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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10924-2022 (O&M)
Date of Decision: 31.01.2023

KHUSHWINDER SINGH SIDHU

....Petitioner(s)

Versus

BHATAT PETROLEUM CORPORATION LTD.(BPCL) AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Keshav Pratap Singh, Advocate with
Mr. Sukhsandesh Chahal, Advocate and
Mr. Rajat Singh, Advocate, for the petitioner.

Mr. Raman Sharma, Advocate, for respondents No.1 and 2.

Mr. S.K. Garg Narwana, Senior Advocate assisted by
Mr. Vishal Garg Narwana, Advocate and
Mr. Japjit Singh Johal, Advocate, for respondent No.3.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing of Letter of Intent dated 21.09.2021 (Annexure P-7) issued by respondent No.2 in favour of respondent No.3 and all consequential orders with a further prayer to issue a writ in the nature of *Mandamus* for conducting the draw of lots for the next eligible applicants for the next Group i.e. Group-3 to which the petitioner belongs.

The brief facts of the present case are that the respondent-

Corporation had issued an advertisement dated 25.11.2018 for the purpose of allotment of Petrol Pumps and the relevant site in the present case was for retail outlet of Mansa City (WML), District Mansa, Punjab under the category open-regular. In pursuance of the aforesaid advertisement, respondent No.3 and some more persons applied for the Retail Outlet Dealership. As per the brochure which prescribes the terms and conditions for the purpose of selection of dealers issued on 24.11.2018 (Annexure P-1), the applicants are divided into three categories. As per Clause 4 (v), Group-1 would comprise of applicants having suitable piece of land in the advertised local/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 would comprise of 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 and Group-3 would comprise of applicants who have not offered land in the application. So far as the applicants under Group-3 are concerned, their applications would be processed/advised to offer land only in case no eligible applicant is found or no applicant gets selected under Group-1 and 2. In this way, applications qua Group-1 is to be taken at the first instance and in case nobody is found to be suitable/eligible, then in default of the same it goes to Group-2 and similar proceeding is repeated for Group-2 and in default of the same, then the applicants of Group-3 are to be considered. Group-1 and 2 applicants who were not found to be suitable would deemed to be in Group-3. The relevant provision of Clause 4 (v) is reproduced as under:

> *'(v) Land (Applicable to all categories):*
> *The applicants would be classified into three groups as mentioned below based on the land offered or land not offered*

> *by them in the application form:-*
>
> *<u>Group 1:</u> 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.*
>
> *<u>Group 2:</u> Applicants having Firm Offer for a suitable piece of land for purchase or long terms lease for a period of minimum 19 years 11 months or as advertised by the OMC.*
>
> *<u>Group 3:</u> Applicants who have not offered land in the application.*
>
> *Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant get 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 alongwith applicants under Group 3 (who did not offer land alongwith 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.'*

Sub clause (i) of Clause 4 (v) provides that in case the applicant or his family members own the land jointly with third person, the consent letter in the form of an affidavit (**Appendix III A)** or power of attorney (Registered) clearly authorizing the applicant for such use of land from third person is also required. Various situations of ownership are also tabulated in sub clause (j) of Clause 4 (v). Serial No.3 provides that when the situation of ownership is self with other owners and the share of the applicant in land is **'Part'**, then the additional documents which are required are that if the share of the applicant and/or family members is more than or equal to land required by the company, consent letter on stamp paper or an affidavit or power of attorney from all co-owners should be provided as per Appendix III A. The aforesaid provisions i.e. Sub clause (i) and (j) of Clause 4(v) are reproduced as under:-

> *'(i) In case the applicant or family member(s) own the land jointly with third person, the consent letter in the form of an Affidavit (**Appendix III A)** or Power Of Attorney (Registered) clearly authorizing the applicant for such use of land from third person is also required.*
>
> *(j) Various situations of ownership for defining owned/firm offer as as under:-*

S. No.	*Situation of ownership*	*Share of applicant in land*	*Additional documents required*	*Evaluation as*
GROUP 1				
1.	*Self*	*Full*	*Nil*	*Owned*
2.	*Self with members of family or owned exclusively by family members*	*Part/Nil*	*Consent letter in the form of affidavit from members of family-Appendix III A*	*Owned*
3.	** Self with other owners* ** Family members with other owner(s)* ** Self with family members & other owners*	*Part* *Nil* *Part*	***If the share of the applicant and/or family members is more than or equal to land required by the company.*** *Consent letter on stamp paper or an affidavit or Power of Attorney from all Co-owners(s) should be provided-* ***Appendix III A.***	*Owned*

4.	*Land owned by Government/ Semi-Government bodies*	*Full*	*Allotment Letter from the Government/Semi-Government bodies in the name of Self with specific mention for use of petrol pump.*	*Owned*
GROUP 2				
5.	*Land owned by third party in part or full*	*Part/Nil*	*Consent letter in the form of affidavit/Power of Attorney from other owner(s)-Appendix III A*	*Firm Offer.*

Sub clause (l) of Clause 4 (v) provides by way of a Note that in case it is found at a later stage that the offered plot is not meeting any of the above conditions, then in such case the offered land would be rejected and candidate will be given opportunity alongwith applicants under Group-3 by intimation through SMS/e-mail.

Note 1 which has been appended to sub clause (m) of Clause 4 (v) provides for the definition of the expression 'Own' to mean having ownership by way of registered sale deed, registered gift deed etc. or title of the property or **registered long lease** (as per individual OMC norms) in the name of applicant/family members as defined in 4(v)-e above.

(emphasis supplied)

Note 3 which has been appended to sub clause (m) of Clause 4 (v) provides that if the original land offered by the applicant meets all the specificaitons as laid down in the advertisement, then there is a provision for offering of alternate land as well.

Clause 14 provides for selection procedure and as per the aforesaid selection criteria, the selection is to be done through draw of lots/bidding and draw of lots has to be done initially for Group-1 and thereafter in default, it will go to Group-2 and Group-3 respectively.

In view of the aforesaid provisions for annexing Appendix III A, in case of land owned by co-owners as well, the format of aforesaid (Appendix III A) is also a part of the brochure which provides that it has to be in the form of a notarized affidavit for offer of land from family members and/or a third person supported by land documents, **then all the joint owners of the land had to submit this affidavit individually.**

When the selection process started by way of draw of lots, there were total 16 candidates, out of which 14 candidates were under Group-1 whereas 2 candidates were under Group-3 but there was no candidate in Group-2. Respondent No.3 was the candidate in Group-1 whereas the petitioner was candidate in Group-3. After the draw of lots dated 13.07.2021, respondent No.3 was selected in the draw of lots and thereafter, the entire process was started with regard to various formalities pertaining to physical verification, LOC and other documents for the purpose of complying with the terms and conditions set out in the aforesaid brochure. After completing the exercise, respondent-Corporation issued a Letter of Intent (LOI) to respondent No.3 on 21.09.2021 vide Annexure P-7. This LOI was pertaining to a land measuring 16 meters approximately (frontage) x19 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, respondent No.3 gave an offer with regard to some alternate land which was accepted by the respondent-Corporation vide Annexure P-8 and an addendum LOI was issued vide Annexure P-8 on 17.12.2021 and this second LOI was pertaining to some other alternate land i.e. land measuring 25.90 meters approximately (frontage) x 48.78 meters (depth) at Khasra No.604//2/2, Khewat No.1962/1861, Khatoni No.4267, situated at village Mansa Kalan, Tehsil and District Mansa.

The petitioner has challenged the LOI dated 21.09.2021 (Annexure P-7) and all the consequential orders on various grounds. On 20.05.2022, this Court passed interim order that till the next date of hearing, there shall be a stay of further action upon the LOI issued in favour of respondent No.3 and in this way, according to the learned counsel for the Corporation, no further action was taken and the matter is stand still from the date the aforesaid order was passed.

Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the petitioner submitted that the action of the Corporation is illegal and *mala fide* in view of various grounds taken by him. The foremost ground which was raised by the learned counsel for the petitioner was that when the earlier LOI was issued to respondent No.3 on 21.09.2021 pertaining to the land which has been mentioned in the aforesaid LOI, the said land was a joint land and it appears that the necessary formalities were completed by respondent No.3 but it appears due to some family settlement and for betterment of business, respondent No.3 had offered an alternate land in pursuance of the aforesaid provision in the brochure. He submitted that when the second LOI was issued pertaining to some different alternate land and specifications of the same have been mentioned in the second LOI dated 17.12.2021 (Annexure P-8). The same was although in the nature of an addendum but the effect of earlier LOI was extinguished. He further submitted that now dealing with the second LOI (Annexure P-8) and the land mentioned therein, respondent No.3 did not fulfill the essential qualifications and terms and conditions as contained in the brochure. He submitted that the land which has been mentioned in the second LOI was a joint land owned by more than 50 persons but the provisions of Sub clause (i) and (j) of Clause 4 (v) as reproduced above were violated because the consent in the form of an affidavit on stamp paper from all the co-owners in the prescribed format of Appendix III A was not obtained by the Corporation. He submitted that the land was a large chunk of land owned by number of shareholders and has also referred to the jamabandi of the aforesaid land vide Annexure P-10. He submitted that so far as respondent No.3 is concerned, the land which has been so mentioned in the second LOI which is a plot was taken on lease by respondent No.3 from some of the co-sharers but the Corporation did not bother to comply with their own terms and conditions of the brochure and did not obtain the requisite prescribed format Appendix III A from respondent No.3 and in this way, there was a violation of the terms and conditions of the brochure. He submitted that the aforesaid LOI deserves to be set aside and quashed by this Court purely on the ground that the terms and conditions as aforesaid have been violated by respondent No.3 and the Corporation.

Learned counsel for the petitioner further submitted that the respondent-Corporation had been rejecting the candidature of hundreds of candidates throughout India only on the ground that requirement of Appendix III A in pursuance of the aforesaid clause was not given by them throughout India and have rejected their candidatures but in the present case for the reasons best known to the officers of the Corporation, they have turned a blind eye towards the terms and conditions contained in their own brochure and therefore, on the ground of *mala fide* and discrimination as well, the LOI is liable to be set aside and quashed.

Raising another argument, learned counsel for the petitioner referred to Annexure P-9 wherein respondent No.3 has given an undertaking on a stamp paper in which it has been so stated by respondent No.3 that he is in full possession of the land and is sole owner of the land which is the subject matter of second LOI and the aforesaid land is in his possession and is free from all encumbrances. The aforesaid undertaking is reproduced as under:-

> '*UNDERTAKING*
>
> *I, Vivek Goyal State that presently I am in full possession of land and I am the sole owner of the plot of land at Khewat/Khatouni No.1962/4267 Khasra No.604//2/2 Mansa Kalan Teh. & Distt. Mansa.*
>
> *The above mentioned land is in my possession & is free from all encumbrances.*
>
> *I offer an area of 25.90 Mtr. x 48.78 Mtr. from above mentioned land to Bharat Petroleum Corporation Limited for the construction of Retail Outlet and have no objection if NOC is taken in the name of Bharat Petroleum Corporation Limited.'*

Learned counsel for the petitioner submitted that in fact the factual position was that respondent No.3 was not the sole owner of the plot but he was only a co-owner of the plot and therefore, the undertaking given was also false. He submitted that in view of the aforesaid facts and circumstances, both the LOIs Annexure P-7 and P-8 are liable to be set aside and quashed. Although so far as first LOI dated 21.09.2021 (Annexure P-7) is concerned, the same has now merged with the second LOI since the second LOI was in the nature of addendum and he has prayed for quashing of LOI dated 21.09.2021 (Annexure P-7) with all the consequential orders and the second LOI is a part of the consequential order, although no specific prayer has been made for quashing of the second LOI.

On the other hand Mr. Raman Sharma, Advocate appearing on behalf of the Corporation submitted that the Corporation was within its rights to have considered the request of respondent No.3 for an alternate plot. He submitted that in the aforesaid plot the Corporation has acted upon the undertaking given by respondent No.3 and in view of the peculiar facts and circumstances that the entire area was a constructed area and respondent No.3 was in possession of that land and the said land is within the Municipal limits and therefore, the effect of jamabandi which shows co-ownership loses its significance and the aforesaid factum was got verified from the concerned Revenue Officer.

On a specific query being raised to the learned counsel for the Corporation as to whether before issuing the second LOI (Annexure P-8) to respondent No.3, the requirement of obtaining Appendix III A was fulfilled or not and as to whether the Corporation has obtained the aforesaid Appendix III A from the co-owners of the land in the format of Appendix III A or not, he submitted on instructions that the same was not obtained. He however submitted that there was no such requirement for obtaining the aforesaid consent of the co-owners in the form of Appendix III A because the property was falling within the Municipal limits and was fully constructed. He submitted that therefore the issuance of the second LOI was just and proper and was in the interest of the Corporation. He further submitted that since respondent No.3 had got the land on the basis of lease, he would fall in serial No.1 of clause (j) and not serial No.3 as reproduced above and therefore, no additional document was required.

Mr. S.K. Garg Narwana, learned Senior Advocate with Mr. Japjit Singh Johal, Advocate, appearing on behalf of respondent No.3 submitted that respondent No.3 has already been issued LOIs vide Annexure P-7 and P-8 in accordance with law and the Petroleum Corporation had already satisfied itself with regard to the fulfillment of the eligiblility conditions as per the brochure and he has already spent an amount of Rs. 30,00,000/- on the aforesaid plot after the LOI was issued on the construction of the infrastructure on the land which was the subject matter of the second LOI and the present petition has been filed after a lapse of six months and in case the aforesaid LOI is set aside, then irreparable loss will be caused to him in the nature of not only his business but also pecuniary loss on the construction of infrastructure. He also supported the contentions raised by the learned counsel for the Corporation by submitting that the case of respondent No.3 was falling in Sr. No.1 and not in Sr. No.3 of Sub clause (j) of Clause 4(v) and there was no requirement of giving any kind of consent from the other co-owners in the facts and circumstances of the present case. He submitted that so far as the present land which is subject matter of the second LOI is concerned, the same was purchased by the grand-father of respondent No.3 in 1978 with specific boundaries and the area and therefore, there was no requirement of giving any form in the nature of Appendix III A and also since the land falls within the Municipal limits, the jamabandi as relied upon by the learned counsel for the petitioner loses its significance. He further submitted that the entire area is fully constructed as is evident from the site plan and the photographs which have been attached as Annexure R3/4 to R3/6. He further submitted that with respect to the land, which was subject matter of second LOI, even CLU has been issued by the Department of Town and Country Planning and NOC has been issued by all the concerned departments. He further submitted that the site plan was also sanctioned by the Municipal Corporation and the Deputy Commissioner for the purpose of construction.

Learned Senior Counsel further submitted that the petitioner has no *locus standi* to file the present case because of two reasons. Firstly, he had applied in Group-3 whereas first of all, the draw of lots has to be conducted for Group-1 of which respondent No.3 was successful and therefore the petitioner has got no *locus standi* to challenge the same because he does not fall in the category of Group-1 and secondly, sister-in-law (Bhabhi) of the petitioner had filed a civil suit for injunction against respondent No.3 and no interim order was passed in favour of the aforesaid sister-in-law of the petitioner by the Civil Court and thereafter the present petition has been filed. He further submitted that the argument raised by the learned counsel for the petitioner that the undertaking given by respondent No.3 was false, is also incorrect in view of the fact that as per the brochure even lease holder is also deemed to be an owner and therefore it cannot be said to be a false undertaking given by respondent No.3. He further referred to the judgement of this Court in ***Ude Singh and others Versus Ram Chander [RSA No.643 of 1980,, decided on 27.02.2008]*** to contend that when the land is constructed, then the jamabandi will not apply.

I have heard learned counsel for the parties.

Taking up the preliminary objection raised by the learned Senior Counsel for respondent No.3 with regard to the locus, first, this Court is of the view that the preliminary objection raised by the learned Senior Counsel is not sustainable in view of the fact that even if as per the brochure which lays down the express terms and conditions, a procedure has been prescribed that first of all the draw of lots is to be held from candidates amongst Group-1 and in default of the same, it goes to Group-2 and then ultimately from amongst Group-1 and 2, who are not eligible, it is put in a common pool alongwith Group-3 and thereafter the entire process starts again. As per Annexure P-6, there were 14 candidates for Group-1 and 2 candidates for Group-3 but no candidate for Group-2. In case respondent No.3 is found to be not eligible then remaining 13 candidates of Group-2 are to be considered and in case the remaining 13 candidates are also by way of following the process not found to be eligible, then ultimately the entire pool is made common alongwith Group-3 which comprises the petitioner as well. In other words, there is a process of elimination by which it leads till the end upto Group-3. Therefore, at this stage, it cannot be said that in case respondent No.3 is found to be not eligible, then it will go to anybody else in Group-1 because the candidates of Group-1 are again to be considered on their own merits and thereafter ultimately the petitioner may fall within the zone of consideration as per the selection procedure given in the brochure. Since the petitioner at this stage cannot be excluded from the overall zone of consideration even abiding by the steps which are to be followed, he does fall within the zone of consideration for the purposes of maintaining the present petition and therefore it is held that the petitioner does have *locus standi* to file the present petition. So far as second objection that a civil suit was filed by sister-in-law of petitioner is concerned, the same is also not sustainable because the present petitioner was not a party to suit.

Now coming on the merits of this case, respondent No.3 was earlier granted LOI vide Annexure P-7 pertaining to a piece of land of which respondent No.3 was the co-owner but there is no dispute raised by the learned counsel for the petitioner that any eligibility condition for non-filing of Appendix III A was violated but on the same day, respondent No.3 had offered an alternative piece of land and on that piece of land, the second LOI Annexure P-8 was issued by the respondent-Corporation. In the second LOI the land has been defined and the learned counsel for the petitioner has referred to a jamabandi to show that the entire land which has been mentioned was owned by about 50 co-owners and therefore he had relied upon Sub clause (j) of Clause 4(v) that the case of respondent No.3 falls at Sr. No.3 and in that eventuality Appendix III A was required to be given by all the co-owners for the purposes of giving 'No Objection Certificate' since the entire land was owned by various co-owners. During the course of arguments, a specific query was raised to both the learned counsel for the Corporation and the learned Senior Counsel for respondent No.3 as to whether there are large number of co-owners of the entire land or not, to which they replied that it is correct that there are large number of co-owners pertaining to the entire land. However, they raised an argument that so far as the plot on which the Petrol Pump is to be set up, the same is owned by respondent No.3 only being within Municipal limits, and therefore, there was no requirement of getting 'No Objection' from the co-owners by filing affidavits on stamp paper by way of Appendix III A.

A perusal of the aforesaid provision of brochure would show that whenever the land where the Petrol Pump is to be set up is owned by various co-owners, then Appendix III A has to be appended. As per the learned counsel for the petitioner, the entire land was an unpartitioned land and there is no document on the record to show that the land was ever partitioned nor it is so argued by the learned counsel for the respondents but the only argument which was raised by them was that it was a municipal land and not an agricultural land and the land was a specified land being purchased by grand-father of respondent No.3. A perusal of the aforesaid brochure would show that such kind of eventuality is neither foreseen nor so specifically incorporated in the aforesaid terms and conditions of the brochure. On the one hand, learned counsel for the petitioner states that the land would fall in the category of Sr. No.3 of Sub clause (j) of Clause 4(v) for which the consent of the co-owners is required in the form of an affidavit and on the other hand, learned counsel for the respondents including the Corporation states that the land falls in the category of Sr. No.1 for which no such document is required. However, a perusal of Sr.No.1 of Sub clause (j) of Clause 4(v) would show that in the second column it is so stated that it will apply only when the share of the applicant of land is full whereas in the present case, the meaning of 'share' has not been defined anywhere in the brochure and therefore the aforesaid Sub clause (j) of Clause 4(v) appears to be totally unclear and ambiguous. In other words, there is no order passed by any authority in this regard after due application of mind as to whether the aforesaid condition of getting 'No Objection Certificate' from the other co-owners was required or not in the peculiar facts and circumstances of the present case where the land has now become a municipal land but it is owned by large number of co-owners.

In view of the aforesaid totality of facts and circumstances, which are peculiar in nature, this Court is of the view that the respondent-Corporation has to apply its mind afresh. In case, the requirement of 'No Objection Certificate' from the co-owners was required and it has not been fulfilled then respondent No.3 would not be entitled for the same but in case, the Corporation after application of mind takes a conscious decision that there is no requirement in the facts and circumstances, then certainly respondent No.3 will have a right to get the allotment.

Consequently, the present petition is partly allowed. The allotment LOI Annexure P-8 is hereby set aside and quashed.

The Executive Director, Retail shall now consider the entire case in a fresh perspective in the light of the aforesaid discussion and after hearing both petitioner and respondent No.3 and shall pass a well-reasoned speaking order with regard to the aforesaid entitlement of respondent No.3 and also as to whether in the facts and circumstances of the present case there was any requirement of getting 'No Objection Certificate' from the co-owners in the form of Appendix III A or not. Let the exercise be completed within a period of three months from today after hearing both petitioner and respondent No.3. In case, respondent No.3 is found to be entitled, then a fresh LOI shall be issued to him and in case he is not found to be entitled, then fresh process shall be started qua all the remaining candidates including the petitioner and in accordance with the procedure prescribed in the brochure.

31.01.2023 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No