
(2012) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8699 of 2011

Smt. Manju Bala Choukse

APPELLANT

Vs

Indian Oil Corporation Ltd. and others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 MP CK 0031

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Harish Dixit, for the Appellant; N.K. Jain assisted by Shri A.K. Jain, Advocate, for the Respondents No. 1 and 2 and Shri S.K. Shrivastava, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Sujoy Paul

1. In this petition filed under Article 226 of the Constitution, the petitioner has challenged the impugned selection vide Annexure P-1 dated 14.12.2011. The petitioner has also prayed for quashing Annexure P-15, whereby the representation was rejected.

Brief facts necessary for adjudication of this matter are as under:-

The respondent No.1 invited candidature/proposal for retail outlet dealership in various regions through advertisement in newspapers. The advertisement was published in "Dainik Bhaskar" on 29.9.2011 (Annexure P/2). The candidates were required to offer a particular land which, as per the brochure, is to be categorised as "owned land" or "firm offer of land". Petitioner submitted her candidature and her case was considered along with cases of other eligible candidates. By Annexure P/1 the marks were awarded by level-II, Dealership Selection Committee, Bhopal.

Shri Harish Dixit, learned counsel for the petitioner, drew the attention of this Court on various heads, on which marks were granted. Learned counsel submits that the petitioner received less marks in the head "capability to provide land and infrastructure/facilities (maximum 35 marks)". The petitioner received 24.25 marks and the private respondent herein received 33.95 marks. Learned counsel for the petitioner submits that in most of the other heads the petitioner has secured much more marks than the private respondent herein. Learned counsel submits that the private respondent herein is considered against a wrong head and because of considering her in a wrong head by applying wrong formula, more marks were illegally given to her, pursuant to which she secured the marks over and above the petitioner.

2. To elaborate, learned counsel for the petitioner, submits that the respondents have prepared a brochure, Annexure R/1/1, which prescribes a methodology for considering the candidates. By placing reliance on Clause 13.1.1 of the brochure, Shri Dixit submits that it prescribes the norms for evaluating the candidates. Learned counsel submits that as per Clause 14, the categorization of candidates as per land should have been either under the head of (a) "owned land" or (b) "firm offer of land". Learned counsel fairly submits that although initially the petitioner pleaded that her case should have been considered in category (a) "owned land" but after perusal of the reply, Shri Dixit is of the considered opinion that petitioner's case is rightly considered in category (b) "firm offer of land". The attack to Annexure P-1 and rejection order is on the ground that the private respondent herein is wrongly considered in category (a) "owned land", whereas she should have been considered along with the petitioner in category (b) "firm offer of land". Learned counsel submits that scheme of marks to be allotted in those two heads is different and if respondent No.3 is considered against category (b) aforesaid, she will secure less marks than the petitioner. Learned counsel submits that the respondents have committed an error of law in considering the respondent No.3 against a different category for which she was not entitled. Shri Dixit submits that this is a flaw in decision making process and, therefore, interference is warranted.

3. Learned counsel submits that the sale deed, Annexure R/3/2 shows that the land is given to the respondent No.3 by her father-in-law Shri Ramesh Chand and out of 1.014 Hectare the respondent No.3 was given 0.209 Hectare. Shri Dixit fairly submits that the land received by respondent No.3 pursuant to Annexure R/3/2 is more than 45x45 mtrs., which is the standard requirement of the Corporation, he submits that although the amount of land is as per the requirement, but by the sale deed no demarcation can be made. It is stated that in absence of any demarcation there is no question of treating the respondent No.3 under category (a) aforesaid. He further submits that the respondent-Corporation has committed an error of law in considering the respondent No.3 in an erroneous category. He placed reliance on the Khasra entries to show that it is only mutation and there is no demarcation. Learned counsel placed reliance on Baital Singh and Others Vs. Shrilal and Others (L.R.s. of respondent No. 1 Trilok

Pal Singh) and State of M.P., and (2009) 7 SCC 445 (Ramdas vs. Sitabai and others). Learned counsel further submits that the demarcation made in Annexure R/3/2 (sale deed) is not in consonance with law and demarcation is not permissible in sale deed. He submits that unless demarcation is made in accordance with law by dividing the property by metes and bounds, no demarcation exists in the eye of law and respondents have committed an error in treating the said sale deed in a manner which provides the ownership of the land with demarcation in favour of respondent No.3.

4. Per Contra, Shri N.K.Jain, learned senior counsel assisted by Shri A.K.Jain, supported the order, Annexure P-1. It is stated that all the objections raised by the petitioner were dealt with in extenso in the order/communication dated 11.5.2012 (Annexure P-15). By drawing the attention of this Court to Annexure P-15, it is stated that the Revenue Inspector, Circle-II, Tahsil Chachoda inspected the site, identified it and approved it. Various other authorities as per the brochure made spot inspection and found the land of respondent No.3 in order. The part of Khasra No. 231, i.e., 0.209 Hect. has been given to respondent No.3 by way of sale deed dated 7.10.2011. As per Khasra records, the ownership of Khasra No. 231 (total area 1.014 Hec.) is as under:-

(i) Ramesh Chand Mahesh Chand is the owner of two-third of the land, i.e. 0.676 Hect..

(ii) Rajni Devi wd/o Shri Badri Prasad, Abhishek, Deepesh, Radhika, Rohit are owner of one third part, i.e., 0.338 Hect.

From the aforesaid, it is clear that Ramesh Kumar had title for 0.338 Hec. of Khasra No.231. Out of this khasra, he sold 0.209 Hect. to respondent No.3 by way of aforesaid sale deed. After that mutation process was completed by Tahsildar and a new khasra number was created. On the strength of aforesaid, it is stated that there is no illegality in treating the respondent No.3 in category (a). Thus, on the basis of sale deed she became owner in the eye of law and, therefore, no fault can be found in the action of the Corporation. It is further stated that no malice is alleged against the members of the selection committee. In absence thereof, this Court is under no obligation to sit as an appellate authority to reweigh the marks.

5. Shri S.K.Shrivastava, learned counsel for the respondent No.3 also supports the impugned orders. He submits that as per clause 4 of the sale deed itself the demarcation was made. A new khasra entry 231/2 was created which shows the proper demarcation. Learned counsel placed reliance on 1997 (2) J.L.J. 167 (Diwan Singh vs. Bhaiyalal) and submits that neither the selection committee nor this court in the writ proceedings is under any obligation to examine the correctness of the sale deed. In absence thereof, the sale deed is to be treated as correct as such and if it is correct and its genuineness is not in doubt, the selection committee has rightly treated the respondent No.3 as owner of the land. He relied on Colgate Palmolive (India) Ltd. Vs. M.R.T.P. Commission and Others, He

also supported the rejection order, Annexure P-15.

6. No other point is pressed by the parties.

7. I have bestowed my anxious consideration to the rival contentions of the parties.

8. A bare perusal of the brochure would show that the category (a) "owned land" is described as under:-

(a) Owned Land The following will be considered as owned land :

(i) Land owned by the applicant exclusively.

(ii) Land owned by the "family" members exclusively.

(iii) Land owned by the applicant exclusively with "family" members.

(iv) Land owned by the applicant along with others provided share of applicant in the land meets IOC's requirement.

In the category (b) "firm offer of land" reads as under:

(b)"Firm Offer" of Land

In addition to land covered under para (a) above, applicants also have the option to offer land with firm offer of land from land owner/s. Such offer from land owner/s should be in the form of notarized affidavit giving of land, khasra / khatauni no., name of village / location, ownership details etc.

The aforesaid entries are reduced in writing in the shape of a formula, which reads as under:-

SN

Situation of Ownership

Share of applicant in Land

Documents required (In addition to land ownership/Revenue record)

Evaluation as

1

Self

Full

Nil

Owned land

2

Exclusively by the ?Family? members

Nil

Notarized affidavit by all owners in favour of applicant

Owned land

3

Self exclusively with ?Family? members

Part

Notarized affidavit by all other Co-owners in favour of applicant

Owned land

4

Self with Others

Share of applicant more than IOC requirement

Notarized affidavit with demarcation of land (portion of land to be given for dealership by the applicant)

Owned land

5

Self with Others

Share of applicant more than IOC requirement

Notarized affidavit without demarcation of land (portion of land to be given for dealership by the applicant)

Firm Offer

6

Self with Others

Share of applicant less than IOC requirement

Notarized affidavit

Firm Offer

7

Others

Nil

Notarized affidavit

Firm Offer

8.

Where the land falling in Owned land category as described in above category at Sr.No. from 1 to 4 is not sufficient for development of retail outlet and land in category 5 to 7 is also offered to me

Nil or Part

Document as applicable for category at Sr.No. 1 to 4 and Document as applicable for category at Sr. No. 5 to 7

Firm Offer

9. The stand of the petitioner is that the respondent No.3 should have been treated like the present petitioner in the category of "firm offer". The whole contention is founded upon the submission that by way of sale deed, at best, a portion of land can be given to the respondent No.3 but in absence of demarcation it cannot become her own land. It is the ground of the petitioner that in absence of demarcation it cannot be treated as her own land. Since wrong formula is applied and respondent No.3 is considered as against a wrong entry, i.e., owned land, she secured more marks than the petitioner and, therefore, the action is called in question.

10. The basic contention of the petitioner is that by way of sale deed the demarcation was not permissible. Accordingly, the entire consideration of sale deed by treating it to be a valid sale deed is bad in law. In other words, the attack is on the ground that it was not open between the parties to enter into a sale deed by demarcating the land and, therefore the committee should have treated the said sale deed in the category of "firm offer" rather treating it under the category of "owned land". Had it been done, the respondent No.3 would have secured less marks than the petitioner.

11. In my considered opinion, as per brochure, it was not open for the selection committee to examine the legality, validity or correctness of the sale deed. If anybody is aggrieved by the sale deed, it can be called in question in accordance with law by a person, who has locus to challenge it. The selection committee, in the considered opinion of this Court, was under no obligation to examine the aforesaid aspect while granting numbers. The selection committee was only required to examine the document on its face value. If on the face value, respondent No.3 is in (a) category, no fault can be found in the decision of the selection committee. Since in the sale deed itself demarcation was made, mutation took place and a new khasra No.231/2 is carved out, which is Annexure R/3/4, it cannot be held that either sale deed is bad in law or khasra entry prevents the selection committee in any manner to treat the said land under category (a). A "Bhu Adhikar and Rin Pustika", Annexure R/3/5 is also issued to the respondent No.3, whereby land is even properly demarcated and shown by way of entry. By Annexure R/3/6 an "Aks" was prepared which shows the position of the land. Thus, selection committee has taken the documents on its

face value. It is not the case of the petitioner that those documents are not genuine or fabricated/manufactured documents. Thus, the selection committee was under no obligation to examine the validity of the sale deed. It rightly considered the documents submitted by the parties on their face value and allotted the marks as per the scheme of marks/formula provided in the brochure. In this view of the matter, no fault can be found in the decision making process adopted by the respondents.

12. This is settled in law that an administrative decision is subject to judicial review on very limited grounds. One of the grounds to assail is Wednusbury Principle. As per this principle, it is to be seen whether the selection committee has taken into account any irrelevant material or committee has not considered any relevant material. In the present case it is nobody's case that Wednusbury's Principles are attracted. This Court is not obliged to sit as an appellate authority to reassess, re-evaluate or reweigh the aforesaid documents and the marks granted by the selection committee. More so, when there is no malice alleged against the selection committee. This Court has taken this view in Writ Petition No.1316/2011 (Devendra vs. Union of India and others), decided on 26.9.2011. Shri S.K.Shrivastava, learned counsel for respondent No.3 submits that the aforesaid order is affirmed by Division Bench in writ appeal.

13. Shri Harish Dixit although relied on the judgment of Ramdas (supra), a bare perusal of the judgment shows that this matter is decided by Supreme Court arising out of a decision of Second Appeal by the High Court. Thus, this judgment is an authority in an appropriate proceeding where the validity of a sale deed is called in question. In writ proceedings where the validity of the sale deed is not called in question, the judgment is of no assistance to the petitioner. Reliance in Baital Singh (supra) is also of no help to the petitioner because the said judgment is also passed in First Appeal in which the sale deed was called in question. In the present writ petition this cannot be gone into. Thus, the judgments cited by Shri Dixit have no application in the present matter.

14. On the basis of aforesaid analysis, it is clear that the only foundation of petitioner's argument that the respondent No.3 is treated against wrong entry, is devoid of merits and substance. Thus, I am unable to hold that the selection committee has committed any error or applied wrong formula in favour of respondent No.3. Thus, this contention cannot be accepted. Consequently, the findings of the selection committee in Annexure P-1 and findings of rejection order, Annexure P-15, are upheld. Consequently, I find no reason to interfere in this matter. Petition is dismissed. No costs.