
(2011) 09 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (C) No. 16039 of 2010

Prasanta Kumar Panigrahi

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Citation : (2011) 09 OHC CK 0030

Hon'ble Judges : V. Gopala Gowda, J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Deepali Mohapatra and Mr. S. Parida, for the Appellant; P.S. Nayak (for O.P. No. 1), M/s G. Mishra, B.N. Mahapatra, S.N. Mishra, D.N. Pattnaik and A.K. Pradhan (for O. Ps. 2 and 3), for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed for a direction to opposite party No. 1-Union of India, represented through its Secretary, Petroleum and Natural Gas Department, New Delhi, opposite party No. 2-Bharat Petroleum Corporation Ltd., represented through its General Manager, Mumbai and opposite party No. 3-Territory Manger (LPG), Bhubaneswar LPG Territory, 33 Industrial Estate, AT/PO/Dist: Khurda to grant LPG distributorship in favour of the Petitioner for Dharakote village and to quash the letter dated 08.09.2010 (Annexure-8) issued by opposite party No. 3 by which the Petitioner has been required to submit the details of the land along with supporting documents as required under the guidelines for Rajiv Gandhi LPG Vitarak (RGGLV) and Clause -3(g) of the advertisement within ten days from the date of the letter, failing which, the Petitioner's candidature is to be treated as cancelled.

2. Petitioner's case in a nutshell is that an advertisement was issued by opposite party No. 2 in the Oriya Daily "The Sambad" dated 20.10.2009 (Annexure-1) inviting applications for grant of LPG distributorship in different areas including the one for Dharakote in the district of Ganjam under RGGLV Yojana. Pursuant to the said advertisement, eight candidates have filed applications for

distributorship under open category along with the Petitioner. The Petitioner has submitted all the required documents as per the advertisement along with his application. All the eight applications were verified/scrutinized by opposite party No. 3 and after verification, the Petitioner was found as the only eligible candidate among them. The other applications were rejected as those failed to fulfil the eligibility criteria. Opposite party No. 3 had issued a letter on 09.02.2010 for submission of details about the land owned by Petitioner in the advertised location. The Petitioner has submitted photocopy of the registered sale deed before opposite party No. 3 on 24.02.2010. Select list dated 12.03.2010 is annexed as Annexure-5 to the writ petition. After the selection was made, the Company carried out field verification to check the documents filed along with the applications on 16.04.2010. During field verification, the Petitioner had shown all the relevant records and the place where he has proposed to construct the godown which comes under Mouza: Khamara Paitari under Dharakote village. Being asked by opposite parties, the Petitioner submitted a report from the Revenue Inspector concerned which clarified that the land of the Petitioner is situated under Dharakote village. In spite of the same, the opposite parties issued letter dated 08.09.2010 (Annexure-8) wherein it was indicated that the Petitioner's candidature would be cancelled as the land on which godown is proposed to be constructed does not come within the purview of village Dharakote. Hence, the writ petition.

3. Ms. Deepali Mohapatra, Learned Counsel appearing for the Petitioner submitted that the application form submitted by the Petitioner fulfils all the eligibility criteria on the basis of which the Petitioner was selected. Due to misinterpretation made by opposite party No. 3 about location of the place proposed by the Petitioner for construction of the godown, the selection is going to be cancelled. In the advertisement, it was specifically indicated that the candidate should have a piece of land measuring at least 20 metres x 24 metres in dimension in Dharakote. Dharakote Tahasil consists of three Mouzas, namely, Kapilas, Khamar Paitari and Ambedabanhill. At the time of field verification, though the above fact was brought to the notice of the opposite party-Company officials, they did not accept that Khamar Paitari comes under Dharakote and instructed the Petitioner to obtain a certificate in that regard from the R.I., Dharakote. Pursuant to such instruction, the Petitioner obtained a certificate from the R.I., Dharakote under Annexure-6 in which it is certified that Khamar Paitari comes under Tahasil Dharakote. The said certificate was sent to opposite party-Company on 23.04.2010. It was further submitted that pursuant to advertisement under Annexure-1, the Petitioner made an application in which the name of the place has been shown as Dharakote. Annexure-10 issued by the R.I., Dharakote of the Revenue Department shows that the village Dharakote is consisting of three Mouzas, namely, (i) Kapilas, (ii) Khamar Paitari and (iii) Ambedabanhill and the land owned by the Petitioner for construction of the godown comes under village Khamar Paitari. Therefore, opposite parties are not justified to say that the land owned by the Petitioner is not within the area for

which advertisement has been made.

4. Ms. Mohapatra, further submitted that subsequent to advertisement dated 20.10.2009 (Annexure-1) opposite parties issued advertisement dated 31.10.2010 (Annexure-9) which was in the nature of a corrigendum. In the said advertisement under Annexure-9, the RGGLV place was indicated with reference to "revenue villages" whereas in the earlier advertisement, under Annexure-1 the RGGLV place was not notified with reference to "revenue village". The opposite parties are not justified to restrict the location to a revenue village by way of issuing corrigendum to the earlier notification dated 20.10.2009 wherein they indicated the place, as Dharakote, which consists of three Mouzas. Therefore, the opposite parties are not justified to treat the application of the Petitioner as cancelled under Annexure-8. Ms. Mohapatra, further submitted that this Court vide interim order dated 24.09.2010 passed in Misc. Case No. 15119 of 2010 directed that as an interim measure, no distributor in respect of Dharakote village shall be appointed without leave of this Court.

5. Opposite parties 2 and 3 filed a counter affidavit traversing the averments made in the writ petition. Learned Counsel for the opposite parties 2 and 3 submitted that the RGGLV Yojana has been made out wherein in a particular Gramin/Village is identified broadly based on potential of a village having monthly sale of 600 LPG cylinders of 14.2 Kg per cylinder and 1800 consumers with monthly per capita consumption of about 5 Kg. The most important eligibility factor in the guidelines of RGGLV Yojana is Clause 3(g) of the advertisement and Clause 4(g) of the RGGLV Yojana guideline, according to which, applicant applying for RGGLV should own a suitable land (plot) of minimum 20 metres x 24 metres in dimension at the advertised RGGLV location for construction of LPG cylinder storage godown. In the advertisement Annexure-1, the place for RGGLV was specifically mentioned for Dharakote and not for any other place. The Petitioner was the only candidate who was qualified after evaluation of criteria. So, there was no need for selection of candidate through draw of lottery. The opposite party-Corporation after its field verification, came to know that the candidate has not offered the land at the advertised location Dharakote, but offered the land at Khamar Paitari. The document under Annexure-4 attached to the writ petition clearly shows that the land is situated at Khamar Paitari and not at Dharakote for which advertisement was made. As the land of the Petitioner was in Khamar Paitari and not in Dharakote he was not found suitable after the field verification by the officials of opposite party-Corporation. In Annexure-6 of the writ petition, the R.I. confirmed that the village Khamara Paitari is the adjacent Mouza of Dharakote. Thus, from the report of the R.I. it is clear that the Petitioner's land is in Khamara Paitari and not in Dharakote for which advertisement was made.

6. It was further argued that following the principle of natural justice, opposite party No. 3 addressed a letter to the R.I., Dharakote, Dist: Ganjam enclosing the land documents, which were produced by the Petitioner and requested the R.I. to

confirm whether the said land comes under the village Dharakote or not. The concerned R.I. has confirmed that Khamar Paitari is a different revenue village. It is further stated that the Petitioner has not produced any supporting document in support of his claim that his income is Rs. 1.22 lakhs for the financial year 2008-09. Clause 14(f) of the advertisement clearly spells out that if any statement made in the application or in the documents enclosed or subsequently submitted in pursuance of the application by the candidate at any stage is found to be incorrect or false, the candidature and application are liable to be rejected without assigning any reason. During the field verification, it came to the notice of the Corporation that the land offered by the Petitioner does not fall within the advertised location and in spite of that the Petitioner was given another opportunity following the guidelines and principle of natural justice, but he did not avail it.

7. On the rival contentions, the only question that falls for consideration by this Court is as to whether the land owned by the Petitioner at Khamar Paitari comes under Dharakote which is the place advertised under Annexure-1.

8. It is not in dispute that the Petitioner owned a suitable land at "Khamar Paitari". Khamar Paitari is one of the three villages, which comes under Dharakote as evident from Annexure-10 issued by the R.I., Dharakote. This has not been disputed by the opposite party-Corporation. In Annexure-6, the R.I., Dharakote has also certified that the village Khamar Paitari comes under Tahasil Dharakote. The opposite party-Corporation has placed reliance upon the certificate given by R.I. under Annexure-C/2, according to which Khamar Paitari is a different revenue village adjacent to village Dharakote. Such certificate of the R.I. does not show that Khamar Paitari is not coming under Dharakote. As stated above, as per Annexure-10, "Khamar Paitari" is one of the three Mouzas coming under Dharakote and in the advertisement under Annexure-1 the place of RGGLV is "Dharakote" as mentioned against Sl. No. 66. Therefore, Khamar Paitari Mouza is coming under the village Dharakote which is advertised for RGGLV. Annexure-1 does not reveal that place for RGGLV has been advertised for a particular revenue village. On a comparison of the advertisements under Annexure-1 and Annexure-9, it further reveals that under Annexure-9 the RGGLV place was advertised with reference to the particular "revenue village" where LPG center under RGGLV is fixed to be situated, but the same does not appear in the advertisement under Annexure-1. Thus, there is discrepancy between Annexure-1 and Annexure-9. In Annexure-9, reference of Annexure-1 was given. It appears that Annexure-9 has been issued in the nature of a corrigendum. The corrigendum can be issued only to correct the typographical error or omission crept therein. But it cannot have the effect of law, or it can take away the vested right neither of a person nor it can have the effect of nullifying the rights of a person conferred by law.

9. In *Piara Singh Vs. State of Punjab and Others*, , the Apex Court considered the scope and application of a corrigendum and held as under:

In any case, in the present case it cannot be said that there is a clerical or arithmetical error in mentioning Khasra number or its area in the sale certificate.... Considering the long lapse of time and the fact that there is no question of a clerical or arithmetical error, the authorities ought not to have exercised jurisdiction u/s 25(2) of the Act which only empowers the authority to correct clerical or arithmetical mistake in any order or errors arising therein from any accidental slip or omission. Under the guise of corrigendum authorities have passed an order handing over possession of additional land in favour of Respondent No. 2. It is also apparent that the Chief Settlement Commissioner has not applied his mind to the facts of the case and has only observed that there is no bar on issuing the second corrigendum or more corrigenda in correcting the arithmetical error.

10. Comparison of Annexure-1 and Annexure-9 does not reveal that there is any typographical error or arithmetical error. As stated above, while in Annexure-9 the name of particular "revenue village" under which the RGGLV location to be situated is given in Annexure-1 no such specification (name of particular "revenue village") has been given. Therefore, we are of the opinion that Khamar Paitari in which the Petitioner's land is situated is coming under "Dharakote" which has been advertised under Annexure-1 as RGGLV place.

11 Under Annexure-8, the only ground given by the opposite party-Corporation is that the land owned by the Petitioner does not come under Dharakote, but in the counter affidavit the opposite parties advanced a new ground for treating the application of the Petitioner as cancelled, i.e., the Petitioner has failed to produce any supporting document in support of his income of Rs. 1.22 lakhs as declared by him for the financial year 2008-09.

12. Law is well settled that an order is to be judged by reasons so mentioned therein and it cannot be supplemented by fresh reasons.

The Hon''ble Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , held as follows:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are

addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

13. In view of the above, Annexure-8 is quashed. The opposite party-Corporation is directed to grant LPG distributorship in favour of the Petitioner for Dharakote within four weeks from today.

14. In the result, the writ petition is allowed.

V. Gopala Gowda, C.J.

I agree.