

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.16987 of 2015
Date of Decision:19.12.2015

Amit Kumar

. . . .Petitioner

Versus

Union of India and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Deepak Balyan, Advocate,
for the petitioner.

Mr.Ashwinie Kumar Bansal, Advocate,
for respondent No.1 (UOI).

Mr.Raman Sharma, Advocate,
for respondents No.2 and 3.

RAKESH KUMAR JAIN, J.

The Bharat Petroleum Corporation Limited (BPCL) [for short 'the Company'] in order to appoint LPG distributors at the location 'Thana Chappar', village Yamunanagar, invited applications vide its advertisement dated 20.11.2013. The petitioner along with 9 other persons applied and all were found eligible. Thereafter, selection of the dealer was made by way of draw of lots on 25.11.2014 in which the petitioner was successful and confirmed by the Company vide its letter dated 2.12.2014. The petitioner also deposited ₹25,000/- in favour of the Company for Field Verification of Credentials (FVC). Since, the Letter of Intent (LOI) was not issued to the petitioner, therefore, he filed CWP No.13584 of 2015 and in those proceedings, he was apprised of by the Company vide its letter

dated 24.7.2015 that the advertisement for the location of 'Thana Chappar' has been cancelled by the Company. The petitioner has thus challenged the letter dated 24.7.2015 in the present writ petition.

It is submitted by learned counsel for the petitioner that action of the respondents is totally arbitrary and unreasonable in cancelling the location of 'Thana Chappar' on the ground that the said location is known as 'Chappar Mansurpur'. It is further submitted that the error in the advertisement can be corrected by way of a corrigendum as the location 'Chappar Mansurpur' is also commonly known as 'Thana Chappar'.

On the other hand, learned counsel for the Company has argued that since the location was not specifically mentioned in the advertisement dated 20.11.2013 as 'Chappar Mansurpur', therefore, the Company has decided to cancel the advertisement and all subsequent proceedings because of a right, in terms of Clause 11 of the general conditions of the advertisement, which the company reserves to cancel/withdraw or amend the advertisement at his sole discretion without assigning any reason. In this regard, learned counsel for the Company has relied upon a decision of the Supreme Court in the case of **Sr. Divisional Retail Sales Manager, Indian Oil Corporation Ltd. through POA Holder and others Vs. Ashok Shankarlal Gwalani** 2012 (13) SCC 260 and a judgment of this Court rendered in **CWP No.15913 of 2013** titled as **"Meena Yadav Vs. Bharat Petroleum Corporation Ltd. and others"** decided on 29.9.2015. Whereas, learned counsel for the petitioner has also relied upon a judgment of the Supreme Court in the case of **"Monika Gupta Vs. Union of India"** 2010 (6) SCC 574.

I have heard both the learned counsel for the parties and perused the available record.

There is no dispute that the petitioner has been selected in the draw of lots held on 25.11.2014 and field verification of his credentials for which he had paid ₹25,000/- to the Company, has also been carried out. The reason assigned for cancelling of advertisement by the Company in the impugned order is as under: -

“This is to inform you that during the subsequent verifications it has been observed that as per revenue records, that there is no location ‘Thana Chappar’ in the district of Yamunanagar in the State of Haryana. The location ‘Chappar Mansurpur’ in all revenue records is commonly known as ‘Thana Chappar’. All the revenue documents for lands in the area ‘Thana Chappar’ are recorded under the revenue name of ‘Chappar Mansurpur’. Hence it is decided and agreed by the Oil industry that no applicant would be technically eligible for the location ‘Thana Chappar’ to provide showroom at the advertised location’.

According to the respondents one Ranjit Singh Cheema made a complaint that there is no location as ‘Thana Chappar’ in the revenue record. This aspect was enquired into by writing a letter to the SDM, Yamunanagar on which the Naib Tehsildar, Mustafabad has made a report that in Halqa Chappar Mansurpur there is no village as ‘Thana Chappar’ as per revenue record rather people in Halqa Chappar Mansurpur call village ‘Chappar Mansurpur’ as

‘Thana Chappar’ and police action is taken in the name of ‘Thana Chappar’. In the industry meeting dated 20.4.2015 and 8.6.2015, which decides the allocation of locations to respective oil companies, it was decided to drop the defective location and to re-advertise the same with correct name as per revenue record i.e. ‘Chappar Mansurpur’.

From the aforesaid facts, it is apparent that the area which is popularly known as ‘Thana Chappar’ is recorded in the revenue record as ‘Chappar Mansurpur’, meaning thereby, location is the same but the said location has two names, one recorded in the revenue record and the other which is being popular at the site as even the Police Station in that area is also known by the name of ‘Thana Chappar’ which is evident from the photograph placed on record as Annexure P-11 and also in the report of the SDM.

The question, thus, would arise as to whether on this ground, the advertisement should be cancelled?

The judgment relied upon by the respondents in the case of **Sr. Divisional Retail Sales Manager, IOCL (Supra)** has altogether different facts because in that case, the Indian Oil Company was to allot the dealership of the site located as Thane Belapur Road, Village Mahape, Navi Mumbai, Maharashtra in which one Nilesh L. Kudalkar was selected after evaluation of the marks given to the candidates. A dispute was raised in that case about the process of evaluation and in that background it was held by the Supreme Court that *“generally, if an irregularity is detected in the matter of selection or preparation of a panel it is desirable to have a fresh selection instead of re-arranging the panel which is found to be vitiated. The Authority empowered to appoint, is the competent*

authority to decide as to whether the panel should be discarded and there should be a fresh selection in view of the facts narrated above. In such circumstances, the High Court under Article 226 of the Constitution of India ought to not have interfered with the decision of the competent authority in cancelling the selection".

This judgment has been followed by a Single Bench of this Court in the case of **Meena Yadav (Supra)** in which the issue was about the proper advertisement of the location. In the said case, location was wrongly mentioned in the advertisement as in the village 'Dahina on Rewari Kania Road in District Mahendergarh' whereas, it should have been village 'Dahina on Rewari Kania Road in District Rewari'. It was observed therein that because of wrong advertisement of the District, many persons were deprived of their opportunity to file applications for allotment of retail outlet.

In the present case, however, no one has come to this Court that because of wrong mentioning of the location, he has been deprived of an opportunity to apply for the outlet. In the reply filed by the respondents/Company, it is only mentioned that one Ranjit Singh Cheema had made a complaint that there is no location as 'Thana Chappar' in the revenue record but nothing has been mentioned thereafter that he was also a candidate for the allotment of the outlet and has been deprived of an opportunity to apply because of the wrong mentioning of the location which is otherwise popularly known as 'Thana Chappar'.

In my opinion, had it been mentioned as 'Chappar Mansurpur' which is the entry in the revenue record, there were more chances of people being deprived of from applying for the outlet because the said location is only in the revenue record which

is otherwise popularly known as 'Thana Chappar'. Even otherwise, as many as 10 persons had applied for the outlet and the petitioner has been successful only in the draw of lots. Thus, both the judgments, relied upon by the respondents, are not applicable to the facts and circumstances of the present case.

In the case of **Monika Gupta (Supra)**, relied upon by the counsel for the petitioner, issue was again with regard to erroneous evaluation of candidates but the Supreme Court has observed that *"the submission of the learned Solicitor General that the Court may allow respondent Nos.2 and 3 to re-advertise the LPG distributorship in question because no discernible method was followed by the concerned authorities for receiving the applications and documents sounds attractive but in the facts of this case we are not inclined to accept the same because that would cause serious prejudice to appellant who was duly selected and placed at Sr. No.1 in the panel/merit list"*.

Thus, keeping in view the facts and circumstances of the case, I am of the considered opinion that the respondents have committed an error in cancelling the advertisement of location 'Thana Chappar' on the ground that it is not mentioned in the revenue record as the said location is mentioned as 'Chappar Mansurpur' but the said location of 'Chappar Mansurpur' is popularly known as 'Thana Chappar'. The respondents should not have cancelled the advertisement because no one has made a complaint that he has been misled because of the wrong mentioning of the location and the location of 'Thana Chappar' can also be described as 'Thana Chappar' alias 'Chappar Mansurpur' as the location is the same and is situated in District Yamunanagar.

Hence, the present petition is hereby allowed and the impugned letter dated 24.7.2015 is quashed.

19.12.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**