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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-799-2024 (O&M)

RESERVED ON: MARCH 21, 2024
PRONOUNCED ON : AUGUST 14, 2024

SURENDER SINGH @ SURENDRA SINGH ...APPELLANT

VERSUS

HINDUSTAN PETROLEUM CORPORATION ...RESPONDENTS
LTD. & OTHERS

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL.
HON'BLE MR. JUSTICE DEEPAK MANCHANDA.**

PRESENT: MR. RAMAN CHAWLA, ADVOCATE
FOR THE APPELLANT.

MR. ASHISH KAPOOR, ADVOCATE
FOR RESPONDENTS NO.1 AND 2.

MS. MAMTA SINGH TALWAR, DAG, HARYANA.

DEEPAK MANCHANDA, J.

The appellant has assailed the impugned judgement dated 5/3/2024 through this Intra-Court appeal, passed by learned Single Judge vide which the writ petition filed by the appellant was ordered to be disposed of with a direction to the respondent corporation to re-consider the case of the appellant, if permissible under the terms and conditions of the brochure.

The outlined facts of the case are that the appellant applied for the allotment of a retail outlet advertised by the respondent corporation, under the Scheduled Caste Category (PH) based on a lease deed executed with one of the owners of the offered land, where rest of the six owners did



not object to the same and furnished their affidavits to that effect. The appellant was selected through the draw of lots however, his claim was rejected vide communication dated 16/01/2024 (annexure P9) on the ground of insufficient offered land, which was challenged through Civil Writ Petition No.2426 of 2024 and was disposed of vide impugned judgement dated 05/03/2024, with the direction to reconsider the case of the appellant, in light of permissible terms and conditions of the brochure but being dissatisfied with the impugned judgement, this appeal has been preferred.

Learned counsel for the appellant contends that learned Single Judge has erred in disposing of the writ petition with the direction to the respondent corporation to reconsider the case of the appellant in the light of permissible terms and conditions, where the appellant was entitled to an opportunity to offer alternate land, which has not been reconsidered by the respondents while rejecting the candidature of the appellant nor appreciated by the writ court.

On the receipt of an advance copy, Mr.Ashish Kapoor,Advocate has put in an appearance on behalf of the respondents No.1 and 2 and has assisted this Court by making his submissions that as per the brochure and the advertisement, the minimum area required for the said retail outlet under specific category is 1225 sq. meter, whereas as per the registered lease deed dated 26/09/2023, the area offered in Khasra No.130 and Killa No.4 is only 0 Kanals 19 Marla, i.e. 475 sq.meter, which is less than the minimum area required. He further submits that as per clause 15 (a) of the Application Form, the eligibility of retail outlet dealership will be decided based on



information given in the Application Form only, whereas the appellant should have disclosed all Khasra numbers which are jointly owned by more than one owners of the offered land thus the lease deed was not as per the terms and conditions of the brochure.

We have heard the learned counsel for the parties and have perused the material available on record with the counsel's assistance.

The impugned judgement would show that during the pendency of the writ petition the learned Single Judge directed the State to verify the actual status of the offered land by the appellant and in compliance with the same, vide communication dated 04/03/2024, it was disclosed that the offered land is not partitioned and the same is owned by multiple owners. While referring to clause 4 (vi)(a) of the brochure which deals with the eligibility criteria for individual applicants including the appellant, the learned Single Judge observed that as per the said clause, in the case of multiple owners of land, the lease deed should have been executed by all the co-owners of the offered land, but instead of same, the said lease deed was executed by only one of the co-owners. Though as per the appellant, the rest of the owners also gave their consented affidavits, but said fact was neither appreciated by the learned Single Judge nor by the respondent-Corporation and as same did not align with the terms and conditions of the brochure, hence the candidature of the appellant was shifted from Group 1 to Group 3. The learned Single Judge observed that, however, there is substantial compliance and if the appellant can get the NOC of other owners as well as is ready to offer alternative land accordingly, then the case of the appellant



needs to be reconsidered in light of the given terms and conditions of the brochure and ordered accordingly.

We have also gone through the contents of the advertisement (Annexure P-1), wherein it is mentioned that the minimum specified area required for said location was 1225 sq.meter and as per the land details mentioned in item No.13 of the Application Form (Annexure P-2) which were filled up and uploaded online by the appellant are Khewat No.244, Khasra No.130, Killa No.4 and same was uploaded which comes to less than 1225 sq. meter i.e. 475 sq. meter. Further as per clause 15(a) of the Application Form, it is also mentioned that the eligibility of retail outlet dealership would be decided based on information given in the Application Form only. The bare perusal of Annexure P-8, i.e. the brochure, shows that the interested applicants including appellant were classified into 3 groups based on the land offered or land not offered by them in the Application Form. The 1st category is Group 1, the 2nd category is Group 2 and 3rd Category is Group 3, where it is mentioned that in case land offered by all the applicants under Group 1 and Group 2 is found not suitable and not meeting the requirements, then those applicants under Group 1 and Group 2 along with applicants under Group 3 would be advised by the OMCs to provide suitable land in the advertised location/stretch, within 90 days from the date of issuance of intimation letter to them through SMS/email. As per note 2 of the advertised criteria for locations under the SC/ST category, it is also mentioned that if the offered land of all applicants under Group 1 and

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Group 2 gets rejected due to not meeting the laid down criteria, then all such applicants shall be allowed to offer land or alternate land (as the case may be) in the advertised location/stretch provided the applicant meets all other eligibility criteria. In note 3 it is mentioned that in case after selection, the offered land is co-owned by multiple persons and the provisionally selected candidate did not provide consent from all the co-owners, then the provisionally selected candidate would be given 21 days time to get consent from all the co-owners for the offered land, failing which the candidature of the provisionally selected candidate will get rejected. The said eligibility criteria is reproduced below:-

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

Common Eligibility Criteria for all Categories applying as Individual (as on date of application unless mentioned otherwise)

- | | | |
|-------|----------------------------|--|
| (i) | Citizenship: | <i>India Citizen</i> |
| (ii) | Residential status: | <i>Resident of India (as per Income tax rules).</i> |
| (iii) | PAN: | <i>Must possess valid PAN card as on the date of application.</i> |
| (iv) | Age | <i>Not less than 21 years and not more than 60 years except for Freedom Fighter under CC2 category</i> |

Proof of age should be supported by copy of 10th Standard Board Certificate / 10th Std. School Leaving Certificate/ Secondary School Leaving Certificate / Birth Certificate / Passport/Identity card issued by Election Commission/PAN card/Aadhar card. However, the document uploaded by the provisionally selected candidate in support of proof of age must contain date, month and year of birth and the certificate relied upon by the candidate for proof of age must be specially mentioned in the application.

- (v) **Educational qualification:**

Passed Minimum 10th (examination conducted by a Board/School).

Certificate issued by Armed Forces as equivalent to 10th Class pass in accordance with Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel and Training) notification No. 15012/8/82-Estt (D) dated 12.02.1986 will also be considered.



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For educational qualification from overseas universities / boards, equivalent certificate issued by competent authority / State Government / Government of India should be submitted by the applicants.

Minimum Educational qualification is not applicable to Freedom Fighters applying under CC2 category.

(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.*

Applications 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.

The other conditions with respect to offering of land are as under: -

- a) *The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application. If the offered land is on Long-term lease and there are multiple owners, then lease deed should be executed by all co-owners of the offered plot. Incase lease deed is not executed by all co-owners; such lease deed shall be treated as invalid.*
- b) *If the offered land is on long term lease, then the Lease agreement should have a provision to sub-lease the offered land wherever the locations are advertised under Corpus Fund Scheme (CFS) and other Corporation Owned Sites ("A"/ "CC" sites).*

In case it is observed that the lease agreement for the land offered by the provisionally selected candidate does not have a provision to sub-lease the

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land, in such cases the provisionally selected candidate would be provided 21 days' time from the date of intimation through SMS/e-mail to make suitable amendment/addendum to the lease agreement and submit the same to the concerned OMC.

- c) For Dealer owned sites ("B"/ "DC" sites), the applicant should ensure that the land arranged by the applicant is either registered in the applicant's name or leased in favour of the applicant for a minimum period as advertised by respective oil company, as per terms of Letter of Intent (LOI). Investment will be made by the OMC towards development of facilities in the offered land only after compliance of the afore mentioned, by the applicant. In case land is obtained on long term lease by the applicant, the lease should be valid till a period of 19 years 11 months from the date or after the date of advertisement but not later than the date of application.*
- d) For Corporation owned sites ("A"/ "CC"/ "CFS" sites), the applicant should ensure that the land offered by the applicant is registered in the name of the OMC either through Long Term Lease or through outright sale before any investment is made by the OMC towards development of facilities in the offered land. In case of long term lease, the lease should be valid till a period of 19 years 11 months from the date or after the date of advertisement but not later than the date of application.*
- e) As and when advised by the OMC, the provisionally selected candidate should upload a copy of Khasra / Khatouni or any other equivalent revenue document or certificate obtained from revenue official confirming the status of ownership of the land, as on the date of application.*

As and when advised by the OMC, the provisionally selected candidate will also be required to upload a site map / layout sketch of the offered plot as per Appendix - V.

- 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*
- g) 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) from the concerned family member(s). Such consent letter in the form of affidavit should have been tendered by the concerned family member(s) on or before the date of application.*
- h) For this purpose, family members would comprise of -*
 - (i) Self*
 - (ii) Spouse*



- (i) Father/Mother including Step Father/Step Mother*
- (iv) Brother/Sister/Step Brother/Step Sister*
- (v) Son/Daughter/Step Son/Step Daughter*
- (vi) Son-in-law/Daughter-in-law*
- (vii) Parents-in-law*
- (viii) Grand Parents (both maternal & paternal)*

*j) For Group 2 applicants, the "firm offer" of land will include land offer from third party based on Agreement to purchase/long term lease (as per terms and conditions of the OMCs). Land offer letter in the form of an Affidavit (**Appendix - III**) tendered by the third party (landowner) **on or before the date of application**, should be available with the applicant along with documents mentioned in clause (e and f) above to establish the ownership of land offered for the Dealership which will have to be submitted by the applicant as and when advised by OMCs.*

*j) in case conveyance (sale/lease/gift) deed of the offered land has been executed by a Power of Attorney (Registered) holder and/or offer letter as per Affidavit (**Appendix - III**) is from Power of Attorney holder (Registered), as and when advised by the OMC, the applicant will also have to submit a copy of the POA along with documents, mentioned in clause (e and f) above. The POA (registered) shall be of a date which is on or prior to the date of execution conveyance (sale/lease/gift) deed and/or offer letter.*

k) The eligibility of applicant with regard to the Land (Group 1 or Group 2) will be decided by the OMC.

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:-

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



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<i>S.No.</i>	<i>Situation of ownership</i>	<i>Share of applicant in land</i>	<i>Additional documents required</i>	<i>Evaluation as</i>
3	<i>Self with other owners</i>	<i>Part</i>	<i>If the share of the applicant and/or family members is more than or equal to land required by the company.</i> <i>Consent letter on stamp paper or an affidavit or Power of Attorney from all Co-owners(s) should be provided – Appendix-III.</i>	<i>Owned</i>
	<i>Family members with other owner (s)</i>	<i>Nil</i>		
	<i>Self with family members & other owners</i>	<i>Part</i>		
4	<i>Land owned by Government/Semi-Government bodies</i>	<i>Full</i>	<i>Allotment letter from the Government/Semi-Government bodies in the name of Self with specific mention for use of petrol pump</i>	<i>Owned</i>
GROUP 2				
5	<i>Land owned by third part in part or full</i>	<i>Part/Nil</i>	<i>Consent letter in the form of affidavit/Power of Attorney from other owner(s) – Appendix III</i>	<i>Firm Offer</i>

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.

o) It should be the responsibility of the applicant to ensure that as on date of application:-

(i) The offered land meets advertised dimension after leaving Right of Way (ROW) line of the road and should be situated abutting the ROW of the

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road.

(ii) The offered land is not notified for acquisition.

(iii) The land owner is in possession of the offered land from the beginning/edge of the ROW line

(iv) There is no other land including Govt. land between ROW and offered plot.

(v) The offered land falls within the advertised location / stretch.

Further, at the time of land evaluation the offered land would also be checked for compliance of the following. The offered land would be accepted only upon meeting the same:-

(i) There is no HT line (> 11 KV) crossing the offered land.

For sites on NH, the offered land must meet NHAI norms. (ii)

Note: In case it is found at later stage that the offered plot is not meeting any of the above conditions then in such case the offered land would be rejected and candidature would get rejected and applicant would be informed through SMS/e-mail. However, for location advertised under SC/ST category, such candidates will be given an opportunity along with applicants under Group - 3 to offer land, through SMS/e-mail, Applicable NHAI norms for setting up retail Outlets (Fuel Stations) on plot of land abutting National Highway can be accessed from <https://morth.nic.in>

- p) Verification of the supporting documents submitted by the provisionally selected candidate, post selection, will be carried out at the time of Scrutiny / Field Verification of Credentials (FVC).

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.
- b. If an applicant offers more than one land then, a confirmation in writing is to be obtained by Land Evaluation Committee (LEC) from the applicant with regard to the plot of land to be considered for evaluation.
- c. The same piece of land cannot be offered by more than one applicant for a particular RO location against an advertisement. In case more than one application is received offering the same piece of land all such applications would be rejected and allotment, if made, would be liable for cancellation. This aspect shall be verified only upon receipt of written information by the OMC. However, if plots having same land details (Khasra/Gatta/Khatauni/Survey/Plot/Dag/Gut No. etc.) are offered by different applicants, such cases will not be liable for rejection provided there is no overlap of any kind and there is clear demarcation of land offered by them.



- d. *The provisionally selected candidate has to make available the offered land including the entry/exit / acceleration lane / de-acceleration lane / service road duly developed up to the road level by cutting/filling (as applicable), with good earth / murrum, layer-wise compacted as per standard engineering practices to the satisfaction of the concerned OMC. The provisionally selected candidate is also required to provide retaining wall and compound wall of min. height 1.5 meters, designed as per site conditions as per approval of OMC. The above stated works has to be completed by the provisionally selected candidate before any investment is made on the offered plot by the OMC.*
- e. *There is no commitment by the Oil Company for taking the offered land from the applicant. If an applicant, after selection, is unable to provide the relevant land documents in respect of the offered land indicated in the application within a period of 2 months (for Group 1) and 4 months (for Group 2) from the date of Letter of Intent (LOI), Oil Company will have the right to cancel / withdraw the LOI Issued in favour of the provisionally selected candidate for allotment of dealership.*

Note 2: For locations advertised under SC/ST category

*In case of locations where the applicant has not offered the land in the application (Group 3) or if the offered land of all applicants **under Group 1 & Group - 2** got rejected due to not meeting the laid down criteria, then all such applicants shall be given an opportunity to offer land or alternate land (as the case may be) in the advertised location/stretch provided the applicant meet all other eligibility criteria.*

A communication through SMS/e-mail would be sent to these applicants to offer land/ alternate land within a period of 90 days from the date of offer letter.

*On receipt of advice to offer land from OMCs the applicant should submit land offer online and indicate the category under which the land falls (Group 1 or Group 2). Upon selection, the provisionally selected candidate would be required to upload all the relevant documents pertaining to the land offered along with consent letter in the form of affidavit (**Appendix - III**) and/or Power of Attorney (Registered), if applicable*

The applicants would be classified into two groups i.e., Group-1 & Group - 2 based on the land offered by them.

In case the applicant(s) fail to offer land / alternate land within the specified period, the offer would be withdrawn, and application rejected under intimation to the applicant(s) through SMS/e-mail.

Only one opportunity would be given to the applicant, either for offering land (if applicant has not offered any land along with application form) or for offering alternate land given to applicants of locations advertised under SC/ST category (if the land offered by the applicant is found to be not meeting the laid down criteria during Scrutiny / land evaluation/ rejection of land after selection, for applicants who have offered land along with the application).

**Note 3:**

- i. *In case after selection, if it is observed that the offered land is co-owned by multiple persons and the provisionally selected candidate did not provide consent of all the co-owners, the provisionally selected candidate would be given 21 days' time to get consent of all the co-owners for the offered land failing which candidature of the provisionally selected candidate will get rejected. However, for locations advertised under SC/ST category such candidates will get an opportunity along with Group – 3 applicants, provided he / she was originally not in Group-3 or have not been moved to Group-3 earlier.*
- ii. *Consent letter(s) in the form of affidavit (Appendix - III) of a date which is prior to date of application, shall only be considered.*
- iii. *In case after selection, it is observed that the offered land does not contain sub lease as required by OMC (for CFS/CC sites) the provisionally selected candidate would be given 21 days' time to make suitable amendment/addendum to the lease agreement failing which the selection of the candidate will get rejected.*

However, for locations advertised under SC/ST category such candidates will get an opportunity along with Group -3 applicants, provided he/she was originally not in Group-3 or have not been moved to Group-3 earlier.”

As per the conditions mentioned above, which are enshrined under the brochure, the grounds for not accepting the application form is that the information provided qua offered land is not as per the criteria. Further, the offered land is co-owned by multiple persons, who did not sign the lease deed. As per note 3 in the condition, if the offered land is rejected due to not meeting the laid down criteria, the appellant shall be allowed to offer land or alternate land in the advertised location subject to other eligibility conditions. Even through this appeal, the appellant by making reference of note 2 and note 3 of criteria has made a limited prayer for granting the opportunity to offer alternative land under the specified category. Rather vide letter dated 16.1.2024 (Annexure P-9) respondent-corporation also offered consideration of candidature along with Group 3

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applicants and granted time to move a representation by 26/1/2024 and pursuant to the same, the appellant submitted representation dated 26/1/2024, but there is nothing on record to show that whether the same has been considered or not.

In the light of the above discussion, we are of the view that the learned Single Judge has not deprived the appellant of said opportunity as prayed in the present intra-Court appeal by passing the impugned judgement, but rather has ordered for reconsideration of the appellant's claim. However, the same is modified to the extent that the claim of the appellant shall be decided within 8 weeks from the date of receipt of certified copy of this order.

Consequently, the appeal is disposed of.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

August 14, 2024
Gulati

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No