

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.515 of 2014

In

Civil Writ Jurisdiction Case No.2862 of 2013

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Rajan Kumar Thakur s/o sri Nagendra Thakur resident of village & PO
Kamtaul, PS Kamtaul, District Darbhanga Appellant/s

Versus

1. The Hindustan Petroleum Corporation Ltd. Through Its Chairman Cum Managing Director, Having Office At 17 Jamshedji Tola Road, Mumbai 400020
 2. The Executive Director, Lpg Hindustan Petroleum Corporation Ltd. Hindustan Bhawan, 8, Shoorji Ballav Marg, Mumbai 400001
 3. The D.G.I.P.G.E.Z. Hindustan Petroleum Corporation Ltd. Purvanchal Bhavan 2nd Floor, Anandpur Offo, Em By-Pass Road Kolkata 700107
 4. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd. Patna Lpg Region, 6th Floor, Lok Nayak Jai Prakash Bhavan, Dak Bunglow Chowk, Patna 800001
 5. The Vigilance Officer, Hindustan Petroleum Corporation Ltd. Null, 6th Floor, Lok Nayak Jai Prakash Bhavan, Dak Bunglow Chowk, Patna 800001
 6. Sudesh Kumar Mishra S/O Sri Jagdish Mishra Resident Of Village & Po Kamtaul, Ps Kamtaul, District Darbhanga Respondent/s
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Appearance :

For the Appellant/s	:	Mr. Anil Kumar Jha Sr. Advocate Mr. Sanat Kumar Mishra Advocate
For the HPCL	:	Mr. Pankaj Advocate
For the Respondent No. 6:		Mr. D. K. Sinha Sr. Advocate Mr. Govind Mohan Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 01-02-2018

It is a desperate effort on the part of a failed candidate, who was not selected for appointment as a LPG distributor for a location known as Kamtaul in the district of Darbhanga under the physically impaired category. If the luck of the present appellant



failed him in the draw of lots and similarly his effort to knock down the selection of the selected candidate, who is Respondent No. 6 in the writ too, did not succeed, the appeal has been preferred.

The crux of the issue is whether the selection of private-respondent by the oil company, namely, Hindustan Petroleum Corporation Ltd. against the advertisement issued in the year 2011 could be held to be bad and contrary to the terms and conditions of the advertisement. The answer given by the Learned Single Judge is against the arguments made by the present appellant. The Learned Single Judge refused to interfere with the selected candidate's rights to be so appointed.

Argument of the learned senior counsel for the appellant is that the company could not have gone beyond the terms and conditions of the advertisement. In this case the issue was whether the selected candidate possessed land in his own name or whether the company committed serious breach of terms and conditions of the advertisement by accepting land, which stood in the name of father of the selected candidate.

The Learned Single Judge did not accept the line of arguments made before him by the present appellant because certain clarification and modification was already in place on the



issue of ownership of land in what is known as the Industry Record Note, dated 15.06.2010 and which became part and parcel of the guidelines issued for Manual of Selection in relation to the LPG distributorship.

No doubt, in the earlier advertisements and guidelines, a candidate was required to possess land in his own name and possession in the name of the family unit as a co-owner or coparcener was not contemplated or envisaged. This created a lot of problems in selection, and the companies decided to meet and modify the previous guidelines reflected in the Industry Note. The guidelines and clarification in fact was made more in conformity with the Hindu Law relating to ownership and succession.

The Learned Single Judge taking into consideration these facts and noticing that the Industry Record Note did contemplate even ownership or co-ownership by family members. Land offered as a family unit was also a valid offer, and the same could not be held to be in violation of the terms and conditions of advertisement. The Learned Single Judge concluded as under:

“On a consideration of the facts and circumstances of the case, this Court does not find any force in the submission of learned counsel for the petitioner. It is evident from the decision of this Court in the case of Ghanshyam Kumar (supra) in which also the HPCL was the respondent that its clear stand



throughout has been that the Industry Record Note dated 15.6.2010 immediately on its signing was adopted by the HPCL and it has been acting on the said Industry Record Note.

I further find that the HPCL is a Government company being a public sector undertaking of the Central Government which is duly incorporated under the Companies Act and thus it cannot be said that until and unless any decision taken by the company receives the approval of the Ministry of Petroleum and Natural Gas, such decision cannot be implemented by the company. No such provision in the Memorandum or Articles of Association of the company has been brought to the notice of this Court nor such provision is likely to be present in the Memorandum and Articles of the company. Thus, irrespective of the stand taken by the Indian Oil Corporation in Sri Shiv Kumar Singh (supra) the said stand cannot be enforced upon the H.P.C.L. which has taken clear stand that it has accepted the modifications/clarifications in the Industry Record Note dated 15.6.2010 with immediate effect.

Further it would be relevant, at this stage, to refer to clause 7 of the Industry Record Note dated 15.6.2010, which is in the following terms:-

“There are instances where the applicant/member of applicant’s family unit is the joint owner of a plot of land along with other members of the family (ancestral property). In the advertisement published



under para 4 (vii)- definition of „own“ it is stated as under.

“Own means having clear ownership title of the property in the name of applicant/family member of the „Family Unit“ as defined in multiple dealership/distributorship norm. In case of ownership/co-ownership by family member, consent letter from the family member will be required.”

Since there are many queries from the field on ownership/co-ownership by family member, it is clarified that, if the share of the land in the name of applicant/family member of the „Family Unit“ as defined in multiple dealership/distributorship norm, meets our requirement including the dimensions required and he has obtained consent letter from the other co-owners of the land (family members from joint family), the land should be considered for eligibility. If the consent letter from the other co-owners of the land is not attached as part of the affidavit, the same should be asked for when the letter is sent to the applicant in format 11 b.”

It is evident from the consideration of the said clause that it does not even modify the definition of the Family Unit as given in the brochure or in the advertisement nor does it make any change with regard to the requirement of having clear ownership title of the property in the name of the applicant/family member of the Family Unit. The said clause is in fact a mere clarification, as specifically stated therein, that the ownership



would include ownership/co-ownership in a joint family land, provided the consent letter from other co-owners of the land is obtained. All that the clarification says is that if the share of land in the name of the applicant/ family member of the Family Unit as defined in multiple dealership/distributorship norm, meets the requirement including the dimensions required and he has obtained consent letter from the other co-owner of the land, the land would be considered for eligibility.

In my view the same has to be treated as a clarification, as a co-ownership in a land particularly in the case of a joint family land cannot be said to be a lack of ownership or title. It means that the separate share of the coparcener of the joint family has not been divided by metes and bounds and thus it would be open to the respondents to have permitted such person with the consent of the other members of the joint family to have shown that land for the purpose of getting the dealership.

I am also of the view that the clarification is not such which changes the basic criterion laid down in the original Brochure giving the Guidelines regarding R.G.G.L.V. and is in fact in the form of clarification which could have been given at any stage. The said clarification even if not mentioned in the advertisement cannot have any adverse effect on the selection process.



I am further of the view that if the policy guidelines are laid down in a brochure by the authorities making the selection, then the mere fact that each and everything in the said policy guidelines are not incorporated in the advertisement does not mean that the authorities are disqualified from following the policy guidelines. As a matter of fact they are obliged to act in accordance with such policy guidelines. In such circumstances, it is for the applicants to make themselves familiar with any such guidelines.

I further find that the Industry Record Note dated 15.6.2010 also mentions the fact that clarification/modification shall form part of the Manual for Selection of RGGLV and the same having been immediately implemented by the HPCL there can be no occasion to exclude the same in the process of selection of RGGLV.

The petitioner is also not correct in stating that the Industry Record Note dated 15.6.2010 was incorporated into the Manual for Selection of RGGLV by the Ministry of Petroleum circulars dated 24.7.2012 and 3.10.2012, since the said circulars do not relate to the clarification made in clause 7 of the Industry Record Note dated 15.6.2010, rather they have further permitted the property belonging to parents and grandparents to be given for construction of godown, whereas the clarification dated 15.6.2010 merely permitted an applicant's share in joint family property to be taken into consideration.



So far as the question of land of the respondent No.6 having passage through public road or private road is concerned, the same was taken care of by the respondent No.6 by entering into a long term lease dated 15.3.2011 before the filing of his application and subsequently the sale deed dated 10.2.2012 has also been executed with respect to the said land and thus there was never any ineligibility of the respondent No.6 on that count.”

The reasoning and the interpretation, which has been given by the Learned Single Judge both to the facts and the law, are correct in our view and, therefore, the appellant cannot succeed in dislodging the private-respondent from the possession of a distributorship of LPG, which anyway had been rightly made and the said dealership is functional now for many a years. There is no reason for this Court to interfere with the decision of the Learned Single Judge.

The appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

skm/-

(Nilu Agrawal, J)

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.02.2018
Transmission Date	

