

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision:- 6th January, 2015.

+ LPA No.5/2015

INDIAN OIL CORPORATION LTD. Appellant

Through: Ms. Mala Narayan, Adv.

Versus

SANJEEV KUMAR Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 3rd November, 2014 of the Single Judge of this Court allowing WP(C) No. 5238/2012 preferred by the sole respondent Shri Sanjiv Kumar against the appellant herein.

2. Though the appeal is accompanied with an application for condonation of delay of one day in filing thereof but having gone through the paper book and having prima facie not found any merit in the appeal, we have heard the counsel for the appellant at length on the admissibility of the appeal.

3. The writ petition from which this appeal arises was filed by the respondent impugning the decision dated 16th July, 2012 of the Re-evaluation Committee of the appellant whereby re-evaluation of the merit panel earlier prepared by the appellant for allotment of Indian Oil Retail Outlet at Palam was carried out and a fresh merit panel prepared wherein the respondent was moved from the 3rd to the 4th position and in pursuance whereunto the dealership agreement executed by the appellant with the respondent was sought to be cancelled/terminated.

4. The learned Single Judge, in the impugned judgment, has found/observed/held:

- i. that the appellant on 15th October, 2010 had issued an advertisement inviting applications for allotment of dealership of Indian Oil Petrol Pumps at various sites;
- ii. the respondent applied for dealership of retail outlets at two sites (however the writ petition was concerned only with the site at Palam);
- iii. as per the result declared on 8th April, 2011 of the Evaluation Committee for allotment of dealership of retail outlet at Palam, the

respondent stood 3rd in the merit panel;

- iv. subsequently the appellant issued a Letter of Intent dated 29th November, 2011 to the respondent, allotting the dealership for retail outlet at Palam;
- v. on 2nd December, 2011, a Dealership Agreement was executed between the appellant and the respondent with respect to the retail outlet at Palam;
- vii. in pursuance to an RTI application of one Mr. Rajendra Rajora it came to the notice of the appellant that the Evaluation Committee of the appellant, while preparing the merit panel for the retail outlet at Palam, had wrongly awarded some marks to the respondent;
- viii. accordingly on 16th July, 2012 a Re-evaluation Committee of the appellant carried out re-evaluation of all eligible candidates and in which it was found that some marks had indeed been wrongly awarded to the respondent; accordingly, a fresh merit panel was prepared, in which the respondent, as per his revised score, was found entitled to the 4th instead of the 3rd position. Accordingly a fresh merit panel list was prepared with respect to the retail outlet at

Palam and in which the respondent was moved from 3rd to the 4th position and one Ms. Kirti Joshi Kumar was advanced to the 3rd position;

- ix. the appellant vide its letter dated 7th August, 2012 informed the respondent that he was “no more empanelled candidate for the above location”;
- x. impugning the aforesaid, the writ petition from which this appeal arises was filed;
- xi. during the pendency of the writ petition, the appellant issued show cause notice dated 1st November, 2012 to the respondent for cancellation of the Dealership Agreement dated 2nd December, 2011;
- xii. that the error on the part of the Evaluation Committee of the appellant was on account of the Evaluation Committee, while preparing the merit panel, accepting the affidavit (filed by the respondent alongwith its application) of a prospective customer who had assured the purchase of certain quantity per month from the respondent if the allotment was made in favour of the respondent, when the said affidavit on account of a blank space in one of the

paragraphs thereof was liable to be rejected and the respondent was not entitled to any marks on the basis thereof;

xiii. it was however not the case of the appellant that the mistake/error on its part in accepting the said affidavit and/or in, on the basis thereof giving marks to the respondent, was on account of any of its officials having unduly favoured the respondent or on account of any *mala fides* on the part of the Evaluating Committee or of the respondent having *mala fidely* secured the allotment in its favour;

xiii. it was purely a case of the Evaluation Committee of the appellant having overlooked the error in the affidavit and/or in condoning it;

xiv. though the policy of the appellant for 'Handling Complaints in Selection of Dealers/Distributors' permitted re-evaluation but since the same also provided for issuance of Letter of Intent only after 30 days of declaration of result and when no complaint was pending for disposal, and further since the brochure issued by the appellant provided for a time of 30 days from the date of declaration of results for making such complaints, it meant that the complaint could be made within a period of 30 days only and not thereafter; else there

would be uncertainty with regard to the finalization of allotment;

- xv. in the present case, not only had the Letter of Intent been issued to the respondent but even a Dealership Agreement had been signed between the parties and a period of over 9 months had elapsed before the appellant sought to terminate the same;
- xvi. the Dealership Agreement of the respondent could not be terminated at that stage, particularly when there was no allegation of malafide or undue influence on the part of the respondent;
- xvii. rather the appellant ought not to have entertained the complaint after the lapse of 30 days;
- xviii. that though undoubtedly there was a blank in one of the paragraphs of the affidavit submitted by the respondent alongwith his application but since the Dealership Agreement had been signed and the respondent had functioned as the dealer for nearly 9 months, records would be available whether the deponent of the said affidavit had complied with the undertaking given therein or not; the appellant had however ignored the same;
- xix. it was the contention of the respondent that the deponent of the

affidavit had complied with the undertaking given therein;

- xx. it would be unjust if the appellant were to be permitted to terminate the contract on account of its own inadvertent error in evaluating the respondent's application.

Accordingly, though the decision taken on 16th July, 2012 of the Re-evaluation Committee and the letter dated 7th August, 2012 were set aside but it was directed that the appellant shall examine the offtake of the deponent of the affidavit aforesaid from the retail outlet allotted to the respondent and if it was found that the deponent of the affidavit had abided by the undertaking contained therein, the respondent would be given an opportunity to furnish a rectified affidavit; however if it was found that the deponent of the affidavit had not complied with the undertaking given in the affidavit, then the appellant would be free to cancel the dealership of the respondent.

5. The view aforesaid of the learned Single Judge of this Court is a plausible view and which cannot be said to be not possible in the facts of the case. We have thus, at the outset, only inquired from the counsel for the appellant as to why this Court should interfere in exercise of Letters Patent

jurisdiction. We may notice that Division Benches of the High Courts of Punjab and Haryana, Gauhati and Bombay in *Major Jagjit Singh Vs. Kartar Singh* MANU/PH/0288/1973, *Sri. Naren Talukdar Vs. The Publication Board* MANU/GH/0189/2011 and *Sulochana Daulatrao Thakare vs. Sangam Shikshan Sanstha* 2004 (4) Bom. C.R. 488 respectively have held that an intra court appeal under Letters Patent is not to be mistaken as an ordinary appeal and that the jurisdiction thereunder against the judgment of a Writ Court under Article 226 is narrower than that of the Writ Court. It was further held relying on *Milkhiram (India) Private Ltd. vs. Chamanlal* AIR 1965 SC 1698 that the Judges hearing the LPA have no jurisdiction to entertain “any appeal merely because they do not agree with the plausible view taken by the learned Single Judge on the basis of cogent material before him unless it is perverse or patently illegal”. We tend to agree with the said view of the High Courts of Punjab and Haryana, Gauhati and Bombay. After all, distinction has to be carved out between appeals arising from the orders of District Courts and Tribunals and appeals arising from the orders of Single Judges of this Court. A Single Judge is not a Court subordinate to the High Court.

6. The counsel for the appellant only contends that the interpretation

placed by the learned Single Judge on the policy (supra) of the appellant does not take note of another clause of the brochure which provides that if any statement made in the application or in the document enclosed therewith is found to be incorrect or false “at any point of time” , the application would be liable to be rejected and in case the appellant is appointed as a dealer, he will still have no claim whatsoever against the appellant.

7. Besides the fact that the aforesaid contention does not answer the query put by us to the counsel for the appellant, we are also of the view that the clause of the brochure relied upon by the appellant does not advance the case of the appellant any further. The said clause entitles the appellant to take action only in the event of any statement made by the applicant for dealership being found to be incorrect or false. The appellant however has not sought to cancel the dealership of the respondent on the ground of any statement made by the respondent in the application for dealership or any document filed therewith being found to be false or incorrect. The ground on which the dealership of the respondent is sought to be cancelled, is of error of the appellant itself in evaluation of the application of the respondent thereby resulting in award of marks to the respondent and to which marks he was not entitled.

8. We have rather asked the counsel for the appellant whether the Dealership Agreement signed by the appellant with the respondent provides for cancellation thereof on the ground on which it is purported to be cancelled. The counsel for the appellant states that the Dealership Agreement was not even placed by the appellant before the learned Single Judge and is also not available today.

9. We are of the view that the stage of submission of application for dealership and evaluation thereof came to an end on the signing of the Dealership Agreement. The relationship between the parties thereafter is to be governed by the Dealership Agreement. Without the appellant showing that its action of seeking to terminate the agreement is in accordance with the terms thereof, the termination by the appellant of the Agreement would clearly be unsustainable. We reiterate that this is not the case, of the respondent by playing any fraud having made the appellant enter into an agreement.

10. The counsel for the appellant has also contended that merely being on the merit panel does not entitle a candidate to allotment and that the prescribed eligibility criteria binds the parties and cannot be altered by the Court. Several judgments in support thereof are cited in the memorandum of

appeal itself.

11. However the aforesaid contention again ignores the fact that the matter had travelled beyond the stage of merit panel and selection of dealer and is sought to be re-opened for reasons attributable to the appellant itself. As aforesaid, unless the Dealership Agreement signed between the parties permits the appellant to cancel the Agreement on detection of any mistake in selection of the respondent as a dealer, the appellant cannot be permitted to exercise that right.

12. Rather, finding that the person who originally was 4th on the merit panel and who on re-evaluation has been moved to the 3rd position is not a party to the writ petition or this appeal, we inquired from the counsel for the appellant whether there is any person who is claiming the said dealership in place of the respondent.

13. The counsel for the appellant states that there is no such person.

14. For this reason also we are of the view that the action of the appellant of purporting to terminate the dealership of the respondent has been rightly struck down by the learned Single Judge.

15. Rather we find that the learned Single Judge, inspite of holding the

action of the appellant of purporting to terminate the dealership of the appellant to be bad, has still given an opportunity to the appellant to terminate the dealership if finds the deponent of the affidavit submitted by the respondent to be not in compliance with the undertaking given therein. The same, in our view sufficiently protects the interest of the appellant and the appellant has no reason to be aggrieved from the order.

16. We accordingly do not find any merit in the appeal and dismiss the same. No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

**JANUARY 6, 2015
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