 PAT CK 0135

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4360 of 2015

Neeraj Kumar

APPELLANT

Vs

The Indian Oil Corporation Limited and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16

Citation : (2016) 2 PLJR 500

Hon'ble Judges : Ahsanuddin Amanullah, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ahsanuddin Amanullah, J.—1. Heard learned counsel for the parties.

2. The present writ application has been filed for quashing the letter No. PAT/LPG/NEW/OP/116/13 dated 02.03.2015 issued by the respondent No. 4 by which the selection of the petitioner for award of LPG Distributorship under OP Category at Bettiah has been cancelled.

3. The short facts of the case are that the Indian Oil Corporation Limited (hereinafter referred to as the "Corporation") published Advertisement on 18.05.2012 for new LPG distributorship at 80 locations. The petitioner applied for the same on 26.06.2012. After initial scrutiny, upon the cancellation of the selection of the earlier successful candidate in the draw held on 21.09.2013, the petitioner was included in the re-draw fixed for 22.02.2014 and declared as the successful candidate. Thereafter, on 06.10.2014, there was Field Verification of Credential (F.V.C.) by a Committee which after physical verification of the site submitted its report dated 06.10.2014 on 05.11.2014. The respondents No. 4 and 5 recommended to accord approval for issuance of Letter of Intent (L.O.I.) in favour of the petitioner. However, by the impugned order, the said selection of the petitioner was cancelled. The petitioner also filed a representation against the cancellation on 12.03.2015.

4. Learned counsel for the petitioner submits that the action of the respondents is absolutely arbitrary and patently illegal. It is submitted that even the reason assigned for such cancellation is untenable in view of the law settled by the Courts. Learned counsel submits that the sole ground for such cancellation is that the registered lease deed in favour of the petitioner for the private land to be used as passage/road for reaching at the site/land proposed for the godown was subsequent to the date on which the application was made. It is submitted that along with the application form, the petitioner had given the details of the land which was to be used for the godown supported by a deed of lease for 15 years. However, with regard to the access to the said plot from the public road, he had enclosed an affidavit from the land owners of the private land agreeing for use of their land for such purpose by the petitioner's lessors. It is submitted that prior to the actual field verification, the petitioner had also submitted a registered lease deed relating to the said private land for being used as passage/road from the godown site to the public road and thus the F.V.C. Committee had found the petitioner to be suitable and fulfilling all the requirements and therefore had recommended to grant approval for issuance of L.O.I. in his favour. Learned counsel submits that the issuance of the impugned order dated 02.03.2015 subsequently on an issue which was already looked into and decided by the F.V.C. Committee and not found to be in violation of any of the provisions related to such settlement, the impugned decision holding the petitioner not suitable is arbitrary exercise of authority. Learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of K. Vinod Kumar v. S. Palanisamy reported in , (2003) 10 SCC 681, the relevant being at paragraphs-8 and 11, in support of the contention that the requirement relating to furnishing of details of land for godown facilities at the stage of making the application was only directory and not mandatory. He has also relied on a decision of the Hon'ble Supreme Court in the case of Sunita Gupta v. Union of India (Civil Appeal No. 4681 of 2014) dated 22.04.2014, the relevant being at paragraph-7 for the same proposition. Learned counsel has further relied upon a decision of the Calcutta High Court in the case of Swapnil Singh v. Bharat Petroleum Corporation Ltd. (A.S.T. 158 of 2013 with A.S.T.A. 93 of 2013) dated 03.04.2014. Learned counsel has also relied upon a decision of this Court in the case of Priyanka Pratap Singh v. Divisional Manager IBP Co. Ltd. reported in , 2004(2) BLJR 919, for the proposition that the details of the land could be provided even subsequent to filing of the application form. Learned counsel has further drawn the attention of the Court to Annexure-R/5, which is copy of the reply filed by the petitioner dated 06.09.2014 before the respondent No. 4 to the letter of the Corporation to the petitioner dated 05.09.2014 in which the petitioner had stated that he did not have any other suitable plot for the proposed construction of godown. It is thus submitted that even after the submission of the form, the Corporation itself asking the petitioner the availability of any other suitable plot clearly indicates that the furnishing of a suitable plot for godown was not a mandatory prerequisite at the time of applying. Learned counsel has also submitted that the right of passage is an easementary right and thus has nothing to do with the

ownership of the land and under the common law itself when a right exists for easement, it cannot be said that the petitioner was disqualified for not having shown ownership of the land through which the proposed easement/passage/road was proposed to connect the site of the godown to the main public road. It is thus submitted that once there was an affidavit by the land owner of the passage in favour of the original landlords from whom the petitioner had taken the land on lease for 15 years for the purpose of constructing a godown, the obvious import and implication is that through the original landlord, the right of passage also devolved on the petitioner and thus it cannot be said that the petitioner did not fulfill the basic requirement.

5. Learned counsel for the Corporation submits that the action of the Corporation is totally within jurisdiction and without any bias or ill-will and based on the terms and conditions of the guidelines for selection of regular LPG distribution as was then in force, i.e., after 1st of April, 2011. It is submitted that a plain reading of Clause 6.1(vii) and the definition thereafter relating to the meaning of "own" clearly indicates that the applicant was required to have "ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant of adequate size for construction of godown for storage "as on the last date for submission of application". Further, it was stipulated that 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. Learned counsel thus submits that the said requirement not having been fulfilled by the petitioner, as admittedly the approach road was neither "owned" by the applicant nor "leased in his name" and furthermore, even the affidavit was in favour of the landlords of the lease plot which was shown by the petitioner to have been taken on lease for such godown and not in his name. It is submitted that though the clear-cut stipulation was that the land should be in the name of the applicant, in the present case even if it is taken for the sake of argument that there was an affidavit showing willingness of the third party to provide land for use of passage, the same also being in the name of other persons and not the applicant i.e., the petitioner, he had clearly not complied with the requirements of the guidelines which are mandatory. Learned counsel, to buttress his point submits that the fact the petitioner submitted a registered lease agreement for the said passage much after the application form and the same being executed on 25.09.2014 also indicates that the petitioner himself was aware that he had not fulfilled the eligibility criteria and to make good the deficiency subsequently submitted a registered lease deed to the Corporation. Learned counsel submits that the communication from the Corporation dated 05.09.2014 to the petitioner with regard to any other suitable plot for construction of godown cannot be read to mean that the Corporation had relaxed the guidelines/criteria as the same was merely in conformity with the Clause 6.1(vii) where there was a provision that in case an applicant has more than one suitable plot for construction of godown for storage as on the date of the application, details of the same could also be provided in the application. It is

thus submitted that the key requirement was that the applicant should have "owned" a suitable plot for construction, which could be considered but the "ownership" itself could not have been acquired later on after the last date of submission of application. Thus, he submits that there is a vital distinction in the present case where by way of abundant caution and to be fair to the petitioner, the Corporation had asked him for any other suitable plot and if he had shown a suitable plot in the location as required under the terms with the rider that the "ownership" would have to relate prior to the date of or at least till the date of application, the same could not have been considered and that the said communication cannot be construed to be a waiver of any of the conditions of eligibility with regard to such selection. Learned counsel has relied upon a decision of a Full Bench of this Court in the case of *Braj Kishore Prasad v. State of Bihar* reported in , 1998 (3) PLJR 34, the relevant being at paragraphs-21 and 22 for the proposition that if the Selecting Authority issues an advertisement and prescribes the last date on or before which applications must be received along with necessary supporting documents, that condition must be given effect and any application or document received after that date may be justifiably rejected by the Authority. It is submitted that even the Corporation had no discretion to selectively relax the norm in the case of the applicant/petitioner as then it would have been accused of acting against Articles 14 and 16 of the Constitution of India. Learned counsel has also relied on a decision of a Bench of this Court in the case of *Niraj Kumar v. Indian Oil Corporation Ltd.* reported in , 2009 (3) PLJR 591, the relevant being at paragraphs- 9 and 10 for the same proposition. He has also relied on the decision of a co-ordinate Bench of this Court in the case of *Nikil Kumar Singh v. Indian Oil Corporation Ltd.* reported in , 2016 (1) PLJR 99, the relevant being at paragraphs-8 and 9 where the Court had upheld the cancellation of candidature of the writ petitioner which was done for non fulfillment of the requisite criteria relating to possession of land for the purposes of showroom and godown in terms of the advertisement. Learned counsel for the Corporation has also relied upon a decision of a Division Bench of this Court in the case of *M/s. Indian Oil Corporation Limited v. Raj Kumar Jha* reported in , 2012(2) PLJR 783, relevant being at paragraphs-9 and 10 for the proposition that there should be direct adherence to the standard mentioned in the advertisement. Learned counsel further draws the attention of the Court to the application form filed by the petitioner specially column-9 thereof where details were required relating to land for construction of LPG godown or constructed LPG godown in which he has only mentioned the land which was leased to him for the purpose of godown being Khesra/Survey No. 2167 whereas admittedly the private land which was to be used as passage is Khesra/Survey No. 2166 which was not even mentioned in the application form and only an affidavit by the landlords of the said land was annexed which also was not in the name of the applicant/petitioner and rather in the name of the original landlords who had leased the land for godown to the petitioner. It is submitted that the brochure clearly mentions that the applicant should "own" the land and the word "own" has been defined to mean "having ownership title of the property or registered

lease agreement for minimum 15 years in the name of the applicant/family member as defined in multiple distributorship norm of eligibility criteria".

6. Learned counsel submits that as far as the case of K. Vinod Kumar (supra) which has been referred to and relied upon by learned counsel for the petitioner is concerned, the Clause which has been interpreted by the Hon"ble Supreme Court, being Clause (g), was different from the eligibility criteria which has been prescribed for the present settlement inasmuch as in the case before the Hon"ble Supreme Court, there was clear stipulation that the applicant should furnish, along with the application, details of land for godown facility which he/she may make available for the distributorship. In the present case, it is submitted that the requirement was that the applicant should "own" the land whereas in the case before the Hon"ble Supreme Court the requirement being to "make available", it was rightly held that the furnishing of particulars of land in the application was to enable a determination and that particulars of such land could be made available subsequent to the filing of the application and even subsequent to the selection. In the present case, the pre-condition being that the "ownership, as on the date of application", the decision of the Hon"ble Supreme Court in the said case cannot be said to apply in the facts and circumstances of the present case. With regard to the other decisions relied upon by learned counsel for the petitioner in the case of Sunita Gupta (supra) of the Hon"ble Supreme Court and Swapnil Singh (supra) of the Calcutta High Court, the issue was with regard to evaluation and giving marks on the basis of various eligibility criteria at the time of selection as per the terms and conditions existing then, whereas in the present case, the issue relates to satisfying/fulfilling the basic eligibility criteria.

7. Learned counsel further submits that the right for easement may be available in the common law but unless enforced/declared in accordance with law in a duly constituted proceeding before a Court of competent jurisdiction, it cannot be taken that the petitioner would automatically have a right through the passage which has been shown by way of affidavit with the application form, moreso, when details of the so called "passage" have not even been indicated/mentioned in column-9 of the application and also not in his "name" which was essential.

8. Having heard learned counsel for the parties at length, the Court deems it appropriate to first deal with the issue relating to basic eligibility criteria as envisaged in the guidelines for selection especially in the case of an individual applicant, which is applicable in the present case and more specifically Clause 6.1(vii)) which is quoted hereinbelow for ready reference:-

""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 metres 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 road (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 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 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.""

9. The definition of "own" relating to this Clause is also worth taking note of and is quoted hereinbelow:-

""Own" means having ownership title of the property or registered lease agreement for minimum 15 yrs in the name of applicant /family member as defined in multiple distributorship norm of eligibility criteria. In case of ownership/co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required.

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 submission of "No Objection Certificate" in the form of an Notarized Affidavit from other owner(s)."

10. Thus, from the plain reading of the guidelines it is clear that the eligibility requirement stipulated that 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. Further, the word "own" has been defined to mean "having ownership title of the property or registered lease agreement for minimum 15 years in the name of the applicant. The petitioner appears to have filled up column-9 of the application form giving details with regard to only the land for construction of the LPG godown

constructed which was leased for 15 years in his name. However, just prior to column-9 of the application form itself it is specified that items No. 9 and 10 of general instructions should be read before providing the information in columns-9 and 10. The petitioner has filled up the details with regard to his leased plot which he had offered for constructing of the LPG godown which is Khesra/Survey No. 2167, though the petitioner had also appended the affidavit from the land owners of the adjacent plot i.e., Khesra No. 2166 and Khata No. 671 giving right of passage to the lessors of the petitioner with the further clause that they could pay the value and get the land registered in their favour as per their convenience. Therefore, clearly the undisputed position is that as on the date of submission of the form, the "ownership" of the land adjacent to the leasehold land in favour of the petitioner for construction of the godown was not available and there was an affidavit to show that the landlords of the adjacent plot had given the right of passage to the lessors of the petitioner with regard to passage and in future they had also agreed for selling the land by registered deed in favour of the said lessors. However, the piece of land which was to be used as passage for the land which was leased to the petitioner was only a piece of land and thus till that time the same was neither a "private road" nor a "public road". The question thus would remain as to whether the affidavit which was submitted by the petitioner along with the application form was sufficient for fulfilling the basic and mandatory eligibility criteria relating to "ownership" of plot of land for construction of godown "as on the date of application".

11. The essence of the guidelines and the eligibility criteria, in the considered opinion of the Court, would thus be as to whether the fundamental fact of the applicant "owing" a plot of land for construction of godown "as on the date of application" existed. The word "own" having been defined to mean "ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant" in the guidelines itself also have to be given the meaning so defined and not by way of any interpretation by the Courts which would amount to reading down of the said definition. Admittedly, the land to be used as an approach road was only a land till the time of application with the land owners having permitted to the lessors of the land to be used by the petitioner for godown, for use as a passage and that too by way of an affidavit cannot be construed to give "title" or "ownership" either to the lessors themselves or through them to the petitioner. The decisions relied upon by the learned counsel for the petitioner have been adequately and rightly distinguished by learned counsel appearing for the respondents. The Court would only like to add that the foundational facts of those cases were different to the extent that there was provision for furnishing details or providing suitable land within a stipulated period even after selection. Thus, the Courts had held that once such provision was there, the subsequent providing of details or even supporting documents in support thereof for the land to be used could be and ought to have been looked into and accepted by the concerned Corporation and the person could not have been summarily declared unfit or unsuitable. In the present case, there being no

"private road" and even as per the instructions issued for filling up of the application form indicating that the "private road" had to belong to the applicant and the petitioner only enclosing an affidavit in favour of his original lessors permitting use of the land as a passage to the leased land and further not mentioning the details of such land in column-9 of the application form, cannot be said to be satisfying the criteria of details of the land as per the advertisement, the guidelines as well as the application form. The Court would thus not like to read down or interpret the word "own" in a manner which is contrary to or dilutes the definition given in the guidelines issued by the Corporation itself just below Clauses 6.1 (vii) and (viii). Further, there was only a recommendation in favour of the petitioner without there being any L.O.I. having been issued and if the respondents have realized the basic infirmity with regard to the application made by the petitioner, they cannot be precluded from taking corrective measure and that too prior to issuance of any L.O.I. and no estoppel shall apply.

12. In view of the discussions made hereinabove, the Court does not find any error in the decision of the Corporation unsuited to the petitioner for grant of LPG distributorship.

13. Accordingly, the writ petition stands dismissed.