

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

212

CWP-23932-2022

Date of Decision : 22.11.2023

DEV PRABHA SHARMA

..... PETITIONER

V/S

BHARAT PETROLEUM CORP. LTD. AND ANR.

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Munish Gupta, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of communication dated 06.10.2022 (Annexure P-18) whereby her request to consider alternative land for LPG distributorship has been declined.

2. The petitioner pursuant to an advertisement dated 09.11.2007 vide application dated 04.12.2007 applied for allotment of LPG distributorship at Location-Piyala, District Faridabad. The petitioner in the application offered leased land. The lease deed was executed between father-in-law and husband of the petitioner. The result of the successful candidate was declared on 17.02.2009. The petitioner figured at serial No.3 in the list of empanelled candidates. A litigation ensued between

candidates at Sr. No.1, 2 and the respondents. The litigation travelled upto Supreme Court and it continued for a quite long time. The respondent vide communication dated 27.01.2022 informed the candidate at serial No.1 that alternative land cannot be considered unless and until CLU with respect to land offered in the application form is rejected by Town and Country Planning Department, Government of Haryana. The said candidate did not come forward and respondent vide communication dated 22.09.2022 withdrew LOI dated 17.06.2017 issued in her favour. The candidate at serial No.2 withdrew her application as she was selected at another place. In these circumstances, the respondent vide communication dated 20.08.2022 invited the petitioner and she was informed about field verification of credentials.

3. The petitioner in her application offered leased land, however, the said land came to be transferred by way of Civil Court order dated 14.06.2008 in favour of husband and brother-in-law of the petitioner. The husband and brother-in-law of the petitioner became equal shareholder of the said land. The husband and brother-in-law of the petitioner till 2013 were on good terms, however, in 2020, a civil litigation ensued between them. The petitioner on account of litigation between her husband and brother-in-law failed to get NOC from her brother-in-law with respect to land which was earlier offered as leased land. She offered alternative land. The respondent vide communication dated 06.10.2022 has rejected offer of alternative land of the petitioner and despite inability asked her to furnish NOC from her brother-in-law. The relevant extracts of the impugned communication read as :

- *You had written a letter to us dated 05.09.2022 & received at plant on 17.09.2022 wherein you had apprised us about your inability to provide NOC from one of the co owners (Sh. Arjun Kumar s/o Shri Krishna Murari). Also you had requested for allowing you to offer alternate land for construction of LPG godown*
- *It is to inform you that as per Brochure for selection of Bharatgas Distributors-June, 2007 (applicable as on date of advertisement), details given in the application alone will be considered for construction of LPG godown and the applicant will not be given any opportunity to offer any other land subsequently (even at the time of Interview). So, you are requested to submit NOCs from all co-owners of the aforementioned land,*
- *Relevant clause (item no 9) of the aforementioned brochure is reproduced as under :*

*CONSTRUCTION OF GODOWN/ SHOWROOM
ON THE SITE AS MENTIONED IN THE
APPLICATION FORM*

"The applicants who readily have suitable godown/land for construction of godown for storage of filled LPG cylinders and shop/land for construction of shop for Bharatgas showroom for setting up of Bharatgas distributorship or have a firm commitment from the land owner for purchase/lease or can arrange it are accordingly awarded marks. The details given on the

application alone will be considered for this purpose and the applicant will not be given any opportunity to offer any other land subsequently (even at the time of interview). For this purpose, the land owned by the family members (as defined in multiple distributorship norms) would also be considered as belonging to the applicant subject to attaching the consent of the concerned family members.

After selection for the applicant, physical verification for the godown land/godown as well as the showroom will be undertaken. In the event, it is found that there is variance in the details given in the application form and or the plot is not found suitable for construction of godown or the godown is not approved by CCOE the allotment of the distributorship will stand automatically cancelled.

Or if an applicant, after selection on the above basis, is unable to make godown duly approved by the Chief Controller of Explosives on the land/godown indicated in application and or showroom as per the oil company's standard layout on the land/ shop indicated in the application then the allotment of Bharatgas distributorship made to the applicant will automatically stand cancelled."

2. *Regarding item no 14.2 of the application form-*

- *Statement of account of Union Bank of India account no-521102010004887 had been provided as supporting document. However the bank account mentioned in*

application form is 4887 (last 4 digits of the account no 521102010004887). Correct affidavit declaring that two bank account numbers are one & the same is still pending to be received.

It has been more than 3 month's time since document verification was done on 24.06.2022 & still documents as detailed above are pending. For the want of the above listed documents, field verification has been delayed inordinately.

4. Learned counsel for the petitioner submits that the petitioner was invited in August' 2022 whereas advertisement was dated 09.11.2007. The petitioner after such a quite long time cannot be expected to offer land which was offered 15 years back. Nobody can be expected to continue lease for even few years without utility. The husband and brother-in-law of the petitioner at that point of time were having cordial relation. The brother-in-law of the petitioner even in 2013 with respect to another advertisement gave his consent, however, on account of litigation between both brothers he has refused to give NOC. The respondent is treating Clause No.9 of the brochure as sacrosanct whereas respondent had asked another candidate to offer alternative land in case CLU is not granted by Town and Country Planning. It shows that condition embodied in Clause 9 is not sacrosanct. The husband of the petitioner is owner of 50% of the land in question. On account of absence of partition, the petitioner cannot identify 50% share, though, 50% share of her husband comes to more than land required for the establishment of LPG Distributorship.

5. Per contra, learned counsel for the respondents submits that

respondent cannot travel beyond terms and conditions of the advertisement and brochure. Clause No.9 of the brochure makes it very clear that land offered in the application form can be considered and no other land can be considered. The respondent has granted relaxation to candidates including Nupur Aggarwal only to the extent where offered land has been acquired by competent authority or there are statutory restrictions. The case of the petitioner is neither case of acquisition nor statutory restrictions imposed by one or another authority.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The conceded position emerging from record is that the respondents invited applications vide advertisement dated 09.11.2007. The petitioner applied vide application dated 04.12.2007. The petitioner in her application offered leased land. The father-in-law of the petitioner was owner of the said land and by way of decree dated 14.06.2008 passed by civil Court, land was transferred in the name of husband and brother-in-law of the petitioner. The husband and brother-in-law of the petitioner became equal owners of the said land. The brother-in-law of the petitioner upto 2013 was having warm and cordial relations with the petitioner which is evident from NOC issued by him with respect to another advertisement. A litigation has ensued between husband and brother-in-law of the petitioner in 2020 and a civil suit for injunction and partition is pending between the parties before civil Court.

8. The petitioner applied for LPG distributorship vide application dated 04.12.2007 and on the said date, there was confirmed lease in her favour. The petitioner was not invited for allotment till July' 2022 and for

the first time, vide communication dated 20.08.2022, she was informed about field verification of her credentials. The husband of the petitioner is owner of 50% of offered land, however, on account of absence of partition, the petitioner cannot offer identified land. A civil suit is pending between husband and brother-in-law of the petitioner and Civil Court has directed to maintain status quo. There was no litigation between petitioner and respondent-Corporation during 2007 to 2022. A long litigation was pending between candidate at serial No.1, 2 and the respondents. The candidate at serial No.2 relinquished her right. The respondent tried its best to allot distributorship to candidate at serial No.1, however, she did not come forward and ultimately, respondent in September, 2022 withdrew LOI issued in her favour. A period of 15 years passed away from the date of application to the date of first time offer to the petitioner. There were all possibilities of change in shape, size and ownership of the land in a long tenure of 15 years and respondent-Corporation could not assume that a piece of land which was offered 15 years back would be in the same shape, size and ownership. It is undisputed fact that the offered land is a big piece of land and husband of the petitioner is owner of 50% of said land. On account of absence of partition, the petitioner cannot offer identified piece of land otherwise 50% share is more than required piece of land. It is apt to notice that respondent has not put the site for re-advertisement means the respondent is waiting for an appropriate candidate for last 15 years. The respondent in the integrum has amended its brochure wherein it has been provided that an applicant may offer alternative land. This fact is not disputed and respondent in many cases has accepted alternative land. The respondent is not accepting alternative land on the sole ground that the

brochure which was in force at the time of advertisement did not permit offer of alternative land. A long period of 15 years has passed away and respondent considering changed economic conditions, needs of the society, urbanisation of the population etc. has amended its brochure whereby candidates have been permitted to offer alternative land. In the peculiar facts of the present case, it would be unjust, unfair and manifestly arbitrary if petitioner is denied opportunity to offer alternative land. The offer made by respondent after 15 years from the application would become mere formality and joke of the system. The Courts are supposed to make purposive and meaningful interpretation.

9. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. The impugned communication dated 06.10.2022 (Annexure P-18) is hereby set aside and respondent is hereby directed to consider alternative land offered by the petitioner.

22.11.2023
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>