

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

Letters Patent Appeal No. 1860 of 2018 (O&M)

Date of Decision: 29.03.2019

Harvinder Singh

.....Appellant

versus

Bharat Petroleum Corporation Ltd. and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Raman B.Garg, Advocate with
Ms. Gitanjali Chhabra, Advocate, for the appellant.

Mr. Raman Sharma, Advocate, for the respondent.

KRISHNA MURARI, CHIEF JUSTICE

By means of this intra-court appeal filed under Clause X of the Letters Patent, the appellant-petitioner has sought to challenge the order dated 24.01.2018 passed by the learned Single Judge dismissing the writ petition.

2. The appellant-petitioner had invoked the jurisdiction of this Court conferred by Article 226 of the Constitution of India making a challenge to the order dated 26.03.2016 passed by the respondent-Bharat Petroleum Corporation Ltd. whereby the application moved by him for allotment of regular LPG distributorship in OBC category was rejected.

3. Facts necessary for adjudication of the dispute in brief can be summarized as under:-

The respondent-corporation issued an advertisement dated 26.10.2013 inviting applications to appoint LPG distributors at various places in the State of Punjab including Bhawanigarh, District Sangrur in the OBC category which is under dispute. The appellant-petitioner was one of the applicants alongwith others. The draw of lots was held on 21.10.2014 in which the appellant-petitioner was successful. He was required to deposit a sum of Rs. 25,000/- for the field verification of credentials. After deposit of the said amount by the appellant-petitioner, the field verification was carried out by the respondent-corporation and it was found that the land offered by the appellant-petitioner has been acquired vide notification dated 23.06.2015 issued under Section 3A(1) of the National Highways Act, 1956. The appellant-petitioner made a representation to the respondent corporation bringing this fact to their notice and offered an alternate land. The respondent corporation agreed and allowed to offer an alternate land. However, it so transpired that the alternate land offered by the appellant-petitioner was not in his possession either as the owner or the lessee thereof on the date of making of the application. Accordingly, the alternate offer was rejected and the amount of Rs.25,000/- deposited was forfeited.

4. The case set up by the appellant-petitioner was that the subsequent acquisition of land was beyond his control and at the time of making the application the land was in his ownership free from all encumbrances and thus the corporation was not justified in rejecting the alternate land offered by him on the ground that the same was not in his ownership/possession at the time of making of the application. Reliance was also placed on the letter dated 15.04.2015 issued by the Ministry of

Petroleum and Natural Gas, Government of India, providing opportunity to offer alternate land in response to the advertisement/flexibility in guidelines.

The said letter reads as under:-

“No. P-43011/16/2015-IOC
Government of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan, New Delhi
Dated 15th April, 2015.

To

The Director (Marketing)
IOCL/BPCL/HPCL, Mumbai.

Sub: Opportunity to offer alternative land in response to the advertisement-Flexibility in guidelines-regarding.

Sir/Madam,

I am directed to say that MOS(I/C), P&NG have received some representations regarding requests for change in the land which was originally offered by the selected candidate. The following instructions of MOS(I/C) are conveyed for necessary action/comments:-

- (A) The candidate should be given an opportunity to offer alternative land. The guidelines should be made flexible and eschew any kind of rigidity in approach.
- (ii) 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 specification laid down in the advertisement then the request of the candidate should not be entertained.
- iii) While considering such cases, OMCs may lay down such other conditions and take into account factors like security/safety considerations, better title (owned vs. lease) and economic feasibility of a particular place of land.

Yours faithfully,
Sd/-A.K.Pandey,
Under Secy. to Govt. of India.”

5. The respondent-corporation contested the proceedings before the learned Single Judge that selection of the distributorship is governed by the Brochure wherein clause-6 providing for eligibility criteria for individual applicants lays down that the applicant should own as on the last date for submission of application as specified in the advertisement or corrigendum.

It was further pleaded that the letter dated 15.04.2015 issued by the Ministry of Petroleum & Natural Gas, Government of India, is only to give some

solace to the applicants who for some reason are not in possession of the land offered by them at the time of submission of the applications but the mandatory provision of the eligibility in the Brochure has not been relaxed to the effect that the alternate land can also be provided after the last date of submission of application. Further case set up by the respondent-corporation was that in case the appellant-petitioner was in possession of the alternate land offered as owner or lessee on the last date of submission of the application, then it was liable to be accepted by the respondent-corporation and since he was not in possession of the said land and the same was acquired by him subsequently after the last date of submission of the application form, his candidature was not liable to be considered in view of the mandatory provisions of the guidelines contained in the Brochure.

6. Learned Single Judge held that there cannot be any deviation from the provisions made in the Brochure for the purpose of offering the alternate land and therefore, dismissed the writ petition.

7. Having heard learned counsel for the parties and having gone through the record we are of the considered opinion that import of the letter dated 15.04.2015 issued by the Ministry of Petroleum & Natural Gas, Government of India, has not been interpreted in the right earnest. The letter itself provides that the candidate should be given an opportunity to offer alternate land and the guidelines should be made flexible and eschew any kind of rigidly in approach. The second condition laid down by the said letter is that the land originally offered at the time of making the application should meet all the specifications as laid down in the advertisement and in case the said land does not meet the specifications laid down in the advertisement then the request of the candidate should not be entertained.

8. In the case in hand admittedly the land which was offered by the appellant-petitioner at the time of making the application was as per the specifications and there is no dispute in this regard. The land became the subject matter of compulsory acquisition offer which the appellant-petitioner had no control. It is not the case of the respondent-corporation that the land offered originally was not according to the specifications.

9. We are not able to cull out from the letter dated 15.04.2015 of laying down any such requirement that the alternate land should be in possession of the applicant at the time of making the application. In our considered opinion the guidelines vide letter dated 15.04.2015 have been issued in order to meet the contingencies like the one in hand where the land initially offered though meets the specifications but on account of any subsequent fact it becomes unfit to be used for the purpose, opportunity should be given to offer an alternate land. The policy clearly provides that the guidelines should be made flexible and there should not be any rigidity in approach. If the reason for alternate land offered by the appellant-petitioner has been rejected is read as per the policy letter dated 15.04.2015, the same would be rendered meaningless. The settled rules of interpretation do not permit such an approach.

10. In view of the aforesaid facts and discussion, the rejection of the candidature of the appellant-petitioner for the reason that the alternate land offered by him was not in his ownership and possession at the time of making the application does not stand the test of reason and thus not liable to be sustained. The learned Single Judge also failed to appreciate this aspect of the matter and wrongly dismissed the writ petition.

11. In such view of the matter, the impugned order passed by the learned Single Judge as also the order dated 26.03.2016 passed by the respondent-corporation rejecting the candidature of the appellant-petitioner are not liable to be sustained and are hereby set aside. The matter stands remitted back to the respondent-corporation to reconsider the offer of alternate land made by the appellant-petitioner in the light of the observations made hereinabove and take a fresh decision in respect of his candidature. The entire exercise may be carried out within six weeks from the date of receipt of a certified copy of this order.

Accordingly, the appeal stands allowed. However, there shall be no order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

29.03.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No