

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

MAT 549 of 2024

with

CAN 1 of 2024

Nibir Sarkar

-Vs-

Indian Oil Corporation Limited & Ors.

For the Appellant : Mr. Saptangshu Basu, Id. Sr. Adv.
Mr. Ramesh Dhara
Ms. Mousumi Chowdhury

**For the respondent nos.
1 to 4** : Mr. Amit Kumar Nag
Ms. Pritha Bhaumik

Heard on : 12.06.2024 & 13.06.2024

Judgment on : 13.06.2024

Joymalya Bagchi, J.:-

1. Pursuant to an advertisement published by Indian Oil Corporation Limited (hereinafter referred to as "IOC") inviting applications for appointment of retail outlet dealership at various places

in the State of West Bengal appellant uploaded an online application in the Scheduled Caste Category for appointment as outlet dealer at Mouza – Budhra, Block-Murshidabad-Jiaganj, District- Murshidabad. On 4th December, 2023 appellant was informed that he had qualified for draw of lots for selection of RO dealership. On 16th December, 2023 he was informed that he had been provisionally selected. Suddenly on 13th February, 2024 the appellant was intimated as the lease deed submitted by him was registered after the date of application and he was not eligible for being considered in Group-1 category but may be considered in Group-3 category. Being aggrieved by the aforesaid decision appellant preferred a writ petition being WPA 4753 of 2024. Learned Single Judge by the impugned order dismissed the writ petition. Hence, the present appeal.

2. Mr. Basu, learned senior Counsel for the appellant submits the eligibility criteria under the 2013 Brochure read with the Application Form permitted an applicant in Group-1 category to submit a notarised affidavit by the lessor/owner of the land in Annexure-III in lieu of a lease deed registered on or before the date of advertisement.

3. His client had submitted a lease deed executed but not registered on the date of advertisement alongwith a notarised affidavit of the lessor offering the land as per Annexure- III. Referring to the word “others” in the Note appended to Clause 13 of the application he

contended the said expression is an inclusive one and would include lessor/owner of the land offered for the outlet. To further his arguments he also referred to changes made in the 2023 Brochure (governing the allotment) vis-à-vis 2018 Brochure wherein as per Clause 4(v)(d) it was specifically stated that Group 1 candidates must have documents as on date of application to establish ownership of land. He contended terms of the Application Form as well as Brochure ought to be liberally construed to enlarge the field of aspiring applicants.

5. Per contra, Mr. Nag, for the IOC contends Clause 4 of the 2023 Brochure laid down the eligibility criteria of the applicants. Sub clause (vi) defined Group-1 applicants as those who either owned the land or had a long term lease for a period of minimum 19 years and 11 months. The expression “own” has been defined in Note-1 Clause (a) appended to Clause 4 to include a lessee having a registered long term lease as per norms. Admittedly appellant did not have a registered lease deed on the date of advertisement and could not have salvaged his position by filing a notarised declaration as per Annexure III of the Brochure. To buttress his submission he referred to Clause 4(vi)(m) of the Brochure wherein various situations of ownership where the consent letter as per Annexure III is permissible have been set out. It does not include an applicant who claims ownership through an unregistered lease deed.

6. In response Mr. Basu, refers to Clause 4(vi)(f) of the 2023 Brochure wherein the applicants were entitled to submit documents of ownership 'executed/registered/issued' on or before the date of application. He submits the aforesaid expressions are to be read in the alternative and an applicant claiming ownership under a lease executed on the date of the application was also eligible.

7. The question which falls for decision is whether the appellant who had unregistered lease deed executed on or before the date of advertisement was eligible to apply in Group-1 category?

8. For better appreciation of the issue relevant Clauses of the 2023 Brochure as well as the Application Form are set out here-in-below:

“ **2023 Brochure**
4. ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS – PROPRIETORSHIP/ PARTNERSHIP

(vi) 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:-

Group-1: 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.

Group-2: 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.

Group-3: Applicants who have not offered land in the application. Only applicable for locations advertised under SC/ST category.

Applicants under Group-3 would be processed/advised to offer land(Annexure-D) only in case no eligible applicant is found or no applicant get selected under Group-1 & Group-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 along with applicants under Group-3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location/stretch, within a period of 90 days 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.

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(f) In addition to above, as and when advised by the OMC, provisionally selected candidate(s) under Group-1 should also upload a copy of any one of the following documents to establish ownership of land offered for the Dealership. The documents must have been executed/registered/issued on or before the date of application:-

- *Registered Sale deed/Registered Gift deed.*
- *Registered Lease deed for a minimum period of 19 years and 11 months (as advertised by respective oil company).*
- *Any other type of ownership/transfer deed document.*
- *Lease agreement or firm allotment letter issued by Government/Semi Government bodies.*

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l) 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) and/or Power of Attorney (Registered) clearly authorizing the applicant for such use of land from third person is also required. Such consent letter in the form of affidavit (Appendix-III) or Power of Attorney (Registered) should have been tendered by the concerned third person(s) on or before the date of application.

(m) Various situations of ownership for defining owned/firm offer are as under:-

m)

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	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-owner(s) should be provided – Appendix-III.	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.	Firm Offer

(n) Each applicant will have to declare, in the application form, the category under which offered land falls. However, it is advised that prior to declaring the category of the offered land in the application, each applicant in their own interest, should get the same verified through an advocate.

The Group under which the applicant's land falls, would be considered based on the declaration given in the application. However, this aspect will be verified by the OMC and in case it is found that the offered land is not in the group as declared by the applicant, the land will not be considered and the applicant will be made ineligible. However, in case of Group-2 applicants, if the offered land is found to be in Group-1 by the OMC, the candidature of such applicants will be considered for selection under Group-2.

For locations advertised under SC/ST category, if it is found that the offered land is not in the group as declared by the applicant, the land will not be considered and the applicant will be moved to Group-3. However, if the applicant was originally in Group-3 or have already been moved to Group-3 earlier, the candidate will be made ineligible. In case of Group-2 applicants, if the offered land is found to be in Group- 1 by the OMC, the candidature of such applicants will be considered for selection under Group-2.

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Note 1:

a. "Own" means 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 member/s as defined in 4(vi) and 4(vi)(h) above."

Application Format For Individual Applicant

9	Group of the Applicant on the Basis of land being offered.	-
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13	<i>Land details – Group 1 (Copy of proof of ownership of land would be required to be submitted as and when advised by Indian Oil Corporation Ltd.)</i>							
	<i>Names(s) of the owner of Land/Lease holder</i>	<i>Relationship with applicant</i>	<i>Date of registration of sale deed/gift deed/lease deed/date of mutation/date of Notarised Affidavit for offer of land as per Appendix III.</i>	<i>Location of the land with respect to Reference point/L and mark (Specify land mark/ Reference point and distance from the same)</i>	<i>Khasra No/Khatouni/ Gut No/ Survey No</i>	<i>Dimensions of land</i>		
<i>Frontage in metre</i>						<i>Depth in metre</i>	<i>Area (Sq.m)</i>	
	 <i>Note: In case land belongs to member of family / Co-owners/ Others, before submission of application, notarized affidavit as per Appendix- III should be available with the appellant, which is to be uploaded/submitted as and when asked by Oil Company Indian Oil Corporation Ltd. In case the offered land has multiple Khasra /Khatauni/ Gut/ Gatta/ Patta/ Plot/ Survey Nos. etc., complete details of land to be entered in the application.</i>							

9. Clause 4 of the 2023 Brochure lays down the eligibility criteria for individual applicants. Sub-clause (vi) classifies the applicants in three categories with regard to the 'land offered or not offered by them in the application form'. Applicants in Group-1 category are those who have a suitable piece of land either by 'ownership/ long term lease' for a period of 19 years and 11 months. The word "own" has been defined under Note-1. Clause (a) appended to Clause 4. It states ownership

shall be, inter alia, by way of “*registered long lease*” in the name of the applicant/family member. The applicants categorised in Group-II category are those who did not ‘own’ the land but had a firm offer for ‘purchase or long term lease’. Group-3 applicants (applicable to SC/ST Category only) were those who had not offered the land in the application at all.

10. From a conjoint reading of the aforesaid categories set out in Clause 4(vi), it is clear only an applicant with a ‘registered long lease’ could apply in Group-1 category. In the present case the appellant though not possessing a ‘registered long lease’ applied in Group-1 category. Clause 4(vi)(f) of the Brochure required the appellant to upload documents to establish ownership as and when advised by IOC. In terms of the said Clause appellant uploaded the lease deed. Upon verification of the lease deed uploaded by the appellant, IOC found the deed was not registered on the date of advertisement and in exercise of power under sub-clause (vi)(n) of the Brochure intimated the appellant that he could not be considered in Group 1 category but may be considered in Group-3 category.

11. Contention of Mr. Basu, is that the appellant had a lease executed in his favour on the date of advertisement. He had also filed a notarised consent letter as per Annexure III from the lessor. This satisfied the requirements of the Application Form read with 2023

Brochure. Situations where Group-1 category applicants are required to submit consent forms as per Appendix-III has been set out in Clause 4(vi)(m) in the Brochure. It does not include an unregistered lessee whose lease was executed on the date of advertisement. On the other hand, it refers to cases where land is partly owned by the appellant with family members or others or co-owned by the members of the family and others.

12. Mr. Basu refers to the expression 'others' in the note appended to Clause 13 of the application form and submits the said expression would include a lessor also.

13. We are unable to accept this interpretation. The note in Clause 13 of the application form must be read in conjunction with Clause 4(vi)(m) of the Brochure which sets out the situations where consent letter as per Appendix-III is to be furnished. It does not include a lessor of an unregistered lease. In our view the expression 'others' may relate to situations where land is owned by family members of the applicant with other owners. In such cases both the family members of the applicant and others are to submit consent letters.

14. We are also not convinced with the argument of Mr. Basu that the words '*executed/issue*' in Clause 4(vi)(f) of the Brochure would entitle his client to upload an unregistered lease deed executed on the date of application. The words '*executed/registered/issue*' were

incorporated with reference to the various nature of documents vis-a-vis proof of ownership. The expression 'registered' would relate to lease deed, sale deed or gift deed while the expressions '*executed/issue*' may relate to other forms of ownership i.e. mutation certificate or allotment letter by Government/ Semi Government Bodies.

15. Scheme laid down in Clause 4 of the Brochure of 2023 relating to eligibility criteria is substantially the same vis-a-vis lease hold owners when compared with 2018 Brochure. Sub-clause 4(vi)(f) of the 2023 Brochure unequivocally states that a registered lease deed on or before the date of application has to be uploaded as and when called upon by the Oil company failing which the applicant shall be disqualified from participating in Group-I category. There is hardly any change with regard to this requirement in Group-1 category under the new Scheme from the previous one.

16. Allotment of retail outlets must be strictly in terms of the eligibility criteria prescribed in the selection process. Appellant was fully conscious as per Clause 4(vi)(f) he was required to furnish proof of ownership i.e. a lease deed registered on or before the advertisement when called upon by the Oil Company. Admittedly, the lease deed was not registered on or before the date of advertisement. To wriggle out of the situation the appellant has sought to rely on a consent letter as per Annexure-III furnished by the lessor. Sub-clause (vi)(m) of the Brochure

specifically delineates the situations where a consent letter as per Annexure-III may be filed by Group-1 applicants. The said sub-clause does not apply to unregistered leases executed by a third party in favour of an applicant and does not include ownership claimed through lease hold rights.

17. In such a situation decision of the Oil Company to demote the appellant from Group I category to Group III as per Clause 4(vi)(n) cannot be said to be unreasonable or unjust. I do not find any reason to interfere with the order impugned.

18. Accordingly, the appeal is dismissed.

19. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also dismissed.

20. There shall be no order as to costs.

21. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)