

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.12.2014

+ **W.P.(C) 6369/2013 & CM No. 13921/2013**

MRS. S SIVAMANI

..... Petitioner

versus

THE UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Sudhanshu Batra, Sr. Advocate with
Mr.P.K. Mittal and Ms.Mehak Gupta.

For the Respondent : Ms.Monika Arora, CGSC with Mr Abhishek
Chaudhary for R/UOI.
Mr Vivek Goyal, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns an order dated 06.05.2013 passed by the Approval Committee (hereafter 'AC') rejecting the petitioner's representation to be considered eligible for scheme for setting up Cold Chain, Value Addition and Preservation Infrastructure in the country.

2. The petitioner's proposal under the scheme was rejected by the AC at its meeting held on 24.01.2013, as the AC found that the petitioner was a shareholder of M/s SH Cold Storage Pvt. Ltd. (hereafter 'SHCSPL') which had already been approved for a Cold Chain Project and had received financial assistance from the respondent. The petitioner assails this

decision as, according to her, she had ceased to be a shareholder of SHCSPL prior to her application for availing the benefits of the scheme.

3. Briefly stated the relevant facts for considering the controversy are as under:-

3.1 The respondent floated a scheme, which entailed financial assistance for entrepreneurs setting up units in the field of Cold Chain, Value Addition and Preservation Infrastructure, with the object of encouraging setting up the facilities for preservation of food articles from farm gate to the consumer.

3.2 The respondent identified various facilities (referred to as 'components') which were required for setting up an infrastructure for preservation and supply chain for food items from the farm gate to the consumers. In terms of the aforesaid scheme, proposals were invited from entrepreneurs for setting up of units to constitute the supply chain relating to food processing sector. The scheme envisaged grant of financial assistance to promoters whose proposals were accepted.

3.3 The petitioner made an application on 06.07.2012 for setting up an integrated cold chain in the State of Tamil Nadu pursuant to the expression of interest/proposals invited by the respondent.

3.4 The AC constituted by respondent considered the proposal of the petitioner on 27.09.2012 and found the same to be, *prima facie*, eligible. Thereafter, all proposals found to be eligible (including that of the petitioner) were referred to a technical committee, constituted to conduct a

detailed scrutiny of the said proposals.

3.5 Apparently, the technical committee noticed that there was certain connection between the petitioner and SHCSPL, which had been approved for a project under the scheme earlier. It was observed that the petitioner was a shareholder of SHCSPL and the said company was held, wholly, by “AKS Group”, which was constituted by the petitioner; her daughter-in-law, Smt. Kalaiselvi; her husband, A.K.S. Saravanan; and her son, A.K. Subramaniam. This was reported to the AC.

3.6 The AC at its meeting held on 24.01.2013 took note of the relationship between the petitioner and SHCSPL and, accordingly, rejected the petitioner’s proposal. The petitioner represented against the aforesaid decision, which was considered by the AC at its meeting held on 15.03.2013 and was rejected.

3.7 The petitioner once again represented against rejection of its proposal, which was considered by independent monitors appointed by respondent. The independent monitors were of the opinion that the representation made by the petitioner was without merit. The recommendation of the independent monitors was accepted and the petitioner’s representation was once again rejected by the AC at its meeting held on 22.04.2013. This decision was communicated to the petitioner on 06.05.2013. Being aggrieved by the said rejection, the petitioner has filed the present petition.

4. Mr Sudahanshu Batra, the learned senior counsel appearing for the petitioner contended that the invitation for Expression of Interest (hereafter

‘EOI’) did not have any condition, which would render the petitioner ineligible for being considered under the scheme. He submitted that the only restriction mentioned was that a second proposal from the same applicant was not permissible. He further contended that SHCSPL was not a sister concern of the petitioner and, thus, the petitioner’s proposal could not be rejected.

5. The learned counsel for the respondent handed over extracts from the project report submitted by SHCSPL, in support of her contention that SHCSPL was a family concern and the petitioner was one of its promoters. It was contended that in the given circumstances the petitioner’s contention that she was unrelated to SHCSPL could not be accepted.

6. I have heard the learned counsel for the parties.

7. The controversy to be addressed is whether the decision of the respondent to not accept the proposal of the petitioner under its scheme is arbitrary, unreasonable or contrary to its policy.

8. The respondent invited the EOI pursuant to the guidelines revised as on 18.03.2010 - *“Revised operational guidelines of the scheme for cold chain, value addition and preservation infrastructure during the 11th five year plan”*. Paragraph 6.0 of the said revised guidelines expressly clarified that a second proposal from the same applicant or company would not be accepted. In addition, paragraph 7 of the said revised guidelines required an applicant to furnish an affidavit affirming as under:-

“(a) that organization's sister concern (s)/ related company / group company as well as the applicant company itself availed any financial assistance for a food processing project in the past from MFPI or not. If yes, the details thereof.

(b) that the organization has not obtained/applied for or will not obtain any grant/subsidy from any Ministry/Department of Central Govt/GOI organization/agencies and State Govt for the same purpose/activity /same components. If yes, the details thereof”.

9. A reading of the said guidelines clearly indicates that the respondent did not intend to entertain any application from a person that had applied earlier. The requirement of submitting the affidavit, as specified, also indicates that a connection with an organisation that had earlier received financial assistance/subsidy, was a relevant consideration for determining the acceptability of a proposal under the scheme.

10. It is not disputed that a proposal made by SHCSPL was earlier accepted by the respondent. Although there is some dispute regarding the quantum of the financial assistance received by SHCSPL, there is no dispute that the said company had received financial assistance from the respondent pursuant to the scheme. The project report submitted by SHCSPL, clearly, indicated as under:-

“COLD CHAIN PROJECT IS PROPOSED TO BE IMPLEMENTED BY M/s. SH COLD STORAGE P LTD., 100% of Equity of this company is owned by M/s. AKS Group, consisting of Shri. A.K. Subramaniam, Shri. A.K.S. Saravanan, Smt. S. Sivamani and Smt. S. Kalaiselvi.”

11. Further the petitioner was also reflected as a promoter of SHCSPL.

Undeniably, SHCSPL is a family concern in which the petitioner had held a vital stake. Although it is stated that the petitioner had transferred her shares in SHCSPL to her daughter-in-law, the same would not alter the nature of SHCSPL as a family concern. Admittedly, the other shareholders and promoters of SHCSPL are petitioner's husband, her son and her daughter-in-law.

12. It is pertinent to note that although the shares held by the petitioner are stated to have been transferred to her daughter-in-law prior to the petitioner's proposal to the respondent, the relevant return reflecting the same was filed with the Registrar of Companies, subsequently.

13. It is also relevant to note that the petitioner is aged about 65 years and it is difficult to accept that proposal submitted by her is an independent entrepreneurial venture. Indisputably, the petitioner is a part of the 'AKS Group' and her assertion that she has no relationship with SHCSPL, is not sustainable.

14. The underlying object of the respondent in refusing to accept proposals from entrepreneurs connected with organisations which had earlier availed of financial assistance is to ensure that the financial assistance granted by the respondent is not cornered in few hands. In my view, the said policy cannot be faulted.

15. Although the revised guidelines do not expressly indicate that a proposal from a person connected with another entity that has received financial assistance will not be entertained, the object of the petitioner's policy is clear. The revised guidelines cannot be read as exhaustive of all

considerations. The said revised guidelines cannot be read as a statute but only as a guide for the respondent to take its decision. It would be open for the respondent to take into account other considerations, provided the same are germane to their policy. The Supreme Court in **Narendra Kumar Maheshwari v. Union of India: AIR 1989 SC 2138** held as under:-

“107. ... This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve.”

16. The revised guidelines had clearly indicated that two applications from the same person would not be accepted. In one sense, the petitioner had already applied and had been granted assistance in a corporate avatar – SHCSPL. Concededly, the petitioner was shown as a promoter of the said family company and the representations made in the proposal indicate that the said company was an alter ego of AKS group. In the circumstances, I find no infirmity with the action of the respondent is looking behind the corporate façade of SHCSPL.

17. In view of the aforesaid, the decision of the respondent to reject the petitioner's proposal is neither arbitrary nor unreasonable and thus not amenable to judicial review.

18. For the reasons stated above, the writ petition and the application are dismissed.

VIBHU BAKHRU, J

DECEMBER 09, 2014
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