

(2020) 10 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (C) No. 6477 Of 2017

Sanjukta Kumari Devi

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. And Two Others

RESPONDENT

Date of Decision : 14-10-2020

Acts Referred:

Citation : (2020) 10 OHC CK 0008

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : Umesh Chandra Behura, P.Dutta, Pitambar Acharya, Srinivas Patnaik, T.P.Paul, N.C. Rout, Prasanta Kumar Panda

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. Petitioner, in this writ petition, assails the selection of opposite party No.3-Sumitra Choudhury as Distributor of LPG of opposite party No.1-Bharat

Petroleum Corporation Limited (for short, "Corporation") for Subarnapur under Jaradagada Grama Panchayat in the district of Ganjam.

2. Pursuant to an advertisement dated 16.11.2016 (Annexure-1) published by opposite party No.1 in daily newspaper, petitioner, opposite party No.3

along with eight others applied for LPG Distributorship, in which opposite party No.3 was selected for being appointed as such. It reveals from the

averments made in the writ petition that Unified Guidelines for selection of LPG Distributor of existing Oil Companies in India (Annexure-2) (for short,

"Guidelines") has been published in July, 2016 and the selection was made in accordance with the said Guidelines (Annexure-2). The "Mode

of Selection" of LPG Distributorship is prescribed in Para-6 of the Guidelines,

which reads as follows:-

6. MODE OF SELECTION

Selection for LPG Distributorship will be done by inviting applications through advertisement under appropriate category in newspapers.

Selection of LPG distributor for an advertised location will be done by draw of lots from all the eligible applicants for that location.

The Eligibility Criteria for Applicants of LPG Distributorship are provided in Para-7 of the said Guidelines. Clauses E & F of sub-para 7.1 of

Para-7 are relevant for adjudication of the writ petition which reads as follows:-

7. ELIGIBILITY CRITERIA FOR APPLICANTS

All applicants fulfilling the eligibility criteria will become eligible for the draw for selection of the LPG distributorship. The eligibility

Criteria is as under:-

7.1 Common Eligibility Criteria for Sheheri Vitarak, Urban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak type of LPG

Distributorships

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E. The selected candidate has to ensure that an all weather motorable approach road (public road or private road connecting to the public

road) minimum 2.5 meter width is made available to provide access of LPG Cylinder Truck to the offered land for Godown/LPG Godown. In

case of private road connecting to the Public Road, the same should be either Owned/Registered lease or having a Right of Way from the

owner(s) of the land. Wherever the State Government stipulates an approach road of wider dimensions the same should be made available

by the applicant.

F. An undertaking has to be provided by the selected candidate at the time of acceptance of Letter Of Intent (LOI) that the Approach

Road as specified will be provided within the timeframe as mentioned in LOI. The Approach Road will be verified for its suitability

before the issuance of Letter of Appointment (LOA). It would be responsibility of the selected candidate to ensure that the LPG cylinder

truck is allowed unhindered access at all times through this approach road to the

distributorship. In the event of failure of selected candidate to make available the approach road, the LOI is liable to be cancelled along

investment made by candidate in the construction of the Godown without having a proper approach road.

2.1 It is alleged in the writ petition that the Godown for storing LPG Cylinders cannot be set up at the proposed site offered by opposite party No.3, as

without verifying the same, selected the opposite party No.3 by drawal of lottery on 14.03.2017. Accordingly, the petitioner along with other applicants

Ganjam at Chatrapur on 27.03.2017 (Annexure-4) stating that there is no public access to the proposed site given by the opposite party No.3. The

this writ petition for setting aside the selection of opposite party No.3 as the LPG Distributor in respect of Subarnapur under Jaradagada Grama

3. Mr. Behura, learned counsel for the petitioner relying upon Clauses 1 and 2 of the Guidelines (supra) submitted that the eligibility

the eligibility criteria will become eligible for draw for selection of LPG Distributorshipâ. He further relied upon Clause-âEâ of sub-

made available to provide access to LPG Cylinder Truck to the proposed site/land for LPG Godown. The proposed site of opposite party No.3 does

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proposed site of opposite party No.3 is surrounded by private residential houses. Thus, the opposite party No.3 does not fulfil the criteria of providing all weather motorable approach road to the proposed site. As such, she could not have been selected for LPG Distributorship in question. Although complaint to that effect was lodged the authorities without taking into consideration the same allowed the opposite party No.3 to participate in the drawal of lottery and she was selected. Hence, the selection of opposite party No.3 as LPG Distributor is not sustainable being in contravention of Para-7 (Eligibility Criteria) and is liable to be set aside.

4. Mr.Acharya, learned Senior Advocate referring to the counter affidavit filed by opposite party Nos.1 and 2, submitted that the suitability of the site for setting up of the Godown is being assessed by the officials of opposite party-Corporation at the appropriate stage as per the Guidelines before issuance of Letter of Appointment. It is his submission that after preliminary scrutiny of the applications received as per Para-13 of the Guidelines, eligible candidates were allowed to take part in the Lottery and on drawal of lottery the opposite party No.3 was selected.

Para-13 of the Guidelines reads as follows:-

13. PROCEDURE FOR RECEIPT OF APPLICATION

Applicants for Sheheri locations will have to make application on-line in portals to be communicated in the Advertisement.

Applicants for Urban, Gramin and Durgam Kshetriya Vitark locations will have to submit applications in the prescribed format, in sealed envelope only. Acknowledgement for applications received will be sent to the applicants.

In case deficiencies are found in the application, a letter would be sent to the applicant to rectify the deficiencies within a specified period of time.

The following deficiencies will be treated as Non-rectifiable:

- a. Age as on the date of application is less than 21 completed years or more than 60 years except applicants applying under FF category;
- b. Does not belong to the category for which the concerned distributorship location is reserved;
- c. Does not possess the minimum requisite qualification as per the eligibility criteria except for FF;

- d. Not an Indian Citizen;
- e. Not a resident of India;
- f. Does not have land for Godown/Showroom as per the eligibility criteria;
- g. Applicant is a Family member of an employee of PSU Oil Marketing Companies;
- h. Applicant not fulfilling multiple dealership/distributorship norms as per the eligibility criteria;
- i. Does not meet the eligibility criteria prescribed for the applicant applying under category of 'existing SKO dealers of OMCs'.

Further, in case where candidate has been declared ineligible on account of deficiencies falling under non-rectifiable category as listed

above and if a representation is received from the candidate within 21 days period from the date of rejection letter, then the same will be

examined for a suitable decision only in those cases wherein clarification/supporting documents are specifically provided for the details

which have been filled in the application form by the applicant for a particular parameter.

Referring to Clause-4 of the Guidelines (supra), he submitted that a selected candidate has to ensure that an all weather motorable approach

road (public road or private road connecting to the public road) minimum 2.5 meters width is made available to provide access of LPG Cylinder Truck

to the offered land for Godown/LPG Godown. After being selected only, the selected candidate has to ensure the same. Further, referring to Clause

4 of the Guidelines (supra), he submitted that an undertaking has to be provided by the selected candidate at the time of acceptance of Letter

of Intent (LOI) that the approach road as specified will be provided within the time frame as prescribed in LOI. Thereafter, the approach road will be

verified for its suitability before issuance of Letter of Appointment (LOA). The question of verification of availability of all weather motorable

approach road does not arise at the stage of drawal of lottery, as specified in the said Guidelines. As such, opposite party No.3 cannot be said to be

not eligible for consideration of her candidature as alleged by the petitioner. Referring to Annexure-A/3 to the counter, Mr.Acharya, learned Senior

Advocate submitted that LOI in favour of opposite party No.3 was issued on 5th April, 2017. In compliance of Clause 4 of the Guidelines

(supra), a clause has been incorporated in the LOI, which read as follows:-

â??You should have to ensure that an all weather motorable approach road (public or private road connecting to the public road) of

minimum 2.5 metre width is made available within a period of four months from the date of this letter in order to provide access of LPG

Cylinder Truck to the offered land for Godown/LPG Godown. In case of private road connecting to the Public Road, the same should be

either owned/registered lease or having a right of way from the owner(s) of the land as prescribed in the Brochure. Relevant land

documents to this effect should be made available before issuance of Letter of Appointment.â??

However, in view of the interim order passed by this Court on 25.04.2017, selection process could not proceed further and LOA has not yet been

issued in favour of the selected candidate, namely, opposite party No.3. He further submitted that if a candidate gives false information he/she can be

dealt with as per Para-26 of the Guidelines , with reads as follows:-

â??26. FURNISHING OF FALSE INFORMATION

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.

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 conducted i.e. 10% of the applicable security deposit will be forfeited.

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.

In such cases, the selected candidate / distributor will have no claim whatsoever against the respective PSU Oil Marketing Company.â??

Thus, he submitted that there is a full-proof selection process and all possible measures are taken before issuance of LOA. The petitioner having

failed in the selection process has no locus standi to challenge the process of selection. Hence, the writ petition being devoid of merit is liable to be

dismissed.

5. Mr.Panda, learned counsel for opposite party No.3 (selected candidate) with reference to the counter affidavit filed by her submitted that on being selected by drawal of lottery, LOI was issued to her as per Annexure-A/3 in respect of LPG Distributorship at Subarnapur under Jaradagada Grama Panchayat, which was reserved for OBC Women category. The selection has been done strictly in terms of the Guidelines. The LPG Godown constructed by opposite party No.3 at her own cost is ready for storage of LPG Cylinders. Since the criteria of selection of LPG Distributorship of opposite party No.3 come under the category of 'Gramin Vitarak', she has constructed the Godown for storage of minimum capacity of 5000 Kgs. of LPG Cylinders. It is his submission that after preliminary scrutiny of applications, as per Para-13 of the Guidelines and observing due formalities, opposite party No.3 along with others including the petitioner were informed to participate in the process of lottery held on 14.03.2017 and the opposite party No.3 came out successful. In the meantime, LOI has already been issued in her favour. Although the lottery was drawn on 14.03.2017 and LOI has been issued in her favour on 5th April, 2017 the opposite party No.3 is yet to commence the Distributorship as LOA has not yet been issued in her favour in view of interim order dated 25.04.2017 passed by this Court. The Sarapanch, Jaradagada Grama Panchayat in his letter dated 01.06.2017 under Annexure-B/3 addressed to the Territory Manager of the opposite party-Corporation clearly expressed his no objection for construction of LPG storage Godown over the proposed site offered by opposite party No.3. He further submitted that the allegation of proposed site of LPG Godown of opposite party No.3 has no access of all weather motorable approach road as it is surrounded by residential plots and houses, are false and as such, he prayed for dismissal of the writ petition.

6. Taking into consideration the submissions made by learned counsel for the parties as well as the materials available on record, it appears that the issue involved in this writ petition revolves around the eligibility of opposite party No.3 to participate in the selection process of LPG Distributorship of Subarnapur village under Jaradagada Grama Panchayat in the district of Ganjam. From the averments made in the writ petition as well as the submissions made by Mr.Behura, learned counsel for the petitioner, it appears that the sole objection raised by the petitioner is with regard to non-

availability of all weather motorable approach road to the proposed site of LPG Godown provided by opposite party No.3.

7. Although Para-7 of the Guidelines begins with the words "All applicants fulfilling the eligibility criteria will become eligible for the draw

for selection of the LPG distributorship", the said Clause deals with both draw of lottery and post-selection criteria when the LOI and LOA are

issued. "All weather motorable approach road" has been dealt with specifically in Clauses "E" and "F" of the Guidelines (supra). It

specifically provides that a selected candidate has to ensure that all weather motorable approach road (public road or private road connecting to the

public road) of minimum 2.5 metres width is made available to provide access to LPG Cylinder Truck to the offered land for Godown/LPG Godown.

Thus, after being selected through drawal of lottery only, the candidate has to ensure that the proposed site for LPG Godown has an all weather

motorable approach road. Further, Clause-"F" provides that an undertaking has to be provided by the selected candidate at the time of

acceptance of LOI that the approach road as specified will be provided within the time frame as mentioned in LOI. It further provides that the

suitability of approach road as offered by the selected candidate will be verified by the authorities before issuance of LOA. The aforesaid provisions

made in the Guidelines make it abundantly clear that on preliminary verification of the applications as per Para-13 of the Guidelines (supra), if a

candidate is found suitable/eligible, he /she would be allowed to participate in the process of selection (through drawal of lottery). After being selected,

he/she has to ensure that the offered site/plot has all weather motorable approach road of 2.5 meters width. It further appears that the suitability of the

approach road will be verified by the authorities before issuance of LOA. Thus, the allegation of Mr.Behura, learned counsel for the petitioner to the

effect that the opposite party No.3 was not eligible to participate in the selection process, is not sustainable. It further appears that in conformity with

Clause-E of the Guidelines (supra), the LOI was issued to the opposite party No.3, wherein a specific clause has been incorporated to the effect that

she should ensure that an all weather motorable approach road of minimum 2.5 meters width will be made available within a period of four months

from the date of issuance of said LOI (Annexure-A/3). Thereafter, the selection process could not proceed in view of the interim direction of this

Court dated 25.04.2017.

8. On a thorough scrutiny of materials available on record, it appears that there is no material on record to show that the proposed site of LPG

Godown offered by the opposite party No.3 does not have an "all weather motorable approach road". Only a bald allegation has been made in

the writ petition without any material in support of the same. In that view of the matter, the allegation made by the petitioner is without any basis. On a

close scrutiny of the materials on record, more particularly the LOI (Annexure-A/3) issued on 05.04.2017 makes it abundantly clear that opposite

party No.3 has to provide an "all weather motorable approach road" within a period of four months of issuance of LOI in terms of Clause-

"E" of the Guidelines (supra). As such, the allegations made by the petitioner being baseless, merits no consideration.

8.1 Accordingly, the writ petition being devoid of any merit is dismissed. Interim order dated 25.04.2017 passed in Misc. Case No.5839 of 2017 stands

vacated.

8.2 Authenticated copy of this order downloaded from the website of this Court shall be treated at par with certified copy in the manner prescribed in

this Court's Notice No.4587 dated 25.03.2020.