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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-27082-2019 (O&M)
Date of Decision:18.01.2023

NARINDER SINGH

....Petitioner(s)

Versus

UNION OF INDIA AND ANOTHER

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Chirag Wadhwa, Advocate, for the petitioner.

Mr. Ankur Sharma, Senior Panel Counsel,
for respondent No.1-Union of India.

Mr. Ashish Kapoor, Advocate, for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for setting aside of order dated 02.08.2019 (Annexure P-7) passed by respondent No.2 i.e. Indian Oil Corporation Ltd.

The Indian Oil Corporation Ltd. issued an advertisement for the purpose of allotment of regular and rural retail outlets which is governed by the brochure dated 24.11.2018 (Annexure P-1). The entire criteria and conditions are laid down in the aforesaid brochure Annexure P-1. The petitioner applied for Group-I allotment and thereafter draw of lots was held on 05.07.2019 whereby the petitioner was successfully nominated.

Thereafter, the entire documents were to be scrutinized for the purpose of eligibility and other conditions and also physical verification was to be done as per brochure. During the time of scrutiny, the respondent-Corporation found that the petitioner has not submitted two documents i.e. Appendix III A and Appendix III B and therefore, his candidature was cancelled by the Corporation vide impugned Annexure P-7. The petitioner has therefore assailed the action of the respondent-Corporation by which he was declared to be ineligible.

Learned counsel for the petitioner has submitted that the petitioner had in fact submitted the requisite documents well in time to the Corporation but the Corporation has wrongfully rendered him ineligible. He submitted that the draw of lots was held on 05.07.2019 and the requisite confirmatory letter from the Advocate concerned was supplied to the Corporation and the said confirmatory letter of the Advocate was dated 09.07.2019 and he also had the requisite confirmatory letter from the Advocate which was dated 12.12.2018 and the last date of filing applications in pursuance of the advertisement was 25.12.2018 and therefore, at the time of filing of the application, the said confirmatory letter from the Advocate dated 12.12.2018 was already in the possession of the petitioner and the only requirement was that the applicant should have the possession of the said confirmatory letter which is in the form of Appendix III B. He submitted that there was no occasion for the respondent-Corporation to have rendered him ineligible in view of the aforesaid position. He also referred to the provisions of the brochure and while referring to Clause 4 (v) (h) wherein it has been provided that the eligibility of the applicant with regard

to the land (Group 1 or Group 2) will be decided by Oil Company with reference to a confirmatory letter from an advocate i.e. Appendix III B and the petitioner was already in the possession of the aforesaid letter and he had given the same to the respondent-Corporation alongwith the application and therefore, the conditions of Clause 4 (v) (h) were satisfied. He further referred to Clause 4 (v) (e) which provided that the land owned by the family member (s) will also be considered as belonging to the applicant (Group 1) subject to producing the consent letter in the form of affidavit (Appendix III A) from the concerned family member (s) and submitted that this consent letter was also given which was in the form of Appendix III A which is so attached alongwith the paper-book at page No.72 and the said affidavit is dated 11.12.2018. He submitted that in this way, both the documents i.e. Appendix III A and Appendix III B were supplied alongwith the application form and therefore, the respondent-Corporation has wrongly rendered the petitioner ineligible. He further submitted that even otherwise also while referring to Note appended to Clause 4 (viii) which provides that even if there is a deficiency in the documents, then the Company will give 10 days time for supplying of the documents and thereafter an additional period of 10 days is also to be given in pursuance of the aforesaid provision which is so provided in the brochure and is placed at page No.31 of the paper-book.

On the other hand, Mr. Ashish Kapoor, Advocate appearing on behalf of respondent No.2-Corporation has submitted while referring to the affidavit/reply filed by the respondent-Corporation that it is a case where the Indian Oil Corporation makes allotment of Petrol Pumps in three

categories which comprises of three groups i.e. Group-1, Group-2 and Group-3. The petitioner applied for Group-1 on the ground that he was having suitable piece of land in the advertised location/area by way of ownership/long term lease for a period of 19 years and 11 months or as advertised by the OMC. He referred to the application form filed by the petitioner Annexure P-2 whereby in column No.9 it has been so specifically stated by the petitioner that he is applying in Group-1. He submitted that for the purpose of applying in a particular group, the necessary documents are required to be made available with the applicant at the time of the application but the same were not available with the petitioner and it was only after the draw of lots when the petitioner was successful and he was to supply documents, then fresh documents were prepared in the form of Appendix III A and Appendix III B which were after the date of draw of lots and therefore, he was not eligible for being considered for allotment being in violation of the mandatory provisions of the brochure itself. He referred to Clause 4(v) (k) which provides that each applicant will have to declare in the application form, the category under which offered land falls and supporting the above, confirmatory letter from an advocate (Appendix III B) giving details of the current ownership, documents relied upon and the category under which the land falls (Group 1 or Group 2) **as on date of application**, is also to be furnished as and when advised and the Group under which the applicant's land falls, would be determined based on the declaration given in the application and confirmatory letter from the advocate regarding the same. He further referred to Note appended to Clause 4 (viii) which specifically provides that

all certificates/documents required for meeting eligibility/specific eligibility criteria should be in possession of the applicant and **valid as on date of application**. He submitted that in the case of the petitioner so far as the confirmatory letter of the advocate dated 12.12.2018 as submitted by the learned counsel for the petitioner which is at page No.71 of the paper-book is concerned, the same was never attached or supplied at all even after the date of draw of lots and it appears that such a letter was an ante-dated letter from the advocate concerned. He submitted that the aforesaid position is substantiated from the fact that the petitioner got another confirmatory letter from the advocate as Appendix III B which was dated 09.07.2019 and therefore, there was no occasion for the petitioner to have got another confirmatory letter of a different date once the initial letter was available with him and he supplied the second letter i.e. of 09.07.2019 to the respondent-Corporation which was even after the draw of lots and was not available with the petitioner at the time of filling up of application form and on the basis of which, an opinion was required to be formed that in which category he is applying. He submitted that once in the application itself he has stated that he is applying in Group-1, then it was required to have been supported by Appendix III B i.e. confirmatory letter from the advocate in pursuance of the brochure which has not been done by the petitioner. He submitted that so far as the requirement of Appendix III A is concerned, the affidavit which has been referred to by the learned counsel for the petitioner which is at page No.72 of the paper-book is concerned, the same is although dated 11.12.2018 but it appears that it has been notarized by an advocate by affixing a stamp on the same but nothing is discernible from

the same that it has been so entered into the register of a notary and therefore, on the face of it, it appears to be an ante-dated affidavit which cannot be relied upon at this stage. He submitted that on 05.07.2019 when the draw of lots were made, the Corporation issued a letter vide Annexure P-6 to the petitioner dated 08.07.2019 to supply the necessary documents including Appendix III A and Appendix III B alongwith other documents and 10 days time was granted to the petitioner and the petitioner submitted the aforesaid confirmatory letter from an advocate which was dated 09.07.2019 which could not have been accepted since the letter itself is after the date of application and did not confirm to the requirements of the brochure. Thereafter, when the petitioner did not submit these documents, the respondent-Corporation had no alternative except for declaring the petitioner as ineligible and therefore, a letter was issued to the petitioner vide impugned Annexure P-7 dated 02.08.2019 that since he has not submitted the aforesaid two documents, he is found to be ineligible as per the guidelines. He further submitted that the Corporation has specifically denied in the reply with regard to receiving of any confirmatory letter or affidavit in the form of Appendix III A and Appendix III B which the learned counsel for the petitioner has relied as being prior to the date of application and now the petitioner has raised a disputed question of fact which may not be gone into by this Court in exercise of powers under Article 226 of the Constitution of India. He further submitted that apart from the above, even otherwise the site/retail outlet has already been allotted to a third party namely Arun Kumar on 29.10.2020 which is more than 2 years ago and a LOI has been issued to him and now third party rights have come but the

aforesaid person in whose favour LOI has been issued has not been impleaded as a party in the present case and since civil consequences are involved so far as the third party is concerned in whose favour LOI has been issued, the present petition is otherwise also liable to be dismissed on the ground of non-joinder of necessary parties.

I have heard the learned counsel for the parties.

It is a case where the petitioner has filed the present petition for setting aside of the order passed by the Corporation Annexure P-7 whereby the petitioner has been rendered as ineligible due to two reasons. Firstly, he did not have in his possession nor did he supply the necessary documents as Appendix III A and Appendix III B. Learned counsel for the petitioner has argued that these two documents were already available with the petitioner and the same were also supplied to the Corporation but the same fact has been so specifically denied by the Corporation in the reply filed by it. A perusal of the brochure which has been attached alongwith the present petition would show that the documents which are required i.e the aforesaid two documents Appendix III A and Appendix III B should have been in the possession of the petitioner at the time of the making of the application which is clear from the Note which is appended with Clause 4(viii). The same is reproduced as under:-

“All certificates/documents required for meeting Eligibility /Specific eligibility criteria should be in possession of the applicant and valid as on date of application”.

However, so far as the Appendix III B is concerned, the

petitioner has himself so submitted that there are two confirmatory letters of the advocate. One is dated 12.12.2018 and the second is dated 09.07.2019. The fact as to whether the confirmatory letter dated 12.12.2018 was appended or was available with the petitioner has been specifically denied by the Corporation. A perusal of the aforesaid confirmatory letter dated 12.12.2018 would show that it has been issued by an advocate but there is no number etc. on the same. An argument was raised by the learned counsel for the respondent-Corporation that once a confirmatory letter of dated 12.12.2018 was assumingly available with the petitioner, then there was no occasion for the petitioner to have obtained a second letter of 09.07.2019 and he supplied only the second letter i.e. of 09.07.2019 which could not have been accepted by the Corporation in view of the aforesaid provisions of the brochure which say that the documents are required to be in the possession of the petitioner at the time of filing of an application for allotment of retail outlet. The reasoning given by the learned counsel for the Corporation appears to be just and reasonable in this regard.

So far as the second document of Appendix III A is concerned, learned counsel for petitioner relied upon one affidavit which is appended at page No.72 of the present petition which is of dated 11.12.2018 which although appears to be notarized but there is nothing from the document to show that such a document has been entered into by in any register of the notary but only a stamp is made and therefore, the plea raised by the learned counsel for the respondent-Corporation that it appears to be an ante-dated document cannot be ignored.

So far as the plea raised by the learned counsel for the

petitioner that even otherwise also $10+10 = 20$ days should have been given to the petitioner is concerned, it is not in dispute that the corporation had written a letter to the petitioner immediately after the draw of lots vide Annexure P-6 dated 08.07.2019 for submitting of the documents within 10 days but the impugned order/letter has been passed on 02.08.2019 which is more than 20 days and therefore, it cannot be said that the provision pertaining to grant of 20 days has been violated.

Even otherwise also two more factors need to be considered. Firstly, the fact that the petitioner was in possession of the aforesaid two documents have been specifically denied by the respondent-Corporation and has also raised various arguments in this regard and therefore, it appears to be a pure disputed question of fact which according to this Court cannot be gone into while exercising extra ordinary powers under Article 226 of the Constitution of India. Secondly, during the pendency of the present petition on 29.10.2020 which is more than 2 years, the respondent-Corporation has already been issued a same site/retail outlet to a third party namely Arun Kumar and a LOI has already been issued to him as per the learned counsel for the respondent-Corporation and the aforesaid person is not impleaded as a party in the present case. The aforesaid third party in whose favour the rights have now accrued by issuance of LOI was definitely a necessary party who has not been impleaded as a party in the present case. Therefore, the present petition is also liable to be dismissed on the ground of non-joinder of necessary parties.

In view of the aforesaid totality and circumstances, this Court does not deem it fit and proper to interfere in exercise of its extra ordinary

powers under Article 226 of the Constitution of India.

Consequently, the present petition being devoid of any merit is hereby dismissed.

18.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No