

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.07.2018

+ **W.P.(C) 8299/2009 and CM No. 5116/2009**

JAIKISHAN AGGARWAL (BLIND)

...Petitioner

Versus

UNION OF INDIA & ORS.

...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Keshav Dayal, Senior Advocate with
Mr Gagan Mathur, Mr Varun Mathur and
Ms Renu Rani.

For the Respondents : Ms Monika Arora, CGSC with Mr Vibhu
Tripathi for R-1/UOI.
Mr Rajiv Kapur and Ms Srishti Nigam
for R-2 & 3.
Mr H.S. Phoolka, Senior Advocate with
Mr Mukesh Gupta for MCD.

AND

+ **W.P.(C) 129/2011 and CM No. 251/2011**

JAIKISHAN AGGARWAL (BLIND)

...Petitioner

Versus

**HINDUSTAN PETROLEUM CORP. LTD.
& ORS.**

...Respondents

Advocates who appeared in these case:

For the Petitioner : Mr Keshav Dayal, Senior Advocate with
Mr Gagan Mathur, Mr Varun Mathur and
Ms Renu Rani.

For the Respondents : Mr Rajiv Kapur and Ms Srishti Nigam
for R-1 & 2.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner has filed these petitions, essentially, to seek allotment of a Petroleum Retail Outlet of Hindustan Petroleum Corporation Limited (hereafter 'HPCL'). In W.P.(C) 8299/2009, the petitioner, *inter alia*, prays for implementation of the judgment dated 10.12.2008 passed by the Chief Commissioner for Persons with Disabilities (hereafter 'Chief Commissioner'), whereby the Municipal Corporation of Delhi (hereafter 'MCD') was directed to allot suitable land for operating a retail petroleum outlet, in favour of the petitioner. The petitioner further prays that HPCL be directed to issue a fresh Letter of Intent (LOI) for allotment of a retail outlet to the petitioner without any condition for providing land for the said outlet. In W.P.(C) 129/2011, the petitioner challenges the letter dated 10.10.2007 issued by HPCL cancelling the LOI dated 05.04.2006 for failure on the part of the petitioner to provide a suitable land.

2. The controversies involved in the present petitions are connected, inasmuch as the petitioner's relief for seeking allotment of land is in aid of the petitioner securing and allotment of retail outlet by HPCL. Therefore, the said petitions were taken up together.

3. The petitioner is blind and falls under the category of Persons with Disabilities. At the material time, when W.P (C) 8299/2009 was

filed, the petitioner was a senior citizen (63 years of age). He has filed the petition [W.P.(C) 8299/2009] on the basis that he was entitled for preferential allotment of land at concessional rate for running a retail outlet, in terms of Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, particularly, since the petitioner had been issued a LOI dated 05.04.2006 by HPCL. The said LOI was cancelled by HPCL by a letter dated 10.10.2007. However, the petitioner claims that the said letter was not communicated to the petitioner and he became aware of the same during the pendency of the proceedings in respect of W.P.(C) 8299/2009. This led the petitioner to file the second petition – W.P.(C) 129/2011 – impugning the letter dated 10.10.2007 issued by HPCL cancelling the LOI dated 05.04.2006.

4. HPCL issued an advertisement on 28.03.2001 captioned “NOTICE FOR DEALERSHIP FOR RETAIL OUTLET”, *inter alia*, stating that it proposed appointing dealers for Company Owned Retails Outlets on sites owned/leased to the Company – HPCL. The advertisement indicated that the said outlets were to be located at four locations in Delhi: Delhi-6, Delhi-7, Delhi-13 and Delhi-11. The outlet at Delhi-11 was reserved for persons falling under the Category “Scheduled Caste (Women)” and the outlet at Delhi-6 was reserved for persons falling under the category of “Physically Handicapped”. The outlets at other two locations were under the “Open” category. The advertisement also indicated that for locations falling under Sr. Nos. 1, 2 and 3 (that is, locations at Delhi-6, Delhi-7 and Delhi-13),

the candidates should indicate the details of the land, which he/she may make available for the outlet. The controversy involved in these petitions relates to the location at Delhi-6.

5. The petitioner submitted an application under the Category of Physically Handicapped, for allotment of a retail outlet. In its application, the petitioner stated that he would arrange site as per the Rules and Regulations of HPCL. The relevant extract of his application is set out below:-

“16. FOR RETAIL OUTLETS/2-3 WHEELER MS
OUTLET DEALERSHIP ONLY

- (i) Do you have a suitable site readily available or can you arrange one in the area advertised within six months, if selected? If yes, please give details.

Ans. I will arrange as per Rules & Regulations of Hindustan Petroleum”

6. The petitioner was called for interview for allotment of a site in Delhi-6 and the merit list was issued on 27.02.2004. As per the merit list, the petitioner was ranked at the third position. The site offered by the candidate placed on the second position was not found suitable. However, she was also issued an LOI dated 18.07.2005 with a specific condition to provide land within a period of two months. Since she could not provide the land for the site as required, the said LOI was cancelled. The petitioner sent several letters complaining that he was entitled to be issued an LOI immediately as the site as offered by the candidate placed at position no. 2, was found unsuitable.

7. The petitioner was issued an LOI dated 05.04.2006 offering a retail outlet dealership to the petitioner on the terms as set out therein. This included the condition that the petitioner would make available a suitable plot of land as indicated by him within a period of two months from the date of the letter after getting suitable clearance from HPCL in this regard. It was also stated that the petitioner was also required to transfer the ownership of land or transfer on long lease for a period of 15 years with one renewal option for the next 15 years, under such terms and conditions as may be agreed between the parties.

8. The petitioner was aggrieved by the said condition and sent a letter dated 11.05.2006 to HPCL, *inter alia*, objecting to the specific conditions for providing land. In the meanwhile, the petitioner also sent several letters to various authorities including the Minister for Petroleum and Natural Gas. The petitioner claims that he had not offered to provide any land and, therefore, was also not awarded any marks for the same in the interview held for selection of a dealer pursuant to the advertisement dated 28.03.2001.

9. On 20.06.2006, HPCL sent a letter informing the petitioner that advertisement in question was issued for four locations out of which one was under the category for Physically Handicapped. Two locations were under “Open” category and one was under the “Scheduled Caste (Women)” category. It was further explained to the petitioner that the Ministry of Petroleum and Natural Gas had issued an Office Memorandum dated 09.10.2000 to provide a transparent, uniform, fair and faster procedure for selection of a suitable candidates

and as per the said Guidelines all other categories except SC/ST Candidates were required to provide land and certain other infrastructure for being appointed to manage the retail outlet. It was stated that there was a Corpus Fund Scheme for giving financial assistance by Oil Companies but that scheme was applicable only to ST/SC dealership/ distributorship. HPCL further clarified that the petitioner's application for dealership was under "Physically Handicapped" category and advertisement clearly specified that candidates for locations at Serial No. 1, 2 and 3 were required to furnish the details of land which he/she would make available for the retail outlet.

10. The petitioner responded to the aforesaid letter on 10.07.2006 by stating that he was not in agreement with the contents thereof. However, he also stated that he had come across a piece of land in village Kanjhawala, Delhi which appeared to be suitable for setting up of a retail outlet and requested HPCL to inspect the same and if found suitable, he would take the said land on lease/purchase from the owner.

11. Apparently, a team from HPCL inspected the site offered by the petitioner. However, the same was not found to be commercially viable. HPCL communicated the same to petitioner by a letter dated 23.08.2006.

12. Thereafter, the petitioner sent several letters, both to MCD seeking allotment of an appropriate site for setting up of a retail outlet,

as well as to HPCL protesting against the condition requiring the petitioner to provide a site for the dealership.

13. The petitioner had requested MCD for allotment of a land and also had pointed out sites that, according to the petitioner, were available. In particular, the petitioner referred to two sites in Sanjay Gandhi Transport Nagar, one site at Naniwala Bagh, Azadpur and one site at Rajan Babu T.B. Hospital at Road No. 49. By a letter dated 13.04.2007, sent by the Additional Commissioner of Land and Estate Department, the petitioner was informed that a retail outlet at Naniwala Bagh could not be allotted. The petitioner was also informed that permission could not be granted to carry business of a fuel station at Hospital Campus at Road No. 49. According to the petitioner, the zonal plan received from the Town and Planning Department did indicate a site for petrol pump near Rajan Babu T.B. Hospital and, therefore, the petitioner sought reconsideration of the said issue.

14. The petitioner continued to pursue with MCD for allotment of a site for setting up of a retail outlet pursuant to the LOI issued to the petitioner. However, the petitioner's efforts were in vain.

15. On 02.04.2008, the petitioner filed a complaint against the MCD and Chief Town Planner before the Chief Commissioner. The said proceedings culminated in an order dated 10.12.2008.

16. In the proceedings before the Chief Commissioner, it was contended on behalf of MCD that the sites mentioned by the petitioner at Road No. 49 and at Naniwala Bagh were not earmarked for a

petroleum pump as they fell within the area earmarked for General Hospital and Community Centre respectively in the Zonal Plan/Master Plan – 2021(MPD). This was disputed by the petitioner.

17. In this backdrop, the Chief Commissioner called upon the respondents to submit a written reply and to produce the relevant files. He also decided to implead the Chief Town Planner as a respondent in the said proceedings and issued summons to him on 09.09.2008. However, none appeared on behalf of the respondents and the matter was proceeded *ex parte*. The Chief Commissioner came to the conclusion that there was a deliberate attempt on the part of the MCD to deny rightful benefit to the petitioner. He also observed that the site map submitted by the Town Planner, MCD indicated sites for petroleum pump. Further, MPD-2021 also provided for norms for fuel stations. In the given facts, the Chief Commissioner directed MCD to allot suitable land under their jurisdiction to the petitioner for setting up of a petrol pump within 30 days of the receipt of the order. He also directed framing of a Scheme under Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in favour of the Persons with Disabilities within a period of 60 days and to publicize the same.

18. In the meanwhile, HPCL cancelled the LOI issued to the petitioner by a letter dated 10.10.2007.

19. Mr Phoolka, the learned Senior Counsel appearing for North Delhi Municipal Corporation (North-DMC) contested the petition on

several fronts. He submitted that there was no petroleum pump site in Sanjay Gandhi Transport Nagar, which could be provided to the petitioner. He also referred to the additional affidavit filed on behalf of the North-DMC affirming that it had been decided that the sites at Sanjay Gandhi Transport Nagar would be allotted only to public sector/oil companies/ government agencies. He also submitted that the petitioner was allotted a *Tehbazari* site under the Physically Handicapped Scheme. He submitted that the said site is located at the corner of the footpath (New Lajpat Rai Market) at the Southern wall of Shop No. 414, facing Esplanade Road (under peepal tree) and the petitioner has been running a travel agency from the said site.

20. Mr Phoolka earnestly contended that the order dated 10.12.2008 passed by the Chief Commissioner is wholly without jurisdiction. He submitted that the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 did not empower the Chief Commissioner of Disabilities to issue any specific directions such as the one issued in this case. He relied upon the decision of the Coordinate Bench of this Court in *Air India Ltd. v. Chief Commissioner for Persons with Disabilities. W.P.(C) 2979 of 2003, decided on 21.05.2007* and the decision of a Division Bench of this Court in *Shah Afzal (Md.) v. Medical Council of India & Anr.: 2010 VI AD (Delhi) 762* and the decision of the Supreme Court in *State Bank of Patiala and Ors. v. Vinesh Kumar Bhasin: (2010) 4 SCC 368* in support of his contention.

21. Mr Dayal, learned Senior Counsel appearing for the petitioner

drew the attention of this Court to several documents and referred to the complaints in support of his contention that the MCD's stand that a petroleum retail outlet could not be established at the sites mentioned by the petitioner or that the same could not be allotted to the petitioner, was erroneous.

22. This Court is not inclined to enter above controversy for the principal reason that the petitioner has been unable to establish a right for being allotted a particular site. The petitioner has founded his claim for allotment of a site for petroleum retail outlet, essentially, on three grounds. First, he claims that he is entitled to such allotment by virtue of the LOI issued by HPCL. Secondly, he claims that he is entitled to a site by virtue of the order passed by the Chief Commissioner. And, lastly, he claims that he is entitled to such allotment as he is a person with disability and, therefore, is entitled to a preferential treatment.

23. Admittedly, the LOI issued by HPCL in favour of the petitioner has been withdrawn. Thus, the first and foremost issue to be addressed is whether the letter dated 10.10.2007 issued by HPCL cancelling the LOI dated 05.04.2006 is liable to be set aside.

24. At this stage, it is necessary to refer to the advertisement dated 28.03.2001 issued by HPCL pursuant to which the petitioner had submitted his application. The relevant extract of the said advertisement is set out below:-

**“HINDUSTAN PETROLEUM CORPORATION
LIMITED**

(A Govt. of India Enterprise)

NOTICE FOR DEALERSHIP FOR RETAIL OUTLET

1. Hindustan Petroleum Corporation Limited proposes to appoint dealers for Company Owned Retail Outlets on site owned by the Company/leased to the Company at various locations in the State of Delhi as per the table below:

SR. NO.	LOCATION	TOWN/AREA	REVENUE DISTT.	STATE	MKTG.	CATEGORY
1.	Delhi-6	Delhi	Delhi	National Capital Territory of Delhi	1999-2K	Physically Handicapped
2.	Delhi-7	Delhi	Delhi	-do-	1999-2K	Open
3.	Delhi-13	Delhi	Delhi	-do-	1999-2K	Open
4.	Delhi-11	Delhi	Delhi	-do-	1999-2K	Schedule Caste (Women)

NOTE : For “Physically Handicapped Candidates” : The person should be orthopaedically handicapped to the extent of a minimum of 40% permanent/partial disability of either upper or lower limbs or 50% permanent/partial disability of both upper and lower limbs together. For this purpose, the standards contained in the Manual for Orthopaedic Surgeon in evaluating Permanent Physically Impairment brought out by the American Academy of Orthopaedic Surgeons, USA and published on its behalf by the Artificial Limbs Manufacturing Corporation of India, G.T. Road, Kanpur, shall apply.

Deaf, Dumb and blind persons will also be eligible to apply for all dealerships/distributorships under this category.

For “Schedule Caste Candidates” : A certificate in support of the candidate belonging to SC category issued by a competent authority notified by the Govt. of India will

have to be furnished by the candidates alongwith their application.

NOTE : FOR LOCATIONS UNDER SR. NOS. 1, 2 & 3 ONLY

a. The candidate should furnish alongwith application, detail of land, which he/she may make available for the Retail Outlet.

b. Considering the location of the land from the point of view of suitability from commercial angle and rates acceptable to the company, applicants willing to transfer the land on ownership / long lease to Hindustan Petroleum Corporation Ltd. would be given preference.

c. If an applicant, after selection, is unable to provide the land indicated by him/her in the application form within a period of two months, from the date of Letter of Indent (LOI), then the allotment of dealership made to him/her will be cancelled.”

25. It is apparent from the plain reading of the said Advertisement that location at Delhi – 6 at Serial No.1 was proposed to be allotted to a candidate under the category of “Physically Handicapped”. The note to the advertisement clearly specified that the candidate for locations under Serial No.1, 2 and 3 were required to furnish alongwith application, details of land which he/she may make available for the retail outlet. It was expressly provided that if the applicant, after selection, is unable to provide the land indicated by him/her in the application form within a period of two months from the date of LOI, then the allotment of dealership made to him/her will be cancelled.

26. The petitioner was fully aware at the time that he was required

to provide an appropriate site for the dealership. The petitioner had also clearly stated in his application that he would arrange the site as per rules and regulations of HPCL. The petitioner is, thus, estopped from contending that the land is required to be provided by HPCL.

27. The petitioner has sought to set up a case of discrimination by alluding to the dealership allotted by HPCL pursuant to the advertisements issued prior to 28.03.2001. The petitioner has claimed that in the past, HPCL had allotted dealership without insisting on the candidates providing land for the site. The petitioner had also referred to allotment made pursuant an advertisement issued on 28.08.2000. This contention was refuted by HPCL and it clarified that particular instances referred to by the petitioner pertained to persons who had applied under the 'open' category and in terms of the advertisement issued on 28.08.2000, the candidates were not required to provide land for the dealership.

28. In any view of the matter, this Court is unable to accept that the decision of HPCL to call for applications from only those candidates who were willing to provide land, is discriminatory or falls foul of Article 14 of the Constitution of India. Merely because HPCL in past had called for applications without such condition does not preclude HPCL from changing the eligibility criteria. HPCL's decision to allot dealership only on the condition that the candidates provide land for the same is, plainly, within their commercial discretion; and if the said condition is applied uniformly to all applicants in a particular category (submitting their application pursuant to the particular advertisement),

the petitioner can have no grievance in this regard.

29. It is also relevant to state that Smt Versha Malhotra – the candidate who was placed in the second position – was also unable to provide the suitable site within the specified period of two months and, therefore, the LOI issued to her was also cancelled. Aggrieved by the same, Smt Versha Malhotra preferred a writ petition W.P.(C) 12578/2006 before this Court challenging the decision of HPCL in cancelling her LOI. The said petition was dismissed by a Coordinate Bench of this Court on 27.04.2009. This Court held that Smt Versha Malhotra was fully aware of the conditions to make available to the suitable plot of land within a period of two months from the date of the LOI and had been unable to satisfy the same. Therefore, the decision of HPCL to cancel the LOI could not be faulted.

30. The present petitions must also share the same fate as the case of Smt Versha Malhotra [W.P.(C) 12578/2006]. The petitioner was fully aware of his obligations to provide a suitable land and had applied for the dealership confirming that he would provide the land as per the rules and regulations of HPCL. Admittedly, the petitioner did not have a suitable site at the time of making his application and he was unable to arrange suitable plot of land within a period of two months as required. Thus, this Court found no infirmity with the decision of the HPCL in cancelling the LOI.

31. In view of the above, the very foundation of the petitioner's claim for an allotment of land from MCD stands eroded and it is not

necessary to examine whether, in fact, any site for a petroleum retail outlet is available with MCD (or its successors including North-MCD). In any view of the matter, the petitioner cannot claim a preferential right for allotment of any particular site. At best, the petitioner can claim that a scheme for preferential allotment of land at concessionaire rates be framed for persons with disabilities. The petitioner, of course, would have full right to participate in preferential allotment of land along with other similarly placed persons. However, the petitioner cannot claim that he is entitled to allotment on account of his disability. Surely, if this was so, other persons with similar disabilities would be equally entitled for allotment of land.

32. This Court is also of the view that the directions issued by the Commissioner are also unsustainable. Section 58 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 specifies the functions of the Chief Commissioner. Section 59 of the said Act also enables the Chief Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities. Section 58 and 59 of the said Act are set out below:-

“58. Functions of the Chief Commissioner.—The Chief Commissioner shall—

- (a) coordinate the work of the Commissioners;
- (b) monitor the utilization of funds disbursed by the Central Government;

- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.

59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.—Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to—

- (a) deprivation of rights of persons with disabilities;
- (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with the appropriate authorities.”

33. It is apparent from the above that the Chief Commissioner is not empowered to give a specific direction for allotment of a land to any particular person as has been done in this case.

34. In *Shah Afzal (Md.) v. Medical Council of India & Anr.: 2010 VI AD (DELHI) 762*, a Division Bench of this Court had examined

the role of the Chief Commissioner and had observed as under:-

27. We also notice that Section 59 begins with the word “without prejudice to the provisions of Section 58” and empowers the Chief Commissioner to look into the complaints (either on his own motion or on an application by an aggrieved person or otherwise) with respect to matters relating to (a) deprivation of rights of persons with disabilities; (b) non-implementation of laws, rules, byelaws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities and to take up the matter with the appropriate authorities. We are mindful of the fact that we are dealing with a beneficial legislation and, therefore, the provisions should be interpreted and construed in a manner which advances the benefits given under the said legislation. Consequently, the powers and functions of the Commissioner would have to be given the widest amplitude possible within the four corners of the provisions of the said Act itself. We cannot, of course, while giving a liberal interpretation, travel beyond the provisions of the Act or some other statutory provisions which could never have been the intention of Parliament. Therefore, the expressions “look into complaints” and “to take up the matter with the appropriate authorities” cannot be elevated to the status of a case in court and an order or judgment passed by a court. The Chief Commissioner is certainly required to and is empowered to look into any transgression of the rights of persons with disabilities as also to examine the issue of non-

implementation of laws etc. which are for the welfare and protection of rights of persons with disabilities, but, having considered the complaint, the Chief Commissioner is required to take up the matter with the appropriate authorities so as to prevent and or remove any deprivation of rights of persons with disabilities and also to ensure implementation of the laws for the welfare and protection of the rights of persons with disabilities. There is no doubt that, for certain purposes, the Chief Commissioner as also the Commissioners, by virtue of Section 63 of the said Act, have been given certain powers of a civil court while trying a suit. However, such powers are exercisable by the Chief Commissioner for summoning and enforcing the attendance of witnesses, requiring the discovery and production of any documents, requisitioning any public record or copy thereof from any court or office, receiving evidence on affidavits and issuing commissions for the examination of witnesses or documents. The powers are limited to such matters only and do not entail that because such powers in certain matters have been given to the Chief Commissioner and the Commissioners, as the case may be, they are to be equated with civil courts. That is certainly not the intention of the legislature and that is not how we read it.

28. xxxxx xxxxxxxxxxx xxxxxxxxxxx

29. Going back to Section 59 of the said Act, we find that the Chief Commissioner has only been empowered to look into complaints and to take up the

matter with the appropriate authorities. Once the Chief Commissioner has looked into the complaint and has come to a 'decision' and thereupon the Chief Commissioner takes up the matter with the appropriate authorities, the said authorities cannot contend that the view of the Chief Commissioner can be totally ignored or side-stepped. We feel that once the Chief Commissioner takes a view on a particular complaint and then takes up the matter with an appropriate authority, if such view is permissible in law, then the appropriate authority would be obliged to redress and remove the grievance of the complainant. In case the concerned authority does not take any action whatsoever, it would then be open to the aggrieved person to approach the High Court under Article 226 for an appropriate writ, direction or order, if he makes out a case of deprivation of a right or non-implementation of laws, rules etc. providing for the welfare and protection of rights of persons with disabilities. But, this does not mean that the order or direction given by the Chief Commissioner, by itself, is elevated to the status of an order passed by a court."

35. As stated above, the Chief Commissioner could take up the matter with the concerned authorities to ensure that an appropriate scheme is made to provide preferential treatment to persons with disabilities in allotment of land; however, no specific directions to provide preference to the petitioner could be issued. The petitioner has no right whatsoever to seek preference over other persons with similar disabilities.

36. In view of the above, the petitions are dismissed. The pending applications are disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JULY 09, 2018
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