

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19906 of 2013
Date of Decision:28.01.2016

Swati

. . . .Petitioner

Versus

Indian Oil Corporation Limited

. . . . Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.A.K. Chopra, Sr. Advocate, with
Mr.Sushil Jain, Advocate,
for the petitioner.

Mr.Ashish Kapoor, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J.

The respondent issued an advertisement on 29.3.2012 for appointment of a dealer for its retail outlet (petrol pump). The petitioner applied under Open (W) category at the location between KM Stone 94-97 on SH-11. She was called for an interview on 11.7.2012 at Panipat. The L-II committee dealt with the merit of the candidates in which the petitioner ranked Ist and was duly informed vide letter dated 6.3.2013. The respondent also issued a Letter of Intent (LOI) to the petitioner in which it was specifically mentioned, in Clause 17.1, that the dealership would be offered to a candidate at Sr. No.1 in the merit panel, on the basis of the interview, after necessary field verification, and then the Letter of Intent would be issued. It was further provided in Clause 9 of the LOI that it would

stand automatically withdrawn and cancelled, if it is found that the candidate had suppressed and/or misrepresented any material facts in her application submitted for award of subject dealership or is convicted for any criminal/economical offence involving moral turpitude. In order to comply with the terms and conditions of the LOI, the petitioner submitted part of land, comprised in Khasra No.57//8, 57//9, 57//12/1 and 57//13/1 at Village Mohana [for short 'the land in question']. This offer was made by the petitioner vide letter dated 7.5.2013, which was inspected by the respondent on 8.5.2013 and found suitable. The petitioner thereafter, entered into a lease agreement with one Brijindra Singh on 13.5.2013 for a period of 30 years in respect of the land in question but the respondent raised an objection regarding the land in question on 27.5.2013 alleging that the committee, who had visited on 8.5.2013 could not finalize its report in the absence of the demarcation of land in question and that the portion of the land in khasra numbers, which was subject matter of the lease, was not clear. Thus seven days time was granted to the petitioner to show the correct demarcation of the leased land. Immediately thereafter, the petitioner applied to the Tehsildar on 29.5.2013 for seeking a direction to Patwari to demarcate the land in question. After it was demarcated and a site plan dated 31.5.2013 was prepared by Tehsildar, Sonapat, showing the area in possession of the petitioner, it was submitted by the petitioner with all relevant documents, to the respondent i.e. the site plan, aks shajra etc. to remove the doubts of the respondent about the land in question. The petitioner also submitted the affidavits of the co-sharers that they have no objection regarding the land in question but the respondent vide its

letter dated 17.8.2013 cancelled the LOI issued in favour of the petitioner on the ground that according to Clause 1 of the LOI, the offer of the plot of land along with all statutory permissions were to be submitted within two months and since the petitioner had requested vide letter dated 5.3.2016 to extend the time for further one month to submit the said documents, therefore, she has violated condition No.1 of the LOI and thus, the LOI was cancelled.

The case set up by the respondent is that the petition has to be dismissed for nonjoinder of necessary parties because LOI dated 12.9.2013 has already been issued to Smt. Krishna Devi w/o late Sh. Virender Singh, prior to the issuance of notice in this case and that the period of two months stipulated in Clause 1 of the LOI has to be followed in its letter and spirit, which has been violated by the petitioner. Reference has also been made to the judgment of the Supreme Court in the case of **“K. Vinod Kumar Vs. S. Palanisamy and others”** AIR 2003 (SC) 3171.

Learned counsel for the petitioner has submitted that the impugned order was passed on 17.8.2013 and after collecting all the relevant documents, the writ petition was filed on 7.9.2013, which was listed on 9.09.2013, in which notice of motion was issued on 25.9.2013, therefore, it cannot be alleged that the necessary party was not impleaded because when the writ petition was filed, the LOI was not allotted to Smt. Krishna Devi w/o late Sh. Virender Singh. It is also submitted that the petitioner has complied with the provisions of Clause 1 of the LOI as the land was offered on 7.5.2013 within a period of two months of the issuance of LOI which was issued on 21.3.2013. It is further submitted that even the judgment relied upon by the respondent is in their favour because it

only talks of offering suitable land within a period of two months from the date of selection and the petitioner had submitted the demarcation report well within a period of seven days as provided, vide letter dated 27.5.2013. As regards the extension of time sought vide letter dated 5.6.2013, it was only for the purpose of providing more documents, if required.

I have heard both the learned counsel for the parties and perused the record.

The facts are not much in dispute. As per the meeting of L-II committee, the petitioner secured 33 out of 40 marks whereas, Krishna Devi had secured 25.4 marks and as such she was way ahead of her in the matter of qualification for the allotment of the retail outlet. The respondent has referred to note (i) of Clause 14(b) of the Brochure of Selection of Petrol/Diesel Retail Outlet Dealers issued by the respondent-company, which read as under: -

“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), 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. 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 IOC for taking the offered land from the applicant.”

Clause 1 of the LOI is also relevant as it has been relied upon by the respondent, which read as under: -

“You will have to make available a suitable plot of land at location “between KM Stone 94 to 97 on SH-11, Dist. Sonapat, State Haryana, for development of aforesaid Retail Outlet, title being clear and marketable within a period of 2 months.”

It is also not in dispute that the land offered by the petitioner measuring 2 kanal 9 marla, as per the lease deed, was 49/453rd share of 22 kanal 13 marla comprised in Khewat No.36 Min 37, 38, Khata No.42, Min 43, 44 comprised in Rectangle and Killa No.57//8 (8-0), 9 (6-11), 12/1 (3-18), 13/1 (4-4), situated at Village Mohana, Tehsil and District Sonapat. The petitioner had admittedly offered the said land to the respondent in terms of Note (i) of Clause 14(b) of the Brochure i.e. “within a period of two months” as the LOI was issued on 21.3.2013 and two months were to expire on 20.5.2013 but in between on 7.5.2013, the land in question was offered by the petitioner but on 27.5.2013, i.e. after the expiry of the cut off date of 20.5.2013, the petitioner was informed by the respondent that she should submit the demarcation of the leased land within seven days. Immediately on 29.5.2013, the petitioner applied to Tehsildar, Sonapat for the demarcation of the aforesaid land, which was got demarcated by the Tehsildar, Sonapat on 31.05.2013 and an *aks shajra* was also prepared, which was submitted by the petitioner in time. Thus, the petitioner had duly complied with the requirement of letter dated 27.5.2013. It is an altogether different thing that the petitioner had also asked for

extension of time to offer some other land, which does not mean that the petitioner did not offer the land in question within the prescribed period. The facts, thus, are sufficient to speak for themselves in favour of the petitioner as the petitioner cannot be attributed with any kind of default, which would visit her with the penalty of cancellation of her dealership.

In view of the aforesaid discussion, I find merit in the present petition, hence the same is allowed and the impugned order is hereby quashed.

28.01.2016*Vivek***(RAKESH KUMAR JAIN)
JUDGE**