

Piyush Khede Vs Indian Oil Corporation And Others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 22, 2025

Acts Referred: Constitution of India 1950 " Article 226

Hon'ble Judges: Pranay Verma, J

Bench: Single Bench

Advocate: Rohit Kumar Mangal, Yogesh Kumar Mittal

Final Decision: Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Pranay Verma, J

1. This petition under Article 226 of the Constitution of India, has been preferred by the petitioner being aggrieved by the order dated 19/3/2024 (Annexure P/2) passed by respondent No.2 whereby his application for appointment as regular /

rural retail outlet (petrol pump) dealer has been rejected on the ground that a High Tension electricity line is passing above the land offered by him. The petitioner has also challenged the letter dated 05.04.2024 (Annexure P/18) issued by the

respondents upholding the said rejection.

2. The facts of the case in brief are that respondent No.1 had issued an advertisement for allotment of retail outlets at various locations including in District Barwani. The respondents issued notice for appointment of regular / rural retail outlet

(petrol pump) dealership. A brochure for selection of dealers for regular / rural retail outlets was also published in June, 2023 providing for guidelines for selection of dealers through draw of lots / bidding process. The petitioner applied for a

petrol pump reserved for SC candidate for location at Serial No.47 of the brochure between KM Stone No.113 and KM Stone No.117 on Agra Mumbai National Highway on RHS while going to Mumbai from Indore. The requirement f

applying as a dealer was that a candidate must be having minimum plot dimension size of 35 meter X 35 meter. Clause 4(vi) of the guidelines divided all the applicants in three categories based on the land offered by them. Group I was where

applicant had suitable piece of land in the advertised location/area. Group II was where applicant had a firm offer for a suitable piece of land for purchase or long term lease and Group III was where applicant did not have any offered land in

the application.

3. The petitioner submitted his application on 19/9/2023. He offered land ad-measuring 0.434 hectare i.e. 434 square meters having purchased the same by registered sale deed dated 22/8/2023. Thereafter he was provisionally selected in

Group I. By an e-mail dated 31/12/2023 he was directed to furnish certain documents which was done by him. Subsequently, the Land Evaluation Committee sent an e-mail stating that inspection of land would be done on 5/3/2024. Petitioner's

land was thereafter inspected and his application was rejected on the ground that the land offered by him has been found to be not meeting the required norms since a 33 KV High Tension line was passing through the land.

4. Learned counsel for the petitioner has submitted that the HT line passing through the land of petitioner is only 1-2 meters inside the land offered by him. His land is total 45 meters x 45 meters whereas the minimum requirement is 35 meters

x 35 meters. Even if the land over which the electricity line is passing is excluded than also his remaining land would be much larger than the minimum requirement of the respondents. The petrol pump can easily start from two meters inside

the offered land and still would qualify for the minimum requirement of 35 meters x 35 meters. If the petitioner had been informed of the proposed action of rejection on the said ground, he would have had an opportunity to clarify that the land

can be so reduced adhering to the minimum requirement. The HT line can also be shifted which would serve the purpose of the respondents. The petitioner ought to have been permitted to rectify the alleged defect since the same does not fall

within the purview of non-rectifiable defects under Clause 23. The HT line can be shifted by making appropriate application to M.P. Paschim Kshetra Vidyut Vitaran Company Ltd. which the petitioner is willing to do and has already initiated

the process in that regard. It is hence submitted that the impugned order be set aside and petitioner be allotted location No.47 as prescribed in the advertisement.

5. Reply has been filed by the respondents and learned counsel for the respondents has submitted that upon receipt of his application, the petitioner was found eligible for the selection process. Thereafter the Land Evaluation Committee

evaluated the land offered by him wherein it was found that there is a 33 K.V. high tension electricity line parallel to the road passing over the land hence it does not meet the criteria for selection on the basis of which petitioner has been

disqualified. The complaint submitted by the petitioner to the aforesaid has also been rejected for the very same reason. The petitioner has failed to fulfill the mandatory conditions under Clause 4 of the selection brochure. The same is an

incurable defect and the contention of the petitioner that he should be permitted to exclude the land over which electricity line is passing cannot be accepted in view of the provisions contained in the guidelines. The suitability of land is to be

assessed on the date of evaluation and there is no provision for permitting any rectification in the defects subsequently. The offer of the petitioner to exclude two meters of land over which the electricity line is passing and for permitting him to

initiate process for shifting of the line is hence not acceptable. It is hence submitted that the respondents have not committed any error in passing the impugned order. Reliance has been placed on the Division Bench decision of the Rajasthan

High Court at Jodhpur in D.B. Spl. Appeal Writ No.827/2022 (Virendra Singh Rathore V/s. Bharat Petroleum Corporation Ltd. & Ors.) decided on 31/05/2023.

6. I have considered the submissions of the learned counsel for the parties and have perused the record.

7. The legality of rejection of candidature of the petitioner is required to be considered in light of provisions contained in brochure for selection of dealers for regular and retail outlets effective from June, 2023. The eligibility criteria in respect of

land is contained in Clause 4(o) which reads as under :-

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 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:-

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

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

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 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>

The land evaluation is required to be done as per the procedure prescribed in Clause 14(J) which is as under :-

14 (I). Land Evaluation:

The concerned Divisional / Regional / Territory Office shall inform the provisionally selected candidate thru e-mail/SMS at least 10 days before the day of visit by LEC for site evaluation. In case of no response/non-availability

of the provisionally selected applicant, the candidature shall be cancelled under intimation to the provisionally selected candidate through SMS/e-mail.

Evaluation of the offered land will be carried out to ascertain land being in advertised area and suitable for development of RO meeting norms. The parameters under which offered land will be evaluated by Land

Evaluation Committee for suitability are:-

Land falls within the advertised area / stretch, as on date of advertisement

Land dimensions meets requirement after leaving Right of Way (ROW) line of the road.

Land meets NHAI norms (for sites on NH)

Land has no Ht line(>11KV)crossing

Land not meeting any of the above parameters will not be considered and will be rejected.

Note: The offered land should meet all the following :-

Offered land should meet all the following :-

1. Minimum frontage as specified in advertisement.

2. Minimum area as specified in advertisement.

3. Minimum depth(as specified in advertisement) perpendicular to the front age atleast at one place after leaving the ROW line.

In case the offered land is found to be suitable, the LEC will submit the recommendation to the Divisional / Regional / Territory head for carrying out FVC of the provisionally selected candidate.

In case land is not found suitable, the provisionally selected candidate will be informed about his/her ineligibility and rejection of his/her candidature. The selection process will be continued with the balance applicants.

However, for locations advertised under SC/ST category the candidate would be considered for selection along with Group 3 applicants provided the candidature of the applicant was originally not in Group 3 or was not

moved to Group-3 earlier and intimation will be sent to the candidate.

9. Clause 4(o) provides that "as on the date of application the offered land must meet advertised dimension after leaving right of way line of the road and should be situated abutting the ROW of the road. Further there should not be any

other land including Government land between ROW and offered plot. Most importantly "at the time of land evaluation the offered land would be accepted only if there is no HT line (more than 11 KW) crossing offered land. Admittedly

on the date when the land of the petitioner was evaluated by the Land Evaluation Committee 33 KVHT electricity line was passing over 2 meters of the land. Though the same was only over 2 meters but was within the area of the land

offered. The land offered by the petitioner thus included part of land over which HT line more than 11 KW was crossing. The entire land would be covered within the meaning of "offered land" hence there was non-compliance of the

provision that there should be no HT line more than 11 KV crossing the offered land.

10. Clause 4(o) further provides that it would be the responsibility of the applicant to ensure that as on the date of application the offered land meets the requirements and further that they continue at the time of land evaluation. The Clause is

mandatory in nature and a purposeful and meaningful reading of the same leaves no room for permitting the applicant at a later stage to make any rectifications to bring the offered land within the requirements of the Clause. The contention of

the learned counsel for the petitioner that the petitioner should have been afforded an opportunity for bringing the land in conformity with the requirements of the aforesaid clause hence cannot be accepted. Reliance by him of Clause 14 (I) of

the brochure is also of no avail as the same does not provide for any rectification in the land offered after the application having been made and the land having been evaluated by the land evaluation committee.

11. Clause 4(o) also provides that the offered land should meet the advertised dimension after leaving right of way (ROW) line of the road and should be situated abutting the ROW of the road. The contention of the petitioner that two meters

of land offered by him should be excluded cannot be accepted since then there would be land, even though the same may be belonging to the petitioner, which would not be abutting the ROW of the road. There would also be land which would

fall within "no other land including Government land between ROW and offered plot". The same would also be impermissible in view of specific conditions enumerated under the aforesaid clause.

12. Further more Clause 23 of the brochure gives the list of non rectifiable deficiencies in the applications. It states that the deficiencies as detailed therein in the application form for retail out let dealers selection are not rectifiable and such

application will not be considered for further selection. Sub Clause (q) is one of such deficiencies where the offered land is not in the advertised location / stretch and / or not meeting the dealers selection guidelines statutory norms, etc. The

land offered by the petitioner has also been held to be not meeting the selection guidelines as it included part of land over which H.T. Line more than 11 KW was crossing. The same is hence a non-rectifiable deficiency in the application and

not a rectifiable deficiency as has been contended by the learned counsel for the petitioner. The ready reference relevant part of Clause 23 is reproduced below :-

“23. List of Non-Rectifiable Deficiencies in Applications

The following deficiencies in the application form for Retail Outlet Dealer Selection are non-rectifiable and such applications will not be considered for further selection process.

q) Offered land is not in the advertised location / stretch and / or not meeting the Dealer selection guidelines / statutory norms, etc.

13. There is no provision under Clause 4(o) or 23(q) of the guidelines to give an opportunity to the applicant to rectify the defects in the land offered by him. On the contrary, the same is impermissible. The contention that no opportunity of

hearing has been given to the petitioner prior to passing of the impugned order also cannot be accepted since there is no provision for post facto hearing as the requirements are to be met on the date of application and on the date of evaluation

by the Land Evaluation Committee. For the very same reason the contention that the petitioner should have been permitted to approach the Electricity Company for shifting of the electricity line to make it in conformity with the requirements of

the guidelines also has no force.

14. Similar view has been taken by the Rajasthan High Court in the case of Virendra Singh Rathore (supra) wherein reliance has been placed on a Division Bench judgment of the Patna High Court. It has been held as under:-

“28. In the present case, now after filing of the affidavit by the AVVNL it is no longer in dispute that on the date the LEC visited the site, HT Line of 33 KVA was existing over the land and was charged and as such, as a

consequence of the stipulations indicated in the brochure, the land was bound to be rejected by the LEC.

29. The plea raised that as the appellant-petitioner had already applied for removal of the line and documents in this regard were submitted to the LEC, the LEC was required to wait for the line to be removed and/or provide a

reasonable time to the appellant for removal of the line and failure in this regard vitiates the action of the respondent and that the line was factually removed on 3/2/2020 i.e. within 20 days of the inspection, the action on the

face of it being arbitrary deserves to be set aside, apparently has no substance.

30. As noticed herein-before, the stipulation in the brochure which is common/universal insofar as all the Government Oil Marketing Companies in India i.e. Indian Oil Corporation, Bharat Petroleum Corporation Ltd. and

Hindustan Petroleum Corporation Ltd. are concerned and are applicable across the country. A bare perusal of the clause relating to Land Evaluation does not leave any manner of doubt that the land in question as on the

date of inspection must confirm to the four parameters for suitability, as indicated therein and consequence of non-confirmation to any of the said parameters has also been indicated i.e. land not meeting any of the parameters

will not be considered and will be rejected.

31. The brochure providing the guidelines on the said aspect nowhere provides grant of opportunity to the candidate to rectify the deficiency, if any, qua any of the norms on which the suitability is to be judged by the LEC.Ã¢â¬â¢

35. Qua clause 14-H, a learned Single Judge in case of K. Rajkumar (supra), wherein, also the HT line had been shifted after the inspection had taken place, came to the following conclusion:-

Ã¢â¬â¢4. It is seen therefrom that if the land has high tension line crossing, it would be rejected as not meeting with the parameters. On the date when the inspection took place, the land in question had a high tension line

crossing. Therefore, it was rightly rejected. But the question is whether the petitionerÃ¢â¬â¢s case can be reconsidered in view of the removal of the said defect by the shifting of the overhead lines. But then, the respondent /

Corporation cannot go beyond the parameters. As the land evaluation criteria would state, once the land is found not suitable, the selected candidate would be informed about his ineligibility and the selection process will be

continued with the balance applicants. However, he would be considered for selection along with Group-III applicants. Now that the defect has been set right, the petitioner can only be considered along with Group-III

applicants.Ã¢â¬â¢

36. Similarly, a Division Bench of Patna High Court in Ajay Kumar Singh vs. The Union of India & Ors. : Civil Writ Jurisdiction Case No. 3001/2001 decided on 14/12/2021 came to the following conclusion:-

Ã¢â¬â¢8. In any event, we notice the authority to have arrived at an opinion based on factual matrix, that the site is unsuitable for the reason that the 11 KV HT line passes over the plot. Purportedly, petitioner pursued the matter

with the authorities for shifting, on which the authorities have taken a decision in the affirmative. But then this would not make the requirement of law for what is required to be seen is the suitability of the site as on the date of

consideration of the application for empanelment.Ã¢â¬â¢

38. From the above, it is apparent that it has consistently been laid down that the requirement of law is that eligibility on the basis of parameters indicated has to be seen on the date of visit by the LEC and any action

subsequent thereto like removal of HT Line, would be of no consequence.

39. The matter has to be examined from yet another angle. It is only fortuitous that within 20 days of the inspection, the HT line has been removed, however, the said aspect cannot form the basis for this Court to come to a

conclusion that some time should have been granted to the candidate to get the line removed as the said some time, though in the present case would be sufficient, in a given case it may take months together for the purpose of

removal of HT Line and in that case the direction to give time would lead to endless delay and would arm the officers of the oil marketing companies to take decisions, which would then be termed as arbitrary, unreasonable

and irrational contrary to the law laid down by the HonÃ¢â¬â¢ble Supreme Court.Ã¢â¬â¢

(emphasis supplied)

15. The stipulation in the brochure relating to land evaluation does not leave any room for doubt that the offered land as on the date of inspection must conform to the four parameters for suitability and consequence of non-confirmation to any

of the parameters is rejection of the land. The guidelines do not provide grant of opportunity to a candidate to rectify the deficiencies. As on the date of making of the application by the petitioner and as on the date when the inspection took

place, there was a high tension electricity line of 33 KV going through his offered land. The candidature of the petitioner was hence rightly rejected. He could not have been granted any opportunity to rectify the defect by shifting the

electricity

line. Once the land was not found suitable the respondents themselves had no authority under the guidelines to provide any opportunity to the petitioner to rectify the defect. In the judgment before the Division Bench of Rajasthan High Court even though HT line had been removed within a period of 20 days from the date of inspection yet the contention of the petitioner therein was not accepted since as on the date of inspection the high tension electricity line was going through his

land.

16. In view of the aforesaid discussion, in my opinion, the respondents have not committed any illegality in passing the impugned order / communication dated 19/3/2023 and in upholding the said rejection by the impugned letter dated 5/4/2024.

17. The petition is consequently found to be devoid of any merits and is hereby dismissed.