

GAHC010155002021



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

Case No. : WP(C)/5267/2021

MRS. NURJAHAN KHATUN
W/O LATE SAMIAL HUSSAIN, R/O VILL-SURJYA KHATRA, WARD NO. 04,
BILASIPARA TOWN, P.O. AND P.S.-BILASIPARA, DIST-DHUBRI-783348

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY, PETROLEUM AND NATURAL GAS,
SHASTRI BHAWAN, NEW DELHI-110001

2:INDIAN OIL CORPORATION LTD.
HAVING REGISTERED OFFICE AT INDIAN OIL BHAWAN
G-9
ALI YAVAR MARG BANDRA (EAST)
MUMBAI-400051

3:DEPUTY GENERAL MANAGER (RETAIL SALES)
INDIAN OIL CORPORATION LTD
GUWAHATI DIVISIONAL OFFICE
FOURTH FLOOR
EAST POINT TOWER
BAMUNIMAIDAM
GUWAAHTI-781021
ASSA

Advocate for the Petitioner : Mr. B. J. Ghosh, Advocate

Advocate for the Respondents : Mr. A. Barkataki, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 24.08.2023

Date of Judgment : 24.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner challenging the decision of the respondent No.3 contained in the letter dated 04.03.2020 whereby it was mentioned that the land documents submitted by the petitioner were not valid for considering the offered land under Group-1 and the petitioner was informed that the candidature of the petitioner would be considered for selection along with Group-3 applicants as per the guidelines. The petitioner had also by way of the instant writ petition sought for a writ of mandamus upon the respondent Nos.2 & 3 to reconsider the case of the petitioner for Group-1.

2. Before dealing with the facts of the case, this Court finds it relevant to take note of that there is a Brochure for selection of dealers for regular and rural retail outlets dated 24.11.2018. The said Brochure contains various Guidelines for selection of dealers for regular and rural retail outlets through Draw of Lots/Bidding Process.

3. In the said Guidelines, Clause 4 stipulates the eligibility criteria for individual applicant-proprietorship/partnership. Sub-Clause (v) of Clause 4 classifies three groups based on the land offered or land not offered by them in the application form. In Group-1, the applicants have been clubbed together who have suitable piece of land in the advertised location/area either by way of ownership/long term lease for a period of minimum 19 years 11 months or as advertised by the OMC. In Group 2, those applicants have been clubbed who have firm offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC. In Group-3, those applicants are clubbed who have not offered land in the application. It is further mentioned in Sub-Clause (v) of Clause 4 that applications of applicants under Group-3 would be processed/advised to offer land only in case no eligible applicant is

found or no applicant get selected under Group 1 & 2. It is further mentioned that in case, land offered by all the applicants under Group 1 and Group 2 is found not suitable/not meeting requirements, then those applicants under Group 1 and Group 2 along with applicants under Group 3 (who did not offer land along with application) 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 issuance of intimation letter to them through SMS/e-mail. It is further stipulated that in case the applicants fail 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.

4. Further to that, there are various other conditions with respect to offering of the land. Amongst the various conditions, Condition (d) stipulates that the applicants under Group-1 should have documents to establish ownership of land offered for the dealership as on date of application, such as Khasra/Khatauni or any equivalent Revenue document or certificate from Revenue Official confirming status of the ownership of the land or registered Sale Deed/registered Gift Deed or registered Lease Deed for a minimum period of 19 years and 11 months (as advertised by respective Oil Company) or any other type of ownership/transfer deed document or lease agreement or firm allotment letter issued by Government /Semi Government bodies.

5. The Condition (e) is very relevant for the purpose of the instant case which stipulates that the land owned by the family member(s) will also be considered as belonging to the Applicant (Group-1) subject to producing the consent letter in the form of affidavit (Appendix III A) from the concerned family member(s).

6. In Condition (j), there is a detailed Table mentioned stipulating the various conditions of ownership for defining owned/firm offer. At Serial No.2 of the said Table in respect of self members of family or owned exclusively by family member(s), the document which is required to be submitted was a consent letter in the form of Affidavit from the members of the family in Appendix III A.

7. This Court finds it relevant at this stage to refer to the selection procedure which is stipulated in Clause 14 of the said guidelines. How the selection through the Draw of Lots/Bidding Process would be held has also been mentioned in the guidelines. Taking into account its relevance, the same is reproduced herein under:-

“SELECTION THROUGH DRAW OF LOTS / BIDDING

All online draws / bid opening would be conducted at the office of the District Collector/District Magistrate as far as possible or at any public Halls/Hotels/OMC Offices in the presence of invited guest(s).

All registered applicants can see the status of their application on the portal www.petrolpumpdealerchayan.in. The list of applicants eligible for Draw of lots/bidding will be made available on the same portal.

List of applicants (Group 1, Group 2 & Group 3) will be prepared on the basis of the land offered or land not offered in the application by the applicant.

In case of 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 web site to the single eligible applicant's e-mail id.

In case of locations involving selection through bidding, if there is only one eligible applicant, the bid of the lone eligible applicant will be opened in line with procedure for multiple applicant location and he/she would be declared as selected and e-mail will be sent by the web portal to the single eligible applicant's e-mail id.

Draw of lots/Bid opening will be held first for the eligible applicants in Group 1. Draw of lots/Bid opening for the 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.

In case of bidding process for a particular location has been carried out and the candidate selected is found ineligible, in that case the next highest bidder would be declared as selected.”

8. From the above quoted Selection through Draw of Lots/Bidding, it would be seen that the list of applicants (Group 1, Group 2 & Group 3) would be prepared on the basis

of the land offered or land not offered in the application by the Applicant. The Draw of Lots/Bid opening will be held first for the eligible applicants in Group 1. The Draw of Lots/Bid opening for the 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.

9. In the backdrop of the above, let this Court take into account the facts involved in the instant case.

10. The petitioner herein is the wife of one Samial Hussain (since deceased). An advertisement was issued by the Deputy General Manager (Retail Sales) of the Indian Oil Corporation Limited on 25.11.2018 inviting applications from interested persons for selection and appointment of Retail Outlet Dealership to set up Petrol Pumps in various locations including Bilasipara Town (from Beltoli to Banglipara) in the District of Dhubri, Assam. The petitioner submitted her application online with required particulars on 25.12.2018, vide online Application No.15457017982763482 and Transaction No.7494773489507 along with payment of application fees of Rs.10,000/-. The application so submitted by the petitioner is enclosed as Annexure-1 to the writ petition. At Serial No.13 of the said application which relates to offered land the petitioner claimed to be in Group-1. As regards the land, the details so given were that the owner of the land was the husband of the petitioner Late Samial Hussain. The document of title mentioned therein was a deed dated 03.04.2013. On the basis thereof, the application of the petitioner was processed under Group-1. Thereupon, the respondent No.3 had issued a communication under No.15456566267586, dated 17.07.2019, informing the petitioner that she had been declared as successful candidate in the Draw of Lots conducted on 16.07.2019 for selection of retail outlet dealership at the location the petitioner applied. The petitioner was requested to remit online Rs.50,000/- towards initial security deposit and to submit the documents as specified therein within ten days at the address mentioned in the said communication for

processing the petitioner's application for award of the retail outlet dealership at the said location. The documents which were sought for were:-

- (i) Notarised Affidavit of the petitioner as per Appendix XA/XB (standard affidavit), as applicable;
- (ii) Proof of Age (date of birth), i.e. self attested copy of the 10th Standard Board Certificate/Secondary School Leaving Certificate/Birth Certificate/Passport/Identity Card issued by the Election Commission/Affidavit for Age (original);
- (iii) Proof of Educational Qualification, i.e. self attested copy of the certificates of passing 10th Standard issued by the Board/School conducting the examination or equivalent;
- (iv) Appendix-III B (Advocate's Letter) along with Appendix-III-A (for offer of the land), if applicable;
- (v) Copy of land documents in support of ownership/lease rights;
- (vi) Sketch of the offered land with dimension;
- (vii) Proof of SKO allocation and
- (viii) Copy of dealership agreement in case the petitioner was an existing unviable SKO dealer.

11. It was further mentioned in the said communication that the verification of all attested photocopies shall be done with the original documents during the field verification of the credentials (FVC). Further to that, the respondent No.3 also issued another communication dated 17.07.2019 thereby intimating the petitioner that based on the Draw of Lots for selection of retail outlet dealership for the location held on 16.07.2019 at the Venue-Landmark Hotel, Dr. B. Baruah Road near Nehru Stadium, Ulubari, Guwahati, the petitioner was declared as selected. It was mentioned in the said

communication that this was only a preliminary intimation towards the selection for Retail Outlet Dealership. However, the award of the dealership is subject to compliance of the terms and conditions of the Corporation in that regard.

12. It is the case of the petitioner that pursuant to the said communication, there was certain delay in submission of the documents by the petitioner. A reminder was issued by the respondent No.3 on 30.09.2019 thereby extending the period for submission of the documents within 19.10.2019. The petitioner, thereupon, submitted the following documents as stated in paragraph No.6 to the writ petition:-

- 1) Notarised Affidavit by the petitioner ;
- (2) Age and Educational Qualification proof certificates;
- (3) Advocate's Letter as per Annexure-III B, amongst others;

13. Subsequent thereto, vide the communication dated 04.03.2020, the petitioner was informed by the respondent No. 3 that the land documents submitted by the petitioner were not valid for considering the offered land under Group 1 on the ground that the land does not fall under Group 1. It was further informed to the petitioner that the candidature of the petitioner in Group 1 was ineligible. However, the candidature of the petitioner would be considered for selection along with Group 3 applicants as per guidelines.

14. It further reveals from a perusal of the writ petition that after almost seven months, the petitioner submitted a representation through registered post to the respondent No.3 under Clause 24 (III) of the "PSU Oil Marketing Company Manual for Selection of Regular and Retail Outlet, 2018" which as per the petitioner was pending consideration. Thereupon, the petitioner has challenged the communication dated 04.03.2020 by way of the instant writ petition which was filed on 23.09.2021.

15. This Court although passed certain orders from time to time seeking various instructions, but issued notice on 04.08.2023 making it returnable on 17.08.2023. Prior

to the issuance of the notice, on 10.12.2021, the Divisional Retail Sales Head, Guwahati Divisional Office, Bamunimaidam filed an affidavit-in-opposition on behalf of the respondent Nos.2 & 3. It was mentioned in the said affidavit-in-opposition that from a bare perusal of the application dated 25.12.2018 submitted by the petitioner, it could be seen that the petitioner's husband had demised and the petitioner was a widow as on the date of filing her application. It was further mentioned that the petitioner had offered her land under Group 1 category which is reserved for applicants possessing their own land or possessing a registered Lease Deed for 19 years 11 months over the land. It was further stated that as per the dealership selection Guidelines governing the concerned advertisement, 'Own' means a plot of land belonging to Self or Family Unit i.e. meaning either spouse/father or mother including step father or step mother/ brother or sister or step brother or step sister/son or daughter or step son or step daughter/son-in-law or daughter-in-law/ parents-in-law/grand-parents (both maternal & paternal) provided the land belongs to a Family Unit, then it is upon the applicant to produce relevant no-objection certificate(s) from the owner(s) of the land offered alongwith the application. It was further mentioned in the said affidavit that the land offered by the petitioner belonged to her deceased husband and as on the date of application, the land offered was not transferred in the name of the petitioner, which is evident from the mutation order dated 11.02.2020 reflected in the Jamabandi of the offered land and also from the date of preferring the mutation, i.e in the year 2019-20. It was further mentioned that neither the petitioner was the owner of the offered plot of land nor the petitioner was able to provide any no-objection certificate from the other to the owner since as on the date of application, the husband of the petitioner was deceased. It was also mentioned that as on the date of application, the petitioner did not possess clear title over the offered plot of land, for which reason the petitioner was placed at Group-3 category i.e, reserved for the applicants who have not offered any plot of land at the time of application. It was further mentioned that putting the petitioner in the Group-3 category would again revive her opportunity to offer the land for the same location under the same advertisement upon

all the applicants under Group-1 and Group-2 category are exhausted.

16. When the matter was taken up on 17.08.2023, this Court put a specific question to the learned counsel for the petitioner as to whether there was any legal representative of Late Samial Hussain who would be entitled to the land taking into account that the devolving of the right over the land of the husband of the petitioner would be automatic upon the demise of the husband of the petitioner. This Court accordingly fixed the matter on 22.08.2023. On 22.08.2023 to enable Mr. B. J. Ghosh, the learned counsel for the petitioner obtain necessary instructions.

17. The learned counsel for the petitioner submitted that the husband of the petitioner, at the time of his death, had left behind the petitioner as well a son and a daughter.

18. Under such circumstances, this Court felt the need to peruse to documents so submitted by the petitioner so that no prejudice is caused to the petitioner. Accordingly, this Court had requested the learned counsel appearing on behalf of the respondents to produce the application filed by the petitioner to peruse as to what documents the petitioner had submitted along with her application. Accordingly, the writ petition was fixed today, i.e. on 24.08.2023.

19. This Court had duly heard the learned counsel for the parties and perused the materials on record including the application so produced by the learned counsel for the respondents in Original. From a perusal of the said Application, it reveals that the petitioner had in pursuance to the communication dated 17.07.2012 and 30.09.2019 enclosed the notarized affidavit as per Appendix-III A; proof of age certificate; proof of educational qualification certificates Advocate's Letter as per Annexure-III B; land documents in support of ownership/leasehold rights. The petitioner, however, did not submit any affidavit as per Appendix-III A.

20. This Court finds it relevant to take note of that the land documents which were submitted were (i) a patta issued in favour of the husband of the petitioner; (ii) the

ownership certificate issued by the Circle Officer, Bilasipara Revenue Circle in favour of the husband of the petitioner; (iii) the Jamabandi (record of rights) in favour of the husband of the petitioner and (iv) land revenue payment receipts in favour of the husband of the petitioner.

21. This Court has also perused the guidelines, the details of which have been referred to hereinabove wherein it clearly mandates that if the land belongs to the applicant with members of the family or owned exclusively by the family member(s), the consent letter in the form of affidavit from the members of the family in Appendix-III A was required to be submitted at the time of submission of the application. However, no such consent letter in the form of affidavit from the members of the family in Appendix-III A was submitted as would appear from the records. It would also be seen that even after opportunities were given on 17.07.2019 which was extended vide another communication dated 30.09.2019, then also the petitioner did not submit any such consent letter by way of an affidavit in terms with Appendix-III A.

22. Taking into account the above, this Court is of the opinion that there was no illegality in the communication dated 04.03.2020 whereby the candidature of the petitioner under Group-1 was rejected/found ineligible with an observation that the candidature of the petitioner would be considered for selection along with Group-3 applicants as per the guidelines.

23. In that view of the matter, this Court is of the opinion that the instant writ petition is devoid of merit for which the same stands dismissed.

24. The records so produced by Mr. A. Barkatarki, the learned counsel appearing on behalf of the respondents is returned.

JUDGE

Comparing Assistant