

GAHC010038332024



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

Case No. : WP(C)/1180/2024

THE BARUAJHAR SAMABAY SAMITI LTD AND ANR
REPRESENTED BY ITS SECRETARY, NAMELY, SAHIDUL ISLAM AT
JANGALPARA, P.O.-JANGALPARA, P.S.-KHARUPETIA, DIST-DARRANG,
ASSAM, PIN-784116

2: SAHIDUL ISLAM
S/O LATE GULU HUSSAIN
R/O VILL AND P.O.-NO.2 GALANDI
P.S.-KHARUPETIA
DIST- DARRANG
ASSAM
PIN-784115. THE SECRETARY OF BARUAJHAR S.S LTD. AT JANGALPARA
DIST-DARRANG
ASSA

VERSUS

THE INDIAN OIL CORPORATION LIMITED AND 2 ORS
HAVING ITS HEAD OFFICE AT INDIAN OIL BHAWAN, G-9 ALI YAVAR JUNG
MARG, BANDRA (EAST), MUMBAI-400051 (INDIA)

2:THE DIVISIONAL MANAGER
DIVISIONAL OFFICE
IOC LTD. (MD)
4TH FLOOR
EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI-781021
ASSAM

3:THE DIVISIONAL RETAIL SALES HEAD
GUWAHATI DIVISIONAL OFFICE
IOC LTD (MD)
4TH FLOOR

EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI-781021
ASSA

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : SC, I O C

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

01.03.2024

Heard Mr. M.U. Mahmud, learned counsel for the petitioners and Mr. M.K. Choudhury, learned Sr. Counsel appearing for all the respondents.

2. The petitioners have prayed for setting aside the impugned Letters dated 09.02.2024 and 19.02.2024 issued by the respondents, whereby the petitioners bid for being appointed as the retail outlet dealer under the Indian Oil Corporation Ltd. (IOCL) for the location "within 3km from Batabari Chowk towards Rowta Chariali on NH-15, Dist.- Darrang, Assam" has been found ineligible and it's subsequent appeal dismissed.

3. That pursuant to a tender notice for granting retail outlet dealership "within 3km from Batabari Chowk towards Rowta Chariali on NH-15, Dist.- Darrang, Assam", the petitioners submitted their application for the same on 13.10.2023. The petitioners were thereafter informed that they had been selected for the said dealership and accordingly, they were requested to remit Rs.50,000/- online as initial security deposit and to upload their self attested documents by 18.12.2023, as specified in the Letter dated 08.12.2023.

However, the respondents vide the impugned Letter dated 09.02.2024, informed the petitioners that the registered lease deed uploaded by the petitioners was dated 16.12.2023, which was after the date of submission of the application for the dealership. The Letter dated 09.02.2024 further stated that as the lease deed should have been registered before the date of submission of the application, the petitioners' land did not fall under Group 1 on the date of submission of the application. In fact the petitioners did not have any right over the land covered by the registered lease deed, which had been subsequently uploaded. As such, the petitioners' candidature was found to be ineligible. The petitioners were also informed that they could make a representation by 19.02.2024, vide the impugned Letter dated 09.02.2024.

4. The petitioners thereafter submitted a representation to the respondents in terms of the impugned Letter dated 09.02.2024 and requested that the dealership should be awarded to the petitioner. The late submission of the registered lease deed was also sought to be explained by the petitioners, by stating that for registering the lease deed, prior permission of the Deputy/District Commissioner was required and as such, they could not submit the same at the time of submission of their application.

5. The representation of the petitioners made on 19.02.2024 was however rejected on the same day by the respondents, vide Letter dated 19.02.2024.

6. The petitioners' counsel submits that though the petitioners were owners of the land, they could register the lease deed only after a lapse of 40-45 days, i.e. on 16.12.2023, as the procedure for registering the lease deed involved taking the approval of the Deputy/District Commissioner. He submits that it was

impossible for the petitioners to submit the lease deed, in terms of the NIT. In support of his submission, the learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in the cases of **1) Mohammad Gazi Vs. State of M.P. and Others**, reported in **(2000) 4 SCC 342**, **2) Gyani Chand Vs. State of A.P.**, in **Civil Appeal No. 5728/2005** and **3) M/s Om Gurusai Construction Company Vs. M/s V.N. Reddy & Ors.**, reported in **2023 Livelaw (SC) 694**. The petitioners' counsel submits that in view of the above, the respondents should be directed to issue the retail outlet dealership licence to the petitioners, after setting aside the impugned orders dated 09.02.2024 and 19.02.2024.

7. Mr. M.K. Choudhury, learned Sr. Counsel for the respondents submits that the petitioners were to be the owners of the land on which the retail outlet was to be established or have a long term lease for a minimum period of 19 years 11 months, at the time of submission of their application, pursuant to the NIT issued by the respondents. However, the petitioners clearly did not have the same, as is reflected in Resolution No.3 of the Board of Directors meeting of the petitioner no.1, held on 27.09.2023. He submits that as the petitioners did not have the mandatory land documents at the time of submission of their application in terms of the NIT, the writ petition has to be dismissed, as the petitioners were ineligible to participate in the tender process.

8. Resolution No.3 of the Board of Directors meeting of the petitioner no.1 Society held on 27.09.2023, is reproduced hereinbelow as follows-

“Resolution No. 3:- In today's meeting, a resolution is taken that, as per resolution no.2, if our Samabay Samiti is selected, then land will be taken on lease. And for carrying out the work of all the three resolutions,

the responsibility vested upon the Secretary of the Samiti.

After the end of the speech of the chairman, the meeting is concluded."

9. The above Resolution No.3 and the submissions made by the counsels for the parties make it clear that the petitioners did not have ownership of the land in question or a lease deed for 19 years 11 months, at the time the application for retail outlet dealership licence had been applied for by the petitioners.

10. The petitioners have not annexed the NIT in this writ petition, on the basis of which they had submitted their bids. However, the rejection of the petitioners' appeal/representation, vide the impugned Letter dated 19.02.2024, has clarified the fact that under Clause 4(vi)(a) of the NIT, the bidders were to be the owners of the land on which the retail outlet dealership was to be established or have a lease deed for 19 years 11 months, at the time of submission of their application for the same, in terms of the NIT. The contents of the Letter dated 19.02.2024 issued by the IOCL is reproduced hereinbelow as follows-

" 1. Refer your letter with Reference No. Nil dated 19.02.2024.

2. Refer the application with application number IOC16971840656120 dated 13.10.2023 submitted by you for retail outlet dealership at the subject mentioned location.

3. Refer Brochure for Selection of Dealers for Regular and Rural Retail Outlets (June 2023), Version 1.0/10.06.2023. Please refer to clause no. 4 (vi), the land that can be offered by an applicant is categorized in the following 3 categories:

*a) **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*

b) **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.

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

4. Further, in clause no. 4(vi)(a) of the said brochure, the following is given:

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.

5. Now, please note that in your application dated 13.10.2023, you have declared the land offered by you as falling under **Group 1**. However, post selection through online computerized lucky draw you have uploaded a registered lease deed executed on 16.12.2023. In the interest of natural justice, an email dated 18.01.2024 was sent to you asking the following:

Quote

- For Society (non Individual applicant) applicable affidavit is Appendix XB. Applicant has uploaded Appendix XA. Please upload the Affidavit Appendix XB.
- Registered lease deed uploaded is of date 16.12.2023 which is after the date of application submission. Lease should be registered before the date of application submission. If there is any such registered lease deed executed before the date of application submission please upload the same.

Un-quote

6. After you have re-uploaded the documents, it was seen that you have submitted the same registered lease deed dated 16.12.2023, which is after the date of application. Since as on the date of application, no registered lease deed is available

with you for the land as offered in the application, therefore as on the date of application, the offered land does not fall under Group 1. Accordingly, your application has been rejected as the land does not fall under group 1 and an email dated 09.02.2024 was sent to you stating the following:

Quote

Registered lease deed uploaded is of date 16.12.2023 which is after the date of application submission. Lease should be registered before the date of application submission. Hence land does not fall under group 1 as on the date of application. Rather applicant did not have any right over the land as on the date of application.

Un-quote

7. Further, please note that the option of declaring whether the land offered falls under group 1 or group 2 at the time of application submission always lies with the applicants. As per the declaration made by the applicants, further evaluation and scrutiny of documents is done.

In view of the above, we regret to Inform you that we are unable to consider your prayer vide letter with Ref. Nil dated 19.02.2024"

11. In view of the petitioners not having the required land ownership documents or lease deed for 19 years 11 months, at the time of submission of their bid/application, which are essential/mandatory documents in terms of the NIT, this Court does not find any infirmity with the decision of the respondent authorities in coming to a decision that the petitioners were ineligible to be considered/selected for the said retail outlet dealership under the IOCL.

12. In the case of ***Mohammad Gazi (supra)***, the Hon'ble Supreme Court had held that the law does not compel a person to do what he cannot possibly perform.

In the case of ***Gyani Chand(supra)***, the Supreme Court had held that it would not be fair to give a direction to do something, which is impossible.

In the case of ***M/s Om Gurusai Construction Company***, the Supreme Court had held that attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills and persuade Courts to interfere by exercising power of judicial review should be resisted.

13. On considering the above judgments, I do not find that the requirement of land documents/land lease documents in terms of Clause 4(vi)(a), was something that could not be done. As such, the stand taken by the petitioners' counsel that he has been asked to do an impossible task is not accepted by this Court and the judgments relied upon by him with regard to an impossible condition being imposed on the petitioners is not borne out on facts.

14. Consequently, this Court does not find any merit in the writ petition, for this Court to exercise its discretion.

15. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant