

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.A.NO.22 OF 2019

JUDGMENT (Per the Hon'ble Sri Justice A.RAJASHEKER REDDY)

This writ appeal is filed under Clause 15 of Letters Patent Act, 1865 (for short 'the Act') challenging the order dated 05.12.2018 passed in W.P.No.37452 of 2017, wherein and whereby, the learned single Judge refused to interfere with the proceedings of the Deputy General Manager (LPG-S)/SAO, of the 3rd respondent – Indian Oil Corporation Limited (for short 'the Corporation), in Ref. SAO: Hayathnagar dated 04-10-2017, in withdrawing the Letter of Intent (for short 'LOI') dated 30.05.2016 issued in favour of the writ petitioner for the proposed LPG distributorship at Hayathnagar, GHMC, Rangareddy District, under Open Category, on the ground of violation of conditions in the LOI; and thereby dismissed the writ petition. Aggrieved by the same, the present writ appeal has been filed.

2. Pursuant to the notification issued by the Corporation on 15.09.2013, for appointment of regular LPG distributors under the Marketing Plan 2013 – 2014, including for the area in question, under open category, the appellant herein was selected in draw of lots and she was issued with LOI vide Ref.No.2016/ IN000100/TG/000008/4411/0008 dated 30.05.2016, offering the LPG distributorship at Hayathnagar, GHMC, subject to fulfilling certain conditions mentioned therein. The said conditions are in conformity with the conditions stipulated in the notification dated 15.09.2013 and guidelines issued in Brochure

for selection of Regular LPG Distributors, May, 2013. The relevant conditions in LOI, for the purpose of present adjudication, are as under:

1. LPG Storage Godown and Showroom

You should provide a godown for storage of 8000 kg (minimum) of LPG filled in cylinders. The LPG storage godown should be approved and licensed by Chief Controller of Explosives of Petroleum and Explosives Safety Organization (PESO) and should have mastic flooring.

You should also provide a showroom of dimensions 3M x 4.5 m in the advertised location or locality specified in the advertisement.

The construction of godown and showroom should be completed within a period of four months from the date of this order. Both godown and showroom should be freely accessible through all weather mortable approach road.

Construction of godown / showroom should be commenced only after permission in writing is obtained from this office.

....

5. Commissioning:

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.

...

Withdrawal of letter of intent:

9.1. This letter is merely a Letter of Intend and is not to be constructed as a 'firm offer' of LPG Distributorship to you. If we find that the progress being made by you towards the above is not to our satisfaction, this letter is liable to be withdrawn along with forfeiture of the amount deposited by you with the Corporation before FVC.

3. On the ground that the appellant has violated the above conditions under clauses 5.1 and 5.2, the Corporation has withdrawn the LOI, by passing the impugned order dated 4.10.2017, the relevant portion of which, is thus:

"Pleaser refer to the Letter of Intent (LOI) dated 30-05-2016 was issued to you for the proposed LPG distributorship at Hayathnagar, GHMC, Rangareddy district under open category.

In your application, you had shown land at Sy.No.70, Saheb Nagar Kurd vide lease deed No.6221/2013 and the rectification deed No.3407/2016. You informed that HMDA rejected your application for conversion of land use of Survey No.70, Saheb Nagar Kurd from residential use to industrial. Subsequently, you requested for permission to provide alternate land and accordingly permission for the same was granted to you on 04/11/2016. You offered land for godown

in Sy.No.221, Batasingaram village, Abdullpurmeet mandal for the proposed LPG distributorship in the month of January, 2017 and accordingly approval was accorded to you for construction of godown on offered land on 11.01.2017.

Since you have not made any progress on commissioning of the distributorship even after an elapse of about sixteen months from the date of issuance of LOI, letters dated 14/06/2016, 24/07/2016 and 01/03/2017 were sent to you for early commissioning of LPG Distributorship.

Vide your letter dated 15/09/2017, you have also confirmed that you are not in possession of the showroom offered by you. The field officer also inspected the land offered for godown site and confirmed that no construction activity has started on the said land.

As per the clause No.5.1 of the conditions of the LOI, you were supposed to complete the construction of godown and showroom after obtaining statutory approvals and commission the distributorship within four months from the date of issue of the LOI. Since, you failed to comply with the conditions of LOI even after sixteen months from the date of LOI, we are constrained to withdraw the Letter of Intent (LOI) issued in your favour.

This is issued without any prejudice to the rights of the Corporation to initiate further necessary action as deemed fit."

4. The learned single Judge, under the impugned order, holding that the appellant having received the LOI, which contained a condition to establish and commission within four months, is not open for her to plead contrary, and accordingly dismissed the writ petition.

5. Learned counsel for the appellant / writ petitioner, while reiterating the above facts, further submit that as per Clause 1 of LOI dated 30.05.2016, the construction of godown shall be completed within four months of the date of LOI and under Clause 5.1, appellant shall make all efforts for commissioning of LPG distributorship within four months from the date of LOI. As the land initially offered by the appellant, for construction of godown, was situate in a residential zone and that permission for land conversion could not be obtained, she offered alternate land and permission was granted on 4.11.2016 and approval for construction of godown was granted on 11.01.2017. He submits that the conditions stipulated in the LOI, are not statutory in nature and the authorities

using their discretion, acceding to the request of the appellant, accorded approval on 11.01.2017 for construction of LPG godown in the alternate land. He submits that this approval was granted much after the lapse of four months period stipulated in the above said clauses in LOI. Therefore, the said period, pales into insignificance. He submits that while according approval for construction of LPG godown at the alternate land, the appellant was advised to get necessary statutory licenses before starting construction work. He submits that the alternate land offered by the appellant was in a commercial zone and she could obtain permission for change of land use from commercial to public-semi-public use vide G.O.Ms.No.128 Municipal Administration and Urban Development (Pig.I(1)) Department dated 18.06.2018, and in the process, some delay, which is beyond the control of the appellant, has occurred and the efforts of the appellant in the process, have to be taken into consideration and further period is required to be extended in the interest of justice.

6. With regard to other ground of not having showroom as per clause (1) of conditions of LOI, learned counsel submits that appellant has obtained premises on lease for showroom at Vinayaka Nagar, Bagh Hayathnagar village, R.R. District, which was leased for fifteen years according to the norms, and later got it registered vide document No.5550/2017 on 16.10.2017. Therefore, this violation mentioned in the impugned proceedings, may not be taken into consideration.

7. Learned counsel further submits that the learned Single Judge has given much importance to the period of four months specified in Clause 5.1 of

LOI dated 30.05.2016, which, as stated above, cannot be considered, as the Corporation has given approval for construction of LPG godown in the alternate land on 11.01.2017, much after the stipulated period. He submits that in the entire process, the appellant has spent huge monies in securing land and godown, and in obtaining land conversion, and if the LOI is withdrawn, she would be put to irreparable loss and that as the appellant has already obtained all the statutory permissions as required by the Corporation, granting her reasonable time for commissioning of LPG distributorship, would not cause any prejudice to the Corporation. With these submissions, the learned counsel sought to set aside the order of the learned single Judge and also the order of withdrawal dated 4.10.2017 and the Corporation be directed to give reasonable time to the appellant to commission LPG distributorship.

8. On the other hand, Sri D.Narendar Naik, learned Standing Counsel appearing for the Corporation submits that as per the conditions of LOI, it is obligatory on the part of the appellant to offer suitable land as per the zoning regulations, for construction of godown, but instead, initially she offered the land, which is in a residential zone and the subsequent offer, was in the commercial zone, both of which, cannot straightaway be used for construction of LPG godown, without statutory permission for conversion of land use. Even vide the communication dated 11.01.2017, while granting approval for construction of LPG godown in the alternate land offered by the appellant, the Corporation advised her to obtain necessary statutory permissions, but she could not obtain the same within reasonable time. In fact, as per clause 5.1 of the LOI, the LPG distribution shall be commenced within four months from the date of LOI, but

even after approval for the second time on 11.01.2017, appellant could not get statutory permissions.

9. Learned Standing Counsel further submits that the lease deed stated to have been obtained by the appellant, was on 16.10.2017, i.e., subsequent to the impugned letter of the Corporation dated 4.10.2017, withdrawing the LOI. Point out pointing out page No.94 of the material papers filed by the appellant, learned Standing Counsel submits that the request of the appellant for grant of NOC from 4th respondent – Hyderabad Metropolitan Development Authority, is still under process as on 01-12-2018. He submits that LOI was given in the year 2016, and even by now, the appellant could not obtain statutory permissions and there is any amount of delay on the part of the appellant, affecting the interest of the people of the locality, where the tenders were called for, and that there are 179 contenders, who are waiting, and if any further period of extended, it would affect the principles of equity in respect of other candidates and the action will become a precedent for all the unsuccessful candidates. He submits that under clauses 5.2 and 9.1 of LOI, Corporation reserves the right to withdraw the LOI, if the progress of work as per the conditions of LOI, is not to the satisfaction to the Corporation. In view of these circumstances, as the work undertaken by the appellant in pursuance of LOI, was not to the satisfaction of the Corporation, after complying with the principles of natural justice, LOI was withdrawn, and the learned Single Judge, considering all the aspects, rightly dismissed the writ petition and there are no grounds to interfere with the order of the learned single judge.

10. Heard Sri K.Lakshman, learned Assistant Solicitor General appearing for respondents 1 and 5, Sri B. Narendra Naik, for respondents 2 and 3 – Corporation, Sri V.Narasimha Goud, for respondent No.4 and the learned Government Pleader for GAD (TG) for respondent No.6.

11. In view of the above facts and circumstances and the rival contentions, the issue that falls for our consideration is whether the order of the learned single Judge, warrants any interference?

12. As per clauses 1 and 5.1 of LOI, extracted above, the appellant shall complete the construction of godown and showroom within a period of four months from the date of LOI and she shall also commission the LPG distributorship within four months from the date of LOI. From the material on record it could be seen that initially, the appellant has offered land for construction of godown, in a residential area, and as her application for conversion of land use, was rejected by 4th respondent – HMDA, she offered alternate land and the Corporation approved her request and accorded permission for construction vide communication dated 11.01.2017 and she was advised to commence the work of construction of godown after obtaining statutory licenses. Even the alternate land offered by the appellant also does not conform to the land use as per zonal regulations, and she could obtain permission for land conversion, vide G.O.Ms.No.128 dated 18.06.2018. Further, as pointed out by the learned Standing Counsel for the Corporation, the application of the appellant for issuance of NOC from 4th respondent – HMDA, is

still pending even as on 01.12.2018. Therefore, it is clear that the appellant could not get all statutory licenses / permissions for construction of LPG godown.

13. Under clause (1) of LOI, the appellant should have a showroom as per the specifications mentioned therein. In the impugned order, it is noted that the appellant has accepted that she is not in possession of the showroom offered by her. However, the appellant sought to rely on a lease dated 16.01.2017, to show that she is in possession of the showroom as per the condition of LOI. But the said lease, as pointed out by the learned Standing Counsel for the Corporation, was subsequent to the date of withdrawal of LOI.

14. Further, it is to be seen that under Clause 9.1 of LOI, the Corporation has made it clear that it is only a letter of intent and not to be construed as a 'firm offer' of LPG Distributorship. It was further made clear that if the progress being made by the appellant towards the above, is not to their satisfaction, the LOI is liable to be withdrawn along with forfeiture of the amount deposited by the appellant. The appellant accepted to the conditions. But even after granting approval for construction of godown in the alternate land vide communication 11.01.2017, the appellant could not even commence the construction of LPG godown, with all the statutory permissions.

15. In the above backdrop, the corporation pointing out the lapses on the part of the appellant, and coming to the conclusion that even after sixteen months from the date of LOI, the appellant has failed to comply with the conditions of LOI, has withdrawn the same. This court, under writ jurisdiction, cannot

substitute its view to that of the Corporation, and hold that progress made by the appellant is justifiable, or conforms to the clauses in LOI.

16. For the foregoing reasons, the learned single Judge was not inclined to exercise the jurisdiction under Article 226 of the Constitution of India, which is discretionary in nature.

17. Having regard to the facts and circumstances of the case, we are also not inclined to entertain the writ appeal under Clause 15 of the Act and interdict the order of the learned single Judge, and the same is accordingly dismissed.

18. Interlocutory applications pending, if any, shall stand closed. No costs.

THOTHATHIL B. RADHAKRISHNAN,CJ

A.RAJASHEKER REDDY,J

DATE:06—02—2019

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