IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6664 OF 2007

Hanuman Radhakishan Joshi,
Age : 53 years, Occ.: Business,
R/o. At present at Nath Nagar Colony,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar ..Petitioner

Vs.

1. The Union of India,
   Through Minister of Petroleum
   and Natural Gas,
   Government of India,
   Shastri Bhavan, New Delhi

2. Indian Oil Corporation,
   (IBP Division),
   formerly known as
   the IBP Company Ltd.,
   the company incorporated under
   the Indian Companies Act, 1956,
   having its registered office at
   IBP House, 34/A, Nirmal Chandra
   Street, Kolkata – 700 013 ..Respondents

Mr. P.S. Dighe, Advocate i/b. Mr. V.R.Dhorde, Advocate for petitioner

Mr. A.P. Bhandari, Advocate for respondent no.2

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : SEPTEMBER 19, 2017

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.) -

1. Rule. Rule made returnable forthwith. By consent, heard learned counsel appearing for the parties, finally.

2. The petitioner purports to challenge to circular dated 21-12-2006 issued by respondent no.2 – Petroleum company, in respect of allotment of company's retail outlet dealership and seeks allotment of dealership to the petitioner at the location of land in his possession. Subsequently, the petitioner has amended the petition and purports to pose a challenge to letter dated 27-05-2003 issued by respondent no.2 withdrawing letter dated 29-01-2003, seeking declaration that said letter dated 27-05-2003 is illegal, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. Broad facts, which are not disputed and may be noted, are that erstwhile IBP company (hereinafter 'IBP') had issued a circular dated 08-10-2002, whereunder it had framed a policy for providing retail outlets of the company to various categories referred to, inter-alia, category-I i.e. for the land owners. In response to the same, various land owners had offered their lands for retail outlet dealership. The petitioner, on 22-01-2003, had filed an application as power of Attorney holder and nominee of land owner Mr.Purushottam

Dhoot for allotment of retail outlet. He was interviewed on the very same day. On 29-01-2003, a letter had been issued to the petitioner intending to allot a retail outlet dealership and asking the petitioner to execute an agreement therefor and to deposit an amount of Rs.2,50,000/-. The petitioner had deposited said sum accordingly on 04-02-2003.

4. Thereafter, petitioner had been again interviewed on 17-05-2003 pursuant to his application for Maintenance and Handling Contract for Company Owned Company Operated ("COCO") retail outlet and informed under letter dated 27-05-2003 about being appointed as Maintenance and Handling (M & H) contractor for company owned outlet at Shevgaon. The communication also refers to requirement of execution of M & H contract and of DD for Rs. 25000/-. Accordingly petitioner had deposited said amount with IBP.

5. There had been change in the policy under a decision dated 05-02-2003 and in view of the same, it appears that respondent No.2 had decided not to go ahead with intention to enter into agreement to grant dealership as referred to under the letter dated 29-01-2003. Accordingly, the petitioner had been issued a letter dated 27-05-2003 withdrawing letter dated 29-01-2003 and

informing that nomination or intention of allotment of retail outlet has been cancelled and amount of Rs.2,50,000/- paid by the petitioner was being refunded.

6. Subsequently, respondent No.2 had entered into a lease agreement in respect of the land of the petitioner for about 29 years in favour of IBP company. The petitioner had executed a contract in July, 2003 for maintenance and handling and from time to time, the maintenance and handling contract entered into between them had been continued.

7. Aforesaid arrangement continued between the parties till respondent No.2 informed the petitioner about commission on sales under the new policy. There was revised remuneration package pursuant to which, the petitioner was required to deposit certain sum, which the petitioner appears to have deposited.

8. It appears that pursuant to the new policy respondent No.2 directed the petitioner to make an application. Since continuance of maintenance and handling contract is perceived to be prejudicial to petitioner under the new policy, a challenge has been posed as aforesaid.

9. In the meanwhile, it appears that the policy decision of 05-02-2003 had been taken exception to before the High Court by other operators of retail outlets. Said challenge had been rejected by High Court in the year 2008. A Civil Appeal against said decision, was preferred before the Hon'ble Supreme Court.

10. Learned counsel for the petitioner, during the course of arguments, submits that though challenge to the policy decision of 2003 has apparently failed before Supreme Court in the *group of Writ Petitions, Civil Appeal No.5228 of 2013 and other companion appeals (Mohd. Jamal Vs. Union of India and anr.)*, yet, the Hon'ble Supreme Court distinguishes the case from the operators in whose favour letter of intent had been issued. Relevant observations of the Hon'ble Supreme Court in paragraph 58 of the decision, emphasised on read thus:

> *" ....Had any Letter of Intent, which tantamounts to grant of dealership, been issued and then in respect of the same lands COCO units were established, the situation would have been different.........."*

11. Learned counsel for the petitioner submits that taking into account facts of present case, while the Letter of Intent/Allotment dated 29-01-2003 had been issued pursuant to the

prevailing policy dated 08-02-2002, dismissal of challenge to subsequent policy of 05-02-2003 would not affect rights accrued to the petitioner under policy dated 08-10-2002. He submits that pursuant to said policy, as a land owner he had offered his land for allotment of retail outlet dealership, which came to be considered and the Letter of Intent had been issued. He submits that certain rights are created in favour of the petitioner for allotment, which could not have been arbitrarily negated under the garb of subsequent policy decision.

12. He submits that further actions by the petitioner which in all probability are likely to be referred to would not at all affect the rights accrued to petitioner. He submits that respondent No.2 had been in dominant position and all the further actions, as such, were influenced by such position of respondent No.2. He, therefore, urges to allow the Writ Petition in terms of the amended prayer clause by quashing and setting aside letter dated 27-05-2003 declaring the same to be illegal, arbitrary and violative of Articles 14, 19 (1)(g) of the Constitution of India and urges to consider the case accordingly.

13. Learned counsel for the petitioner further contends that respondent No.2 is likely to oppose the petition contending *laches*.

14. He submits that initially policy of 2003 had been challenged by the other operators of retail outlets as referred to above, which did not bear fruits before High Court and the same had been taken to the Hon'ble Supreme Court, which was decided in 2013. Therefore, present Writ Petition has been amended having regard to the observations of the Hon'ble Supreme Court appearing at page no.46 paragraph 58 of its judgment in the case of *Mohd. Jamal Vs. Union of India and anr. delivered in Civil Appeal No.5228 of 2013*. He, therefore, submits, opposition to petition on the ground of laches would be unsustainable.

15. Learned counsel for respondent no.2 submits that the petitioner is expected to explain not only *laches* but has also get out of acquiescence as well as estoppel. He submits that after letter dated 29-01-2003 had been withdrawn, the petitioner had accepted refund of Rs.2,50,000/-. Not only the petitioner had entered into the maintenance and handling contracts but also based on policy of 05-02-2003, had entered into the subsequent agreements with respondent no.2 in respect of the very land. The petitioner had not, even by semblance, resisted or opposed or challenged the order

cancelling letter dated 29-01-2003 under letter dated 27-05-2003 till the amendments were sought in 2014.

16. The learned counsel for respondent no. 2 further contends that a Letter of Intent does not create any rights in the petitioner to have a petrol pump dealership unless and until an agreement is executed to that effect. He further purports to point out that the letter dated 29-01-2003 makes clear, under condition No.3 of the same, that the letter and the transaction between the parties would be subject to the subsequent policy decision. Condition no. 3 reads thus :-

> *" 13. As you are aware that IBP Co. Limited is a group Company of M/s. Indian Oil Corporation Ltd. and IBP is required to abide by all the instructions, guidelines and policies declared by Government from time to time, and you would also be bound by all such directions and actions pursuant to those directions."*

17. He submits that after cancellation of the letter dated 29-01-2003 under letter dated 27-05-2003, many events have occurred as aforesaid. Respondent no.2 has acted in furtherance of the policy dated 05-02-2003. In the circumstances, the petitioner is estopped from going back to letter dated 29-01-2003 and assert so called rights based on the same. He submits that the *laches* would

come into play in respect of the same since there has been no attempt to challenge the letter dated 27-05-2003, till 2014. He submits that the observations of the Supreme Court sought to be relied upon, would not in any way assist the petitioner to get over the *laches.* As a matter of fact, there is no explanation tendered as to why the challenge has not been raised till 2014. The observations of the Supreme Court are only explanatory and would not give rise to any fresh right to the petitioner. He, therefore, submits that there is no substance in the petition and the same deserves to be dismissed.

18. Although petitioner purports to challenge new policy under Circular dated 21-12-2006, it is not shown as to how the Circular would be violative of Article 14, 14(1)(J), and 300. It is not disputed that said circular applies uniformly across the country. It appears that the petitioner had not challenged the policy dated 05-02-2003. There is no plausible explanation forthcoming from the petitioner, as to what has kept him back from challenging cancellation of letter dated 29-01-2003 under letter dated 27-05-2003. Though the petitioner contends that respondent no.2 had been in dominant position, it is not shown that it was such as would

prevent the petitioner from challenging the action of respondent no.2. In the facts and circumstances as aforesaid, it does not carry any substance. The petitioner had not only entered into further transactions with respondent no.2 pursuant to the prevailing policy of respondent no.2, but also has taken benefit of the same for quite a long time. While there has been subsequent change in the policy of 2003 and as new policy was introduced in 2006, he purports to challenge the subsequent policy of 2006. Originally when the writ petition was filed, he did not then intend to challenge cancellation of letter dated 29-01-2003. It appears that during pendency of this Writ Petition, after the decision had been rendered by the Supreme Court, the petitioner purports to take exception to the letter dated 29-01-2003. It does not appear to be the case of the petitioner that further action had been taken establishing COCO unit before withdrawal of letter dated 29-01-2003.

19. Observations relied on by petitioner reproduced in paragraph 10 herein above in the case of *Mohd. Jamal (supra)* in the present undisputed set of facts does not inure any benefit to the petitioner. It is not the case at all that petitioner had expected anything with reference to letter dated 29-01-2003 after it had been

withdrawn on 27-05-2003. No agreement in furtherance of said letter dated 29-01-2003 before 27-5-2003 had been entered into. In any case extract of paragraph no.58 of the case of *Mohd. Jamal (supra)* relied upon as quoted by petitioner would not be taken into account out of context. It appears that in said matter, petitioner-land owner's case was contended to be pending before petroleum company and further contracts were interim arrangement. It is not such a case in the present petition nor such is the contention. With withdrawal of so called letter of intent dated 29-01-2003, there is no case at all for petitioner based on promissory estoppel or legitimate expectation that too a decade after when the withdrawal is sought to be challenged based on decision of Supreme Court. The petitioner had, in fact, pursuant to the new policy, entered into a contract with respondent no.2. Petitioner had not challenged 2003 cancellation of letter at all till 2013. As such, we do not consider that the petitioner can claim entitlement to dealership based on earlier policy decision while he appears to have entered into maintenance and handling contract based on the subsequent/changed policy. It would be worthwhile to reproduce paragraphs 58 and 59 from Supreme Court judgment in the case of *Mohd. Jamal vs. Union of India & another* (supra).

" *58. In order to appreciate the difference between the two concepts, it has to be understood that the concept of a dealership in respect of a retail outlet is completely alien to the concept of a COCO unit. While the former deals with the right of the dealer to independently operate the retail outlet, in the case of a COCO unit, the entire set up of the retail outlet is owned by the Oil Companies and only the day-to-day operation thereof is outsourced to a M&H Contractor.* ***With the discontinuance of the earlier policy of granting dealerships in respect of retail outlets and the introduction of a new policy awarding M&H Contracts in respect of the COCO outlets, in our view, the land owners who had entered into fresh lease agreements after the policy to grant dealerships had been suspended, cannot now claim any right on the basis of the earlier policy in the absence of any Letter of Intent having been issued thereunder. Had any Letter of Intent, which tantamounts to grant of dealership, been issued and then in respect of the same lands COCO units were established, the situation would have been different. Placed in such a position, the land owners cannot claim any relief in these proceedings and, if any loss or damages have been suffered by them on account of the assurance earlier given regarding grant of dealership, particularly in making the sites ready therefor, the remedy of such applicants would lie elsewhere. The policy guidelines and, in particular, Clauses 1.2 and 1.2.2 thereof are not available to the Appellants and the Petitioners in these proceedings, which are concerned mainly with COCO units which have no connection with the concept of dealership.***

59. ***We are inclined to hold that the doctrine of promissory estoppel and legitimate expectation, as canvassed on behalf of the Appellants and the Petitioners, cannot be made applicable to these cases where the leases have been granted by the land owners on definite terms and conditions, without any indication that the same were being entered into on a mutual understanding between the parties that these would be temporary arrangements, till the earlier policy was restored and the claim of the land owners for grant of dealership could be considered afresh.*** *On the other hand, although, the nominees of the lessors were almost in all cases appointed as the M&H Contractors, that in itself cannot, in our view, convert any claim of the land owner for grant of a permanent dealership. As has* *been indicated hereinbefore, even the M&H Contractor had to submit an affidavit to the effect that he did not have and would not have any claim to the dealership of the retail outlet and that he would not also obstruct the making over possession of the retail outlet to the Oil Company, as and when called upon to do so. The decisions cited on behalf of the Appellants/Petitioners, are not, therefore, relevant for a decision in these cases. Although, the Appeals have been filed on account of the denial to the land owners of the grant of dealership in respect of the lands demised by them to the Oil Companies, the entire focus has shifted to COCO outlets on account of the fresh lease agreements entered into by the Appellants with the Oil Companies which has had the effect of obliterating the claim of the land owners made separately under earlier lease agreements. The claims of the Appellants/Petitioners in the present batch of matters have to be treated on the basis of the agreements subsequently entered into by the Oil Companies, as submitted by the learned Attorney General."*

20. In the circumstances, observations relied on, which is a portion extracted from aforesaid paragraph as reproduced under paragraph 10 above, cannot be isolated and construed and interpreted separating the same from rest of portion of paragraph no.58. As such, observations relied on by petitioner would be hardly of any assistance to the petitioner.

21. The learned counsel for petitioner during the course of submissions had relied on decision in the case of *Basantiprasad Vs. Chairman, Bihar School Examination Board and others, (2009)6 SCC 791*. The decision has been rendered by Supreme Court on the background

that termination order had been passed in 1992, challenge to which was posed by employee's wife in 2007 after conviction of employee was set aside by Appellate Court, while employee's termination order was passed by the employer on the basis of conviction. In the circumstances, it had been considered by the Supreme Court that delay has been satisfactorily explained. In the present case, it is difficult to consider that any analogy can be drawn from cited case, which would be applicable to the facts of the present case.

22. The learned counsel for the petitioner also relies on a decision in the case of *Dr. Zakir Hussain Primary Teachers Training College and anr. Vs. State of Bihar and ors., (2010) 12 SCC 517*. It appears that in said case examinations were conducted in 1984, but its results were withheld and the school examination board passed resolution in February, 2004 to cancel the results. Thus, Writ Petition was preferred in March, 2004 questioning legality of the resolution. High Court dismissed the writ petition on the ground of *laches*. The Supreme Court, in the circumstances, had considered the contentions raised by the parties. It is in the circumstances of said case, setting aside High Court order, the matter was remitted for reconsideration to High Court by the Supreme Court. From this case

as well, it is difficult to consider that any analogy can be drawn, which would be applicable to the facts of the present case.

23. In the present case while letter dated 29-01-2003 had been withdrawn, there had been no challenge at all to withdrawal and after withdrawal of letter dated 29-01-2003 fresh agreement had been entered into. No promise was there nor can there be any legitimate expectation after withdrawal of said letter.

24. In the circumstances, the Writ Petition fails and is dismissed. Rule stands discharged.

25. The learned Counsel for the petitioner prays that the interim relief granted earlier, may be continued for a period of twelve weeks, in order to enable him to challenge the present order.

26. The learned Counsel for respondent no.2 opposes the said prayer.

27. We deem it appropriate to continue the interim relief granted earlier, for a period of twelve weeks from today.

[SANGITRAO S. PATIL, J.] **[SUNIL P. DESHMUKH, J.]**

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