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

+ **W.P.(C) 11820/2015 & CM No. 31401/2015**

SUNITA

..... Petitioner

Through: Mr Ranbir Yadav, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Arjun Mitra and Ms Pallavi Shali,
Advocate for UOI/R-1.

Mr Anil K. Batra and Mr Lakhi
Singh, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.09.2017

1. The petitioner has filed the present petition, *inter alia*, impugning the decision of respondent no.2 (hereafter 'BPCL') rejecting the petitioner's application for appointment as a dealer for a BPCL's retail outlet on the ground that the land offered by the petitioner for the retail outlet "*does not fall within the advertised stretch*".
2. It is the petitioner's case that the land for outlet offered by the petitioner is on "Najafgarh to Khaira Road", which is the description of the location advertised, and therefore, BPCL's decision to reject the petitioner's application is arbitrary, unreasonable and wholly unjustified.
3. Briefly stated, the relevant facts necessary to address the controversy are as under:-

3.1 On 15.09.2011, BPCL issued a "*Notice for Appointment of Retail Outlet Dealers*" and advertised the same in a Daily. By the aforesaid notice, BPCL expressed his intention to appoint dealers for retail outlets in the States of Uttar Pradesh and Uttarakhand and the Union Territory of Delhi, at the rural locations as specified in the notice.

3.2 The notice also specified the locations where BPCL expected the applicants to have or arrange suitable land for retail outlets and provide the same to BPCL on sale/long lease. In terms of the said notice, applicants who owned land at the locations indicated in the notice would be given weightage over other applicants. The petitioner is desirous of setting up a retail outlet at "Najafgarh to Khaira Road" and, therefore, filed an application in response to the aforesaid notice providing the necessary particulars. The petitioner's application was accepted and, by a letter dated 02.07.2013, she was called upon to appear before the Dealer Selection Committee for an interview scheduled on 18.07.2013. The petitioner was also directed to bring the original documents of enclosure as stipulated in the application sent by her, however, the petitioner's application for dealership was subsequently rejected and this was communicated to the petitioner by a letter dated 13.10.2015. The only reason for rejection indicated in the said communication dated 13.10.2013 was stated as: "*it is regretted to inform you that your candidature has been rejected as the Land offered by you, does not fall within the advertised stretch.*"

3.3 In the counter affidavit filed on behalf of BPCL, it has been affirmed that that a field verification was conducted by the officers of BPCL and they had reported that the land offered by the petitioner was 0.85 km ahead of

Najafgarh to Khaira Road and, therefore, was not on the stretch of road where BPCL desired to set up a dealership. A copy of the "Field Verification Report" indicating the above has also been enclosed with the counter affidavit.

4. Mr Yadav, learned counsel appearing for the petitioner referred to a map indicating the location of the petitioner's land and submitted that the same was plainly on Najafgarh-Khaira Road. He also referred to a response received from the Executive Engineer, Civil Road Circle Division M-142, P.W.D. (Government of Delhi) indicating that "*Najafgarh to Khaira Road extends from Khaira Mor situated on Najafgarh Dhasa Road to Jhuljhuli Mor.*"

5. The aforesaid submissions have been countered by Mr Batra, learned counsel appeared for BPCL. He submitted that "Najafgarh to Khaira Road" referred to a stretch of road Najafgarh to village Khaira and not the stretch of road as claimed by the petitioner. He also referred to the map produced by the petitioner and pointed out that the location of the petitioner's land was beyond the village Khaira (if moving from Najafgarh). He submitted that the petitioner's land could not be stated to be located on the stretch of road from Najafgarh to Khaira. The petitioner's application could not be accepted.

6. Mr Yadav countered the aforesaid contention by submitting that wherever BPCL desired to specify the stretch of road, it had specified the same by mentioning the milestones on the specified road. As an illustration, he pointed out that at Serial No. 29, BPCL had described the location of Meerut-Hapur Road as "*Meerut-Hapur Road, Between Km Stone 10 & 13*".

He submitted that since no such particular stretch was specified. The description Najafgarh to Khaira Road would necessarily mean the Najafgarh to Khaira Road as was recorded in the records of the Government of NCT of Delhi.

7. I have heard the learned counsel for the parties.

8. It is relevant to note that in the notice for appointment of retail outlet dealers issue by the BPCL, BPCL had specifically indicated as under

"Applicants who 'owns' land at the location will be given weightage over applicants who have only a 'firm offer' from third parties for obtaining suitable land either on ownership or on lease basis. The technical/commercial suitability of the Land will be decided by BPCL based on parameters and this will be done only for the land offered /details submitted along with the application form. If the applicant, after selection, fails to provide the land indicated in the application form within a period of two months from the date of Letter of Intent (LOI), BPCL will have the right to cancel the allotment of dealership made to the applicant."

9. It is also apparent from the contentions advanced that the principal controversy relates to the location of the retail outlet for which applications was invited. Whilst the petitioner may be right that her land is located on the road referred to "Najafgarh to Khaira Road" as per the records of the Government of NCT. However, it is apparent that BPCL is desirous to set up a retail outlet on the stretch of road from Najafgarh to village Khaira. Notwithstanding the description of the location advertised, the decision of BPCL in this regard must necessarily prevail. BPCL cannot be compelled to set up a retail outlet at a location not desired by it. BPCL always retained

discretion to not accept an application for a dealership and therefore its decision to reject the petitioner's application cannot be faulted.

10. It is also well settled that a mandamus would be issued only to enforce a legal right and in this case, the Court finds it difficult to accept that the petitioner had acquired any vested right for being appointed as a retail outlet dealer.

11. The petition is, accordingly, dismissed. No order as to costs.

VIBHU BAKHRU, J

SEPTEMBER 07, 2017
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