

27th March,
2024
(AK)
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W.P.A 4629 of 2024

Dipti Ghosh
Vs.
Union of India and others

Mr. Sudeep Sanyal
Mr. Snehasis Jana
Mr. Sukanta Das
Mr. Chandrachur Lahiri

...for the petitioner.

Mr. Amit Chakraborty
Mr. Pradip Paul
Ms. Renesa Dey

...for the Union of India.

Mr. Avinash Kankani

...for the respondent nos. 2 & 3.

1. The petitioner participated in an open tender for grant of retail outlet dealership by the Hindustan Petroleum Corporation Limited, the respondent herein.
2. Learned counsel for the petitioner contends that not only did the petitioner participate but was selected as successful bidder on a draw of lots.
3. It is argued that the very action of the respondents in calling the petitioner for draw of lots and thereafter in issuing a communication indicating that the petitioner had been selected in the draw of lots shows that the respondents waived one of the clauses in the tender advertisement, which provides

that the applicants in Group-I (which pertains to the petitioner as well) have to have 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.

4. It is argued that even apart from the issue of waiver, the said clause was not mandatory, as evident from the act of the respondents themselves.
5. Learned counsel for the petitioner argues that subsequently, although after the draw of lots, the petitioner has entered into registered deeds with the owner of the plot, whereby the petitioner has purchased about half of the land and taken on lease for 99 years the rest.
6. Thus, it is argued that the cancellation of the petitioner's deed by the respondent-authorities, which is impugned herein, is palpably arbitrary and *de hors* the tender terms.
7. Learned counsel for the respondent-authorities places reliance on Clause 23(g) of the tender document to indicate that the declaration by the applicant regarding the group of land fell within the categorically of non-rectifiable deficiencies in the applications.

8. That apart, the issuance of the communication to the petitioner regarding result of draw of lots was merely preliminary and provisional in nature.
9. It is sought to be explained that the respondents initially undertook an exercise to ascertain whether the applications of the several participants pertained to the concerned area/location and thereafter had a further scrutiny to ensure that all the terms and conditions were fulfilled.
10. In the present case the petitioner, having not qualified for a basic eligibility criterion, has been rightly cancelled.
11. It is seen from the communication by the respondent-authorities to the petitioner dated December 12, 2023 that the success of the petitioner in the draw of lots was intimated to the petitioner.
12. However, in unambiguous terms, it was mentioned in the said communication that it was a “preliminary intimation” towards the “provisional selection” of the petitioner for RO dealership.
13. The award of the dealership, it was further stipulated in the self-same intimation, is subject to compliance of terms and conditions of the corporation in that regard.

14. Thus, at no point of time was there any waiver on the part of the respondent-authorities regarding the clause concerned.
15. Since the requirement in the tender document, of the Group-I applicants either owning or having on lease of minimum 19 years 11 months the piece of land offered, fell under the eligibility criteria and in the absence of any alleviating clause to mitigate the rigour of the same, there is no reason why the said clause should be taken to be directory.
16. It is well-settled that the tender inviting authorities are the best judges of the interpretation of the tender terms and conditions.
17. In the present case, the mandatory nature of the clause is cited by the respondents themselves which construction cannot be found to be unreasonable, particularly in view of the specific sentence in the communication to the petitioner that the intimation was preliminary and the selection was merely provisional, subject to compliance of terms and conditions of the tender.
18. The petitioner has also sought to highlight the last clause under the relevant provision of the tender document where the requirement regarding ownership or lease of the land was stipulated.
19. However, the same merely provided that in case land offered by the applicants were found not to be

suitable or not meeting requirements, the applicants would provide suitable land in the advertised location/stretch within a period of 90 days from the date of issuance of the intimation letter.

20. However, the expression “suitable” as mentioned in the said clause cannot be confused with “eligible” for participation in the tender.
21. Whereas the ownership/lease of minimum 19 years 11 months of the offered land was a necessary eligibility criterion, the suitability mentioned in the last clause thereof was merely in respect of the location and the nature of the land which is quite evident from a composite reading of the terms of the tender document itself.
22. Whether the bidder had ownership/lease of at least 19 years and 11 months can be ascertained from a perusal of the deeds/documents submitted, whereas ‘suitability’ and consequential scope of offering an alternative land within the advertized location/stretch can only refer to suitability on the yardstick of location and nature vis-à-vis functioning of a retail outlet.
23. Hence, it cannot be said that the respondents acted beyond their authority in further scrutinizing the application of the petitioner and on finding that as on the date of the tender advertisement, that is,

July 18, 2023 or the date of application of the petitioner, that is, October 7, 2023 and/or the last date of closing of the tender, that is, October 17, 2023, the petitioner did not fulfill the eligibility criterion regarding ownership /lease for the requisite period in respect of the land offered.

24. Hence, I do not find any irregularity, arbitrariness and/or any perversity in the decision-making process while cancelling the petitioner's bid by the respondents.
25. Accordingly, WPA No. 4629 of 2024 is dismissed on contest without, however, any order as to costs.
26. The brochure (tender document) handed over by learned counsel for the petitioner today be kept on record.
27. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)