

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No.47 of 2016

Date: 23.06.2016

Between:

Deshopanthula Shailaja, w/o Prabodh Kumar,
Aged about 31 years, Occu: Housewife,
R/o H.No.4-77, Opp: to Library, Venugopala
Swamy Temple Street, Sultanabad (P & M),
Karimnagar District.

.....Appellant/
Writ Petitioner

and

The Indian Oil Corporation Limited,
Indian Oil Bhavan, No.G/9, Ali Yuvar Jung Marg,
Bandra East, Mumbai, rep.by its General Manager
and others

.....Respondents/
Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT APPEAL No.47 of 2016

JUDGMENT: (*Per the Hon'ble Sri Justice P.Naveen Rao*)

This appeal is filed by the writ petitioner assailing the order of learned single Judge allowing the review petition filed by the Indian Oil Corporation Limited and dismissing the writ petition. In the writ petition, petitioner/appellant successfully challenged the action of respondent – IOCL in not awarding marks against 'land and infrastructure' heading while evaluating her application for grant of retail outlet dealership of petrol and diesel in Sultanabad village of Karimnagar district.

2. The parties are referred to as arrayed in the writ petition.

3. The facts relevant for consideration of the writ appeal are briefly as under:

3.1. Indian Oil Corporation Limited (hereinafter referred to as respondent corporation) issued open notification dated 21.10.2011 calling for applications from the interested candidates fulfilling parameters of eligibility prescribed in the notification for awarding dealership of retail outlet of the respondent corporation.

3.2. On 24.11.2011, addendum and corrigendum notification was issued. In the said addendum notification, retail outlet location at Sultanabad was also notified at Sl.No.7. The said location was reserved for women from open category. Petitioner and the 4th respondent responded to the said notification. In the selections finalized by the respondent corporation, petitioner was shown at no.2 and 4th respondent was shown at No.1. The selection procedure envisages allocation of marks to various attributes. As per the notification, 35 marks are earmarked towards ownership ('A' site)/a long lease of 19 years and 11 months ('B' site) or if there is 'firm offer of land for purchase ('A' site)/long lease ('B' site), it shall carry 25 marks on land proposed for

establishing the retail outlet. Against this heading, petitioner was awarded '0' marks. Aggrieved by the awarding of '0' marks and thereby not selecting the petitioner and selecting the 4th respondent, petitioner instituted W.P.No.25160 of 2012.

4. Writ petition was contested by the respondent corporation as well as 4th respondent. It is not in dispute that petitioner was not awarded marks under the parameter 'land and infrastructure'. On consideration of relevant clauses of notification and guidelines, the writ petition was allowed. Learned single Judge noticed that in addition to the ownership of the land, provision is also made under the heading of 'firm offer of land' and under this heading, the offer made by the petitioner satisfied the requirement and, therefore, petitioner ought to have been awarded appropriate marks under this heading and not awarding marks vitiated the selection process. Consequently, directions were issued to award marks under the parameter 'land and infrastructure' treating the offer of petitioner as the 'firm offer of land' and revise the merit panel.

5. It is useful to extract relevant observation of learned single Judge. They read as under:

".....The requirement of Clause 14(b) Note (iii) of the Guidelines will be satisfied if the applicant produces either of the two sets of the documents mentioned in Note (iii) (i) or Note (iii) (ii). It is not necessary that both sets of documents need to be produced by the applicant for treating his offer under the head 'firm offer of land'. Indisputably, the petitioner has satisfied the requirements of filing of notarized affidavit of her father in law, who is admittedly the owner of the property, and also filing khatuni, which is one of the prescribed documents under Note (iii)(i) of Clause 14(b) of the Guidelines. Therefore, the petitioner is entitled to award of marks under the parameter 'land and infrastructure', treating the offer as the 'firm offer of land' for which the maximum marks of 25 are prescribed. The respondent Corporation has, therefore, committed a serious error in awarding '0' marks to the petitioner under this parameter."

6. The respondent corporation initially challenged the decision of the learned single Judge in WA (SR) No. 96336 of 2014. It was contended that finding was based on procedure for selection of candidate for awarding of Kisan Seva Kendra Dealership, whereas this unit does not come under such scheme and is governed by separate guidelines.

Having regard to the said assertion, while granting liberty to the respondent corporation to approach the learned single Judge, Division Bench dismissed the writ appeal at the SR stage.

6.1 Consequent to the dismissal of the Writ Appeal, respondent corporation filed Review W.P.M.P.No.31094 of 2015. It was contended that the guidelines noted by petitioner relate to Kisan Seva Kendra outlets; that the subject site is identified as “A” site; that “A” site should have firm commitment/offer for purchase; that the advertisement and guidelines mandate giving of land for establishing outlet for sale; and that offer from the owner of the land was only for long lease.

6.2. With this line of argument, respondent-corporation persuaded learned single Judge to review the earlier decision and to dismiss the writ petition. Learned single Judge held as under:

“In the above facts and circumstances, this Court is of the opinion that the writ petition was allowed based on the set of guidelines pertaining to Kisan Seva Kendra, which have no relevance for the regular Retail Outlets governed by the separate set of Guidelines which were discussed above. As respondent no.1 was neither the owner of the land nor secured the ‘firm offer’ of sale from its owner i.e., her father-in-law, and instead he has only offered to give site on long lease, she is not entitled for award of marks under the head ‘land and infrastructure’.”

7. Learned counsel for the petitioner asserted that in terms of the notification dated 24.11.2011, there was no requirement for the petitioner to offer the subject land for sale as condition for awarding of dealership and as per the notification, even offer to grant lease is sufficient for consideration of the site offered by the petitioner and in terms of the requirement under the heading of ‘land and infrastructure’, petitioner is entitled to awarding of marks. Learned counsel, therefore, contended that the order in the writ petition was in accordance with the guidelines and the notification dated 24.11.2011.

8.1. Learned senior counsel Sri R.Raghuandan Rao submitted that the subject site is identified as “A” site. The petitioner was not fulfilling the requirements of notification read with clause 14(b) of the guidelines. As per the note appended to notification dated 24.11.2011 read with column-5 of the table in the notification, a candidate applying for awarding of

dealership on “A” site must offer the concerned land for sale to the respondent corporation. Clause (b) under the heading ‘important notes’ of the notification dated 24.11.2011 ‘mandates the offer to sale the land’, whereas no such offer was made by the petitioner and the affidavit furnished by the father-in-law of the petitioner only offers to grant land on long lease. Thus, petitioner is not entitled to awarding of marks under the heading of ‘land and infrastructure’. He, therefore, submits that learned single Judge has come to correct conclusion in the review petition.

8.2. Mr. Raghunandan Rao sought to implore that the policy of respondent corporation to purchase the land offered for establishing retail outlet and not to accept lease is in the best interest of the respondent Corporation having regard to past experience. He submits that it is always open to the corporation to adopt suitable measures in the best interest of the corporation.

9. In order to appreciate rival contentions, it is useful to extract the relevant entries i.e., col.5 & 6 of notification, relevant clause under the heading ‘important notes’ in the notification dated 24.11.2011 and clauses 13 and 14 (b), of the guidelines. They read as under:

10.1. Columns 5 & 6 of notification:

Sl. No.	Name of location	Revenue District	category	Type of dealership	
				Whether IOC expects the applicant to have arrange suitable land for the dealership and give the same to IOC on sale/long lease	Whether IOC expects the applicant to have/ arrange suitable land for the dealership but need not be given to IOC on lease/sale. In this case it is expected that the applicant will also provide all other fixed facilities required for the dealership at his cost.
(1)	(2)	(3)	(4)	(5)	(6)
7.	Sultanabad (towards Peddapally)	Karimnagar	Open(W)	YES	No

10.2. 1. Important notes:

(a) xxxx

(b) Location against which “YES” has been marked under col.(5) of the above table the eligible candidate who have readily available site suitable for setting up retail outlet or having a firm commitment/offer from the land

owner for purchase of site should furnish along with the application the details of such land to be made available to IOC, that the applicant owns or can arrange on firm offer which can be made available to IOC for retail outlet. The candidate will not be given opportunity to offer any other land subsequently. For this purpose the land owned by the family members (as defined in para 2 e(i) and (ii) would also be considered as belonging to the applicant in such case the applicant has to submit notarized affidavit by all owners/ co-owners (if all owners/ co-owners are within family) refer part 14 of brochure for details such applications if selected will have to offer the land (including in the application) to the corporation at the mutually agreed terms and conditions within a period of two months. From the date of letter of intent (LOI) for the purpose of development of RO. If an applicant after selection is unable to provide the subject land to IOC at mutually agreed terms within a period of two months IOC will have the right to cancel the allotment of dealership made to the applicant. The suitability of the land will be decided by IOC, however, there is no commitment from IOC for taking the offered land from the applicant. ”

10.3. Relevant entries of Brochure:

10.3.1.: **Clause 13.3 - ELIGIBILITY:**

10.3.2.: **Clause 13.3.1 - NORMS FOR EVALUATING THE CANDIDATES:**

(ii) **Allocation of marks on various parameters:**

Parameter	Sub-heads	Description	Max Marks	Evaluation
Capability to provide land and infrastructure/ facilities (Max.35 marks applicable to individual and non-individual	Suitable land for retail outlet	“A” site Having clear title to land “own land” /regd. Sale deed as on date of application.	35	Based on verifying the documents submitted and evaluation of committee as explained in Pt.14 and 15 below.
		“B” site Having clear title to land “own land” / Regd. Sale deed / having land on long lease (regd.) for a minimum period of 19 years 11 months as on date of application	35	
		“A” Site Having “firm offer” of land for purchase.	25	
		“B” site Having “firm offer” of land for purchase / long lease.	25	

Clause 14 . PREFERENCE FOR APPLICANTS OFFERING SUITABLE LAND

(a) xxxxx

(b) Firm Offer of land:

In addition to land covered under para (a) above, applicants also have the **option to offer land with firm offer of land from land owner/s. Such offer from land owner/s should be in the form of notarized affidavit giving details of land, khasra/khatauni no., name of village/location, ownership details etc.,**

NOTE:

(i) However, if an applicant, after selection on the above basis, is unable to provide the land indicated in the application within a period of TWO months from the date of Letter of Intent (LOI), IOCL will have the right to cancel the allotment of dealership made to the applicant. The suitability of the Land will be decided by IOCL. In this case IOC will provide all fixed facilities at its cost **at the site so taken from the applicant on purchase/long term lease basis.** However, there is no commitment from IOCL for taking he offered Land from the applicant.

(ii) Wherever IOC has advertised that **it also expects the applicant to provide suitable land at the advertised location to IOC on sale/long lease, their willingness to transfer such land to IOC should be clearly indicated in the**

application under Para 12(f). Considering the location of the land from the point of view of suitability from technical and commercial angle and rates applicable to IOC, **applicants willing to transfer the land on ownership/long term lease to IOC would be considered.** However, there is no commitment from IOC for taking the offered Land from the applicant.

(iii) Documents For Offered Land The applicant should furnish at least one of the following document (in support of ownership) which should have been issued/revalidated on or after date of advertisement:

(i) Khasra/Khatuni or any equivalent revenue document or certificate from revenue official confirming the status of ownership of the land. Or (ii) Registered sale deed/Registered lease deed or any other type of ownership transfer deed/document in favour of applicant.

11.1. Insofar as the subject retail outlet is concerned, column-5 under the heading of 'type of dealership' is applicable. Column-5, at the cost of repetition, reads as under:

“Whether IOC expects the applicant to have arrange suitable land for the dealership and give the same to IOC on sale/long lease.”

11.2. Under this column, against entry 7, it is marked as **“YES”**.

11.3. Clause (b) under the heading of 'important notes' explain that if the advertisement indicates **‘YES’** against column no.5, the candidate should furnish, along with the application, the ***details of such land to be made available to Indian Oil Corporation that the applicant owns or can arrange on firm offer which can be made available to IOC for retail outlet.*** In case the land is owned by the family members, this note requires, the applicant should submit notarized affidavit by all owners/co-owners and such application, if selected, would have to offer the land ***to the corporation at the mutually agreed terms and conditions.***

11.4. Relevant entry in clause 14 of brochure for selection of dealers for regular and rural retail outlets (brochure) and notes appended there under also envisage taking the land on lease.

12. Strong emphasis is made on classification of site as “A” site and such classification requires offering of land for sale. Table in Cl.13 of brochure, extracted above, would show that land for retail outlet is classified as “A” site and “B” site and two modes of offering the land is prescribed. In the first mode, if applicant owns land having clear title or

has a registered sale deed in his favour, such land is classified as “A” site. If the applicant is having land on long lease of minimum of 19 years and 11 months such site is classified as “B” site. Both carry maximum of 35 marks. In the second mode, if applicant is having firm offer of land for purchase, it is classified as “A” site and if the applicant is having firm offer of land for long lease, it is classified as “B” land. This category of land carries maximum of 25 marks. The distinction between these two modes is land owned/having registered long lease against firm offer of sale/long lease. The second mode suffers disadvantage by 10 marks less. In both modes, provision of lease is envisaged and leased land also entitled to awarding of marks 35 or 25 as the case may be.

13. No provision in the guidelines or the notification is brought to our notice which prescribes classification of subject site only as “A” site, thus eliminating land on lease. On the contrary, extracted column 5 of notification prescribes offering of land on lease.

14. A bare reading of the above extracts clearly point out that there was no indication given in the advertisement that the applicant for dealership at Sultanabad has to offer the land shown for establishment of retail outlet for sale to the respondent corporation. On the contrary, against column-5 the indication is clear, i.e., **sale/long lease**. Even in clause (b) under the heading of ‘important notes’, nowhere the word ‘sale’ is used. On the contrary, clauses 13 and 14(b) of brochure, heavily relied by learned senior counsel, also provides taking the land on lease.

15. It is not in dispute that on behalf of petitioner, owner of the land, who is none other than the father-in-law of petitioner offered the subject land on long lease. Thus, petitioner is entitled to consideration of land offered by her under “B” site category in the second mode of offer. Non consideration was erroneous.

16. It appears guidelines were thoroughly revised in the year 2014. The subject dealership relates to the year 2011. Two separate sets of guidelines were notified in the year 2011 concerning the two categories of

dealership. There is not much of a difference in the guidelines concerning general retail outlets and outlets under Kisan Seva Kendra Scheme.

17. Though heavy reliance was also placed on clause 14 of the brochure, even this clause do not come to the rescue of the respondent corporation. It is appropriate to note that clause 14 deals with 'preference for applicant offering suitable land'. Thus, it envisages preference and does not exclude from consideration a land offered for lease. Use of word preference only mean that if there are two applicants coming out with same offer and secured same marks, preference will be given to applicant who offered land for sale. Heading of sub-clause (b) of clause 14 of brochure is 'firm offer of land'. On a careful reading of this clause also, it does not envisage 'firm offer of sale' as mandatory requirement by an applicant on the land identified by the prospective applicant for establishment of retail outlet as sought to be contended. On the contrary, this clause also talks about taking the land on long term lease basis. The burden of song to persuade learned single Judge to review his decision was on the ground of classification of site as 'A' site and notification prescribing 'firm offer of sale'. The respondent corporation was reading into something which did not exist.

18. It is also seen from the order in the review petition that while concurring with the submissions made by the review petitioner, learned single Judge straight away allowed the review petition and dismissed the writ petition. Whenever the Court is convinced that earlier decision was not correctly decided and there was error apparent on the face of the record, Reviewing Court should set aside judgment under review and restore the writ petition for fresh hearing, but straight away cannot dismiss the writ petition also while allowing the review petition.

19. The respondent corporation cannot fall back on its intention not to take the land offered on lease but to buy, when advertisement does not reflect its intention and advertisement clearly specifies to offer the land on long lease also and father-in-law of the petitioner offered the land on long lease. An unwritten and unspecified condition, which is contrary to the

specific clauses in the advertisement and brochure cannot be relied upon, post facto and without putting on notice the prospective applicant, to deny the eligibility on that ground, when the prospective applicant is otherwise qualified.

20. During the course of arguments, learned counsel for the petitioner also fairly submitted that even though initially father-in-law of the petitioner offered the land on long lease, if required, petitioner is willing to offer the land for sale to the respondent corporation. This should have put the controversy to rest, but the corporation apparently keen to fit the litigation.

21. For all the above stated reasons, the order under appeal is not sustainable and is accordingly set aside. Accordingly, the writ appeal is allowed. The respondent corporation is granted further time of two months to undertake the review of selections and revise the merit panel for allotment of dealership in Sultanabad of Karimnagar district by duly considering the land offered by the petitioner to establish retail outlet at Sultanabad in Karimnagar District for awarding of marks under the heading 'land and infrastructure'.

Miscellaneous petitions if any shall stand disposed of. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 23.06.2016

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