IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A. No.565 of 2016 in
Civil Writ Petition No.14345 of 2013
Reserved on : July 04, 2019
Date of decision: July 24, 2019

M/s Indian Oil Corporation Ltd. and another ...Appellants

Versus

Mukesh Kumar Jain and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Ashish Kapoor, Advocate
for the appellant.

Mr.Shailendra Jain, Senior Advocate with
Mr.Sahil Nayyar, Advocate for respondent No.1.

Mr.Arun Gosain, Central Government Standing Counsel
for respondent No.2 – Union of India.

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HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 17.07.2015 in Review Application No.612 of 2014 in Civil Writ Petition No.14345 of 2013 whereby respondent No.1 was held entitled to 25 marks under the parameter 'Capacity to arrange Land/Infrastructure' instead of the Zero marks allotted to him by appellant No.1.

2. The appellant M/s Indian Oil Corporation Limited issued an advertisement dated 13.8.2011 for selection of Dealers (Retail Outlet) for Kisan Seva Kendra (KSK) for 286 locations which included location of village Alipur Tigra, Tehsil Ferozepur Jhirka, District Mewat (Haryana).

Respondent No.1 submitted application dated 26.9.2011 for his selection/ appointment as the Dealer for the said location.

3. The selection of the dealers was to be made as per process outlined in Brochure dated 28.7.2011 issued by the Indian Oil Corporation Limited. The norms for evaluating the candidates were detailed in Clause 13.1.1 of the said brochure which is reproduced below:

"13.1.1 NORMS FOR EVALUATING THE CANDIDATES:

(i) The eligible applicants will be evaluated out of a total of 100 marks through a 3 tier process comprising the following steps.

- *The offered land will be evaluated as per laid down parameters by the 'Land evaluation commitee' which will in turn decide the marks in respect of parameter 'Capability to provide land and infrastructure/facilities' which carries a maximum mark of 35.*
- *'Level-1 Committee' will scrutinise the documents and allocate marks with regard to documents based parameters out of a maximum of 53 marks (for individuals)/45 (for non individual).*
- *'Interview committee' will carry out personal interview and award marks out of the remaining maximum 12 marks (for individuals)/ 20 (for non individual) based on specified parameters and complete the selection process.*

(ii) The evaluation of eligible applicants will be carried out based on the following broad parameters:

Sr. No.	*Parameter*	*Maximum Marks: Individuals including partnerships*	*Maximum Marks: Non-individual entities*
a.	*Capability to provide land and infrastructure/facilities**	*35*	*35*
b.	*Capability to provide finance*	*25*	*25*
c.	*Educational qualifications*	*15*	*0*

d.	*Capability to generate business*	*10*	*25*
e.	*Age*	*4*	*4*
f.	*Experience*	*4*	*4*
g.	*Business ability/Acumen*	*5*	*7*
h.	*Personality*	*2*	*0*
	Total	*100*	*100*

** Not applicable for cases where the prospective dealer is not required to offer/arrange land and Finance.*

Allocation of marks on various parameters

Parameter	*Sub-heads*	*Description*	*Max. Mark*	*Evaluation*
Capability to provide Land and infrastructure/ facilities (Max. 35 marks applicable to individual and non-individual	*Suitable land for retail outlet*	*'A' site* *Having clear title to land "own land"/ Registered sale deed as on date of application* *'B' site* *Having clear title to land "own land" / Registered sales deed/ having land on long lease (registered) for a minimum period of 19 years 11 months on date of application*	*35*	*Based on verifying the documents submitted and evaluation of committee as explained in Pt.14 and 15 below*
		'A' site *Having "firm offer" of land for purpose* *'B' site* *Having "firm offer" of land for purpose/long lease*	*25*	

4. As per the norms the applicants were to be evaluated out of a total of 100 marks. Marks were specified for different parameters like Capability to provide land and infrastructure/facilities, capability to provide finance, Educational qualifications, capability to generate business, age etc.

For 'Capability to provide land and infrastructure/ facilities' a maximum of 35 marks were allocated.

5. The land that could be offered was categorized as "Owned Land" and "Firm Offer of Land". For "Owned land" the maximum marks were 35. In case there was a "Firm Offer of land" the maximum marks were 25.

6. As per Clause 13.1.2(e) the minimum qualifying marks for open category locations was 60% of the total marks. Thus in the open category an applicant had to secure 60 marks to qualify.

7. Clause 14 of the Brochure specified the lands that would be considered as "Owned land" and the lands that would fall in the category of "Firm Offer of land".

8. The documents that were required to be submitted in respect of the two kinds of land were also specified depending on the `Situation of Ownership'.

The said clause is reproduced below:

"14. PREFERENCE FOR APPLICANTS OFFERING SUITABLE LAND

Availability of suitable land for setting up of KSK retail outlet at the advertised location is the essence of the project. Wherever IOC expects the applicant to have/arrange suitable land for the dealership, the same is mentioned against each location in the advertisement. The suitability of land will be assessed by IOC as per norms given in para 15 of Brochure. The land and details offered along with the application alone will be considered for this purpose and applicant will not be given the opportunity to offer any other land subsequently. The land offered by the applicant can be in either *of following category.*

***(a) Owned land**:*

The following will be considered as owned land:

(i) Land owned by the applicant exclusively

(ii) Land owned by the "family" members exclusively

(iii) Land owned by the applicant exclusively with "family" members.

(iv) Land owned by the applicant along with others provided share of applicant in the land meets IOC's requirement.

The land falling in category (ii), (iii) & (iv) will be considered as belonging to the applicant subject to applicant producing the consent on notarized affidavit signed by all other co-owners. The definition of "family unit" will be as per para 6 of Brochure.

In addition to above, for locations to be developed as Dealer Owned site (marked 'Yes' in column 6 of advertisement), the land on long term lease (for a minimum period of 19 years 11 months) will also be considered as owned land subject to above conditions. In other words, for locations to be developed as Corporation Owned site (where 'Yes' is marked in column 5 of advertisement), leased land will not be considered.

***(b) Firm Offer of land**:*

In addition to land covered under para (a) above, applicants also have the option to offer land with firm offer of land from land owner/s. Such offer from land owner/s should be in the form of notarized affidavit giving details of land, khasra/khatauni no., name of village/location, ownership details etc.

xxx xxx xxx

(iii) Documents for offered land:

The applicant should furnish atleast one of the following document (in support of ownership) which should have been issued/revalidated on or after date of advertisement: (i) Khasra/ Khatuni or any equivalent revenue document or

Certificate from revenue official confirming the status of ownership of the land. Or (ii) Registered sale deed/ Registered lease deed or any other type of ownership transfer deed/ document in favour of applicant.

(iv) Copy of the lease agreement or allotment letter issued by Government/Semi-Government/ Autonomous bodies like DDA, NOIDA, HUDA etc will be considered for ownership of land offered.

(v) In addition to documents in para (iii) and (iv) above, following additional documents are also required, as applicable.

SN	*Situation of Ownership*	*Share of applicant's land*	*Documents required (In addition to land ownership/ Revenue record)*	*Evaluation as*
1	*Self*	*Full*	*Nil*	*Owned land*
2	*Exclusively by the "Family " members*	*Nil*	*Notarized affidavit by all owners in favour of applicant*	*Owned land*
3	*Self exclusively with "Family" members*	*Part*	*Notarized affidavit by all other Co-owners in favour of applicant*	*Owned land*
4	*Self with others*	*Share of applicant more than IOC requirement*	*Notarized affidavit with demarcation of land (portion of land to be given for dealership by the applicant)*	*Owned land*

5	*Self with Others*	*Share of applicant more than IOC requirement*	*Notarized affidavit without demarcation of land (portion of land to be given for dealership by the applicant)*	*Firm Offer*
6	*Self with Others*	*Share of applicant less than IOC requirement*	*Notarized affidavit*	*Firm Offer*
7	*Others*	*Nil*	*Notarized affidavit*	*Firm Offer*
8	*Where the land falling in Owned land category as described in above category at Sr. No. from 1 to 4 is not sufficient for development of retail outlet and land in category 5 to 7 is also offered to meet IOC's requirement*	*Nil or Part*	*Document as applicable for category at Sr. No.1 to 4 and Document as applicable for category at Sr. no.5 to 7*	*Firm Offer*

9. Where the land offered was owned by the applicant, it necessarily had to be, and was, considered as 'Owned land.'

10. Besides that 'Land owned by the "family" members exclusively', 'Land owned by the applicant exclusively with "family" members', 'Land owned by the applicant along with others provided share of applicant in the land meets IOC's requirement' was also to be considered as belonging to the applicant subject to the applicant producing the consent on notarized affidavit signed by all the other co-owners. This land would be considered as "Owned Land".

11. "Family unit" was to be as per para 6 of Brochure which is as

under:

> *"6. APPLICABILITY OF MULTIPLE DEALERSHIP NORM (RELATIONSHIP CLAUSE)*
>
> *(I): Relationship Clause for individual including Partnerships*
>
> *In a given 'family unit' consisting of a father, mother and unmarried brother(s)/unmarried sister(s), if the applicant is unmarried*
>
> *OR*
>
> *In a given 'family unit' consisting of spouse, unmarried son(s)/unmarried daughter(s), if the applicant is married-as the case may be.*
>
> *None of these individuals would be entitled to a new dealership/distributorship of any Oil Company if any other individual in this 'family unit' already holds a dealership/distributorship or Letter of intent (LOI) for dealership/distributorship of any Oil Company.*
>
> *Each partner of the applicant partnership firm has to individually satisfy the criteria as applicable for individuals stated above."*

12. For locations to be developed as Dealer Owned site land on long term lease (for a minimum period of 19 years 11 months) was also to be considered as 'Owned land'.

13. In addition to offering "Owned Land", applicants had the option to offer land with firm offer of land from land owner/s which was termed as "Firm Offer of Land". Such offer from land owner/s was required to be in the form of notarized affidavit giving details of land, khasra/khatauni number, name of village/location, ownership details etc.

14. The controversy in the present case is regarding the evaluation of respondent No.1 under the parameter "Capability to provide land and infrastructure/facilities". The question was whether respondent No.1 had submitted the requisite documents/ affidavits as required in terms of the brochure.

15. Respondent No.1 had offered two parcels of land. The first being Khasra No.27//23/1 (3-16). Regarding this land he had a long term lease from the owner for 30 years w.e.f., 01.09.2011 to 31.08.2041. As this lease was for more than 19 years 11 months there is no dispute that this fell in the category of "Owned Land".

16. As this land was not sufficient to meet the requirements of the IOC he offered second piece of land comprised in Khasra No.35//3 (1-0). The Jamabandi for this land for the years 2001-2002 showed its ownership in the name of Mehta s/o Imam Khan s/o Rustam (half share), Jameel s/o Azij s/o Imam Khan (half share). Mehta had died before respondent No.1 applied for the outlet. Along with the application respondent No.1 submitted a joint affidavit of Mazid and Juhru sons of Mehta s/o Imam Khan and Jameel s/o Azij to the effect that agricultural land bearing Khasra No.35//3 (1-0) was in their ownership to the extent of ½ share each after the death of Mehta. It was adjoining the land comprised in Killa No.27//23/1 (3-16). In the event of the petitioner being appointed for dealership of the said retail outlet for KSK they were agreeable to sell the said Khasra Number to him.

17. Respondent No.1 was awarded 'NIL' marks on the parameter of

'Capability to provide land and infrastructure/facilities' for the reason that he had not submitted the affidavits of all three co-sharers in the land of Mehta after his death. His total marks were 57.95 marks. As he had not obtained the minimum qualifying 60 % marks, he was not awarded the dealership. Being aggrieved he filed the writ petition.

18. The writ petition was initially dismissed vide order dated 9.10.2014. The Court held that the land offered by respondent No. 1 fell in category No.8 read with category No.2 based on the `Situation of Ownership'. The land in Killa No.27//23/1 (3-16) could be considered “Owned Land” as he had a long term lease in his favour. With regard to the land in Khasra No.35//3 (1-0) he had submitted affidavits of two sons of Mehta namely Majeed and Zuhru whereas, it was admitted that Mehta had another son who had pre-deceased him. The son of pre-deceased son Assu was also entitled to have a share in the estate of Mehta. The requirement of category No.2 was to submit notarized affidavits of all owners which the respondent had failed to do. Accordingly, he was rightly awarded 'Nil' marks. No error was found in the action of the Corporation.

19. Respondent No.1 filed a review application which was allowed. The earlier order dated 9.10.2014 was recalled. The learned Single Judge held that as the property offered in Khasra No.35//3 (1-0) was not owned by a member of the applicant's family, hence, the case would not be covered under Category 2, wherein the term 'family' is meant to be a family of which the applicant is a member as defined in Clause 6 of the Brochure. It was held that the case would be covered under Category

No.7. The requirement spelled out against category 7 was of a “notorized affidavit” and not “Notarized affidavit by all owners in favour of applicant”. It was accordingly held that a notarized affidavit from any one of the owners would suffice. As the respondent No.1 had submitted such a notorized affidavit he was held entitled to '25' marks. The appellant was directed to make a fresh publication of the result on the basis of the directions.

20. It is this order in the Review Petition which has been challenged by the Indian Oil Corporation in this Letters Patent Appeal.

21. Heard Ld. Counsel for the parties and perused the record.

22 There is no dispute that the land comprised in Killa No.27//23/1 (3-16) regarding which respondent No.1 has a long term lease would be considered as “Owned Land”. However as this land was not sufficient, respondent No.1 also offered land comprised in Khasra No.35//3 (1-0).

23. Thus the 'Situation of Ownership' of respondent No.1 would be of the category depicted at Serial No.8 (in the table at clause 14(v) of the Brochure). Sr. No.8 deals with a situation where the land falling in the 'Owned category' is not sufficient and land in categories at Sr.Nos.5 to 7 is additionally offered to meet IOC requirements.

24. Respondent No.1 had no share in Khasra No.35//3 (1-0). It was exclusively owned by others. Hence this land would fall in the category depicted at Sr. No.7.

25. The document required as specified against this Serial Number

is 'Notarized Affidavit.' The question is whether this requires notorized affidavit of all the co-owners or of only one of the co-owners.

26. Clause 14(b) of the brochure is the provision which gives the option to the applicants to also offer land with `firm offer from land owners' It requires that:

> *" Such offer from land owner/s should be in the form of notarized affidavit giving details of land, khasra/khatauni no., name of village/location, ownership details etc."*

27. This obviously contemplates the affidavit of the owner in case there is only one owner, and a separate affidavit from each owner in case the land is jointly owned. In fact without such affidavits of all co-owners it would not even be treated as a "Firm Offer of Land" as per Clause 14(b) of the brochure.

28. In this respect the requirement in clause 14(b) of the brochure is similar that in clause 14(a). As per clause 14(a) of the brochure in the case of 'owned land', affidavit of all the co-owner family members is necessary for any land owned by the applicant jointly with his family members and to be considered as 'Owned Land'.

29. Thus in case of jointly owned lands this requirement of separate affidavits of all the co-owners is a pre-condition before the land can even be considered to be `Owned Land' or one regarding which there is 'Firm Offer of land'.

30. The mere mention of `Notarized affidavit' at Sr.No.7 does not negate this position. It is also significant that the requirement is of 'Notarized affidavit' and not 'only one affidavit from any co-owner' or any

other similar expression indicating that affidavit of only one such co-owner would suffice.

31. Thus the argument of Ld. Counsel for respondent No.1 that affidavit of even one of the many co-owners would be sufficient cannot be accepted.

32. Learned counsel for respondent No.1 has contended that there was no misrepresentation on his part. The affidavit had been submitted as per the entries in the revenue record. Though Mehta had died before he submitted the application but it was only later, on 10.04.2012 that mutation No.1476 of the ½ share of Mehta son of Shri Imam Khan son of Rustan in Khasra No.35//3 (1-0) was sanctioned in the names of his two sons Majid and Juhru and one grandson Assu son of late Latish Akhtar to the extent of 1/3rd share each. Latish Akhtar pre-deceased Mehta in the year 1976. Respondent was not aware of this fact. If he had known that Assu also was a co-sharer in the land he would certainly have got an affidavit from him as well. Subsequently, the applicant has purchased the said Khasra No.35//3 (1-0) vide a registered sale deed dated 20.04.2012 from Jameel s/o Aziz s/o Imam Khan (½ share) and Assu s/o Akhtar s/o Mehta, Majeed, Juhru sons of Mehta s/o Imam Khan(all three in equal shares in half share). The same was mutated in his name vide mutation No.1477 dated 30.04.2012. This fact also finds a mention in the report of the Tehsildar sent to the Deputy Commissioner. It was also before the Land Evaluation Committee which found the site suitable on all counts.

33. We are unable to accept this argument of the Ld. Counsel.

As per Clause 10(g) of the brochure :

"(h) No additional documents whatsoever will be accepted or considered after the cut off date of the application."

34. As per clause 10(i) *'Applications received after the cut-off date for any reason including postal delay, and those without accompanying valid documents like Affidavits, Certificates etc., application fee or incomplete in any respect will not be considered and no correspondence will be entertained by IOCL in such cases whatsoever.'*

35. Similarly sub-clauses (c) (d) and (e) of Clause 21 of the brochure `General Terms and Conditions' provide that no additional documents etc. can be accepted after the cut off date of the application.

The same are reproduced below:

"(c) No addition/deletion/alteration will be permitted in the application once it is submitted.
(d) No additional documents whatsoever will be accepted or considered after the cut-off date of the applications.
(e) Applications received after the cut-off date, including postal delay and those without accompanying valid documents including application fee or incomplete in any respect will not be considered and no correspondence will be entertained by IOCL in such cases whatsoever."

36. Thus the fact that respondent No.1 has purchased the land subsequently can be of no avail to him.

37. It is well settled that it is for the public sector undertaking to prescribe the eligibility conditions for the grant of dealership. In the

absence of any power of relaxation the essential conditions of eligibility have to be strictly adhered to. The applicants only have a right to consideration if they satisfy all the conditions prescribed therein. Deviation from the conditions is not permissible as it is necessary to provide all the candidates with a level playing field.

38. No provision for any relaxation has been referred to by the Ld. Counsel for respondent No.1. As respondent No.1 did not comply with the requirement regarding submission of notarized affidavits of all the co-owners of the offered land, he was rightly awarded 'Nil' marks by the appellant under the parameter 'Capacity to arrange Land/Infrastructure'.

39. Accordingly, this appeal is allowed. The judgment of the Ld. Single Judge dated 17.07.2015 is set aside. The writ petition filed by respondent No.1 is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 24, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No