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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1885 of 2014
Date of decision:18.09.2017

Smt. Rinku Jindal and another …Petitioners

Versus

Indian Oil Corporation Ltd. and another …Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. V.K.Jindal, Senior Advocate, with
Ms. Janya Sirohi, Advocate, for the petitioners.

Mr. Ashish Kapoor, Advocate,
for respondents No.1 and 2.

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Rakesh Kumar Jain, J.

The petitioners have challenged the order dated 06.03.2013 by which Letter of Intent issued in their favour has been withdrawn.

In brief, the respondents issued an advertisement on 27.08.2010 inviting applications for allotment of Kissan Sewa Kendra Retail Outlet Dealership throughout the State of Haryana including village Amrawali Khera on Pillukhera Mandi to Kheri Road under open (W) category. The petitioners also filed application for allotment of the dealership. They were also interviewed along with other applicants and the retail outlet was allotted to them. They were issued Letter of Intent vide reference No.HDO/R/DS-5 dated 02.06.2011/15.06.2011. The petitioners have allegedly obtained various 'No Objection Certificates' and licenses etc., required for the dealership, but on 06.03.2013, they received the impugned letter, by which Letter of Intent issued to them was withdrawn on account of discrepancies in the financial statements submitted by them.

It is alleged by the petitioners that the minimum financial requirement of the respondents for setting up and operating the Kisan Sewa Kendra was of ₹15 lacs, i.e. ₹10 lacs for setting up the infrastructure and ₹5 lacs for its running expenses including the price of high speed diesel. It is alleged that the petitioners deposited copy of the Fixed Deposit of ₹5 lacs each in their name and also given photocopies of FDR of ₹5 lacs in the name of Vijay Kumar, husband of petitioner no.1, and FDR of ₹4,50,000/- in the name of Pardeep Kumar, husband of petitioner no.2. It is also alleged that the petitioners have also some amount in their bank accounts, therefore, the impugned order has wrongly been passed against them.

After notice, the respondents have filed the reply, in which it is averred that the petitioners were declared as first empanelled candidates with 83.75 marks. The information supplied by them about their financial status escaped their notice at the time of field verification but, ultimately, it has been found that in the application form, the petitioners had claimed a total amount of ₹32,23,079/-, which were actually ₹22,23,079/- as on 08.10.2010 (date of application), therefore, the submission made by the petitioners was false. The stand of the respondents is that as per Clause 19.2 of the brochure, if any wrong information is supplied by the applicant(s), then the dealership can be terminated at any time. Clause 19.2 of the brochure reads as under:-

> "**19.2 <u>FURNISHING OF FALSE INFORMATION:</u>**
>
> If any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer, the allotment shall be cancelled forthwith and dealership terminated in case commissioned."

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It is also submitted that the petitioners did not give true facts as the application was filed on 08.10.2010 with the detail of their net worth, as per which petitioner no.1 was having bank balance of ₹5,41,079/- in her A/c No.2192116657, whereas out of the said amount, she had already withdrawn ₹5 lacs on 06.10.2010 and converted it into FDR. Similarly, petitionerno.2 had also mentioned her bank balance in A/c No.3081784691 as of ₹7,32,000/- as on 08.10.2010 but out of the said amount, she had also withdrawn ₹5 lacs on 06.10.2010 and deposited it in the FDR. Moreover, the case of the respondents is that both the petitioners had misled them by showing their bank balance as on 08.10.2010 as petitioner no.1 had shown her bank balance as ₹5,41,079/-, whereas it was reduced to ₹41,079/- on 06.10.2010. Petitioner no.1 has also shown her total net worth as of ₹56,15,079/-, whereas ₹5 lacs were debited from the said total amount because she had already taken out ₹5 lacs from her account and has counted ₹5 lacs twice. Same is the position of petitioner no.2, who has shown ₹7,32,000/- in her bank account on the date of application, i.e. 08.10.2010, whereas it should have been ₹2,32,000/- in her account and she has also calculated ₹5 lacs twice.

Counsel for the respondents has also submitted that the petitioners have also given an undertaking in the application that *"I hereby certify that the information given above is true to the best of my knowledge and belief. Any wrong information/suppression of facts will disqualify me from being considered for the dealership".*

Counsel for the petitioners has argued that the alleged suppression of information was not material as it is provided in the brochure that the amount given in the FDs, Bank Accounts/and other financial documents as proof for financial capability should be valid as on date of application. According to him, the amount of ₹5 lacs, even if withdrawn from the accounts of the petitioners, was shown as FDR in their total net worth.

On the other hand, counsel for the respondents has submitted that the question is not of material suppression but it is of the suppression or concealment of true facts on the part of the petitioners which would non-suit them from claiming the dealership.

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no doubt that Clause 19.2 of the brochure for the selection of petrol/diesel rural retail outlet (Kisan Seva Kendra) Dealers, issued on 01.07.2010, clearly provides that if any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer, the allotment would be cancelled forthwith and dealership would be terminated in case commissioned. There is no change in the aforesaid provisions till date.

Consequently, while applying this provision to the facts and circumstances of the present case, coupled with the other provisions like the undertaking given by the petitioners, in which they have stated that any wrong information/suppression of facts would disqualify them from being considered for the dealership, I am of the considered opinion that the petitioners are guilty of suppression of material information as on the date of application, i.e. 08.10.2010 as they were not having ₹5,41,079/- and ₹7,32,000/- in their bank accounts and they had intentionally appended the account statements upto 05.10.2010 and withdrawn the amount of ₹5 lacs each from their accounts so

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as to deposit it into FDRs. If the petitioners were not having the intention to suppress any material information or giving wrong information, then they should have attached their account statement upto 08.10.2010 and not upto 05.10.2010 but in order to conceal the fact of withdrawal of ₹5 lacs, they had appended the account statement only upto 05.10.2010 and intentionally withdrawn ₹5 lacs each on 06.10.2010. The Court can easily read their mind as to why they have attached their account statement upto 05.10.2010 when they had filed the application on 08.10.2010 because they had already withdrawn ₹5 lacs each from their bank accounts on 06.10.2010.

Thus, in view of these facts and circumstances, the argument raised by the petitioners that it is not a case of suppression of material facts cannot be accepted because the suppression is deliberate and has been proved on the part of the petitioners.

Consequently, the present writ petition is hereby dismissed being denuded of any merit, though without any order as to costs.

September 18, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No