

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 4743 of 2014 (P)

PETITIONER(S):

RUBIYA R.N.,
D/O.REHMAN RAWTHER, VENGAVILA HOUSE, IRAPPIL,
MANGODE P.O, CHITHARA, KOLLAM-691 559.

BY ADVS.SRI.K.NIRMALAN
SRI.A.RAJASIMHAN
SRI.B.PRASANTH

RESPONDENT(S):

1. INDIAN OIL CORPORATION,
REPRESENTED BY ITS CHIEF AREA MANAGER,
INDANE AREA OFFICE, PANAMPILLY AVENUE,
PANAMPILLY NAGAR, KOCHI-682 036.
2. GENERAL MANAGER,
INDANE OFFICE, INDIAN OIL CORPORATION LTD.,
PANAMPILLY AVENUE, PANAMPILLY NAGAR, KOCHI-682 036.

* ADDITIONAL R3 TO R5 IMPLEADED

3. SIYAD N., AGED 33 YEARS,
S/O.NAZAR, SIYAD MANZIL, POVATHUMMOOLA,
MANANAKK, PERUMKULAM, CHIRAYINKEEZH,
THIRUVANANTHAPURAM.
4. ANJU, AGED 26 YEARS,
W/O.RAAJITH, THADATHARIKATHU VEEDU, VENGODE,
VALAVUPACHA PO., CHITHARA, KOLLAM DIST.
5. ANILA, AGED 43 YEARS,
W/O.VIKRAMAN, CHARUVILLA PUTHAN VEEDU, AANADU,
MADATHARA, THIRUVANANTHAPURAM.

* ADDL.R3 TO R5 ARE IMPLEADED AS PER ORDER DATED 20.08.2015
IN IA 11378/15.

R1 & R2 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
R3-R5 BY ADVS. SRI.LIJU M.P.
SRI.A.YAHIAKHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 4743 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 COPY OF THE NOTIFICATION DT.23-9-2013 PUBLISHED IN MALAYALA
MANORAMA.

EXT.P2 COPY OF THE RELEVANT PAGES OF GUIDELINES.

EXT.P3 COPY OF THE APPLICATION DATED 24-10-2013.

EXT.P4 COPY OF THE ACKNOWLEDGMENT LETTER DT.25-10-2013.

EXT.P5 COPY OF THE SKETCHES PREPARED BY THE VILLAGE OFFICER.

EXT.P6 COPY OF THE SKETCHES PREPARED BY THE VILLAGE OFFICER.

EXT.P7 COPY OF THE REJECTION ORDER DT.31-1-2014.

EXT.P8 TRUE COPY OF THE LETTER DTD.30.5.2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms^v/

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 4743 of 2014

Dated this the 20th day of October, 2015

JUDGMENT

The petitioner, an applicant for LPG distribution at Chithara, Kollam District, has approached this Court challenging rejection of her application. The application has been rejected vide Ext.P7 stating as follows :

“Please refer to your application (serial number CAO/106/005) on the subject. We regret to inform you that your candidature has not been found to be eligible for LPG Distributorship as Godown and show room. Dimensions are not as per requirement. Appendix 1 Not as per standard format.”

2. There is no dispute that dimensions shown in the application are defective.

3. According to the petitioner, this is a curable defect and no way would affect the application. The petitioner points out clause 8.5 and submits that this is a

curable defect. Clause 8.5 reads as follows :

Clause 8.5 - Procedure For Receipt of Application - **“Application would be received in sealed envelope only. After application is received, serial number would be put on the envelope and also recorded in a 'Register'. Acknowledgement for applications received will be sent to the applicants. In case deficiencies are found in the application, a letter would be sent to the applicant to rectify the deficiencies within a specified period of time.”**

4. Clause 8.5, on the other hand, per contra, the learned Standing Counsel would submit that it is not a curable defect and this is a condition prescribing eligibility and cannot be improved by subsequently providing details of dimensions of the land. Therefore, the only question is whether this is a curable defect or not.

5. The deficiency and eligibility are two different aspects. The last date of submitting the application was on 25/10/2013. The impugned order was issued on 31/01/2014. The dimensions of land is one of the pre-requisite to take part in the process for

selection, the eligibility is prescribed under clause 6.1.vii :-

“Should own as on the last date for submission of application as specified in the advertisement or corrigendum (if any):

a plot of land of minimum dimensions 25 M x 30 M (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of LPG Godown for storage of 8000 Kg of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 M x 30 M will not be considered.

Or

a ready LPG cylinder storage godown (within 15 km from municipal/town/village limits of the location offered in the same State) of 8000 Kg capacity.

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 Regular Distributorship locations and revised minimum dimensions of 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 (public road or private road connecting road connection to the public road). In case of

private road connecting to the public road, the same should belong to the applicant/member of Family Unit (as per the multiple dealership/distributorship norm of eligibility criteria) as per the ownership criteria defined below. 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.

The land should also 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.

In case an applicant has more than one suitable plot for construction of godown for storage of minimum 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown **as on the last date for submission of application as specified in the advertisement or corrigendum (if any)**, the details of the same can also be provided in the application."

7. It stipulates that the petitioner should have a land having dimensions prescribed therein. Admittedly, the petitioner's land did not have the dimensions shown in the

notification. The petitioner submits that she is having other land with the same dimensions and therefore it is a curable defect. The deficiency in this context has to be understood when there is a non-compliance of the formalities. The eligibility has to be understood with reference to the fulfillment of criteria of the candidates proposing to apply. As seen from clause 6.5 itself, the deficiency there refers only to the application. It indicates that if a curable defect exist that can be cured. Even if the petitioner is having other land as on the last date of receipt of application, the details cannot be provided subsequently as the right of the person would depend upon the rights available to him on the last date of application based on the details provided in the application.

8. This Court is of the view that when particulars are discernible from the details furnished by the applicant, even though it may be defective as far as the applicant is concerned, it would satisfy the formalities under the guidelines issued by the Petroleum Authority. Therefore, there is no defect as far as the Oil Marketing Company is concerned. Therefore, it cannot be treated as a curable

defect. In such circumstances, this Court is of the view that the rejection of petitioner's application as per Ext.P7, is perfectly justifiable.

Accordingly, the writ petition is dismissed. No costs.

Sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

bpr