

GAHC010061852022



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

Case No. : WP(C)/2375/2022

GAURAVOTTAM BARO
S/O SRI MAHINDRA CHANDRA BARO, OFFICE AT B.C. SURANA ROAD,
WARD NO. 1, P.O.-KHARUPETIA-784115, DIST-DARRANG, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF ROAD TRANSPORT AND HIGHWAYS.

2:NATIONAL HIGHWAY AUTHORITY OF INDIA
REGIONAL OFFICE AT 4QWR (PLUS) J54
SANKET VIHAR
SWARAJ NAGAR
SARUMOTORIA
GUWAHATI
ASSAM-781005

3:INDIAN OIL CORPORATION LIMITED
CIN-L23201MH1959GOI011388
HAVING ITS REGISTERED OFFICE AT INDIAN OIL BHAVAN
G-9
ALI YAVAR JUNG MARG
BANDRA (EAST)
MUMBAI-400051 AND STATE OFFICE AT NOONMATI
GUWAHATI-781020
ASSAM BEING REPRESENTED BY ITS REGIONAL MANAGER

4:KAMAL KRISHNA BORO
S/O SRI PRAFULLA CH. BORO
R/O VILL-CHENIALPARA (BARACHARA)
P.O.-MUDAIBARI

P.S.-KALAIGAON
MOUZA-CHENIALPARA
DIST-UDALGURI
BTAD
PIN-784146
ASSA

Advocate for the Petitioner : MR. R C SANCHATI

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

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 23-03-2023

The petitioner invoking the extra-ordinary and discretionary jurisdiction of this Court, has instituted the instant writ petition under Article 226 of the Constitution of India to lay a challenge to the selection of the respondent no. 4 as a dealer of a Rural Retail Outlet pursuant to an Advertisement published on 25.11.2018 inviting applications from intending applicants for a specific location, mentioned hereinbelow.

2. By the Advertisement published on 25.11.20218, the respondent Indian Oil Corporation Limited [IOCL] invited applications for appointment of Rural Retail Outlet dealers at various locations within the State of Assam. By the Advertisement, applications were invited for appointment of dealers of Rural Retail Outlets in respect of a total 462 nos. of locations within the State of Assam. The selection process pertaining to which the writ petition is concerned with is the dealership for a Rural Retail Outlet at the location – “From Dhula to Kharupetia on NH-15/NH-52 towards increasing chainage in LHS” [Serial no. 186 of

the Advertisement] [hereinafter referred to as 'the subject-location', for short]. In response to the Advertisement dated 25.11.2018, a number of applicants including the petitioner and the respondent no. 4, submitted their applications. The Advertisement mentioned that the site should either be owned or on lease with the applicant for minimum 19 years 11 months or the applicant should have firm offer for the same. The petitioner submitted his application bearing no. 15456361705906 on 24.12.2018, that is, before the last date of submission of application [25.12.2018]. The respondent no. 4 had also submitted his application bearing application no. 15456361705906 for the same Rural Retail Outlet.

2.1. After receipt of the applications, the respondent IOCL authorities made a scrutiny of the applications and after such scrutiny, the applicants were shortlisted under different categories. The application of the respondent no. 4 was placed Group-1 in terms of the Brochure for Retail Outlet Dealer Selection by the Oil Company ['the Brochure', for short] whereas the application of the petitioner was placed in Group-2 in terms of Clause 4[v] of the Brochure. As per the procedure laid down, it was the applicants in Group-1 whose applications were to be considered first by the process of draw of lots. After such shortlisting was made, two other applicants were found ahead of the respondent no. 4 in Group-1 category. The applications of those two applicants were taken up first, one after the other, ahead of the candidature of the respondent no. 4 in Group-1 category. As none of the two applicants in Group-1 could meet the land evaluation criteria norms in the evaluation process undertaken subsequent to their selections, their candidatures were rejected by the respondent IOCL authorities. As a result of the failure on the part of the said two applicants who were ahead of the respondent no. 4 in Group-1, to meet the norms during the stage of

land evaluation, the respondent IOCL authorities proceeded to consider the application of the respondent no. 4. Having found the respondent no. 4 meeting the eligibility criteria, he was issued a Letter of Intent [LoI] to set up the Rural Retail Outlet at the subject-location, mentioned above. Challenging the selection of the respondent no. 4, the instant writ petition has been preferred by the petitioner.

3. I have heard Mr. R.C. Sancheti, learned counsel for the petitioner; Mr. K. Gogoi, learned Central Government Counsel [CGC] for the respondent no. 1; Mr. M.K. Choudhury, learned senior counsel assisted by Ms. N. Dutta, learned counsel for the respondent no. 3 [IOCL]; and Mr. A.R. Sikdar, learned counsel for the respondent no. 4.

4. Mr. Sancheti, learned counsel for the petitioner has submitted, at first, that the petitioner, though in the writ petition, has raised primarily 3 [three] grounds, namely - [a] Land Area offered by the respondent no. 4 Rural Retail Outlet at the subject-location; [b] Lease Agreement submitted by respondent no. 4 and the date of its execution; and [c] the plot of land offered for the Retail Outlet vis-à-vis inter-section with other roads; as regards ineligibility of the respondent no. 4 to be offered dealership at the subject-location, he would not press the first two grounds and would confine his submissions only in respect of the matter relating to the third ground, that is, the plot of land offered by the respondent no. 4 for the Rural Retail Outlet at the subject-location has inter-section with roads and, thus, the same does not meet the laid down norms. Drawing attention to a Circular dated 26.06.2020 of the Ministry of Road Transport & Highways [MoRT&H], Government of India [GoI] on the subject – "Guidelines/Norms for Grant of permissions for construction of access to Fuel

Stations, Wayside amenities, connecting roads, other properties, Rest Area Complexes & such other facilities” [‘the MoRT&H, GoI Guidelines’, for short], Mr. Sancheti has submitted that the said MoRT&H, GoI Guidelines are to be followed without any deviations in respect of any Fuel Station, that is, any Retail Outlet like the one under consideration. Referring specifically to Clause 2.1 [Norms on Existing Service Road/Slip Road] & Clause 2.2 [Location Norms on Rural stretches of National Highways] contained in Appendix-I of the Circular dated 26.06.2020, he has submitted that any Fuel Station to be constructed on any rural stretches of a National Highway, must be located at least at a distance of 300 metres from any intersection with *any category of road* and median gap. It is his submission that the plot of land offered by the respondent no. 4 for the Rural Retail Outlet at the subject-location, was inspected by the respondent IOCL authorities and they had themselves found that there were two roads – one at a distance of 200 metres [approx.] towards Kharupetia and the other at a distance of 130 metres [approx.] towards Dhula at National Highway 15 [new]/ National Highway 52[old] - from the plot of land offered by the respondent no. 4. In such view of the matter, the decision taken by the respondent IOCL authorities in allowing the respondent no. 4 to set up the Rural Retail Outlet at the plot of land offered by the respondent no. 4 is in clear contravention with the mandatory norms laid down by the MoRT&H, GoI Guidelines contained in the Circular dated 26.06.2020.

5. The above contentions advanced on behalf of the learned counsel for the petitioner have been refuted to by the learned counsel for the respondents. Mr. Choudhury, learned senior counsel appearing for the respondent IOCL authorities has submitted that in response to the Advertisement dated 25.11.2018, the petitioner submitted only a notarized lease deed

in respect of the plot of land he had offered for the Rural Retail Outlet for the subject-location and the same was not registered under the provisions of the Registration Act, 1908. It is his contention that any lease deed beyond 1 [one] year and above is to be compulsorily registered under Section 17[d] of the Registration Act, 1908, a stand also taken in the counter affidavit. As such, the petitioner was ineligible to be offered dealership of any Rural Retail Outlet, notwithstanding his candidature being placed in Group-2 category of applicants. As per the prescribed procedure, the selection has to be made by draw of lots amongst the applicants in Group-1 category first and as such, the petitioner as a Group-2 category applicant, has no locus to challenge the selection of the respondent no. 4, who was a Group-1 applicant. Mr. Choudhury has further submitted that after selection of the respondent no. 4, the Land Evaluation Committee [LEC] carried out inspection in respect of the plot of land offered by the respondent no. 4 for the Rural Retail Outlet for the subject-location and the LEC found that there were two roads at a distance of 200 metres [approx.] towards Kharupetia and 130 metres [approx.] towards Dhula on National Highway 15 [new]/ National Highway 52 [old] respectively from the plot of land offered by the respondent no. 4. Reporting the said facts in its letter dated 05.04.2021, the respondent no. 4 was asked to seek clarification from the National Highway Authority of India [NHAI] as to whether the plot of land offered by the respondent no. 4 would meet the eligibility of distance norm of 300 metres from any inter-section set forth in the MoRT&H, GoI Guidelines contained in the Circular dated 26.06.2020. Subsequent thereto, the respondent no. 4 had sought clarification from the Executive Engineer, PWD, Rangia [NH] Division, Rangia and the said authority by its letter no. TB/1-168/pt-v/352 dated 29.05.2021 which was stated to be issued after carrying out a survey, had clarified that the plot of land offered by the respondent no. 4 would meet

the distance norms laid down in the MoRT&H, GoI Guidelines. Mr. Choudhury has further contended that it is the decision-making process which is to be examined in exercise of the power of judicial review and not the decision. In so far as the decision-making process is concerned, he has submitted that the respondent IOCL authorities had undertaken the selection process in a fair, transparent and non-arbitrary manner and as such, the petitioner has not been able to show any ground for interference. Mr. Sikdar, learned counsel for the respondent no. 4 while adopting the submissions of the learned senior counsel appearing for the respondent IOCL authorities, has submitted that the respondent no. 4 has, in the meantime, after issuance of the Letter of Intent [LoI], proceeded ahead with the construction of the Rural Retail Outlet by fully developing the subject-plot with boundary walls. The respondent IOCL authorities in their counter affidavit has endorsed the said position and has further asserted that subject-plot has 35m x 35m dimensions leaving behind Right of Way [RoW] of 30 metres from the centre point of the National Highway. The Deputy Commissioner, Darrang has issued a No Objection Certificate on 11.04.2022 granting necessary approval for setting up the Rural Retail Outlet. Both Mr. Choudhury and Mr. Sikdar have, however, fairly submitted that the Rural Retail Outlet is not commissioned till date because of the pendency of the writ petition.

6. 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 MoRT&H, GoI Guidelines contained in the Circular dated 26.06.2020 in connection with grant of permission for construction of access to Fuel Stations, wayside amenities, etc., issued by the MoRT&H, GoI and annexed as Annexure-XII to the writ petition.

7. As has been mentioned above, the petitioner and the respondent no. 4 were applicants for dealership in respect of the same Rural Retail Outlet at the location – 'From Dhula to Kharupetia on NH-15/NH-52 towards increasing chainage in LHS' in the district of Darrang' ['the subject-location']. As per the Advertisement, the Rural Retail Outlet at the subject-location is reserved for candidates belonging to the Scheduled Tribes [ST]. It was further prescribed that the site should either be owned or on lease with the applicant for minimum 19 years 11 months or the applicant should have firm offer for the same. It is an admitted position that the respondent no. 4 had offered a plot of land measuring 1 [one] Bigha ['the subject-plot'] as per the land area and dimension norms laid down by the Advertisement whereas the petitioner with his application, had submitted a notarized Lease Deed dated 21.12.2018 in respect of the plot of land he had offered for setting up the Rural Retail Outlet. The plot of land measuring 1 [one] Bigha, offered by the respondent no. 4, is located at Village – Hirapara, Post Office & Police Station – Dhula, District – Darrang and the same is covered by Dag no. 3562 & Periodic Patta no. 4 and is of Class – Bisesh Faring. For brevity, the said plot of land offered by the respondent no. 4 is hereinafter referred to as 'the subject-plot' for the purpose of easy reference. For offering the subject-plot for Rural Retail Outlet, the respondent no. 4 had executed a Lease Deed dated 21.12.2018 with its owner and the said Lease Deed was submitted along with his application for the Rural Retail Outlet for the subject-location by the respondent no. 4 on 25.12.2018.

8. In so far as the contention regarding the location norms is concerned, Clause 2.1 and Clause 2.2 of Appendix-I of the Circular dated 26.06.2020 are of relevance. As per Clause 2.1,

irrespective of the terrain, no norm shall be applicable if the Retail Outlet is proposed on the existing service roads/slip road. However, permission for Retail Outlet proposed on the existing service roads/slip roads needs to be obtained from Highway Administration to regulate other requirements such as drainage facilities, plot size, drinking water, toilet facilities, signs, markings, etc. It is further mentioned that no access permission shall be granted for establishment of a Retail Outlet on the entry/exit ramp of service/slip road. Clause 2.2 has set forth a condition that on any rural stretches of a National Highway, the distance of any inter-section with *any category of road* and median gap from the proposed Retail Outlet must be at least 300 metres.

9. It has emerged that subsequent to the selection of the respondent no. 4, the respondent IOCL authorities had carried out an inspection in respect of the subject-plot for examining its feasibility for setting up of the Rural Retail Outlet for the subject-location. On inspection, the Land Evaluation Committee [LEC] had found the subject-plot falling within the subject-location. The LEC had also found the subject-plot meeting the land dimensions laid down in the Advertisement. The LEC had, however, noticed existence of two small village roads at the opposite side of the subject-plot – one at a distance of 200 metres [approx.] towards Kharupetia and the other at a distance of 130 metres [approx.] towards Dhula - on National Highway 15 [new]/National Highway 52 [old] abutting the subject-plot. As there is a norm that any inter-section should not be within a distance of 300 metres from a proposed Retail Outlet, as per the MoRT&H, GoI Guidelines, the respondent IOCL authorities after receipt of the Report from the LEC, wrote to the respondent no. 4 vide letter no. TEZ/NHAI/NHAPP/186/01 dated 05.04.2021 to obtain clarification from the National Highway

Authority of India [NHAI] as to whether the subject-plot would meet the eligibility criteria set forth in the MoRT&H, GoI Guidelines as regards distance norm from inter-section on the non-urban stretches of a National Highway. It is found from the letter bearing no. TB/1-168/pt-v/352 dated 29.05.2021 of the Executive Engineer, PWD, Rangia [NH] Division, Rangia, addressed to the respondent no. 4, that the said authority had clarified that the subject-location had chainage in 42.975 km at LHS of National Highway 15, and the subject-plot, covered by Dag no. 356 & Periodic Patta no. 4, falls under the jurisdiction of Rangia NH Division for installation of IOCL Retail Outlet. In the letter dated 29.05.2021, the authority has clarified that the stretch of National Highway 15 beside which the subject-plot lies, is under the Rangia NH Division and the Rangia NH Division is the highway administrator for the said stretch. After survey, it has been clarified that the subject-plot meets the norms laid down in the MoRT&H, GoI Guidelines and as such, the respondent no. 4 was requested to pursue the matter with the respondent IOCL authorities.

10. Since it has been argued on behalf of the petitioner that there are existence of two roads at a distance from the subject-plot, the photographs of which have also been enclosed with the writ petition, a query has been put by this Court to the learned counsel for the petitioner about the nature of the two roads, which are situated at distances of 200 metres [approx.] and 130 metres [approx.] from the subject-plot offered for the proposed Rural Retail Outlet in question. It is the response from the petitioner that the two roads are only earthen roads. From the sketch map prepared by the LEC, it is noticed that the National Highway 15 and the two roads are at the opposite sides of the National Highway from the subject-plot. Further, the said two roads get connected National Highway and the same are in

the nature of T-Junctions.

11. On a closer perusal of the MoRT&H, GoI Guidelines, setting forth norms for grant of permission for construction of access to fuel stations, etc. formulated by the Circular dated 26.06.2020, it is noticed that Note [b] has clarified that in case of distance from inter-section with *any category of road*, the road means paved carriageway [Bituminous/Concrete/Interlocking Concrete block] of 3.0 metres width and having length of minimum 300 metres and above irrespective of the category of road. The two roads which situate at distances of 200 metres [approx.] and 130 metres [approx.] from the subject-plot do not prima facie fall in the category of paved carriageway [Bituminous/Concrete/Interlocking Concrete Block].

12. It is settled that there are inherent limitations with regard to the ambit and scope of judicial review of administrative decisions and exercise of power of judicial review in matters relating to award of contracts. The principle is to exercise judicial restraint in administrative action. When a decision is taken by the tendering authority upon due consideration of the terms and conditions laid down in the tender document and the norms and guidelines regulating the subject-matter of tender and if it is seen that the successful bidder has substantially complied with those, then such decision of the tendering authority is not to be ordinarily interfered with. It is to be borne in mind that the court in its extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India, does not sit as a court of appeal but it merely reviews the manner in which the decision was made. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness,

bias and mala fides. The purpose is to check whether the choice or decision to select the successful bidder is made lawfully in a fair and transparent manner and not to check whether the choice or decision is sound. It is ordinarily the decision-making process which is examined by the court while exercising the power of judicial review and it is only when the decision-making process is found vitiated by arbitrariness, irrationality, unreasonableness, bias and mala fides, then only the same is liable to be interfered with.

13. Reverting back to the facts of the case, the respondent authorities in the IOCL after scrutinizing the application of the respondent no. 4, categorized him as a Group-1 applicant as the respondent no. 4 had submitted a registered Lease Deed dated 21.12.2018 for a period above 19 years 11 months. On the other hand, the petitioner was placed in Group-2 category as he did not have any own land or any lease land on the basis of a registered Lease Deed. The petitioner had submitted only a notarized deed at the time of submission of his application and the said position is admitted by the petitioner himself. As per the terms and conditions of the Advertisement and the Brochure, the respondent IOCL authorities were to consider the applicants in Group-1 category first for the proposed Rural Retail Outlet for the subject-location. After finding the application of the respondent no. 4 meeting the norms of the Advertisement and the Brochure on all aspects, the members of the LEC carried out land evaluation of the subject-plot and submitted its Report on 03.12.2020. In the Report, the LEC finding two village roads, as mentioned above, near the subject-location had made a remark that a clarification would be required as regards the inter-section of the village roads with the National Highway and for clarity, the LEC made a Layout Sketch of the subject-plot. The petitioner had made a grievance on the same aspect in his Representation dated

29.10.2021. Finding the subject-plot otherwise suitable for the proposed Rural Retail Outlet, the LEC in its Report made it specific that the selection would be subject to meeting the distance norm qua inter-section laid down for establishment of Retail Outlet on the rural stretches of a National Highway. Subsequent to the Report of the LEC, the respondent IOCL authorities wrote to the respondent no. 4 on 05.04.2021 to seek clarification on the aspect of the subject-plot meeting the inter-section criteria laid down in the MoRT&H, GoI Guidelines and the respondent no. 4 had, in turn, sought clarification from the Public Works Department [PWD] [National Highway Works], Assam as to whether the subject-plot would meet the norms prescribed in the MoRT&H, GoI Guidelines. In response, the Executive Engineer, PWD, Rangia [NH] Division, Rangia by his Communication bearing no. TB/1-168/pt-v/352 dated 29.05.2021 had clarified that the area within in which the subject-plot is situated, falls under the jurisdiction of the Rangia [NH] Division and the Rangia [NH] Division is the Highway Administrator for the said stretch. The Executive Engineer, PWD, Rangia [NH] Division, Rangia had further clarified that after carrying out a survey, it found the subject-plot meeting the norm in the MoRT&H, GoI Guidelines. From the materials available in the case papers, it is noticed that it was only after the clarification provided by the Executive Engineer, PWD, Rangia [NH] Division, Rangia on 29.05.2021, the respondent IOCL authorities after consideration of the LEC Report and the clarification provided by the Executive Engineer, PWD, Rangia [NH] Division, Rangia, reached a decision, on 17.07.2021, that the subject-plot would be suitable for the proposed Rural Retail Outlet for the subject-location advertised on 25.11.2018. The aforesaid stands taken by the respondent IOCL authorities and the clarification provided by the Executive Engineer, PWD, Rangia [NH] Division, Rangia vide his letter dated 29.05.2021 have not been traversed by the petitioner in any manner. The

statements and averments made in the affidavits-in-opposition filed by the respondent no. 3 and the respondent no. 4 have not been controverted by the petitioner by filing any reply affidavit to any of the afore-mentioned affidavits-in-opposition.

14. Having considered the entire conspectus of facts and circumstances obtaining in the case in hand, more particularly, the decision-making process adopted by the respondent IOCL authorities in reaching the decision that the subject-plot, offered by the respondent no. 4, is suitable for the Rural Retail Outlet for the subject-location advertised vis-à-vis the distance norm as regards inter-section laid down for construction of Retail Outlet in the MoRT&H, GoI Guidelines contained in the Circular dated 26.06.2020, this Court does not find any good and sufficient reason to interfere with the process of selection leading to selection of the respondent no. 4 for dealership for the Rural Retail Outlet for the subject-location, on failure on the part of the petitioner to place cogent materials to the contrary. As a consequence, the writ petition is found bereft of any merit and, thus, the same is liable to be dismissed. It is, therefore, accordingly dismissed. There shall be no order as to cost.

JUDGE

Comparing Assistant