

(2019) 07 JH CK 0145
In the Jharkhand High Court
Case No : Writ Petition (c) No. 6163 Of 2018

Nilmani Kumari

APPELLANT

Vs

Bharat Petroleum Corporation Limited

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0145

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Amit Kumar Sinha, Mrinal Kanti Roy

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder two fold prayers have been made i.e., for quashing of letter No.LPG.ER.RANC.6. Hansdiha, dated 20.09.2018 (Annexure-5) issued by the respondent by which the candidature of petitioner for award of Liquefied Petroleum Gas Distributorship in Hansdiha has been rejected with a further direction to direct the respondent to refund the amount of security deposit amount which has been deposited by the petitioner at the time of submission of his bid for its consideration.

2. This matter was taken up on 06th July, 2019 and was adjourned directing Mr. Mrinal Kanti Roy, learned counsel representing Bharat Petroleum Corporation to seek instruction with respect to final outcome of the advertisement in question and to apprise as to whether the allotment in terms of the said advertisement has been made in favour of the others or not.

3. Mr. Roy, learned counsel has informed this Court that the successful candidate has been shortlisted in the mid way of the process for field verification, upon this learned counsel for the petitioner has submitted that since the selection in pursuance to the advertisement, successful bidder has been made, therefore, he

is only confining his prayer with respect to security deposit amount which is also the subject matter of the impugned order and leaving the first prayer pertaining to quashing of the rejection of the candidature of the petitioner.

4. It is the case of the petitioner that although the candidature has been rejected but in no stretch of imagination the security deposit amount which has been deposited by the petitioner can be forfeited since there is no suppression of the fact.

5. He has tried to demonstrate by taking aid of the brochure of Unified Guidelines for Selection of LPG Distributors wherein under condition No.17 which contains the content under the heading "Documents and amount to be submitted by the selected candidate before FVC", he has referred to the list of documents to be submitted along with the application wherein under serial No.1 in item No.7 reference of the land documents for showroom is to be submitted which would be self attested copy of documents pertaining to "Ownership" of land for showroom (Not required if the distributorship type is DKV) in name of applicant or member of 'family unit' Registered Sale Deed/Gift Deed/Lease Deed (15 years minimum)/Mutation and Government record.

He further submits that the petitioner has submitted lease deed although not registered but notarized.

He has interpreted the stipulation made in item No.7 that there is no requirement to submit registered lease deed rather the registered documents will only be submitted if the sale deed would be submitted since in the prefix of sale deed, the word 'registered' is there and therefore, the 'registered' word would be only read out for sale deed and not for gift deed or lease deed and since there is no stipulation to submit the lease deed which will be a registered document, hence, there is no suppression or misrepresentation warranting forfeiture of security deposit amount as required to be done under the condition stipulated under Section 26 of the Brochure.

His further submission is that even if the notarized lease deed has been submitted, the same cannot be said to be even incorrect or false since the content contended in the said lease deed suffers from no infirmity rather the correct information has been furnished.

6. Per contra, Mr. Mrinal Kanti Roy, learned counsel for the Bharat Petroleum Corporation has submitted by refuting the contention raised by the learned counsel for the petitioner by submitting that the interpretation of the item No.7 of serial No.1 pertaining to the submission of list of document, is not correct, in view of the fact that when the sale deed/gift deed/lease deed has been required to be submitted the period is also stipulated there i.e., of 15 years minimum, his submission is that if the showroom is being facilitated to be opened in an area which is for the convenience of the people of that locality and the said showroom must be for minimum period of 15 years, otherwise, it will cause inconvenience to the people of that locality by shifting of the showroom from one place to

another in the short interval of time, therefore, he submits that since the period of 15 years has been stipulated hence, either the gift deed or the lease deed will have no legal identity if not registered that is the position of law under the Indian Registration Act, 1908 that is for the reason that the word 'registered' is not to be read out in isolation, to be read along with the 'sale deed' rather the word registered would be taken together to be read out for 'sale deed' or 'gift deed' or 'lease deed' and hence, since on this ground alone the candidature of the petitioner has been rejected at the time of FVC and hence, the petitioner since is coming under the category of furnishing incorrect or false affecting eligibility and as such in view of the sub-clause (b) to condition No.26 the amount deposited by the selected candidate is required to be forfeited i.e., 10% of the applicable security deposit will be forfeited.

7. Here, in the instant case, it is the admitted case of the petitioner that in support of the ownership of the land, he has furnished the lease deed but not registered, therefore, at the time of field verification credentials his candidature has been rejected.

8. This Court in order to appreciate their arguments the content reflected under condition No.17 of the brochure needs to be appreciated and it has been appreciated wherein under item No.7 reference of land documents for showroom has been provided, extract of condition No.17 which is relevant for the issue involved in this case hereunder as:

"17. DOCUMENTS AND AMOUNT TO BE SUBMITTED BY THE SELECTED CANDIDATE BEFORE FVC

SR. NO.

Reservation Category of the location for which candidate has applied

LIST OF DOCUMENTS TO BE SUBMITTED WITHIN SEVEN WORKING DAYS OR AS SPECIFIED BELOW FROM THE INTIMATIN OF SELECTION

1

Open

1. Notarized Affidavit by the applicant as per format given in Appexdix-1.
2. Proof of educational qualification i.e. - Self Attested copy of Certificate of passing X Std. Or equivalent
3. Proof of date of birth i.e. - Self Attested copy of School Leaving Certificate / Birth Certificate / Passport / PAN Card.
4. Appendix-2-Notarized Affidavit.
5. Appendix-4-Notarized Affidavit, if applicable.
6. Land documents for Godown : Self attested copy of documents pertaining to

"Onwership" of land for godown in the name of applicant or member of 'family unit' Registered Sale Deed/Gift Deed/Lease Deed (15 yrs minimum)/Mutation and Government Record.

7. Land documents for Showroom: Self attested copy of documents pertaining to "Ownership" of land for showroom (Not required if the distributorship type is DKV) in the name of applicant or member of 'family unit' Registered Sale Deed/Gift Deed/Lease Deed (15 yrs minimum)/Mutation and Government Record.

8. Residency certificate (Only for DKV locations) in the prescribed format Appendix - 5 for candidates availing inter se priority of the Gram Panchayat or the Sub Division, as the case maybe.

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9. It is evident from the aforesaid requirement to establish the eligibility by one or the other bidders in support of establishing ownership for showroom, the documents by way of sale deed/gift deed/lease deed (15 years minimum)/mutation and government record are to be submitted.

10. It is not in dispute that a sale deed or gift deed cannot be said to be valid document if not registered but likewise a lease deed is to be furnished for a minimum period of 15 years and therefore, in absence of registration of the said instrument will be invalid in view of the specific provision contained in the Indian Registration Act whereby and whereunder it has been provided that a lease deed if for the period of more than 11 months, the said document is to be a registered one and since herein, the lease deed is to be submitted for establishing the ownership for minimum period of 15 years, therefore, the word 'registered' is also to be taken together with the lease deed.

11. The condition as stipulated under item No.(b) to furnish documents pertaining to ownership by way of sale deed or gift deed or lease deed for 15 years so that the showroom be established in a locality for substantial period and in case of sale deed or gift deed if the document would not be registered, there would be every likelihood of a litigation and there will be eviction from the premises in absence of substantial document so far as the lease deed is concerned, if the lease deed would not be a registered one and the lessee if comes forward for vacating the lessee then there will be difficulty in establishing the relationship of landlord and tenant therefore, the condition stipulated in a category where the candidate is submitting lease deed, the same would be for a period of 15 years minimum so that the showroom may remain in locality at least for 15 years minimum causing no inconvenience to the people at large and taking the said aspect of the matter the authorities have rejected the candidature of the petitioner by treating him under the category of incorrect or false which has affected his eligibility warranting forfeiture of the security deposit amount.

12. The condition has been stipulated for furnishing of false information and its effect under condition No.26 which reads hereunder as:

"26. FURNISHING OF FALSE INFORMATION

a. If any statement made by the applicant in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application at any stage is found to have been suppressed / misrepresented / incorrect or false affecting eligibility, then the application/candidature is liable to be rejected without assigning any reason.

b. In case the selection of the candidate is rejected after the FVC or after issuance of LOI but before issue of Letter of Appointment, then the amount deposited by the selected candidate before the FVC is concluded i.e., 10% of the applicable security deposit will be forfeited.

c. In case the selected candidate has been appointed as a distributor and the allotment is liable to be cancelled, then the distributorship will be terminated along with forfeiture of security deposit remitted by the candidate.

d. In all the above cases, the selected candidate/distributor will have no claim whatsoever against the respective PSU Oil Marketing Company."

Further the condition pertaining to deposit of security amount is under condition No.22 which reads hereunder as:

"22. SECURITY DEPOSIT

a. The selected candidate before being issued the appointment letter will have to deposit interest free refundable security deposit to the respective OMC as specified below:

Type of Distributorship

Security deposit

Open

OBC category

SC/ST category

Gramin Vitrak

Rs.4. Lakhs

Rs.3. Lakhs

Rs.2. Lakhs

Durgam Kshetriya Vitrak (DKV)

Rs.4. Lakhs

Rs.3. Lakhs

Rs.2. Lakhs

b. The security deposit of 10% applicable for the respective type/category of LPG Distributorship collected from the selected candidate prior to issuance of LOI, will be adjusted against the above security deposit as applicable.

c. Oil Marketing Companies (OMCs) will reserve the right to adjust any dues to it from the Security D e p o s i t amount at the time of resignation/termination of the Distributorship. However, in case if termination of the distributorship is on account of proven malpractice, the said security deposit mentioned above will be forfeited."

It is evident from the condition No.22 that the security amount to be deposited which would be 10% applicable, meaning thereby, the amount as has been referred in total as stipulated under condition No.22 the same is 10% of the total amount and therefore, the 10% of the applicable security deposit as has been referred in condition No.26(b) would be the entire amount of security amount.

13. The same issue fell for consideration before this Court in W.P.(C) No.4783 of 2018 while answering the same, view has been taken that if the forfeiture clause would be invoked the entire security deposit by the applicant is to be forfeited.

14. The petitioner since has not furnished the lease deed which was not a registered one, therefore, the same has affected his eligibility hence, he is coming under one of the category as stipulated under condition No.26(a) which contains the "incorrect or false affecting eligibility" also be one of the ground for forfeiture of the security amount since on the ground of non-furnishing the registered lease deed which has affected the eligibility of the petitioner, therefore, the ground for forfeiture of the security amount is available and hence, the order by which the security amount has been directed to be forfeited, cannot be said to suffer with infirmity warranting any interference by this Court in view of the facts and circumstances as narrated hereinabove.

15. Accordingly, the writ petition fails and is dismissed.