

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.37452 of 2017

ORDER:

Withdrawal of Letter of Intent vide proceedings Ref:No.SAO/Hayathnagar, dated 04.11.2016 issued by the third respondent Corporation is under challenge in the present writ petition.

2. The respondent Corporation issued a notification on 15.09.2013 inviting applications for LPG Distributorship Letter of Intent (Hereinafter called 'LOI') vide Ref. No.2016/IN000100/TG./000008/4411/00008 was also issued on 30.5.2016. Clause 5 of the said LOI deals with 'Commissioning' and according to sub-Clause 5.1 of the said Clause 5, the applicant is required to make all efforts to commission the LPG distributorship within four months from the date of LOI. On the ground that the petitioner failed to adhere to the said Clause, the third respondent issued a show-cause notice vide Ref No.SAO/Hayathnagar, dated 24.07.2017, asking the petitioner to show-cause as to why action should not be taken as per the guidelines. In response to the said show-cause notice, the petitioner submitted explanation dated 03.08.2017, asking three months time. Thereafter, the third respondent passed an order vide Ref No.SAO:Hayathnagar, dated 04.10.2017, withdrawing the LOI issued earlier in favour of the petitioner.

3. In the above background, the present writ petition came to be filed, questioning the validity and the legal sustainability of the said withdrawal.

4. Heard Sri CH.Dhanunjaya, learned counsel for the petitioner and Sri D.Narender Naik, learned Standing Counsel for the respondent Organisation apart from perusing the material available before the Court.

5. It is contended by the learned counsel for the petitioner that the action impugned in the present writ petition is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India; that the delay occurred in production of “NOC” from the local authority cannot be attributed to the petitioner; that except “NOC” from the local authority, petitioner obtained NOCs from all other authorities; that vide G.O.Ms.No.128, M.A & UD (Plg-I (1)) Department dated 18.06.2018, the State Government ordered conversion of the land use as such the respondents ought to have permitted the petitioner herein.

6. On the contrary, it is maintained by the learned Standing Counsel for the respondent organisation, Sri D.Narender Naik that there is no illegality nor there is any procedural infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India; that in view of the notification dated 15.09.2013, Clauses 6.1.VII and VIII and Clause 5.1 of LOI dated 30.05.2018, petitioner is not entitled for any relief; that having applied in terms of the said Clauses, it is not open for the petitioner to plead contrary to the same; that there is no diligence on the part of the petitioner in adhering to the said requirements. It is eventually requested by the learned Standing Counsel for dismissal of the writ petition.

7. In the above backdrop, now the issue that emerges for consideration of this Court is_ “Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

8. The information available before this Court reveals that the respondent Corporation issued a notification dated 15.09.2013, proposing to appoint LPG distributors at various points including one at Hayathnagar; Clauses 3 (a) (b) and 4 of the said notification read as follows:

“3. BASIC FACILITIES REQUIRED FOR OPERATION OF LPG DISTRIBUTORSHIP:

(a) Godown for Storage of LPG in Cylinders

LPG Distributor would require and Storage Godown duly approved and licensed by Chief Controller of Explosives of Petroleum and Explosives Safety Organization (PESO) for storage of 6000 Kg LPG in Cylinders.

The applicant should own a Plot of land 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. The Plot of land for construction of Godown not meeting the minimum dimensions of 25M x 30M will not be considered

Or

A ready LPG cylinder storage godown (within 15 kms from Municipal/Town/Village Limits of the location offered in the same State) of 8000 KG capacity.

b) A show-room of minimum dimensions 3 meter by 4.5 meter as per the standard layout is to be made in a shop/land located in the advertised location or locality as specified in the advertisement for LPG Distributorship and it should be easily accessible to general public through a suitable approach road.

4. Detailed guidelines on eligibility, infrastructure requirements of land for LPG godown/LPG godown, Showroom infrastructure for Home delivery of cylinders etc., along with the details of selection process are given in the Brochure, which can be collected personally from the address mentioned at para 9 below at a cost of Rs.50/-. It can also be downloaded free of cost from the websites: www.iocl.com, www.ebhamigas.com, www.bharatpetroleum.in and www.hindustanpetroleum.com of IOCL, BPCL and HPCL.”

9. The respondent Corporation issued guidelines in the form of a “Brochure” and Clause 6 of the said guidelines deals with “Eligibility Criteria for Individual Applicants”. According to the said Clause “all applicants fulfilling the eligibility criteria will become eligible for the draw for selection of LPG distributorship. Clauses 6.1. vii and viii are 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 25 M x 30 M (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 25 M x 30 M will not be considered.

a ready LPG cylinder storage godown (within 15 km from municipal/town/village limits of Ma 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 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 ownership/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. 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 of minimum 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown as on the last date for submission of application as specified in the advertisement or corrigendum (if any), the details of the same can also be provided in the application.

VIII) Own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metres by 4.5 metre as on the last date for submission of application as specified in the advertisement or corrigendum (if any) at the advertised location or locality mentioned in the advertisement. It should be easily accessible to general public through a suitable approach road.

In case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metre by 4.5 metre as on the last date for submission of application as specified in the advertisement or corrigendum (if any) at the advertised location or locality as specified in the advertisement, the details of the same can also be provided in the application.

Reference vii & viii above:

'Own means having ownership title of the property at registered lease agreement for minimum 15 yrs in the name of applicant / family member (as defined in multiple distributorship norm of eligibility criteria) as on the last date for submission of application as specified in the advertisement Of corrigendum (if any). In case of ownership/co- ownership by family member (s) as given 3h:wet consent in the form of a Notarized Affidavit from the family members) will be required.

In case the land is jointly owned by the applicant member of 'Family Unit' (as defined in multiple dealership/distributorship norm) with any other person(s) and the share of the land in the name of applicant/ member of the 'Family Unit' meets the requirement of land including the dimensions required, then that land for godown/showroom will also qualify for eligibility as own land subject to submission of 'No Objection Certificate' in the form of an Notarized Affidavit from other owner(s).

10. There is absolutely no controversy on the applicability of the above Clauses. It is also pertinent to note that Clause 5 of LOI dated 30.05.2016 deals with Commission and sub-Clauses 5.1 and 5.2 of Clause 5 read as follows:

“5.1. Make all out efforts to commission the LPG Distributorship within four months from the date of this letter.

5.2. If we find that the progress being made by you towards the above is not to our satisfaction, this offer is liable to be withdrawn.”

11. According to the petitioner, the delay, if any, cannot be attributed to the petitioner and having regard to the facts and circumstances on hand, there is no justification on the part of the respondent Corporation in resorting to the impugned action. Initially the petitioner herein offered the land in Sy.No.70 of Sahibnagar Kalan Village, Hayathnagar Mandal, Ranga Reddy District and thereafter when the petitioner sought change of land use from residential to industrial purpose vide application dated 23.08.2016, the HMDA/the fourth respondent herein vide Ref No: 000199/GHT/CLU/U5/HMDA/23082016, dated 24.09.2016, rejected the request of the petitioner for change of land use. Subsequently, on the application of the petitioner dated 26.09.2016, the Indian Oil Corporation

vide Ref:SAO/Hayathnagar, dated 11.01.2017, accorded permission for construction of LPG Godown in Sy.No.221 of Batasingaram Village, Abdullapurmet Mandal, Ranga Reddy District. According to the petitioner, after receipt of the said approval, he started approaching the concerned authorities and taken action without wasting any time and after compliance of all statutory and mandatory requirements, the District Collector vide Lr.No.E4/1294/2017 dated 14.03.2018 informed HMDA that there is no objection for change of land use from Commercial Zone to Semi Public AND Government vide G.O.Ms.No.128 MA & UD Department dated 18.6.2018 accorded permission for conversion of land in Sy.No.221/P of Batasingaram village, Hayathnagar Mandal, Ranga Reddy District and the same was published in Newspaper (the Hindu) on 03.07.2018. It is significant to note in this context that having regard to the contents of the notification dated 15.09.2013 and Clause 6.1. VII and VIII of the Brochure and Clauses 5.1 and 5.2 of Clause 5 of the Letter of Intent dated 30.05.2016, it would be incumbent and obligatory on the part of the petitioner to Commission the outlet within four months from the date of LOI. Admittedly, the petitioner herein failed to comply with the said requirements. In the considered opinion of this Court, the said requirements were incorporated out of public interest and the inconvenience or difficulties of the individuals are of no significance and consequence.

12. Having agreed to the conditions in the guidelines and having received the LOI which contained a condition to establish and commission within four months, it is not open for the petitioner to plead contrary to the same. If the reasons assigned by the petitioner are allowed to sustain, the very object behind the establishment of outlet within the time frame would be defeated.

13. In view of the above reasons, this Court has absolutely no shadow of doubt to hold and to come to a conclusion that the petitioner herein has failed to make out any case, warranting interference of this Court under Article 226 of the Constitution of India.

14. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 5.12.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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