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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 2072/2007

HITENDER KUMAR SHOKEEN Petitioner
Through Mr. Ajay Dahiya, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. V.K. Goel, Advocate
for R-3.
Mr. A.K. Mishra, Advocate for HPCL.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the report or not? Yes
3. Whether the judgment should be referred in the digest? Yes

ORDER

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04.05.2010

1. The prayer in this writ petition is for quashing a Letter of Intent ('LOI') dated 7th December 2005 issued by the Respondent No. 2 Hindustan Petroleum Corporation Limited ('HPCL') allotting a retail dealership for Delhi – 13 region in favour of Respondent No. 3. The challenge in this petition is also to the guidelines laid down on 19th August 2003 by the Government of India, Ministry of Petroleum and Natural Gas for selection of Retail Outlet Dealers/Distributors of public sector oil companies including the HPCL.

2. One of the conditions for allotment of a retail outlet, either company owned or otherwise, is that the applicant should, after selection, be able to provide land for the purposes of the retail

outlet. In the instant case, an advertisement was issued on 28th March 2001 by the HPCL inviting applications for dealership for retail outlet in four locations in the State of Delhi i.e. Delhi – 6, Delhi – 7, Delhi – 13, Delhi -11. At this stage, it must be noticed that according to the HPCL, Delhi – 6, Delhi-7, Delhi – 13 etc. do not refer to the postal code numbers but to certain zones into which Delhi has been divided for the purposes of allotment of petrol pumps.

3. The present case concerns an application made for Delhi – 13 zone, which is stated to include the Nizamuddin area. One of the conditions in the advertisement dated 28th March 2001 concerning the applicant having to make land available reads as under:

“a. The candidate should furnish along with application, detail of land, which he/she may make available for the Retail Outlet.

b. Considering the location of the land from the point of view of suitability from commercial angle and rates acceptable to the company, applicants willing to transfer the land on ownership/long lease to Hindustan Petroleum Corporation Limited would be given preference.

c. If an applicant, after selection, is unable to provide the land indicated by him/her in the application form within a period of two months, from the date of Letter of Intent (LOI), then the allotment of dealership made to him/her will be cancelled.”

4. The Petitioner as well as Respondent No. 3 applied pursuant to the above advertisement. The Petitioner submitted his application on 29th May 2001. Since the advertisement was for a company owned retail outlet, he proceeded on the erroneous assumption that there was no need to indicate that land would be made available by the applicant. It appears that the applications were not processed for a long time thereafter.

5. In the meanwhile, the Government of India issued impugned revised guidelines dated 19th August 2003 for selection of retail outlet dealers. This was by way of modification of the existing guidelines issued in 2000-01. *Inter alia*, the following condition was inserted:

“(i) For the Marketing Plan locations advertised by the OMCs for which no interviews were held, the selection of dealers may be made by a selection committee consisting of three officials from the concerned Oil Company to which the dealership belongs, in accordance with the guidelines contained in this Ministry’s OM No. P-39012/1/1999-IOC dated 9th October 2000. The criteria for evolution of candidates for these already advertised locations will be communicated separately.”

6. It is the Petitioner’s contention that the above stipulation could not be applied retrospectively and therefore his application had to be considered only in terms of the earlier guidelines without the above clause. However, for reasons to be indicated hereafter, this Court does not propose to examine this contention in the present

writ petition.

7. The Petitioner received a communication dated 2nd June 2004 from the HPCL asking him to appear for an interview before it on 29th June 2004. He appeared for the interview on the scheduled date. He did not hear from the HPCL thereafter. He applied to the HPCL on 6th June 2005 under the Right to Information Act, 2005 ('RTI Act') to know the result of the interview. By a letter dated 16th June 2005 he was furnished the results of the interview. Under the column 'Capability to provide infrastructure and facilities' (Maximum Marks 35)' while the Respondent No. 3 was awarded 25 marks, the Petitioner was awarded 0 marks.

8. Aggrieved by the rejection of his application, the petitioner filed W.P. (C) No. 7434 of 2006 in this court. During the pendency of the said writ petition, on 8th May 2006 the Petitioner submitted another application under the RTI Act seeking details of the land furnished by Respondent No. 3 for the retail outlet. However, by its letter dated 31st May 2006 HPCL declined to furnish the information on the ground that the Petitioner's Writ Petition (Civil) No. 7434 of 2006 was pending. The said writ petition was ultimately withdrawn on 12th December 2006 and thereafter the present writ petition was filed.

9. The Petitioner has challenged the allotment of the retail outlet to Respondent No. 3 by the HPCL by the LOI dated 7th December

2005 principally on the ground that at the time of filing her application Respondent No. 3 failed to furnish any details of the land that was going to be made available by her for the retail outlet. Therefore, she could not have been awarded 25 marks by the Selection Committee on that score. It is submitted that Delhi-13 pertained to Nizamuddin area and the Respondent No. 3 was required to furnish details of land that would be made available by her to the HPCL for a retail outlet in that area. Secondly, it is pointed out that the Respondent No. 3 had in any event not made available to the HPCL land in the said area within two months from the date of the LOI. Therefore, the LOI making the allotment of dealership to her had to be cancelled. It is further submitted that since applications were invited for appointment of dealers for “Company Owned Retail Outlets on site owned by the Company/leased to the Company”, there was no requirement for the Petitioner to have provided land. In such event he could not be awarded 0 marks.

10. The HPCL in its counter affidavit took a preliminary objection about the Petitioner not having approached the Court with clean hands. It is pointed out that the petitioner applied for dealership despite the advertisement specifically mentioning that neither the candidate nor any of his close relatives should be holding dealerships or distributorships of any oil company. It is pointed out that in the documents filed with the present writ petition, the Petitioner admitted that his family had a petrol pump in Delhi and

that running petrol pumps was his family business. It is also submitted that although applications were invited for “Company Owned Retail Outlets” the retail outlet was to be run on either land owned by HPCL or leased to HPCL. The specific requirement was that the candidate should furnish along with the application, details of the land which he or she may make available for the retail outlet. It is submitted that the Petitioner cannot question the policy decision of the Government of India which is translated into the revised guidelines of 19th August 2003. As regards the specific averment of the Petitioner regarding granting of the LOI to Respondent No. 3, no specific reply has been filed by the HPCL.

11. The Respondent No. 3 filed her counter affidavit on 12th March 2010. As regards the assignment of marks regarding availability of land it is stated as under:

“The Petitioner was awarded marks as per the wisdom of the Selection Committee. It is pertinent to note that the Petitioner got ‘0’ marks in ‘Capability to provide infrastructure & facilities’. This was obviously on account of the fact that the Petitioner did not have the land for the petrol pump which was must.”

12. As regards the awarding of 25 marks to Respondent No. 3 it is merely stated that “grounds against paragraph Nos. B to F are matter of record” and that “the answering Respondent did not have any parameter which would disqualify her for allotment of petrol pump.”

13. The above submissions have been considered. This court is unable to accept the submission of the Petitioner that because the advertisement was for a company owned retail outlet, there was no need for the applicant to make available land to the HPCL. That is a plain misreading of the advertisement, which is unambiguous about the applicant having to make land available even if the retail outlet is company owned. That *per se*, therefore, eliminates the Petitioner from the reckoning. There is, therefore, no need to go into the question whether he was even otherwise disqualified to be allotted a retail outlet. Nevertheless, in order to examine the legality of the allotment of the retail outlet made to Respondent No.3 this Court on 23rd March 2010 required the HPCL to produce the entire record.

14. Today, learned counsel for the HPCL produced the records of the case which included application made by Respondent No. 3. The question in para 16 (i) of the said application form reads as under:

“Do you have a suitable site readily available or can you arrange one in the area advertised within two months, if selected? If yes, please give details.”

15. In response thereto, Respondent No. 3 has given the following reply:

“If I selected, I will try to arrange a suitable site as per location.”

16. It appears that along with her application Respondent No. 3 did

not furnish any details of the land that was going to be made available by her. Much later, in June 2004 she appears to have furnished a 'lease deed agreement' typed out on a Rs.10 stamp paper which in fact is an affidavit of one Satish Kumar. The said affidavit reads as under:

“Lease Deed Agreement

I, Satish Kumar son of Shri Randhir Singh resident of Village Bapdola, P.O. Nangloi, New Delhi-110 043, do hereby solemnly affirm and declare as under:

1. That I am the lawful owner of the land at Khasra No. 10/7, (Khatoni No. 111/61) Village Bapdola, New Delhi – 110 059, to sell to let out on rent (either in part or whole) to any Tenant, to Mortgage, to transfer the above property or to appoint further attorney(s).

2. I declare that if Anju Bansal w/o Shri Vijay Bansal resident of 110, Arunodaya Apartment, Vikaspuri, New Delhi, selected for the dealership of retail outlet in the Company of (HPCL I am ready to lease to the Company demanded area from my land situated at Khasra No. 10/7, (Khatoni No. 111/61) Main Nangloi to Najafgarh Road in the area of Village Bapdola, New Delhi – 110 043 for long term lease as per company requirements. Site Plan enclosed.

Sd/-
Deponent

Verification:

Verified at New Delhi, on this 25th day of June 2004, that the contents of the above affidavit are true and correct to the best of my knowledge and belief.

Sd/-
Deponent”

17. This Court fails to appreciate in the first instance how the above affidavit could have been treated by the Selection Committee as satisfactory compliance with the conditions set out in the advertisement issued by the HPCL. If the conditions are carefully perused, it will be seen that the candidate should have to give details of land which is capable of being given on lease to the HPCL. Clause (b) gives preference to those candidates who are “willing to transfer the land on ownership/long lease” to HPCL. It is inconceivable how Respondent No. 3 can offer land belonging to a third party of which she is neither a co-owner nor a lessee. Further, the affidavit filed by Satish Kumar is misleading. It is titled “lease deed agreement” when in fact it is not that at all. This was obviously a crude attempt to mislead the Selection Committee. Secondly, the land of which Satish Kumar claims to be the owner is in Village Bapdola. It is unclear whether this is in the Delhi-13 zone. Thirdly, Satish Kumar is by the said affidavit “declaring” that if Respondent No.3 is selected for dealership he is “ready to lease to the Company demanded area” from his land. This is really in the form of a contingent promise which obviously cannot be acted upon since it is based on the happening of an uncertain event. It is very strange that this kind of document was accepted by the Selection Committee and Respondent No. 3 was awarded 25 marks in the category of “Capability to provide infrastructure and facilities”. This Court has no hesitation in holding that the above

exercise is a reflection of total non-application of mind by the Selection Committee. While the award of '0' marks to the Petitioner who did not offer any land cannot be faulted, the award of 25 marks and allotment of the retail outlet to Respondent No. 3 by the LOI dated 7th December 2005 is wholly unsustainable in law.

18. Learned counsel for the HPCL contended that it was enough if the applicant made available land for the retail outlet subsequent to being selected. Further, it was not necessary that the applicant should be either the owner or the lessee of the land being offered. This Court is unable to accept the above submission. If the clauses stipulated in the advertisement are properly read it is implied that, at the least, the applicant should have a transferable interest in the land. The second clause gives preference to those applicants who own land since that will facilitate easy transfer of the land to the HPCL. The third clause in the advertisement makes it clear that the successful applicant should make available land for the retail outlet within two months of the issuance of the LOI. Unless such candidate owns the land or takes a land on lease or has a transferable interest therein HPCL cannot be given possession of the land for the retail outlet within two months. This could have been made explicit in the advertisement itself. In fact such condition exists in similar advertisements issued by other public sector oil companies.

19. The above conditions were mandatory and could not have been relaxed by the HPCL. In any event Respondent No. 3 did not make land available to HPCL within two months of the issuance of the LOI. The allotment to her would in any event not survive.

20. Given the above position, this Court is not inclined to examine the challenge raised in the petition to the revised guidelines announced by the circular dated 19th August 2003. Moreover, the revision in guidelines was consistent with the decisions of the Supreme Court in *Common Cause, A Registered Society v. Union of India (1996) 6 SCC 530* and *Onkar Lal Bajaj v. Union of India (2003) 2 SCC 673*. The revised guidelines ensure a more transparent and accountable selection process. They do not call for interference.

21. It is a matter of concern that the selection process in the instant case which commenced with the advertisement dated 28th March 2001, moved at snail's pace thereafter. The allotment under challenge was made only on 7th December 2005. The guidelines issued in 2000-2001 clearly stipulated that the selection is required to be made within 145 days from the date of the advertisement and that the LOI should be issued within 16 days thereafter. If such a time-bound process is not adhered to strictly, the object of having a transparent and accountable procedure for selection would be defeated. In such event, the selection process would inevitably have to commence afresh.

22. For all the aforementioned reasons, the impugned LOI dated 7th December 2005 allotting the retail outlet for Delhi-13 to the Respondent No. 3 is hereby set aside.

23. The HPCL will ensure that the fresh selection process is completed within the time frame stipulated in the extant guidelines. The HPCL will hereafter make it explicit that for its “Company Owned Retail Outlets on site own by the Company/leased to the Company” land to be made available should be either owned by the applicant or taken on lease by the applicant without any restriction as to further transfer by sub-lease or otherwise in favour of the HPCL.

24. The writ petition is disposed of with the above directions.

S. MURALIDHAR, J.

MAY 04, 2010
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