IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2021

DELIVERED ON : 18.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.4527 of 2019
and W.M.P.Nos.24512, 5105, 5109 & 5112 of 2019

Smt.Dhanalakshmi Konduru
... Petitioner

Vs.

Indian Oil Corporation Limited,
Represented by the Deputy General Manager (LPG - Sales),
Indane Area Office,
Marketing Division,
500, Anna Salai, Teynampet,
Chennai - 600 016.
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus to call for the records pertaining to the issuance of the proceeding in Ref.No.IOC04112075525042018 dated 09.02.2019 on the file of the respondent and quash the same and further may direct the respondent to award the LPG distributorship at Chennai (Chrompet) in favour of the petitioner.

For Petitioner : Mr.S.Elambharathi

For Respondent : Mr.M.S.Krishnan, Senior Counsel
for Mr.Mohammed Fayaz Ali

O R D E R

In this writ petition, the issue revolves upon the interpretation of Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors.

2.It is the case of the petitioner that she has satisfied the distance criteria as per Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors as according to her, the godown for storage of LPG Cylinders offered by her is located within 15 Kms. from outer limits of Pallavaram Municipality if the distance is measured “As the crow flies”. But, according to the Respondent Oil Corporation, the petitioner has not satisfied the distance criteria as stipulated under Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors since the godown for storage of LPG Cylinders offered by the petitioner is beyond 15 Kms. as the said godown is located at a road distance of more than 15 Kms. from the outer limits of Pallavaram Municipality where the petitioner's proposed showroom is located.

3.The petitioner has challenged the letter dated 09.02.2019 issued by the respondent rejecting the property offered by the petitioner at Survey No.86/1, Arungal Village, Chengalpattu Taluk for the godown to store LPG Cylinders on the ground that the said godown is situated at a distance of 16.3 Kms. by road from the end point of Pallavaram Municipality where the petitioner's offered showroom having address at 453/2A, New Survey No.453/3A1A2, Plot No.147, Ground Floor, 2nd Street Santhi Nagar EXT, Chrompet, Chennai - 600044 is located. The respondent in the impugned letter dated 09.02.2019 has also requested the petitioner to offer any alternate property for the godown and they have informed the petitioner that in case the petitioner fails to offer an alternate property, her candidature will be rejected and the sum of Rs.50,000/- deposited by her with the respondent Corporation will stand forfeited.

4.Aggrieved by the impugned letter dated 09.02.2019, the petitioner has preferred this writ petition.

5.Heard Mr.S.Elambharathi, learned counsel for the petitioner and Mr.M.S.Krishnan, learned Senior Counsel for Mr.Mohammed Fayaz Ali, the learned counsel for the respondent.

6.The learned counsel for the petitioner drew the attention of this Court to Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors and would submit that the petitioner has satisfied the distance criteria under the said Clause. According to him, the distance will have to be measured only "As the crow flies" and not as per the "Road distance".

7.The learned counsel for the petitioner drew the attention of this Court to the report dated 25.02.2020 submitted by the Tahsildar, Vandalur, pursuant to the directions issued by this Court and would submit that the distance of the godown offered by the petitioner as per the said report of the Tahsildar is 12.70 Kms. of the distance "As the crow flies". Hence, according to him, the petitioner having satisfied the distance criteria, the respondent ought not to have rejected the property offered by the petitioner for the godown.

8.The learned counsel for the petitioner then drew the attention of this Court to Section 11 of the General Clauses Act, 1897 and would submit that any distance will have to be measured in a straight line on a horizontal plane i.e. "As the crow flies". Hence, according to him, rejection of the petitioner's property for the godown by the respondent is arbitrary and illegal.

9.The learned counsel for the petitioner also drew the attention of this Court to a judgment of a learned Single Judge of this Court in the case of P.G.Murugesan Vs. The Assistant Commissioner (Excise), Coimbatore reported in 1998 (II) CTC 661 and would submit that since the term "distance" has not been defined under the Unified Guidelines for Selection of LPG Distributors, Section 11 of the General Clauses Act, 1897 which defines distance will have to be applied. Hence, according to him, the distance has to be calculated only "As the crow flies".

10.Per contra, Mr.M.S.Krishnan, learned Senior Counsel for the respondent would submit that the road distance is the criteria for measuring the distance of the location of the godown offered by the petitioner from the outer limits of the Municipality where the showroom of the petitioner is proposed to be located.

11.The learned Senior Counsel for the respondent would submit that the godown offered by the petitioner at Survey No.86/1, Arungal Village, Chengalpattu Taluk is situated at a distance of 16.3 Kms. by road from the end point of Pallavaram Municipality where the showroom is proposed to be located.

12.The learned Senior Counsel for the respondent also drew the attention of this Court to the report dated 12.12.2019 submitted by the Tahsildar, Vandalur Taluk, Chengalpattu District, pursuant to the directions issued by this Court and would submit that as per the said report, the proposed godown of the petitioner is located at 15.5 Kms. from the outer limits of Pallavaram Municipality where the proposed showroom of the petitioner is located and hence, according to him, the distance criteria has not been satisfied by the petitioner. Hence, according to him, the impugned letter rejecting the petitioner's property for the godown has been rightly issued by the respondent.

13.The learned Senior Counsel for the respondent also drew the attention of this Court to a Division Bench judgment of the Madras High Court in the case of the Commissioner of Income Tax, Chennai Vs. Smt.Sakunthala Rangarajan reported in 2016 SCC OnLine Mad 19271 and would submit that there is no straight jacket formula for calculation of distance and according to him, as per the aforesaid decision of the Division Bench, the methodology of measurement of distance depends upon the context and the purposes to be achieved.

14.The learned Senior Counsel for the respondent while referring to Section 11 of the General Clauses Act, 1897 would submit that as per the said Section there is no hard and fast rule that the methodology for measuring distance will have to be "As the crow flies" i.e. in a straight line on a horizontal plane. According to him, the distance rule is incorporated in the guidelines only in public interest and only to help the customers to get LPG Cylinders quickly. Therefore, according to him, the distance of 15 Kms. mentioned in Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors is only the "Road distance" and not "As the crow flies".

Discussion:

15.Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors reads as follows:

> "iv. Selected candidate for Sheheri Vitrak & Rurban Vitrak locations failing under 'X' and 'Y' Category Metro Cities/ Cities/State will be allowed to construct the godown in and within 15 kms outside the Municipal Limit of the Town/City of the advertised location."

16.The advertised location for which the petitioner had applied is Chennai (Chrompet, Kancheepuram District). As per Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors, the godown offered by the petitioner should be 15 Kms. from the outer limits of Pallavarm Municipality as Chrompet falls under Pallavaram Municipality limit. The petitioner has offered her land situated at Survey No.86/1, at Arungal Village, Chengalpattu Taluk for the purpose of godown to store LPG Cylinders. The showroom offered by the petitioner is located at Santhi Nagar EXT, Chrompet, Chennai and according to the respondent, the distance between the showroom and the godown is 22 Kms.

17.According to the respondent, the Field Verification Credentials (FVC) of the petitioner was conducted by the respondent Committee and it was found that the petitioner's godown is located at a distance of 16.3 Kms from the Municipal limits of Pallavaram which is beyond the permissible limit as per the aforementioned guidelines.

18.A direction was also issued by this Court to the Tahsildar, Vandalur Taluk calling upon him to file a report as to the distance of the petitioner's godown located at Arungal Village, Chengalpattu Taluk from the outer limits of Pallavaram Municipality both by adopting the methodology of "By Road" and "As the crow flies".

19.A report dated 12.12.2019 was submitted by the Tahsildar, Vandalur Taluk, Chengalpattu District before this Court stating that the distance by road to the petitioner's godown situated at Survey No.86/1, Arungal Village, Chengalpattu Taluk from the outer limits of Pallavaram Municipality is 15.5 Kms.

20.A report dated 25.02.2020 was also submitted by the Tahsildar, Vandalur before this Court stating that the distance to the petitioner's godown "As the crow flies" from the outer limits of Pallavaram Municipality is 12.70 Kms.

21.The respondent is a Public Sector Oil Corporation and caters to public interest. The distance criteria of 15 Kms. from the outer limits of the Municipality where the showroom is located has been introduced only in public interest for easy accessibility of LPG Cylinders by the public at large. If the distance has to be measured by adopting the methodology "As the crow flies", the very object of the incorporation of the distance criteria in Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors referred to supra will get defeated as easy accessibility to get Cylinders by the general public will get affected in case of difficult terrains where there are no short cut roads between the showroom and the godown.

22.The following illustration can be given to explain as to why the distance criteria will have to be measured by "Road distance" and not by "As the crow flies".

Take the case of a candidate offering a godown in a hill station which is within 15 Kms. radius "As the crow flies" from the outer limits of the Municipality where the showroom is located in the foothills. In those cases, the distance "By Road" will be many times more than the distance "As the crow flies". A customer will find it difficult to get LPG Cylinders if the distance is measured by using the methodology "As the crow flies".

23.Therefore, this Court is of the considered view that the distance criteria as per Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors will have to be measured as per the "Road distance" and not "As the crow flies".

24.Section 11 of the General Clauses Act, 1897 reads as follows:

> "11.Measurement of distances – In the measurement of any distance, for the purpose of any [Central Act] or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane."

25.Section 11 of the said Act has made it clear that "if a different intention appears," there is no necessity to measure the distance in a straight line on a horizontal plane i.e. "As the crow flies". Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors fixing the distance criteria was introduced only in public interest to help the general public in easy accessibility of LPG Cylinders. If the distance is measured by using the methodology "As the crow flies", public interest will be affected as their accessibility to LPG Cylinders will be affected as the distance measured “As the crow flies” is of no consequence to the customers/service staff as they travel only “By Road”. Therefore, it is very clear that the intention of the respondent to introduce the distance criteria is only to subserve public interest. The exception “unless a different intention appears” found in Section 11 of the General Clauses Act, 1897 squarely applies to the facts of the instant case. Hence, the distance will have to be measured only “By Road”.

26.A Division Bench judgment of this Court in the case of the Commissioner of Income Tax, Chennai Vs. Smt.Sakunthala Rangarajan reported in 2016 SCC OnLine Mad 19271 relied upon by the learned Senior Counsel for the respondent also supports the case of the respondent. Paragraph Nos.28 and 29 of the said judgment are extracted hereunder:

> 28.For illustration, take the case of a person, who has a shop in Fort Road, Parrys, on the eastern side. If he has to go to a shop or office or any place located in NSC Bose Road, on the Western Side, he has to go round the High Court, and reach the place of destination. He has no right to use the High Court premises, which is not a public pathway/road and therefore, the distance has to be measured, only by approach road and not through the place, which is restricted to public. Therefore, if only a person has access, through an approach road, permitted by the authorities or used as a common pathway/road, the distance can be measured. Between an agricultural land and the nearest municipality, if there is a mountain, lake or private lands, government properties and where public has no access and if there is an alternate road/route, permitted by the authorities for use of public, then the distance has to be measured only through the access road and not in a straight line on horizontal plane.
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> 29.While carving out Section 11 of the General Clauses Act, 1897, legislature has also made it clear that for the purpose of any Act, that distance, shall unless a different, intention appears, be measured in a straight line on a horizontal plane. The proper interpretation to Section 11 of the General Clauses Act, 1897, depends upon the purposes for which, an Act is enacted. In the case of an explosive unit or stone quarry operations, aerial distance/crow's flight can be taken. In such circumstances, the distance falls within the ambit of prohibited distance. Thus in Section 11 of the General Clauses Act, 1897, the legislature has also foreseen that measurement of distance, should be in the context and the purposes to be achieved, in any enactment and it is not a straight jacket formula, that in all cases and under all circumstances and notwithstanding the purposes,

for which, an Act is enacted, measurement of distance should be done only in straight line on horizontal plane.

27.As per the aforesaid decision of the Division Bench of this Court, it is clear that legislature has foreseen that measurement of distance should be on the context and purposes to be achieved and that is the reason under Section 11 of the General Clauses Act, 1897, the legislature has thought it fit to bring about an exception by introducing the term "unless a different intention appears" when the distance cannot be measured in a straight line on a horizontal plane i.e. "As the crow flies". There cannot be any hard and fast rule as regards the methodology for measurement of distance as submitted by the learned counsel for the petitioner as the methodology to be adopted for measurement of distance depends upon the context and the objects to be achieved. The interpretation of Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors will have to be interpreted is a way that benefits the general public at large as the said Clause has been introduced only in their interest for their easy accessibility of LPG Cylinders. If the distance is measured "As the crow flies", their interest will be jeopardised. Hence, this Court is of the considered view that the respondent has rightly rejected the petitioner's offer of the land situated at Arungal Village, Chengalpattu Taluk for the godown since it is located at a distance beyond 15 Kms. (Road distance) from the outer limits of Pallavaram Municipality where the showroom is proposed to be located.

28.The judgment relied upon by the learned counsel for the petitioner in the case of P.G.Murugesan Vs. The Assistant Commissioner (Excise), Coimbatore reported in 1998 (II) CTC 661 does not have any bearing to the facts of the present case as that case was dealing with restrictions imposed with regard to the location of a liquor shop under Rule 18 of the Tamil Nadu Liquor (Retail & Vending) Rules, 1989. In the case on hand, location of LPG godowns are involved. Further in that case, the term "distance" was defined under the Rules itself. In the case on hand, the term "distance" has not been defined and hence this Court is of the considered view that in public interest which is the object of introducing Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors distance "By Road" alone should be taken into account and not the distance "As the crow flies".

29.For the foregoing reasons, this Court is of the considered view that there is no merit in this writ petition and accordingly, this writ petition is dismissed. However, if the petitioner is able to provide an alternate property for the godown satisfying the distance criteria as per Clause 8(m)(iv) of the Unified Guidelines for Selection of LPG Distributors by taking into consideration the road distance as well as satisfying other requirements of the respondent within a period of 15 days from the date of receipt of a copy of this order, the respondent shall consider the said property and if found feasible shall consider awarding contract to the petitioner for Distributorship within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

Indian Oil Corporation Limited,
The Deputy General Manager (LPG - Sales),
Indane Area Office,
Marketing Division,
500, Anna Salai, Teynampet,
Chennai - 600 016. The Deputy General Manager.

+1 cc to M/s.S.Elambharathi, Advocate Sr.No. 1762

W.P.No.4527 of 2019

SSV(CO)
RMP(03/02/2021)