

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. LPA No.363 of 2023 (O&M)
BHARAT PETROLEUM CORPORATION LTD. AND ANOTHER
.....Appellants
V/s.
KUSHWINDER SINGH SIDHU AND OTHERS
.....Respondents

2. LPA No.352 of 2023 (O&M)
VIVEK GOEL
.....Appellant
V/s.
KUSHWINDER SINGH SIDHU AND OTHERS
.....Respondents

Reserved on 10.04.2023.
Date of Decision: 19.04.2023.

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Amit Jhanji, Senior Advocate assisted by
Ms. Niharika Garg, Advocate,
for the appellants in LPA-352-2023.

Mr. Raman Sharma, Advocate,
for the appellants in LPA-363-2023 and
for respondent No.2 and 3 in LPA-352-2023.

Mr. Keshav Pratap Singh, Advocate,
for respondent No.1 in both the Appeals.

M.S. RAMACHANDRA RAO, J.

These two Letter Patent Appeals arise between the same
parties and so have been disposed of by this common order.

These two appeals are preferred against the order of the
learned Single Judge of this Court rendered on 31.01.2023 in
CWP-10924-2022.

Background facts

The appellants in LPA-363-2023-Bharat Petroleum Corporation Pvt. Ltd. (hereinafter referred as “Corporation”) had issued an advertisement dt.25.11.2018 for the purpose of allotment of the Petrol Pumps, and one of the sites for retail was Mansa City, District Mansa, Punjab under category ‘Open-Regular’.

Pursuant to the said advertisement, the appellant in LPA-352-2023 i.e. Vivek Goel (hereinafter referred as “VG”) along with some others had applied for retail outlet dealership.

As per the Brochure issued on 24.11.2018 (P-1) which prescribed the terms and conditions for the purpose of selection of dealers, the applicants were divided into three Categories/Groups based on the land offered or not in the application form. As per Clause 4(v), these three groups were as under:-

Group 1:

Applicants having suitable piece of land in the advertised location/area either by way of ownership / long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 2:

Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 3:

Applicants who have not offered land in the application.

The brochure further stated that:-

“Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant gets selected under Group 1 & 2.

In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group 1 & Group 2 along with applicants under Group 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location / stretch, within a period of 3 months from the date of issuance of intimation letter to them through SMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected.”

Thus, according to the Brochure, the applicants in Group-1 would be considered at the first instance; and if none among them are suitable or eligible, only then, the applicants of Group-2 would be considered; and if there is none found suitable/eligible from Group-2 as well, then applicants of Group-3 would be considered.

Group-1 and Group-2 applicants who are not found suitable/eligible would be deemed to be in Group-3.

When selection process started by way of draw of lots, there were total 16 applicants out of which 14 candidates were under Group-1, and only 2 candidates were under Group-3, but there was no applicant in Group-2.

The appellant in LPA-352-2023/VG was an applicant under Group-1, and respondent No.1 in both the Appeals, by name, Kushwinder Singh Sidhu (hereinafter referred as “KSS”) was an applicant in Group-3.

After the draw of lots on 13.07.2021, VG was selected and thereafter the entire process was started with regard to carry out various formalities pertaining to physical verification, submission of NOC and other documents for the purpose of complying with the terms and conditions set out in the Brochure.

After completing this exercise, the Corporation issued Letter of Intent in favour of VG on 21.09.2021 in respect of the land measuring 16 meters approximately (frontage) x 19 meters (depth) at Khasra No.198/21/1 (1-2), 199//25 (9-16), Khewat No.1332/1260, Khatoni No.3288, situated at Village Mansa Kalan, Tehsil and District Mansa, Punjab.

However, on the same day, VG gave an offer with regard to some alternate land which was accepted by the Corporation vide Annexure P-8 and an addendum LOI was issued on 17.12.2021. The alternate land was 25.90 meters approximately (frontage) x 48.78 meters (depth) at Khasra No.604//2/2, Khewat No.1962/1861, Khatoni No.4267 of the same Village. This offer of alternate land was also permitted by Note 3 in Clause(4) of the brochure.

The CWP-10924-2022

KSS filed CWP-10924-2022 challenging the Annexure P-7 LOI dt.21.09.2021 and all consequential orders including Annexure P-8 dt.17.12.2021 on various grounds.

The stand of KSS

He *inter alia* contended that VG had provided alternate land for which the second LOI P-8 dt.17.12.2021 was issued superseding P-7 LOI dt.21.09.2021; that the land mentioned in P-8 LOI was a joint land owned by more than 50 persons, and VG did not submit consent of the co-owners in the form of affidavit on stamp paper in the format prescribed in Appendix III A to the Corporation. He placed reliance on P-10 *jamabandi* in that regard.

He further submitted that the land mentioned in P-8 LOI dt.17.12.2021 is a plot also taken on lease by VG from some of the co-sharers, but the Corporation did not bothered to comply with their own terms and conditions of the Brochure, and did not obtain the requisite prescribed format affidavit and thus, there was a violation of the terms and conditions of the Brochure i.e. sub-clause (i) and (j) of Clause 4 (v).

He alleged malafides and discrimination and contended that the Corporation had rejected the candidature of several other candidates throughout India only on the ground that requirement of Appendix III A was not given by them, but has made an exception in the case of VG. He further contended that VG was not the sole owner of the plot, but only a co-owner and an undertaking P-9 given by VG that he is the sole owner of the land in question was false.

The stand of the Corporation

The Corporation took the plea that it was within its rights to have considered the request of VG for offering an alternate plot and also acting upon the undertaking given by the VG because the entire area was a

constructed area, VG was in possession of the land, that it was within the municipal limits, and so the *jamabandi* showing co-owners of the land lost its significance, and this had been got verified by them from the concerned Revenue Officer. It also contended that there is no necessity to obtain any consent from the co-owners in the Form Appendix III A because the property was falling within the municipal limits and was fully constructed, and therefore, issuance of P-8 LOI was just and proper.

It was further contended that the VG had got the land also on the basis of the lease and it would fall at Sr. No.1 of Clause 4 (v) (j) and not under Sr. No.3 thereof.

Contentions of VG

Counsel for VG contended that it had already been issued LOIs Annexures P-7 and P-8 in accordance with law, and that the Corporation had already satisfied itself with regard to the fulfillment of the eligibility conditions as per the Brochure. He contended that VG had already spent ₹30 Lakhs on the aforesaid plot after issuance of LOI for constructing infrastructure thereon, and the Writ Petition filed after a lapse of 7½ months ought not be entertained because if the LOI in favour of the VG was set aside, irreparable loss would be caused to him.

He supported the contentions of the counsel for the Corporation. He also contended that the *alternate land* offered by VG for which second LOI was issued had been purchased by his grandfather in the year 1976 with specific boundaries and area, and there was no requirement of giving any form in the nature of Appendix III A particularly since the

land falls within the municipal limits, and the *jamabandi* relied upon by the KSS has no significance.

He contended that the entire area was fully constructed as is evident from the site plan and photographs filed as R-3/4 to R3/6, and in respect of the land which was the subject matter of the P-8 LOI, even a Change Of Land Use certificate had been issued by the Department of the Town and Country Planning, and all the NOCs had also been issued from the concerned Departments. He also stated that the site plan was also sanctioned by the Municipal Corporation and Deputy Commissioner concerned for the purpose of construction.

Counsel for the VG further contended that KSS had no *locus standi* to file the Writ Petition, *firstly* because he had applied under Group-3 whereas first of all, draw of lots would be conducted for Group-1 of which VG was successful, and KSS has no *locus* to challenge the same because he does not fall under the category of Group-1; *secondly* that the sister-in-law of KSS had filed a Civil Suit for injunction against VG and having failed to obtain any interim order in the Civil Suit, instigated KSS to file the Writ Petition under reference.

He also contended that the contention of the KSS that the undertaking given by VG is false cannot be accepted since as per the Brochure even a lease holder is also deemed to be an owner. He also relied upon the judgment of this Court in *Ude Singh and Others Vs. Ram Chander*¹ to contend that when the land is constructed upon, then the *jamabandi* will not apply.

¹ RSA-643-1980, decided on 27.02.2008

Order of the learned Single Judge

Learned Single Judge in the impugned order dt.31.01.2023, firstly took up the preliminary objections about the *locus standi* of KSS and rejected the said contentions.

He held that the Brochure prescribed that first of all draw of lots is to be held amongst the applicants in Group-1, and in default of the same, it goes to Group-2, and ultimately, from Groups 1 and 2 if none is found eligible, they will put in a common pool along with the applicants of Group 3 and thereafter the entire process would start again.

He noted that as per Annexure P-6, there were 14 applicants in Group-1 and there were only 2 applicants in Group-3, but there was no applicant in Group-2; that in case VG was found not eligible (among Group-1 applicants) then remaining 13 candidates of Group-1 are to be considered; and in case all of them are found ineligible, then ultimately the entire pool is made common along with Group-3 which comprises of KSS as well.

He held that in other words there is a process of elimination which would ultimately lead and end up to Group-3, and therefore, at this stage, it cannot be said that in case VG is found to be not eligible, then it will go to anybody else in Group-1 because candidates of Group-1 are to be considered on their own merits; and there is a *possibility* that ultimately KSS may fall within the zone of consideration as per the selection procedure given in the Brochure.

He held that since KSS at this stage cannot be excluded from the overall consideration zone, even abiding by the steps which are to be

followed, he does fall within the zone of consideration for the purposes of maintaining the Writ Petition and therefore, he has *locus standi* to file the Writ Petition.

He rejected the second objection raised about the filing of the Civil Suit by the sister-in-law of KSS on the ground that KSS was not himself is a party to that Suit.

He then went into merits and found fault with action of the Corporation for not insisting upon getting NOC from the other co-owners because of non-fulfillment of the same by VG and allowed the Writ Petition and set aside the allotment of P-8 LOI in favour of the VG and quashed it.

He then directed the Corporation to consider the entire case in a fresh perspective, hear both KSS and VG and then pass a reasoned speaking order with regard to entitlement of VG and also to consider whether there is any requirement of NOC from the co-owners in the form of Appendix III A or not. He then directed that this exercise be done within 3 months after hearing both KS and VG, and in case VG is found to be entitled, fresh LOI be issued to him, and in case VG is not entitled, he directed that fresh process be started *qua* all the remaining applicants including KSS as per the procedure prescribed in the Brochure.

Challenging the same, these Appeals are filed by the Corporation and VG.

Contentions of the Appellants (Corporation & VG)

Counsel for the appellants in both the Appeals strenuously contended that the finding of the learned Single Judge on the *locus* of KSS to file the Writ Petition is erroneous since the learned Single Judge had

himself noticed that KSS falls in Group-3 while VG and 13 others were in Group-1 (there was nobody from Group-2); and as per the procedure prescribed in the Brochure issued by the Corporation, the chance of KSS (who is the applicant in Group-3), to be considered for issuance of LOI, would arise only when 13 candidates of Group-1 are found ineligible for issuance of LOI in the event VG is held to be ineligible; none of the other 13 applicants of Group-1 had approached this Court and sought any relief to set aside P-8 LOI granted to VG; none of the co-sharers of the VG have ever complained that his/her consent was not taken for offering the land *qua* which the P-8 LOI had been issued by the Corporation; there is an extremely remote chance of KSS getting the LOI since his chance would come only after the remaining 13 candidates of Group-1 are found ineligible; merely because there is a theoretical chance/possibility of KSS getting the LOI, he cannot be said to have *locus* to file the Writ Petition. They also pointed out that the affected persons if at all would be the 13 applicants of Group-1 or the co-sharers of VG, and when none of them have any grievance, a person like KSS cannot be said to be an aggrieved party and file the Writ Petition.

Counsel for the KSS refuted the said contentions and supported the reasoning given by the learned Single Judge in holding that KSS had *locus standi* to file the Writ Petition. He contended that at this stage, KSS cannot be excluded from the overall zone of consideration because there is a chance that he may become eligible if the other 13 candidates of Group-1 are found ineligible as per the Brochure.

Consideration by the Court

We have noted the contentions of the both the sides.

Admittedly the Writ Petition is not in the nature of a Public Interest Litigation, and the Writ Petitioner/KSS had filed the Writ Petition claiming to be *aggrieved* by the grant of P-8 LOI dt.17.12.2021 in favour of VG.

Even according to KSS, as per the procedure of the Corporation, the applicants would be classified in 3 Groups i.e. Group 1, 2 and 3; there were total 16 applicants who have applied in total of whom 14 applicants including VG were in Group-1, and only 2 applicants were in Group-3 including KSS, but there was not applicant in Group-2.

As per the Brochure issued by the Corporation, the applicants of Group-3 would be considered and their applications would be processed only in case no eligible applicant is found or no applicant gets selected amongst Groups 1 and 2.

The applications *qua* Group-1 would be taken at the first instance and in case nobody is found suitable/eligible then applicants of Group-2 would be considered, and the process would be repeated for Group-2, and if none in Group-2 is selected, only then the applicants in Group-3 would be considered.

Thus, the chance of a Group-3 applicant like KSS would come only if all the 14 applicants of Group-1 are found ineligible. Thus there is a mere theoretical chance of KSS being considered for grant of LOI.

In our opinion mere existence of a *possibility* that Group-3 applicants might be considered without there being any *probability* of that happening,

cannot confer *locus* on KSS to challenge the grant of P-8 LOI in favour of the VG.

More so, when such a challenge has been made on 16.05.2022 i.e. 7½ months after the issuance of the LOI, during which period VG had spent considerable amount to make the said land fit for use as a Petroleum Retail Outlet, and had even obtained permission from the Municipal Corporation, NOCs from all the Departments as also the Change of Land Use Certificate from the Department of Town and Country Planning.

In the case of *Attorney-General of the Gambia v. Pierra Sarr N'Jie*² Lord Denning had held that *though the words 'person aggrieved' is of wide import and should not be subjected to a restrictive interpretation, the said words would not include a mere busybody who is interfering in things which do not concern him.* This view was upheld by the Supreme Court in the case of *PSR Sathanantham Vs. Arunachalam*³.

In *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed*⁴, the Supreme Court held:

“37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) “person aggrieved”; (ii) “stranger”; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may

² [1961] A.C. 617

³ 1980 (3) SCC 141

⁴ (1976) 1 SCC 671, at page 683

be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of “persons aggrieved”. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be “persons aggrieved”.

39. To distinguish such applicants from “strangers”, among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person

“against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?”

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?”

Applying the above tests we are of the view that KSS is not a person whose legal right has been infringed; he has not suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been

prejudicially and directly affected by the act or omission of the authority, complained of. He has no special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public.

So we are of the opinion that KSS cannot be termed an ‘aggrieved person’ and has no *locus standi* to file the CWP as there is only remote possibility that he would be issued an LOI since his case would be considered only if 14 others of Group-1 fail.

Conclusion:-

For the aforesaid reasons, we hold that KSS had no *locus* to question the grant of the P-8 LOI in favour of VG and learned Single Judge erred in entertaining the Writ Petition and granting relief to KSS. Once KSS is held to have no *locus* to file the Writ Petition, there is no necessity for us to express any opinion about the question whether there was really any violation of the terms of the grant of LOI in favour of VG.

Therefore, the appeals are allowed and the order dt.31.01.2023 passed by the learned Single Judge in CWP-10924-2022 is set aside.

Pending application(s), if any, also stands disposed of.

Photocopy of this order be placed on the file of the connected case.

April 19, 2023

Ess Kay

[M.S. RAMACHANDRA RAO]

JUDGE

[SUKHVINDER KAUR]

JUDGE

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>