
(2014) 03 OHC CK 0058
In the Orissa High Court
Case No : W.P. (C) No. 12017 of 2011

Satyabadi Dalsingharay

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Citation : (2014) 118 CLT 483 : (2014) 1 OLR 941

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S.C. Parija, J.—Heard learned counsel for the parties.

2. This writ petition has been filed challenging the decision of the Hindustan Petroleum Corporation Ltd., in-cancelling the merit list dated 14.07.2009, drawn up in favour of the petitioner for award of retail outlet dealership at Badapokharia - Champagada location under "open category" and holding a re-interview and selecting opposite party No. 3 as the retail outlet dealer for the said location. Accordingly, a prayer has been made-to quash the selection made in favour of the opp. party No. 3 and direct the opp. party No. 2 to award the retail outlet dealership at Badapokharia-Champagada location under "open category" in favour of the petitioner, as per the earlier merit list dated 14.07.2009.

3. The brief facts of the case is that the Hindustan, Petroleum Corporation Ltd. issued an advertisement dated 30.1.2006, for selection of retail outlet dealership at Badapokharia-Champagada location on N.H. 5, in the district of Khurda. Pursuant to such advertisement, four applications were received, including that of opp. party No. 3. The said opp. party No. 3 had offered land bearing Plot No. 952, Khata No. 1140/496, in Mouza-Badapokharia, in the district of Khurda, on the strength of an affidavit dated 24.02.2006 from the land, owner for leasing/ selling the land to the opp. Party No. 3 for setting up the retail outlet. The Technical Evaluation Committee of the Corporation awarded "71 marks to opp.

Party No. 3, for the land offered for setting up retail outlet. However, none of the other candidates could score more than the, qualifying marks of 60% and hence no candidates were empanelled for dealership.

4. The same location was re-advertised on 2.12.2007 and only one application was received from the present petitioner, who offered the same land bearing Plot No. 952, Khata No. 1140/496, in Mouza-Badapokharia, in the district of Khurda, which had earlier been offered by opp. party No. 3 in the year 2006. This time, the Technical Evaluation Committee of the Corporation awarded "0" marks for the land on the ground that the land is situated on a sharp curve and down hill of a mountain with number of cashew-nut trees and hence the same was found not suitable for setting up retail outlet. As the petitioner was the only candidate and he had secured overall aggregate of 48.8% marks, which is below the qualifying marks of 60%, he was not empanelled for the dealership.

5. The Corporation again re-advertised the said location for the third time on 14.07.2009. Both the present petitioner and opp. party No. 3 applied for the retail outlet dealership for the said location. Opp. party No. 3 again offered the same land, i.e. Plot No. 952, Khata No. 1140/496, in Mouza-Badapokharia, in the district of Khurda, which he had offered in the year 2006, as the owner of the land, as he had purchased the same in the meantime. The Technical Evaluation Committee again awarded "0" marks for, the said land to opp. party No. 3. The petitioner was awarded "86" marks for the land offered by him for the proposed retail outlet. After interview, the petitioner was declared as 1st empanelled candidate.

6. Being aggrieved by the decision of the Technical Evaluation Committee of the Corporation to award "0" marks, opp. party No. 3 filed a complaint on the ground that he had been awarded 71" marks for the same land in 2006 and therefore, the award of "0" marks for the same land is not proper and justified. The Corporation conducted an investigation into the complaint made by opp. party No. 3 and the Investigating Officer found that the land offered by opp. party No. 3 was meeting the norms and therefore he should have been awarded appropriate marks on various parameters in accordance with the prescribed guidelines. As the complaint made by opp. party No. 3 was found to be substantiated, the Corporation vide order dated 18.03.2010 directed for re-interview of the eligible candidates. The Corporation constituted a fresh Technical Evaluation Committee, who re-evaluated the bids of the parties and awarded "69" marks for the land to opp. party No. 3 and 78" marks to the present petitioner in the re-interview conducted on 2.12.2010, opp. party No. 3 was found to have secured an overall aggregate of 70.31% of marks and was declared as the 1st empanelled-candidate and the petitioner was the second empanelled candidate securing overall 68.05% marks.

7. Being aggrieved by the action of the Corporation in revising the marks earlier awarded to opp. party No. 3, the petitioner lodged a complaint against the selection of opp. party No. 3 the said complaint of the petitioner was investigated

into and the Investigating Officer reported that the decision of the Technical Evaluation Committee in awarding "0" marks to opp. party-No. 3 for the land offered by him was a bona fide mistake, which could-be detected only during investigation and therefore, there was no error in the decision in selecting opp. party No. 3 as the 1st empanelled candidate.

8. This decision of the Corporation to review its earlier decision and revise the marks awarded to the petitioner vis-?-vis opp. party No. 3 and selecting opp. party No. 3 as the 1st empanelled candidate is under challenge in the present writ petition.

9. The specific plea of the petitioner is that as he had been awarded "86" marks for the land offered by him for setting up proposed retail outlet at the prescribed location in the earlier interview held on 14.7.2009, the same could not have been reviewed/revise on the complaint of opp. party No. 3. In any case, while awarding marks to opp. party No. 3 for the land offered by him, the marks already awarded to the petitioner earlier could not have been reduced. It is further submitted that the petitioner having offered the said land earlier, pursuant to the advertisement dated 2.12.2007, which is now being offered by the opp. party No. 3, and having been awarded "0" mark on the ground that the land is situated on a sharp curve and down hill of a mountain with number of cashew-nut trees and hence not suitable for setting up retail outlet and the opp. party No. 3 having been awarded "0 mark for the said land earlier, there was no justification for the Corporation in reviewing/revise the same and awarding " him "69" marks for the same land.

10. Learned counsel for the petitioner accordingly submits that the entire process of selection adopted by the Corporation is improper and arbitrary and the selection made in favour of opp. party No. 3 cannot be sustained.

11. Learned counsel appearing for the Corporation-opp. party Nos. 1 and 2, with reference to the counter affidavit submits that the Technical Evaluation Committee of the Corporation had initially awarded "0" mark to opp. party No. 3 for the land offered by him. Subsequently, on the complaint of opp. party No. 3, the matter was investigated by a senior officer of the Corporation, who found during investigation that the land offered by opp. party No. 3 was meeting the norms prescribed in the guidelines and therefore appropriate marks should have been awarded on various parameters as per the guidelines. As the complaint made by opp. party No. 3 was found to be substantiated, the entire issue was reevaluated by a fresh Technical Evaluation Committee, by holding a re-interview and in consideration of all parameters, the petitioner was awarded "71" marks and opp. party No. 3 was awarded "69" marks respectively for land offered by them. Accordingly, on an overall aggregate, opp. party No. 3 secured 70.31 % marks and the petitioner secured 68.05% marks, as per Annexure-B/1 to the counter affidavit.

12. Learned counsel for the Corporation further submits that even if the earlier

"86" marks awarded to the petitioner is taken into consideration, even then, his over all aggregate comes to 70.05 % marks as against opp. party No. 3, who has secured 70.31% marks. Accordingly, it is submitted that the decision of the Corporation in this regard should not be interfered with.

13. Learned counsel for the opp. party No. 3 submits that as the said opp. party No. 3 was awarded 71" marks for the same land offered by him in the year 2006, there was no justification for awarding "0" marks for the self same land, which he had offered as the owner, having purchased the same from the recorded owner in the meantime, it is submitted that on the complaint of opp. party No. 3, the Corporation conducted an investigation by a senior officer and during such investigation it was found that the award of "0" mark to opp. party No. 3 was a bona fide mistake. Accordingly, on reconsideration, the opp. party No. 3 was awarded "69" marks for the land offered by him and after re-interview which was conducted on 14.07.2009, the opp. party No. 3 secured an over all aggregate of 70.31% marks, while the petitioner secured 68.05% marks. It is accordingly submitted that as the error in awarding marks had been corrected by the Corporation on a reconsideration of the matter, the same cannot be faulted.

14. Admittedly, opp. party No. 3 had offered the land bearing Plot No. 952, Khata No. 1140/496, in Mouza-Badapokharia, in the district of Khurda in the year 2006 for opening of a retail outlet at Badapokharia-Champagada location, on the basis of a lease agreement entered into with the recorded land owner and the Technical Evaluation Committee of the Corporation had awarded 71" marks for the said land offered by opp. party No. 3. Subsequently, when the Corporation re-advertised for appointment of retail outlet dealership for the said location on 2.12.2007, the present petitioner on the basis of the lease agreement entered into with the recorded land owner offered the same land for setting up the retail outlet. The Technical Evaluation Committee of the Corporation had awarded "0" mark to the, petitioner, in the third advertisement issued on 14.07.2009, the petitioner offered another land at the location and opp. party No. 3 offered the same land as the land owner, having purchased the same in the meantime. The Technical Evaluation Committee of the Corporation awarded "86" marks to the petitioner and "0" marks to the opp. party No. 3. On a compliant, the Corporation conducted an investigation and during investigation it was found that the land offered by opp. party No. 3 meets the prescribed norms and therefore, he should have been awarded appropriate marks on various parameters in accordance with the prescribed guidelines. Subsequently, afresh Technical Evaluation Committee of the Corporation conducted a re-interview on 02.12.2010, in which, opp. party No. 3 was awarded "69" marks and the petitioner was awarded 78" marks respectively, for the lands offered by him. On an overall aggregate with regard to various parameters, as prescribed under the guidelines, opp. party No. 3 secured 70.31% marks and was declared 1st empanelled candidate and the present petitioner secured 68.05% marks and was the 2nd empanelled candidate.

15. Accordingly, the opp. party No. 3 has now been selected for the retail outlet dealership at the prescribed location.

16. From the above, it is seen that there has been several assessment and evaluation in respect of the self same land and on different occasions, different marks have been awarded. Further, while the Technical Evaluation Committee of the Corporation had awarded "0" mark to opp. party No. 3 in the year 2006, for the same land, now offered by him on the finding that the same is situated on a sharp curve and down hill of a mountain with number of cashew nut trees and therefore, found not suitable for putting up retail outlet, it is not understood as to how during investigation by a senior officer of the Corporation, the said land was found to be meeting all the norms and suitable for putting up the retail outlet. Moreover, it is not understood that while reviewing and/or reconsidering the case of opp. party No. 3 and revising the marks awarded to him for the land offered by him, how the Technical Evaluation Committee of the Corporation could revise and reduce the marks already awarded to the petitioner earlier, when he was declared as the 1st empanelled candidate.

17. In view of the above, the impugned decision taken by the Technical Evaluation Committee in the re-interview conducted on 02.12.2010 cannot be sustained and the same is accordingly quashed.

18. The Corporation-opp. party Nos. 1 and 2 are directed to constitute a fresh Technical Evaluation Committee, preferably with new members, for re-assessing the comparative merits of the petitioner vis-?-vis opp. party No. 3 as per the prescribed guidelines for appointment of retail outlet dealership at the Badapokharia-Champagada location on N.H. 5, in the district of Khurda and finalize the same as expeditiously as possible, preferably within a period of two months hence.

19. The writ petition is accordingly disposed of.