

GAHC010029452014



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

Case No. : WP(C)/2101/2014

MILAN CH. RAY
C/O- LT. ISHAN CH. RAY, R/O VILL.- THAKURANIPARA, P.S.- ABHAYAPURI,
DIST.- BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
TO BE REP. BY THE SECY. TO THE MINISTRY OF PETROLEUM AND
NATURAL GAS, NEW DELHI- 1.

2:THE INDIAN OIL CORPORATION LTD.
REP. BY ITS CHARIMAN - CUM - MANAGER DISRECTOR
HAVING ITS REGISTERED OFFICE AT G-9
ALL YAVAR JUNG MARG
BANDRA EAST
MOMBAI- 400051
INDIA.

3:THE GENERAL MANAGER
INDIAN OIL CORPORATION LTD.
NORTH POINT TOWER
BAMUNIMAIDAM
GHY- 21
DIST.- KAMRUP M
ASSAM.

4:THE CHIEF AREA MANAGER
INDIAN OIL CORPORATION LTD.
INTEGRATED AREA OFFICE
DR. B.K. KAKATI ROAD
KACHARI BASTI
ULUBARI

GHY- 7
DIST- KAMRUP M
ASSAM

Advocate for the Petitioner : MR.M K SHARMA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

23.05.2023

The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India assailing an order of cancellation dated 21.02.2014 issued under the hand of the respondent no. 4 i.e. the Chief Area Manager, Indian Oil Corporation Limited, Integrated Area Office, Guwahati, whereby, the Letter of Intent [LoI] no. 2013/IN000296/AS/000035 /2411/00025 dated 04.06.2013 issued earlier in favour of the petitioner awarding Indane Liquefied Petroleum Gas [LPG] Distributorship at the location, Sidalsuti [LPG Market] has been cancelled. Apart from seeking setting aside and quashing of the order of cancellation dated 21.02.2014, the petitioner has sought for a direction to the respondent Indian Oil Corporation Limited [IOCL] authorities to restore the LoI dated 04.06.2013 and to allow the petitioner to operate the Indane LPG distributorship at Sidalsuti in terms of the LoI dated 04.06.2013.

2. By an Advertisement dated 31.12.2011 published by the three Public Sector Oil Marketing Companies [OMCs] viz. [i] Indian Oil Corporation Limited [IOCL]; [ii] Bharat Petroleum Corporation Limited [BPCL]; and [iii] Hindustan Petroleum Corporation Limited [HPCL] jointly, applications were invited from interested applicants for selection and appointment of LPG distributorships under Rajiv Gandhi Gramin LPG Vitrak Scheme [‘the RGGLV Scheme’, for short] for 67 nos. of different locations in different districts of Assam. Amongst the locations, Serial no. 39 was in respect of a location at Village – Sidalsuti, Block – Srijangram, District – Bongaigaon under CC category. The last date of submission of applications initially fixed by the Advertisement dated 31.12.2011 was, later on, extended by a Corrigendum up to 14.02.2012.

3. The Advertisement inter alia laid down the eligibility criteria for distributorship of LPG. The applicants were requested to go through the terms and conditions of the Advertisement before submission of the application. It was laid down in the Advertisement that the candidate must 'own' a plot of land having dimensions of 20 metres X 24 metres at the applied location under the RGGLV Scheme for the construction of godown in order to keep LPG cylinders. The candidate must have ownership of the plot of land offered for RGGLV distributorship either in his name or in the name of a member of the family jointly and in the event of joint ownership, the applicant was required to submit a No Objection Certificate from the other co-owners of the plot of land.

4. In response to the Advertisement dated 31.12.2011 and considering himself eligible to apply for the LPG distributorship under the RGGLV Scheme for the location at Sidalsuti [hereinafter referred to as 'the subject-location', for easy reference], the petitioner submitted his application. The petitioner has contended that he submitted the application by complying with the necessary formalities before the last date of submission of application, 14.02.2012. After receipt of the applications in respect of the subject-location, the respondent IOCL authorities processed the same and after processing, informed the petitioner by a Communication dated 04.09.2012 that the petitioner was found qualified for selection of RGGLV distributorship for the subject-location. By the Communication dated 04.09.2012, the petitioner was asked to be present personally at 10-00 a.m. on 27.09.2012 at the venue specified therein for the Draw of Lots to be conducted amongst the applicants found qualified for the subject-location. Accordingly, the petitioner attended the venue notified for the Draw of Lots scheduled on 27.09.2012. After completion of the process of selection including interview held for selection at Guwahati on 07.02.2013, the petitioner was offered a Letter of Intent [LoI] vide Letter no. 2013/IN000296/AS./000035/2411/00025 dated 04.06.2013 offering LPG distributorship under the RGGLV Scheme at the subject-location.

5. It is the case of the petitioner that after receipt of the LoI dated 04.06.2013, he proceeded to carry out the formalities intimated vide the LoI dated 04.06.2013. In order to set up the Indane LPG distributorship at the subject-location, he also started construction of the godown immediately after 04.06.2013 by making investment and half of the construction works of the godown was completed at a fast pace. He deposited an amount of Rs. 2,00,000/- in favour of the

respondent IOCL by two demand drafts dated 20.01.2014. When the petitioner was expecting that the process of award of Indane LPG distributorship at the subject-location would be confirmed by an Appointment Letter followed by signing of the standard RGGLV Agreement between the petitioner and the respondent IOCL, as indicated in the LoI, the petitioner was served with a Show Cause Notice dated 16.01.2014 by the respondent no. 4 asking him to explain within a period of 15 days from the date of receipt of the Show Cause Notice as to why the LoI placed on the petitioner should not be withdrawn for the reason that the plot of land offered by the petitioner for setting up the Indane LPG distributorship at the subject-location was not in his possession on the date of submission of the application. On receipt of the Show Cause Notice dated 16.01.2014, the petitioner submitted his Reply in writing on 30.01.2014 refuting the allegations made in the Show Cause Notice. But by the order of cancellation dated 21.04.2014, the Letter of Intent [LoI] dated 04.06.2013 had been cancelled.

6. Heard Mr. D. Deka, learned counsel for the petitioner; Mr. K. Gogoi, learned Central Government Counsel [CGC] for the respondent no. 1; and Mr. P. Bharadwaj, learned counsel for the respondent nos. 2, 3 & 4.

7. Mr. Deka, learned counsel for the petitioner has submitted that the Show Cause Notice served upon the petitioner on 16.01.2014 was much after the LoI dated 04.06.2013. After selection of the petitioner as Indane LPG distributor for the subject-location, Sidalsuti after the Draw of Lots held on 27.09.2012 and the subsequent interview held for selection at Guwahati on 07.02.2013, the Field Verification of Credentials [FVC] for the LPG distributorship under the RGGLV Scheme was carried out by the FVC team on 11.03.2013 and the FVC team found the site suitable for the subject-location. The FVC team had merely observed that the petitioner was not a permanent resident of Sidalsuti. It is submitted by Mr. Deka, learned counsel for the petitioner that permanent residence criterion was not a criterion to be strictly followed in awarding the LPG distributorship at the subject-location as Clause 3.4 of the LoI dated 04.06.2013 had indicated that the petitioner had to shift his residence to Sidalsuti, thereby, making it clear that the petitioner had to shift his residence if he was not residing, at the time of issuance of the LoI, at the subject-location, Sidalsuti. It is further submitted by him that the Show Cause Notice dated 16.01.2014 was silent on the aspect of residence but it had taken a new ground to the effect that the plot of land offered by the petitioner for setting up the RGGLV godown at Sidalsuti was not in

the possession of the petitioner on the date the application was submitted by him. It is submitted by him that the Manual for Selection of the RGGLV [‘the Selection Manual’, for short] was silent on the aspect of having possession of a plot of land at the subject-location on the date of the application and as such, the cancellation of the LPG distributorship is clearly illegal. It is his further submission that on the date of cancellation of the LoI, that is, 21.02.2014, the petitioner had both the ownership as well as clear possession of a plot of land offered for LPG distributorship under RGGLV Scheme for the subject-location.

8. Refuting the contentions of Mr. Deka, learned counsel for the petitioner, Mr. Bharadwaj, learned counsel appearing for the respondent IOCL authorities has submitted that the matter of selection and award of Indane LPG distributorship under the RGGLV Scheme was are governed by the provisions of the Selection Manual. Mr. Bharadwaj has referred to the eligibility criteria for RGGLV LPG Vitrak Scheme contained in Clause 6, more particularly, Clause 6.1[vii] wherein a condition was set forth to the effect that the applicant should ‘own’ a suitable land [plot] of minimum 20 metres X 24 metres in dimensions at the advertised RGGLV location for construction of LPG cylinder storage godown. Referring to the prescribed application format and the general instructions to the candidates applying for LPG distributorships, he has submitted that the applicant must ‘own’ the plot of land on or before the date of application. In the case in hand, the petitioner as an applicant, while submitting his application on 30.01.2012 had only submitted a copy of a Deed of Agreement dated 24.01.2012 for sale and purchase of a plot of land executed between one Sri Tara Prasad Ray, the owner of the said plot of land measuring 3 Kathas 15 Lessas on one hand, and the petitioner on the other hand. He has further submitted that the petitioner had subsequently got clear title of another plot of land belonging to one Smti Paka Bala Ray by way of a registered Gift Deed dated 27.02.2013. He has, thus, submitted that though the Show Cause Notice dated 16.01.2014 spoke about non-possession of the plot of land it had actually meant about clear ownership. In the Reply dated 30.01.2014 to the Show Cause Notice, the petitioner had failed to produce any cogent material to show that he had clear ownership of the plot of land offered for the LPG distributorship under the RGGLV Scheme at the subject-location on any date prior to the last date of submission of the application in response to the Advertisement in question. In such view of the matter, there shall not be any interference with the order of cancellation of the LoI dated 04.06.2013 by the order of cancellation of LoI dated 21.02.2014.

9. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings. I have also gone through the records related to the award of LPG dealership under the RGGLV Scheme for the subject-location at Sidalsuti and the Selection Manual published in November, 2009, produced by Mr. Bharadwaj for perusal.

10. From the materials on record, it has emerged that the petitioner was selected for Indane LPG distributorship under the RGGLV Scheme for the subject-location after a Draw of Lots held on 27.09.2012 and subsequent interview held for selection at Guwahati on 07.02.2013, which facts are reflected in the LoI dated 04.06.2013. In the LoI, it was mentioned that there was requirement for construction of godown for storage of 5,000 Kg [minimum] of LPG filled in cylinders. The LPG storage godown should be approved and licensed by the Chief Controller of Explosives of Petroleum and Explosives Safety Organization [PESO]. The petitioner would be required to construct showroom of dimensions 2.6 metres X 3 metres near the godown or in an existing nearby shop. The construction of godown and showroom should be completed within a period of four months from the date of the LoI. By the LoI, the petitioner was intimated about the requirements that the showroom should be as close as possible to the LPG storage godown and both the godown and showroom should be freely accessible through all weather motorable approach road [public road or an approach road constructed by the LoI holder and connecting to the public road. The LoI had, at the same time, mentioned that the construction of godown/showroom should be commenced only after permission in writing was obtained from the office of the respondent IOCL.

11. It was mentioned that after compliance of the conditions set forth in the LoI by the petitioner, the award of the Indane LPG distributorship under the RGGLV Scheme to the petitioner would be conferred/formalized by an Appointment Letter followed by the signing of a standard RGGLV Agreement between the petitioner as the LoI holder and the IOCL. The LoI had further intimated that the petitioner would be required to deposit interest free refundable security deposit of Rs. 2,00,000/-.

12. Clause 6 of the LoI mentioned about its withdrawal stating that in Clause 6.1, the letter

was merely a Letter of Intent and was not to be construed as a 'firm offer' of the LPG distributorship under the RGGLV Scheme to the petitioner. If the IOCL would find that the progress being made by the petitioner as the LoI holder towards the compliance of the conditions was not to the satisfaction of the IOCL, then the LoI dated 04.06.2013 would be liable to be withdrawn.

13. The Selection Manual had laid down the guidelines for selection of RGGLV LPG Vitrak by the Oil Marketing Companies [OMCs] including the IOCL. Clause 6 of the Selection Manual had provided for eligibility criteria for the RGGLV. As per the common eligibility criteria for all categories, set forth in Clause 6.1 thereof, an applicant for the RGGLV, as per sub-clause [vii] must own a suitable land [plot] of minimum 20 metres X 24 metres in dimensions at the advertised RGGLV location for construction of a LPG cylinder storage godown. Clarification was provided by stating that 'own' would mean having clear ownership title of the property in the name of the applicant/any family member of the 'family unit' as defined in the Selection Manual. The prescribed application format for the purpose of RGGLV mentioned similar terms. In the application form, the applicant was required to provide information about the date of registration of sale deed/gift deed/date of mutation. In the general instructions issued to the candidates applying for the RGGLV, it was specifically laid down that an applicant while providing the details of the plot of land as per the format, required to possess either a registered sale deed or gift deed or mutation in the government records, etc. and the date of such documents had to be on or before the date of application.

14. Reverting back to the case in hand, it has emerged from perusal of the records that the petitioner, at the time of submission of his application for Indane LPG distributorship under the RGGLV Scheme, had mentioned about a Deed of Agreement executed on 24.01.2012. On perusal of the copy of the said Deed of Agreement which is available in the records of the selection process, it is noticed that the said Deed of Agreement was only an agreement for the purpose of sale and purchase of a plot of land, measuring 3 Kathas 15 Lessas located at Village – Kaimari Lohora Para, Srijangram Revenue Circle, Dihi – Barhaijari, District – Bongaigaon and not a sale deed. As per the said Deed of Agreement, the 1st party therein viz. Sri Tara Prasad Ray, the owner of the plot of land would sell the same at the fixed consideration, mentioned therein, to the petitioner, the 2nd party to the Agreement. From the records, it has further emerged that the

one Smti Paka Bala Ray had executed a Deed of Gift in favour of the petitioner on 27.02.2013 whereby Smti Paka Bala Ray as the donor and absolute owner of a plot of land measuring 3 Kathas 15 Lessas located at Village – Balajani Chechapani had gifted the said plot of land to the petitioner. The plot of land described in the Deed of Agreement dated 24.01.2012 was different from the plot of land described in the Deed of Gift, registered on 27.02.2013.

15. The plot of land referred to in the registered Gift Deed dated 27.02.2013 stood mutated in favour of the petitioner only on 02.03.2013 and the said fact is discernible from the *Jamabandi* [Record-of-Rights] issued in respect of the said plot of land by the Circle Officer, Srijangram Revenue Circle. From the said *Jamabandi*, it is noticed that the Circle Officer by his order dated 02.03.2013 passed in a mutation case, Mutation Case no. 4816/2012-2013/FMUT recorded the said plot of land in the name of the petitioner. The petitioner has not been able to show any cogent and tangible materials to substantiate his contention that he had clear ownership of any plot of land in terms of the Advertisement in question, at the subject-location on or before the last date of submission of application, that is, on 14.02.2012.

16. A contention is advanced by the learned counsel for the petitioner that the LoI for the Indane LPG distributorship for the subject-location was awarded to the petitioner on 04.06.2013 after reaching a satisfaction that the petitioner had met all the criteria to be awarded the Idane LPG distributorship. It was therefore, not open for the respondent IOCL authorities to cancel the LoI at a much later date on 21.02.2014. In reply, the respondent IOCL authorities has referred to the proceedings of a writ petition, W.P.[C] no. 6717/2013 and the order passed therein on 10.03.2014. The writ petition, W.P.[C] no. 6717/2013 was instituted at the instance of two petitioners who were candidates with the petitioner herein, in the same selection process. In the said writ petition, the two petitioners had contended that when the LoI was issued to the respondent no. 5 therein i.e. the petitioner herein, he had no ownership of any land at Village – Sidalsuti and therefore, he was not eligible to be issued the LoI. In the course of the proceedings of the writ petition, W.P.[C] no. 6717/2013, it was stated before the Court by the respondent IOCL authorities that subsequent to such allegations, an enquiry was conducted and in the enquiry, it was found out that the petitioner did not won and possess any plot of land at Village – Sidalsuti on the last date of submission of the application. It was further pointed out that the LoI dated 04.06.2013 had been cancelled by the respondent IOCL authorities in the meantime. In

view of emergence of such facts, the Court considered the prayer of the two petitioners therein as to whether their candidatures deserved consideration after cancellation of the LoI issued in favour of the respondent no. 5 therein i.e. the petitioner herein, afresh. Taking note of those obtaining facts and circumstances, the writ petition, W.P.[C] no. 6717/2013 was disposed of by an order dated 10.03.2014 with a direction to the respondent IOCL authorities to consider the candidatures of the remaining candidates for the subject-location, Sidalsuti on the basis of the available materials and also applying the yardsticks and parameters applicable for such distributorship by observing that the exercise should be completed as expeditiously as possible.

17. It appears apposite, at this stage itself, to take note of the background facts, in brief, involved in the decision of the Hon'ble Supreme Court of India in Civil Appeal nos. 6928-6929 of 2015 [Bharat Petroleum Corporation Limited and others vs. Swapnil Singh], decided on 08.09.2015. Like in the case in hand, in Swapnil Singh [supra] also, applications for selection of regular LPG distributorships were invited in April, 2011 by BPCL. One of the eligibility criteria was that the applicant should own a plot of land of adequate size and specific descriptions provided therein, on the date of application. The applicant should have ownership title of the property or registered lease agreement for a minimum 15 years period in the name of the applicant / family member as defined in multiple distributorship form of eligibility criteria. The respondent submitted an application on 13.09.2011, wherein by offering a plot of land, he mentioned the date of registration of the sale deed / gift deed / lease deed / deed of mutation as 13.09.2011. After the Draw of Lots, on 30.03.2012, the respondent was found successful and on 19.02.2013, Field Verification of Credentials was carried out to verify whether the respondent actually was the owner or a lease holder of the offered land, as required by the Selection Brochure. During the process of Field Verification of Credentials, it came to the knowledge of the appellant BPCL authorities that the respondent had entered into the lease agreement only on 20.12.2012 for a period of 15 years and that lease agreement was registered only on 21.12.2012. It was, thus, found out during the Field Verification that the respondent did not have a registered lease deed as on the date of application i.e. 13.09.2011. Having found so, the appellant BPCL authorities cancelled the allotment of the LPG distributorship to the respondent by a letter dated 11.06.2012.

17.1. Aggrieved thereby, the respondent preferred a writ petition and ultimately, the matter reached the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India had found that

the respondent had only a notarized lease agreement dated 13.09.2011 in his possession on the date of submission of his application on 13.09.2011. The registered lease deed came into existence only on 20.12.2012, which was registered on 21.12.2012. It was, therefore, observed that on the date of the application, the respondent therein was not eligible in terms of the Brochure and the application form since he only had a notarized lease deed dated 13.09.2011, instead of a registered lease deed. The Hon'ble Supreme Court took note of the fact that Brochure and the application form were absolutely clear in the sense that the applicant must be the owner of the specified area of land or must have a registered lease deed of the specified area of land on the date of application. Accordingly, it was observed that the respondent was not eligible on the date of application i.e. 13.09.2011 and no fault was found with the decision regarding rejection of the candidature of the respondent therein taken by the respondent BPCL authorities.

18. The conspectus of facts involved in the case of *Mira Rani Sarkar vs. Union of India and others*, reported in [2021] 5 GLR 319, are also in similar lines. In *Mira Rani Sarkar* [supra], the petitioner did not have any registered lease deed for the plot of land offered for LPG distributorship on the last date of submission of application and he submitted his candidature only on the basis of a notarized agreement.

19. From the discussions made above, it is clearly emerged that on the last date of submission of application, that is, 14.02.2012, the petitioner did not have any ownership or any registered sale deed/lease deed/gift deed, etc. in respect of the plot of land offered by him for the Indane LPG distributorship under the RGGLV Scheme for the subject-location, Sidalsuti in the application. He had clear ownership of a plot of land at the subject-location, Sidalsuti only on 27.02.2013 when the Gift Deed, referred above, in respect of a plot of land other than the plot of land originally offered by the petitioner in his application, was executed in favour of the petitioner. It is, thus, evident that the petitioner did not fulfill the criteria of eligibility of having ownership of a plot of land offered for the Indane LPG distributorship under the RGGLV Scheme for the subject-location, in terms of the Advertisement in question and the Selection Manual for selection of RGGLV Vitrak Scheme at the time of his application. It cannot be said that with the execution of a gift deed subsequent to the last date of submission of application, the petitioner had acquired the eligibility of the distributorship.

20. The observations made in Swapnil Singh [supra] and Mira Rani Sarkar [supra] are found applicable on all fours with the fact situation obtaining in the case in hand. Thus, this Court does not find any reason to interfere with the decision of the respondent IOCL authorities with regard to cancellation of the LoI dated 04.06.2013 by the order dated 21.02.2014. Consequently, the writ petition is found bereft of any merit and is to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant