

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

Date of decision: 12th October, 2011.

+ **W.P.(C) 2759/2007**

% **ROSHAN LAL & ANR.** Petitioners

+ **W.P.(C) 2762/2007**

% **PRAMOD MALIK** Petitioner

+ **W.P.(C) 2823/2007**

% **VERINDER SINGH** Petitioner

+ **W.P.(C) 3913/2008**

% **HARMESH LAL & ANR.** Petitioners

-V E R S U S-

UNION OF INDIA & ANR.

.....Respondents

AND

+ **CONT.CAS(C) 137/2011**

% **VERINDER SINGH** Petitioner/Relator

VERSUS

AMRISH KAPOOR & ANR.

.....Respondents/Alleged Contemnors

Present : Mr. Sanat Kumar, Ms. Poonam Solanki & Mr. Sumeet Anand, Adv.
for petitioners in all.
Mr. B.V. Niren, Adv. for R-1 in W.P.(C) 3913/2008.
Ms. Mala Narayan, Mr. Rahul Narayan & Mr. Shiv Shankar, Adv.
for R-2 in all writ petitions and for respondents in contempt petition.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The counsel who appears for the petitioners in all the petitions states that the controversy in all the writ petitions is identical and has argued with respect to W.P.(C) No. 2759/2007. The petitions impugn the Notification dated 6th September, 2006 of the respondent no.1 Ministry of Petroleum and Natural Gas (MoPNG), Govt. of India; the petitioners aver that the said Notification though not applicable to the petitioners' Retail Outlets/Petrol Pumps, is being wrongly applied to the petitioners. The petitions also seek to restrain the respondent no.2 IBP Company Ltd. (IBP) from terminating/cancelling the petitioners' Retail Outlets/Petrol Pumps on the basis of the said Notification dated 6th September, 2006. Alternatively, the petitions seek surrender of the land underneath the said Retail Outlets/Petrol Pumps leased out to the respondent no.2 IBP and delivery of possession thereof.

2. Notice of the petitions was issued and parties directed to maintain *status quo* qua allotment, possession and construction of the Petrol Pumps in question. The said interim relief has continued till now. It was the contention of the counsel for the respondent no.2 IBP as far back as on 15th May, 2008 that the controversy in the petitions is covered by a judgment of the Division Bench of this Court. The same was controverted by the counsel for the petitioners, though at one stage the matters were adjourned for the reason of pendency of identical matters in the Supreme Court. The petitions were thereafter allowed to be amended to *inter alia* add the relief of mandamus commanding the respondent no.2 IBP to appoint the petitioner no.1 as the permanent dealer in respect of the Retail Outlets subject matter of the petitions. The petitioners thereafter filed applications contending that though lease of a much larger piece of land had been given and taken by the respondent no.2 IBP but the Retail Outlets/Petrol Pumps were operating in a portion only thereof and seeking the release of the remaining land from the lease to the petitioners. Notice of the said applications was issued. Counter affidavit has been filed by the respondent no.2 IBP to which rejoinder has been filed by the petitioners. The counsels have been heard.

3. The case in the amended W.P.(C) No.2759/2007 is that the petitioner no.1 is the owner of land measuring approximately 8094 sq. mtrs. in Village-Jalalpura Khurd on Jind Hansi Road, District-Jind, Haryana; on 23rd June, 1998 the respondents floated a policy for setting up of Jubilee Retail Outlets (JROs) with various facilities on National Highways and State Highways; that even before the said policy could be implemented, the respondent no.2 IBP in anticipation thereof started inviting the land owners to lease out their land for commissioning of such outlets which till the implementation of the JRO Policy were proposed to be operated as “Company Owned Company Operated” (COCO) Retail Outlets, to be allotted to the land owners on implementation of the JRO Policy; that the petitioner no.1 being desirous of getting a dealership of a Retail Outlet from the respondent no.2 IBP, agreed to lease out his land aforesaid to the respondent no.2 IBP; JROs were to be different from usual Retail Outlets/Petrol Pumps inasmuch as JROs were to be set up on plots of land not less than five acres in size and were to be Model Retail Outlets having a number of facilities apart from sale of petroleum products; that a registered lease deed of the said land was thus executed by the petitioner no.1 in favour of the respondent no.2 IBP for a period of 33 years; that even prior to

the execution of the registered lease deed, the petitioner no.1 made huge investments on development of the land to make the same suitable for a Retail Outlet/Petrol Pump.

4. It is further the case of the petitioners that since the appointment of the petitioner no.1 as the dealer was likely to take some time awaiting the implementation of the JROs Policy, the respondent no.2 IBP asked the petitioner no.1 to nominate another person as the Maintenance and Handling Contractor for the Retail Outlet/Petrol Pump set up by the respondent no.2 IBP on the said land of the petitioner no.1; that the petitioner no.1 accordingly nominated his brother-in-law, the petitioner no.2 for the said purpose and accordingly the respondent no.2 IBP appointed the petitioner no.2 as the Maintenance and Handling Contractor of the COCO Retail Outlet set up on the said land; the same was to be an interim arrangement, only till the grant of dealership by the respondent no.2 IBP to the petitioner no.1 of the JRO intended on the said land.

5. It is further the case of the petitioners that though till 31st March, 2002 the distribution of petroleum products was under the control of Public Section Oil Companies only but thereafter the Private Sector Companies such as Reliance, ESSAR were allowed to set up Retail Outlets and the

Administered Price Mechanism till then in force was dismantled and more freedom given to the Public Sector Oil Companies also to frame their own policies and in accordance wherewith the respondent no.2 IBP was expected to appoint the petitioner no.1 as the dealer with respect to the Retail Outlet/Petrol Pump on the land of the petitioner no.1. Reference is made to the Policy Guidelines dated 8th October, 2002 for selection of Retail Outlet Dealers in the de-regulated scenario.

6. The petitioners further plead that in accordance with the policy aforesaid dated 8th October, 2002 the Public Sector Oil Companies acting thereon appointed 307 dealers; that the respondent no.2 IBP also vide its Policy Circular dated 23rd July, 2003 provided that in the event of award of dealership, the land owner will have the option to nominate another individual or can opt for dealership himself. It is further pleaded that thereunder, JROs/existing COCOs were to be operated through regular dealers instead of by Maintenance and Handling Job Contractors.

7. The petitioners contend that notwithstanding the aforesaid Policy having come into force, the respondent no.2 IBP did not appoint the petitioner no.1/land owner as the dealer and continued to operate the said Retail Outlets/Petrol Pumps as COCO Retail Outlets only.

8. The petitioners refer to a subsequent Policy dated 25th October, 2004 and contend that thereunder also it was clearly stated that JROs will not be handed over to the pending Letter of Intent (LOI) holders; in a subsequent Policy dated 17th November, 2005 also guidelines were issued for allotment of Retail Outlets to land owners; reference is further made to the Notification dated 6th September, 2006 making a distinction between JROs and temporary COCOs which were to be phased out slowly. It is contended that the JROs were thus to remain as permanent COCO Retail Outlets with dealership thereof to the land owners.

9. Accordingly, the reliefs aforesaid have been claimed.

10. The respondent no.2 IBP in its counter affidavit has at the outset referred to the judgment of the Division Bench in **IBP Company Ltd. Vs. Nand Kishore Bajpai** 147 (2008) DLT 764 and contended that vide the same, 120 other similar writ petitions were dismissed and these petitions are also liable to be accordingly dismissed. It is further contended that the SLPs preferred thereagainst were also dismissed by the Apex Court on 31st July, 2008.

11. The respondent no.2 IBP else on merits has pleaded that the land subject matter of the said Retail Outlets was taken on lease by the

respondent no.2 IBP approximately two years prior to the Policy of 8th October, 2002 on which the petitioners base their claim for dealership; under the lease deed(s) of the land, the respondent no.2 IBP as lessee has full power to transfer or sublet the land or any part thereof to any person without any restrictions and without reference to the land owner(s); that under the said lease deed(s), the respondent no.2 IBP is also entitled to terminate the lease with one month notice even prior to the period of the lease and to remove the Petrol Pump therefrom; that the Maintenance and Handling Contract of the Retail Outlet/Petrol Pump set up on the said land was also given for a period of one year only terminable even earlier; that the petitioner never applied and/or submitted any application for award of dealership under the Policy dated 8th October, 2002. It is stated that the Policy dated 8th October, 2002 was in force only till February, 2003 when it was suspended and ultimately superseded by Policy dated 19th September, 2003; that thus the claim of the petitioners on the basis of Policy which has ceased to be operative is not maintainable; during the operation thereof neither any application for dealership made by the land owner nor any dealership offered/granted.

12. It is further pleaded in the counter affidavit that the Division Bench in para 25 of the judgment supra has noticed that none of the lease deeds were executed with the intention of creating any allotment of dealership but were leases simplicitor of land for setting up of Retail Outlets; similarly, Maintenance and Handling Contracts were only for the purposes of running the COCO Retail Outlets for a limited period and were not relatable to the leases of land. Reference is made to para 26 of the judgment holding that the clauses in lease deeds empowering the Oil Companies to transfer the land in favour of third party without any restriction also negate the claim of the land owners of being exclusively entitled to run the Retail Outlet on the said land. Reference is further made to para 31 of the judgment supra holding that only a relationship of landlord and tenant existed between the Oil Companies and the land owner without creating any right in the land owner to dealership of the Retail Outlet/Petrol Pump to be set up on the said land.

13. It is further pleaded that the Division Bench in para 32 of the judgment has found that since the land owners were neither LOI holders nor falling in any other special category to be allotted dealership, were not entitled to the same merely on the basis of the lease deeds; similarly, there

was no basis for their/their nominees continuing as the Maintenance and Handling Contractors with respect to the said Petrol Pumps.

14. The counter affidavit further avers that the distinction sought to be carved out in the petitions between the JROs and COCO Retail Outlets in fact does not exist; JROs are COCOs operated by Maintenance and Handling Contractors appointed by the Oil Companies. Reference is made to Clause 2(ii) of the Policy/Notification dated 6th September, 2006 providing that permanent COCO Retail Outlets including JROs should be operated by an officer of the concerned Oil Marketing Company and there should be no labour contractor appointed. It is thus pleaded that the Policy Circular dated 6th September, 2006 covers the JROs as also held by the Division Bench.

15. It is yet further pleaded in the counter affidavit that the Division Bench had also negated the plea of legitimate expectation. It is contended that the Supreme Court had entertained only those SLPs where either dealership application forms had been submitted or lease agreements executed during the period 8th October, 2002 and 5th February, 2003 when the Dealership Selection Policy of the respondent no.2 IBP was subsisting; that the petitioners herein are not covered by the said exception.

16. It is further averred in the counter affidavit that even in the contract of appointment of Maintenance and Handling Contractors there was no reference to the land and no permanency.

17. The respondent no.2 IBP in response to the application aforesaid of the petitioners for release of the “excess land” under the lease has stated that the same is not permitted under the De-leasing Policy of the respondent no.2 IBP; that the respondent no.2 IBP has made huge investment in developing the site and there is no reason for de-leasing the same; that the petitioner no.1 is not entitled to resile from his contractual obligations and this writ petition cannot be used to alter the terms of a registered lease deed.

18. The petitioners in rejoinder have reiterated their case and have stated that the lease of the land, though of the year 2002, are clearly borne out from the contemporaneous correspondence to be in anticipation of the appointment of the land owners as dealers.

19. The counsel for the petitioners besides reiterating the case aforesaid in the rejoinder has contended that these petitions were filed when the respondent no.2 IBP was intending to take over the management and control of the Retail Outlet/Petrol Pump from the petitioner no.2 Maintenance and Handling Contractor to hand over the same to the pending LOI holder; that

the remaining land has not been utilized by the respondent no.2 IBP till now; that though the intent at the time of execution of the lease deed itself was of appointment of the land owner as the dealer but was not so appointed owing to the Guidelines of 4th October, 1999 then in force, prohibiting the landlord from being appointed as the Contractor. On enquiry as to how any representation could be made by the respondent no.2 IBP contrary to the Policy then in force, it is contended by the counsel for the petitioners that the same was made in anticipation of the decision freeing the Oil Companies from government control; that unless there was a link between lease of the land and the anticipated dealership, nominees/relatives of the land owner in each of the cases would not have been appointed as the Maintenance and Handling Contractors.

20. It is further contended by the counsel for the petitioners that though transparency in the appointment of dealers was introduced to treat all similar but giving dealership of such large Retail Outlets/Petrol Pumps to some of the LOI holders while others have smaller Petrol Pumps without the provision for providing other facilities would also lead to favouritism and discrimination. It is also contended that there is no wait list of LOI holders as of today and for this reason also there is no need to terminate the

arrangement with the petitioners to vest the said Retail Outlets/Petrol Pumps in the LOI holders; that the persons for whose benefit the 6th September, 2006 Policy was intended, no longer exist. The principle of “promissory estoppel” is invoked. It is contended that the Division Bench in the judgment aforesaid though concerned with the same controversy did not consider all the arguments as raised herein and particularly the aspect of promissory estoppel. It is further contended that the land owners in those cases also though contending that they had leased out their land in anticipation of Dealership/Maintenance and Handling Contract had not sought release of excess land, as the petitioners herein are seeking.

21. The counsel for the petitioners on enquiry as to why, if the leases were in anticipation of dealership, provision therefor was not incorporated therein contends that the leases were executed in standard format applicable to all cases, even to those where the land owners had been granted the dealership. It is further contended that upon promulgation of the Policy dated 8th October, 2002 the earlier restrictions on appointment of the land owners as dealers disappeared and the petitioners became entitled to appointment. Reference is made to the judgment dated 19th November, 2009 of the Division Bench of the Karnataka High Court in Writ Appeal

No.3248/2009 titled *Indian Oil Corporation Ltd. Vs. Sri. Y.T. Narendra Babu* where it is contended that the principle of promissory estoppel was upheld.

22. The counsel for the respondents besides reading from the judgment of the Division Bench in *Nand Kishore Bajpai* (supra) has also cited *Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer* (2005) 1 SCC 625 holding that application of principle of promissory estoppel and legitimate expectation in the face of a Notification is unsustainable and that to invoke doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition and bald expressions without any supporting material would not be sufficient. It is contended that the plea of promissory estoppel in view of the leases in the present case being executed two years prior to the JRO Policy of the year 2002 is not sustainable. She has also contended that the present petitions are fully covered by the judgment of the Division Bench and the Supreme Court in other similar petitions and the petitioners admittedly do not fall in the window carved out by the Supreme Court. It is stated that the Dealership Selection Boards were dissolved only on 1st April, 2002 and thus there could be no promise in contravention thereof in the year 2000 at the time of execution of the lease deeds as claimed. It is yet further

contended that the petitioners have no vested claim to dealership.

23. The counsel for the petitioners in rejoinder has contended that the Division Bench and the Supreme Court have not considered para 3 of the Policy and the practice of appointment of temporary dealers. Reliance is placed on *Rajbir Singh Dalal Vs. Chaudhari Devi Lal University Sirsa* (2008) 9 SCC 284 where Supreme Court held an earlier judgment of the Supreme Court to be not a precedent for the reason of having not given any reason. He contends that even if there was no promise in the year 2000 but since the nominees of the land owners were Maintenance and Handling Contractors since lease and the subsequent policy of the year 2002 was in consonance with the assurance given, a case of promissory estoppel is made out.

24. In the present case it is not in dispute that the same policy as being agitated in the present bunch of petitions fell for consideration concerning same reliefs as claimed before the Division Bench and the Apex Court.

25. The claims of the persons similarly situated as the petitioners have been negated. I have enquired from the counsel for the petitioners whether a decision to the contrary in the present round of writ petitions can be taken. If at all any of the material facts/pleas have not been considered,

the said argument has to be raised before the Bench which rendered the decision and not before this Bench. If the same were to be permitted, it would not only be contrary to the principle of finality of litigation but would lead to an anomalous situation where similarly situated persons may end up with inconsistent reliefs from the Court.

26. Reference may also be made to a recent dicta of the Supreme Court in ***Gammon India Ltd. vs. Commissioner of Customs, Mumbai*** 2011 (7) SCALE 297 as per the direction wherein which was circulated to all the High Courts, criticizing the practice of entertaining petitions, issues raised wherein are settled, by carving out a distinction.

27. In the circumstances, I do not deem it appropriate to even discuss the various arguments or to render findings/observations thereon, the matters being admittedly covered as aforesaid.

28. The petitions are accordingly dismissed. Though at the beginning of the hearing only the plea of being covered was taken by the counsel for the respondents but the counsel for the petitioners nevertheless availed ample time for re-arguing but I refrain from imposing any costs.

29. As far as the claim of the petitioners of release of excess area is concerned, admittedly there is a registered lease in force with respect

thereto. Once the claim of the petitioners of the lease being relatable to grant of dealership has been rejected, the claim for release of excess land on the ground of refusal of the dealership also has to necessarily fail. Even if respondent no.2 has not used the land for the purpose taken, the same does not constitute a ground for eviction, atleast not in the writ jurisdiction. The petitioners are thus not found entitled to the said relief also.

30. Contempt in Cont. Cas (C) 137/2011 is averred of the interim order of *status quo* in W.P.(C) 2823/2007. It is averred that the respondent no. 2 by refusing to renew the Maintenance and Handling Contract is in violation of the order. No notice of the contempt petition has been issued as yet. No case of contempt is made out. The contempt petition is also accordingly dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

OCTOBER 12, 2011
Bs.