

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.02.2019

+ **W.P.(C) 580/2015**

SATISH AHUJA

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Pranav Sachdeva and Mr Jatin Bhardwaj

For the Respondents: Ms Mrinalini Sen, Ms Nidhi Raman and Mr
Tanmay Yadav for UOI.
Ms Sonali Kumar for R-2/IOCL.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner was operating a retail outlet for petroleum products in Ghaziabad, which was shut down as the Ghaziabad Development Authority (GDA) did not renew the lease on terms as acceptable to respondent no. 2 (IOCL). The petitioner has filed the present petition, *inter alia*, praying that directions be issued to respondent no. 2 (IOCL) to grant revival of the dealership or resitment of a retail outlet. Further, the petitioner prays that IOCL be directed to compensate the petitioner for the alleged losses suffered by him for maintaining the retail outlet while it was closed.

2. The petitioner contends that the action of the IOCL to terminate the dealership agreement with the petitioner is contrary to the De-Leasing policy issued by the Ministry of Petroleum and Natural Gas issued on 28.04.2010 (hereafter 'the Policy'). The petitioner submits that as per Clause 1.3 of the Policy, the IOCL is obliged to explore the possibility of a negotiated settlement for renewal of a lease agreement. This is disputed by the IOCL, which contends that in line with the Policy, it made earnest efforts to obtain the land upon which the dealership was located. Further, it even made a representation to the Ghaziabad Development Authority (GDA), the lessor of the said land, to purchase the said land. However, the reserve price of the said land was commercially unviable for the IOCL.

3. It is the petitioner's case that under the guidelines for Reconstitution, Resitement and Revival of Retail Outlets issued on 17.11.2005 (hereafter 'the Guidelines'), the petitioner is entitled for resitement, as his dealership was closed for reasons not attributable to him. IOCL disputes the aforesaid claim and contends that the petitioner had tendered his resignation voluntarily and, therefore, the petitioner is not entitled to resitement of the dealership. It further claims that in terms of the guidelines, resitement can be done only if the dealer arranges the land for the same.

Factual Background

4. The petitioner's father was an erstwhile officer of IOCL and after his superannuation, had entered into a Dealership Agreement with IOCL on 26.04.1974 (hereafter 'the Agreement') for running an

‘A’ category retail outlet located on land leased by the GDA to the IOCL. The Agreement was renewed on 20.03.1983.

5. After the death of the petitioner’s father, the Agreement was renewed in the name of the petitioner on 06.03.1992. The lease agreement entered into between the IOCL and the GDA expired on 12.08.2008, and the GDA thereafter refused to renew the lease.

6. The petitioner contends that he approached IOCL on various occasions requesting the IOCL to renew the lease, however, IOCL failed to take timely steps to negotiate with the GDA. On 22.10.2012, the GDA directed the petitioner to vacate the premises and shut the operation of the petrol pump within a period of fifteen days. On 22.10.2008, the GDA directed the petitioner to vacate the premises.

7. IOCL submits that considering the GDA was not inclined to renew the lease of the premises, IOCL also considered the option to purchase the premises from the GDA, but the circle rate as demanded by the GDA was not acceptable to IOCL for commercial reasons. Alternatively, IOCL requested the GDA to grant an alternate site, however, this was also not acceded to by the GDA.

8. On 10.11.2012, the petitioner requested IOCL to allot a Company Owned Company Operated (COCO) Outlet to him, on a temporary basis. However, the petitioner submits that various representations made to IOCL by him were not responded to.

9. On 20.06.2013, the IOCL intimated the petitioner that it was currently negotiating with the GDA to sell the premises to IOCL, however, as the price demanded by the GDA was high, IOCL would not be able to do so.

10. On 25.09.2013, the petitioner tendered his resignation as he was unable to continue to bear the expenses of the closed outlet. In view of the above, IOCL terminated the Agreement on 17.12.2013. On 22.08.2014, the petitioner requested resitment from IOCL. However, the petitioner submits that he did not receive a reply in this regard.

Reasons and Conclusion

11. The first and foremost question to be addressed is whether the petitioner is entitled for resitment of the retail outlet dealership, given that he had tendered his resignation to act as a dealer on 25.09.2013 and the dealership agreement with IOCL was thereafter terminated. In this regard, it is admitted that the petitioner had tendered his resignation owing to the prolonged closure of the retail outlet in question. Admittedly, the GDA had directed the closure of the retail outlet pursuant to which it was closed in November, 2012. Notwithstanding the closure, the petitioner had continued to bear the expenses of the staff and other utilities till the termination of the dealership pursuant to the petitioner's resignation. It is obvious that the petitioner had no other recourse but to request for termination of the dealership since he could not be expected to continue with the same, even after the retail outlet had been closed.

12. In the counter affidavit filed on behalf of the IOCL, it is averred that a hearing was afforded to the petitioner after submission of his resignation, and it was specifically inquired from him whether he had submitted his resignation under any duress or pressure. The petitioner

had repeatedly confirmed that he had resigned out of his own free will and, not under any coercion or pressure. It is, thus, contended on behalf of the IOCL that the petitioner cannot now claim any benefit of resitment. This contention is unpersuasive, as there is no controversy as to the reasons which compelled the petitioner to submit his resignation and seek closure of the dealership agreement.

13. The record is also replete with communications sent by the petitioner calling upon the IOCL to take the necessary steps for securing extension of the lease for the retail outlet from the GDA. More importantly, the petitioner had also sent various letters seeking allotment of an alternative site, prior to the termination of the dealership. The learned counsel appearing for the petitioner has also drawn the attention of this Court to the letters dated 10.11.2012, 17.11.2012 and 24.11.2012, sent by the petitioner requesting the IOCL for allotment of a COCO retail outlet.

14. In the circumstances, this Court is of the view that the petitioner's request for resitment cannot be rejected on the ground that he had submitted his resignation and had sought termination of the dealership agreement.

15. The next question to be addressed is whether the petitioner is entitled to resitment in terms of the policies as framed by the IOCL. The petitioner has relied on the circular dated 03.08.2002 (Circular No. 39/07-02), which sets out the guidelines for resitment of retail outlet dealership. Clause (e) of Article 1 of the said guidelines is relevant and, is set out below:-

“1 Conditions for Resitment:

Resitement of Retail Outlet can be carried out to the following illegible:

- (a) *****
- (b) *****
- (c) *****
- (d) *****

(e) Dealer is forced to vacate existing site by the lessor or any authority after exhausting all legal remedies.”

16. Similarly, in terms of the Circular issued pursuant to a letter dated 17.11.2005 by the Ministry of Petroleum and Natural Gas (MoP&NG), the resitement of a commissioned dealership could be considered on various grounds, including, in cases where a dealer is forced to vacate existing site by the lessor or any other authority. Clause (f) of Sub-Paragraph 3.2.1 of the said circular is set out below:-

3.2 Resitement of a commissioned dealership

3.2.1	Resitement of a commissioned dealership may be considered on the following grounds : (a) ***** (b)***** (c) ***** (d) ***** (e) ***** (f) Dealer is forced to vacate existing site by the lessor or any authority after the dealer has exhausted all legal
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	remedies upto High Court.
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17. In view of the above, there can be little dispute that the petitioner is eligible for resitement as the retail outlet had been shut down due to the lessor (GDA) not renewing the lease. However, it does not necessarily follow that the IOCL must allot a fresh site to the petitioner. Plainly, such allotment would also be subject to availability and other conditions. The aforesaid guidelines and policy merely indicate the eligibility of a dealer for seeking resitement. This, undoubtedly, is established in the case of the petitioner.

18. In the present case, the IOCL has stated that it has been unable to accede to the petitioner's request since the petitioner has not provided any land for the retail outlet. It has been stated that the current policy requires a dealer to also make available the land either on a lease or on an outright sale basis.

19. Ms Kumar, learned counsel appearing for IOCL, had also referred to a policy circular dated 04.10.2012 (Circular No. 205-10/2012). The learned counsel appearing for the petitioner had drawn the attention of this Court to Sub-Clause (2) of Clause 1.4 of the said circular which stipulated that the onus to provide land will be on dealer. Clauses 1.2, 1.3 and 1.4 of the said Circular are set out below:-

“1.2 Resitement has to be with the same dealer.

1.3 The resitement will be permitted in the same class of market within the same State except for cases covered in para.1.4 & 1.5.

1.4 Resitement within State/UT boundaries (**in any class of market**) can be allowed in following cases:

- i. For ROs meeting current resitement norms w.r.t. road related developments at the site, acquisition of RO site / being forced to vacate /surrender the site, will be allowed resitement in any class of market within the State/UT boundaries
- ii. In all such cases, onus to provide land will be on dealer.
- iii. In case of Corporation owned / leased sites, where Companies have to vacate / surrender the site, resitement will be carried out only after obtaining approval for surrendering the site from Board / Sub Committee of the Board.
- iv. In other words, resitement on account of reasons not covered in para (i) above will continue to be governed by the norm of being within “same class/ state”.

20. A plain reading of Clause 1.3 indicates that the resitement in the same class of market within the same State would be permitted. Clause 1.4 of aforesaid Circular pertains to resitement within the State/UT boundaries in any class of market. Mr Sachdeva, learned counsel appearing for the petitioner, contended that a plain reading of the aforesaid clauses indicates that the stipulation, that a dealer would provide the land for the retail outlet, is not applicable to resitement within the same class of market within the same State. This is clearly

a contentious issue. The interpretation of Clauses 1.3 and 1.4 as canvassed by Mr Sachdeva, appears plausible. However, it is necessary to bear in mind that the said clauses set out the policy adopted by the IOCL, and it would be necessary to accept the interpretation of IOCL regarding its own policy. So long as the IOCL uniformly follows the same, the petitioner's grievance would be unjustified. In this case, IOCL has unequivocally stated that it is not providing resitement to any dealer, unless, the dealer is able to arrange for the land. A plain reading of Clause 1.4 of the said policy also indicates the same.

21. Having stated the above, even if the petitioner's contention that in terms of Clause 1.3 of the said policy resitement in the same class of market is permitted without the necessity of arranging for the land is accepted, the same cannot lead to the conclusion that the IOCL is obliged to resite the petitioner's dealership. As noticed above, the same would necessarily have to be subject to availability of sites and compliance of other conditions.

22. In the present case, the petitioner is seeking resitement in sites located in Delhi. Clearly, the same does not fall under Clause 1.3 of the said policy, which only permits resitement in the same class of market within the said State.

23. It is affirmed on behalf of the IOCL that a site is not available within the State or the same market, being offered for resitement. In this view, IOCL's decision to not to accede to the petitioner's request, cannot be faulted.

24. It was contented on behalf of the petitioner that the petitioner could be allotted COCO retail outlet. The petitioner's request in this regard also cannot be accepted as the petitioner's case does not fall within the COCO divestment guidelines as approved by the Ministry of Petroleum and Natural Gas. IOCL has placed on record the amended guidelines for COCO divestment as approved by the MoP&NG by a letter dated 03.08.2016. In terms of the said guidelines, COCO sites are available to the persons as specified therein. Dealers belonging to SC/ST Category whose retail outlet site is acquired by Government/Government Agencies are entitled for being granted a COCO site. However, there is no provision for allotment of a COCO site for resitement of dealers from the general category.

25. IOCL has filed an affidavit unequivocally affirming that there is no site available with IOCL in the National Capital Region and in terms of the policy being followed land has to be arranged by the dealer as IOCL cannot find and finance such land.

26. In view of this unequivocal statement, the petitioner's claim for resitement without arranging of any land cannot be accepted. Thus, the reliefs as prayed for by the petitioner cannot be granted.

27. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 20, 2019/pkv