



Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 112 of 2024

Date of Decision: 02.12.2024

Shri. Danialking Marwein,
S/o S. Wanniang,
R/o. Mawkhiat Village,
West Khasi Hills District, Meghalaya.

...Petitioner

-Versus-

1. Union of India, represented by the
Ministry of Petroleum and Natural Gas,
Government of India, New Delhi.
2. Bharat Petroleum Corporation Limited,
12/E&F, Maker Towers, Cuffe Parade,
Post Box No.19949, Mumbai – 400005.
3. The Territory Manager (Retail),
Bharat Petroleum Corporation Limited,
Holding No-253, Ward No-2,
Lower Lachumiere, Shillong,
East Khasi Hills District, Meghalaya.

...Respondents



Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Applicant(s) : Mr. M.L.Nongpiur, Adv.

For the Respondent(s) : Mr. S.Jindal, Adv. with
Mr. I.Kharmujai, Adv.
Ms. T.Pohlong, Adv. for R 2 & 3.

- | | | |
|-----|--|--------|
| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: _ | Yes/No |
-

JUDGMENT AND ORDER

1. The petitioner by way of the instant writ petition is before this Court praying for setting aside of the impugned letters dated 06-01-2024 and 16-03-2024, whereby the petitioner was declared not eligible for RO dealership (Retail Outlet) due to the reason of mismatch of letters in the hard copy of the Pan Card with the uploaded one.

2. The brief facts are that the petitioner in response to an advertisement for appointment of RO dealership was provisionally selected vide letter dated 29-12-2023 and had paid the initial security deposit of ₹ 20,000/- and had also submitted all requisite documents including the Pan Card.



However, vide the impugned letter dated 06-01-2024, the respondent company informed the petitioner that he was not eligible for RO dealership due to the reason of mismatch in the uploaded number of the Pan Card, where in the hard copy the number was BYJPD0795F, the uploaded number was BJYPD0795F. Against the said rejection, the petitioner was asked to submit a representation if aggrieved and on submission of the same, vide the impugned letter dated 16-03-2024, the representation was rejected.

3. As the said disposal of the representation was not to the knowledge of the petitioner initially, WP(C). No. 74 of 2024 was filed against the non-disposal of the representation and during the proceedings, the respondent had informed this Court that with the Model Code of Conduct in place, the RO dealership had not been settled with any other party. On an affidavit filed by the respondent company, bringing on record the impugned order dated 16-03-2024, rejecting the representation of the petitioner, WP(C). No. 74 of 2024 was withdrawn on 12-04-2024 and the instant writ petition was then filed on 17-04-2024.

4. Mr. M.L.Nongpiur, learned counsel for the petitioner has submitted that the mismatch of the petitioner's Pan Card in the application form was with regard to a single alphabet due to a bonafide typographical error and



that the action rejecting the selection of the petitioner is against the principles of reasonableness and violation of Articles 14 and 21 of the Constitution of India. It is further submitted that Clause 23 of the Brochure on Selection of Dealers, wherein a Pan Card number mismatch has been listed in the list of non-rectifiable deficiencies in applications, is only but a guideline, which does not have the force of law and cannot be held to be a rigid mandatory requirement, considering the mismatch was only with regard to one letter of the alphabet.

5. In support of his case, the petitioner has placed reliance on an ***order dated 25-07-2024, of the Karnataka High Court passed in Writ Petition. No. 1771 of 2024***, wherein the facts of the said case are similarly situated and the case of the petitioner therein was allowed by holding that the guidelines were neither mandatory nor binding, and that the mismatch was neither intentional nor deliberate, but on account of bonafide reasons.

6. On another limb of submission, the petitioner on the assertion by the respondent company that the said RO dealership had since been awarded to another person on 22-02-2024, before filing of the previous writ petition that is WP(C). No. 74 of 2024, the learned counsel has contended that the settlement with the third party is provisional, more so, with the Letter of Intent / Award not being brought on record, and as such, no third party



right has been created till date. It is also argued that if there is any settlement with a third party, the same would amount to concealment/misrepresentation and an act of contempt in violation of the orders passed by this Court.

7. Mr. S.Jindal, learned counsel for the respondents No. 2 & 3, in reply has submitted that the petitioner cannot seek the reliefs as prayed, inasmuch as, in the application for dealership, an undertaking had been signed wherein the petitioner had agreed that if the information given in the aforesaid application was found to be incorrect, the petitioner would be declared ineligible for the RO dealership. There being a clear mismatch between the uploaded Pan Card number and the hard copy, he submits, by operation of Clause 23 (n) contained in the Brochure for Selection of Dealers, the application therefore stood rejected. It is then submitted that even before the first writ petition that is, WP(C). No. 74 of 2024 had been filed in March 2024, one Shri. Lumborlang Wanswett had been allotted the RO dealership on 22-02-2024, and that the representation of the writ petitioner had been rejected on 16-03-2024, much before the interim order dated 22-04-2024, was passed by this Court in the instant writ petition.

8. The learned counsel submits that the application dated 25-09-2023 of the writ petitioner read with the guidelines governing the selection /



allotment process for RO dealerships, constitutes a contract between the parties. This being the case he contends, Clause 23 (n) of the guidelines has to be adhered to and cannot be deviated from, and that the petitioner by filing the instant writ petition is asking this Court to rewrite the contract between the parties, by holding that the Pan Card mismatch is a rectifiable defect, even when the guidelines provide that the same is non-rectifiable. In support of this argument, the learned counsel has cited the case of ***Shree Ambica Medical Stores & Ors. vs. Surat People's Co-operative Bank Limited & Ors. reported in (2020) 13 SCC 564***, where it has been held that the Court through its interpretive process cannot rewrite or create a new contract between the parties.

9. The learned counsel has then asserted that the petitioner has not raised any challenge against Clause 23 (n) either in the pleadings or in the prayer and as such, no relief can be forthcoming, notwithstanding the power of the Court to mould the relief and further that a Pan Card mismatch is not a ground for judicial interference. It is also submitted that a typographical error is not a ground for relief and in this regard has placed reliance on the following judgments:

(i) ***IOCL vs. Raj Kumar Jha, 2011 SCC Online Pat 1529.***



(ii) *Gaurav Gupta vs. Bharat Petroleum Corporation Limited & Ors., judgment dated 07-05-2024 passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP-6000 of 2024.*

10. It is further submitted that the decision of the respondents cannot be said to be unreasonable as the same was based on the guidelines mandated to be compulsorily followed by the respondents. The judgments placed by the petitioner have also sought to be differentiated and distinguished by the learned counsel, who submits that the judgment of the Karnataka High Court in WPC No. 1771/2024, while setting aside the petitioner's application on the ground of Pan Card mismatch is without any reasoning as to why the rejection was erroneous. It is then lastly submitted that the RO dealership has already been allotted on 22-02-2024 and the new allottee is not a party in the present proceedings, nor had the petitioner sought to implead him even after coming to the knowledge of the same, and that it is a well-established position of law that no order prejudicial to a person can be passed in the absence of that person.

11. Having heard learned counsel for the parties, though the main issue in question is the rejection of the application of the petitioner on account of the mismatch of one alphabet in the uploaded Pan Card number, another aspect that also deserves consideration, is the manner in which the respondent company has conducted itself in the course of the proceedings.



As it has been submitted, the first writ petition that is, WP(C). No. 74 of 2024 had been filed against the non-disposal of the representation of the petitioner on 18-03-2024, which was then withdrawn on 12-04-2024 on receipt of the order that the representation had been rejected by an order dated 16-03-2024. The said information was contained in the affidavit filed on 10-04-2024 by the respondent company in WP(C). No. 74 of 2024 which however, did not disclose the fact that the said RO dealership had already been settled with another party on 22-02-2024. This is revealed from the records of the disposed of WP(C). No. 74 of 2024 which had been requisitioned by this Court in the course of hearing of the instant writ petition.

12. It was only in the affidavit filed by the respondent company in the instant writ petition challenging the rejection of the representation, that it was revealed that the RO dealership had been awarded to another party as far back as on 22-02-2024. Interestingly, in the course of the proceedings in the instant writ petition, this Court by order dated 22-04-2024, at the motion stage itself, had directed in the interim that there shall be no settlement of the RO dealership with any other party and this interim order was then continued vide successive orders till the last extension on 22-08-2024 without any objection by the learned counsel for the respondents No. 2 & 3. The respondent company in spite of this fact did not deem it fit to



apprise the Court at the initial stage itself that the dealership had been awarded to another party and continued in the charade, as if the matter was still available for consideration. This to the mind of the Court amounts to suppression and misrepresentation which shall be dealt with later in the order.

13. Coming to the main aspect of the matter, it is noted that the mismatch in the uploaded Pan Card number was of one alphabet, which at Clause 23 (n) is listed as a non-rectifiable deficiency. Though in the judgments placed by the respective counsels of different High Courts, there has been divergent views, this Court in consideration of these pronouncements and also the circumstances of the case would hold that the petitioner while applying for the RO dealership was well aware as to the undertaking which had been given at the time of application for the Retail Outlet. At Clause 15 (a) of the application itself, it has been clearly spelt out that if it was found that information given is incorrect, amongst other conditions, then the candidature would stand cancelled and declared ineligible for Retail Outlet dealership. Further, though it has been argued that the Brochure for Selection of Dealers is only a guideline which does not have the force of law, the fact that Pan Card number mismatch, being listed at Sl. No. 23 (n) of the List of Non-rectifiable Deficiencies in applications, in the considered view of this Court, this requirement which



binds the petitioner in no unclear terms, despite the fact that the error was of a single alphabet, will constitute an infraction of the agreed terms and conditions. It is also to be noted that these guidelines have been framed and are part of company policy which the respondent company is also bound by. The decision placed by the petitioner of the Karnataka High Court therefore, will not come to his aid more so, as the same has not dwelt in detail as to the reasons and circumstances allowing that writ petition.

14. The other points that go against the writ petitioner is also the fact that no challenge has been made to Clause 23 (n) and as such, notwithstanding any other circumstances, the petitioner is bound by the undertaking given in the application. The decisions placed by the counsel for the respondent on this aspect and other points are deemed not necessary to be elaborated upon, in view of the findings made herein above.

15. However, reverting back to the suppression of material facts by the respondent company which it appears has been made knowingly in judicial proceedings before this Court, the same is deprecated and it is expected that necessary appropriate disciplinary action be instituted against the Officers concerned who are responsible for misleading this Court. It is also further provided that the respondents No. 2 & 3, for such conduct



shall pay a cost of ₹ 1,00,000/- (Rupees one lakh) to be made over to the Meghalaya State Legal Services Authority, Shillong, for the purposes of legal aid within a period of four weeks from the date of this order.

16. With the above noted directions, this writ petition is closed and disposed of.

Judge