

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 31170 of 2014 (U)

PETITIONER :

**GEORGE AGENCIES,
REPRESENTD BY ITS SOLE PROPRIETOR P.K. GEORGE,
S/O. GEEVARGHESE, MADEENA COMPLEX, INDIRA JUNCTION,
ALAPPUZHA.**

BY ADV. SRI.R.T.PRADEEP

RESPONDENT(S):

- 1. BHARAT SANCHAR NIGAM LIMITED.,
REPRESENTED BY ITS CHIEF GENERAL MANAGER,
KERALA TELECOM CIRCLE, THIRUVANANTHAPURAM-1**
- 2. GENERAL MANAGER,
OFFICE OF THE GENERAL MANAGER (TELECOM),
BHARAT SANCHAR NIGAM LIMITED, ALAPPUZHA-688 011.**
- 3. ASSISTANT GENERAL MANAGER, (S&M CM),
OFFICE OF THE GENERAL MANAGER (TELECOM),
BHARAT SANCHAR NIGAM LIMITED,
ALAPPUZHA-688 011.**
- 4. M/S. CHOICE ENTERPRISES,
REPRESENTED BY SHIBU.K. VARGHESE, BSNL FRANCHISEE,
CHENGANNUR-689 121.**
- 5. M/S. KEY SYSTEMS INDIA PRIVATE LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, K.C. JOSEPH,
BSNL FRANCHISEE, CHERTHALA-688 524.**

**R1 TO R3 BY SRI.PREMJIT NAGENDRAN,SC,BHARATH SANCHAR NIGAM LTD.
SRI.MATHEWS K.PHILIP,SC, BSNL**

**R4 BY ADVS. SRI.MATHEW JOHN
SRI.DOMSON J.VATTAKUZHAY**

R5 BY ADV. SRI.SREEKANTH S.NAIR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE INVITATION OF EXPRESSION OF INTEREST DATED 20-8-2014 BY 1ST RESPONDENT.
- P2. TRUE COPY OF THE LETTER DATED 20-11-14 BY THE 3RD RESPONDENT TO 5TH RESPONDENT.
- P3. TRUE COPY OF THE FRANCHISEESHIP AGREEMENT DATED 16/8/2013

RESPONDENT(S)' EXHIBITS

- R3(A) COPY OF THE PRINT OUT OF SCREEN SHOTS DATED 20/11/2014 & 21/11/14
- R3(B) COPY OF THE RECEIPT EVIDENCING PAYMENT FOR THE STOCK TAKE DATED 21/11/2014
- R3(C) COPY OF THE RECEIPT DATED 24/05/2014
- R3(D) COPY OF THE LETTER SENT BY THE PETITIONER DATED 7/06/2014
- R3(E) COPY OF THE LETTER DATED 30/07/2014
- R3(F) COPY OF THE LETTER SENT BY THE PETITIONER DATED 4/08/2014
- R3(G) COPY OF THE REPLY SENT BY THE RESPONDENT DATED 4/09/2014
- R4(A) COPY OF THE AGREEMENT BY THE 4TH RESPONDENT WITH BSNL ON 20/11/2014
- R4(B) COPY OF THE LETTER DATED 2/3/2013 BY THE SALES HEAD BHARTI AIRTEL LTD
- R4(C) COPY OF THE E.MAIL DATED 13/4/2013
- R4(D) COPY OF THE LETTER DATED 15/4/2013

/TRUE COPY/

P.A.TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.31170 of 2014

Dated this the 24th day of June, 2015.

JUDGMENT

The petitioner is aggrieved with the non-consideration of the petitioner as per Ext.P1, as also the the grant made to the 4th respondent, which the petitioner submits is in violation of the specific terms of Ext.P1. The petitioner had been a franchisee, carrying on the business of BSNL products and services, in two territories, as granted by the BSNL. The wife of the petitioner was also a franchisee, carrying on operations under a different proprietorship concern, termed 'M/s. A.J Distributors'; also in two territories. The wife expired and the petitioner, as the legal heir, made a request to the BSNL to allow him to continue the same till the expiry of the period, for which the franchise was granted to M/s. A.J Distributors.

2. The BSNL allowed such transfer and while the petitioner was continuing all the four franchisee-ships, he surrendered one,

which was earlier in the name of the wife. The petitioner's expression of interest as per Ext.P1 did not cross the threshold eligibility, since he suffered from a disability in so far as he having surrendered a business during the validity of the franchise.

3. The petitioner contends that, the evaluation of the Committee constituted by the BSNL, takes into account (i) the experience of the firm, (ii) its turn over, (iii) the situs of the agency as also (iv) the performance in the interview, for which separate marks are prescribed. As to all the three definite aspects, the petitioner would have secured full marks and if he was evaluated he would have come out successful in the interview too, is the plea. The petitioner's bid ought to have been evaluated and considered and ought not to have been rejected on the question of disability. The BSNL also could not take up the disability as a valid contention, since on a request made, by Ext.R3(g), it was agreed to evaluate the petitioner. No disability could be invited on the surrendered franchise, since that was one the petitioner was carrying on as the legal heir of his wife, a

different status, is the argument. The grant made to the 4th respondent, it is also assailed since there were only two bidders, and no consideration could have been made, as per Ext.P1, unless three bids were available.

4. The learned counsel appearing for the BSNL, however would contend that there is no promise as such in Ext.R3(g). On a request made by the petitioner, the BSNL had merely said that, if an application is filed, that would be considered in terms of Ext.P1 and also in terms of the policy of the BSNL. Further, it is also contended that it is not as if the petitioner in a different status, took over the management of the franchise, entrusted earlier to his wife. The petitioner approached the BSNL with a request for consideration of his continuing the agency and a fresh agreement was executed for the balance period with the petitioner as a franchisee.

5. Looking at Ext.R3(g), this Court does not find any promise made by the BSNL, to consider the bid of the petitioner. In fact the petitioner was informed that he suffers from a disability, in so far as he having surrendered a franchise. Though

the petitioner had only two franchise, the petitioner agreed to takeover that of his wife; on her death. The contention that the petitioner was carrying on such franchise as the legal heir of his deceased wife, cannot at all be countenanced. As a legal heir or in his own capacity or as a proprietor, the petitioner has the same status. It is not as if the petitioner was carrying on the premises as the agent of his wife. The wife is no more and on her death, the petitioner had requested for continuing the franchise and executed fresh agreements with the BSNL. The petitioner cannot be taken as carrying on the franchise in a different status.

6. A reading of Ext.R3(g) would also indicate that, having taken over the franchise carried on by his wife, the petitioner was not able to perform as required by the BSNL. The BSNL had at various points directed the petitioner to improve the performance, which he was unable to and in such circumstances, the petitioner surrendered one franchise. When the petitioner made an Expression of Interest as per Ext.P1 and a request for consideration of his application, Ext.R3(g) was the response to it. The BSNL clearly listed out the facts as stated herein and also

pointed out that the petitioner suffers from a disability, in so far as the Sales and Distribution Policy of 2012 [for brevity, Policy]. About participating in the expression of interest as a Proprietor of 'George Agency', it is merely intimated that the evaluation committee would examine the responses in accordance with the guidelines in the policy and the bids would be evaluated in accordance with the evaluation criteria in Ext.P1. The petitioner being disqualified as per the policy, the petitioner's Expression of Interest was not evaluated by the Committee. The committee refused to do so on the basis of the petitioner's disability. Looking at Ext.R3(g) it cannot be said that there was a promise that the Committee would evaluate the petitioner. In such circumstances, the disability incurred cannot be challenged in the teeth of the specific terms of the Policy.

7. The contention that there should have been minimum three expressions of interest, for a proper evaluation to be carried out, the same does not emanate from Ext.P1. In any event, the learned counsel appearing for the BSNL points out that there were five persons, out of which, three were disabled on the

threshold itself. It was in such circumstances that the two persons, who achieved the threshold eligibility was evaluated and the franchise granted to the 4th respondent. The contention is raised on the basis of Clause E(b), which only mandates that shortlisting should be done on the basis of marks obtained in (i) to (iii) [as listed at the beginning] and the top three should be invited for interview. That is not to say that if there are not three bidders, the entire notification should be scuttled.

The writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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