

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CWP-18236 of 2016
Date of Decision:16.01.2023

Madhu Grover

....Petitioner(s)

Versus

Indian Oil Corporation and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kulbhushan Raheja, Advocate,
for the petitioner.

Mr. Ashish Kapoor, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing the order dated 10.08.2016 (Annexure P-19) issued by respondent No.2 vide which the selection of the petitioner for distributorship of LPG at location Ferozepur I, District Ferozepur has been cancelled, with a further prayer for issuance of a writ in the nature of *mandamus* directing the respondents to allot the LPG distributorship at Ferozepur to the petitioner and with a further writ in the nature of prohibition restraining the respondents from getting the LPG distributorship of Ferozepur to anybody else till the pendency of the present petition.

The brief facts on the basis of which the present writ petition has been filed are that the respondent-Corporation is an Oil Corporation and also

dealing with the distributorship of LPG and for that purpose, an advertisement was issued by the respondent-Corporation vide Annexure P-1 on 26.10.2013 for inviting applications for 198 LPG distributorship at different places. The relevant portion of the advertisement has been attached by the petitioner as Annexure P-1 and the relevant site in the present case was Ferozepur I. Various persons applied for the LPG distributorship and thereafter there was draw of lots and after the same was conducted, the petitioner was successful in the draw of lots and therefore a proposal emanated from the respondent-Indian Oil Corporation for further processing so as to meet the other conditions of the advertisement. After the petitioner was successful in draw of lots, the respondent-Corporation conducted physical verification and found that there was a violation of one of the clauses of the advertisement, i.e. Clause 6 (vii) whereby it was provided that the applicant should own as on the last date of submission of application as specified in the advertisement or corrigendum if any, a plot of land of premium dimensions of 25m x 30m (within 15 kms from the municipal/town/village limits of the location offered in the same State) for construction of LPG godown for storage of 8000 kgs. of LPG in cylinders. The part of land for construction of godown not meeting the minimum dimensions of 25m x 30m will not be considered. The said clause has already been reproduced by the respondent-Corporation in the reply filed by it. In Clause 6(viii) it is further provided that the selected candidates will be required to provide the LPG Godown facilities at the plot of land/godown as offered in the application or the alternate plot of land/godown offered as above at the time of Field Verification and Credentials (FVC) and found to be suitable for providing LPG Godown facilities. Similarly, the selected candidate will be

required to provide the LPG Showroom facilities at the plot of land/shop as offered in the application or the alternate plot of land/shop offered at the time of Field Verification and Credentials (FVC) as above and found to be suitable for providing LPG Showroom facilities and in case the selected candidates fail to provide the LPG storage godown and LPG showroom at the same site as mentioned in the application or at the alternate site offered at the time of FVC, the allotment of LPG distributorship made to the applicant will stand cancelled.

The Corporation has vide impugned order dated 10.08.2016 has dropped the selection of the petitioner and the proposed regular distributorship has been cancelled vide impugned Annexure P-19 and therefore the present petition has been filed seeking quashing of the aforesaid order.

Mr. Raheja, learned counsel appearing on behalf of the petitioner submitted that the respondent Corporation has acted in an arbitrary manner in cancelling the proposed distributorship to the petitioner on the ground that the land which he has taken on lease was not meeting the criteria of 25m x 30m as stated in the advertisement and the measurement if any done by the respondent Corporation was factually incorrect and erroneous.

To substantiate his argument, he relied upon Annexure P-11 which is a letter issued by the Circle Patwari wherein it has been mentioned that the land which the petitioner has taken on lease was having dimensions which were within the aforesaid parameters of 25m x 30m. The details of dimensions as mentioned by the Patwari Circle are as follows:-

“Dimensions of Leased Land is by East: 100 ft. (30.48 mts), West: 100 ft. (30.48 mtrs), North: 92 ft. (28.06 mts.) South: 90 ft. (27.45 mts) total area 845.85 sq. mts. This land consists 27'-8” (8.38 mts)

wide government passage in the north side.”

He has further relied upon Annexure P-12 which is a certificate issued by the Civil Engineer wherein it has been stated that as per the area in lease deed and as per site construction of godown measuring 25m x 30m is possible. He further relied upon the lease deed itself whereby a correction was made in it vide Annexure P-4 in which also the dimensions have been stated which falls within the criteria of the respondent-Corporation. The relevant portion of the same is reiterated as under:-

“By East Self ownership dimension 100 ft., By West Self ownership dimension 100 ft. By North Road dimension 90 ft. and by South Self ownership dimension 90 ft.”

Learned counsel for the petitioner has also referred to the opinion which was obtained by the Corporation from the legal counsel in this regard wherein it has been mentioned that the land is free from all the incumbrances and there is no defect in title vide Annexure P-13. He submitted that in view of the aforesaid position, the action of the respondent-Corporation was arbitrary and therefore the impugned order Annexure P-19 is liable to be quashed and directions be issued to the Corporation to allot the LPG distributorship of Ferozepur I to the petitioner.

On the other hand, Mr. Ashish Kapoor, learned counsel appearing on behalf of the respondent-Corporation vehemently opposed the prayer of the petitioner in which challenge has been laid to the impugned order Annexure P-19. He submitted that in fact the petitioner has no vested right in him to have sought a prayer for allotting a distributorship to the petitioner because there was only an offer from the respondent-Corporation for considering him for the LPG

distributorship purely on the basis of draw of lots and thereafter the entire process with regard to documentation, NOC and physical verification etc. started in which he was not found to be eligible. He submitted that it was not a case where there was any concluded contract between the parties but there was only a proposal to allot and the respondent-Corporation being a Public Sector Undertaking is well within its rights to reject the offer at least before the same has been allotted to a person and therefore no right has been vested in the petitioner to maintain the present petition. He further submitted that so far as the factual position is concerned, in fact after the draw of lots, the area was physically inspected by a team of the Corporation wherein it was found that the condition of dimension of 25m x 30m was not met by the land which was offered by the petitioner.

To substantiate his argument, he referred to Annexure R-1/1 which is the map prepared and certified by the Patwari and while referring to the same, he submitted that considering the depth of the land which was required to be 30 m, on the one side of the dimension, it is 33.53m which is although more than 30 meters but on the other side, it was 27.43 meters which was below 30 meters whereas the width was more than 25 meters. In this way, on the one side of depth (length) it did not meet the criteria since it was not a case of the land which was in the dimensions of a rectangle or square and both the sides lengths differed with each other. He submitted that the mandatory criteria for allotment of LPG distributorship on the basis of land was therefore not meted out by the petitioner on the basis of physical verification conducted by the company officials and also got measured from the Patwari who had made the aforesaid Annexure R-1/1 which is the *aks-sajra* of the land which was

proposed by the petitioner in this regard. He further submitted that the Corporation could not have ignored the aforesaid dimensions which did not meet the criteria because even if it proceeded with the same, the other departments including the Department of Explosives could not have issued any NOC to the petitioner and therefore the entire exercise would have become futile and therefore the respondent-Corporation in its wisdom has rightly declined the offer which was made to the petitioner vide Annexure P-19 by passing an order.

He also further submitted that the present writ petition was filed in the year 2016 and there is no interim order passed in the present petition and during the pendency of the present petition, in fact the LPG distributorship has already been allotted to some other person namely Rohit Garg in the year 2020 and the said LPG distributorship is now operational and in case the prayer of the petitioner is now allowed then it will not only disrupt and uproot the LPG distributorship already granted to a third party but it will also prejudice the rights of the third party because civil consequences are involved so far as the rights of the third party are concerned. He submitted that the aforesaid third party to whom now the distributorship has been granted is not impleaded as a party in the present case although he was so allotted in the year 2020 which is almost three years ago. The learned counsel for the respondent has therefore prayed for the dismissal of the present petition.

I have heard the learned counsel for the parties.

The present writ petition has been filed seeking quashing of an order which has been passed by the respondent-Corporation in the year 2016 vide Annexure P-19. The respondent-Corporation had issued an advertisement

on the basis of which the process started and draw of lots was held in which the petitioner was declared to be successful. Thereafter, there was a proposal to allot LPG distributorship to the petitioner and for that purpose, all the formalities were required to be completed after the draw of lots including physical verification. One of the conditions in the advertisement was that the plot must be having measurement of 25m x 30m but as per the Corporation during the physical verification, the said measurements were not found to be that of the land belonging to the petitioner. The learned counsel for the petitioner had relied upon the report of the Patwari, the corrected lease deed and the opinion of the legal counsel in this regard.

A perusal of the opinion of the legal counsel of the Corporation, would show that the opinion was pertaining only to the non-encumbrance of the land but did not pertain to the measurement of the land and therefore the said opinion otherwise would also be insignificant in the present case. So far as the dimensions which have been contained in the corrected lease deed and the report given by the Patwari is concerned, a perusal of the same would show that the dimensions have been mentioned to be more than 25m x 30m. However, on the other hand, a perusal of the *aks-sajra* which has been appended by the respondent with the reply Annexure R-1/1 and certified by the Halqua Patwari, it would show that on the one side the depth of the plot is more than 30 meters but the other end of the depth/length is less than 30 meters. The plea which has been taken by the learned counsel for the respondent that for such like situation where both the sides are not meeting the criteria of 30 meters, the further formalities pertaining to NOC etc. were not possible especially from the Explosive Department, would carry weight.

The stage at which the offer was declined was a stage where there was no concluded contract between the parties and it was only a case of offer given by the respondent-Corporation and is always subject to fulfilment of various other formalities and procedures including physical verification. The report as relied upon by the learned counsel for the petitioner and the *aks-sajra* as appended by the respondent-Corporation appears to be contradictory to each other and therefore it appears that it is a pure disputed question of fact which cannot be gone into by this Court in exercise of powers under Article 226 of the Constitution. Apart from the above, the LPG distributorship has, during the pendency of the present petition, already allotted to a third party, who is not impleaded in the array of parties and therefore in case any direction is issued by this Court, it would certainly affect the rights of the third party as civil consequences are involved.

In view of the aforesaid totality of facts and circumstances, this Court does not find any merit in the present petition, the same is hereby dismissed.

However there shall be no order as to costs.

(JASGURPREET SINGH PURI)
JUDGE

January 16, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No