

GAHC010151052019



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

Case No. : WP(C)/4532/2019

DEBABROT PHUKAN
S/O. SRI MUNINDRA NATH PHUKAN, VILL. OLD AMULAPATTY, NEAR
BOXING CLUB, WARD NO. 12, P.O. AND P.S. GOLAGHAT, DIST. GOLAGHAT,
ASSAM. PIN-785621.

VERSUS

HINDUSTAN PETROLEUM CORPORATION LTD. AND 2 ORS.
(A GOVT. OF INDIA ENTERPRISES) HAVING ITS REGD. OFFICE AT 17,
JAMSHEDJI TATA ROAD, MIMBAI-400020, REP. BY ITS CHARIMAN CUM
MANAGING DIRECTOR (CMD)

2:CHAIRMAN CUM MANAGING DIRECTOR (CMD)
HINDUSTAN PETROLEUM CORPORATION LTD.
A GOVT. OF INDIA ENTERPRISES HAVING ITS REGD. OFFICE AT 17
JAMSHEDJI TATA ROAD
MUMBAI-400020.

3:HEAD OF REGIONAL OFFICE

HINDUSTAN PETROLEUM CORPORATION LTD. SECOND FLOOR
JANAPATH
H.D. COMPLEX
G.S. ROAD
ULUBARI
GUWAHATI-781007

For the Petitioner (s) : Mr. P.P. Dutta, Advocate.

For the Respondent (s) : Mr. S.Borthakur, Advocate.

Date of hearing & Judgment : **25.09.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner being aggrieved by the Communication dated 11.06.2019 whereby the Petitioner's application to be considered in Group -1 was rejected and the Petitioner's candidature was placed for selection alongwith Group-3 applicants as per the Guidelines.

2. For understanding the dispute, this Court finds it relevant to take note of Clause 4(v) of the Brochure for Selection of Dealer for Regular and Rural Retail Outlets. A perusal of the said Clause shows that the Applicants would be classified into 3 groups on the basis of the land offered or land not offered by them in the application form. Group 1 relates to those applicants having suitable piece of land in the advertised location/area either by ownership/long term lease for period of minimum 19 years 11 months or as advertised by the Oil Marketing Company (OMC). Group 2 relates to those applicants

having firm offer for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC. Group 3 are those applicants who have not offered land in the application. It is also relevant to take note of that Applicants coming within the fold of Group 3 would be processed/advised to offer land only in case no eligible Applicant is found or Applicant gets selected under Group 1 & 2. Further to that, it is further mentioned that in case the land offered by the Applicants under Group 1 & Group 2 are found not suitable/not meeting the requirements, then these applicants under Group 1 and Group 2 alongwith Applicants under Group 3 would be advised by the OMC to provide suitable land in the advertised location/stretch within a period of 3 months from the date of issue of the intimation letter to them through SMS/e-mail. It is further mentioned that in case the applicant fails to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected.

3. This Court further finds it relevant to take note of Clause 4(j) of the Brochure which stipulates the various situations of ownership for defining owned/firm offered as stipulated therein. As per the guidelines, the Applicants coming under Group 2, there has to be a consent letter in the form of an affidavit/power of attorney from the other owners i.e. in Appendix III A.

4. In the backdrop of the above, a perusal of the advertisement

dated 25.11.2018 and more particularly taking into consideration the location which is a subject matter of dispute i.e. at Sl. No. 19, it is seen that the said selection would be made on the basis of draw of lots.

5. Clause 14 G stipulates the selection through draw of lots. In terms with the said procedure mentioned therein list of Applicants (Group 1, Group 2 and Group 3) would be prepared on the basis of the land offered or land not offered in the application by the Applicants. In case of the locations involving selection through draw of lots, if there is only one eligible Applicant, no draw of lots is required. The lone eligible Applicant would be declared as selected and e-mail will be triggered by the website to the single eligible Applicant's e-mail. It is further stipulated that draw of lots/bid opening will be held first for the eligible Applicants in Group 1. Draw of lots/bid opening for eligible Applicants of Group 2 will be held only if there is no Applicant in Group 1 or Applicants in Group 1 have been disqualified/not found suitable or have withdrawn. Therefore, a conjoint reading of Clauses 4(v) and 14 G, it would show that first the draw of lots would be done from the Group 1 Applicants. If no Group 1 Applicant or the Group 1 Applicants are not qualified as per the Guidelines, the Group 2 Applicants would be chosen by draw of lots. The Group 3 Applicants' right to be considered for draw of lots would occasion only when the Applicants are not there in Group 1 or Group 2 or such Applicants of

Group 1 or Group 2 are disqualified as per the Guidelines.

6. In the backdrop of the above, let this Court therefore take note of the facts involved. As above noted, the notice for appointment of Regular/Rural Retail Outlet Dealership was issued on 25.11.2018. The instant writ petition pertains to the location Arengapara Chariali, Golaghat, P.O.- Kacharihat Tini Ali on Golaghat By pass Road via Dhansiri Water Tank. It was an open category advertised location and it was mentioned that the mode of selection would be through draw of lots. From the records, it reveals that the Petitioner submitted his application on 23.12.2018. In the said application, the Petitioner applied as an Applicant falling within Group 1. At Clause 13 of the said application, it was mentioned that the said land offered belonged to one Bonty Gogoi, Pankaj Gogoi and Tikhen Hazarika. It was further mentioned that the date of the Sale Deed/Gift Deed/Registered Lease Deed/the date of mutation was 21.12.2018. The said documents on the basis of which the Petitioner claim to fall within Group 1 is a notarized Lease Deed dated 21.12.2018 between the alleged owners of the said land with the Petitioner. A perusal of the said documents reveals that the period of lease shall be at Will of the lessee and the Deed of Lease must be renewed after expiry of the term of 25 years on the same terms and conditions.

7. This Court at this stage finds it relevant to take note of Section 17(1) of the Registration Act, 1908 which stipulates the documents

which are compulsory registrable. Taking into account Clause 3 of the Lease Deed dated 21.12.2018, the said document apparently is compulsory registrable. The effect of non-registration of a document which is compulsory registrable as mentioned in Section 49 of the Registration Act, 1908 stipulating that a document which is compulsory registrable, if not registered shall not affect any immovable property. Under such circumstances, the said Lease Deed cannot confer any right upon the Petitioner over the land in question more so the said lease cannot be also said to come within the ambit of registered Lease Deed. Taking into account the above, the Petitioner therefore cannot come within the ambit of Group 1.

8. This Court at this stage finds it relevant to reiterate that as per Clause 4(v) of the Guidelines if the land offered by the Applicant in Group 1 is found not suitable/not meeting the requirements, then the Applicant under Group 1 has to be considered alongwith Group 3. As the Petitioner applied as a candidate coming within the fold of Group 1, the question of the Petitioner being placed at Group 2 does not arise. Under such circumstances, the Communication dated 11.06.2019 by which the Petitioner's application to be considered in Group -1 was rejected and the Petitioner being placed for selection alongwith Group-3 Applicants as per the Guidelines is not interfered with.

9. In that view of the matter, this Court does not find any merits in

the writ petition for which the writ petition stands dismissed. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant