

LPA no. 2122 of 2014 (O&M) 1

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

LPA no. 2122 of 2014 (O&M)

Date of Decision :12.07.2016

Gulshan Chugh

....Appellant(s)

Versus

Union of India and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJ MOHAN SINGH**

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Mr. Jagdish Manchanda, Advocate for the appellant
Mr. Ashish Kapoor, Advocate for respondent no.2
Mr. R.S.Bains, Advocate for respondent no.3

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned
Single Judge dated 23.9.2014.

The respondent – Corporation issued an advertisement on
9.11.2007 inviting applications for LPG distributorship at various places
including the site against which the present appellant applied. He was
declared successful and placed at Sr. no. 1 in the merit list, but
subsequently, discarded from the process of selection on the ground that the
land that he has offered for construction of godown was in conflict with
Punjab Schedule Roads and Controlled Area (Restriction of Unregulated

Development) Act, 1963 and thus not conducive for construction of a

godown. His marks were appropriately reduced resulting in selection of respondent no.4. This action of the respondent – Corporation was challenged by the appellant by way of CWP no. 5163 of 2012 resulting in the impugned judgment.

It has been contended by the learned counsel for the appellant that there was no mention of the land being clear from all statutory conflicts including the Punjab Schedule Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963 and thus he was caught unawares. He further states that alongwith his application he has submitted an affidavit which suggested that there was other land available with his lessor to be made available to the appellant for construction of godown.

Vide letter dated 22.12.2010 the Indian Oil Corporation rejected the claim of the appellant on the ground of mis-representation of facts towards capability of providing infrastructure. A specific reason was assigned that the site offered by the appellant was hit by the provisions of Punjab Schedule Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963.

In the same breath the respondent – Corporation had written that the appellant was given sufficient opportunities and time during the period from January, 2010 to July, 2010 to prove his credentials as stated in

the application form which the appellant failed to prove. This fact is

seriously disputed by the appellant who contends that no such opportunities were given rather on receipt of this application in December, 2010 he immediately got another lease deed executed of some other land adjacent to the one which he had offered which was free from impact of the Punjab Schedule Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963. He, thus, contends that looking at it from any angle once he had offered an alternate site it was incumbent upon the corporation to accept his offer rather than dis-entitle him to dealership on the ground of mis-representation of facts.

Apart from this it has been contended that it is subsequently that the respondent – Corporation has inserted a clause in the instructions regarding the land being free from provisions of Punjab Schedule Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963. On the strength of this, it is sought to be contended that once the instructions do not specify as such when the appellant made an application he could not be bound to such conditions, particularly, when instantaneously on receipt of the rejection letter, he had offered alternate land.

This argument on the face of it sounds attractive in the first instance but the learned counsel for the Corporation has brought to our notice clause 9 which may be extracted herebelow:-

THE SITE AS MENTIONED IN APPLICATION FORM:-

“The applicants who readily have suitable godown/land for construction of godown for storage of filled LPG cylinders and shop/land for construction of shop for LPG showroom for setting up of LPG distributorship or have a firm commitment from the land owner for purchase/lease or can arrange it are accordingly awarded marks. The details given in the application alone will be considered for this purpose and the applicant will not be given any opportunity to offer any other land subsequently (even at the time of interview). For this purpose, the land owned by the family members (as denied in multiple distributorship norm) would also be considered as belonging to the applicant subject to attaching the consent of the concerned family members.

After selection of the applicant, physical verification of the godown land/godown as well as the showroom will be undertaken. In the event it is found that there is variance in the details given in the application form and or the plot is not found suitable for the construction of godown or the godown is not approved by CCOE the allotment of the distributorship will stand automatically cancelled.”

Evidently, it is only the land disclosed and offered in the application which was to be considered for evaluating the merit of the candidates foreclosing any other option to offer alternate land. Once this was the condition the appellant ought to have been careful in offering the land for construction of a godown. His case, therefore, had to be considered in terms of a separate column regarding capability of arranging land which would entitle him to lesser marks.

We are, however, not inclined to agree with the observations made by the respondent that there was mis-representation by the appellant to disentitle him to dealership. The only thing that can be said is that the appellant even though had offered land in his application but the same not being conducive in view of the provisions of Punjab Schedule Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963 and the conditions foreclosing the option of offering any other alternate land would have to be accepted to be a good reason to oust him from selection.

Even if no mention is made in the form regarding the land being free from the effect of Punjab Schedule Roads and Controlled Area (Restriction of Unregulated Development) Act, the issue is that it would flow from the general perception of a prudent man that he cannot offer any land or site where construction of a godown is impermissible on account of

would also not be a in a position to grant a dealership. It is for this reason that a separate column exists in the form regarding capability of providing infrastructure if not already possessed, for which evidently assessment would be as per the selection parameters.

Lastly, the appellant sought to raise the allegations of mala fide that the respondent no.4 was related to some influential officer of the Corporation. We find that even though such assertion has been made in the writ petition, the person against whom mala fides have been alleged has not been impleaded as a party respondent in the writ proceedings thereby precluding the appellant to raise such a plea. We also notice that even though the appellant had with some vehemence stated that he had attached an affidavit (Annexure P-4) with the application suggesting availability of land other than the one offered by the appellant, the same has to be treated with some suspicion as the same is dated October, 2007 whereas the advertisement in this regard was made in November, 2007.

Hence, dismissed.

(Mahesh Grover)
Judge

12.07.2016
rekha

(Raj Mohan Singh)
Judge