

GAHC010031952018



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1019/2018

AJIT CHANDRA DUTTA
S/O LT. HANHIRAM DUTTA
R/O N.S.T. CAMPUS, RAJABARI, GAR-ALI, OPP. I.T.I. JORHAT,
DIST. JORHAT- 785014, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
PETROLEUM AND NATURAL GAS, NEW DELHI.

2:INDIAN OIL CORPORATION LTD.
MARKETING DIVISION HEAD OFFICE
INDIAN OIL BHAWAN
REGD. OFFICE- G-9
ALI YAVAR JUNG MARG
BANDRA (EAST) MUMBAI- 400051

REP. BY ITS CHAIRMAN.

3:THE CHIEF GENERAL MANAGER
(RETAIL SALES)
INDIAN OIL CORPORATION LTD. (INDIAN OIL AOD STATE OFFICE
INDIAN OIL BHAWAN
SECTOR-III
NOONMATI
GUWAHATI - 781020
ASSAM

4:THE DIVISIONAL RETAIL SALES MANAGER
TINSUKIA INTEGRATED DIVISIONAL OFFICE

(INDIAN OIL -AOD)
INDIAN OIL CORPORATION LTD.
SRIPURIA
TINSUKIA - 786125
DIST. TINSUKIA
ASSAM

5:THE CHIEF MANAGER

(MARKETING AND OPERATION)
INDIAN OIL CORPORATION LTD. ASSAM OIL DIVISION

SRIPURIA
TINSUKIA- 786125
ASSAM

6:SRI PARAMANANDA PHUKAN
S/O SRI TARUN CH. PHUKAN
R/O KAMALABARI ROAD
P.S. AND P.O. DULIAJAN
DIST. DIBRUGARH
ASSA

Advocate for the Petitioner : MRS J M KONWAR
Advocate for the Respondent : ASSTT.S.G.I.

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri J. Singh, Advocate.
Advocates for respondents : Shri T. J. Mahanta, Sr. Counsel,
Shri P. Bharadwaj, SC, IOC.

Date(s) of hearing : 06.03.2024

Date of judgment : 06.03.2024

JUDGMENT & ORDER

Heard Shri J. Singh, learned counsel for the petitioner. Also heard Shri P. Bharadwaj, learned Standing Counsel, IOC who has also produced the records. The respondent no. 6 is represented by Shri T. J. Mahanta, learned Sr. Counsel assisted by Ms. P. P. Das, learned counsel.

2. The subject matter of challenge is a communication dated 15.12.2017 whereby the application of the petitioner made towards an invitation to offer by the IOCL for allotment of a retail outlet at Jorhat has been rejected. The facts may be briefly narrated as follows.

3. The IOCL had published an NIT on 11.07.2012 for allotment of retail outlets in various locations including the location of Moubandha to Pulibar in the district of Jorhat against Sl. No. 49. According to the petitioner, he being eligible, had applied for the aforesaid allotment vide an application dated 23.08.2012. Pursuant thereto, a Call Letter was issued to the petitioner on 12.12.2012 fixing the date of interview on 27.12.2012 at 12:00 noon in the office of the respondent at Tinsukia in which the petitioner had appeared. Since there was no response for a long time, on 19.12.2014, the petitioner had issued a communication to the respondent authorities to know the status of the evaluation. However, long after about 5 years, the impugned communication dated 15.12.2017 has been issued, as per which the application of the petitioner was informed to have been rejected. The principal reason cited for rejection was that the petitioner was not found eligible on the parameter "capability to arrange finance". Immediately on receipt of the letter, the petitioner had filed a

representation on 22.12.2017 whereby it was informed to the authorities that the reasons cited were not correct and he was financially sound. However, the petitioner came to know later on on 22.12.2017 that the LOI was issued in favour of the respondent no. 6 without considering his case.

4. Shri Singh, the learned counsel for the petitioner has submitted that the reasons cited in the impugned letter dated 15.12.2017 are unsustainable in law and has been done without any application of mind. Attention of this Court has been drawn to certain annexures including communication by the bank, as per which it is claimed that the financial health of the petitioner was sound and he was in a capacity to run the business, if allotted to him. The petitioner had also procured certain information and documents by taking aid of the Right to Information Act.

5. By referring to the affidavit-in-opposition filed by the respondent IOCL dated 12.06.2018, Shri Singh, the learned counsel for the petitioner submits that it appears from the Note-sheet dated 24.12.2014 that at the first instance, all the documents and credentials of the petitioner were accepted and he was, in fact evaluated as the first nominee. However, there was a second evaluation on 19.10.2016 as per which, not only marks which were earlier allotted to the petitioner under certain Heads have been reduced, the respondent no. 6 have been given marks under certain Heads which were otherwise not entitled to by him. Shri Singh, learned counsel by referring to the second evaluation documents dated 19.10.2016 has submitted that though the respondent no. 6 has been given more marks under the Heading 'land', the ownership of such land is disputed and there are also cases pending in the appropriate Court. He accordingly submits that while the rejection of the petitioner's bid is unsustainable, the selection of the bid of the respondent no. 6 is also not in

accordance with law and therefore there is a requirement of interference by this Court. It is specifically submitted that the NIT in question contains a specific clause being Clause 14 whereby preference would be given to applicants who would offer suitable land which would include family land. However, the said condition is accompanied by a caveat that if the land is a family land, the other co-owners would have to give necessary no objection certificates in the prescribed forms. It is submitted that pendency of a Court case on the ownership of the land in question is itself a ground for rejection of the bid of the respondent no. 6 on the Head of 'land'.

6. Shri P. Bharadwaz, learned Standing Counsel, IOC by producing the records however submits that the rejection order dated 15.12.2017 is a reasoned order whereby the authorities in question had cited reasons for rejecting the bid application of the petitioner. It is submitted that though in the initial evaluation made in December, 2014, the documents submitted by the petitioner were taken into consideration, no results of such evaluation was ever communicated to any of the parties. In the meantime, complaints were received with regard to the financial soundness of the petitioner and therefore, the documents submitted by the petitioner towards his financial health were reconsidered and it was found that the first evaluation was done without taking into consideration the materials in its proper perspective. It is submitted that the second evaluation had to be done by taking into consideration the implication of the documents furnished by the petitioner towards his financial health. It is submitted that under the parameter "capability to arrange finance", three specific points have been taken in the impugned communication dated 15.12.2017 which are all objective in nature based on materials on record and therefore this Court may not be interfered with such decision making process. It

is further submitted that there is no allegation of any *mala fide*.

7. As regards the allegation made on the eligibility of the respondent no. 6, more specifically with his land documents, it is submitted by Shri Bharadwaj, the learned Standing Counsel that the aforesaid points were never urged in the writ petition and was only taken in the affidavit-in-reply. He submits that the documents furnished by the respondent no. 6 in support of his application were found to be meeting the requirements of the bid document and the land dispute which has been presently urged on behalf of the petitioner pertains to a Title Suit of the year 2018 which is much after the decision making process and also after the issuance of the LOI which is dated 22nd of December, 2017. The learned Standing Counsel accordingly submits that the writ petition is liable to be dismissed.

8. Shri T. J. Mahanta, learned Senior Counsel for the respondent no. 6, while endorsing the submission of the learned Standing Counsel of the Corporation has submitted that the rejection of the application of the petitioner vide the impugned communication dated 15.12.2017 is based on an objective criteria wherein reasons have been cited. It is submitted that none of the reasons are perverse and are rather based on materials on record. He reiterates the submission made on behalf of the Corporation that the alleged dispute with regard to the ownership of the land in question pertains to a suit filed in the year, 2018 which will not have any effect in the decision making process by the Corporation.

9. The rival submissions advanced have been duly considered and the materials on record including the original record placed before this Court by the Corporation have been carefully examined.

10. It transpires from the materials on record that the petitioner along with the respondent no. 6 had responded to the NIT dated 11.07.2012 in respect of which the parties were called for interview held on 27.12.2012. Though the documents before this Court would show that there was an initial evaluation on 24.12.2014, there is nothing on record to show that the results of such evaluation was either published or communicated to the parties and therefore the question of accruing any right to either of the parties would not arise as no such communication was made. This Court has been apprised that certain more scrutiny was done on the credentials of the petitioner regarding his financial health especially on the parameter "capability to arrange finance" and thereafter a second evaluation was made on 19.10.2016. Based on the said evaluation, the impugned rejection order dated 15.12.2017 has been issued to the petitioner which cites very specific reasons on the ground of rejection which are based on the parameter "capability to arrange finance". The impugned letter mentions that the balance in the savings account of the joint account of the petitioner was Rs.15,345/- as on 23.08.2012 as against Rs.20,345/- which was indicated by the petitioner. It is also been mentioned that so far as the cash credit account of the proprietorship of the petitioner is concerned, there was a debit balance of Rs.24,76,605/- and thirdly, in a current account with the proprietor as Smt. Gitabali Rajkumar was shown as Rs.4647.50/-. The said letter has also mentioned that in case of grievance of the petitioner regarding his rejection, he could file a representation.

11. This Court is of the opinion that the reasons cited are germane and based on materials on record which are also objective in nature and therefore unless the said reasons are shown to be perverse or not based on any materials on record, this Court would be loath in interfering with such decision making

process of the Corporation.

12. As regards the second leg of argument by which the petitioner has challenged the eligibility of the respondent no. 6, more particularly, on the land issue of the said respondent no. 6, this Court has noticed that the said issue has been mentioned in the rejoinder affidavit that the land in question is a disputed piece of land in which litigation is pending. However, on a perusal of the document filed in connection thereto, it is found that the Court case is in the form of a Title Suit which was filed in the year 2018 i.e. much after the date of the decision making process as well as the date of issuance of the LOI which is 22.12.2017. Though a party to a *lis* is entitled to bring in relevant facts even by way of a rejoinder affidavit as held by the Hon'ble Supreme Court in the case of

Sri-La-Sri Subramania Desika vs State of Madras & Anr. reported in ***AIR 1965 Supreme Court 1578***, wherein it is held that averments made in a rejoinder affidavit would also form part of the pleadings, this Court has noticed that even if those materials are taken into account, those are found to be irrelevant *qua* the decision making process which is the subject matter of challenge.

13. Shri Singh, the learned counsel for the petitioner has submitted that he had made investment of a huge amount. However, in absence of any materials to show that any right had accrued upon the petitioner so as to entitle him to make investments in this regard, the concept of promissory estoppel would not be applicable in the present case.

14. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that no case for interference is made out and accordingly the writ petition is dismissed.

15. The records in original are returned back to the learned Standing Counsel.

JUDGE

Comparing Assistant