

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4257/2015

Sau. Kiran w/o Subhash Gawande

...Versus...

Hindustan Petroleum Corporation Limited through its Regional Manager,
Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. B.H. Dangre, Advocate for petitioner
Shri P.D. Meghe, Advocate for respondent nos.1 and 2
Shri M.I. Dhatrak, Advocate for respondent no.3

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : 21.10.2015

By this petition, the petitioner challenges the selection of the respondent no.3 for L.P.G. dealership at Bazargaon as not being eligible for grant of L.P.G. dealership.

The petitioner as well as the respondent no.3 applied for L.P.G. dealership for Bazargaon in pursuance of an advertisement issued by the respondent – HPCL in the year 2010. In the draw of lots, the petitioner was eliminated and the respondent no.3 was selected for L.P.G. dealership. After field verification, it was found that the plot of land for godown was not owned by the respondent no.3 or any member from his family, but was owned by his grandfather. The respondent no.3 challenged the rejection of his candidature in Writ Petition No.1714/2013. This Court allowed the writ petition filed by the

respondent no.3 and held that the grandfather was also included within the definition of the term “family” and the respondent – HPCL was not justified in rejecting the candidature of the respondent no.3. The communication cancelling the selection of the respondent no.3 was set aside by the judgment dated 27.9.2013 and the respondent – HPCL was directed to reconsider the application of the respondent no.3 for dealership, in accordance with the terms of the advertisement. The case of the respondent no.3 was reconsidered by the HPCL and by the impugned order dated 3.4.2015, the letter of intent was issued in his favour. The petitioner has challenged the letter of intent – order dated 3.4.2015 in the instant petition.

The learned Counsel for the petitioner submitted that the grandfather was not included in the “family” in the year 2010 when the advertisement was issued. It is submitted that the respondent – HPCL had rightly rejected the candidature of the respondent no.3 on the ground that neither the respondent no.3 nor any member from his family owned the land on which the godown was required to be constructed. It is submitted that a suit is filed by Bhagwatprasad Asati and Vijay Asati against the grandfather of the respondent no.3 bearing R.C.S. No.554/2004 and the trial Court had issued a temporary injunction, restraining the grandfather of the respondent no.3 from alienating the suit property or creating any third party interest therein. It is stated that the order of temporary injunction has been upheld in an appeal against order and the appeal against order filed by the grandfather of the respondent no.3 has been dismissed. It is stated that the respondent no.3 does not have a clear title to the

property meant for the godown and hence, the impugned order is liable to be set aside.

Shri Meghe, the learned Counsel for the HPCL submitted that the HPCL had earlier rejected the candidature of the respondent no.3 on the ground that the land was owned by the grandfather and a grandfather was not included within the definition of the term “family”. It is submitted that subsequently a grandfather was also included in the definition of the term “family” and hence, after the Hon’ble Supreme Court dismissed the Special Leave Petition filed by the HPCL against the judgment dated 27.9.2013 in W.P. No.1714/2013, the HPCL, on verification of the documents, issued the letter of intent in favour of the respondent no.3. It is submitted that according to the respondent – HPCL, the respondent no.3 has clear title over the property as the property stands in the name of the grandfather and the grandfather of the respondent no.3 has given the necessary consent letter to the HPCL. It is also stated that third party interest is not created in favour of the HPCL or any other party by the grandfather of the respondent no.3.

Shri Dhattrak, the learned Counsel for the respondent no.3 submitted that after the letter of intent was issued in favour of the respondent no.3, the respondent no.3 has constructed the godown on the plot and in view of the dismissal of the special leave petition filed by the HPCL before the Hon’ble Supreme Court, this Court may not interfere with the impugned order dated 3.4.2015. It is stated that the grandfather of the petitioner has tendered the consent letter to the HPCL and third party interest is not created in favour of the HPCL in terms of

the allotment. The learned Counsel sought for the dismissal of the writ petition.

On hearing the learned Counsel for the parties, it appears that there is no scope for interference with the impugned order dated 3.4.2015 in exercise of the writ jurisdiction. The issue whether the grandfather is included within the definition of the term “family” and the respondent no.3 could have offered the plot of his grandfather to the HPCL stands concluded with the dismissal of the SLP against the judgment dated 27.9.2013. The property admittedly stands in the name of the grandfather of the respondent no.3. It is held by this Court in the judgment dated 27.9.2013 that the grandfather is included in the term “family” and since the respondent no.3 had submitted the consent letter of his grandfather to the HPCL, the rejection of the candidature of the respondent no.3 on the ground that the land was not owned by the respondent no.3 or his “family” member was not correct. The judgment in W.P. No.1714/2013 was challenged by the HPCL before the Hon’ble Supreme Court but without success. Hence, it would not be proper for this Court to reconsider the question whether the candidature of the respondent no.3 could be rejected as the land on which the godown was required to be constructed is owned by his grandfather, who did not fall within the definition of the term “family”.

We also do not find any force in the submission made on behalf of the petitioner that the candidature of the respondent no.3 ought to have been rejected in view of the temporary injunction order passed in the suit against the

grandfather of the respondent no.3. The respondent – HPCL has verified the documents and has found that the property on which the godown is required to be constructed stands exclusively in the name of the grandfather of the respondent no.3. It appears that in the said suit a temporary injunction is issued in the year 2004, restraining the grandfather of the respondent no.3 from alienating the suit property or creating any third party interest therein. The respondent no.3 as well as the HPCL have clearly stated that third party interest is not created in favour of the HPCL or any other party by the allotment of the LPG dealership in favour of the respondent no.3. It is stated that third party interest in respect of the land is not created by the said transaction. Also, we find that the respondent no.3 has constructed the godown on a part of the land after the letter of intent was issued. In the circumstances of the case, the impugned order does not call for interference.

In the result, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

Wadkar