

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.1042 of 2015

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.19470 of 2013 dated 14.10.2015. The appellant herein is the petitioner in W.P.No.19470 of 2013 wherein he sought a Writ of mandamus to declare the action of the Chief Regional Manager, M/s.Hindustan Petroleum Corporation Limited (HPCL), in cancelling the dealer selection process vide proceedings dated 24.06.2013 and in issuing a fresh advertisement/notification, as illegal and arbitrary. A consequential direction was sought to the respondents to adhere to the advertisement/notification dated 06.09.2010 as regards the retail outlet proposed at Andugulpet Village on LHS of Mancherial to Mandamarri Road between 259 and 264 KM stones and to appoint the petitioner as the dealer in terms of the findings recorded by the Grievance Redressal System, vide proceedings dated 06.02.2012, holding respondents 5 and 6 to be ineligible.

Facts, to the limited extent necessary, are that, in response to the notification issued by the 1st respondent on 06.09.2010, the appellant herein, and respondents 5 and 6, applied for selection as a retail outlet dealer. The notification dated 06.09.2010 lists 234 locations where HPCL sought to appoint retail outlet dealers. The location mentioned at serial No.57 is *“Andugulpet Village on LHS on Mancherial to Mandamarri Road between 259 and 264 KM stone in Adilabad District”*. While the appellant's site is located near Andugulpet Village, the sites identified for establishment of a petrol retail outlet by

respondents 5 and 6 are located in Thimmapur Village. Both Andugulpet and Thimmapur Villages fall between 259 and 264 KM stones on Mancherial to Mandamarri Road.

Pursuant to the exercise of selection undertaken on 19.10.2011, respondent No.5 was awarded rank No.1, respondent No.6 rank No.2, and the appellant herein rank No.3. The appellant submitted a complaint to the Grievance Redressal Committee which, in its order dated 06.02.2012, held that the locations offered by respondents 5 and 6 were outside Andugulpet Village, but within 259 and 264 KM Stones; and there was ambiguity in defining the location in the advertisement. They decided to re-advertise the location.

On being so informed by HPCL on 08.05.2015, the appellant filed W.P.No.16579 of 2012 and the 5th respondent filed W.P.No.19061 of 2012. Both the writ petitions were heard and, by common order dated 09.07.2012, the Learned Single Judge set aside the proceedings of the Grievance Redressal Committee dated 06.02.2012 on the ground that the petitioner in W.P.No.19061 of 2012 (respondent No.5 herein) was not put on notice before the said order was passed which had the effect of annulling the entire selection process. On the ground of violation of principles of natural justice, the order passed by the Grievance Redressal Committee dated 06.02.2012 was set aside, and the respondents were directed to consider the representation submitted by the appellant herein afresh, after putting respondent No.5 on notice, and after giving him an opportunity of being heard.

Thereafter the respondents examined the matter afresh and, by proceedings dated 24.06.2013, informed the appellant that he had personally visited the Corporation on 13.08.2012, and had submitted

his objections vide letter dated 13.08.2012; the appellant had informed the Corporation, by his earlier letter, that the site offered by the 5th respondent, for establishing a retail outlet, was situated in Thimmapur Village and beyond Andugulpet Gram Panchayat limits; he had also stated that the 6th respondent did not have any valid document showing his ownership or lease from the rightful owner; and the appellant's representation was considered, and a speaking order was being passed.

After referring to the guidelines, for selection of retail outlet dealers on post selection scrutiny of the merit panel, the letter dated 24.06.2013 records that the merit panel declared/displayed by the selection committee, after the interview, shall be deemed to be final only after post selection scrutiny of the marks by a competent senior officer of the Corporation; on post selection scrutiny by the senior officer of the Corporation, it was reported that the contradictions observed during investigation had emerged due to ambiguity in defining the location in the advertisement wherein, while two villages fell within the specified stretch, only one village was included; under these circumstances, proceeding with the dealer selection process for this location was considered inappropriate, and hence the entire selection process for this location was cancelled; and the location was being considered for re-advertisement appropriately, if found possible, by providing a clear definition of the proposed stretch, and village names, as per the revenue records.

The said letter dated 24.06.2013, thereafter, referred to the appellant's complaint that the application of respondents 5 and 6 ought not to have been entertained, since the lands on which they proposed to establish the retail outlet were not within the limits of

Andugulpet Village; as per the investigation report, and upon physical verification, the investigation officer had observed that in the advertised stretch, i.e 259 to 264 KM stone on LHS on Mancherial to Mandamarri Road, two villages fell i.e Andugulpet and Thimmapur Villages; the contradiction, observed during investigation, had emerged due to ambiguity in defining the location in the advertisement wherein, while two villages fell within the specified stretch, only one village was included; the Grievance Redressal Committee of the Corporation had examined the applications and, ultimately, an order was passed on 06.02.2012 pointing out that there was some uncertainty or lack of clarity in identification of the location in the notification itself, and that a fresh notification should be issued with correct description as per the guidelines of selection; and the Corporation had cancelled the selection for the subject location entirely, as there was ambiguity in defining the location in the advertisement wherein, while two villages fell within the specified stretch, only one village was included.

The proceedings dated 24.06.2013 further records that the guidelines stipulated that the dealership would be offered to the first candidate in the merit panel on the basis of the interview after necessary verification; the appellant was placed at serial No.3 in the merit list, and his turn of eligibility would come only after the ineligibility of candidates at serial Nos.1 and 2, in the event selection had taken place without any ambiguity, in defining the location, in the advertisement; and in case the selection process for location was found not to be in accordance with the laid down guidelines, or ambiguity in defining the advertised stretch, resulting in wrong selection of the merit panel, the merit panel would be required to be

cancelled, and the location re-advertised, if it was viable. The appellant was also informed that he was at liberty to apply pursuant to the fresh advertisement of the Corporation, whenever it came out with a clear definition of the location.

Aggrieved thereby the appellant filed W.P.No.19470 of 2013 and the Learned Single Judge, by the order under appeal dated 14.10.2015, dismissed the Writ Petition. The Learned Single Judge observed that it was apparent that the selection process was cancelled on account of the ambiguity in the advertised location, as it was not precisely notified; 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 was left to the decision of respondents 1 to 4 to proceed further with the selection process or not; the impugned order showed due consideration of the appellant's representation; it was also noticed that the investigation report and physical verification found that, apart from Andugulpet Village, two other villages fell within the milestones including Thimmapur village; the impugned order, therefore, stated that, pursuant to the relevant guidelines of the respondent-Corporation, the entire selection process had to be cancelled, and re-advertisement of the precise location was necessary; and the order further stated that the appellant was placed at serial No.3, and would be entitled to selection only if the candidates at serial Nos.1 and 2 were unsuccessful on any ground.

The Learned Single Judge expressed his inability to see how invalidity could be alleged against the impugned order on any ground as the selection process, relating to an ambiguous location, could not have precisely assessed the location offered by the appellant and

respondents 5 and 6 as all of them would be technically qualified, having applied for the correct location. The Learned Single Judge concluded that respondents 1 to 4 were justified in cancelling the selection process, and advertising the precise location afresh.

The Learned Single Judge also noted that a fresh notification was already issued on 09.10.2014 and the selection process was at the stage of finalisation. With regards the contention urged on behalf of the appellant, that he could not apply in response to the fresh advertisement on account of reduction of the age eligibility, the Learned Single Judge observed that it was open to respondents 1 to 4 to stipulate conditions of eligibility while issuing the advertisement, and he found no illegality in the impugned order.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellant, would contend that the description in the impugned notification is precise, and does not suffer from any ambiguity; in addition to the Kilometer Stones, the notification specified Andugulpet Village as the location; even if Thimmapur Village is said to fall within the Kilometer stretch between 259 to 264 on Mancherial to Mandamarri Road, since the name of the Andugulpet village is also specified in the notification, it is evident that the notification does not suffer from any ambiguity; vagueness, if any, should be such as is perceived by the bidders, and not by the Corporation; the decision of the Corporation in setting aside the notification, on the ground that it suffers from ambiguity or vagueness, is irrational and arbitrary; the notification refers to at least three other locations where the names of the villages and the kilometer stones are mentioned (Serial Nos. 16, 18 and 72); it is only the present location, referred to at serial No.57 of the notification, which

has been found to be vague and ambiguous; and as the appellant is ineligible under the guidelines stipulated subsequently, and respondents 5 and 6 are no longer interested in participating in the selection process, the retail outlet ought to have been awarded to the appellant.

On the other hand Sri B.Mayur Reddy, learned counsel appearing on behalf of the respondent-Corporation, would submit that the appellant has no legal right to claim that he should be selected, and a petroleum retail outlet should be established near Andugulpet Village, as the merit panel was not scrutinised and sanctified by the respondent officials; the guidelines, for selection of retail outlet dealers, confer power on the officials to cancel the merit panel in its entirety; this Court would neither sit in appeal nor substitute its views for that of the respondent-Corporation on whether or not the location stipulated in the notification suffers from ambiguity; the appellant has sought to convert judicial review proceedings, under Article 226 of the Constitution of India, into appellate proceedings; it is only if the decision of the Corporation, in cancelling the notification is found to be so irrational and arbitrary that no reasonable man could have considered it to be fair and reasonable, would interference be justified; and as the Corporation has acted fairly and reasonably, in coming to the conclusion that the notification suffers from ambiguity, no interference is called for.

As noted hereinabove, the notification dated 06.09.2010 at serial No.57 refers to the proposed location of the petroleum outlet as ***“Andugulpet Village of LHS on Mancheri to Mandamarri Road between 259 and 264 KM stones”***. While Andugulpet Village has, no doubt, been referred to, it is not in dispute that Thimmapur Village also falls

between 259 to 264 KM Stones on Mancherial to Mandamarri Road. Respondent No.5, who had proposed the location of petroleum retail outlet in Thimmapur Village, submitted his bid contending that the location proposed by him fell within the proposed location specified in serial No.57 of the notification, as Thimmapur Village was also located between 259 to 264 KM stones on Mancherial to Mandamarri Road.

As noted hereinabove, the bid submitted by the 5th respondent was found to be the best, and he was placed at serial No.1 in the merit list as against the appellant being placed at serial No.3. It is the appellant who, in his objections to respondents 5 and 6 being placed at serial Nos.1 and 2 of the merit list, had specifically contended that Thimmapur village is not in the proposed location stipulated at Serial No.57 of the impugned notification. It is on the basis of the appellant's complaint that the respondent-corporation caused an investigation, and having realised that both Andugulpet and Thimmapur Villages fell within the stretch between 259 and 264 KM stones on Mancherial to Mandamarri Road, concluded that the notification ought to have been more precise; and their failure to refer to Thimmapur Village in the notification, though the said village also fell in the stretch between 259 to 264 KM stones on Mancherial to Mandamarri Road, had resulted in the appellant claiming that Andugulpet Village alone was proposed as the location, of the petroleum retail outlet in the notification dated 06.09.2010. The respondent-Corporation decided that, for the aforesaid reasons, the notification dated 06.09.2010 suffered from ambiguity and, instead of processing the bids submitted by respondents 5, 6 and the appellant

any further, they should cancel the entire selection process, and issue a notification afresh.

As has been rightly held by the Learned Single Judge, in the order under appeal, mere submission of the bids does not by itself confer any right on a bidder to claim that he should be selected for establishing the retail outlet; and, as long as the decision of the Corporation to cancel the entire notification is not so palpably arbitrary or unreasonable as to fall foul of Article 14 of the Constitution of India, this Court would not be justified in interference. In the exercise of its powers of judicial review, under Article 226 of the constitution of India, this Court would neither sit in appeal over the judgment of the Corporation to rescind the notification nor would it substitute its views for that of the Corporation. Even if the conclusion arrived at by the Corporation is one of two or more possible views, and the view canvassed on behalf of the appellant were to appeal to this Court, even then no interference would be called for, provided the decision of the Corporation, to rescind the notification dated 06.09.2010, does not violate Article 14 of the Constitution of India.

As noted hereinabove, the Corporation concluded that, since both Andugulpet Village and Thimmapur Village fell in the stretch between 259 to 264 KM stones on Mancherial to Mandamarri Road, their failure to specify both these villages in the notification had resulted in ambiguity, in the 5th respondent submitting his bid, and in the appellant objecting thereto. It is not as if the Corporation has chosen to award the petroleum outlet to the 5th respondent who was found to be the most meritorious in the selection process. They have, instead, chosen to cancel the selection process in its entirety, and to

call for bids afresh. We are satisfied that the decision of the Corporation, in cancelling the notification dated 06.09.2010 on the ground that the earlier notification suffers from ambiguity, is not unreasonable, much less one which is in violation of Article 14 of the Constitution of India.

The plea of discrimination on the ground that three other locations in the notification dated 06.09.2010, which also refer to the name of the Village and the Kilometer stretch, have not been re-notified, and it is only the proposed location, at serial No.57 of the notification dated 06.09.2010, which the Corporation has re-notified does not merit acceptance. The burden, of establishing that the classification is in violation of Article 14 of the Constitution of India, is on the person who has invoked the jurisdiction of this Court. The burden was, therefore, on the appellant to plead and establish that the other three proposed locations (locations stipulated at serial Nos.16,18 and 72) referred to in the notification dated 06.09.2010 also had other villages located within the kilometer milestones and that persons, who submitted bids for these locations, included those from villages other than those referred to in the said notification dated 06.09.2010. A vague submission, in the writ affidavit, would not suffice and, in the absence of particulars being furnished, the respondents cannot be faulted for not dealing with this contention in their counter affidavit. As the appellant has failed to discharge the onus of establishing discrimination by the Corporation, in cancelling the notification dated 06.09.2010 only for the proposed location at serial No.57, this plea also necessitates rejection.

In any event the jurisdiction, which this Court exercises in an intra-court appeal under Clause 15 of the Letters Patent, is extremely

limited, and save patent error in the order under appeal, no interference is called for. We find no such infirmity in the order under appeal necessitating interference.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

19th January, 2017
JSU

(Dr. SHAMEEM AKTHER, J)



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