
(2019) 01 CAL CK 0069

In the Calcutta High Court

Case No : Writ Petition (W.p) No. 23828 (W) Of 2018

Rajmul Hossain

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Citation : (2019) 01 CAL CK 0069

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Milan Bhattacharya, Ibrahim Shaikh, Moslemuddin Ahmed, Prasun Mukherjee, Deepak Agarwal

Final Decision : Dismissed

Judgement

Let the affidavit of service and the supplementary affidavit filed by the petitioner be kept on record.

Records reveal that an advertisement was published on 31st August, 2017 by the Hindustan Petroleum Corporation Ltd. (in short, HPCL) inviting applications for LPG distributorships. Responding to the same, the petitioner submitted his application under open category pertaining to the location at Emamnagar, District - Malda. He was asked to participate in the draw of lots in which he emerged to be successful. As directed, he deposited an amount of Rs.40,000/- within the time specified and field verification was held on 26th June, 2018. By a memo dated 19th September, 2018 it was communicated to the petitioner that his candidature has been rejected since the "land offered for showroom and Godown is not at advertised location". Challenging the said memo dated 19th September, 2018 the petitioner filed the present writ petition on 28th November, 2018. During pendency of the writ petition, two further memoranda dated 12th November, 2018 and 7th December, 2018 were communicated to the petitioner. The same has been brought on record by filing the supplementary affidavit. A further memo dated 17th November, 2018 was also communicated to the petitioner by HPCL. A copy of the same, as produced by Mr. Mukherjee, learned

advocate appearing for the HPCL, be kept on record.

The memo dated 19th September, 2018 was replaced by a revised rejection memo dated 12th November, 2018. The ground of rejection as incorporated in the memo dated 12th November, 2018 runs as follows:

"During FVC major Variation was observed in the land documents offered for Godown and Showroom. Though the candidate has submitted a Registered Lease Deed, the same is conditional and the lease deed does not commence from the date of its execution but after completion of godown / showroom which can be any date within a period three months from the date of execution of the subject lease deed. Hence, there is no Godown & Showroom land as on date of application i.e. 30.09.2017. or the date of closing of Application i.e. 18.10.2017."

By the subsequent letter dated 17th November, 2018 the petitioner was requested "to provide alternate land measuring minimum dimension of 4.5mX3m and 21mX26m for Showroom and Godown within the advertised location at Emamnagar on or before last date of application ie 18.10.2017." In the said memo it was also stated that "if you are ineligible to provide the land for LPG Showroom and Godown as per above mentioned guideline within 15 (Fifteen) days, then it will be treated as you are unable to produce any alternative land for LPG Showroom and Godown subsequently your candidature will be cancelled and we will proceed further."

Since the petitioner could not offer such alternate land, his candidature was finally rejected by the memo dated 7th December, 2018.

Drawing the attention of this Court to the memo dated 17th November, 2018, Mr. Bhattacharya, learned senior advocate appearing for the petitioner submits that having extended the time to provide an alternate land, the respondents could not have insisted that the deed of such alternate land is required to be a registered one as on the last date for submission of application, i.e., 18th of October, 2017. The contents of the memo dated 17th November, 2018 are self-contradictory.

He further submits that HPCL, being an instrumentality of the State, is under an obligation to conduct a selection process in a fair and transparent manner. The advertisement was published on 31st August, 2017, field verification was held on 29th June, 2018, the first order of cancellation of the petitioner's candidature was issued on 19th September, 2018, the said order was replaced by a memo dated 12th November, 2018 and by a memo dated 17th November, 2018, the petitioner was asked to offer an alternate land within fifteen days from the date of the said memo. Though opportunity was granted to the petitioner to provide an alternate land about five months after the field verification, he was asked to provide alternate land only within fifteen days from the date of issuance of the memo dated 17th November, 2018. From such sequence, it is explicit that the respondents have proceeded in hot haste and such action warrants interference of this Court.

Mr. Mukherjee, learned advocate appearing for the HPCL authorities disputes and denies the contention of the petitioner and submits that as per the guidelines an applicant is required to provide suitable land for godown and showroom within the last date for submission of application. In the instant case, the said last date was 18th October, 2017. The lease deed submitted by the petitioner is a conditional lease deed, as would be explicit from the clause - 1 of the said deed which runs as follows:

"In consideration of a monthly rent of Rs.500/- (rupees five hundred only) and the LESSEE'S covenants hereinafter mentioned and contained the LESSOR hereby demise and lease unto the LESSEE hereby takes on rent the plot of land properly mentioned in the schedule below for a period of 16 (Sixteen years) from the date of completion of the construction of room within three month from the date hereof mentioned above."

Such a conditional lease deed is not acceptable as per the guidelines. However, the petitioner was granted an opportunity to provide an alternate land but he failed.

Indisputably, the petitioner was required to provide a lease deed registered prior to the last date of application. There was no godown and showroom land on date of application, i.e., 30th September, 2017 or on the date of closing of application, i.e., 18th October, 2017. The lease deed provided by the petitioner contains a specific clause that the same would be for a period of 16 years "from the date of completion of the construction of room within three month from the date hereof mentioned above". Such a conditional lease deed has not been accepted by HPCL and I do not find any infirmity in such action.

The argument of Mr. Bhattacharya that having extended the time to provide an alternate land, the authorities could not have insisted that the deed of such alternate land is required to be a registered one as on the last date for submission of application, i.e., 18th of October, 2017 is not acceptable to this Court inasmuch as the requirement under the guidelines is to provide such land as on the last date for submission of application.

In view thereof, this Court is unable to grant the relief, as prayed for by the petitioner and the writ petition is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.