

CWP No.2522 of 2016 (O&M)

[1]

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

**CWP No.2522 of 2016 (O&M)
Date of decision:21.04.2016**

Rupinderpal Singh

...Petitioner

Versus

The Bharat Petroleum Corporation Ltd. and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.S.Sidhu, Advocate,
for the petitioner.

Mr. Raman Sharma, Advocate,
for respondent Nos.1 and 2.

Mr. Raman B. Garg, Advocate,
for respondent No.3.

Rakesh Kumar Jain, J. (Oral)

All the three National Oil Companies, namely, Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited issued advertisement dated 26.10.2013, published in "The Tribune", inviting applications for the purpose of allotment of Liquefied Petroleum Gas (LPG) distributorship under various categories and locations specified in the advertisement for the candidates belonging to different categories in the State of Punjab. One of the locations for which the LPG distributorship was offered was of Bharat Petroleum Corporation Limited (hereinafter referred to as the "BPCL") at Gidderbaha in District Sri Muktsar Sahib under Urban-Rural category as per

CWP No.2522 of 2016 (O&M)

[2]

the Marketing Plan 2013-2014. The petitioner applied for allotment of the LPG distributorship in the open category as per the guidelines framed by the Ministry of Petroleum, which are known as “Guidelines for Selection of Regular LPG Distributors issued in August 2013” and the relevant portion of the said guidelines is reproduced as under:-

“(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 25m x 30m (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 23m x 30m 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 connecting 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 owners/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.

CWP No.2522 of 2016 (O&M)

[3]

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 godown as on the last date of submission of application as specified in the advertisement or corrigendum (if any), the details of the same can also be provided in the application.”

As per the procedure, after scrutiny of the documents, 22 candidates including respondent No.3 and the petitioner were in fray in the draw of lots, which was held on 06.11.2014, in which respondent No.3 was successful, who has been issued proposed Letter of Intent (LOI) for the LPG distributorship at Gidderbaha in which it was provided that *“you should provide a godown for storage of 8000 Kg (minimum) to 15000 Kg (maximum) of LPG filled in cylinders at the plot of land bearing survey/Khewat No.46, Rect. No.56, Killa No.17/2 (0-8)m 18 (8-0), 19(5-10) offered in the application during the FVC”. The LPG storage godown should be approved and licensed by Petroleum and Explosives Safety Organization (PESO)”*.

It is not in dispute that the site of godown offered by respondent No.3 was within the municipal limits of Municipal Council, Gidderbaha, which is also depicted by way of a site plan attached as Annexure P-4 with this petition, in which it is mentioned that the site lies in rectangle No.56, Killa No.18 of village Gidderbaha-I. According to the petitioner, the Fire Officer, Gidderbaha, after inspecting the spot, certified that the land of the godown is situated within the municipal limits of Municipal Council, Gidderbaha. Even the Municipal Council, Gidderbaha

CWP No.2522 of 2016 (O&M)

[4]

issued notice to respondent No.3 on 26.08.2015 that he has been constructing a godown for storage of gas cylinders on Peori Road (Near Warehouse Godown) in his own land without sanctioning of site plan from the Municipal Council, for which he had already been issued notices under Sections 195 & 195-A of the Municipal Act, 1911. So much so, some persons, namely, Manjit Singh, Tikka Singh and Jagsir Singh also filed a suit for permanent injunction, restraining respondent No.3 from storing gas cylinders/making godown for the purpose of storage of gas cylinder at the site in question, before the Civil Judge (Jr. Divn.), Gidderbaha, in which injunction was granted on 05.10.2015 with an observation that the land in question is located within the municipal limits, about which the action has already been taken by the municipal authorities. The Municipal Council, Gidderbaha also returned the Draft No.85057 dated 22.07.2015 worth ₹5,000/- dated 24.07.2015 submitted by respondent No.3 towards the fee for sanctioning of site plan.

The petitioner then made a representation to the Territory Manager, BPCL, Bathinda dated 29.10.2015 requesting that the LPG distributorship allotted to respondent No.3 be cancelled and may be allotted to him because the godown is being constructed by respondent No.3 within the municipal limits, which is in violation of the eligibility condition mentioned here-in-above. Since the representation of the petitioner was not answered one way or the another, therefore, the present petition has been filed.

After notice, the replies have been filed by respondent Nos.1 and 2 and respondent No.3 separately. The petitioner has also filed

CWP No.2522 of 2016 (O&M)

[5]

replication to the replies filed by respondents No.1 to 3 and respondent Nos.1 and 2 have also filed additional affidavit of Rajesh Kumar S/o Kanshi Ram, Territory Manager (LPG), BPCL, Bhatinda today in the Court, which is taken on record.

Counsel for the petitioner has submitted that the allotment of the present LPG distributorship is governed by the Guidelines for Selection of Regular LPG Distributors, issued in August 2013, in which Clause 11 provides as under:-

“11. FURNISHING OF FALSE INFORMATION

If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to have been suppressed/misrepresented/incorrect or false affecting eligibility, then the application/candidature is liable to be rejected without assigning any reason.

In case the selection of the candidate is rejected after the FVC or after issuance of LOI but before issue of Letter of Appointment, then the 10% of the security deposit deposited by the selected candidate before FVC will be forfeited.

In case the selected candidate has been appointed as a distributor and the allotment is liable to be cancelled, then the distributorship will be terminated along with forfeiture of security deposit remitted by the candidate.

In such cases, the selected candidate/distributor will have no claim whatsoever against the respective Oil Company.”

According to the petitioner, respondent No.3 has deliberately given false information about the availability of the land in his own name for the purpose of construction of godown for storage of gas cylinders, which was located within the municipal limits of Municipal Council, Gidderbaha, which should have been within 15 Kms. from

CWP No.2522 of 2016 (O&M)

[6]

municipal/town/village limits of the location offered as per Clause 3(a) of the advertisement (Annexure P-1) dealing with the basic facilities required for operation of LPG distributorship. It is further submitted that respondent Nos.1 and 2 have erred in allowing respondent No.3 in shifting the godown by offering an alternative land in terms of letter No.P-43011/16/2015-IOC dated 30.04.2015, which was written by the Under Secretary to the Government of India to the Director (Marketing), IOCL/BPCL/HPCL. The said letter has a reference of a letter dated 15.04.2015, which has also been written by the same authority, referred to above, in which it is categorically mentioned that *“however, such conditions should not be unqualified. First and foremost, the land originally offered in the application should meet all the specifications as laid down in the advertisement and on the basis of which LOI has been issued or proposed to be issued. If the land offered in the application does not meet the specifications laid down in the advertisement then the request of the candidate should not be entertained”*. Ultimately, the reference has been made to the letter No.SL/VKM/1702 dated 15.07.2015, which was written by the General Manager (LPG-Sales), IOCL to the Director (LPG), Government of India, Ministry of Petroleum of Natural Gas, New Delhi on the subject of “opportunity to offer land in response to the advertisement-flexibility in guidelines-regarding”. The relevant portion of the said letter is reproduced as under:-

“Regular LPG Distributorship Selection Guidelines (March 15) and RGGLV Selection Guidelines (Dec 14) provide that once the candidate is selected and offered LOI based on the field verification (FVC), the LOI holder would require constructing the LPG godown and showroom facilities at the same premises as mentioned in the application from or at the alternate land offered by the candidate as

CWP No.2522 of 2016 (O&M)

[7]

physically verified by the FVC committee and found suitable. The details of the land on which he/she is to construct godown/showroom are specified in the LOI.

In view of the instructions received from MOP&NG as per above referred letter to give opportunity to the selected candidate (LOI holder) to offer alternate (better) land for construction of godown/showroom facility, Industry Working Group deliberated on the issue in depth. The Guidelines for Selection of Regular LPG Distributorship and Guidelines for Selection of RGGLV shall be revised by suitable amendments incorporating conditions that take into account factors like security/safety consideration, better title (owned vs. lease) and economic feasibility of a particular piece of land.”

According to the petitioner, these guidelines were dealing with the amendment in Regular LPG Distributorship Selection Guidelines (March 15) and RGGLV Selection Guidelines (Dec 14) and have nothing to do with the Guidelines for Selection of Regular LPG Distributors issued in August 2013, which are regulating the appointment of LPG distributorship in the present case. He has also refereed to the actual letter dated 15.07.2015, wherein the amendment has been made by inserting Clause 4.2, which reads as under:-

“4.2 Insert the following para in place of the above deleted para:
“If the land offered by the candidate in the application or the alternate land offered by the candidate at the time of FVC meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, then the LOI holder can offer an alternate/new land for construction of godown/showroom, in the advertised location, which will be considered on the grounds of enhanced security/safety, better title (owned instead of leased), convenient location, lower operating cost etc.”

All these letters have been mentioned by the petitioner only

CWP No.2522 of 2016 (O&M)

[8]

because of the reason that the respondents have taken a stand that the construction of the godown by respondent No.3 has been allowed to be shifted by letter Annexure R-4 dated 07.12.2015, relying upon the letter No.SL/VKM/1702 dated 15.07.2015, which is not applicable to the present case.

Counsel for respondent No.3 has submitted that he has not violated any specification and has already raised construction of the godown at the alternate site by spending huge amount as per the approved LOI issued by the BPCL.

Counsel for respondent Nos.1 and 2, while defending their action, has submitted that the petitioner has been wrongly reading Clause 3(a) of the advertisement as he is sticking to the location of the LPG godown within 15 Kms. from the municipal limits, whereas it was an additional condition, otherwise the godown could have been constructed within the municipal limits. It is further submitted that the letter dated 15.07.2015 much-less the instructions are not applicable only to the Regular LPG Distributorship Selection Guidelines (March 15) and RGGLV Selection Guidelines (Dec 14) but also applies to all the LPG distributorship guidelines including the Guidelines for Selection of Regular LPG Distributors issued in August 2013. It is also submitted that the consent has been given for construction of the godown by the Chief Controller of Explosives, Chandigarh and has also tried to suggest that the godowns can be constructed within the municipal limits, as has been done by the Town and Country Planning Departments of Haryana, Union Territory, Chandigarh and the GAMADA, SAS Nagar, Mohali. In support

CWP No.2522 of 2016 (O&M)

[9]

of his submissions, he has also relied upon a decision of the Supreme Court in the case of **Shailesh Dhairyawan vs. Mohan Balkrishna Lulla**, 2015 (11) Scale 684.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The issue involved in this case is about the appointment of a LPG distributorship at a particular location in the State of Punjab. The terms and conditions have been provided in the brochure, which has been attached by the petitioner as Annexure P-10 with his replication, in which the eligibility criteria has been given in Clause 6. This Court is concerned only with Clause 6(vii) of the Eligibility Criteria, which provides that the applicant, desirous to apply for allotment of LPG distributorship, should own a plot of land of minimum dimensions 25m x 30m (within 15 Kms. 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. It is provided that if the plot of land for construction of godown is not meeting the minimum dimensions of 25m x 30m, then it will not be considered. Admittedly, respondent No.3 had offered the plot which was located within the municipal limits of Municipal Council, Gidderbaha. There is no provision from which this Court could even imagine that the condition of distance of within 15 Kms. from the municipal/town/village limits was an additional qualification and the applicant could have his land within the municipal/town/village limits for the purpose of construction of the godown for storage of gas cylinders. It is merely an imagination on the part of respondent Nos.1 and 2 or for the purpose of defeating the case of

CWP No.2522 of 2016 (O&M)

[10]

the petitioner, this ground has been taken by them.

Insofar as the offer of alternate land by respondent No.3 is concerned, these letters of course have been placed on record by respondent Nos.1 and 2 but those letters or instructions are not applicable to the present case because those letters/instructions are applicable to the Regular LPG Distributorship Selection Guidelines (March 15) and RGGLV Selection Guidelines (Dec 14), whereas the Court is dealing with the Guidelines for Selection of Regular LPG Distributors issued in August 2013, which have not even once referred to in any of these letters, attached by respondent Nos.1 and 2 with their reply. It is categorically mentioned in Clause 11 of the Guidelines for Selection of Regular LPG Distributors issued in August 2013 that in case any false information is furnished by any of the candidates who has even been given the distributorship, then the distributorship in his favour shall be rejected along with forfeiture of the security deposited by him.

In such a situation, once this Court is satisfied that there was a false information or declaration by respondent No.3 at the time when he had filed the application to respondent Nos.1 and 2 for the purpose of allotment of LPG distributorship that he was having the land for construction of godown as per Clause 6(vii) of the Guidelines for Selection of Regular LPG Distributors issued in August 2013, it should have been cancelled by respondent Nos.1 and 2 at the time of Field Verification Credentials (FVC) but inspite of cancelling the allotment of LPG distributorship, LOI has been issued to respondent No.3. The respondents did not answer the representation made by the petitioner to the Territory Manager, BPCL,

CWP No.2522 of 2016 (O&M)

[11]

Bhatinda and hence, forced him to file the present petition.

Be that as it may, the fact remains that neither the letter nor instructions contained in letter No.SL/VKM/1702 dated 15.07.2015 are applicable insofar as the case of respondent No.3 is concerned nor it has been denied by the respondents that the land offered by respondent No.3 for the purpose of construction of godown for storage of LPG cylinders was within the municipal limits of Municipal Council, Gidderbaha, which was in direct conflict of Clause 6(vii) of the Guidelines for Selection of Regular LPG Distributors issued in August 2013. Therefore, the appointment of respondent No.3 as LPG distributor by respondent Nos.1 and 2 deserves to be cancelled.

I accordingly allow the present petition and cancel the allotment of LPG distributorship in favour of respondent No.3. Further, respondent Nos.1 and 2 are directed to hold a fresh draw of lots excluding respondent No.3 and all those who have offered the land for the purpose of construction of godown for storage of gas cylinders situated within the municipal limits. The entire exercise shall be done by respondent Nos.1 and 2 within a period of one month from the date of receipt of certified copy of this order.

April 21, 2016
vinod*

(Rakesh Kumar Jain)
Judge