

Court No. - 40

Case :- WRIT - C No. - 27701 of 2023

Petitioner :- Mahesh Kumar Kausadhan

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shiv Sagar Singh

Counsel for Respondent :- C.S.C., Komal Mehrotra

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Sri Shiv Sagar Singh, learned counsel for the petitioner, Sri Komal Mehrotra, learned counsel for respondent nos. 2 and 3 and Sri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondent nos. 1, 4, 5 and 6.

2. The petitioner has preferred present writ petition challenging the impugned order dated 14.06.2023 passed by the Executive Engineer, Nirman Khand, Public Works Department, Kushinagar (respondent no.5), whereby he has refused to grant 'No Objection Certificate' for establishment of the retail outlet. Further prayer is made to issue direction to the District Magistrate, Kushinagar (respondent no.4) to issue NOC in favour of the petitioner for establishment of the retail outlet.

3. Facts in brief as contained in the writ petition are that an advertisement was published by Bharat Petroleum Corporation Limited on 25.11.2018 inviting applications from interested persons for award of MS/HSD Retail Outlet Dealership at location Kaptanganj within 3 Kms from Azadpur Chowk on Hatta road, District Kushinagar, U.P. under Open (Regular)/CC category. The petitioner applied on a prescribed form for the retail outlet in question. In this regard, the petitioner had taken land (100x100 ft) on lease for a period of 19 years and 11 months from one Ram Naresh, who is owner of Plot No.4587/0.214 hec. situated in Village Sahiya @ Kaptanganj and Pakharpar, Pargana Haveli, Tehsil Kaptanganj, District Kushinagar. After draw of lots held on 26.06.2019, a Letter of Intent dated 02.09.2022 was issued to the petitioner for retail outlet dealership of the Corporation. As per the procedure, the Territory Manager (Retail), Gorakhpur, vide letter dated 19.09.2022, requested the District Magistrate, Kushinagar to grant 'No Objection Certificate' in respect of the aforesaid location. By the impugned order dated 14.06.2023 the respondent no.5 has refused to grant NOC in favour of the petitioner.

4. The contention of the petitioner is that the petitioner has

submitted an application for allotment of a Retail Outlet and he was selected by the Corporation for allotment of a Retail Outlet. The petitioner has further submitted that the letter of intent was issued on 02.09.2022 and a request was made by the Corporation to the District Magistrate for grant of NOC. By the impugned order dated 14.06.2023 the Executive Engineer, Nirman Khand, Public Works Department, Kushinagar (respondent no.5) has rejected the application submitted by the Corporation on the ground that the plot in question falls outside the limit of Nagar Panchayat Kaptanganj and there is one intersection within 300 meter from the said plot. It has also been argued that the plot offered by the petitioner for establishment of the retail outlet is recorded in the name of one Ram Naresh, who has given the land on lease for a period of 19 years and 11 months, and the said land is meeting the norms laid down by the Corporation. The petitioner has also filed declaration that adjacent to the offered land, there is no encroachment. The respondent no.5 has illegally refused to grant NOC to the petitioner on non-existence ground. There is no such guideline for determination of the distance to the intersection on highway but the same has been taken as ground for rejection of the NOC.

5. Per contra, Sri F.A. Ansari, learned Standing Counsel has vehemently opposed the writ petition and placed reliance on the Full Bench judgements of this Court in **Anand Kumar Sharma vs. State of UP and others**, 2014 (2) ADJ 742 and **Smt. Sadhna vs. State of U.P. and others** reported in (2017) 3 UPLBEC 2049, wherein it was held that the petitioner did not acquire any vested right on making the purported application to get his application considered on the basis of the policy, as existing on the date of making the application. Similar view has also been reiterated by the Division Bench in **Shreyas Gramin Bank through Chairman and another vs. Kasturi Devi** 2016 (3) ADJ 741 and the writ petition is liable to be dismissed.

6. We have occasion to peruse the record in question as well as the impugned order and find that the advertisement was issued on 28.11.2018 for award of retail outlet dealership in various areas. In pursuance of the said advertisement, the petitioner applied on 24.12.2018 for award of retail outlet dealership at location Kaptanganj under open category. After due selection, the letter of intent was issued to the petitioner on 02.09.2022 and consequent to the acceptance of the letter of intent, the Corporation vide letter dated 19.09.2022 requested the District Magistrate, Kushinagar for issuance of NOC for setting up new retail outlet at Village Basahiya at Captanganj, District Kushinagar. The respondent no.5

has refused to grant NOC in favour of the petitioner on the ground that the retail outlet is being established at Plot No.4587 situated on Kaptanganj to Hatta road. In response of the letter sent by the respondent no.5 dated 08.05.2023, the Nagar Panchayat Kaptanganj, Kushinagar vide letter dated 14.06.2023 has informed that said plot no.4587 falls outside the limit of Nagar Panchayat Kaptanganj and as per Clause 3.2 at point no.2 of the Government order dated 08.12.2022 prescribing policy/guidelines for establishment of petrol pump, the distance of any intersection with any category of road and median gap for “proposed fuel station on SH” is 300 meter (minimum). Further, during the spot inspection it is found that there is one intersection as Gramin marg within 300 meter from the said plot and further there is no mention of the intersection in the drawing, which was provided by the respondent Corporation.

7. In Anand Kumar Sharma (supra) the Full Bench of this Court has held that mere making of an application would not confer an indefeasible or vested right for appointment on compassionate ground. Relevant paragraphs 15, 24 and 27 are reproduced herein below:-

“15. In Anand Kumar Sharma vs. State of U.P. and Ors 2014 (2) ADJ 742 (FB) a Full Bench of this Court held that the petitioner did not acquire any vested right on making the application on 25/7/2005 to get his application considered on the basis of the policy as existing on the date of making the application. The Government order dated 04/8/2006 was fully applicable w.e.f. 04/8/2006 and no error was committed by the Collector taking into consideration the policy dated 04/8/2006 when the application was rejected on 18/12/2006.

24. In fact, as held by the Full Bench of this Court in Anand Kumar Sharma (supra), the mere making of an application would not confer an indefeasible or vested right for appointment on compassionate ground. A new Scheme for payment of ex-gratia in lieu of appointment on compassionate ground in RRBs came into effect on 31.7.2004 and the Board of Directors of appellant-bank accepted the said scheme on 27.10.2006 and as per Para-13 of the Scheme in question, all applications for compassionate appointment/grant of lump sum financial relief, if any, pending as on the effective date, will be dealt with in accordance with the above Scheme approved by the appellant-bank. Consequently the claim of the petitioner-respondent was rejected on 7.12.2006.

27. The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as "vested", fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.”

8. In Shreyas Gramin Bank (supra) the Division Bench has held that the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post.

9. In view of the foregoing discussion, we are of the opinion that the petitioner did not acquire any vested right on making the application for grant of retail outlet on the basis of policy as existing on the date of making the application. No error was committed by the respondent no.5 while refusing to grant NOC in favour of the petitioner.

10. Accordingly, the writ petition is dismissed.

Order Date :- 18.10.2023

Vikram