

(2014) 04 CAL CK 0065

In the Calcutta High Court

Case No : A.S.T. 158 of 2013 and A.S.T.A. 93 of 2013

Swapnil Singh

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : AIR 2014 Cal 172 : (2014) 3 WBLR 272

Hon'ble Judges : S. Chatterjee, J;P.K. Chattopadhyay, J

Bench : Division Bench

Advocate : Debabrata Saha Roy and Mr. Pingal Bhattacharyya, Advocate for the Appellant; Amitabh Shukla and Mr. Prakash Ch. Pandey, B.P.C.L, Advocate for the Respondent

Final Decision : Allowed

Judgement

P.K. Chattopadhyay, J.—Bharat Petroleum Corporation Limited (hereinafter referred to as B.P.C.L.) along with other two leading Oil Companies namely, Indian Oil Corporation and Hindustan Petroleum Corporation Limited jointly published advertisement in the English News Daily "The Telegraph" on 13th July, 2011 inviting applications from the intending eligible candidates for appointment of L.P.G. Distributors in the States of West Bengal and Sikkim. The appellant herein in response to the aforesaid advertisement dated 13th July, 2011 offered her candidature by submitting application in the prescribed form and manner within the stipulated time period for the area of Bali Jagacha, in the district of Howrah. Guidelines for selection of L.P.G. Distributorship have been mentioned in the Brochure published by the aforesaid three Oil Companies. Clause 7 of the said Brochure contains the eligibility criteria for individual applicants. One of the eligibility criteria as mentioned in sub clauses (vi) and (vii) is that the candidates should own a plot of land of adequate size for construction of godown for storage of 8000 kg of L.P.G. and should own a suitable shop of minimum size of 3 meters by 4.5 meters or a plot of land of the same size on the date of advertisement. It has been explained thereafter that "own" means having ownership title of the

property or registered lease agreement for minimum 15 years in the name of applicant/family member as defined in multiple distributorship norm of eligibility criteria.

2. According to the appellant/petitioner, no deficiency could be found in the application form and the annexed documents submitted by the said appellant/petitioner and therefore, the said appellant/petitioner was declared eligible for draw of selection of L.P.G. Distributorship.

3. From the records, it appears that the appellant/petitioner along with five others were found eligible and allowed to participate in the draw of lots which was conducted by the respondent B.P.C.L. Undisputedly, the appellant/petitioner was ultimately selected.

4. It has been specifically submitted on behalf of the appellant/petitioner that along with duly filled in prescribed application form, the said appellant/petitioner also submitted notarized lease deeds executed on 13th September, 2011 in respect of the plot in question. The aforesaid lease deeds were also registered before the District Sub-Registrar, Howrah long before the field verification conducted by the Respondent B.P.C.L. on 19th February, 2013.

5. The respondent Oil Company conducted the draw for selection of L.P.G. Distributorship in respect of the location in question since six applicants were found eligible. There is no dispute that the appellant/petitioner herein was ultimately selected for the L.P.G. Distributorship in respect of the Bali Jagacha by the respondent Oil Company after conducting the draw.

6. In course of the field verification, it was detected that at the time of submitting the application, applicant did not have a registered lease agreement in her favour as mentioned in column 9 of the application and clause 7.1(vi) and (vii) of the brochure. It was declared by the appellant that the land was registered on 13.09.2011, whereas it was detected in course of field verification that the date of registration of the land was 21.12.2012, and not 13.09.2011.

7. By a letter dated 11.06.2013 the appellant/petitioner was informed by the respondent B.P.C.L. about the cancellation of the selection for award of L.P.G. Distributorship as the lands offered for construction of godown and the shop were not registered at the time of making application by the said appellant/petitioner. The land in question was subsequently registered on 21.12.2012.

8. The appellant/petitioner herein filed a writ petition before this court challenging the aforesaid decision of the respondent Oil Company regarding cancellation of the selection of the appellant/petitioner as the L.P.G. Distributor in respect of the Bali Jagacha area.

9. The learned Single Judge by the impugned judgment and order under appeal dismissed the writ petition on merits. Assailing the said judgment and order passed by the learned Single Judge, present appeal has been preferred and in connection with the said appeal, application for stay has also been filed. Both the

appeal and the application have been taken up for consideration by this Bench.

10. The learned advocate representing the appellant/petitioner submitted that the said appellant/petitioner never suppressed the notarised lease deed executed on 13th September, 2011 since the copies of the notarised lease deeds were also submitted along with the prescribed application form. The learned advocate of the respondent Oil Company however, denied the aforesaid claim of the appellant/petitioner and submitted that the copies of the lease agreement were not submitted along with the prescribed application form.

11. It is now to be decided whether the appellant/petitioner herein actually violated any clause of the application form. It has been alleged on behalf of the respondent Oil Company that the appellant/petitioner herein has violated the conditions mentioned in the Clauses 9 and 10 of the application form. The written communication dated 11th June, 2013 issued by the Territory Manager, L.P.G., Kolkata, B.P.C.L. are set out hereunder:-

Bharat Petroleum Corporation Ltd. A Govt. of India Enterprise Kolkata LPG Territory

Ct. Lpg. Jagacha. Select. CON

11.06.2013

Ms. Swapnil Singh, D/o. Shri Rajesh Pratap Singh, C/o. Anand Narayan Singh, 194/2, G.T. Road, North, Salkia, Howrah 711 106 West Bengal

Dear Madam,

Subject: Distributorship AT "Jagacha", Dist. Howrah. West Bengal, Category-Open, Marketing Plan-1999-00.

You are aware, based on the joint advertisement dated 11.07.2011 (Corrigendum dated 11.08.2011) issued by the Public Sector Oil Marketing Companies in the local Newspaper "Ananda Bazar Patrika", you along with other applicants applied for distributorship at location Jagacha, District-Howrah, in the State of West Bengal, Category-Open under Marketing Plan-1999-00.

Based on your application received by this company, you were selected through lottery drawn on 30.03.2012 as per Appendix Q, recording proceeding of the draw for selection of location Jagacha, Howrah, West Bengal.

Before issuing any Letter of Intent to you, as per the procedure, this company carried out field verification to check the credentials provided in your application. On verifying the accuracy of the data given by you in your application vis-?-vis the field verification as carried out, the under mentioned was observed.

You have sated in the application Clause No. 9 & 10, Page-2, following details of Land for Construction of LPG Godown & Showroom:

Quote-

As per Clause No. 9 & 10 of the Application, the land should be owned or leased for minimum 15 years in the name of applicant/member of "Family Unit".

-Unquote"

On verifying the documents by the team during FVC, it was found that the Leased Deeds of the proposed lands offered for construction of LPG Godown & Showroom were registered on 21.12.2012 & submitted at the time of FVC.

You have violated the Clause No. 9 & 10 of the application.

View above, your selection for award of distributorship for the location Jagacha, Howrah, West Bengal has been cancelled, which you may please note.

Thanking you, Yours faithfully, For Bharat Petroleum Corporation Limited, Sd/- Sudipto Mukherjee Territory Manager, LPG, Kolkata

c.c.: RLM ER-for your information please

c.c.: Dy. Mgr. Sales, Kolkata-for your information please.

12. The learned advocate representing the appellant/petitioner submitted that the said appellant/petitioner mentioned the date of the notarization of the lease agreements before the Notary Public while furnishing the information in respect of the Clauses 9 & 10 of the application form.

13. Mr. Saha Roy representing the appellant/petitioner submitted that the said appellant/petitioner clearly disclosed the notarised lease agreements while submitting the application for distributorship by filling up the prescribed application form since the copies of the notarised lease agreements were annexed with the prescribed application form.

14. Mr. Saha Roy further submitted that location and total area of land mentioned in the application form of the appellant/petitioner satisfied the inspecting team of the respondent Oil Company at the time of conducting field verification on 19th February, 2013. Mr. Saha Roy also submitted that the notarised lease deed is also a document in the eye of law and only requirement is to register the same before execution of the distributorship agreement with the respondent Oil Company.

15. In the present case, the land covered by the lease agreement was subsequently registered before the Sub-Registrar, Howrah on 21st December, 2012 i.e., long before the field verification conducted by the inspecting team of the respondent Oil Company.

16. The learned counsel of the appellant submitted that the desire and intention of the respondent Oil Company to handover the retail outlet to a lady at a good location in the area in question has been fulfilled by the selection of the appellant/petitioner for the L.P.G. Distributorship in question.

17. The learned counsel of the appellant/petitioner further submitted that the

said appellant/petitioner substantially complied with all the norms regarding ownership and possession of the lands in question and the very purpose of acquiring the lands by the selected distributor for construction of L.P.G. Godown and Showroom at the advertised location has not been frustrated in the present case. The learned counsel of the appellant/petitioner relied on the decision of the Supreme Court in the case of B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, .

18. The learned advocate representing the respondent Oil Company submitted that the appellant/petitioner has submitted false information in Clauses 9 and 10 of the application form and therefore the respondent Oil Company had no other option but to cancel the selection of the appellant/petitioner for award of L.P.G. Distributorship in respect of Jagacha Area, Howrah.

19. Mr. Shukla, learned advocate of the respondent Bharat Petroleum Corporation Limited submitted that the appellant/petitioner herein did not fulfill the eligibility criteria since the said appellant/petitioner did not execute the sale deed or lease deed in respect of the lands in question for construction of L.P.G. Godown and showroom at the time of submission of the prescribed application form. The learned advocate of the respondent further submitted that there was no scope to enclose the copies of the lease deeds along with the prescribed application form of the appellant/petitioner.

20. Mr. Shukla specifically urged before this court that the appellant/petitioner herein furnished false information in the application form in order to suppress the status of the lands in question in the application form.

21. Mr. Shukla cited the following decisions of the Hon''ble Supreme Court in support of his arguments:-

(i) District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi,

(ii) Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another,

22. Having heard the learned counsel of both the parties and going through the records, we find that both the lease deeds mentioned in Column Nos. 9 & 10 of the application form by the appellant herein have duly been notarised on 13th September, 2011, which was mentioned specifically in the application form by the said appellant/petitioner. Even assuming that the appellant/petitioner herein did not enclose the copies of the notarised lease deeds along with the prescribed application form then the appellant/petitioner herein should have been informed about the deficiency in order to enable the said appellant/petitioner to rectify the said deficiency within a specified period of time in terms of clause 9.5 of the Guidelines which is set out hereunder:

9.5. Application would be received in sealed envelope only. After application is received, serial number would be put on the envelope and also recorded in a "Register". Acknowledgement for applications received will be sent to the

applicants.

In case deficiencies are found in the application, a letter would be sent to the applicant to rectify the deficiencies within a specified period of time.

23. In the present case, however, the lands in question were registered long before the field verification. Therefore, there was no occasion to rectify any deficiency by the appellant/petitioner herein. The respondent Oil Company at the time of conducting the field verification knew that the lands in question have been registered in the name of the appellant/petitioner and there could not be any hurdle for the construction of L.P.G. Godown and Showroom on the lands in question mentioned in the application form.

24. The decisions cited by the respondent Oil Company are not at all applicable in the facts of the present case and therefore, the principles laid down in the aforesaid decision cannot be of any assistance for deciding the issues raised in the present appeal.

25. Undisputedly, the appellant herein took the lease of the lands in question for the purpose of construction of L.P.G. Godown and Showroom at the locations in question and notarised the same before the Notary Public on the date mentioned in the application form. Subsequently, the said lands were purchased by executing registered deed of conveyances before the Sub-Registrar, Howrah long before the field verification conducted by the inspecting team of the respondent Oil Company. Thus, the appellant herein substantially complied with the terms and conditions mentioned in the guidelines for selection of L.P.G. Distributors.

26. Keeping in view of the object and purpose regarding appointment of the L.P.G. Distributorship in the area in question, we find that the appellant herein substantially satisfied the requisite conditions mentioned in the application form. Accordingly, the respondent Oil Company should not have cancelled the selection of the appellant for award of distributorship at the Jagacha Location, Howrah on a flimsy ground overlooking the fact that the appellant herein substantially satisfied the requisite conditions mentioned in the guidelines for selection of L.P.G. Distributors.

27. Furthermore, in the present case, selection was made by draw of lots and therefore it cannot be said that the appellant/petitioner herein has deprived any better candidate. The alleged deficiency of the appellant is purely academic in nature, since the appellant herein became the owner of the lands in question mentioned in the application form long before the field verification apart from the fact that the lease agreements executed before the Notary Public in respect of the lands in question were valid and operative and could not be ignored by the parties to the said agreement. As a matter of fact, the lessor never raised any objection with regard to the said lease agreements at any point of time and ultimately sold out the said lands covered by the lease agreements to the appellant herein.

28. The learned Single Judge failed to appreciate that the appellant herein substantially fulfilled the eligibility criteria as mentioned in the guidelines for selection of L.P.G. Distributors. The learned Single Judge held that if the respondent Oil Company would have granted an opportunity to the appellant herein to rectify the deficiency, then the same would have been a deviation of the terms of the eligibility criteria and resulted in a fraud on public without realising the fact that there was no scope to rectify any deficiency by the appellant herein in view of the fact that the lands in question mentioned in the application form by the appellant herein were purchased subsequently by a registered sale deed, executed long before the field verification.

29. For the aforementioned reasons, we are unable to approve the decision of the respondent Oil Company regarding cancellation of the selection of the appellant for award of L.P.G. Distributorship in respect of the location at Jagacha, Howrah and also unable to affirm the decision of the learned Single Judge. Therefore, we quash the decision of the respondent Oil Company regarding cancellation of selection of the appellant for award of distributorship for the Jagacha location in the district of Howrah as communicated by the respondent No. 4 to the appellant herein by the written communication dated 11th June, 2013 and also set aside the impugned judgment and order under appeal.

30. The authorities of the respondent Oil Company are therefore, directed to issue the Letter of Intent and grant L.P.G. Distributorship at Jagacha, District Howrah in favour of the appellant-petitioner without any further delay but positively within a period of two weeks from the date of communication of this order.

31. With the aforesaid directions, we allow both the appeal as well as the connected application. In the facts of the present case, there will be however, no order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Samapti Chatterjee, J.

I agree.