

Court No. 24

16.08.2021

(Item No. 4)

(SB/AB)

W.P.A 4839 of 2021

(via video conference)

Atulanand Singh

Vs.

Indian Oil Corporation Ltd. & Ors.

Mr. Debabrata Saha Roy

Mr. Pingal Bhattacharyya

Mr. Subhankar Das

Mr. Neil Basu

..... for the petitioner

Mr. Amit Kumar Nag

Mr. Swarajit Dey

.... For the respondent

Pursuant to an advertisement published by the oil Companies for grant of LPG distributorship the petitioner applied for the area Howrah (Mandirtala). The petitioner was declared successful in the draw of lots. The same was communicated to the petitioner by a communicating letter dated 29.12.2018 by the Indian Oil Corporation where it was mentioned that the petitioner was declared successful and he was requested to comply with the conditions for the purpose of proceeding further with the grant of LPG distributorship. Necessary documents and the deposit of Rs.50,000/- were submitted by the petitioner.

The petitioner was intimated that upon verification of the documents submitted by him it was observed that the same piece of land offered by him was also offered by his wife for the same advertised location.

The petitioner was directed to provide the demarcation plan of land and the demarcation map should be signed by the petitioner, his wife, his father and the surveyor. The petitioner intimated the Company that he was the owner of the said land where the show room was proposed to be constructed and in respect of the land proposed for the godown his father was the owner of the land and consent has been given by his father in his favour.

By an order dated 14.06.2019 the candidature of the petitioner stood rejected and the sum of Rs.50,000/- deposited by him stood forfeited on the ground that the land offered for show room and the land offered for LPG godown was also offered by his wife in respect of the same location. The applicant being unable to provide the demarcation map showing separate piece of land, the candidature stood rejected.

The petitioner through his learned Advocate made a representation before the Area Manager of the Company on 24th June, 2019 copy whereof was forwarded to the Ministry of Petroleum and Natural Gas. In response to the said legal notice the Under Secretary of the Ministry of Petroleum and Natural Gas intimated the Director (Marketing), Indian Oil Corporation Limited by a communication dated 19.07.2019 that as per the Unified Guidelines for selection of LPG distributorship "own" means either

the person has the ownership over the proposed land or has registered lease deed for at least fifteen years. If any particular land is offered by more than one applicant without acquiring any enforceable right in the land in respect of ownership, the same cannot be a ground for rejection of the candidate who has acquired the right in the land offered. The Company was requested to examine the issue keeping in mind the aforesaid and take an appropriate decision in the matter.

A writ petition was filed by the petitioner before this Court challenging the rejection of his candidature. The order passed by the learned Single Judge in W.P. No. 16436(W) of 2019 (Atulanand Singh vs. Indian Oil Corporation Ltd. and Others) was carried up in appeal by the petitioner and by an order dated 27.11.2019 the hon'ble Appeal Court directed the "Director (LPG), Ministry of Petroleum and Natural Gas" to consider and dispose of the representation filed by/on behalf of the petitioner on 04.07.2019 by a reasoned order after giving the parties an opportunity of hearing.

In compliance of the aforesaid order the matter was duly considered and by an order dated 28.02.2020 the Ministry advised the Company to reconsider the application of the petitioner and convey the decision to the Ministry.

It has been submitted in Court by learned advocates appearing on behalf of both the parties that the Company has filed an application praying for review of the order of the Hon'ble Division Bench which is pending till date.

The petitioner in the instant writ petition prays for implementation of the order passed by the Ministry. A direction was passed upon the Company for filing a report. In the report the Company has annexed a copy of the order dated 22.02.2021 which mentions that the Company was of the opinion that the rejection of his candidature was in line with the Unified Guidelines.

Learned advocate for the petitioner submits that the lands in question where the proposed show room and godown are to be constructed do not belong to his wife. A letter dated 10.05.2019 written by the wife of the petitioner to the area manager of the Company has been relied upon wherein it has been clearly mentioned that she never obtained any consent in writing or verbal from the owners of the plots of land and inadvertently disclosed the same in her application. She has also mentioned that she did not have any right or interest in the two plots of land at any point of time and has also specified that her declaration or disclosure does not stand in the way of setting up of LPG distributorship godown or show

room in the two plots of land in favour of the selected candidate.

Admittedly, there is no dispute with regard to the title or ownership of the plots of land in question.

According to the Company, “Family Unit” has been defined in the Unified Guidelines, which means parents (including Step Father, Step Mother), grandparents (both maternal and paternal), Brothers / Sisters (including Step Son / Step Daughter), Son-in-law / Daughter-in-law of the applicant or the spouse (in case of the married applicant) as on last date of submission of application. In case of ownership / co-ownership by family member (s) as given above, consent in form of a declaration from the family member (s) will be required.

Clause 5.1.11 of the Unified Guidelines mentions that the applicant should “Own” a plot of land of minimum dimensions as on the last date for submission of application.

Clause 5.2.4 mentions that the same piece of land for godown or same piece of land for showroom cannot be offered by more than one applicant for a particular location against the advertisement. In case it is found at any stage that the same piece of land for godown or same piece of land for showroom has been offered by more than one applicant for the same location of the advertisement, then all such

applications would be rejected or if selection has been done, then the same would be cancelled.

According to the Company as the same plots of land were offered both by the husband and the wife, their applications are liable to be cancelled in accordance with the Unified Guidelines.

It has been submitted that the rejection order dated 22.02.2021 has been filed by way of a report and the same is not under challenge in the present writ petition.

Upon hearing the submissions made on behalf of the parties and upon perusal of the materials on record, it appears that the candidature of the petitioner stood cancelled earlier by an order dated 14.06.2019. The same was under challenge before this Court. The Hon'ble Division Bench directed the Director of the Ministry to take a decision in the matter. The Ministry has opined that harmonious reading of the clauses of the Unified Guidelines for selection of LPG distributorship in case more than one applicant offers the same plot of the land means that the same plot of land shall be owned by them in terms of Clause 1.23 of the Unified Guidelines.

It is an undisputed fact that out of two pieces of land offered by the petitioner one is owned by him and in respect of the other, consent has been obtained from the owner. The wife of the petitioner, in respect

of none of the two plots of land, is either the owner or the leaseholder or even a consent holder of the same. The Guidelines mention that in case of ownership / co-ownership by family member(s), consent in form of declaration from family member(s) will be required.

In the instant case the wife has mentioned that she does not have any stake in the property which has been offered by her husband and the father of the petitioner has already given his consent for setting up of business by the petitioner herein.

The learned advocate for the Company strenuously submits before this Court that the impugned order of rejection dated 22nd February, 2021 has not been brought on record by the petitioner, accordingly an opportunity ought to be given to the Company for filing an affidavit defending the same. As the petitioner and his wife offered the same piece of land, accordingly, the candidature of the petitioner has been rightly cancelled.

The submission of the learned advocate for the Company does not appeal to the Court.

It appears that earlier rejection dated 14th June, 2019 which was impliedly set aside by the Hon'ble Division Bench of this Court and the present rejection dated 22nd February, 2021 are absolutely on the similar lines. Once the rejection order has been set aside by the Court and remanded back to the superior

authority for reconsideration there is no further requirement of giving another opportunity to the Company to defend the same.

It appears that the Company has misinterpreted the Unified Guidelines.

In my opinion, the term 'offered' as mentioned in the Guidelines should necessarily mean *legally offered*. Only mentioning the details of the land without any supporting documents cannot be treated as a valid offer of the land. The Ministry was also of the opinion the right put forth by the claimant ought to have been an enforceable right.

As the petitioner has sufficient documents to prove and support his stand that he is the owner and the consent holder of the land where he seeks to set up his business, and the same is in line with the Unified Guidelines of the Company, it is not proper for IOCL to cancel the candidature of the petitioner on the ground mentioned either in the letter of cancellation dated 14th June, 2019 as annexed in page 70 of the writ petition or the letter of cancellation dated 22nd February, 2021 passed by the Company annexed at page 9 of the report.

The earlier rejection dated 14th June, 2019 was impliedly set aside by the order of the Hon'ble Division Bench passed on 27th November, 2019.

Setting aside of the order dated 22nd February, 2021 is consequential to the order passed by the Court on the earlier occasion. Allowing further time to the Company to defend their stand would merely delay the matter. As the order of rejection has already been brought on record by the Company, accordingly necessary orders are passed herein.

In view of the above, the instant writ petition is disposed of by setting aside the impugned order of rejection dated 22nd February, 2021 and directing the respondent no.6 being the Senior Area Manager, IOCL, Kharagpur to process the application of the petitioner, strictly in accordance with law at the earliest.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)