

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12191 of 2014

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Deepak Kumar, Son of Paras Nath Gupta, Resident of Vilage+P.O.- Karwandia,
P.S. Sasaram, District- Rohtas

.... Petitioner

Versus

1. The Union of India
2. The Hon'ble Minister, Ministry of Petroleum and Natural Gas, Govt. of India, Shastri Bhawan, New Delhi- 110001.
3. The Secretary, Ministry of Petroleum and Natural Gas, Govt. of India, Shastri Bhawan, New Delhi- 110001.
4. The Chairman, Indian Oil Corporation Ltd., 3079/03 J.B. Tito Marg, Sadique Nagar, New Delhi- 110048
5. The Executive Director (LPG), Indian Oil Corporation Ltd., Registered Office- G/9 Aliyava Jung Marg (Bandra East), Mumbai- 400051
6. The Dy. General Manager (LPG), Bihar State Office, Indian Oil Corporation Ltd., Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001
7. The Chief Area Manager, Patna Area Office, India Oil Corporation Limited, Shahi Bhawan-1st floor, Exhibition Road, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. T.N.Maitin, Sr.Adv.
Mr. Krishna Deo Raj, Adv.
For the Respondent/s : Mr. Anil Kumar Jha, Sr.Adv.
Mr. Sanat Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 21-01-2015

Heard learned counsel for the parties as with regard to the
following relief prayed in this writ application:

“(i) For issuance of writ in the appropriate nature for quashing of the letter dated 3.6.2014 issued under the signature of the Chief Area Manager, Indian Oil Corporation (LPG) whereby and whereunder the candidature of the petitioner for selection of Rajeev Gandhi LPG Vitarak for the location of Basa Karwandia, District Rohtas has been cancelled on the ground that the mutation has not been made

in favour of the petitioner with regard to the land offered by the petitioner without considering that the petitioner is the sole heir of his father and has got right title and owner by way of inheritance.

(ii) For further direction to the respondents- authority to consider the case of the petitioner for appointment of Rajeev Gandhi LPG Vitarak for the location indicated above and take a final decision in this regard.

(iii) For further direction to the respondents- authority to consider the case of the petitioner in the light of mutation made in favour of the petitioner and issue letter of intent considering the petitioner was sole candidate whose application found fit under the reserved category OBC (CC) and take final decision within time framed and communicate the same.

(iv) For further direction to the respondents- authority to not dereserved the said location by publishing/ advertisement for selection of candidate for general category of Rajiv Gandhi LPG Gramin Vitarak in open category for the said reserve location.”

2. Mr. T.N.Matin, learned Senior counsel for the petitioner, in support of the aforementioned prayer has straightway proceeded to assail the impugned order dated 3.6.2014 on the ground that the disqualification of the petitioner in the matter of grant of Rajeev Gandhi LPG Vitarak Scheme is factually incorrect and legally impermissible. He explains that the application of the petitioner could not have been rejected on the ground of land being not mutated in the



name of the petitioner. He has further submitted that when the petitioner had filed his application he had made it clear that the land was in the name of his father and the father being part of his family, it was not correct on the part of the authorities to hold that the petitioner did not fulfil the requirement of the land.

3. In this case a counter affidavit has been filed on behalf of the respondents in defence of the impugned order and it has been stated that the petitioner had given a false declaration both with regard to ownership of the land and its mutation.

4. In the considered opinion of this Court the question of eligibility of the petitioner has to be adjudicated on the basis of requirement of the land as laid down in the Brochure for selection of Rajeev Gandhi Gramin LPG Vitrak (RGGLV) published in April, 2013, inasmuch as the advertisement in question in the present case having been issued on 28.6.2013, the petitioner under the term of the advertisement was to be governed by this 2013 guidelines. In the guideline the eligibility criteria was as follows:

“6. COMMON ELIGIBILITY CRITERIA FOR ALL CATEGORIES:

Applicant applying for RGGLV should

- a. Be an Indian citizen
- b. Be a resident of either of the Gram Panchayat (or the corresponding administrative/ revenue structure as applicable in the respective State/UT) of the advertised



RGGLV location or of the Taluka/ Tehsil (or the corresponding administrative/ revenue structure as applicable in the respective State/UT) of the advertised RGGLV location. For selection of RGGLV, first preference will be given to the applicants residing in Gram Panchayat of the advertised RGGLV location, failing which applicants residing in the concerned Taluka/ Tehsil of the advertised RGGLV location shall be considered.

- c. Have passed minimum Xth Standard examination or equivalent from a recognized Board. This condition is not applicable for applicants belonging to Freedom Fighter (FF) category.
- d. Be not less than 21 years and not more than 45 years in age as on the date of application for all categories except GP & FF category & applicants belonging to the category of 'SKO dealers of OMCs.'

For applicants applying for location reserved under GP category, age should not be less than 21 years and not more than 60 years as on date of application.

For applicants belonging to the category of "SKO dealers of OMCs", maximum upper age limit shall be 60 years as on date of application. There is no age restriction for applicants applying for locations reserved under FF category.

- e. Not be a family member of an employee of Oil Marketing Companies as on date of application.

In relation to an OMC employee, definition of family is:-

- i. The wife or husband as the case may be of the employee, whether residing with him or not, but

does not include a wife or husband as the case may be separated from the employee by a decree or order of a competent Court.

- ii. Sons or daughters or step-sons or step-daughters of the employee and wholly dependent on him, but does not include a child or step-child who is no longer in any way dependent on the employee or of whose custody the employee has been deprived by or under any law.
- iii. Any other person related whether by blood or marriage to the employee or to such employee's wife or husband and wholly dependent on such employee.

f. Fulfil Multiple dealership/ distributorship norm

Multiple Dealership/ Distributorship norms means that the applicant or any other member of 'family unit' should not hold a dealership/ distributorship/ RGGLV or Letter of Intent (LOI) for a dealership/ distributorship/ RGGLV of a PSU Oil Company i.e. only one Retail Outlet/ SKO-LDO dealership/ LPG distributorship/ RGGLV or PSU oil Company will be allowed to a 'Family Unit'. However, existing SKO dealers of OMCs operating below an average allocation of 75 KL of SKO per month during the immediate preceding 12 months prior to the month of advertisement will be eligible to apply under the category of individual applicant only and if selected will have to surrender their Kerosene dealership prior to issuance of letter of appointment for RGGLV. The SKO dealer applying for RGGLV will have to submit documentary

proof of Kerosene allocation issued by the allocating authority of the State Govt/ Divisional/ Territory/ Regional office of the Oil Marketing Company, as the case may be.

The aforementioned multiple Dealership/ Distributorship norms shall also be applicable to retailers/ distributors appointed by PSU Oil Marketing Companies for exclusive marketing of NDNE (Non Domestic Non Essential) LPG cylinders.

'Family Unit' in case of married person/ applicant, shall consist of individual concerned, his/her Spouse and their unmarried son(s)/ daughter(s). In case of unmarried person/ applicant, 'Family unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorcee, 'Family Unit' shall consist of individual concerned, unmarried son(s)/ unmarried daughter(s) whose custody is given to him/her. In case of widow/ widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/ unmarried daughter(s).

- g. Have minimum total amount of Rs.4 lakhs as the closing balance on the last date for submission of application, as specified in the advertisement or corrigendum (if any). This amount can be put together from Saving accounts in Bank/ Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies/ Government Organization/

Public Sector Undertaking of State and Central Government Kisan Vikas Patra, NSC, Bonds, Shares of Listed Companies. Listed Mutual Funds, ULIP, PPF, Surrender value of Life Insurance Policies in the name of self or family members of the 'family unit' as defined in Multiple dealership/ distributorship norm who pledge in writing such assets in favour of applicant.

In case of locations reserved under 'SC/ST' category, applicant should have minimum of Rs.2 lakhs as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any), put together from Saving Accounts of Bank/ Post Office, Free and unencumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies/ Government Organization/ Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, NSC, Bonds, Shares of listed Companies, Listed Mutual Funds, ULIP, PPF, Surrender value of Life Insurance Policies in the name of self or family members of the 'Family Unit' as defined in Multiple dealership/ distributorship norm who pledge in writing such assets in favour of applicant.

h. (i) Should own:

a plot of land of minimum dimensions 21Mx 26M for construction of LPG Godown for storage of 5000 Kg of LPG in cylinders at the advertised RGGLV location.

The plot of land for construction of godown not meeting the minimum dimensions of 21Mx26M will not be considered.

Or

a ready LPG cylinder storage godown of 5000 kg capacity at the advertised RGGLV location.

In case there are any state specific requirements/ norms applicable for construction of the LPG godown, then the same will be applicable for the respective RGGLV locations and revised minimum dimensions of the plot of land will be required as specified in the advertisement of that respective State.

The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (road or private road connecting to the public road). In case of private road connecting to the public road, the same should be owned by the applicant/ member of family as defined in h(iii) below in the ownership criteria for land. In case of ownership/ co-ownership by family member(s) in respect of such private road, consent letter from respective family member(s) will be required.

(ii) The land should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals/ Drainage/ Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/ Highway/ authorities/ Town and Country Planning Department etc.

(iii) Own means having clear ownership title of the property in the name of applicant/ family member(s) of the 'Family Unit' as defined in multiple dealership/



distributorship norm or land belonging to parents and grandparents (both maternal and paternal) of the applicant as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/ co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required.

(iv) In case the land is jointly owned by the applicant/ member of family unit (as defined in multiple dealership/ distributorship norm) / parents and grandparents (both maternal and paternal) of the applicant with any other person(s) and the share of the land in the name of applicant/ member of the family unit/ parents & grand parents (both maternal and paternal) of the applicant meets the requirement of land including the dimensions required then that land for godown will also qualify for eligibility as own land subject to submission of 'No Objection Certificate' in the form of an Notarized Affidavit from other owner(s).

(v) In case an applicant has more than one suitable plot for construction of godown for storage of 5000 Kg of LPG in cylinders or ready LPG cylinder storage godown of 5000 Kg capacity available as on the last date for submission of application as specified in the advertisement or corrigendum (if any), then the details of the same can also be provided in the application.

i. Be physically and mentally sound to be able to run

the business.

j. Neither have been convicted nor charges been framed by any Court of Law for any criminal offence involving moral turpitude/ economic offences.

k. Not be a signatory to Distributorship/ Dealerships Agreement terminated on account of proven cases of malpractice/ adulteration of any oil Company.”

(underlining for emphasis)

5. In the case in hand we are only concerned with the requirement of the land as laid down in Clause 6(f) and 6(h) which clearly defines expression ‘family unit’ and ‘own’ respectively. From such definition it becomes clear that the applicant must have title of ownership in the property either in his own name or in the name of family unit. The ‘family unit’ also has been clearly defined under Clause 6(f) laying down that in case of married applicant the family unit shall consist of the applicant, his or her Spouse and their unmarried son(s) or daughter(s), whereas in case of unmarried applicant, the family unit shall consist of applicant, his or her parents and his or her unmarried brother and unmarried sister.

6. Admittedly when the petitioner had filed his application he had declared himself to be unmarried and therefore, when he had also declared that he had a piece of land for setting of the LPG dealership in the name of his father he was definitely fulfilling the criteria but then the question would be as to whether the land was actually even in

the name of his father?

7. Let it be noted that the petitioner in his application had declared the date of mutation as 5.12.1990 in respect of Khesra No. 380/143 but in course of verification it got discovered that the mutation case itself was filed by his father on 2.11.2013 whereas the last date of filing of the application was 28.7.2013. Thus, on the day when the petitioner had made a declaration in his application i.e. 30.7.2013 with regard to his father having already mutation in his name in the date of 5.12.1990 he had made a false declaration. That becomes absolutely manifest from the order sheet of mutation case filed by the father of the petitioner, as contained in Annexure 3, which clearly goes to show that the application was filed for such mutation by his father on 2.11.2013 and the order of mutation was passed on 12.11.2013.

8. These facts are not at all disputed facts. In fact the respondents have in their counter affidavit explained only this aspect with clarity and precision in paragraphs no. 9 to 13 of the counter affidavit which reads as follows:

“9. That the petitioner had applied vide application dt. 30.7.2013 for the RGGLV for location Basa Karwandia district Rohtas against the advertisement dt. 28.6.2013. It is stated that as per the selection guideline in force/ concerned advertisement the applicant/ member of his family unit/



parents/ grand parents (both maternal and paternal) should have land in his/ their name. It is further stated that any eligibility attained after the date of application is not to be considered. The family unit has been further defined in the advertisement.

10. That as the petitioner was single eligible applicant, no draw was held and the petitioner's credentials and eligibility were investigated under Field Verification.

11. That in course of FVC the officials found that the offered land was not in the name of the applicant's father as mentioned in the application. In the application the land was shown to be in the name of father of the petitioner and the date of mutation to be 5.12.1990. LPC dt. 9.12.2013 was found correct. However, it was found from the records available in the office of the Circle Officer, it was clear that the land was not in the name of father on the date of application and it was mutated in the name of applicant after the application date. This was also clear from the letter dated 25.2.2014.

12. That as admitted in the writ petition also the land was in the name of ancestor of the petitioner beyond the aforesaid relations/ degrees and admittedly after the date of application mutation took place. Hence, the cancellation of the candidature is justified.

13. That the petitioner has not moved the IOCL or the Hon'ble Court with clean hands rather he has suppressed the material facts and misled the oil company. As per the provisions in the application itself and also the advertisement, if any information furnished in the application is found to be

incorrect the candidature is liable to be cancelled.”

9. There is no rejoinder to its counter affidavit but Mr. Maitin has tried to explain that the land in question which was shown to be in the name of the father of the petitioner could not be disputed by the authorities of the IOC in absence of record of mutation because the record of mutation is not the sole document of the title and ownership. In this regard he has explained that the claim of ownership can also be established from many other documents, Khatiyan, rent receipt, mutation and possession.

10. In the considered opinion of this Court when the ownership in the application form was sought to be established only by way of date of registration of the sale deed/ gift deed or date of mutation, and the petitioner also had made a declaration giving the name of his father as owner of the land as well as date of mutation dated 5.12.1990 he cannot be allowed to take any other stand with regard to the fulfillment of requirement, specially when it is also not his case that he had even produced the required no objection certificate of his grant-father in whose name the land in question stood recorded on the date of filing of application by the petitioner in Corporation for granting dealership in question. It is this aspect of the matter which has been ultimately recorded by the respondents in the impugned order dated 3.6.2014 which for the sake of clarity and

convenience is also quoted hereinbelow:

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Ref: PAT/114/84

Date: 3.6.2014

To

Deepak Kumar

S/o Paras Nath Gupta

Vill. Karwandia

PO Karwandia

PS Sasaram

Dist.: Rohtas

Bihar 821805

Dear Sir,

Sub: Application for award of Rajiv Gandhi LPG Vitrak (RGGLV) at Basa, Karwandia, Dist. Rohtas under Category OBC (CC), Advertised on 28.2.2011.

Please refer to your application No. PAT/114/01 on the above subject. We regret to inform you that the following discrepancies were found during field verification:-

1. In application, you have offered plot at Khata No.143, Khesra No. 380 at village Karwandia of Dist. Rohtas and the owner of the plot is Sri Parasnath Gupta, your father. During verification, it was found that as on last date of submission of application, your father Sri Parasnath Gupta was not the owner of the offered plot. Mutation in favour of Sri Parasnath Gupta has been done only on 12.11.2013. You have also declared the date of mutation in your letter of dated 25.2.2014. The offered land was not in the name of your father as mentioned in the application and as per your letter dated 25.2.2014, actual owner of the land is

your deceased grandfather and affidavit as per Annexure B could not be submitted by you as per policy.

Hence, your candidature has not been found suitable for award of subject RGGLV as per policy.

In this context, please be informed that the amount of Rs.20000.00 (Rupees Twenty thousand only) which you have deposited as 10% of security deposit to conduct FVC, is forfeited as per policy guidelines of RGGLV.

This is without prejudice to your other right and contentions of the Corporation in the matter.

Thanking you,

Yours sincerely,

For Indian Oil Corpon Ltd (MD)

Sd/-

Ch. Area Manager

Patna A.O.”

11. From reading of the reasons in the aforementioned impugned order it thus becomes clear that on the date of filing of the application of the petitioner i.e. 30.7.2013 the petitioner had offered the land claiming it to be in the name of his father but on that day the land definitely was not even in the name of his father but his grandfather, who had already died leaving no scope for submitting a no objection certificate as per prescribed norms in the brouchure. The date of mutation shown in the application form as 5.12.1990, therefore, is also admittedly incorrect because of own subsequent admission of the petitioner subsequently that such land was mutated

in the name of his father on 12.11.2013 i.e. after expiry of the date of filing application for award of dealership.

12. The submission of Mr. Maitin that there was no dispute of any nature whatsoever because even for land belonging to his deceased grand-father, his father was the natural heir can have no exception in terms of Hindu Law but here in this case the personal laws are not the basis for eligibility criteria. Such eligibility criteria having an artificial line of definition either in respect of ownership or in respect of family unit cannot be held to be bad, especially when the petitioner knowingly in terms of the advertisement and eligibility criteria had participated in it with his eyes wide open. Today having become unsuccessful the petitioner cannot be allowed to assail the definition of the word 'own' or the word 'family unit'. Thus, this Court does not find any error in the decision taken by the authorities rejecting the candidature of the petitioner.

13. The reliance placed by Mr. Matin on a judgment of this Court in the case of Rajan Kumar Thakur v. the Hindustan Petroleum Corporation Ltd., reported in 2014(3) PLJR 422, will also be of no help and assistance because that was a case relating to an advertisement dated 28.2.2011 covered by a separate and different guideline wherein reference was made to industry Record Note dated 15.6.2010. The concept of obtaining consent letter in fact was given

up in 2013 guidelines and was substituted by a No Objection Certificate as would be evidenced from reading of Clause 6(h)(iv).

14. More-over, in the present case there is no question of land being jointly owned by the petitioner alongwith his father when he himself had in the application filed by him in column No.9 of the application in the prescribed proforma described the owner of the land to be only his father Paras Nath Gupta and none-else. Thus, neither the issue of submission of No Objection Certificate nor the consent letter which aspect has been discussed by this Court in the case of Rajan Kumar Thakur (supra) shall be applicable in the present case.

15. Here it is a plain and simple case that the petitioner wanted LPG dealership on the basis of furnishing the land of his father by claiming that such land was mutated in the name of his father on 5.12.1990 but in enquiry it was discovered that the land was never recorded in the name of the father till last date of filing of the application. Therefore, he did not fulfil the eligibility criteria of ownership and the family unit as defined in the Brochure.

16. In that view of the matter, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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