

(2022) 11 GAU CK 0035

Gauhati High Court

Case No: Writ Petition (Civil) No. 189 Of 2019

Mainajan Khatun

APPELLANT

Vs

Hindustan Petroleum
Corporation Ltd And 4
Ors.

RESPONDENT

Date of Decision: Nov. 14, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 226
- Transfer of Property Act, 1882 - Section 105
- Registration Act, 1908 - Section 17(1)(d), 49

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: A Matlib, S S Roy

Final Decision: Dismissed

Judgement

1. Heard Mr. B. D. Konwar, the learned Senior Counsel assisted by Ms. D. Brahma, the learned counsel appearing on behalf of the petitioner and

Mr. S. Borthakur, the learned counsel appearing on behalf of the respondent Nos. 1, 2, 3 and 4. I have also heard Mr. N. H. Barbhuiya the learned

counsel appearing on behalf of the respondent No.5.

2. This Court vide an order dated 11.01.2019 had issued notice returnable by 8 (eight) weeks and had stayed the cancellation letter dated 23.10.2018

and any consequential allotment of LPG distributorship at Chikni in the district of Barpeta to respondent No.5. The respondent No.5 being affected

with the said order dated 11.01.2019 which has been extended from time to time had filed an Interlocutory Application being I.A.(Civil) No.783/2022

seeking vacation/modification/alteration of the order dated 11.01.2019 passed in the accompanying writ petition. The said Interlocutory Application came up for consideration before this Court today.

3. While hearing the learned counsels appearing on behalf of the parties in the said Interlocutory Application, it transpires that any decision on the said Interlocutory Application would have a bearing on the merits of the case. Accordingly, with the consent of all the parties, the matter has been taken up for final disposal at this stage.

4. For appreciation of facts involved in the instant writ petition it would be relevant to take note of that a notice for appointment of distributors of LPG at 93 locations including a location at Serial No.18 pertaining to the respondent No.1 company situated at place Chikni, Gram Panchayat Chikni, Block Ruposhi in the District of Barpeta was published in a news daily. The allotment of the distributorship was to be made in respect a Class Open (Women) insofar as the location at Serial No.18. It was further mentioned in respect to Serial No.18 that the class of the market would be rural and the security deposit would be Rs.4,00,000/- and the marketing plan was 2018-2019.

5. At this stage, it may be relevant to take note of that in the said notice for appointment of LPG distributorship advertisement, a detail translated copy of which was enclosed to the affidavit filed by the respondent Nos.2, 3 and 4 would show that the detail guidelines on eligibility criteria for selection of LPG distributor, infrastructure requirements of land for LPG godown, land for showroom/ready built showroom, infrastructure for home delivery of cylinders etc. along with the details of selection process were given in the Brochure for selection of LPG distributorship which can be downloaded from any of the Oil Companies'™ websites " www.iocl.com, www.ebharatgas.com, www.bharatpetroleum.in, www.hindustanpetroleum.com of IOCL, BPCL and HPCL. Though the petitioner did not enclose the Brochure to the writ petition which ought to have been done, the respondent Nos.

2, 3 and 4 have included the same as Annexure-2 to the affidavit in opposition.

6. For the purpose of instant writ petition, Clause 1(w) is relevant taking into account the land which is required to be offered for obtaining the distributorship. Clause 1(w) being relevant is reproduced hereinbelow.

1.(w). "Ownership" or "Own" for godown/showroom for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya

Vitrak Type of Distributorship means having:

a. Ownership title of the property Or

b. Registered lease deed having minimum 15 years of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any).

Additionally, applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the

lease is valid for a minimum period of 15 years from the date of advertisement. The applicant should have ownership as defined under the term

"Own" above in the name of applicant/member of "Family Unit" (as defined in multiple dealership/distributorship norm of eligibility

criteria)/parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister),

Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter-in-law of the applicant or the spouse (in case of married applicant) as on last

date for submission of application as specified either in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family

member(s) as given above, consent in the form of a declaration from the family member(s) will be required.

In case the share of land in the jointly owned property by the applicant/member of "Family Unit" as defined in multiple dealership/distributorship

norm)/parents & grandparents (both maternal and paternal) of the applicant or the spouse with any other persons(s) meets the requirement of land

including the dimensions required, then that land for godown/showroom should qualify for eligibility as "own" land subject to submission of "No

Objection Certificate" in the form of declaration from other owner(s).

7. From the perusal of the said Clause-1(w), it would transpire that "Ownership" or "Own" for godown/showroom for Sheheri Vitrak,

Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak Type of Distributorship means having ownership title of the property or registered lease

deed having minimum 15 years of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any). It was also categorically mentioned in the said clause that additionally, applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of 15 years from the date of advertisement. Further it was mentioned that the applicant should have ownership as defined under the term "Own" above in the name of applicant/member of "Family Unit" as on last date for submission of application as specified either in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s), consent in the form of a declaration from the family member(s) will be required. It was further mentioned that in case the share of land in the jointly owned property by the applicant/member of "Family Unit" as defined in multiple dealership/distributorship norm)/parents & grandparents (both maternal and paternal) of the applicant or the spouse with any other persons(s) meets the requirement of land including the dimensions required, then that land for godown/showroom should qualify for eligibility as "own" land subject to submission of "No Objection Certificate" in the form of declaration from other owner(s).

8. Clause-2 of the said Brochure relates to basic facilities required for operation for LPG Distributorship. It is also relevant to take note of the eligibility criteria for applicants as stipulated in Clause-8 of the Brochure and more particular Clause- 8(m) and Clause- 8(n) which relates to godown and showroom respectively. A perusal of both the said clauses would show that the applicant as on the last date of submission of the bid or such extension as may be provided by any corrigendum has to be either the owner of the land in question or has to have a registered lease deed of minimum 15 years in respect to the land in question.

9. Before further proceeding it would also be relevant to take note of that in Clause- 8(n), there is a mention relating to opportunity to offer alternate land for godown and/or showroom. The relevant portion of Clause-(n) is quoted hereinbelow.

Opportunity to offer land for Godown and/or Showroom

â€œIn case if the offered land for Godown and/or offered land for showroom by the selected candidate which is shown in the application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application at the verification (FVC) stage, then the selected candidate can offer an alternate land which is owned by the applicant/member of the â€˜Family Unitâ€™™/parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter-in-law of the applicant or the spouse (in the case of married applicant) as on last date for submission of application as specified either in the advertisement or corrigendum if any.

Selected candidate, who has been issued an Letter of Intent (LOI) can offer an alternate land which is owned by the applicant/member of the â€˜Family Unitâ€™™/parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter-in-law of the applicant or the spouse (in the case of married applicant) for construction of Godown/Showroom, in the advertised location provided the land originally offered in the application was meeting all the specifications as laid down in the advertisement and on the basis of which LOI is issued.â€

10. A perusal of the above quoted Clause would show that if the offered land for Godown and/or offered land for showroom by the selected candidate is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application at the verification (FVC) stage, then the selected candidate can offer an alternate land which is owned by the applicant/member of the â€˜Family Unitâ€™™ as on last date for submission of application as specified either in the advertisement or corrigendum if any. Further if a selected candidate, who has been issued an Letter of Intent (LOI) can offer an alternate land which is owned by the applicant/member of the â€˜Family Unitâ€™™ in the advertised location provided the land originally offered in the application was meeting all the specifications as laid down in the advertisement and on the basis of which LOI is issued.

11. In the backdrop of the above, let this Court take into consideration the facts of the instant case. In the notice for appointment of LPG distributor as published in the newspaper, it was mentioned that the interested persons who were qualified have to submit the online application on or before 17:00 hrs of 25.06.2018. The petitioner being interested, submitted her application form on 25.06.2018 as could be seen from Annexure-2 to the writ petition.

In the said application, the petitioner has mentioned that the date of registration of sale deed/gift deed/registered lease deed/date of mutation to be 25.06.2018. Upon the papers being verified, it was found that the petitioner instead of submitting any title document or a registered Deed of Lease for a period of 15 years, had submitted an affidavit seeking compliance to Clause-8(m) and Clause-8(n) read with Clause-1(w) of the Brochure. Upon the said defect being noticed, the Area Sales Manager, Assam LPG, HPCL issued a communication dated 17.09.2018 informing the petitioner that in the application the land offered for LPG Godown/Showroom having Patta No./Dag No.421/817, there was no lease deed which was submitted rather a notarized deed has been provided which is not acceptable as per Unified guidelines for appointing LPG distributorship. Under such circumstances, the petitioner was requested to offer an alternate plot of land suitable for construction of LPG godown and meeting all the eligibility criteria as stipulated in the advertisement brochure/guideline. It was categorically mentioned that offer for alternate land (with all the relevant land documents) should reach the office in Guwahati at the address mentioned therein on or before 7 days from the date of issuance of the said order. It is an admitted case of the petitioner that within the period of 7 days as given in the said letter dated 17.09.2018, the registered Deed of Lease was not submitted.

12. From a perusal of the petition, it transpires that a registered Lease Deed was entered into between one Mr. Ajij Khan and the petitioner on 01.10.2018 for a period of 15 years from the date of execution of the said Lease Deed. Thereupon, the petitioner submitted the said registered Lease Deed before the authority concerned. The Chief Regional Manger of the respondent No.1 vide a communication dated 23.10.2018 rejected the candidature of the petitioner on the ground that the land for godown offered by the petitioner with the application was taken on a notarized lease. It

was further mentioned that the alternate land offered by the petitioner was found to be taken by a registered Lease Deed on 01.10.2018 i.e. after the last date of submission of the application. The petitioner's candidature having been rejected vide the communication dated 23.10.2018, the petitioner has approached this Court under Article 226 of the Constitution of India for setting aside the order dated 23.10.2018 and for a Writ of Mandamus for a direction upon the respondents thereby directing the respondents to accept the registered Lease Deed submitted by the petitioner on 01.10.2018 and with a further direction to award the LPG distributorship to the petitioner as per the advertisement dated 25.05.2018 as well as letter dated 27.07.2018 and to pass appropriate orders as deem fit by this Court.

13. Upon notice being issued, the official respondents have filed their affidavit in opposition stating inter alia that the rejection of the petitioner's candidature has been done in accordance with the provisions of the Brochure which categorically mandated that the petitioner in order to get the allotment of distributorship was required to submit a title document or a registered Lease Deed for a minimum period of 15 years. The last date of submission was on 25.06.2018 and on that date the petitioner did neither have a title document or a registered Lease Deed for a period of 15 years.

Under such circumstances, the authority concerned had mentioned in the affidavit that taking into consideration the mandate of Brochure, more particularly Clause-8(m) and Clause-8(n), the candidature of the petitioner therefore was rejected. It was further mentioned that taking into account that the actions of the respondent authorities neither suffers from any malafide nor perversity or there was any irrationality or unreasonableness, the question of interference under Article 226 of the Constitution of India did not arise.

14. The respondent No.5 did not filed his affidavit in opposition but placed reliance on the pleadings contained in the Interlocutory Application.

15. I have heard the learned counsels for the parties and perused the materials on record. From a perusal of materials on records as already discussed hereinabove, the petitioner admittedly as on the last date of submission of the bid i.e. on 25.06.2018 did not have any title document or a registered Lease Deed for a period of 15 years. The Clauses in the Brochure was unambiguous to mandate the requirement of the title document or the

registered Lease Deed for a minimum period of 15 years has to be as on the last date of the submission of the bid document or such extended period

as per the corrigendum. It is being an admitted case that there was no corrigendum in respect to the instant tender. The petitioner having submitted

her bid documents on 25.06.2018, it was the requirement as per the tender condition that as on that day, the petitioner was required to have a title over

the land offered or had a registered lease deed for a minimum period of 15 years as on the date of submission of the tender/bid. Admittedly, the

Petitioner only gave a notarized Deed which was not acceptable in view of the terms and conditions mentioned in the Brochure. The rejection of the

candidature of the petitioner under no circumstances can be said to be an action by the respondent authority to be vitiated by malafide or perversity or

unreasonableness or irrationality.

16. The insistence of the Respondent Authority to the requirement of a title document or for a registered Deed of Lease for 15 years from the date of

submission of the bid document cannot also be faulted upon taking into consideration the provisions of Section 105 of the Transfer of Property Act,

1882 read with Section 17(1)(d) and Section 49 of the Registration Act, 1908 which specifically mandates that a lease deed for a period exceeding one

year is compulsorily registrable and it would not affect any immovable property if not registered. Further allowing the petitioner to submit a registered

lease deed after the last date of submission of the bid would be deviating from the terms of the Brochure and would result in violating the mandate of

Article 14 of the Constitution. Under such circumstances, the rejection of the candidature of the petitioner was rightly done by the Respondent

Authorities for which there arises no question of interference.

17. For the reasons mentioned above, this Court therefore dismisses the writ petition. In view of the dismissal of the writ petition, the interim order

dated 11.01.2019 stands vacated and the respondent authorities are given the liberty to proceed with the said distributorship in accordance with law.

18. Before concluding, this Court would like to observe that the Respondent Authorities shall proceed with the process for allotment of the

distributorship keeping in mind that observations made hereinabove and the requirement of the tender conditions.

19. With above observations and directions, the instant petition stands dismissed.