

(2019) 12 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1212 Of 2019

Sanjay Kumar Sharma

APPELLANT

Vs

Bharat Petroleum Corporation Limited And Another

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Citation : (2019) 12 SHI CK 0006

Hon'ble Judges : L. Narayana Swami, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Suneet Goel, B.N. Mishra, Vandana Mishra

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. The respondent/Bharat Petroleum Corporation Limited, has rejected the candidature of the petitioner for the allotment of Rural Retail Outlet (Petrol Pump) under Group-I at Village Sadwankhas to Suliali, Tehsil Nurpur, District Kangra (H.P.), vide communication dated 17.05.2019. Feeling aggrieved, the petitioner has preferred the instant writ petition.

2. Necessary facts may be noticed hereinafter:-

2(i). Respondents-Corporation had issued an advertisement on 25.11.2018, inviting online applications for Regular/ Rural Petroleum Retail Outlet dealerships for various places within the State of Himachal Pradesh, wherein, one of the places was Village Suliali, Tehsil Nurpur, District Kangra. The last date for submissions of online applications was 24.12.2018.

2(ii). Under clause 4(v) of the Brochure issued by the respondents for selection of dealers for Regular/Rural Retail Outlets, the applicants could be classified into following three groups based on the land offered by them in the application form:-

"Group 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership/ long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 2: Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 3: Applicants who have not offered land in the application.

Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant get selected under Group 1 & 2.

In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group 1 & Group 2 along with applicants under Group 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location/stretch, within a period of 3 months from the date of issuance of intimation letter to them through SMS/e-email. In case the applicant fails to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected."

Another relevant condition with respect to offer of land, as contained in Column 4(v) of the brochure, is as under :-

"a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application....."

The land owned by family members, in consonance with clause 4(v)(e) of Brochure is also to be considered as belonging to the applicant in Group-I, subject to production of consent letters in form of affidavits of concerned family members.

2(iii). Petitioner applied for Petroleum Retail Outlet Dealership under the aforementioned advertisement vide his online application dated 05.12.2018 (Annexure P-2).

Column No.13 of this application, shows that petitioner applied under Group-1 category as owner of the land comprised in Khasra No.533, situated at Mohal Kohla Dalyal, Kanoongo Circle, Sadwan, Tehsil Nurpur, District Kangra (H.P.).

2(iv). Petitioner qualified for draw of lots in Group-1 and vide communication dated 08.02.2019 (Annexure P-7) was declared successful candidate in the draw of lots, for the location in question. While processing the case of the petitioner, it was discovered by the respondents that Khasra No.533 was not exclusively owned by him. This land in the revenue documents was recorded in the joint ownership and possession of petitioner alongwith several others, wherein petitioner had 25 out of 30 shares. Respondents thereafter sent a communication

to the petitioner by email on 25.04.2019 (Annexure P-11), directing him to submit, inter alia, consents from all co-owners by 16.05.2019, failing which, candidature of petitioner was liable to be rejected without further notice. It was also brought to the notice of the petitioner that in case documents, other than the rectified documents pertaining to the offered land were submitted by him, then his candidature will be considered alongwith Group-3 applicants in accordance with guidelines.

2(v). According to the respondents, petitioner failed to submit the required rectified documents within the stipulated time frame. Therefore, vide communication dated 17.05.2019 (Annexure P-13), the candidature of the petitioner for Group-1 category was rejected. The petitioner was informed that his candidature would now be considered alongwith Group-3 applicants, in consonance with following Note 4(iv) of the Dealer Selection Guidelines, contained in the brochure for retail outlet:-

"4(iv). In case after selection, if it is observed that the offered land is co-owned by multiple persons and the selected candidate did not provide consent of all the co-owners, the selected candidate would be given 21 days' time to get consent of all the co-owners for the offered land failing which the selection of the candidate will get rejected and the candidate will get opportunity along with Group 3 applicants."

Aggrieved against the rejection of his candidature in Group-1 category, instant writ petition has been preferred by the petitioner.

3. We have heard learned counsel for the parties and gone through the record.

3(i). The factual matrix of the case is not much in dispute. In the Jamabandi for the year 2015-16 (page 104 of petition), Khasra No.533, situated at Patwar Circle Ther, Kanoongo Circle, Sadwan, Tehsil Nurpur, District Kangra, measuring 00-11-36 hectares, was recorded in the ownership and possession of petitioner alongwith various other co-owners. Petitioner was recorded co - owner to the extent of 25 out of total 30 shares over the joint land.

3(ii). The petitioner, while submitting his application for the allotment of the petroleum retail outlet, had applied under Group-I, as owner over the land comprised in Khasra No.533. The application was submitted by him on 05.12.2018. However, on the day of submission of the application, Khasra No.533 was not in exclusive ownership and possession of the petitioner.

3(iii). Learned counsel for the petitioner, contended that:- subsequent to submission of his online application dated 05.12.2018, the petitioner during last week of December 2018, had applied to the concerned revenue authority for partition of his share in Khasra No.533; land was ordered to be partitioned vide order dated 24.04.2019 passed by Assistant Collector, 1st Grade, Tehsil Nurpur, District Kangra; Khasra No.533 was accordingly partitioned and petitioner was allotted his share measuring 00-09-40 hectares in Khasra No.533/1, carved out

of Khasra No.533; petitioner became exclusive owner of Khasra No.533/1, measuring 00-09-40 hectares. It is not in dispute that on 11.05.2019 petitioner had submitted all the documents related to partition of Khasra No.533 to the respondents with respect to the fact that pursuant to partition order dated 24.04.2019, he had become exclusive owner of Khasra No.533/1.

3(iv). According to learned counsel for the petitioner, the insistence of the respondents of consent from co-owners, in the factual situation of the case, was meaningless as petitioner had become exclusive owner in possession of Khasra No.533/1 in the meanwhile. Therefore, the rejection of his candidature under Group-I by the respondents, vide communication dated 17.05.2019, was illegal.

4. From the above observations, the following can be deduced:-

4(i). The last date for submission of application form was 24.12.2018. Petitioner was not the exclusive owner of Khasra No.533 by 24.12.2018. He was owner of 25 out of total 30 shares.

4(ii). The respondent-Corporation put the application of petitioner in rectifiable category in Group-1, for the purpose of getting consent of co-owners of Khasra No.533 in accordance with stipulations of the Brochure.

4(iii). Respondents were within their right to call for the consent/ authorization of the co - owners in favour of the petitioner for establishing petroleum retail outlet over the land in question as huge investments are made for establishing a petroleum retail outlet. Respondents were well within their right to insist upon no objection/consent from the co-owners of Khasra No.533 in accordance with terms and conditions contained in brochure (Annexure P-1). By placing petitioner's application under rectifiable category, vide their communication dated 25.04.2019, the respondents-Corporation gave 21 days to him for submission of consent from all the co-owners. The consent documents were to be submitted by the petitioner accordingly on or before 16.05.2019.

4(iv). It has been admitted by learned senior counsel for the respondent-Corporation that before 16.05.2019, i.e. the date given for supplying consent of co-owners, petitioner on 11.05.2019 had submitted all the documents to the respondents evidencing the fact that the land has been partitioned in accordance with law and he has become exclusive owner of Khasra No.533/1.

4(v). The contention of learned counsel for the petitioner that there was no need for the petitioner to furnish consent of co-owners as he had become absolute owner of Khasra No.533/1, carved out of Khasra No.533, deserves to be accepted for following reasons:-

a). Petitioner had applied as owner of Khasra No.533, measuring 00-11-36 hectares in his application dated 05.12.2018.

b). Last date for submission of application was 24.12.2018.

c). Khasra No.533, measuring 00-11-36 hectares, was in joint ownership and

possession of various co-sharers, including the petitioner, as on 24.12.2018.

d). Petitioner applied for partition of Khasra No.533 during last week of December, 2018. The partition was ordered by revenue authorities on 24.04.2019. After the partition, petitioner became exclusive owner of Khasra No.533/1 (carved out of Khasra No.533), measuring 00-09-40 hectares.

e). The respondent-Corporation, though was within its rights under various clauses of Brochure to insist upon consent of co-owners of Khasra No.533, offered by the petitioner in his application submitted under Group-1 category before 16.05.2019, however, before this date, petitioner had become exclusive owner of Khasra No.533/1 under Order dated 24.04.2019, passed in partition proceedings initiated by the petitioner.

d). Therefore, there was no necessity for him to furnish consent of co-owners, as there was no co-owner on Khasra No.533/1, after 24.04.2019. It is not in dispute that petitioner had supplied documents with respect to partition order dated 24.04.2019 qua land in question to the respondents and the factum of his becoming exclusive owner of Khasra No.533/1 on 11.05.2015, i.e. well before the given date of 16.05.2019. In the facts and the circumstances of the case, there was no occasion for the respondents to reject the candidature of petitioner from Group-I category on the ground of non-submission of consent letters of co-owners.

5. In view of the above observations, the instant writ petition is allowed. Accordingly, impugned order dated 17.05.2019 (Annexure P-13), is quashed and set aside. Respondents are directed to consider and process the application of the petitioner under Group-I category pursuant to the advertisement in question. Pending miscellaneous application(s), if any, shall also stand disposed of.