

(2012) 03 OHC CK 0010

In the Orissa High Court

Case No : Writ Petition (C) No. 2253 of 2011

Smt. Pranati Priyadarshini Dash

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Citation : (2013) 115 CLT 5

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : R.K. Swain, B. Nayak, B. Mohanty, A.K. Nandi and P.K. Mohanty, for the Appellant; S.D. Das . Asst. Solicitor General G. Mishra, B.N. Mohapatra, G.N. Padhi and K.C. Rajguru Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This Writ Petition has been filed with a prayer to declare the selection of LPG distributorship for Chhatia in the district of Jajpur under the Rajib Gandhi Gramin LPG Vitrak (in short, "RGGLV" Yojana) in favour of Opp. Party No. 4 Shri Asit Kumar Sahu as illegal & to quash of the letter dated 14.10.2010 (Annexure-F/2) by which Opp. Party No. 4 was offered RGGLV distributorship at Chhatia on certain conditions mentioned therein. The further prayer of the Petitioner is to direct Opp. Party No. 2 Bharat Petroleum Co. Ltd. (in short, "BPCL") to make second draw/lottery for selection of LPG distribution for Chhatia under RGGLV Distributor Scheme. Petitioner's case in a nutshell is that on 20.10.2009 an advertisement was published in daily Odia Newspaper "The Sambad" by three Oil Companies, namely, Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd. & Hindustan Petroleum Corporation Ltd., for selection of RGGLV Distributors in different places within the State. The Petitioner applied for distributorship of LPG under BPCL for Chhatia in the district of Jajpur. After scrutiny of the application forms, on 10.4.2010 in website Opp. Party No. 2 has published the names of eligible candidates, who have qualified for selection of RGGLV for Chhatia. In that list, Petitioner's name finds place at SI. No. 2. The

said list further discloses that the Petitioner has secured 96.5 marks as per the marking procedure for selection. As per the condition stipulated in Clause 8 of the advertisement, the selection of candidates for LPG distributor was to be made by lottery among the eligible candidates. Accordingly, vide letter dated 27.4.2010 the Petitioner was called for by Opp. Party No. 2 to attend the draw of selection on 18.5.2010 which was scheduled to be held in the Conference Hall of Bharat Petroleum Corporation, Bhubaneswar. Pursuant to the said representation of the Petitioner & sitting over the matter since August, 2010 is highly illegal & arbitrary in the eye of law. Opp. Party No. 2 has cancelled the draw without assigning any reason & nothing has been intimated to the Petitioner despite repeated requests made to Opp. Parties. The laid action of Opp. Parties is violative of principles of natural justice. The action of Opp. Parties in deciding to allot the distributorship (sic) question to O.P. No. 4 without making the second draw is illegal, (sic) same being violative of terms & conditions prescribed in the advertisement. O.P. No. 4-Asit Kumar Sahu has not fulfilled the criteria of providing suitable land for the purpose of constructing godown. In the interest of justice, O.P. No. 2 should have proceeded for making the draw as decided earlier.

In her additional affidavit dated 07.03.2012, the Petitioner stated that Opp. Party No. 4 has utilized a place for his distributorship, which is neither mentioned in the application nor the property is coming under family unit norms. The property, details of which are given under Annexure-E/2 of the counter, stands recorded in the name of one Ramesh Sahoo (the paternal uncle of Opp. Party No. 4) & other co-sharers. On the said plot, grand residential buildings, cow-shed, garage & plumber room, separate bath room & latrine are existing. Within that boundary campus, Ramesh Sahoo has a big asbestos room used for the purpose of storing the sanitary commodities, having retail shop other than this place in the name & style of M/s. Nigam Store. The storing room of Ramesh Sahoo has been extended & coloured as LPG storage god own hurriedly for the purpose of storing LPG Gas of Opp. Party No. 4. The so-called letter, the Petitioner attended the draw on 18.5.2010 & in the said draw Opp. Party No. 4-Asit Kumar Sahu was selected as LPG distributor for Chhatia. Thereafter, Petitioner received a letter dated 19.7.2010 from Opp. Party No. 2 inter alia stating that the draw of LPG distributorship for Chhatia will be held on 12.8.2010 in the Conference Hall of BPCL again. Petitioner's case is that after receiving the said letter, she thought that the previous selection was cancelled. All of a sudden, the Petitioner received another letter dated 5.8.2010 from Opp. Party No. 2 wherein it was stated that the draw scheduled to be held for selection of LPG distributorship for Chhatia on 12.8.2010 has been cancelled. The Petitioner's case is that she learnt from reliable sources that the authorities are going to allot the distributorship of LPG for Chhatia in favour of Opp. Party No. 4 again without making any draw, though he has been disqualified earlier. Hence, this Writ Petition.

2. Mr. R.K. Swain, Learned Counsel appearing on behalf of the Petitioner submits that the second draw scheduled to be held on 12.8.2010 for selection of LPG distributor for Chhatia was cancelled without assigning any reason. In the

present case, draw was made on 18.5.2010, but due to non-fulfilment of criteria the selected persons did not get the allotment for Chhatia in Jajpur district & accordingly, the Petitioner along with others were called for second draw which was scheduled to be held on 12.8.2010. Therefore, the action of Opp. Parties in not making the draw for second time as per the terms & conditions of the advertisement is illegal & arbitrary. The action of Opp. Party No. 2 in not considering the asbestos room has been renovated by spending around Rs. 50,000 for the purpose of storing LPG Gas. The storing place of LPG Gas is within the residential campus & adjacent to the Siva Temple of Lord Amareswar & is of 91 metres distance from the Nodal High School & Primary Schools & adjacent to the other residential houses & 83 metres far from the office of Chhatia Gram Panchayat & Chhatia Co-operative Society.

3. Mr. S.D. Das Learned Assistant Solicitor General appearing on behalf of Opp. Party No. 1 submits that as per the modification/ clarification dated 15.6.2010, Clause 8 thereof provides that if the applicant has another plot of land in his name as per "family unit" norms with date of registration on or before the date of application, the same would be taken into consideration as "alternate land". Sri Asit Kumar Sahu was originally selected & during field verification, it was found that the land offered in his application form was not within the advertised location & opportunity was given to him in terms of Clause 8 of the modified guidelines (Annexure-C/2) to provide another plot of land standing in his name as per "family unit" norms with date of registration on or before the date of application. Therefore, there has been absolutely no illegality on the part of the Corporation in providing an opportunity to Sri Asit Kumar Sahu to provide an alternate land.

4. Mr. G. Mishra, Learned Counsel appearing for Opp. Party Nos. 2 & 3 submits that as per the direction of Ministry of Petroleum & Natural Gas the Scheme has been floated wherein Gramin areas are to be identified wholly on the basis of monthly sale of 600 LPG Cylinders of 14.2 Kg & 1800 Customers with monthly per capita consumption of about 5 Kg. The process of selection has been formulated by the Public Sector Oil Marketing Companies & it is basically a three tier process, i.e., eligibility criteria, evaluation process & the eligible candidates are to be allowed to participate in the draw for the proposed LPG Distributorship under RGGLV Scheme. The Oil Marketing Companies published a common advertisement on 20.10.2009 in daily newspapers, i.e., "The Times of India" Bhubaneswar Edition & two local Odia Newspaper, i.e. "The Dharitri" & "The Sambad" calling for applications for appointment of Distributors under RGGLV Scheme for 101 locations under various categories, as mentioned therein, in the State of Orissa. At Serial No. 69, BPCL had advertised for location at Chhatia in the district of Jajpur under open category. As per Clause 14 of the advertisement, the Company reserves the right to cancel/withdraw/amend the advertisement or extend the due date at its sole discretion without assigning any reason. For the Chhatia location, five candidates were found eligible & qualified for draw of selection for RGGLV.

A final list of the suitable candidates for draw of selection was prepared & it was displayed on the board as well as in the official website of the company. In the draw, Opp. Party No. 4 Asit Kumar Sahu was declared selected. On 7.6.2010, the field verification was carried out by the Company officials & it was found that the land in Khata No. 261 & Khasada No. 580 offered by Sri Asit Kumar Sahu is situated in village Paikarapur; whereas the location advertised is Chhatia. Since the offered land was in different village than the advertised location, it violated clause 3(g) of the advertisement, which says that the land should be situated in the advertised RGGLV location. Sri Asit Kumar Sahu after satisfying the terms of the guidelines has been declared eligible & accordingly the letter of intent KRD/RGGLV/Chatia dated 14.10.2010 has been issued in his favour.

Under RGGLV Scheme land is a requirement under eligibility criteria & not the criteria for evaluation. Sri Asit Kumar Sahu has offered alternate land at the advertised location with required dimension belonging to his father (family unit norms) in Mouza Chhatia & Khatian No. 256, Plot No. 712. The said land is recorded in the name of Petitioner well before the date of the application. On 22.9.2010, the field verification was carried out & it was found that the land offered by him is situated in the advertised location & the Khatian records were also verified by the Revenue Inspector, Chhatia, who confirmed the same to be true by putting his endorsement on the Khatian. After satisfying all the criteria by Sri Asit Kumar Sahu, the Corporation has issued the letter of Intent, i.e., KRD/RGGLV/Chhatia on 14.10.2010 to Sri Asit Kumar Sahu.

5. Mr. G. Padhi, Learned Counsel appearing for Opp. Party No. 4 submits that Opp. Party No. 4 has secured 99.8 marks in the draw carried out on 18.5.2010 for which he was selected. Opp. Party No. 4 offered a land in Paikarapur Mouza which is adjacent to Chhatia Mouza with an expectation that the land offered at Paikarapur which situates by the side of National. Highway is more convenient & accessible than the land at Chhatia. In the modified guidelines under Annexure-A/4, it has been stipulated not to reject applications on frivolous ground & an opportunity is to be given to the applicants to rectify the deficiencies. In the said modified guideline, it was further stipulated that during the FVC process, it has been observed in some cases that the land mentioned in the application by the applicant for god own is not suitable. In such case, it is clarified that since the land is a requirement under the eligibility criteria & not the criteria for evaluation, it would be proper to consider the alternate land provided it stands recorded in the name of the applicant/member of the applicant's family unit & the date of registration of the document must be on or before the date of application. After submission of ROR under Annexure-C/4, the land was enquired by the FVC & thereafter the letter of intent was issued on 14.10.2010 with certain conditions. On receipt of the letter of intent vide Annexure-D/4, Opp. Party No. 4 vide his letter dated 16.11.2010 submitted the site layout & construction plan of the proposed storage facilities to the Deputy Chief Controller of Explosives. Pursuant to the said letter of Opp. Party No. 4, the Deputy Chief Controller of Explosives vide his letter dated 23.11.2010 intimated Opp. Party No. 4 that the site layout &

construction plan of the proposed storage facilities is approved with certain conditions. Pursuant to the letter under Annexure-E/4, Opp. Party No. 4 completed the construction of storage shed in every respect as per the approved drawing & complied with other conditions & submitted all the documents as directed as per the letter dated 23.11.2010 within the stipulated time. Thereafter, Opp. Party No. 3 issued letter of appointment on 5.3.2011 to Opp. Party No. 4 for RGGLV at location Chhatia indicating therein to execute an agreement referred to as Distributorship Agreement. In the last paragraph of the said appointment letter, it was mentioned that appointment of Opp. Party No. 4 is subject to pending final decision of this Court in W.P.(C) No. 2253 of 2011. The Deputy Chief Controller of Explosives, Govt. of India vide his letter 29.8.2011, intimated Opp. Party No. 4 that licence is granted for possession of cylinders filled with compressed gas in the licensed premises. In his additional affidavit dated 12.03.2012, Opp. Party No. 4 stated that after receipt of the letter of intent dated 14.10.2010 vide Annexure-D/4 Opp. Party No. 4 submitted the plan contained in the letter of intent for approval, which was approved by the Deputy Chief Controller of Explosives on 23.11.2010. The construction of the godown was carried out as per the approved plan & after completion, Geo-Tech Consulting Engineers submitted the completion certificate on 08.02.2011 stating therein about their satisfaction that the LPG Godown for 5000 kg over Plot No. 712, Khata No. 256 of (village: Chhatia, Dist: Jajpur has been constructed & completed as per the approved plan. A huge amount has been invested for construction of the said showroom as per the specification. The said amount has been arranged from own sources, i.e. from private borrowing for which Opp. Party No. 4 is paying interest at a higher rate. Pursuant to the appointment order issued by the Territory Manager, BPCL on 05.03.2011, Opp. Party No. 4 commissioned the unit on 07.03.2011. Opp. Party No. 4 has availed a loan of Rs. 10,00,000 in the nature of Cash Credit from the State Bank of India. He has generated 2824 numbers of consumers from Chhatia & the nearby villages of Chhatia. Opp. Party No. 4's unit is running in the name & style of "Nigam Bharat Gas Gramin Vitrak", which has been insured on 21.03.2011 for a sum of Rs. 30,12,528 to the New India Assurance Company Ltd. till 20.03.2012. The writ petition), has been filed with a mala fide intention only to harass the authorities. The Learned Counsel for Opp. Party No. 4 prayed for dismissal of the Writ Petition.

6. On the rival contentions of the parties, the following questions arise for consideration:

- (i) Whether Opp. Party No. 4-Shri Asit Kumar Sahu fulfils the eligibility criteria so as to be considered for selection of LPG Distributorship for Chhatia ?
- (ii) Whether Opp. Parties are justified in cancelling second draw (fixed to 12.8.2010 for valid reasons?
- (iii) What orders?

7. Question Nos.: (i) & (ii) being inter-related, they are dealt together. The specific case of the Petitioner is that Opp. Party No. 4 has not fulfilled the eligibility as regards the land necessary for LPG Storage Godown & show room required under the RGGLV scheme. In the application, the land, particulars which are given by Opp. Party No. 4, is not situated within the advertised area.. Therefore, Opp. Party No. 4, is not eligible to be considered for Distributorship in question. This fact has not been denied by Opp. Party No. 2- Territory Manager & Opp. Party No. 3-Divisional Manager, BPCL. In their counter affidavit, they have stated that on field verification carried out on 07.06.2010 it was found that the land under Khata No. 261 & Khasada No. 580 offered by Sri Asit Kumar Sahu is situated in village Paikarapur whereas the advertised area was Chhatia. Since the land offered was in different village, it violates the provisions of clause 3(g) of the advertisement which says that the land should be situated in the advertised RGGLV Location. As it appears, for that reason Opp. Party-BPCL vide letter dated 19.07.2010 decided to make a draw of LPG distributorship for Chhatia again on 12.08.2010 & accordingly, informed the Petitioner to remain present on that date in the conference hall. However, subsequently, Opp. Party No. 2 vide letter dated 05.08.2010 informed the Petitioner that due to unavoidable circumstances the RGGLV selection of LPG distributorship for Chhatia, Jajpur scheduled to be held on 12.08.2010 has been cancelled. Further action, if any, would be intimated in due course of time.

8. Mr. S.D. Das, Learned Assistant Solicitor General submitted that Clause (8) of "Industry Record Note on Modifications/Clarifications with regard to Selection Process of RGGLV in the manual for Selection of RGGLV Revision 1st (Annexure-C/2) provides that if an applicant offers another plot in his name as per "family unit" norms with date of registration on or before the date of application, the same would be considered as alternate land. Therefore, Opp. Party No. 4-Asit Kumar Sahu was given an opportunity to provide an alternate suitable land in the advertised location & Opp. Party No. 4 has also provided a suitable alternate land in the advertised location.

9. At this juncture, it is necessary to quote here the relevant portion of Clause (8) of Industry Record Note on Modifications/ Clarification referred to supra:

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 & 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 & 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 it suitably during the FVC, In case the land mentioned in the application is suitable as per the criteria given in the text of advertisement/application & 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.

10. It is amply clear from above clause 8 that an applicant must furnish particulars of the land situated in the advertised location in the application. In case, the land offered by the applicant is not found suitable & the applicant offers another plot of land as per the said advertised location either recorded in his name or as per the family unit norms with date of registration on or before the date of application, such land, would be considered for the purpose of selection for LPG Distributorship. Admittedly, in this case Opp. Party No. 4 has not furnished any land particulars in his application situated within the advertised location. This fact has been admitted by the Opp. Party-Corporation for which they have decided to go for second draw/lottery.

At this juncture, it would be beneficial to refer to the Judgment of the Hon''ble Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , wherein the Hon''ble Court held as under:

7. Now it is clear from paragraph (1) of the notice that tenders were invited only from "registered find Class hoteliers having at least 5 years" experience". It is only if a person was a registered find Class hotelier having at least 5 years" experience that he could, on the terms of paragraph (1) of the notice, submit a tender. Paragraph (1) of the notice prescribed a condition of eligibility which had to be satisfied by every person submitting a tender & if, in a given case, a person submitting a tender did not satisfy this condition, his tender was not eligible to be considered. Now it is true that the terms & conditions of the "tender form did not prescribe that the tenderer must be a registered IInd Class hotelier having at least 5 years" experience nor was any such stipulation to be found in the form of the agreement annexed to the tender but the notice inviting tenders published in the newspapers clearly stipulated that tenders published in the newspapers clearly stipulated that tenders may be submitted only by registered find Class hoteliers having at least 5 years" experience & this tender notice was also included amongst the documents handed over to prospective tenderers when they applied for tender forms. Now the question is, what is the meaning of the expression "registered IInd Class hotelier", what category of persons fall within the meaning of this description? This is a necessary enquiry in order to determine whether the 4th Respondents were eligible to submit a tender. It is clear from the affidavits & indeed there was no dispute about it that different grades are given by the Bombay City Municipal Corporation to hotels & restaurants &, therefore, there may be a registered IInd Class Hotel but no such grades are given to persons running hotels & restaurants & hence it would be inappropriate to speak of a person as a registered IInd Class hotelier, But on that account would it be right to reject the expression "registered IInd Class hotelier" as meaningless & deprive paragraph (1) of the notice of any meaning & effect. We do not think such a view would be justified by any canon of construction. It is

a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document & should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary" rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The Court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless & futile or reduce to silence any part of the document & make it altogether inapplicable. Now, here the expression used in paragraph (1) of the notice was "registered IInd Class hotelier" & there can be no doubt that by using this expression the 1st Respondent intended to delineate a certain category of persons who alone should be eligible to submit a tender. The 1st Respondent was not acting aimlessly or insensibly in insisting upon this requirement nor was it indulging in a meaningless & futile exercise. It had a definite purpose in view when it laid down this condition of eligibility in paragraph (1) of the notice. It is true that the phraseology used by the 1st Respondent to express its intention was rather inapt but it is obvious from the context that the expression "registered IInd Class hotelier" was loosely used to denote a person conducting or running a IInd Class hotel or restaurant. It may be ungrammatical but it does not offend common sense to describe a person running a registered IInd grade hotelier. This meaning is quite reasonable & does not do any violence to the language & makes sense of the provision contained in paragraph (1) of the notice. We must, in the circumstances, hold that, on a proper construction, what paragraph (1) of the notice required was that only a person running a registered IInd Class hotel or restaurant & having at least 5 years" experience as such should be eligible to submit a tender. This was a condition of eligibility & it is difficult to see how this condition of eligibility & it is difficult to see how this condition could be said to be satisfied by any person who did not have five years" experience of running a IInd Class hotel or restaurant. The test of eligibility laid down was an objective test & not a subjective one. What the condition of eligibility required was that the person submitting a tender must have 5 years" experience of running a IInd Class hotel, as this would ensure by an Objective test that he was capable of running a IInd Class restaurant & it should not be left to the 1st Respondent to decide in its subjective discretion that the person tendering was capable of running such a restaurant. If, therefore, a person submitting a tender did not have at least 5 years" experience of running a IInd Class hotel, he was not eligible to submit the tender & it would not avail him to say that though he did not satisfy this condition, he was otherwise capable of running a IInd Class restaurant & should, therefore, be considered. This was in fact how the 1st Respondent itself understood this condition of eligibility, when the 4th Respondents submitted their tender along with their letter dated 24th January, 1977 & it appeared from the documents submitted by the 4th Respondents, that they did not have 5 years" experience of running a

IInd Class restaurant. The 1st Respondent by its letter dated 15.2.1977 required the 4th Respondents to produce documentary evidence to show that they were "registered IInd Class hotelier having at least 5 years" experience". The 1st Respondent did not regard this requirement of eligibility as meaningless or unnecessary & wanted to be satisfied that the 4th Respondents did fulfil this requirement. Now, unfortunately for the 4th Respondents, they had over 10 years" experience of running canteens but at the date when they submitted their tender, they were not running a II grade hotel or restaurant nor did they have 5 years" experience of running such a hotel or restaurant. Even if the experience of the 4th Respondents in the catering line were taken into account from 1962 onwards, it would not cover a total period of more than 4 years 2 months so far as catering experience in IInd Grade hotels & restaurants is concerned. The 4th Respondents thus did not satisfy the condition of eligibility laid down in paragraph (1) of the notice & in fact this was impliedly conceded by the 4th Respondents in their letter dated 26th February, 1977 where they stated that they had "experience equivalent to that of a IInd Class or even 1st Class hotelier". The 4th Respondents were, accordingly, not eligible for submitting a tender & the action of the 1st Respondent in accepting their tender was in contravention of paragraph (1) of the notice". In view of the above, taking aid of Clause 8, the Opp. Party Corporation cannot justify its action.

11. The other illegality noticed is that the alternate land given by Opp. Party No. 4 bearing plot No. 712, under Khatian No. 256 Mouza: Chhatia, Thana: Badchana stands recorded in the name of R.C. Sahoo & other co-sharers of R.C. Sahoo, who happened to be the paternal uncle of Opp. Party No. 4 & is not coming within the meaning of family unit norms as required under Clause 9 of Annexure 1. The expression "Family Unit as per clause 9 of the advertisement under Annexure-1 & clause 4 of the brochure for selection of RGGLV means "family unit" of a married applicant shall consist of self, applicant's spouse, & unmarried son (s)/daughter (s); & "family unit" of an unmarried applicant shall consist of self, applicant's parents & applicant's unmarried brother (s)/sister (s).

12. Since Mr. R.C. Sahu, is the paternal uncle of Opp. Party No. 4, he is not coming within the meaning of "family unit". Thus, the alternate land offered by Opp. Party No. 4 does not stand either in the name of Opp. Party No. 4 or in the name of any of his family members, On this ground also, selection of Opp. Party No. 4 for RGGLV distributorship is not legal & the same is liable to be quashed.

13. For the reasons stated above, Opp. Party No. 4 does not fulfil the criteria for selection of LPG Distributorship for Chhatia & Opp. Party-BPCL is not justified in cancelling the second lottery/ draw scheduled to be held on 12.08.2010.

14. In the facts situation, we direct Opp. Party-BPCL to make the second draw/ lottery of LPG Distributorship for Chhatia within a period of four weeks from today & select LPG distributor as per the said draw in accordance with the terms & conditions of the advertisement. With the aforesaid observation & direction, the Writ Petition is allowed & the letter dated 14.10.2010 (Annexure-F/2) is

quashed.