

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.16370 of 2016
(Through Hybrid mode)

Nimai Chandra Sarkar

....

Petitioner

Mr. S.K.Dalai, Advocate

-versus-

***CMD, Indian Oil Corporation Ltd.
and others***

....

Opposite Parties

Mr. P.Acharya, Senior Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
10.03.2022

Order No.

17. 1. Mr. Dalai, learned advocate appears on behalf of petitioner and submits, impugned is letter dated 24th August, 2016, by which, on allegation of having concealed vital information on land ownership and misrepresentation of facts pertaining to it on affidavits dated 24th July, 2014 and 29th October, 2014, his client's candidature stood cancelled.
2. He submits, his client had offered land belonging to his late father. The land was found suitable and his client was selected. His client filed the affidavits stating that his father had died and himself and his younger brother were the heirs in respect of the land. There was omission to mention names of his mother and two sisters as legal heirs.

3. Drawing attention to disclosures in the rejoinder Mr. Dalai submits, pursuant to the cancellation, challenge by this writ petition to it and interim order obtained, his client got clear title in respect of the land under registered deed of release dated 28th April, 2015. The deed, including registration details, stand disclosed in the rejoinder and he hands up the original. The original is returned to Mr. Dalai. He submits, opposite party no.3, to eliminate his client, had lodged complaint as would appear from paragraph 5 of the counter filed by said opposite party. The complaint was lodged on 27th February, 2015 with the oil company. It is pursuant to this complaint his client's candidature was cancelled.

4. Mr. Acharya, learned senior advocate appears on behalf of the oil company and submits, clause 21 in tender conditions specified liability of rejection on false information and misrepresentation. Clause 21 is reproduced below:

"21. FALSE INFORMATION

If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to have been suppressed/misrepresented/incorrect or false, then the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases

the candidate/dealer shall have no claim whatsoever against the respective Oil Company.”

He also relies on clause 4 (eligibility criteria) sub-clause (vi)(f). Said sub-clause is reproduced below.

“(f) In case the applicant or member(s) of ‘family unit’ own the land jointly with third person, the consent letter in the form of an Affidavit (Appendix-VA) or Power Of Attorney clearly authorizing the applicant for such use of land from third person is also required.”

He opposes discretion being exercised in this jurisdiction since, he submits, this is a case of false information/misrepresentation and every letter of the conditions must be strictly enforced by his client in the matter of distribution of State largesse to individuals.

5. Opposite party no.3 though filed counter but goes unrepresented.

6. In affidavit dated 24th July, 2014, inter alia, following was said.

“1. That my deceased father Krishna Pada Sarkar is having lands situated under Mouza-Kalimela (700 meters away from Kalimela junction to Podia) covered by Khata No.650/183. Plot No.- 3040/4043/4108 to an extent of Hc. 0.405R.

2. That my father expired in the year 2009 leaving behind me and my elder brother Sri Nimai Chandra Sarkar as his only legal heirs/successors.

3. That after the death of my father my elder brother Sri Nimai Chandra Sarkar possesses the above mentioned lands.

4. That my elder brother has applied for the Retail Outlet Dealership of I.O.C. at Kaliela under Group-1 category against the advertisement appeared in Sambad Newspaper dated 26-06-14.

5. That in case my elder brother Sri Nimai Chandra Sarkar is elected for R.O. dealership I will transfer the above mentioned lands in favour of my elder brother Sri Nimai Chandra Sarkar for settling of Retail outlet facilities at the above mentioned location if necessary and I have no objection if he will start Petrol Pump in the above mentioned land.

6. I hereby confirm that the said piece of land has not been offered by e to any other person for Retail Outlet Dealership of this location against the above mentioned advisement.

7. I hereby verify that what has been stated above is true and correct to the best of my knowledge and nothing has been concealed there from.”

7. Deponent of the affidavit said, petitioner's father expired in year 2009 leaving behind his elder brother and himself as his only legal heirs/successors. He did not say that petitioner was the only legal heir/successor. He omitted to mention his mother and two sisters. The subsequent fact is that the younger brother, mother and two sisters joined to make petitioner sole owner of offered land. In the circumstances it cannot be presumed that there was false statement or misrepresentation.

8. Court has perused above extracted contents of the affidavit, in context of subsequent registered release deed dated 28th April, 2015. Complainant before the oil company was not any other co-sharer in respect of offered land but opposite party no.3, who appears to be next contender, in line for selection, on elimination of petitioner. The other heirs, being family members of petitioner, have joined in making petitioner owner of offered land, obviously for him to get the dealership. Their motive for doing so is presumed to be familial bond and hope of family income. The younger brother impliedly said as much in the affidavit.

9. By affidavit dated 24th July, 2015 the younger brother said he would transfer in favour of petitioner in event the dealership is granted to the latter. On knowing the allegation of having made false statement/misrepresentation, all family members, within meaning of family unit in relied upon eligibility sub-clause (vi)(f) under clause 4, have joined to convey their interest in respect of offered land, to petitioner. This has been done pursuant to impugned cancellation though

condition required, for grant of RO, was simply authorization of applicant by other members of the family unit. Members of petitioner's family rallied behind him, for his application to succeed. This fact militates against presumption of false statement made by the affidavit.

10. The omission has also been alleged to be interpreted as misrepresentation but under the law, definition of misrepresentation given in Indian Contract Act, 1872 is, inter alia, as follows:

“18. “Misrepresentation” defined.—
 “Misrepresentation” means and includes—
 (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
 (2) xx xx xx
 (3) xx xx xx.”

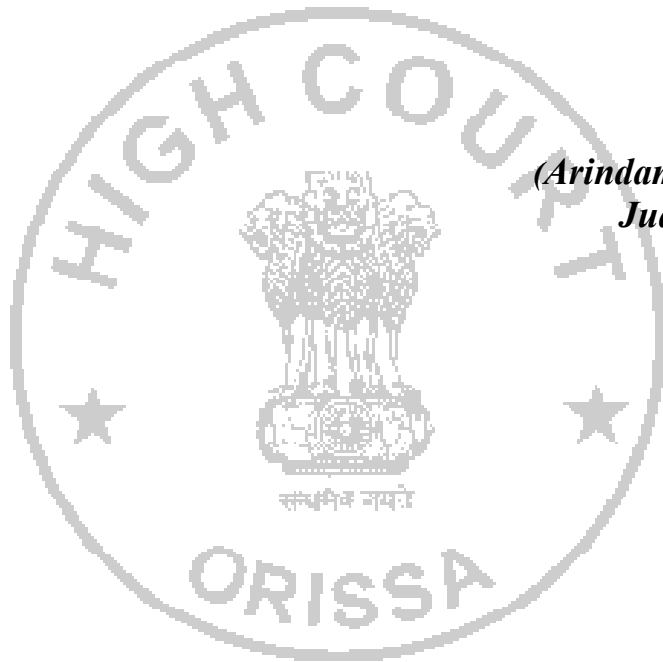
As aforesaid, petitioner did not say he was the only legal heir/successor in respect of offered land. He omitted to include all the heirs. The positive assertion, therefore, must be seen to be that he was one of the heirs. As such the positive assertion does not fall within meaning of misrepresentation given under sub-clause (1) in section 18.

11. For reasons aforesaid impugned letter dated 24th August, 2016 is set aside and quashed. The oil company is directed to scrutinize and verify for itself, title to offered land held by petitioner, as claimed under said deed of release dated

28th April, 2015. In event the oil company finds that petitioner has clear title as appearing from the deed as duly registered, there being no other objection by it, petitioner is to be given the dealership. For purpose of verification, it will open to the oil company to require all executants of the deed to also personally appear and confirm their participation in the execution of it. The entire exercise is to be completed within eight weeks of communication of this order.

12. With above direction, the writ petition is disposed of.

RKS



(Arindam Sinha)
Judge