
(2015) 12 AHC CK 0087
In the Allahabad High Court
Case No : Writ - C No. 54357 of 2013

Saurav Mittal

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Citation : (2016) 1 ADJ 682

Hon'ble Judges : Dinesh Maheshwari and S.B. Singh, JJ.

Bench : Division Bench

Advocate : Anshul Kumar Singhal and V.K. Singh, for the Appellant; Prakash Padia, S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Dinesh Maheshwari, J.—The petitioner, who had been an applicant for award of Retail Outlet dealership of the respondent Indian Oil Corporation ("the respondent Oil Company" hereafter), has preferred this writ petition with his grievance against denial of marks towards "capability to provide land & infrastructure" and against rejection of his complaint.

2. After having heard the learned counsel for parties and having perused the material placed on record, we have formed the opinion that the petitioner's grievance, as regards denial of marks towards "land & infrastructure" for alleged want of the affidavit of co-owner and want of disclosure of demarcation, deserves reconsideration by the respondent Oil Company. In this view of the matter, it does not appear necessary to dilate and adjudicate on all the issues raised in this writ petition. Suffice it would be to indicate, in brief, the relevant background aspects and the reasons wherefore reconsideration of the relevant questions appears expedient.

3. The relevant background aspects of the matter are that in response to an advertisement issued by the respondent Oil Company on 12.10.2011, for appointment of Retail Outlet dealers at various locations, the petitioner applied

for the location "Aligarh Delhi Road, NH-91, village Gawana to Aligarh Border, District Aligarh". So far the requirement of "land & infrastructure" was concerned, the petitioner offered a piece of land admeasuring 1225 sq. metres, as comprised in Gata No. 4 at village Marhola, Pargana Kher, Tahsil Gawana, District Aligarh out of the total land admeasuring 2250 sq. metres, that was purchased by him from one Sri Jaiveer Singh Tomar by way of a registered sale-deed dated 16.12.2011. For comprehension of the material aspects related with the transactions concerning the land of Gata No. 4, it could be noticed that originally, the said land of Gata No. 4 admeasuring 1.717 hectares was of one Sri Prithvi Singh son of Damber Singh. The said Sri Prithvi Singh sold 1/7th portion (admeasuring 0.245 hectares) of this land to the said Sri Jaiveer Singh Tomar by way of a registered sale-deed dated 18.08.2005. The portion sold to Sri Jaiveer Singh was distinctly shown in the site plan attached to this sale-deed. Out of the land so purchased by Sri Jaiveer Singh, about 0.020 hectare portion went in acquisition for National Highway; and the remaining 0.225 hectare was sold to the petitioner.

4. It appears that after submission of application by the petitioner, site inspection was carried out by the respondent Oil Company; and it had been the case of the petitioner that at the time of inspection on 09.08.2012, the Khatauni bearing endorsement of mutation in his favour and an affidavit of the said Sri Prithvi Singh were also submitted. Thereafter, interviews were held at Agra on 11.9.2012. The petitioner has pointed out that immediately after the interview, result was declared wherein, himself as also the other applicant were held disqualified. The petitioner raised the grievance against rejection of his candidature and the decision taken by the respondents on such a grievance was communicated to the petitioner by the impugned letter dated 08.07.2013, which reads as under:-

"This has reference to the copy of your letter dated 19.09.2012 addressed to General Manager UPSOII. The same was received by us on 04.10.2012.

We have gone through your complaint and point wise reply is as under.

1. You have offered land part of Khatai No. 179 Gata No. 4, part of the same (ie 0.225 hectare out of total 1.717 hectare) was purchased by you from Mr. Jai Singh Tomar where he was the owner of the same part of land. As per Khatauni submitted by you there are two co-owners 1. Mr. Prathvi Singh 2. Jai Singh Tomar in the said Land. As per Dealers selection Guidelines "Notarized affidavit by all the owners in favour of applicant" is required. But you have not submitted Notarized affidavit from the other co-owner Mr. Prathvi Singh. Further the offered land was not demarcated as per the land paper enclosed with the application. Hence awarded Zero marks under the parameter "capability to provide land & infrastructure."

2. As per advertisement Dated 20.12.2010 the working capital required for subject location is 18 Laks where as you have submitted documents of total

working capital 16,73,786/- (Rs. 8 Laks in FDR+Rs. 7,21,499 in a/c No. 3459 of Shreyas Gramin bank+Rs. 1,52,287 in a/c No. 7751110000901 of Bank of India) along with application form. Hence marks awarded accordingly under parameter "Ready availability of finance".

3. Commitment volume from future customers is not written i.e. blank in the Affidavits submitted along with application form. Hence Zero marks awarded under parameter "Tied up Volume".

The above is for your kind information please."

5. Seeking to question the aforesaid communication dated 08.07.2013, the petitioner has filed this petition, inter alia, with the submissions that the affidavit of co-owner would have been required only if the site proposed was owned by two or more persons; but in the present matter, there was no such co-ownership of any person with him. Even then, according to the petitioner, an affidavit of the said Sri Prithvi Singh was indeed forwarded to the authorities. It is also submitted that so far demarcation part was concerned, a site plan was distinctly submitted by the petitioner with clear-cut demarcation, which was at page No. 74 of the papers submitted by him (page 131 of the paper book of this petition).

6. The respondents in their counter affidavit would maintain that as per the available record, the said Sri Prithvi Singh sold only 1/7th part of the total land admeasuring 1.717 hectares as comprised in Gata No. 4 to Sri Jaiveer Singh, who, in turn, sold the portion purchased by him to the petitioner. In this scenario, according to the respondents, the said Sri Prithvi Singh was standing in the capacity of a co-owner and a notarized affidavit of co-owner of the land was indeed required, particularly when there had been no legal partition of the land of Gata No. 4.

7. Learned counsel for the petitioner has referred to a decision of the Hon'ble Supreme Court in the case of Babita Jaiswal Vs. Indian Oil Corporation Ltd. & others (Civil Appeal No. 7775 of 2012, decided on 01.11.2012 to submit that when the identity and specifications of land offered by the petitioner were distinctly available on record, the approach of the respondents in denial of marks towards "land & infrastructure" remains unjustified. According to the learned counsel, the said Sri Prithvi Singh could not be treated as co-owner of the petitioner's portion of plot and his consent was not even necessary for award of marks to the petitioner on this parameter of "land & infrastructure".

8. Per contra, learned counsel for the respondents submitted that demarcation and mutation of land being missing in this case, the Oil Company has rightly not awarded any marks to the petitioner on this parameter, particularly when the affidavit of the co-owner was not submitted. Learned counsel for the respondents further submitted that the aforesaid decision in Babita Jaiswal's case would not apply to the present case because therein, the land was sold to two different persons and individual purchaser was not treated to be the co-owner for the other purchaser.

9. It may be pointed out that during the course of submissions, the learned counsel for the petitioner frankly submitted that so far item Nos. 2 and 3 of the impugned communication dated 08.07.2013 are concerned, the petitioner is not claiming any award of further marks on such parameters of "Ready availability of finance" and "Tied up Volume". So far as the parameter of "capability to provide land & infrastructure" is concerned, in our view, the matter requires reconsideration, particularly with reference to the decision of Hon'ble Supreme Court in Babita Jaiswal's case (supra) and in light of the material available on record.

10. Honble Supreme Court in the said case of Babita Jaiswal found and observed as under:-

"It is not in dispute that in furtherance of the sale deeds executed by Shri Kamala Prasad, the names of the appellant and Smt. Nirmala Devi were separately mutated in the revenue records. Therefore, there was no doubt about the identity of the plot and the area sold to the appellant which constituted the basis of claim for award of dealership and L-1 Committee did not commit any error by awarding marks to the appellant in lieu of the plot. Unfortunately, this aspect of the case was altogether ignored by the Investigating Officer and respondent No. 2 committed serious illegality by cancelling the selection on the ground that the appellant had not furnished the consent of the co-owner.

The Division Bench of the High Court also committed serious error by dismissing the writ petition on the assumption that in the absence of formal partition of plot No. 995, Nirmala Devi will be deemed to be co-owner of the portion of the plot purchased by the appellant. In our view, when the appellant and Nirmala Devi had purchased separate portions of plot No. 995, which were duly mutated in their names, Nirmala Devi could not be treated as co-owner of appellant's portion of the plot and her consent was not necessary for award of marks in lieu of the land.

In the result, the appeal is allowed and the impugned order is set aside. Order dated 16.03.2010 passed by respondent No. 2 is quashed and the selection of the appellant for award of dealership of KSK is upheld. Respondent No. 2 and officers subordinate to him are directed to take consequential actions within a period of two months from today."

11. The distinction as suggested by the learned counsel for the respondents, in our view, does not relate to the ratio of the decision aforesaid. A transaction made by division of a parcel of land, with sale of the two portions to different persons and another transaction by division of parcel of land where only one portion is sold and another is retained by the original owner, practically stand at the same footings so far consideration of the respondents is concerned; and the ratio of Babita Jaiswal's case would equally apply. In other words, whether separate portions of land are sold to two different persons or whether one portion is retained by the original owner while selling the other, the effect, for the

purpose of consideration of respondents, is the same. The question whether such different owners of different portions could be held to be co-owners for the purpose of "capability to provide land & infrastructure" for award of outlet dealership, has been decided by the Hon'ble Supreme Court against the respondent Oil Company while holding that the other person cannot be treated as co-owner of the applicant's portion of plot. Applying the ratio of decision in Babita Jaiswal's case (supra), prima facie, we are unable to endorse the views of respondents that Prithvi Singh was required to be treated as co-owner even of the petitioner's portion of the land.

12. Apart from the above, a certified copy of the sale-deed executed by the original owner Prithvi Singh in favour of the predecessor of the petitioner, namely, Sri Jaiveer Singh, has been placed on record as Annexure R-A-1 to the rejoinder affidavit with the submissions that therein, specific site plan with demarcation of the land sold to Jaiveer Singh was annexed; and coupled with this remains the fact that with his application, the petitioner indeed submitted a site plan (at page - 74 of the papers submitted by him) showing distinctly the portion of land being offered for the purpose of outlet. Thus, the case of the petitioner is that identity with specific demarcation of land offered is beyond doubt.

13. We are not making final comments on merits of the case as the matter is proposed to be restored for reconsideration by the respondents. Suffice it to observe for the present purpose that all the relevant aspects of the matter having not gone into consideration of the authorities concerned while dealing with the complaint/grievance raised by the petitioner in paragraph-1 of the communication impugned, the questions relating to award of marks under the parameter "capability to provide land & infrastructure" deserve reconsideration.

14. Accordingly, and in view of the above, this writ petition succeeds and is allowed to the extent that paragraph-1 of the impugned communication dated 08.07.2013 is annulled, and complaint of the petitioner as regards award of marks under the heading "capability to provide land & infrastructure" is ordered to be reconsidered by the Executive Director of the respondent Indian Oil Corporation. It would be expected of the authority concerned to reconsider the matter in accordance with law and with reference to the record of the case at the earliest, preferably within four weeks from the date of production of a certified copy of this order.

15. No costs.