
(2016) 12 AHC CK 0043
In the Allahabad High Court
Case No : Misc. Bench No. 9782 of 2013

Shyam Narayan Verma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ADJ 461

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : A.S.G., Anurag Vikram, P.P. Singh, Ravi Nath Tilhari and Vineet Kumar Singh Bisen, Advocates, for the Respondent; Om Prakash Mani Tripathi, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

1. Heard Shri Om Prakash Mani Tripathi, learned counsel for the petitioner, Shri P.P. Singh, learned counsel for respondent nos. 2, 3 & 4 and Shri Ravi Nath Tilhari, learned counsel for respondent no.5.

This is a dispute relating to the selections of a LPG Distributorship under the Rajeev Gandhi Gramin LPG Distributorship Scheme at Jangal Dudhai, District-Maharajganj, U.P. The site was advertised on 16.04.2012, the list of eligible candidate was empanelled and declared on 18.02.2013 and the date of draw was 01.03.2013.

2. The respondent no.5 was declared selected and was allowed to offer an alternate land after field verification on 23rd September, 2013 i.e. long after the date of draw.

3. The challenge raised in this writ petition is on two grounds. Firstly, that the respondent no.5 was ineligible as he did not possess the land measuring 20 X 24 meters which was required to set up a godown for the said distributorship according to Clause-3(N) and Clause-9 of the norms prescribed by the

respondent/Corporation in the advertisement and therefore, this sufferance of ineligibility clearly disqualified the respondent no.5 from being offered the letter of intent.

4. The second ground of challenge is that his declaration with regard to criminal antecedents was also incorrect and that he was not entitled to be considered as a candidate being ineligible on that count under Clause-3(>).

5. Learned counsel for the petitioner contends that so far as the first ground of ineligibility is concerned, it may suffice to refer to the admission in paragraph-10 of the counter affidavit filed by respondent no.5 where it is clearly admitted that due to non-finalisation of family settlement, the land as depicted in his application and the site plan submitted in relation thereto over plot no.3502, was lesser than the area as required by the Hindustan Petroleum Corporation.

Paragraph-10 of the counter affidavit on record further states that the respondent no.5 submitted the site plan of plot no.3320 on 23rd September, 2013 that was ultimately found suitable and as such, the respondent no.5 on the strength of such alternate suitable land, was allotted the dealership which, according to the petitioner, could not have been done, inasmuch as, this alternate land had neither been offered along with the application nor it could have been offered after the draw of lots on 1st of March, 2013.

6. It is also urged that the respondent No.5 succeeded in getting himself empanelled on the basis of an incorrect information about the availability of land for the godown. The declaration given in the application form was incorrect and therefore the candidature was bound to be rejected.

7. It is then contended that if the respondent no.5 did not have the land as per the eligibility criteria, then his candidature ought to have been cancelled and there was no occasion to allow him to improve upon his candidature by way of an alternate land that was subsequently offered on 23rd September, 2013. This action of the respondent/Petroleum Corporation is, therefore, arbitrary, contrary to the terms and conditions and is otherwise violative of Article 14 of the Constitution of India being discriminatory.

8. In order to refute this very first contention, learned counsel for the respondent/corporation has vehemently urged that this procedure was very much permissible in terms of the brochure for selection of LPG Distributors read with the Industry Record Note dated 15.06.10, a copy whereof has been filed along with the counter affidavit of the respondent/Petroleum Corporation.

9. Shri P.P. Singh, learned counsel for the respondent/Corporation has invited the attention of the Court to Clause-8 of the Industry Record Note on Modifications/ Clarifications with regard to the selection process and on the strength thereof, he submits that if during the field verification process it is found that the selected candidate has offered another suitable plot of land, then the candidature should be accepted and the selected candidate can be allowed to construct the facilities

at the alternate plot of land. This arrangement for an alternate plot of land, therefore, has to be finalised within two months of the issuance of the letter of intent. He contends that this provision, therefore, allowed the respondent no.5 to submit the alternate plot which was found suitable and has been accordingly accepted.

10. He has further invited the attention of the Court to the common eligibility criteria for all categories mentioned in the Brochure in Clause-4 contending that the same mentions the area of the land requirement and so far as the selection process is concerned, the same is provided in Clause-12 and accordingly, since the candidature of the respondent no.5 had not been rejected on the ground of ineligibility, this land offered by the respondent no.5 which was subsequently made available and was suitable, was accepted as per the aforesaid provisions. The Petroleum Corporation has, therefore, not committed any error in accepting the candidature of the respondent no.5.

To support his submissions he has also relied on the division bench judgment dated 10.09.2012 in W.P. No. 7591/2012 - Pawan Kumar Singh v. Union of India. He has urged that the said decision clearly acknowledges the change or exchange of land and consequently the division bench judgment also supports the stand taken by the respondent. He also submits that the petitioner being unsuccessful, he does not have the right to challenge the selection process.

Shri Ravi Nath Tilhari, learned counsel for the respondent no.5 has invited the attention of the Court to the supplementary counter affidavit filed by respondent no.5 dated 6th September, 2016 wherein in Paragraphs - 2 to 6 he has asserted that the land initially offered by the respondent no.5 brought the respondent within the eligibility zone, inasmuch as, the land that had been offered, conformed to the size as required in the advertisement, and further that the extent of share as prescribed under the brochure is not the eligibility criteria so as to non-suit the respondent no.5. He has further stated that if the respondent no.5 had initially not offered a suitable land, then he had every right to offer the alternate land in the circumstances stated above and which was found suitable after making a spot inspection and has been accepted by the Corporation.

11. The contention, therefore, is that the allegation of ineligibility is without any basis and even on the second ground relating to the criminal case against respondent no.5 it has been urged that the information tendered was not incorrect on the date when it was required and consequently no ineligibility can be inferred from any such declaration. The selection of the respondent no.5 was, therefore, valid on all counts and he contends that the writ petition deserves to be dismissed.

12. We have considered the submissions raised. Learned counsel for the respondent no.2/Petroleum Corporation has relied on the division bench judgment dated 10.09.2012 in the case of Pawan Kumar Singh v. Union of India to contend that the petitioner being an unsuccessful candidate, he cannot

challenge the selection process. The aforesaid argument has to be rejected outright, inasmuch as, if the selection process is vitiated, then in that event if the site is re-advertised, the petitioner may have a right to apply afresh for the same. The petitioner is not an outsider but he was an applicant for the said site and had been empanelled at Serial No.2. He can be a future aspirant for the same. Consequently, the petitioner has every right to challenge the selection process adopted by the respondent/Corporation within the limited scope of challenge that can be raised under Article 226 of the Constitution of India.

13. The second contention with regard to the option available for changing the site on the strength of the judgment in Pawan Kumar Singh's case (Supra) is also unacceptable. The said judgment does not lay down the law on a consideration of the relevant provisions as has been pointed out in this case and therefore, as would be evident from the findings recorded hereinafter the aforesaid judgment would not be a ratio so as to attract the principles of a binding nature of a precedent.

Having said so, we now proceed to examine the facts of the present case on its own merits. The requirement of land as recorded, and as permissible, clearly contemplates that if the land offered is a cotenureship, then in that event, the no objection or the consent of the other co-tenure holders has to be on record.

14. In the instant case, it appears that the respondent no.5 along with his brothers and father exhibited themselves as co-tenure holders and it is in that light that the averments have been made in Para-10 of the counter affidavit. Whereas the revenue extract which has been filed as Annexure-8 to the writ petition, and which remains undisputed, is that the land stands recorded in favour of Ramanand, Sadanand and Ramvriksha sons of Sita who are the recorded co-tenures holders of the land in question. The respondent no.5 is the son of Sadanand. Thus, his two uncles Ramanand and Ramvriksha are the recorded cotenure holders. There is nothing on record to indicate that the uncles of the respondent no.5 had given their consent and therefore, the statement made in Para-10 of the counter affidavit does not reflect the correct picture. The land offered by the respondent no.5 was not in conformity with the requirements as desired under the relevant rules and regulations of the petroleum corporation. It is not the case of the corporation also that the consent had been given by the co-tenure holders. The only consent was by the father of respondent no.5 who is only one of the co-tenures holders of the said land. It is for this reason that the land which had been offered by the respondent no.5 did not bring him within the zone of eligibility, and not on the grounds of suitability. The land, therefore, not being initially available, the respondent/corporation had the only option of rejecting such a candidature and not making it subject to field verification.

15. To our mind the process which has been adopted to allow the respondent no.5 to offer another land altogether new on the ground of suitability is, therefore, a misreading of the provisions of Clause-8 of the Industry Record Note dated 15.06.10 that has been pointed out by the learned counsel for the

corporation. Clause-8 is extracted herein under:-

"During the FVC process, it has been observed in some cases that the land mentioned by the applicant for godown in his application is not suitable. However, the applicant has offered another plot of land (in the advertised RGGLV location) in his name as per "family unit" norms with date of registration on or before the date of application. In such cases, it is clarified that since land is a requirement under eligibility criteria and not a criteria for evaluation, it would be in order to consider the alternate land if it is in the name of the applicant/member of applicant's family unit and date of registration of the same is on or before the date of application. However, the same if considered has to be duly verified for its suitability during the FVC.

In case the land mentioned in the application is suitable as per the criteria given in the text of advertisement/application and the candidate has an alternate plot of land (in the advertised RGGLV location) which is more suitable for godown for the customer then the selected candidate can be allowed to construct the facilities at alternate plot of land.

In case the land mentioned in the application is subsequently notified (i.e. after date of application) for acquisition or statutory restrictions are imposed, then the candidate can be allowed to arrange for an alternate plot of land in the advertised RGGLV location within a period of two months from the date of LOI."

16. A reading of the aforesaid clause clearly indicates that during the field verification process it is only the suitability of the land which can be looked into and not the offer of an altogether new land when as admitted to the respondent no.5 the initial land was not even available. A new plot can be offered only in the contingency of the last clause extracted above.

17. The case presently involved is clearly distinguishable on this ground that the land which was offered by the respondent no.5 was not even available for consideration during empanellment at the time of draw of lots on 01.03.2013 and this made the respondent no.5 ineligible. The alternate plot was not mentioned in the application form nor was it possible to amend the offer under the terms of the brochure and advertisement. The question of assessing the suitability of an unavailable land, therefore, had not arisen at all. What the corporation appears to have done is to have received an alternate new offer on 23.09.2013 and then found it suitable which is not in accordance with the procedure prescribed.

18. The reason further is that the question of suitability can be gone into in the manner as provided in Clause-4 (g) of the brochure that had been filed by the respondent/corporation. The same is extracted herein under:-

"Own a suitable land (plot) of minimum 20metre X 24metre in dimension at the advertised RGGLV location for construction of LPC Cylinder Storage Godown.

Owns means having clear ownership title of the property in the name of applicant/family member of the "Family Unit" as defined in multiple dealership/

distributorship norm. In case of ownership/co-ownership by family member, consent letter from the family member will be required.

Land for construction of Godown will be considered suitable, if it is freely accessible through all weather motorable approach road (public road or private road of the applicant connecting to the public road) and should be plain, in one contiguous plot free from live overhead power transmission or telephone lines. Pipelines/Canals/Drainage/Nallahs should not be passing through the plot."

19. The issue of suitability for the construction of a godown has to be considered in the light of all the ingredients of suitability described therein. A perusal of the same does not include a land which is not available and otherwise makes a candidate ineligible. It is the suitability of the land which can be cured and not the ineligibility. The respondent/corporation, therefore, has adopted a circumvented method by helping out the respondent no.5 by allowing him to offer a new land altogether and declaring it to be suitable much after the draw of lots.

Clause 14(ga) and (gha) of the advertisement dated 16.04.2012 clearly prohibits the furnishing of any extraneous information than what is required and declares that any incomplete application shall not be entertained. The alternate plot of the respondent no.5 was not part of the original offer and the land offered with the form was unavailable as such the application was incomplete. The advertisement as per Clause 3 (N) and Clause (9) spells out the basic criteria of land required for the showroom and godown. The form as published in the advertisement against Clause (9) further specifies the details to be provided about ownership, status and measurement of the land. If the criteria is met by the candidate, there is a specific column to mark "Yes" (gka). If not, then the candidate has to mark "No" (ugha). The footnote then clearly declares that if the candidate has marked "No" (ugha) then the candidate would be ineligible (ik= ugh gSa). There is no explanation offered by the corporation in its affidavit about this specific condition of the advertisement. The respondent no.5 appears to have succeeded in getting himself empanelled on the strength of an incorrect information about availability of the land which makes him further ineligible as the declaration in the form is false. Had the respondent No.5 stated "No" (ugha), he would have been treated to be ineligible. The incorrect information tendered led to his empanellment.

It is only the suitability of a plot already offered that can be subject of choice during field verification. It is also worth noting that the Industry Record Note dated 15.6.10, Clause 8 whereof is being relied upon by the respondent as being part of the Manual of Selection for RGGLV sites, is not mentioned in the brochure for selection which is the basis of advertisement. Neither the brochure that has been made effective between April 2011 to September 2012 appended as Annexure CA-1 of the counter, nor the advertisement refer to the note dated 15.06.2010 as part of the terms and conditions.

Having said so, we find that the petitioner's contention on the first ground has to succeed as the very decision making process of the corporation is clearly vitiated and hit by Article 14 of the Constitution of India.

20. The award of dealership to the respondent no.5, therefore, could not even have been considered as the respondent no.5 did not fulfil the eligibility criteria either on the date of the advertisement i.e. 16.4.12 or even on the date of the draw of lots i.e. 1.3.13. The subsequent offer of land on 23rd September, 2013 and the same being treated to be a fulfilment of the conditions as discussed herein above was, therefore, an erroneous exercise by the respondents. The procedure having been vitiated we find the selection to be invalid on this count. Accordingly, the second ground relating to the ineligibility of the respondent no.5 on the ground of incorrect declaration of a criminal case need not be gone into.

21. The writ petition is allowed. The selection and appointment of respondent no.5 as an LPG Distributor is set aside. The order dated 01st March, 2013, Annexure-1, is quashed. The respondent/corporation shall be at liberty to re-advertise the said site again.