

(2015) 02 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3449 of 2013

Sudha Parashar

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 02 MP CK 0026

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Baldev Kumar, for the Appellant; Harish Dixit, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rohit Arya, J.—By this petition under Article 226 of the Constitution of India, petitioner has prayed for quashment of assessment list (Annexure P/12) with further direction for selection of the petitioner for award of retail outlet.

2. Facts necessary for disposal of this petition are to the effect that respondent No. 1-Hindustan Petroleum Corporation Limited, (for short "HPCL") a Public Sector Undertaking, Government of India registered under the Indian Companies Act, 1956 is engaged in the business of award of dealership of retail outlet of Petrol, Diesel, LPG, Kerosene and other petroleum products throughout the territory of India. On 15/9/2011, an advertisement (Annexure P/1) was issued in Hindi Daily-Dainik Bhaskar inviting applications for award of retail outlet at location No. 219 within the territory of Naraua Panchayat. Three applications were received, petitioner is one of them. Interview was conducted on 11/1/2012 and after interview petitioner was placed at No. 1; however, on a complaint (Annexure P/6) filed by respondent No 3, that the land offered by the petitioner since did not conform the dimensions as required, therefore, she was ineligible to be considered, respondent No. 1, wrote a letter to Tahsildar on 28/3/2012 for providing the dimensions of the land offered by the petitioner being Survey No.

582/1, area 0.100 situated at village Naraua. Spot inspection was carried out by the Revenue Inspector on 19/4/2012. Panchnama was also prepared on spot. It was found that the land so offered by the petitioner was having dimensions 35 mt. length x 24 mt. width on survey No. 581/1; however on additional 8 mt. x 35 mt. land, it was found that though petitioner was in possession, however, no title to the aforesaid land was possessed by the petitioner. It is also found that as per revenue record, the total area of land of survey No. 582/1 is. 0.100 hectare i.e. 10764 sq. ft. and the dimensions of the area as stated by the Revenue Inspector was 35 x 32 mt. i.e. 0.112 hectare equal to 12055 sq. ft. as such clearly there is inconsistency between the area of land shown in the revenue record against Survey No. 582/1 and the land shown by the Revenue Inspector by spot inspection. That apart, as per the advertisement, the land offered for award of retail outlet, must be 30 mt. away from the center of the road and in the instant case, after reducing 30 mtrs, the land left is not sufficient to award retail outlet contrary to the standard shown in the advertisement. As such the land offered was found to be less than the requirement as advertised. However, upon submission of the report as regards, dimensions of the land, the respondents have rescheduled the interview on 15/3/2013 for which the petitioner was also issued a letter dated 21/2/2013. Petitioner was awarded "0" marks under the head movable and immovable properties, as petitioner has not supplied supporting documents in support of land, building, shops, house and vehicles. Further the petitioner was awarded "0" marks under the head ""Income"" as the petitioner alongwith her application has not submitted the report approved by recognized valuer of the government, which was very much necessary to award marks. Petitioner has also been awarded "0" marks under the head ""Letter ensuring Loan/credit/worthiness as petitioner has not produced any financial status certificate from the concerned bank. Accordingly, petitioner was denied award of retail outlet in the area concerned.

3. Petitioner has submitted that respondents have acted arbitrarily and illegally while awarding "0" marks regarding the column immovable property after second interview. It is submitted that land offered by her as is evident from Annexure P/3 is of her ownership and the area shown in Kaifiyat column is 11240 sq. ft. whereas, the land required was only 30 x 30 sq. mt. Thus, the land offered by her is much more than the area required under the advertisements with dimensions of 30 x 30 sq. mt. Therefore, there was no reasonable justification to award "0" marks under the column of movable and immovable property. It is further submitted that from the Revenue Inspector's report, it is evident that apart from the area of 35 x 24 sq. mt. , petitioner is also in possession of adjacent area of 8 x 35 sq. ft., hence, the total area in possession of the petitioner is much more than the area required and therefore, there was no reason to award "0" marks to the petitioner on the ground that the additional land in possession of the petitioner being 8 x 35 sq. mt. was not of her ownership, as there was no such requirement that land in possession of the applicant should be of his/her ownership. It is submitted that as a matter of fact,

the aforesaid area in possession of petitioner is an adjacent area and is of the ownership of her brother-in-law (Devar) and the same is part of joint family property.

4. That apart, it is also submitted that over the land offered by respondent No. 3, a 11 kv power line is passing through and therefore, same could not have been taken into consideration as there is a bar as indicated in clause 6 of the advertisement. Besides, the land offered by respondent No. 3 is an agricultural land, therefore, under clause 8 also, the said land was not fit for award of retail outlet until and unless same is diverted for other purposes. With the aforesaid submissions, it is prayed that assessment sheet (Annexure P/12) be quashed and petitioner be declared entitled for award of retail outlet.

5. Per contra, respondent No. 1 has filed counter affidavit and has raised a preliminary objection that availability of land offered by the petitioner is not in conformity with the requirement as indicated in advertisement but also involves disputed questions of facts as there are glaring variations as regards the area of land shown in the revenue record and that of in report of Revenue Inspector on spot inspection, therefore, writ jurisdiction under Article 226 of the Constitution of India cannot be invoked for resolution of such disputed questions of facts. Instead, the petitioner ought to have filed a civil suit for said purpose. That apart, it is submitted that as per clause 5 of the advertisement the eligible candidates are required to submit availability of plot of the dimensions shown i.e. 30 x 30 sq. mt. or an agreement of sale or of lease with details of land alongwith application. On subsequent stage, no opportunity shall be afforded to the applicants to fulfill this requirement. There is an exception appended to the aforesaid condition that the land of family members shall also be treated as that of applicant's ownership provided that there is a consent accorded by the family members for the said purpose. It is submitted that petitioner had only offered the land falling in survey No. 582/1 in her application. As per the revenue record (Annexure P/3), the aforesaid land has an area of 0.100 hectare i.e. 10764 sq. ft.; whereas, in kaifiyat column the total area is shown to be 11240 sq. ft. Likewise in column No. 10, a Pakka Makan has been shown constructed over the said land as such there are apparent variations in the area shown in revenue records as well as details against survey No. 582/1. That apart on spot inspection, it has been found that in survey No. 582/1 towards Sonar Road, the total length is 35 mt. and the width on the one side is 24 mt. and on the other side towards Karera Road is 22 mt. Up to 23 mt. there is a boundary wall with the open area. Thus, the total open land available in survey No. 582/1 is only 23 x 24 sq. mt. The possession of petitioner is also shown in adjacent area of 35 x 8 sq. mt. which is not part of survey No. 582/1. No documentary evidence is on record to show that as to in what capacity, the aforesaid area could be said to be available to the petitioner. Besides, the available land should be 30 mtrs. away from the center of the road. If 30 mtrs. is deducted towards road side Karera, area left is only 14 mtrs. Under such circumstances, it cannot be said that petitioner had the available land of 30 x 30 sq. mt. as per the requirement under

the advertisement. Hence, "0" marks were given to the petitioner due to non-availability of required land. It is also submitted that allegations that 11 kv power line is passing across the land made available by respondent No. 3 is factually incorrect as after due spot inspection and verification, it was found that the 11 kv power line is not passing across the area offered by the respondent No. 3 and is far away from the said land as stated in para 15 of counter affidavit. The inspecting team had inspected the land and found the same to be in order. As such the allegations made against respondent No. 3 are ill founded. With the aforesaid submissions, it is prayed that petition be dismissed.

6. Having heard learned counsel for the parties, this Court is of the view that sole controversy involved in this petition is as to whether the petitioner could be said to have the available land as per the requirement of advertisement (Annexure P/1) for the purposes of award of retail outlet ?

7. Before advertizing to the merits of submissions so advanced by rival parties, it is apposite to mention that the scope of interference in such matters is well-explained and circumscribed as settled by catena of judicial pronouncements. The process of selection for award of dealership by Oil Corporations is essentially an administrative decision which is required to be arrived at in fair manner. Inviting applications through advertisement from amongst the eligible candidates by an Oil Corporation for award of dealership in fact and in effect is in the process of business transaction for which detailed comprehensive terms and conditions are stipulated not only in the advertisement but also in the brochure issued by the HPCL,. Fulfillment of those conditions are stated to be mandatory. Hence, before accepting invitation for award of dealership, a candidate is required to go through the terms and conditions subject where to claim of a candidate is processed, examined and decided by HPCL. Non- adherence thereto or infraction/variance thereof by a candidate may result into vulnerability of the candidature and it is open for the HPCL to take a final decision as regards acceptance or rejection of a candidature. This is so because it is a contract between HPCL and the candidate, having commercial significance. The decisions taken by the HPCL in such matters are not pregnable though the decision making process by the HPCL is always open for judicial review. The fairness in decision making process is not only the requirement of Article 14 of the Constitution of India but also sine qua non of rule of law. K. Vinod Kumar Vs. S. Palanisamy and Others, is referred to which is quoted):

The law is settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision- making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process. The capability of the appellant herein to otherwise perform as an LPG distributor is not in dispute. The High Court was not, therefore, justified in interfering with the decision of the Selection Board and the decision of BPCL to issue the letter of allotment to the appellant herein.

8. The minimum land required as per the advertisement for award of retail outlet is 30 x 30 sq. mt. which should be 30 mt. away from the center of the road. The applicant under clause 5 is required to make available the land of his own or such land for which there is a specific agreement to sale or lease by a third person in favour of application. Besides the land of family member defined in the same clause may also be treated to be land of applicant provided that there is an express undertaking/consent given in that behalf. The land offered by the petitioner is only of survey No. 582/1. As per the revenue record, the area available in said survey No. is 0.100 hectare i.e. 10764 sq. ft. and in Kaifiyat column no. 12, the area is shown to be 11240 sq. ft. That apart a Pakka Makaan is also shown to have been constructed in the said survey number. As per the report furnished by the Revenue Inspector, the total area is that of 35 x 24 sq. mt. and in addition, it is also stated that the adjacent land having an area of 35 x 8 sq. mt. is also in her possession but there is nothing on record to establish her right thereto. Open area of survey No. 582/1 is 23 x 24 sq. mt. The possession shown on additional area of 35 x 8 sq. mt. is not shown to be a part of survey No. 582/1. The contention of the petitioner that she is in possession of the aforesaid area cannot be accepted for the reason that (i) petitioner has only offered the land available in survey No. 581/1; (ii) there is nothing on record to show that adjacent additional area of 35 x 8 sq. mt. is of her ownership; (iii) even if, it is assumed that the said area as claimed by the petitioner to be of her ownership, is joint family property, there is no evidence on record to demonstrate that there was any consent so agreed by the members of the family at the time of submission of the application.

9. Even in this petition also, there is no such consent letter. Under such circumstances, in terms of clause 5 of the advertisement, the land offered by the petitioner has not been found to be in conformity to the requirement of the land as advertised. It is clear from the advertisement that only such land shall be considered for eligibility which has been offered at the time of application. Any subsequent documents as regards availability of land strictly prohibited under clause 5 itself. Hence, considering the fact that land offered by the petitioner since did not conform to the requirement of advertisement the same has rightly been rejected by respondent No. 1. Once the petitioner herself is not found to be eligible for award of retail outlet for want of availability of required land, objections to the award of retail outlet in favour of respondent No. 3 in the opinion of this Court cannot be countenanced. Further the officers of respondent No. 1 inspected the land offered by respondent No. 3 and submitted their report to the effect that 11 kv power line is not passing through the land offered by respondent No. 3 and is far away, therefore, there is no reason or justification not to accept such averments made by respondent No. 1 on affidavit. No rejoinder to the counter affidavit filed by respondent No. 1 has been filed by the petitioner. In fact the respondent No. 1 is the best judge to assess the availability of land during selection process.

10. In view of the above, this Court is of the view that there is no illegality in the

action of respondent/HPCL in rejecting the candidature of the petitioner for award of retail outlet.

11. The petition sans merit and is hereby dismissed. No order as to costs.