

GAHC040002392019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Writ Petition (C) No.178 (AP)/2019

SHRI DON PERTIN.

..... PETITIONER.

-Versus-

THE STATE OF ARUNACHAL PRADESH & 5 OTHERS..... RESPONDENTS.

Advocates for the petitioner: Mr. N. Danggen
 Mr. O. Duggong,
 Mr. O. Perme,
 Mr. T. Tatak and
 Mr. D. Taggu.

Advocate for the respondents: Mr. N. Ratan, Central Govt. Counsel,
 Mr. T. Tapak, Standing Counsel, IOC,
 Mr. N. Pada.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of Hearing : 13.06.2023.

Date of Judgment : 18.07.2023.

JUDGEMENT & ORDER (CAV)

Heard Mr. O. Duggong, learned counsel for the petitioner. Also heard Mr. N. Ratan, learned CGC appearing for the respondent No.1, Mr. D.K. Sharma, learned counsel appearing for the respondent Nos.2 to 5 and Mr. N. Pada, learned counsel appearing for the respondent No.6.

2. This Writ Proceeding, under Article 226 of the Constitution of India, is being instituted by the petitioner, namely, Shri Don Pertin with the following prayers:-

- (i) to quash and set aside recommendation/report of Land Evaluation Committee, based on self verification dated 22.03.2019 for RO dealership of Dambuk;
- (ii) to quash and set aside the order dated 30.03.2019, passed by the head of Division Office, Indian Oil Corporation Limited, through e-mail Ref: 15453871642034;
- (iii) to issue direction to the respondents to re-verify the land of the petitioner for RO dealership at Dambuk;
- (iv) or in alternative, to issue direction to the respondents to consider the representation dated 24.04.2019 and 20/05/2019 filed by him within a specified time period;

3. The background facts, leading to filing of the present writ petition is adumbrated herein

below :-

“Pursuant to an advertisement, dated 25.11.2018, published in the Newspaper for appointment of regular/rural retail outlet (Petrol Pump) dealership for various places in Arunachal Pradesh, the petitioner on 21.12.2018 applied for Retail Outlet (RO) Dealership at Dambuk, under ST (Scheduled Tribe) Category on NH 13, between ADC Office, Dambuk and Bridge over river Sinekorong in Lower Dibang Valley District.

Thereafter the petitioner executed a land lease agreement on 21.12.2018, along with his brother who possesses a plot of land in the Dambuk area, for the purpose of RO dealership, and subsequently after going through all the formalities, lottery was drawn on 29.01.2019, for selection of RO dealership by the IOCL officials at Tinsukia and the petitioner was selected, as informed by the Head of Divisional Office, IOCL.

Thereafter, on 02.03.2019, an e-mail was sent to him by the Head of Divisional Office, IOCL informing that a Land Evaluation Committee (LEC) will be visiting the proposed site for inspection on 12.03.2019. But, on that day the LEC did not turn up. Later on, without any intimation, to the petitioner, the LEC had unilaterally visited the land of the petitioner and the petitioner came to know about the same from a third person. Thereafter, on 30.03.2019, the petitioner received another e-mail, wherein it was stated that on 12.03.2019, the LEC visited the site offered by the petitioner and found the same to be not meeting the required norms and by citing this reason, the selection of the petitioner for RO dealership was cancelled. Thereafter, on 29.04.2019 he had received another communication wherein it is stated that rejection of his candidature was due to verification dated 22.04.2019. It is also stated that as per guidelines it is mandatory for all the parties to remain present physically during such verification. And violating its own guidelines, the IOCL had cancelled his selection.”

4. Being aggrieved by the impugned rejected order, dated 30.03.2019, the petitioner has approached this Court, by filing the present Writ Petition, on the ground that the unilateral verification of the land of the petitioner by the respondents, and subsequent cancellation of his selection, is an outcome of arbitrary and ill informed decision of the respondents which

resulted in violation of his legal as well as fundamental right.

5. The respondent No.2 to 5 have submitted their affidavit in opposition denying the assertions made in the petition. It is stated that - due to pre occupation with other official works, the LEC conducted land evaluation on 22.03.2019, in presence of the petitioner and a group photograph was taken on the same date which clearly show the presence of the petitioner. It is also stated that the land offered by the petitioner is found to be not meeting the requirement, and therefore, his selection for RO dealership was cancelled.

6. The respondent no 6, in his affidavit in opposition stated that the petitioner was very much present at the time of site verification by the LEC and a group photograph of the petitioner was also taken and that suppressing material facts the petitioner has filed this petition with false affidavit and also obtained stay order by misleading the court. Therefore, it is contended to dismiss the petition.

7. The petitioner then filed his reply to the affidavit in opposition denying the averments made in the petition. It is stated that getting information while he reached the site the LEC had already completed verification and within half an hour they left the site giving no opportunity to the petitioner to explain the rough site map which was not drawn to scale. It is also stated that without informing him the LEC visited the site and taken decision behind his back and the decision so taken is arbitrary and in violation of the procedure established by law and therefore, it is contended to allow the petition.

8. Mr. O. Duggong, the learned counsel for the petitioner submits that the respondent authorities have cancelled the selection of the petitioner for the retailed outlet dealership, with malafide intention and the same is writ large from their decision to make physical verification behind the back of the petitioner, violating their own guidelines. Mr. Duggong further submits that physical verification is required to be made in physical presence of all the

parties. It is the further submission of Mr. Duggong that on flimsy ground, the LEC has rejected his selection and had the verification been made in his presence, then he could have explained to the LEC the doubt that had arisen in their mind about the land in question of the petitioner. But, ignoring their own guidelines, the LEC had made physical verification behind the back of the petitioner. Mr. Duggong also submits that the petitioner, thereafter, had submitted two representations to the respondent authorities and the same are yet to be disposed of. Therefore, Mr. Duggong contended to set aside the impugned order dated 30.03.2019 as it violates the valuable rights of the petitioner.

9. Whereas, Mr. D.K. Sharma, the learned counsel for the respondent No. 2 to 5 submits that the LEC had made the physical verification in presence of the petitioner and that the LEC had found the land of the petitioner not suitable as the same had failed to meet the requirement. Mr. Sharma has also submits following case laws:-

(i) Jagadish Mandal vs. State of Orissa, reported in **(2007) 14 SCC 517**;

(ii) Municipal Corporation of Ujjain vs. BVA India Ltd, reported in **(2018) 5 SCC 462**;

(iii) Municipal Corporation Neemuch vs. Mahadeo Real Estate, reported in **(2019) 10 SCC 738**

(iv) Prestige Light Ltd vs. SBI reported in **(2007) 8 SCC 449**;

(v) Judgment and order of this court in WP(C) No.297/2019;

to contend that the power of judicial review of an administrative action is very limited and it shall be exercised only when the decision made or the process adopted by the authority is tainted with malafides or arbitrariness, and when public interest is affected. Mr. Sharma further submits that there is no merit in this petition and therefore, it is contended to dismiss the same.

10. On the other hand, Mr. N. Pada, the learned counsel for respondent No.6, referring to a decision of Hon'ble Supreme Court in **K. D. Sharma vs. Steel Authority of India** reported in **(2008) 12 SCC 451**, submits that suppressing material facts the petitioner has filed this petition and filed one false affidavit and also obtained stay order by misleading the court and on this ground alone this writ petition is liable to be dismissed. Mr. Pada further submits that the petitioner was very much present while the LEC had visited the land of the petitioner for physical verification, and in the affidavit, in reply at para No.4, he had admitted the same. Mr. Pada further submits that there is no merit in this petition and therefore, it is contended to dismiss this petition.

11. In view of the pleadings of the parties and submissions of learned Advocates of all the parties the issues that arisen for adjudication of this court is formulated as under:-

- (i) Whether the decision of the respondent authorities, communicated vide e-mail dated 30.03.2019, by respondent No.4 to the petitioner, to cancel his selection for the retailed outlet at Dambuk of Lower Dibong Valley District, is tainted with mala-fides or arbitrariness and thereby violates the legal rights of the petitioner ?
- (ii) Whether petitioner has, suppressing the material facts, and misleading this court obtained an order to maintain status- quo, and on such count he is not entitled to any relief(s) from this court ?

12. I have gone through the pleadings of the parties and the documents placed on record carefully. Also, I have gone through the case laws referred by Mr. Sharma, the learned counsel for the respondent No.2 to 5 and also gone through the case law referred by Mr. N. Pada, the learned counsel for the respondent No.6.

13. It is not in dispute that the petitioner had applied on 21.12.2018 for Retail Outlet (RO) Dealership at Dambuk, under ST (Scheduled Tribe) Category on NH 13, between ADC Office, Dambuk and Bridge over river Sinekorong in Lower Dibang Valley District, in response to an advertisement, dated 25.11.2018, published in the Newspaper for appointment of regular/rural retail outlet (Petrol Pump) dealership for various places in Arunachal Pradesh. The petitioner, thereafter, had executed a lease agreement on 21.12.2018, with his brother, who possesses a plot of land in the Dambuk area, for the purpose of RO dealership. Thereafter, observing all the formalities, a lottery was drawn on 29.01.2019, for selection of RO dealership, by the IOCL Officials at Tinsukia. In the said lottery the petitioner was selected for the dealership and he was informed by the Head of Divisional Office, IOCL vide e-mail dated 31.01.2019, **(Annexure - I series at Page-26 of the Writ Petition.)**

14. Further it appears that - on 02.03.2019, an e-mail **(Annexure-II)** was sent by the Head of Divisional Office, IOCL, to the petitioner, informing him that a Land Evaluation Committee (LEC) will be visiting the proposed site for inspection on 12.03.2019, and also requesting him to remain present there personally along with relevant documents. Option was also given that in case he could not remain present, he may authorize his authorized representative along with his or her ID proof and authorization. However, on that day the LEC did not turn up. The petitioner's case is that later on, without any intimation, to the petitioner, the LEC had unilaterally visited the land of the petitioner and he came to know about the same from a third person. It is the further case of the petitioner that on 30.03.2019, he had received another e-mail **(Annexure-III)**, wherein it was stated that on 12.03.2019, the LEC visited the site being offered by the petitioner and found the same to be not suitable and by citing this reason, his selection for RO dealership was cancelled. Thereafter, on 29.04.2019 he had received another communication, **(Annexure-IV)** wherein it is stated that rejection of his candidature was due to verification of the offered plot of land on 22.03.2019. The further case of the petitioner is that as per guidelines it is mandatory for all the parties to remain present physically during such verification. However, in total violation of this norm, the LEC had inspected his land and thereafter the IOCL had cancelled his selection.

15. The petitioner has annexed the Brochure, Selection of Dealers for Regular and Rural Retail Outlets, dated 24th November 2018 as **Annexure-VII**. Clause 14 of the said Broacher deals with selection process. Clause 14.H of the said Broacher deals with land evaluation, which read as under:-

Land Evaluation :

The concerned Divisional/Regional/Territory shall inform the selected candidate through e-mail/SMS/ at least 10 days before the day of visit by LEC for the site evaluation. In case no response/non-availability of the selected applicant; the candidature shall be cancelled under intimation to the selected candidate through SMS/ e-mail.

Evaluation of the offered land will be carried out to ascertain land being in advertised area and being suitable for development of RO – meeting norms. The parameters under which land will be evaluated by Land Evaluation Committee for suitability are:-

Land in advertised area / stretch

- Land dimensions as per requirement
- Land meets NHAI norms (for sites on NH)
- Land has no HT line (>11 KVA) crossing

Land not meeting any of the above parameters will not be considered and will be rejected.

Note: Offered land should have minimum frontage & area as specified in advertisement. Minimum depth perpendicular to the frontage at least at one place should be available as specified in advertisement.

In case offered land is found to be suitable, the LEC will submit the recommendation to the Divisional/Regional/Territory head for carrying out FVC of the selected candidates.

In case land is not found to be suitable, the selected candidate will be informed about his ineligibility and selection process will be continued with the balance applicant. However, the candidate would be considered for selection along with Group 3 applicants and intimation will

be sent to the candidate.

16. Thus, the requirement of the Rule is that the concerned Divisional/Regional/Territory shall inform the selected candidate through e-mail/SMS/ at least 10 days before the day of visit by LEC for the site evaluation. The pleaded case of the petitioner is that he was informed about visiting of the LEC by an e-mail dated 02.03.2019, (**Annexure-II**) by the Head of Divisional Office, IOCL, informing him that the Land Evaluation Committee (LEC) will visit the proposed site for inspection on 12.03.2019, and requesting him to remain present there personally along with relevant documents. But, on that day the LEC had not visited the site. In fact the LEC had visited the site on 22.03.2019, as per **Annexure-IV**. Thus, the e-mails dated 30.03.2019 (**Annexure-III**) and dated 29.04.2019 (**Annexure-IV**) both appears to be contradictory. It is also his case that the respondent IOCL had thereby violated its own guidelines and get the verification done behind his back and thereby deprived him of the opportunity of proper clarification/hearing, especially in absence of a Map that conform to a proper scale.

17. The respondent No. 2 to 5 also, in their affidavit at para No. 5, has, in no uncertain terms admitted that due to pre occupation with other official works, the LEC conducted land evaluation on 22.03.2019, in presence of the petitioner and a group photograph was taken on the same date which clearly show the presence of the petitioner at the site. But, the affidavit in opposition is silent about giving intimation to the petitioner 10 days before the day of such visit of the LEC for site evaluation, which appears to be mandatory. Thus, admittedly, site verification was conducted without intimation and behind the back of the petitioner. Though, it was pleaded by the respondent No. 2 to 5 that site verification was conducted in presence of the petitioner, and a group photograph was taken, which shows the presence of the petitioner on that day yet, the petitioner in his reply to the affidavit in opposition of the respondent No. 2 to 5 has stated that on the date of site verification by the LEC, he was engaged in some other works and by the time he got the information about arrival of the LEC from fellow villagers and rushed to the spot to meet them and reached the spot then he was

told by the LEC that they have already verified the proposed site and hastily made him to sign some papers which the petitioner could not read carefully, and they return back within half an hour. It is also stated that the Map, which he had sent with the RO application was un-scaled one (rough sketch map) and needs to be explained and because of the arbitrary action of the LEC he got no opportunity to clarify and explain the same.

18. It is to be noted here that the above reply of the petitioner is not controverted by the respondent No.2 to 5. Thus, it appears that because of the unscheduled visit of the LEC on 22.03.2019, the petitioner could not prepare to explain the rough sketch map of the proposed site offered by him and thereby he was deprived of the opportunity to explain the rough site map.

19. It is to be noted here that while dealing with arbitrariness in the case of **State of Orissa v. Mamata Mohanty**, reported in **(2011) 3 SCC 436**, Hon'ble Supreme Court has held in paragraph No. 59 as under:-

“59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision-making process remains bad.”

20. In the same vein, Hon'ble Supreme Court in **A.P. Dairy Development Corporation vs. B. Narasimha Reddy**, reported in **(2011) 9 SCC 286**, reiterated

the legal proposition as follows:

“29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone.”

21. Now, advertent to the case in hand, if we examine the action of the respondent IOCL, i.e. the unscheduled visit of the site offered by the petitioner, without giving him any information, before 10 days of such visit, as required in Clause 14.H of the Rule, for the site evaluation on 22.03.2019, and without giving any opportunity to explain him the rough sketch map of the proposed site offered by him, and thereby depriving him of the opportunity to explain the rough site map, and thereafter, cancelling his selection for the dealership, on the touchstone of the principle laid down in the case laws, discussed herein above, then the inescapable conclusion that could be arrived at is that the action of respondent IOCL is tainted with arbitrariness and mala-fide.

22. Though the learned counsel for the respondent No.2 to 5 submits that the scope of judicial review is very limited, yet, the said submission left this court unimpressed in as much as the respondent No. 2 to 5 committed breach of the rules of natural justice and committed error of law and also abused its power. It is to be mentioned here that while examining the scope of the power of the High Court of judicial review of an administrative action, in the case of Tata Cellular vs. Union of India, reported in (1994) 6 SCC 651, in paragraph No. 77 held as under:-

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decisionmaking authority exceeded its powers?**
- 2. Committed an error of law,**
- 3. Committed a breach of the rules of natural justice,**
- 4. Reached a decision which no reasonable tribunal would have reached or,**
- 5. Abused its powers.**

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (I) Illegality : This means the decisionmaker must understand correctly the law that regulates his decisionmaking power and must give effect to it.**
- (ii) Irrationality, namely, Wednesbury unreasonableness.**
- (iii) Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, ‘consider whether something has gone wrong of a nature and degree which requires its intervention’.

23. I have carefully gone through the case laws (i) Jagdish Mandal (supra) (ii) Municipal Corporation of Ujjain (supra) (iii) Municipal Corporation Neemuch (supra) (iv) Prestige Light Ltd (supra) (v) Judgment and order of this court in WP(C) No.297/2019; referred by Mr. Sharma, the learned counsel for the respondent No. 2 to 5 and K. D. Sharma (supra) the case law so referred by Mr. N. Pada, the learned

counsel for the respondent No. 6, and in view of the discussion and finding recorded herein above I am of the view that the ratio laid down therein would not advance the case of the respondents.

24. In view of the discussion and finding, recorded here in above, the question No.(ii), so formulated herein above, has to be answered in negative as the order to maintain status-quo is found to be not obtained by suppressing any material facts, and misleading this court.

25. In the result, I find sufficient merit in this petition and accordingly the same stands allowed. The impugned letter/order dated 30.03.2019, passed by the head of Divisional Office, Indian Oil Corporation Limited, and communicated through e-mail Ref: 15453871642034 stands set aside and quashed. The respondent No. 2 to 5, specially respondent No. 4, i.e. The Divisional Officer, Tinsukia Divisional Office, IOCL, Tinsukis is directed to re-verify the land of the petitioner for RO dealership at Dambuk by intimating him the date of such verification before 10 days, as required by Rule 14.H and thereafter to afford him an opportunity to explain the Rough Sketch Map, if so warranted. The above exercise has to be carried out within a period of one month from the date of receiving certified copy of this judgment.

26. In terms of above this writ petition stands disposed of leaving the parties to bear their own costs.

JUDGE

Comparing Assistant