

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

CWP-10647 of 2019

Date of Decision:01.02.2023

Krishan Kumar

....Petitioner(s)

Versus

Bharat Petroleum Corporation Limited and others

.....Respondent(s)

2)

CWP-30287 of 2022

Krishan Kumar

....Petitioner(s)

Versus

Bharat Petroleum Corporation Limited and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S. Mamli, Advocate,
for the petitioner (in CWP-10647 of 2019).

Ms. Mehak Sawhney, Advocate,
for the petitioner (in CWP-30287 of 2022 .

Mr. Raman Sharma, Advocate,
for respondents.

Mr. Pranav Chadha, Advocate,
(Local Commissioner).

JASGURPREET SINGH PURI, J. (Oral)

Both the petitions are taken up together with the consent of
learned counsels for the parties since the subject matter in both the petitions

is the same, i.e. challenge to the allotment made to respondent No. 4 for retail of LPG outlet, although the petitioners in both the petitions are different but the challenge is identical.

The brief facts of the present case are that respondent No.1-Bharat Petroleum Corporation Limited (hereinafter to be referred to as the 'Corporation') had issued an advertisement for selecting the candidates for LPG outlet under the Rajiv Gandhi Gramin LPG Vitarak (RGGLV) for distribution of cylinders of 14.2 kg. for 1800 customers at village Shingani, Tehsil Loharu, District Bhiwani (Haryana). After the selection process was completed, respondent No. 4 was allotted the aforesaid LPG agency by the Corporation and it was commissioned in July 2013 and from then onwards, respondent No. 4 is stated to be operating the aforesaid LPG agency continuously till date.

CWP-10647 of 2019 has been filed by one Krishan Kumar son of Shri Subhash Chand in the year 2019 seeking cancellation of the aforesaid allotment to respondent No. 4. He is stated to be not the candidate in the selection process but is only a villager/consumer of the area.

CWP-30287 of 2022 has been filed by one Krishan Kumar son of Bharat Singh in the year 2022, making a similar prayer for cancellation of allotment to respondent No. 4. This petitioner is stated to be one of the contestants as a candidate during the selection process which had taken place in the year 2011 after the advertisement had been issued but he was unsuccessful in the selection process.

So far as the writ petition filed by Krishan Kumar son of Subhash Chand (petitioner in CWP-10647 of 2019) is concerned, the same

has been filed after a delay of six years from the time of commissioning of the LPG outlet to respondent No. 4 and so far as writ petition filed by Krishan Kumar son of Bharat Singh (petitioner in CWP-30287 of 2022) is concerned, who was stated to be one of the candidates in the selection process, the same has been filed after delay of nine years. The grounds taken by both the petitioners are almost similar.

This Court in CWP-10647 of 2019 on 02.07.2019 had asked learned counsel for the Corporation to verify the factual position as regards the averments made by the petitioner in paragraph 7 of the writ petition by which it was alleged that there is a high voltage wire passing over the godown and there is a canal nearby and there is a violation of rules by the respondents. Thereafter, the matter was kept pending and when this matter was taken up for hearing on 06.01.2023 by this Court, learned counsels appearing on behalf of the petitioners in both the petitions had submitted that there is a violation of brochure (Annexure P-1) which is attached with both the cases. They had raised two objections. Firstly, there are high tension electric wires over and above the godown where the LPG distributorship is operating and secondly, the road leading to the aforesaid godown does not comply with the specifications for transportation of LPG cylinders because the distance of the aforesaid godown is about 1 km from the main road and there is no road connecting the distributorship godown to the main road and therefore there can be no transportation of cylinders from the main road to the godown and consequently sometimes consumers have to take the cylinders from the godown because the home supply is not adequate. The aforesaid two objections raised by both learned counsels for the petitioners

was repelled by learned counsel appearing on behalf of the Corporation. However, this Court had, after hearing all learned counsels for the parties and on the basis of no objection from learned counsel for the parties, appointed a Local Commissioner to inspect the spot and to furnish the report to this Court in the interest of justice. The Local Commissioner was asked to submit the report after visiting the spot in the presence of some officers of the Corporation as well as in the presence of the petitioners in both the cases and time and date was also fixed. It was further directed that the report shall be submitted alongwith the photographs with regard to the aforesaid two objections.

Thereafter, a report of the Local Commissioner has been received by this Court and on the last date of hearing, learned counsels for the petitioners had sought time to peruse the report. No one has filed any objection to the report. A perusal of the aforesaid report shows that the Local Commissioner has given the report on both the aforesaid objections. The relevant portion of the aforesaid report is reproduced as under:-

“3. That the first aspect which was to be ascertained was that “whether there is any high-tension electric wire passing above the godown or not and in case there is any high-tension electric wire even near the godown then what is the distance between the godown and the high-tension electric wire”. It is submitted that no high-tension electric wire is passing above the godown. Further, there is a Transformer of 25 KVA installed at a distance of 66 feet/20.11 meters from the boundary wall of the godown. For kind consideration of this Hon’ble Court, photographs clicked on 08.01.2023, showing the above said facts, are attached herewith as Annexure C-3 (colly.).

4. That the second aspect which was to be ascertained was that “what is the approximate distance between the main road and the godown and what is the width of the road leading to the godown and as to whether it is motorable road or not”. In this regard it is submitted that the approximate distance between the main road and the godown is 200 meters.

It is further submitted that there are two Kutcha (unmetalled) roads/pathways/passages leading to the godown. The width of the Kutcha Road/pathway/passage leading to the godown which is along the canal, is approximately 11 feet/3.35 meters wide. The width of the Kutcha Road/pathway leading to the godown, which is parallel (to the passage along the canal) is approximately 14 feet/4.26 meters wide.

Further-more it is humbly submitted that both the pathways/passages leading to the godown are not metalled. Otherwise, vehicles can ply/move on the same, and therefore it may be described as motorable. Photographs in this regard are attached herewith as Annexure C-4 (colly).”

Photographs have also been attached alongwith the report. This Court has perused the report filed by the Local Commissioner. So far as the first objection pertaining to the existence of high-tension wires over the LPG godown is concerned, the report of the Local Commissioner is that no high-tension wires are passing above the godown. However, there is a transformer 25 KVA installed at a distance of 66 feet/20.11 meters from the boundary wall of the godown and photographs regarding the same are also attached. So far as the second objection pertaining to the passage/road leading to the godown from the main road is concerned, it has been so reported that the approximate distance between the main road and the godown is 200 meters.

There are two kutcha (un metalled) roads/pathways/passages leading to the godown. The width of the Kutcha Road leading to the godown which is along the canal is approximately 11 feet/3.35 meters wide and the width of the Kutcha Road leading to the godown, which is parallel to the aforesaid road for the aforesaid passage is approximately 14 feet/4.26 meters wide. Furthermore, it has been so stated in the report that both the pathways/passages leading to the godown are not metalled but otherwise, vehicles can ply/move on the same, and therefore it may be described as motorable.

Mr. R.S. Mamli, learned counsel appearing on behalf of the petitioner (in CWP-10647 of 2019) and Ms. Mehak Sawhney, learned counsel appearing on behalf of the petitioner (in CWP-30287 of 2022) have submitted that in fact there are electricity wires above the godown and even as per the report of the Local Commissioner, there is a transformer as well near the godown. So far as the second objection is concerned, they submitted that even as per the report of the Local Commissioner, there is no Pakka/metalled road leading to the godown even as per the report of the Local Commissioner and the photographs attached therewith. They submitted the aforesaid path which has been so mentioned in the report alongwith the photographs does not belong to respondent No. 4 and is a forest land regarding which no permission has been taken. They further submitted that even a suit for injunction was also filed by respondent No. 4 against the Gram Panchayat for seeking right to passage.

Learned counsels have further referred to the provisions of the brochure which lays down the terms and conditions which govern the

allotment of LPG distributorship. They referred to sub-clause h(i) & h(ii) of Clause 6 in this regard. The relevant portion of the same is reproduced as under:-

“(i)The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (road or private road connecting to the public road). In case of private road connecting to the public road, the same should be owned by the applicant/member of family as defined in h(iii) below in the ownership criteria for land. In case of ownership/co-ownership by family member(s) in respect of such private road, consent letter from respective family member (s) will be required.

(ii) The land should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals/Drainage/Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/Town and Country Planning Department etc.”

Learned counsels submitted that even as per the terms and conditions set out in the brochure governing the LPG distributorship, the plot or land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road and in case of a private road leading to the public road, the same should be owned by the applicant/member of the family as defined in sub-clause (h) (iii) and consent letter has to be obtained from the other family members. They have submitted that in the present case there is no motorable approach road and therefore the aforesaid provision has been violated. While referring to the sub-clause (ii) pertaining to electricity wires, they submitted that as per the

aforesaid sub-clause, the plot where the godown is to be situated was to be free from live overhead power transmission or telephone lines whereas in the present case the electricity wires are passing and there was a transformer nearby and therefore there is a violation of sub-clause (ii) as well. They, therefore, submitted that the allotment which has been made in favour of respondent No. 4 in the year 2013 is liable to be quashed on the ground of violation of the aforesaid two conditions.

On the other hand, Mr. Raman Sharma, learned counsel appearing on behalf of the respondent No.1-Corporation submitted that the report of the Local Commissioner is very clear. So far as the objection pertaining to the electric wires is concerned, as per the report of the Local Commissioner, there are no live wires passing above the aforesaid godown. So far as the existence of one transformer near the godown is concerned, it is at a distance of 66 feet from the godown even as per the report of the Local Commissioner and therefore on the face of it there is no violation of the conditions pertaining to electric wires. While dealing with the second objection, he again referred to the report of the Local Commissioner wherein it has been specifically stated that there are not one but two passages which are parallel and leading to the godown from the main road and the distance of the godown from the main road is approximately 200 meters which is a short distance. The width of these two roads have also been so stated in the report of the Local Commissioner and it has also been stated by the Local Commissioner that the aforesaid roads can be described as motorable although they are not metalled roads and therefore the second objection raised by learned counsel for the petitioners is also not sustainable in view of

the aforesaid report of the Local Commissioner. He further submitted that the selection process had started in the year 2011 and the LPG distributorship was allotted to respondent No. 4 in the year 2013 and now these two petitions have been filed in the year 2019 and 2022 which are at highly belated stage and therefore both the petitions are also liable to be dismissed on the ground of delay and latches.

I have heard learned counsels of the parties and have also perused the report filed by the Local Commissioner in this regard.

There are two issues involved in the present case. Firstly, whether there are any high-tension electric wires passing over and above the godown being in violation of sub-clause h(ii) of Clause 6 and secondly, whether sub-clause h(i) of Clause 6 is also being violated because there is no motorable approach road. So far as the first issue pertaining to the passing of the electric wires is concerned, a perusal of the report of the Local Commissioner would show that it has been stated so clearly alongwith photographs that there are no high-tension electric wires passing over the godown. The photographs pertaining to the same have also been attached with the report. The existence of a transformer of 25KVA at the distance of 66 feet is not in violation of terms of the aforesaid sub-clause h(ii) of Clause 6. Therefore, so far as the first objection pertaining to high tension electric wires is concerned, the objection raised by learned counsels for the petitioners is not sustainable.

Coming to the second objection pertaining to sub-clause h(i) of Clause 6 as reproduced above, a perusal of the aforesaid sub-clause would show that the requirement is that the plot of land should be freely accessible

through all weather motorable approach road. However, in case the road is private then other conditions have been provided. However, in the present case the road is admittedly not private and therefore the other conditions pertaining to getting no objection from the other family members etc. does not apply in the present case. There are conditions which are set out in the aforesaid clause. Firstly, the godown should be freely accessible and secondly, it should be accessible through all weather motorable approach road. A perusal of the report of the Local Commissioner alongwith the photographs would show that there are two parallel roads approximately of 11 feet and 14 feet and therefore it cannot be said that the godown is not accessible from the main road which is otherwise at the distance of only 200 meters. So far as the condition of all weather motorable approach road is concerned, the Local Commissioner has also so stated that it can be considered as motorable road. A perusal of the aforesaid clause would show that there is nothing in the clause to show that the road should be metalled road/Pakka road. Therefore, it cannot be said that the aforesaid clause is violated at the time of issuance of allotment of the LPG distributorship.

Apart from the above, the LPG distributorship awarded to respondent No. 4 was commissioned in July 2013. CWP-10647 of 2019 was filed by Krishan Kumar son of Subhash Chand in the year 2019. In the entire selection process, he was not a candidate to the selection process but he is stated to be only a villager/consumer and there is no justification for delay of six years in filing the present petition. So far as the second petition, i.e. CWP-30287 of 2022 is concerned, the same was filed in the year 2022 after a lapse of nine years. Although the petitioner of that case is stated to be one

of the candidates at the time of the selection process which started in the year 2011 but inordinate delay of nine years is unexplained and therefore both the petitions are also liable to be dismissed on the ground of delay and latches.

After hearing learned counsel for the parties and perusing the report of the Local Commissioner, this Court does not deem it fit and proper to invoke extraordinary power under Article 226 of the Constitution of India for interference. Both the petitions are devoid of merit and are hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

February 01, 2023
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Whether speaking : Yes/No

Whether reportable : Yes/No