

HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.21165 of 2011

ORDER:

This writ petition is filed for a mandamus, declaring the order of the 2nd respondent passed in Ref.DSC/KRO/127, dated 30.05.2011, by and under which, the entire selection process for appointment of retail outlet dealer at Nagulaguttapalli is cancelled, as illegal and arbitrary and consequently, direct the 3rd respondent to issue letter of intent in favour of the petitioner for running a retail outlet for the advertised location.

Heard both sides and perused the material on record.

The respondent Corporation issued a paper publication on 06.09.2010, inviting applications for a retail outlet dealer at Nagulaguttapalli, Kadapa District under open category. In the interviews held on 05.01.2011, the writ petitioner and respondents Nos.4 to 6 are placed in merit list and the writ petitioner stood as No.1 in the merit list. The petitioner offered his land in Sy.No.415, admeasuring Ac.0.69 cents, situated in Surabhi revenue village. The petitioner and respondents Nos.4 to 6 lodged complaints, and they were investigated by the competent authority after affording reasonable opportunity to all the complainants and submitted a report. Basing on the said report, the Grievance Redressal Committee of the respondent Corporation passed the impugned order on 30.05.2011, a copy of which was communicated to the petitioner and respondents Nos.4 to 6, vide letter dated 08.06.2011. By the impugned order, the competent authority observed that while required location is at Nagulaguttapalli, the lands offered by the four candidates are situated in Surabhi Revenue village of Kadapa District.

The petitioner stated that the respondent corporation has erroneously cancelled the selection process merely on the ground that the sites which are offered by all the candidates are situated at Surabhi village. The committee has to take into consideration the fact that Nagulaguttapalli is a hamlet of Surabhi village and all the institutions, like Z.P.High School, Primary Health Centre, U.P.School and Veterinary hospital are situated at Nagulaguttapalli village. Once the Nagulaguttapalli village is a hamlet of Surabhi village, the revenue records are given only as lands situated at Surabhi village, and hence, it is contended that the order impugned is liable to be set aside. It is further submitted that once the dealer selection is carried as per the guidelines, the 2nd respondent has no power or jurisdiction to invoke clause 19(b)(ii) for passing the impugned order, and in fact, the said clause does not attract for passing the impugned order.

Respondents Nos.1 to 3 filed counter, denying the contentions of the writ petitioner and further contended that the interviews were conducted on 05.01.2011 for appointment of retail outlet dealership for the location at Nagulaguttapalli, Kadapa District and on the same day, the merit list was displayed and the writ petitioner was empanelled as 1st candidate. Thereafter, complaints were received from the petitioner and respondents Nos.4 to 6 and the matter was entrusted to Shri K.S.Unni, Chief Manager-Retail Up-gradation for investigation and after receiving report from the investigating officer, the Grievance Cell passed the impugned order in terms of guidelines 19(b)(ii). The respondent corporation reserves its right to cancel/withdraw/amend the advertisement without assigning any reason. It is further contended that the subject location is Nagulaguttapalli, but not Surabhi Revenue Village

and the Committee felt that the location may be considered for re-advertisement with appropriate description as per the revenue records, if it is viable.

Respondents Nos.4 and 6 filed separate counters, contending that the petitioner is not eligible for getting the out let, he has no experience and he submitted fake documents. It is further contended that the land offered by the writ petitioner is situated far away from subject location, and they offered their lands situated near to the subject location. They indirectly support the decision of the respondent corporation.

It is manifest from the above facts that in pursuance to the notification, dated 06.09.2010, inviting applications for retail outlet dealer in Nagulaguttapalli village of Kadapa District, the writ petitioner and respondents No.4 to 6 submitted their applications and interviews were conducted on 05.01.2011. In the said interview, the petitioner stood No.1 and thereafter complaints were made by 4th and 6th respondents which were entrusted to one K.S.Unni, Chief Manager-Retail Upgradation for investigation. The said Officer investigated the complaints and gave a report on 29.04.2011 that the allegations made against the petitioner are not established and it is not possible to identify the limits of Nagulaguttapalli village to ascertain that the sites offered by the petitioner is in the said village and recommended the selection process to continue. On the basis of the said report of the Investigating Officer, the Senior Regional Manager/3rd respondent was directed to proceed with the finalization of the retail outlet. However, on the ground that the sites offered by all the candidates for the retail outlet dealership are situated in Surabhi village and it is not possible to clearly define whether the sites offered by the candidates are within Nagulaguttapalli village or not, the

entire selection proceedings were cancelled which is challenged as being arbitrarily and without jurisdiction. It is also contended that the entire selection process cannot be cancelled by invoking the clause 19 (b)(ii) of the guidelines on the ground on which it is made.

The investigation into the complaints by the competent authority has clearly revealed that the lands of the petitioner and the respondents are shown to be in Surabhi revenue village, that the Investigating Officer met the M.R.O. of Chakrayapet mandal who confirmed that Nagulaguttapalli is one of the Hamlets of Surabhi village and that the said M.R.O. also certified that the land admeasuring 0.69 cents in Sy.No.415 where the petitioner intended to set up a retail outlet is situated in Surabhi village since Nagulaguttapalli is not shown as separate village in Chakrayapet mandal. It is also submitted that even the correspondence which the respondent/Corporation carried on with the petitioner is by showing the Postal address of the petitioner as *R/o. Nagulaguttapalli, Surabhi Post, Chakrayapet Mandal*. A certificate is also produced to show that there is Zilla Parishad High School in Nagulaguttapalli village of Chakrayapet Mandal with recognition No.4768/B2/2003, dated 06.10.2003.

From the material on record, it is noticed that in Surabhi revenue village, there is a village by name Nagulaguttapalli which is described as Hamlet of Surabhi revenue village. It is not as though that there is no village by name Nagulaguttapalli but in the documents produced by the bidders including the one who has been held to be successful and others, the lands are shown to be in Surabhi revenue village but not in Nagulaguttapalli village. There is no dispute that the land admeasuring Ac.0.69 cents in Sy.No.415 where the writ petitioner proposed to set up

his retail outlet is in Surabhi revenue village and in the documents produced it is not shown that the said land is in Nagulaguttapalli village. The revenue officials namely the Tahasildar certified that Surabhi revenue village comprises of Nagulaguttapalli as its hamlet. The Tahsildar of Chakrayapet mandal gave a certificate in reference No.C/187/2011, dated 18.01.2011 which reads as under:-

Ref.No.C/187/2011

Office of the Tahsildar
Chakrayapet, Date: 18.01.2011

CERTIFICATE

This is to certify that Surabhi village of Chakrayapet mandal, Kadapa District comprises Twenty hamlet villages. Nagulaguttapalli is one among them where Z.P.High School, P.H.C. Centre, U.P.School and Veterinary Hospital etc. All these institutions are running located at Nagulaguttapalli. Hence Nagulaguttapalli plays an important role. There is no scope to specify any S.No. belongs to any hamlet villages. All the survey numbers from 1 to S.Nos.1654/1 do come under Surabhi (v) situated very adjacent to Nagulaguttapalli on the main road leading from Vempalli – Rayachoty main road. As such it may be said that S.No.415 ext.0.69 cents belongs to Nagulaguttapalli H/o.Surabhi village.

Sd/-

TAHSILDAR

Similarly, the Village Revenue Officer of Surabhi of Chakrayapet mandal gave a certificate which reads as under:-

CERTIFICATE OF JURISDICTION

This is to certify that Sri Allapureddy Manikanta Reddy, S/o.Sreenadha Reddy, a resident of Surabhi Agraharam is having a land bearing the S.No.415 an extent of 0.69 cents out of 3.75 cents. The existing land location is Nagulaguttapalli village jurisdiction. The land is located on Vempalli-Rayachoti main road.

Sd/-

Village Revenue Officer
Surabhi
Chakrayapet Mandal

It is also on record that on either side of Vempalli-Rayachoti road, there are lands including the land in Sy.No.415 where the petitioner is having land where the retail outlet is proposed to be established. Within close vicinity thereof, there was Z.P.High School and also Primary Health Center. Both these establishments are shown to be existing in Nagulaguttapalli village. The photographs of the two departments is shown wherein it is clearly mentioned that the primary Health Center is in Nagulaguttapalli village and similarly the Z.P.High School is in Nagulaguttapalli village. As already stated, these two departments are in existence on either side of Vempalli-Rayachoti road and near the land in Sy.No.415. Therefore, the authorities cannot say that there is no Nagulaguttapalli village and that the lands where the petitioner intended to establish the retail outlet is in Surabhi revenue village but not in Nagulaguttapalli village.

What is noticed from the above material is that there do exist a village by name Nagulaguttapalli and which in fact was notified by the respondent-Corporation for setting up a retail outlet after making all the necessary inspections. Merely because Nagulaguttapalli village has not been shown separately in the records though it is shown as Hamlet of Surabhi Revenue Village, it cannot be said that there is no Nagulaguttapalli village as such and that there is any ambiguity either in the notification issued by the Corporation or in the documents furnished by the petitioner and the unofficial respondents. The revenue records show that Nagulaguttapalli is not a revenue division but it is a Hamlet of Surabhi revenue division. Therefore, the sites where the petitioner and the respondents offered for setting up a retail outlet are shown in the

documents as in Surabhi Revenue Division and that is for that reason that Nagulaguttapalli and B.T.Palle are not the independent revenue divisions.

Learned Counsel appearing for the respondent/Corporation relied upon a decision of our High Court in Writ Appeal No.1042 of 2015 dated 19.01.2017 wherein the powers of the Corporation to cancel the entire selection process on account of the ambiguity in the advertised location was upheld. In the case before the Division Bench the facts were that the Corporation has notified a retail outlet dealership for Andugulpet village on LHS on Mancherial to Mandamarri Road between 259 and 264 KM store in Adilabad District. In between the two KM stones, two villages were falling namely Andugulpet village and Thimmapur village. In view of the ambiguity, the entire selection process was annulled and was decided to be re-notified. The authorities held that there is ambiguity in defining the location in the advertisement wherein, while two villages fell within the specified stretch, only one village was included and therefore the authorities decided that further proceeding with the dealer selection process for this location was considered inappropriate and hence the same was cancelled to be re-advertised appropriately. The Division Bench held that 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, the Court would not be justified in interference. It was further observed that 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 (bidder) were to appeal to this Court, even then no interference would be called for, provided the

decision of the Corporation, to rescind the notification does not violate Article 14 of the Constitution of India. The Court further held that the decision of the Corporation, in canceling the notification 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.

From the above decision of the Division Bench, it is manifest that the action of the Corporation in deciding to re-notify the retail outlet by canceling the previous notification cannot be found fault with unless it is shown that the same is unreasonable and is in violation of the Article 14 of the Constitution of India.

The facts of the instant case are quite distinct. Unlike in the case before the Division Bench, there was no ambiguity in the notification. The retail outlet was notified for Nagulaguttapalli village but the same was cancelled on the ground that in the revenue records, the lands where proposed retail outlet is sought to be established is in Surabhi revenue village but not Nagulaguttapalli village, which is a hamlet.

As per the revenue records, Nagulaguttapalli is a hamlet and is part of Surabhi revenue village. The authority competent to adjudicate the grievances and complaints in its order dated 30.05.2011 found no merit in any of the allegations made against the writ petitioner who admittedly was fully qualified but it made the following observations leading to cancellation of the notification.

“III. ORDER

Various complaints have been made by the candidates on award of marks during selection and the same were investigated and found not substantiated. This leads us to the conclusion that the dealer selection process was carried out as per the laid down guidelines.

As per the observations of the investigation officer, it is noted that while location was advertised as Nagulaguttapalli, the land documents of all the 4 candidates who applied for retail outlet dealership at this location state that they are situated in 'Surabhi Revenue Village'. Also, it was brought out during investigation that none of the land records submitted by the candidates who applied for retail outlet dealership state that the land is situated in Nagulaguttapalli village. The investigation officer also met the Mandal Revenue Officer (MRO) of Chakrayapet Mandal having revenue jurisdiction over the area where the sites offered by all the candidates are situated and obtained a letter stating that Nagulaguttapalli is one of the Hamlet villages of Surabhi (v) and that Nagulaguttapalli is not a separate village of Chakrayapet mandal. The investigation officer has observed that it is not possible to clearly define whether the sites offered by the candidates for the subject location are lying within Nagulaguttapalli limits or not.

This leads us to the conclusion that the sites offered by all the candidates are situated in Surabhi revenue village while advertised location is 'Nagulaguttapalli'.

Although dealer selection was carried out as per laid down guidelines, it has been established that sites offered by all the candidates for retail outlet dealership at Nagulaguttapalli are situated in Surabhi village and it is not possible to clearly define whether the sites offered by the candidates for the subject location are lying within Nagulaguttapalli limits or not. Hence, in pursuance of clause 19 (b.ii) of guidelines of HPCL for selection of retail outlet dealers, the entire selection proceedings for appointment of retail outlet dealer at Nagulaguttapalli are hereby cancelled. The location may be considered for re-advertisement with appropriate description as per revenue records, if it is viable. Sr.Regional Manager, Kadapa Regional Office shall inform all the complainants accordingly at the earliest. A copy of this disposal order shall also be given to the complainants."

The authority has expressed doubt as to whether the lands offered for establishing a retail outlet are lying within Nagulaguttapalli village or not. Based on that doubt by invoking the provisions of clause 19 (b)(ii) of

the guidelines directed cancellation of entire selection proceedings for appointment of retail outlet dealer at Nagulaguttapalli village.

The power that is invoked for canceling the notification is derived from clause 19 (b)(ii) of the guidelines, which reads as under:-

“19. Grievance/Complaint redressal system:-

(a)

(b) When a decision is taken to investigate the complaint, the investigation will be done by one Senior Officer of HPCL and will pass a speaking order after giving due opportunity to the complainant etc. Efforts will be made to ensure that the complaints are disposed of within three months from the date of receipt of response of the complainant. Copy of the speaking order will be given to all concerned. Thereafter, decision on the complaint will be taken as under:

(i)

(ii) **Established complaint:** Action will be taken as under

(a) In case the selection process for a location was found to be not in accordance with the laid down guidelines resulting in wrong selection of first empanelled candidate, the merit panel will be cancelled and all the candidates who have appeared for the original interview only will be called for the re-interview.

(b) In case the dealer selection was done as per laid down guidelines and complaint against the first empanelled candidate is established, action will be taken to cancel the selection of the first empanelled candidate and issuance of LOI to the next candidate in merit panel. Similar action will be taken in case of established complaint against second empanelled candidate also.

(c) If complaint is established against all the empanelled candidates, the location will be re-advertised if it is viable.”

A perusal of the above provision makes it clear that the same cannot be invoked for canceling the notification and deciding to re-notify the same on the ground on which it is sought for in the instant case.

The cumulative effect of the foregoing discussion is that the action of the respondents in canceling the notification and deciding to re-notify is arbitrary, unreasonable and without any valid reasons. That apart, the process of selection could not be cancelled under the provisions of Clause-19(b)(ii) of the guidelines. Therefore, the impugned order cannot be sustained and the same is liable to be set aside, and is accordingly set aside.

The Writ Petition is accordingly allowed. No order as to costs.

Date: 29th August, 2017
Dsr/smr

M.S.K.JAI SWAL, J

