

Court No. - 40

Case :- WRIT - C No. - 52412 of 2016

Petitioner :- Shiv Prasad Gupta

Respondent :- Hindustan Petroleum Corporation Ltd. And 2 Others

Counsel for Petitioner :- Akanksha Sharma, Manish Goyal (Senior Adv.)

Counsel for Respondent :- Komal Mehrotra, S.C., Vikas Budhwar

Hon'ble Saral Srivastava, J.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Ms. Anjali Gokhlani, learned counsel for the petitioner, and Sri Komal Mehrotra, learned counsel for respondents.

2. The petitioner, by means of the present writ petition, has assailed the order dated 05.07.2016 passed by the Chief Regional Manager, Hindustan Petroleum Corporation Limited, Gorakhpur, whereby the letter of intent issued to the petitioner with respect to the distribution of LPG Cylinders has been cancelled.

3. The facts, in brief, are that the advertisement for setting up LPG distributorship was published by respondent no.2 on 16.04.2012. The petitioner, in pursuance of the said advertisement, submitted an application in the prescribed form on 15.05.2012 with respect to the Village Chaf Jungle Visnupura, Chhapra, District Kushi Nagar. As per the advertisement, the petitioner was supposed to have a plot of an area of 20M. X 24M. The petitioner, in respect to the details of property in the column of 'ownership' stated his name, and in the column of 'relationship with the applicant', he stated 'self'. The petitioner, along with the form, submitted a Khatauni in respect to Gata No.10, Khata No.300 situated in Village Chaf Jungle Visnupura, Chhapra, District Kushi Nagar. The lottery with respect to the aforesaid centre for distribution of LPG Cylinder was done on 24.01.2013, in which the petitioner got selected, and accordingly, a letter of intent was issued to the petitioner on 28.02.2014.

4. It appears that a complaint was lodged against the petitioner with regard to the ownership of the plot on which the LPG distributorship was to

be established. Accordingly, respondent no.2 got an inspection/inquiry done by the Sub-Divisional Magistrate, Tehsil Tamkuhi Raj, District Kushi Nagar, in respect to the complaint. The report of Sub-Divisional Magistrate dated 22.10.2014 stated that the name of the petitioner is recorded in Gata No.10 Khata No.300, having an area of 0.352 hectares as a co-sharer since before 07.03.2013. The petitioner's share in the said plot is 1/9, i.e., 0.039 hectare. The report further stated that Pramod and Sunil, who are the brothers of the petitioner, executed a sale deed in favour of Shivji on 09.02.2013 in respect to their share in Arazi No.10 to the extent of 0.073 hectare, and the name of the petitioner has been recorded in the revenue record on 07.03.2013.

5. On the strength of the aforesaid report, the respondent no.2 passed an order dated 05.07.2016 stating therein that on the date of submission of application for establishment of LPG godown, the share of the petitioner in the plot was 390 square meter whereas the required area for setting up the LPG godown was 480 square meter, and since the petitioner has purchased the additional land of 730 square meter on 09.02.2013 after the submission of the application, therefore, the petitioner has submitted fabricated document, and as the petitioner has violated Clause 14 and Clause 8 of the form, therefore, his letter of intent deserves to be cancelled. Consequently, the letter of intent of the petitioner was cancelled, which is impugned in the present writ petition.

6. A counter affidavit has been filed by the respondents contending *inter alia* that, as per Clause 13 of the selection guidelines, the committee comprising two officers of the respondent company is to scrutinize the application of the petitioner for the award of marks on the basis of the information given in the application form. It is further stated that on conduction of field verification of credentials of the candidate if it is found that there is no variance in the information given in the application form vis-a-vis the actual physical verification then the letter of intent is issued in favour of the candidate, and if the variation is found in the information given in the appendix form vis-a-vis the field verification then the candidature of the candidate is rejected and the security amount is forfeited.

7. It is further alleged that the petitioner intentionally misled the respondent corporation inasmuch as he did not have an adequate piece of land on the last date of submission of the application form.

8. The petitioner has filed a rejoinder affidavit denying the averments made in the counter affidavit.

9. Learned counsel for the petitioner, while challenging the impugned order, has submitted that the letter of intent was issued on 28.02.2014, and before the issuance of the letter of intent, the petitioner owned the required area of plot needed for the setup of LPG distributorship. Accordingly, she submits that the defect in the application form with regard to not complying with the condition of having the required land stipulated in the advertisement was curable and not a fatal defect on the basis of which letter of intent of the petitioner could be cancelled.

10. She further submits that even otherwise, as per sub-Clause C of Clause 1.23 of unified guidelines for selection of LPG distributorship, the land on which, the distributorship was to be set up was owned by the petitioner alongwith his father and two brothers, and if their share is included with the share of the petitioner, the petitioner was having the required land as per the advertisement for setting up the LPG distributorship.

11. She further contends that it is undisputed that the land on which the LPG distributorship was to be set up was also owned by his father and two brothers and in such an event, the case of the petitioner is covered under sub-Clause C of Clause 1.23 of guidelines and the petitioner was to submit the consent in the form of declaration from the family members on the last date of submission of application as specified either in the advertisement or corrigendum. She submits that in the declaration form, the family members were not disclosed with the application form at the time of submission of the application form, but that is a curable defect, and thus, she submits that the respondents ought to have considered this aspect of the matter while passing the impugned order.

12. She has further placed reliance upon Clause 16.4 of the guidelines to contend that it is also provided in the guidelines that during the Field Verification of Credentials (FVC) in case land mentioned by the applicant

for godown or showroom in his application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application form and if the applicant is having any alternate land in his name or members of his family as per the definition of family unit for land of the applicant with date of registration on or before the last date for submission of application as specified either in the advertisement or corrigendum (if any), the same can also be considered.

13. On the strength of the aforesaid clause, she submits that petitioner has acquired the title of the land in respect to the required area during the FVC and Clause 16.4 should be given a liberal interpretation in a sense that if the ownership in respect to the alternative land can be considered then the respondent can also consider the acquisition of title in respect of land over which the establishment of LPG distributorship is proposed. She has also placed reliance upon the judgement of this Court in the case of ***Rahul Singh Vs. India Oil Corporation Ltd. and Others*** passed in Writ-C No.7354 of 2024.

14. Per contra, learned counsel for the respondents would contend that in the instant case, it is not disputed that the land over which the LPG distributorship was to be established was owned by the petitioner, his father and two brothers and after including the share of the petitioner, his father and two brothers, the condition of requirement of land as provided in the advertisement is fulfilled. It is contended that in the form, there is a specific column with respect to the ownership of the property and relationship with the applicant, and in the column of 'ownership', the petitioner has stated his name, and in the column of 'relationship with the applicant', the petitioner has stated 'self'.

15. He has further submitted that it is evident from the application form that, in case the land belongs to a member of the family unit, a notarized affidavit as per Appendix C has to be filed. He submits that in the instant case, admittedly, a notarized affidavit as per Appendix C of the members of the family unit was not filed. He further submits that the petitioner did not correctly disclose the ownership of the property over which he wanted to set up the LPG distributorship, inasmuch as on the date of submission of the application form, the required land, which was needed for setting up the

LPG distributorship, was 20M.X24M. Whereas the share of the petitioner was less than the required area, and only after the inclusion of the share of the father and two brothers of the petitioner, the petitioner could meet the requirement of having the required land as provided in the advertisement for the establishment of LPG distributorship. Accordingly, he submits that in such an event, it was incumbent upon the petitioner to have disclosed the name of all the persons who owned the property, whereas the petitioner has concealed this fact.

16. He further submits that the petitioner is bound by the declaration given in the advertisement with regard to the declaration of fact in the application form and also he is bound by the affidavit submitted by him in the form of Appendix-A referred in Clause-A, and since, it is a case of non-disclosure of correct information, therefore, it is a case of deficiency in submitting the form and authority has not committed any error in law in rejecting the application form.

17. He further submits that the reliance placed by the learned counsel for the petitioner over Clause 16.4 of the guidelines is misplaced inasmuch as the said clause is applicable where it was found during the FVC process that if the land which was offered by the petitioner does not meet the eligibility condition or requirement as stipulated in the advertisement and if the applicant has alternative land in his name or members of the family unit as per the definition of family unit for land of the applicant with the date of registration on or before the last date for submission of application as specified either in advertisement or corrigendum (if any), the same can be considered.

18. He submits that the instant case is a case of false disclosure of information and not a case where the land offered for the establishment of LPG distributorship did not meet the criteria of the minimum requirement of land stipulated in the advertisement, nor did the petitioner have any alternative land which he could offer in place of the land provided by him.

19. He further submits that the Clause 16.4 would attract only during the FVC process and there is no pleading in the writ petition that during the FVC process the petitioner has provided any alternative land in place of the land which he offered for setting up LPG distributorship complying with the

requirement of Clause 16.4 of the guidelines and in the absence of any pleading to this effect the said argument cannot be pressed during the course of hearing as the respondents are not in a position to reply the factual assertions not pleaded in the writ petition during course of argument. Accordingly, he submits that the writ petition lacks merit and deserves to be dismissed.

20. We have considered the rival submissions advanced by learned counsel for the parties and perused the record.

21. The undisputed facts which are borne out from the record are that the petitioner, pursuant to the advertisement dated 16.04.2012, submitted an application on 15.05.2012. The petitioner offered the land, i.e., Gata No.10, Khata No.300, situated in Village Chaf Jungle Visnnupura, Chhapra, District Kushi Nagar, for the establishment of LPG distributorship. From the khatauni enclosed with the writ petition, it is evident that the area of the said Gata is 0.352 hectares, and there are several co-owners of the said Gata. The petitioner's share in the said Gata is 1/9, and the petitioner on his own did not have sufficient land as per the stipulation in the advertisement and only after the inclusion of the share of brothers and father of petitioner, the petitioner could fulfil the eligibility criteria in respect of land needed for the establishment of LPG distributorship as per the stipulation in the advertisement.

22. At this point, it is relevant to reproduce the relevant column of the application form, which required the petitioner to fill in the details of ownership of property:

“Provide the following details. In case land belongs to member of ‘Family Unit’, attach notarised affidavit as per Appendix-D”

Name(s) of the owner of land	Relationship with applicant	Date of registration of sale deed/gift/d ate of mutation	Address of the location of the land for LPG godown	Khasra No/ Survey No	Dimensions of land	
SHIV PRASAD	SELF	5.2.2000	GOSAI PATTI	10+52	Length in metre	Breadth in metre
					35	25

23. The petitioner in the aforesaid column has filled his name as owner of the property offered by him for the proposed LPG distributorship, and in the column 'relationship with the applicant', he stated 'self'. It is also one of the stipulation in the advertisement that in case the land belongs to the family unit or land is owned by the petitioner along with his father or brother or sister as provided in Clause 1.24 of the guidelines, a consent in the form of declaration from the family members was required on the last date of submission of application as specified in the advertisement/corrigendum (if any).

24. Admittedly, in the instant case, the petitioner did not disclose the name of his father and brothers, nor enclosed the notarized affidavit as per Appendix C. It has also come on record that the petitioner purchased the share of his two brothers, namely Pramod and Sunil, by a sale deed dated 09.02.2013, much after the submission of the application form, and thereafter, his name was recorded in the revenue records. So it is evident from the aforesaid fact that on the date of submission of the application form, the land which was offered by the petitioner for the establishment of LPG distributorship was not owned by the petitioner, and it is only after the inclusion of the share of his brothers and father that the petitioner fulfilled the eligibility criteria of the required land.

25. In such view of the fact, it was the duty of the petitioner to have disclosed correctly the details of the owners of the property and should have also disclosed correctly the relationship with the other co-owners in the application form. There is a declaration given by the petitioner in the application form that the information provided in the application form is true and correct. The petitioner was also supposed to give an affidavit in Appendix A stating that the information given in the form is correct. Paragraph 8 of the affidavit provides that a candidate has also to state in the affidavit that if any information/declaration given by him in the application or any document submitted by the candidate in support of application are found to be untrue or incorrect or false, the respondent would be within its right to withdraw the letter of intent or terminate the LPG distributorship (if already appointed) and the candidate would have no claim, whatsoever,

against the corporation for such withdrawal or termination. Para 8 of the affidavit in the form Appendix-A is reproduced below:

"That if any information/declaration given by me in my application or in any document submitted by me in support of application for the award of the RGGLV or in this affidavit shall be found to be untrue or incorrect or false, the Indian Oil Corporation/Bharat Petroleum Corporation/Hindustan Petroleum Corporation would be within its rights to withdraw the letter of intent/terminate the distributorship (if already appointed) and that I would have no claim, whatsoever, against the Corporation for such withdrawal/termination."

26. Thus, the petitioner is bound by the undertaking and averments made by him in the affidavit that the information given by him in the form is true and correct, and there is no concealment. In the instant case, admittedly, the petitioner has not given the details of the owners of the property in the application form, and in view of the aforesaid fact, it is a case of concealment of information while submitting the application form and not a case of deficiency in submitting the application form.

27. So far as the argument of learned counsel for the petitioner that in the instant case, the petitioner is entitled to the benefit of sub-Clause C of Clause 1.23 of the guidelines is concerned, we may note that the said clause could help the petitioner only if the petitioner had disclosed the correct information in the form. Even as per sub-Clause C of Clause 1.23 of the guidelines, the other owners had to submit a consent in the form of declaration from the family members on the date of submission of the application as specified either in the advertisement or corrigendum (if any).

28. In the instant case, admittedly, no consent in the form of declaration of the father and brothers of the petitioner was enclosed along with the application form, and therefore, in such view of the fact, this clause also does not help the petitioner.

29. So far as the reliance placed by the petitioner on Clause 16.4 of the guidelines is concerned, the same is reproduced herein below:

"During the FVC process, in case land mentioned by the applicant for godown/showroom in his application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application form and if the applicant is having any alternate land in his name/member(s) of the family unit as per the definition of family unit for land of the applicant with date of registration on or before the last date for submission

of application as specified either in the advertisement or corrigendum (if any), the same can be considered. However, the same if considered has to be duly verified for its suitability during the FVC. In case at the time of FVC, it is found that the all-weather motorable road providing access to the Godown land is not available or if the candidate expresses his/her inability to ever provide the same, the candidate can offer an alternate land meeting the eligibility criteria. Such alternate land, if considered, has to be duly verified during the FVC for its suitability for providing LPG godown and showroom facility as mentioned hereinabove."

30. The perusal of the aforesaid clause discloses that this clause applies only when during the FVC process, in case land mentioned by the applicant for godown or showroom does not meet the eligibility condition/requirement as stipulated in the advertisement/application form/brochure and if the applicant has any alternative land in his name or in the name of family members then the same can be considered.

31. In the instant case, on the date of submission of the application form, the applicant did not fulfil the criteria of land required for the purpose of establishment of LPG distributorship and applicant did not have any alternative land for establishment which he could offer for establishment of LPG distributorship therefore, the Clause 16.4 of the guidelines is not attracted in the present case.

32. In case the applicant did not fulfil the criteria of land for the establishment of a Government showroom, it is only during the FVC process that he could offer an alternative land which meets the criteria mentioned in Clause 16.4. In the instant case, the petitioner has not disclosed the date of the FVC process nor has stated that he has an alternative land meeting the criteria provided in Clause 16.4 of the guidelines. In the absence of any such pleading in the writ petition, the petitioner cannot claim the benefit of Clause 16.4 of the guidelines.

33. So far as argument of petitioner that Clause 16.4 be given liberal interpretation is concerned, we find that said argument in the facts of present case is fallacious and lacks merit for the reason that petitioner has not disclosed in the writ petition the date of FVC process, and further on the date of FVC process, he fulfilled the land criteria as stipulated in the Guidelines. In the absence of any such pleading in the writ petition, no positive finding

can be returned regarding the entitlement of the petitioner in respect to the benefit of Clause 16.4 of the guidelines.

34. So far as the judgment relied upon by the learned counsel for the petitioner in the case of ***Rahul Singh (supra)*** is concerned, the same is not applicable in the facts of the present case inasmuch as the said judgment has been rendered on the basis of the guidelines issued in the year 2023 whereas the petitioner will be governed by the guidelines applicable on the date of application of petitioner, therefore, the said judgment does not come to the rescue of the petitioner.

35. Thus, for the reasons given above, the writ petition is ***dismissed*** with no order as to cost.

Order Date :- 19.8.2025

Mohit

(Arun Kumar Singh Deshwal,J.) (Saral Srivastava,J.)