
(2016) 09 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 4374 of 2015

Shri Gopal Das

APPELLANT

Vs

India Oil Corporation Limited

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Citation : (2017) AIR(Gauhati) 7

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. B. Sinha, Advocate, for the Respondent No. 4; Mr. K.N. Choudhury, Senior Advocate, for the Petitioner; Mr. M.K. Choudhury, Standing Counsel, OIL, for the Respondent Nos. 1 to 3

Final Decision : Allowed

Judgement

Mr. Arup Kumar Goswami, J. - Heard Mr. K.N. Choudhury, learned senior counsel, appearing for the petitioner. Also heard Mr. M.K. Choudhury, learned senior counsel, appearing for the Indian Oil Corporation Ltd., and Mr. B. Sinha, learned counsel, appearing for respondent No.4.

2. This writ petition under Article 226 of the Constitution of India is filed praying for setting aside the selection of the respondent No.4 for appointment as LPG Distributor for Karimganj (Town), in the District of Karimganj, pursuant to the advertisement published by Indian Oil Corporation Ltd. (IOCL) in "Dainik Jugasankha" in its issue dated 30.09.2013 and the letter dated 14.07.2011, rejecting the petitioner's complaint, filed before the DGM (LPG) for cancellation of the selection respondent No.4, as well as for a direction to hold a draw, under Clause 5 of the guidelines mentioned in the Brochure for the year 2013, amongst the qualified applicants selected for the draw earlier.

3. The location at Karimganj town is meant for Open Combined Category consisting of physically handicapped persons, outstanding sports-persons and freedom fighters belonging to Open Category. The last date for submission of

application was 31.10.2013.

4. According to the advertisement, the applicants should own a plot of land of minimum dimension of 25m X 30m (within 15 Kilometer from municipal/town/village limits of the location offered in the same State) for construction of LPG godown for storage of 8000 Kg. of LPG in cylinders. It is indicated that if the plot of land offered does not meet the minimum dimension, the application will not be considered. Clause 3(b), dealing with showroom, provides that a showroom of minimum dimension of 3m X 4.5m, as per the standard layout, is to be made in a shop/land located in the advertised location or locality as specified in the advertisement for LPG distributorship and that it should be easily accessible to general public through a suitable approach road. Clause 4 of the advertisement reads as follows:

"Detailed guidelines on eligibility, infrastructure requirements of land for LPG godown/LPG godown, showroom, infrastructure for Home delivery of cylinders etc. along with the details of selection process are given in the Brochure, which can be collected personally from the address mentioned at para 9 below at a cost of Rs. 50/-. It can also be downloaded free of cost from the websites - www.iocl.com, www.ebharatgas.com, www.bharatpetroleum.in and www.hindustanpetroleum.com of IOCL, BPCL and HPCL respectively."

5. Clause 6.1(viii) of the Brochure on Guidelines for Selection of Regular LPG Distributors, May, 2013 (for short, "Brochure of May, 2013") stipulates that the applicant should own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metres by 4.5 metre as on the last date for submission of application as specified in the advertisement or corrigendum (if any) at the advertised location or locality mentioned in the advertisement. It should be easily accessible to general public through a suitable approach road. It also stipulates that in case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metre by 4.5 metre as on the last date for submission of application as specified in the advertisement or corrigendum (if any) at the advertised location or locality as specified in the advertisement, the details of the same can also be provided in the application. There is another Brochure, namely, Brochure on Guidelines for Selection of Regular LPG Distributors, August, 2013 (Annexure-H of the affidavit of respondent Nos.1, 2 and 3) and Clause 6.1(viii) is identical with that of Brochure of May, 2013.

6. Three applicants including the petitioner and respondent No.4 were shortlisted for selection of LPG Distributorship for Karimganj town. As the selection was to be made by draw of lots, they were asked to appear personally on 30.06.2014 for the draw for selection and, on the basis of draw of lot, respondent No.4 was selected.

7. Coming to learn that the land documents submitted by the respondent No.4

do not meet the eligibility criteria, the petitioner submitted a complaint before the respondent No.3 stating that the land offered by the respondent No.4 does not fall within Karimganj Municipal area. The IOCL issued a letter dated 14.07.2014 requiring the petitioner to submit supporting documents and, accordingly, the petitioner submitted a detailed complaint on 17.11.2014. As no action was taken on the same despite submitting another complaint on 03.03.2015, the petitioner approached this Court by filing a writ petition, being WP(C) 3563/2015, and this Court, by an order dated 18.06.2015, disposed of the writ petition directing the IOCL authority to pass a speaking order. Thereafter, the IOCL authority issued a letter dated 14.07.2015 to the petitioner rejecting the complaint submitted by him. In the said letter dated 14.07.2015, it is indicated that the Field Verification of Credentials Committee (for short, "FVC"), after investigation, submitted a report stating that the location of the plot offered by respondent No.4 for showroom did not fall within the municipal area of Karimganj town. It is also stated that based on Policy Manual for Regular Distributor, May, 2013, which provided that in case the land mentioned in the application by the applicant for godown/showroom is not suitable and if the applicant is having any alternate land in his name/in the name of members of the Family Unit as per norms with date of registration on or before the last date for submission of the application as specified in the advertisement or corrigendum (if any), the same can be considered, the selected candidate was asked for alternate land falling within the municipal area. It is stated that though the complaint of the petitioner was substantiated, it could not lead to cancellation of selection due to acceptance of alternate plot of land made available by the respondent No.4.

8. Mr. K.N. Choudhury, learned senior counsel for the petitioner submits that though, in terms of the advertisement and Brochure of May, 2013 or Brochure of August, 2013, it was permissible for an applicant to provide in the application the details of an additional plot of land, the respondent No.4 in his application provided only one plot of land for showroom and that the said plot of land was, admittedly, found to be not located within the advertised location. In view of the same, the IOCL ought to have cancelled the selection of respondent No.4. Learned senior counsel submits that in the instant case the Brochure of May, 2013 or Brochure of August, 2013 would only be applicable and the respondent authorities, apparently, had taken recourse to Brochure on Guidelines for Section of Regular LPG Distributorship, April, 2014 (for short, "Brochure of 2014"). Relevant portion of Clause 6(viii) reads as follows:

"In case if the offered land for godown/godown and offered land for showroom/showroom by the selected candidate which is shown in the application is not found to be suitable at the time of Field Verification of Credentials (FVC), then the selected candidate can offer an alternate land which is owned by the applicant/member of the "Family Unit" as on the last date for submission of application as specified in the advertisement or corrigendum, if any. Such alternate land will be considered subject to its suitability for providing LPG

godown and showroom facility as mentioned herein above."

9. Mr. K.N. Choudhury has also submitted that the PSU Marketing Company's Manual for Selection of Regular LPG Distributorship, May, 2013 (for short, "Manual") which is referred to in the letter dated 14.07.2015, is restricted for internal use of the company only and Clause 17.6 could not have been resorted to inasmuch as the criteria of selection have to be expressly provided for in the Brochure. Clause 17.6 of the Manual reads as under:

"During the FVC process, in case the land mentioned by the applicant for godown/showroom in his application is not suitable and if the applicant is having any alternate land in his name/member(s) of the Family Unit as per norms with date of registration on or before the last date for submission of application as specified in the advertisement or corrigendum (if any), the same can be considered. However, the same if considered has to be duly verified for its suitability during the FVC."

10. Learned senior counsel also has placed reliance on a letter dated 21.03.2011 with regard to amendment in policy regarding release of advertisement for selection of retail outlet, dealership/LPG distributorship in capsule form issued by the Under Secretary, Government of India, Ministry of Petroleum and Natural Gas, with particular reference to Clauses 1(vi) and 2, which read as under:

"1 (vi) - If there are any changes in the guidelines, which have not been reflected in the Brochure being sold from the office/R.O. of the OMCs, the same shall be published along with the advertisement inviting applications for the dealership(s).

2. The above proposal is approved with the stipulation that the OMCs may issue advertisement of at least one fourth page to half page and include full details of the eligibility of the locations, reservation category etc. while other details can be made available on the website."

11. Reliance is also placed on an office order No.33/7/03 dated 09.07.2003 of the Central Vigilance Commission with particular reference to paragraph 2 thereof, which reads as under:

"2. The Commission would reiterate that whatever pre-qualification, evaluation/exclusion criteria, etc. which the organization wants to adopt should be made explicit at the time of inviting tenders so that basic concept of transparency and interest of equity and fairness are satisfied. The acceptance/rejection of any bid should not be arbitrary but on justified grounds as per the laid down specifications, evaluation/exclusion criteria leaving no room for complaints as, after all, the bidders spend a lot of time and energy besides financial cost initially in preparing the bids and, thereafter, in following up with the organisations for submitting various clarifications and presentations."

12. Learned Senior counsel has drawn the attention of the Court to a letter dated 06.10.2015 (Annexure-20), which is in response to an RTI application filed by

the petitioner, to submit that the revised guidelines of May, 2013, are applicable to all locations advertised/re-advertisement from May, 2013 onwards and that the revised guidelines of April, 2014 are applicable to all locations advertised/re-advertised from April, 2014. Mr. Choudhury has also drawn attention to the letter dated 17.10.2014 at Annexure-F of the affidavit-in-opposition of the respondent No.4, also available at Annexure-2 of the affidavit-in-reply filed by the petitioner to the affidavit-in-opposition of respondent No.4, addressed to the respondent No.4 by IOCL to highlight that the respondent No. 4 was informed that his offered land did not fall within Karimganj Municipal area and that because of the same he was being given another opportunity to offer another plot of land for godown/showroom within 10.11.2014 failing which it was indicated that his application would be treated as cancelled. In addition to that, he has referred to a letter dated 02.07.2014 (Annexure-7a) issued by the Chairman, Karimganj Municipal Board to highlight that the land offered by respondent No.4 does not fall within Karimganj Municipal Area, a certificate dated 20.08.2014 (Annexure-7b) of the Additional Deputy Commissioner, Karimganj as well as a certificate dated 08.07.2014 (Annexure-7c) of Kanishail - Sharifnagar Gaon Panchayat, to demonstrate that the plot of land of respondent No.4 falls within Kanishail - Sharifnagar Gaon Panchayat, which is a rural area.

13. Placing reliance on Annexure-3 of the affidavit-in-reply filed by the petitioner to the affidavit-in-opposition of respondent No.4, which is a report of Field Verification of Credentials, Mr. K.N. Choudhury has pointed out that the land for godown which was mentioned in the application filed by the respondent No.4, was also not suitable as it was not plain land but hilly land and the approach road to the proposed godown site, which would be about 2 kms. from the metallic road, is not all-weather motorable approach road but Kutcha road and, despite such report, the selection of respondent No.4 has not been cancelled, he submits.

14. In order to buttress his submissions, Mr. K.N. Choudhury has placed reliance to the following judgments:

(i) Dutta Associates Private Limited v. Indo Merchantiles Private Limited and Others, reported in (1997) 1 SCC 53.

(ii) Union of India and Others v. Dinesh Engineering Corporation and Another, reported in (2001) 8 SCC 491.

(iii) Civil Appeal Nos. 6928-6929 of 2015, arising out of Special Leave Petition (C) Nos. 15953-15954/2014 (Bharat Petroleum Corporation Limited and Others v. Swapnil Singh) dated 08.09.2015.

15. Mr. M.K. Choudhury, learned Senior counsel, appearing for the IOCL, has submitted that the IOCL has the discretion to consider and accept an alternate site offered by an applicant in case the original site is not deemed suitable. He also submits that the format for Field Verification of Credentials also permits the authority to ask for alternate land, which is available to the applicant or member of the Family Unit on or before the last date for submission of application. He has

submitted that Clause 17.6 of the Manual provides for asking the applicant for alternate land during the field verification process and, therefore, it is not necessary that such a provision has to be incorporated in the Brochure. Learned Senior counsel for the IOCL submits that, originally, when the three applicants had been called for draw of lot, the probability of getting selected of each of the applicant was 33.3%, but if the respondent No.4 is eliminated from the selection process because of his offered plot of land not being found suitable, the probability of the remaining two applicants of getting selected would go up to 50% and, therefore, selection of respondent No.4 may not be interfered.

16. Mr. B. Sinha, learned counsel appearing for respondent No.4 while basically adopting the argument of Mr. M.K. Choudhury submits that the Brochure of May, 2013 is part of the Manual and, therefore, it cannot be said that there is lack of transparency or that the selection process is not spelt out for the benefit of the applicants.

17. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

18. In Swapnil Singh (supra), the Apex Court had upheld the decision of the oil company in cancelling the allotment of LPG distributorship on the ground that during the field verification process it had transpired that the candidate only had a notarized agreement instead of a registered lease deed, which was the condition laid down for being an eligible candidate in terms of the Brochure and the application form.

19. In Dinesh Engineering (supra), the Apex Court had held that although certain amount of elbow room is available for use of discretion in accepting offers in contracts, the same will have to be exercised within the four-corners of the requirements of law and, more particularly, Article 14 of the Constitution of India.

20. In Dutta Associates (supra), the Apex Court highlighted that the consideration of tenders received and the procedures to be followed in the matter of acceptance of tenders should be transparent, fair and open and that whatever procedure is sought to be followed in accepting tenders, must be clearly stated in the tender notice.

21. Respondent No.4 was intimated by letter dated 17.10.2014 that his offered land for showroom did not fall under Karimganj Municipal Board. No doubt, the respondent No.4 was allowed to offer alternate plot of land by the aforesaid letter dated 17.10.2014, but the respondent No.4 did not challenge the finding recorded in the said letter that his offered land did not fall within the advertised location by filing a writ application. Therefore, in the present writ proceeding, no adjudication is called for with regard to the finding rendered that the plot of land offered by the respondent No.4 in the application form did not fall within the advertised location. The only issue that must engage the attention of the Court is as to whether respondent No.4 could have been asked to offer an alternate plot of land.

22. Clause 4 of the advertisement, as is noticed earlier, makes it clear that the details of selection process are to be given in the Brochure. Either the Brochure of August, 2013 or the Brochure of May, 2013 will hold the field as the last date of submission of application was 31.10.2013 and at any rate, the Brochure of 2014 will not be applicable as it came into force sometime in April, 2014.

23. It is to be noticed that the provision inserted in Brochure of 2014, permitting a selected candidate to offer an alternate plot of land in case the land shown in the application is not found to be suitable, which is owned by the applicant/member(s) of the Family Unit as on the last date for submission of application, is not a stipulation enumerated in the Brochure of May, 2013 or the Brochure of August, 2013. The Manual is restricted for internal use and, therefore, obviously, the applicants normally cannot have access to the same to know the selection procedure undertaken by the Oil Company. In order to make the process transparent, the provision of the Manual of Clause 17.6, was, apparently, engrafted in the Brochure of 2014.

24. The Brochure of August, 2013 and the Brochure of May, 2013 had provided that in case the applicant has more than one plot of land of the required size at the advertised location or locality for construction of showroom as on the last date for submission of application as specified in the advertisement, the details of the same can also be provided in the application. It is to be noticed that the respondent No.4 had mentioned in his application about only one plot of land.

25. In terms of the application submitted, the respondent No.4 did not own a plot of land for the showroom within the advertised location. A fair meaning has to be given to Clause 6.1(viii) of the Brochure of May, 2013 and Brochure of August, 2013. If an applicant had two plots of land within the advertised location or locality and had indicated details of the same in the application, it will stand to reason that if, for some reason or the other, the first plot of land is not considered suitable for the purpose, the authorities can always fall back upon the other plot of land indicated in the application.

26. At the cost of repetition, to recapitulate, Clause 17.6 of the Manual provides that in case the land mentioned by the applicant for godown/showroom is not found suitable and if the applicant is having any alternate land on or before the last date for submission of the application, as specified in the advertisement, the same can be considered. However, what is striking is that the IOCL can ask for an alternate plot only in the event the plot of land is not found suitable. Suitability will mean that the land offered by the applicant is within the advertised location or locality, but for some reason or the other, the same is not found suitable. Even under the Manual, IOCL cannot ask for an alternate land if the land offered in the application is not within the advertised location. It is to be borne in mind that the advertisement stipulated that even if the plot of land did not meet the required dimension, the application will not be considered.

27. The Brochure of August, 2013 or the Brochure of May, 2013 can, even

without the aid of the Manual, be extended to a situation enabling the IOCL to consider a second plot of land indicated in the application in case the first plot of land is not found suitable for one reason or the other. In the instant case, it is not a question of suitability of the plot of land offered by the respondent No.4. The plot of land offered by respondent No.4 did not meet the eligibility condition, namely, that the plot of land was not within the advertised location. In such a scenario, asking for an alternate plot of land on the ground that the land was not suitable is absolutely misconceived. Clause 17.6 of the Manual could not have been exercised in such a contingency when the plot of land offered did not meet the eligibility criteria.

28. In that view of the matter, I am of the considered opinion that the selection of the respondent No.4 is liable to be interfered with. Accordingly, the selection of respondent No.4 is set aside.

29. The writ petition is allowed. The respondent authorities will hold draw of lot with the remaining short-listed candidates and take steps in accordance with law.

30. Writ petition stands allowed in terms of the above observations and direction.