
(2018) 11 MP CK 0019
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6411 Of 2014

Sachin Rathi

APPELLANT

Vs

Indian Oil Corporation Limited And Another

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 11 MP CK 0019

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Prashant Sharma, A.K. Jain, Ajay Singh Raghuvanshi, Abhishek Singh Bhadoriya

Final Decision : Dismissed

Judgement

(1) This petition under Article 226 of the Constitution of India, has been filed seeking the following relief(s) :-

"7. Relief(s) Prayed For:-

It is, therefore, most humbly prayed that the writ petition may kindly be allowed and the impugned order dated 4-9-2014, Annexure P/1, passed by respondent may kindly be set aside and the respondent be directed to consider the Petitioner's documents Annexure P/9, Annexure P/10, & Annexure P/11 and re-decide the petitioner entitlement for grant of LPG distributorship for the location applied for by the petitioner, i.e., Guna-2 (Mahaveerpura-A.B. Road) District Guna under "Open" category to the petitioner in the interest of justice.

Any other writ, order or direction as this Hon'ble Court may deems fit in the facts and circumstances of the case be granted.

Costs be awarded."

(2) The necessary facts for the disposal of the present petition, in short, are that the respondent no.1 issued an advertisement for inviting applications for grant of

LPG Distributorship. The advertisement was published in the news papers on 8-9-2013. The petitioner applied for grant of LPG Distributorship at Guna-2 (Mahaveerpura-A.B. Road), District Guna under "Open" Category, and for construction of godown he submitted his documents of ownership bearing survey no. 49/1. It is the case of the petitioner, that after the scrutiny of the applications, the petitioner was found to be entitled for participating in draw for grant of LPG Distributorship and an information, in this regard was given to the petitioner by letter dated 27-5-2014. The draw was held on 17-6-2014 and the petitioner was selected and he was directed to deposit an amount of Rs.50,000/- as security amount. The said amount was deposited. However, later on by impugned order dated 4-9-2014 (Annexure P/1), the candidature of the petitioner has been rejected on the ground that the lands offered by the petitioner for godown were not found suitable as per eligibility criteria.

(3) Challenging the order dated 4-9-2014, it is contended by the petitioner that, it is not in dispute that the petitioner would have constructed the godown over the land owned by the petitioner, however, one piece of land, over which the approach road was to be constructed, is owned by the mother and aunti of the petitioner, who have given their consent, and thus, the candidature of the petitioner has been wrongly rejected.

(4) It appears that during the pendency of this petition, a Letter Of Intent (LOI) was issued in favor of the respondent no.2, and later on the LPG Distributorship was also granted to the respondent no.2, therefore, it was objected by the respondent no.1, that unless and until, the LOI issued in favor of the respondent no.1 is challenged, the petition would not be maintainable. Accordingly, the petitioner amended the petition, and the respondent no.2 was impleaded and certain averments were also made in the writ petition, regarding the LOI, but the prayer clause was not amended and the LOI issued in favor of the respondent no.2 has not been challenged. This Court by order dated 26-10-2016 had also observed that LOI has been issued and dealership has been awarded to another person, who is required to be implicated in the present case, and the LOI is also required to be challenged. However, inspite of the opportunity granted to the petitioner, the LOI and the award of dealership in favor of the respondent no.2 has not been challenged by amending the prayer clause.

(5) It is submitted by the Counsel for the petitioner, that Guidelines for selection of Regular LPG Distributors for the year 2013 was issued by the respondent no.1. Clause 6.1.vii reads as under:-

"vii. Should own as on the last date for submission of application as specified in the advertisement or corrigendum (If any):

.....

or

.....

.....

The plot of land or ready LPG Cylinder storage godown should be freely accessible through all weather motorable approach road (Public road or private road connecting road connecting to the public road). In case of private road connecting to the public road, the same should belong to the application/member of Family Unit (as per the multiple dealership/distributorship norm of eligibility criteria) as per the ownership criteria defined below. In case of ownership/co-ownership by family members(s) in respect of such private road, consent letter from respective family member(s) will be required.

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(6) It is submitted by the Counsel for the petitioner, that Family Unit has been defined under the guidelines in clause v, which reads as under:-

"Family unit" in case of married person/applicant, shall consist of individual concerned, his/her spouse and their unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'Family' shall consist of individual concerned his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorce, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter (s) whose custody is give to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

(7) It is submitted that in the present case, the land over which the approach road is to constructed belongs to the mother and aunty of the petitioner, and their consent letters were already submitted by the petitioner. It is submitted that as per clause 6.1.vii, where the approach road is private road connecting to the public road, then the same should belong to the applicant/member of Family Unit but further it has been provided that 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. In the present case, since, the consent letter of the mother and aunty of the petitioner was annexed, therefore, the petitioner, fulfills all the eligibility criteria provided under the guidelines, therefore, the rejection of his candidature is bad. It is further submitted that "Family Members" have not been defined in the guidelines and under these circumstances, this Court can look into the dictionary meaning of the word "Family Members" and accordingly, the mother and aunty would come within the meaning of "Family Members" and thus, their consent letter would fulfill the criteria.

(8) Per contra, it is submitted by the Counsel for the respondent no.1, that the word "Family Members" used in the second last and last line of clause 6.1.vii (fourth) should be read as member of Family unit, therefore, the mother and aunty of the petitioner would not fall within the definition of "member of Family unit", and thus, the candidature of the petitioner was rightly rejected. To buttress

his contentions, the Counsel for the respondent no. 1 has relied upon the order dated 29-1-2014 passed by a co-ordinate Bench of this Court in the case of Jitendra Sharma Vs. Bharat Petroleum Corporation Ltd. and others in W.P. No. 7262/2013.

(9) It is submitted by the Counsel for the respondent no.2, that a Division Bench of this Court in the case of Indian Oil Corporation Ltd. Vs. Rahul Sahu reported in AIR 2014 MP 180, has held that the person must have ownership, right and title of the property in his name or "family members of the family unit".

(10) Heard the learned Counsel for the parties.

(11) In Clause 6.1.vii (Fourthly), the words "Members of Family Unit" and "Family Members" have been used. If the intention of the respondent no.1 was to limit the ownership/title of the property, limited to the "Members of the Family Unit", then it would not have used the word "Family Member(s)" in the same provision. Thus, the submission made by the Counsel for the respondents that the "Family Member(s)" should be construed as "Members of Family Unit" cannot be accepted. In the guidelines itself, it has been provided as under:-

Reerence vii & viii above :

"Own' means having ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant/family member (as defined in multiple distributorship norm of eligibiltiy criteria) as on the date date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family members(s) will be required.

(12) It is submitted by the Counsel for the petitioner, that although in the above provision, it is mentioned that the word "Family Members" has been defined, but in fact it has not been defined, and later on this mistake was realized and in the guidelines of the subsequent years, the word "family members" has been defined but in absence of definition of "Family Members", this Court must look for its general dictionary meaning.

(13) Considered the submissions made by the Counsel for the petitioners.

(14) Clause 6.1.iv of the guidelines read as under:-

"iv Not be a family member of an employee of Oil Marketing Companies as on date of application.

In relation to an OMC employee, definition of family is :-

a. The wife or husband as the case made be of the employee, whether residing with him or not, but does not include a wife or husband as the case may be separated from the employee by a decree or order of a competent Court.

b. Sons or daughters or step-sons or step daughters of the employee and wholly

dependent on him, but does not include a child or step-child who is no longer in any way dependent on the employee or of whose custody the employee has been deprived by or under any law.

c. Any other person related whether by blood or marriage to the employee or to such employee's wife or husband and wholly dependent on such employee.

(15) It is submitted by the Counsel for the petitioner, that the meaning of word "Family Member" as given in clause 6.1.iv cannot be imported for the simple reason, that clause 6.1.iv deals with Multiple Dealership/Distributorship norms and the purpose of giving the said meaning is to avoid giving multiple dealership to one single family.

(16) In Reference vii and viii, the word "Own" has been defined, and it is mentioned that the word "Family Member" would mean the definition of family member given in multiple distributorship norm of eligibility criteria. Thus, in the guidelines itself, it has been clarified that the same meaning of Family member would apply while considering the ownership. Thus, it is clear that the words "Family Members" as used in clause 6.1.vii has to be interpreted in the same manner as defined under clause 6.1.iv.

(17) Thus, any member related whether by blood or marriage to the employee or to such employee's wife or husband and wholly dependent on such employee would be treated as a "Family Member".

(18) In the present case, admittedly, the land over which the approach road was to be constructed, is owned jointly, by the mother and aunty of the Petitioner, and it is nowhere claimed by the Petitioner that they are wholly dependent upon him.

(19) Thus, it is clear that aunty cannot be treated as related by blood and secondly in absence of any declaration to the effect that the mother and aunty of the petitioner is wholly dependent upon him, this Court is of the considered opinion, that the petitioner had fallen short of the eligibility criteria as prescribed under clause 6.1.vii. (Fourthly).

(20) Accordingly, it is held that the respondent no.1 has not committed any mistake by rejecting the candidature of the petitioner, by holding that the lands offered by the petitioner for godown in his application form are not found suitable a per eligibility criteria.

(21) Therefore, this petition must fail on the technical ground of non-challenge to the LOI and grant of LPG dealership in favor of respondent no.2, as well as on merits also.

(22) Thus, this petition is dismissed being devoid of merits.