

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

* * * *

-

WRIT PETITION No.19470 of 2013

BETWEEN

D. Rama Rao.

... PETITIONER

AND

The Hindustan Petroleum Corporation Limited, Rep. by its Managing Director, 17, Jamshed
G Tata Road, Mumbai and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: .10.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

1. Whether Reporters of Local newspapers may be No
allowed to see the Judgments?
2. Whether the copies of judgment may be marked No
to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to see the No
fair copy of the Judgment?

-

ORDER:

Heard Mr. Vedula Venkataramana, learned senior counsel for the petitioner; Mr. B. Mayur Reddy, learned counsel appearing for respondents 1 to 4; Mr. K.V. Bhanu Prasad, learned counsel appearing for respondent No.5 and Mr. Krishna Kumar Kovvuri, learned counsel appearing for respondent No.6.

2. Petitioner challenges the order of the third respondent dated 24.06.2013 whereby after hearing the petitioner as well as respondents 5 and 6, the selection of retail outlet dealer at the advertised location was cancelled and the said location was ordered to be readvertised with appropriate description as per revenue record.

All the said parties were also given liberty to apply afresh as and when fresh advertisement is issued by the first respondent.

3. Brief facts pleaded in the writ petition are that in response to the notification dated 06.09.2010 of the first respondent, petitioner and respondents 5 and 6 applied for selection as retail outlet dealer. The location advertised was "Andugulpet village of LHS on Mancherla to Mandamarri Road, between 259 and 264 KM stone in Adilabad District". Petitioner states that he applied with reference to his own land situated at Andugulpet village whereas respondents 5 and 6 disclosed the land not within the said village but within KM 259 to 264. It is stated that interviews were held on 19.10.2011 and the fifth respondent was placed at Sl.No.1 while the sixth respondent and the petitioner were placed at Sl.Nos.2 and 3 respectively and another person at Sl.No.4. Petitioner made a complaint before the Grievance Redressal Committee, which considered the said complaint and by order dated 06.02.2012 found that the location offered by respondents 5 and 6 are outside Andugulpet village but within KM 259 to 264 and came to the conclusion that there was ambiguity in defining the location in the advertisement and decided to readvertise the location.

4. On communication of the said order to the petitioner on 08.05.2015, he filed WP.No.16579 of 2012. The fifth respondent also filed WP.No.19061 of 2012. Both the said

writ petitions were allowed by common order of this Court dated 09.07.2012 by setting aside the impugned order holding that cancellation of selection process is illegal. The respondents were directed to consider the representation of the petitioner afresh after giving notice and opportunity of hearing. Thereupon, fresh exercise was conducted by the first respondent and thereafter, on 24.06.2013, the impugned order was passed by the third respondent reiterating the cancellation of selection and directing fresh advertisement. The said order is questioned in this writ petition, *inter alia*, on the ground that the selection process, having been completed, cannot be abandoned or cancelled without there being any fault on the part of the petitioner and in spite of petitioner's land satisfying the location criteria. Petitioner has also raised the ground of *promissory estoppel* and legitimate expectation and contends that by order of this Court in the writ petitions, referred to above, there is an *estoppel* against respondents from cancelling the selection process.

5. When this writ petition was initially heard on 08.07.2013, notice was ordered and subsequently, after the standing counsel for the respondents appeared, by a further order dated 21.11.2014, it was noticed that in pursuance of the impugned order fresh notification was issued on 09.10.2014 and as the petitioner apprehended that finalizing the selection process, as per the subsequent notification, would frustrate the writ petition, an interim direction was given permitting the respondents to continue the process of selection but were directed not to finalize the selection. The said order continues to operate. All the respondents have now filed counter affidavits as well as vacate stay petitions seeking vacation of the said order. Accordingly, the vacate stay petitions as well as the writ petition was heard on 22.09.2015 and 30.09.2015 and reserved for orders.

6. Respondents 1 to 4 have filed counter affidavit justifying their stand that the location earlier advertised was itself ambiguous inasmuch as though it had mentioned Andugulpet village, there were two other villages located within the milestones 259 to 264 and thereby, the applications received from the petitioner and respondents 5 and 6 were for Andugulpet village as well as for the stretch falling within the milestones. The grievance redressal committee, having found that the location advertised itself was ambiguous, was of the view that the location has to be readvertised. Petitioner, however, challenged the said decision in the writ petitions, referred to above and

this Court allowed the writ petitions, primarily, on the ground that while cancelling merit panel, the ranking of the fifth respondent was also affected but neither he was given any notice nor was he heard and therefore, fresh exercise was directed to be conducted. It is stated that on 02.08.2012 the petitioner as well as respondents 5 and 6 were notified and the issue was freshly considered and on finding that the location advertised was ambiguous, the impugned proceedings were issued cancelling the merit panel as well as ordering re-advertisement with precise location. It is, therefore, contended that the petitioner cannot re-agitate the self-same issues, which were argued and decided in the writ petitions, referred to above,

7. Another counter affidavit by respondents 1 to 4 was also filed together with vacate petition viz. WVMP.No.1078 of 2015 with self-same contentions and seeking vacation of the interim order, referred to above, as extended thereafter.

8. Petitioner has filed a reply affidavit reiterating that the cancellation of selection was clearly arbitrary and the identical decision earlier reached by the grievance redressal committee was set aside by this Court. It is, therefore, contended that the present impugned order reiterating the same conclusions as that of the grievance redressal committee is clearly unsustainable. It is also pointed out that under the guidelines of the respondents, particularly, 18(c) and 19(b) define the procedure to be followed by respondents and the impugned order contrary thereto cannot be sustained.

9. Mr. Vedula Venkataramana, learned senior counsel for the petitioner, while reiterating the contentions in the writ petition, placed strong reliance upon the earlier order of this Court and submits that the issue with regard to cancellation of selection panel already stands concluded by the said judgment, which has become final and it is not open for the respondents to reiterate the self-same view again under the impugned order.

10. Per contra, Mr. B. Mayur Reddy, learned standing counsel for respondents 1 to 4, submits that this Court had set aside the order only on the ground that the fifth respondent was not notified and heard and for that reason, the matter was sent back for fresh consideration. Learned counsel submits that the third respondent had issued notice to

petitioner as well as respondents 5 and 6 and the said respondents are not, apparently, aggrieved by the impugned order, as they have not questioned the same. Learned counsel, therefore, submits that the ambiguity in the earlier notified location is evident as all the applications were strictly in accordance with the notified location but at different places. Since the first respondent corporation decided to locate the retail outlet at a specified location, the ambiguity in the notification could not be corrected except by re-advertisement and thus, the decision, which is impugned, had to be taken.

11. Learned standing counsel also placed reliance upon the guideline 18(a), which provides that the marks awarded by the dealer selection committee to the candidates in the merit panel, displayed on the notice board by the selection committee are subject to scrutiny by a senior officer of the corporation, who will submit a report to the Head Zone and as such, the merit panel so displayed by the selection committee after the interview would be considered to be final only after scrutiny of marks is conducted by senior officer of the corporation and found to be in order by Head Zone. Based on the above guideline, learned counsel submits that the merit panel, in this case, cannot be said to be a final merit panel as only the selection committee displayed the marks and the same was neither scrutinized nor approved by the head office. Learned counsel also pointed out guideline 19(b)(ii), which provides for cancellation of merit panel, in the circumstances, resulting in wrong location. In addition to that, learned counsel submits that subsequently fresh advertisement was issued on 09.10.2014 specifying "Andulgulpet LHS on SH1" as the location advertised, which describes the location precisely avoiding any ambiguity and contends that the selection process has reached final stage and held up on account of interim order of this Court.

12. Learned counsel for respondents 5 and 6 have specifically stated before this Court that neither of the respondents has any objection or grievance against the impugned order of the third respondent.

13. In view of these rival contentions, it is apparent that the selection process, in question, was cancelled on account of the ambiguity in the location advertised, as the location was not precisely notified. In my view, mere selection and empanelment of candidates would not

give any legal right to the candidate to insist on the selection process to go on and ultimately, it is left to the decision of respondents 1 to 4 to proceed further with the selection process or not.

14. In the earlier writ petitions, this Court had set aside the decision of the grievance redressal committee to cancel the selection process on the ground that it was without notice and without hearing the fifth respondent, who was ranked No.1 in the merit list. This Court, therefore, felt that the candidate placed at Sl.No.1 is deprived of his valuable right and any order that deprives him of the said position could have been passed only after he was given opportunity of being heard. The order of the grievance redressal committee was, therefore, set aside, primarily, on the aforesaid ground. This Court also gave liberty to the respondents to reconsider the matter after giving notice to all and opportunity to the petitioner. Admittedly, petitioner has been given due notice and opportunity, as he has himself filed a detailed representation dated 13.08.2012 demonstrating the ineligibility of respondents 5 and 6 and requested allotment to him.

15. The impugned order also shows due consideration of the petitioner's representation. It was also noticed that investigation report and physical verification found that apart from Andugulpet village, two other villages fall within the milestones including another village Timmapur. The impugned order, therefore, states that in pursuance of relevant guidelines of the first respondent corporation, the entire selection process had to be cancelled and re-advertisement of the precise location was necessary. The order, further, states that the petitioner, in any case, was placed at Sl.No.3 and would be entitled to selection only if candidates placed at Sl.Nos.1 and 2 are unsuccessful on any ground. I am, therefore, unable to see how invalidity can be alleged against the impugned order on any ground, as the selection process relating to ambiguous location could not have precisely assessed the location offered by the petitioner and respondents 5 and 6 as all of them would be technically qualified, having applied for the correct location. In my view, therefore, respondents 1 to 4 were justified in cancelling the selection process and advertising the precise location afresh. In fact, during the pendency of this writ petition, fresh notification was already issued on 09.10.2014 and the selection process is at the stage of finalization.

16. Learned senior counsel states that the petitioner could not apply in response to the fresh advertisement on account of reduction of age eligibility, as per the said subsequent notification.

17. Obviously, that also cannot be a ground as it is open for respondents 1 to 4 to stipulate the conditions of eligibility while issuing the advertisement. Looking at any of the angles, I do not find any arbitrariness or illegality in the impugned proceedings.

Consequently, the writ petition deserves to be dismissed and is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

October , 2015

DSK