

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH

WRIT APPEAL No.42 OF 2017

1. The Indian Oil Corporation Limited, Represented by its Chairman, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai-400051.
2. The Chief Divisional Retail Sales Manager, Guwahati Divisional Office, Indian Oil Corporation Ltd, 4th floor, East Point Tower, Bamunimaidan, Guwahati-781021.

.....Appellants

-Versus-

Miss Odi Jerang, D/o- Vijay Jerang, R/o- Vill. Ruksin, P.O. & P.S. – Ruksin, District- East Siang, Arunachal Pradesh.

.....Respondent

For the appellants

: Mr. D. K. Sharma, Advocate.

For respondent

: Mr. R. Sonar, Advocate

- B E F O R E -

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER (ORAL)

24.09.2019

(S. K. MEDHI, J.)

Heard Mr. D.K. Sarmah, the learned counsel for the appellant and Mr. R. Sonar, the learned counsel appearing for respondent No.1.

2. This intra-Court appeal is directed against the judgement and order dated 25.08.2017, passed by the learned Single Judge in W.P.(C) 58 (AP)/2017.

3. The appellants herein were the respondents No. 1 and 2 in the connected writ petition. The brief facts as projected in the writ petition is that the appellants had issued an advertisement dated 25.10.2014, inviting applications for awarding a Retail Outlet Dealership at location from "Ruksin to Pasihat on NH-52" in the East Siang District of Arunachal Pradesh under ST category. It had been projected that in response to the said advertisement, 77 applications were received out of which 66 applications were found eligible for land evaluation and finally 17 applications were found eligible for draw of lots/bidding process for selection of the locations for Retail Outlet Dealership. The site offered by the respondent No. 1 was inspected by the Expert Committee constituted for the purpose of evaluating the land offered by the various applicants. It was projected that the committee members did not make any objection regarding the site offered by the respondent No. 1. However, by the impugned letter dated 03.02.2017, the respondent No. 1 was informed that her candidature had not been found to be eligible for Retail Outlet Dealership because the offered plot did not meet prevailing National

Highways Authority of India (NHAI for short) norms. Accordingly, the aggrieved respondent No. 1 had filed the connected writ petition wherein she had prayed for direction to set aside and quash the impugned letter dated 03.02.2017 issued by the appellant No. 2 and for issuance of a direction to the appellant to allow the respondent No. 1 to participate in the final selection process of Retail Outlet Dealership by way of lottery.

This Court while issuing notice had directed not to go ahead with the draw of lots. However, it is the case of the appellant that before the copy of the interim order was furnished, the draw of lots took place and one Smt. Ponung Tabing was selected for the allotment.

4. The appellants herein had contested the writ petition by filing their affidavit-in-opposition. The respondent No. 1 herein had filed her affidavit- in- reply and the matter was finally heard on 22.08.2017 and this Court by the judgment and order dated 25.08.2017, impugned herein, had allowed the writ petition by setting aside and quashing the letter dated 03.02.2017, issued by the appellant No. 2 and the consequential orders/ notifications and Letter of Intent (LOI for short) issued by the appellants in favour of the respondent No. 3 in the writ petition (respondent No. 2 herein, since deleted). Be it mentioned herein that the name of the respondent No. 2 has been deleted in this appeal vide order dated 25.07.2018. The operative part of the said judgment and order is quoted herein below:

"8. I have considered the facts and circumstances submitted by the learned counsels and the argument forwarded by them. There is no dispute on the fact that the application of the petitioner was rejected by the respondents No. 1 & 2 for the purported reason that her proposed site for Retail Outlet Dealership is not suitable because there was an intersection of two roads i.e. N.H-52 and Jonai Road measuring about 6 meters at the distance of 200 meters from it. This facts alleged by the respondent No. 1 & 2 purportedly based on the report of the land evaluation committee has been denied by the petitioner and countered with support of a certificate issued by none other than the Additional Deputy Commissioner under whose jurisdiction the land falls. This has not been refuted or countered by the

respondents by producing a more authentic or reliable document. Therefore, this Court has no choice but to accept the plea of the petitioner that such road called Jonai does not exist in that area and there is no intersection of such road with the N.H-52. In fact, the land evaluation committee report based on which it is claimed to have decided that the petitioner is not eligible is surprisingly not produced by the respondents. At the end of the hearing, it was submitted by the learned counsel for the respondents No. 1 & 2 that if required the same may be produced. It was their duty and in their own interest to produce the same without asking of this Court if they want to substantiate their claim. Haring not done so leads to their own peril.

Taking into consideration all the above, it is concluded that the respondents No. 1 & 2 have deliberately and dishonestly disqualified the petitioner and thereby committed discrimination against her in order to unduly favour the respondent. This act of the respondents is not permissible specially, since the respondent No. 1 is a Government Company established for the people. It is expected of it to be fair and equitable in its functioning specially when it comes to allotting such dealership to the citizens of the Country. Functionaries of such company must not forget that they are distributing national wealth to the citizens, therefore, all their acts must not only be fair and equitable but must also seemed to have been so. But, in this case, I am afraid, the respondents seems to have fallen short of what they are expected to be.

In consequence, this Court is no choice but to quash and set aside the impugned decision and the letter dated 03.02.2017, issued by the Chief Divisional Retail Sales Manager, Guwahati Divisional Office, of Indian Oil Corporation Limited, whereby the petitioner was informed that she is not qualified to join the lottery for selection of Retail Outlet Dealership to be set up at a place from Ruksin to Pasighat on NH-52, District East Siang, and the consequential orders/notifications and letter of intent issued by the respondents No. 1 & 2 in favour of the respondent No. 3. Needless to say but the respondents must start the process of selection afresh.

With this, the writ petition is disposed."

5. Assailing the impugned judgment and order, the learned counsel for the appellant has submitted that the land evaluation of the respondent No. 1 was done by an Expert Committee. The said committee, upon inspection, prepared a layout sketch of the land offered by the respondent No. 1 and it was found that the said land was not suitable for purpose of opening Retail Outlet Dealership because of existence of intersection of two roads i.e. NH-52 and Jonai Road measuring about 6 metres at the distance of 200 metres from the offered plot. The said report was prepared and signed on 15.12.2011. By referring to the said

report, it is submitted by the learned counsel for the appellant that the respondent No.1 had also signed the said report. It is also submitted that the respondent No. 1 had suppressed material facts that the land evaluation was done in her presence. By referring to the guidelines in force, it is submitted that as per paragraph 4.5.1(ii) of the said guidelines issued by the Government of India, Ministry of Road Transport and Highways, there should be no intersection with rural roads/ approach roads to private and public properties within a distance of 300 metres from the concerned plot. The summary of the submissions made by the learned counsel for the appellants are as follows:

- (i) The respondent No. 1 had suppressed material facts in the writ petition by withholding information that 6 metres wide Jonai Road intersects NH-52 within 300 metres from the offered plot, which disqualifies the said plot of land as per NHAI norms.
- (ii) The respondent No. 1 had withheld that she had signed the inspection report which contained a sketch map to show the existence and intersection within 300 metres of the offered plot.
- (iii) That the learned Single Judge ought not to have taken cognizance of the certificate dated 22.05.2017 issued by T. Pada, Addl. Deputy Commissioner, East Siang District, Ruksin whereby he had certified "*... that there does not exists any road named 6 mts. wide Jonai road which intersects NH-52 at a distance of 200 mtrs from the edge of her aforesaid plot of land. Besides, as a matter of fact and official records, there is no such 6 mtrs wide Jonai road intersecting NH-52 in the entire stretch of NH-52 towards Pasighat within East Siang District, Arunachal Pradesh.*" In this connection, it is submitted that the said document was filed along with affidavit in reply and as the

matter was heard at the admission stage, the appellants did not get an opportunity for rebuttal of the said document.

- (iv) That the same officer who had issued the above referred certificate dated 22.05.2017, thereafter, has issued another certificate dated 02.11.2017, wherein he had stated as follows- *"... Further, there is no roads or link roads intersecting/ bisecting with the NH 52 within the distance of 200 meters. However, within the distance of 231 meters one link road is existing which connected from NH 52 to Leku village under Jonai Sub-Division (Assam)."* Therefore, it is apparent from the subsequently obtained certificate that there exists one link road from NH 52 to Jonai Sub-Division and, as such, as per the NHAI guidelines, allotment of retail outlet at the site is not in public interest and safety.
- (v) The learned Single Judge had failed to appreciate that in view of the existent rules, the land offered by the respondent No.1 was not found suitable and, as such, the Hon'ble Single Judge ought not to have issued a direction to allow the respondent No. 1 to participate in the selection process because if the respondent No.1 had participated in the process, and had she succeeded in the lottery, the selection would have been in violation of the existing guidelines/ norms prescribed by the NHAI.

6. Per-contra, the learned counsel for the respondent No.1 has submitted that the selected candidate i.e. the respondent No. 2 whose name was deleted vide order dated 25.07.2018 had relinquished her claim for allotment of retail outlet, as such, the appellants would have to undertake *de novo* process of selecting another suitable candidate for

allotment of retail outlet and, as such, it is submitted that the present writ appeal has become infructuous. It is also submitted that there is nothing on record to show that the inspection report was made available to the petitioner prior to or even during the pendency of the writ petition. Moreover, the impugned letter dated 03.02.2017 was served upon the respondent No.1 by registered post only on 13.02.2017 and upon receipt of the same, the respondent No. 1 had submitted her representation to the appellants with a request for re-evaluation of the site offered by her by explaining that no 6 metres wide Jonai Road existed near her offered land and, as such, it is submitted that when the specific stand of the respondent No. 1 in the writ petition was that she was verbally informed by the inspection committee members that her land was found suitable, there was no requirement for the petitioner to dispute the inspection report and when the petitioner became aware of existence of remarks adverse to her interest, she had immediately submitted her representation on 13.02.2017 and, as such, the allegation about suppression of material facts does not survive for consideration of this Court. It is further submitted that the inspection report as well as the certificate dated 02.11.2017, issued by the Addl. Deputy Commissioner, Ruksin were not on record before the learned Single Judge at the time when the writ petition was heard and, as such, this Court ought not to place reliance on the new documents produced at the appellate stage.

7. Having heard the learned counsels for both sides, we have perused the materials available on record. In this appeal, the appellants have placed reliance on that the inspection report dated 15.12.2016 as well as the certificate dated 02.11.2017 issued by the Addl. Deputy Commissioner, Ruksin. It is seen that both the aforesaid documents were not produced by the appellants at the time when the writ petition was being heard by the learned Single Judge. On a perusal of paragraph 8 of the judgment and order impugned herein, we find that the learned Single

Judge has made observation to the effect that the claim of the appellants regarding existence of 6 metres road at the distance of 200 metres from the plot was countered with the support of a certificate dated 22.05.2017 by the Addl. Deputy Commissioner under whose jurisdiction the land falls, which had not been refuted or countered by the appellants by producing a more authentic or reliable documents and based on the inability on part of the appellants to dislodge the claim of the respondent No. 1 that she was wrongly disqualified. Thereupon, the writ petition was allowed by the learned Single Judge.

8. Accordingly, as the documents on which the appellants are now heavily relied upon were not placed before the learned Single Judge, we are not inclined to rely on the documents produced by the appellants for the first time in this appellate proceeding. We would like to mention herein that the said document namely certificate dated 02.11.2017 was not procured by the appellant directly but has simply used the same which was annexed by the allottee Smt. Ponung Tabing in her Rev.Petn. No. 10 (AP)/2017 which has been admitted in paragraph of the additional affidavit dated 18.09.2019.

9. We have also seen that on the prayer made on behalf of the respondent No. 2, her name was struck-off by order dated 25.07.2018 and as the learned counsel appearing for the appellants as well as for the respondent No. 1 are *ad idem* that the selected candidate i.e. the now deleted respondent No. 2 is no longer interested for allotment of retail outlet dealership, we are of the considered opinion that the appellants would have to undertake the process of selection afresh, as directed by the learned Single Judge.

10. We find that as the appellants could not demonstrate before the learned Single Judge that there existed any intersection within a distance of 300 metres from the concerned plot of land offered by the

respondent No. 1, we find no infirmity in the impugned judgment and order dated 25.08.2017 and, as such, the challenge against the said order fails.

11. At the conclusion of his submissions, the learned counsel for the appellants had made an alternative submission that in the present case in hand, the selection process was initiated vide advertisement dated 25.10.2014 and it had taken a long time to award the retail outlet dealership, as such, he has submitted that instead of a fresh selection, the appellants may be permitted to resort to draw of lots. In this connection, we are of the considered opinion that as it has been projected before us that the candidate who was selected has relinquished her claim, the alternative prayer made by the learned counsel for the appellant cannot be acceded to. Moreover, except the respondent No. 1 none of the other applicants had challenged the selection process undertaken by the appellants and, as such, without knowing whether any of the applicants are still interested for retail outlet dealership, this Court cannot pass any order which may affect persons, who are not arrayed as parties in this proceeding.

12. Accordingly, in view of the discussions above, this appeal stands dismissed, leaving the parties to bear their own costs.

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