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

Judgment reserved on: 13.3.2018
Judgment pronounced on: 14.8.2018

\+ **W.P.(C) 2919/2017 & CM No.12743/2017**

KAVITA ..... Petitioner

Through : Mr. Gaurang Kanth, Mrs. Biji Rajesh and Ms. Eshita Baruah, Advs.

versus

INDIAN OIL CORPORATION LIMITED & ANR ..... Respondents

Through : Ms. Meenakshi Arora, Sr. Adv. with Ms. Mala Narayan and Ms. Madhumanti Ghose, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Prefatory facts:

1. This writ petition has been filed seeking the following substantive directions against respondent No.1 i.e., Indian Oil Corporation Limited (hereafter referred to as 'IOCL'):

> *"a) Quash the Seniority List (Annexure P-7) prepared by the Respondent Corporation for the preferential allotment of Retail Outlet to pending SC/ST LOI Holders (selected without land).*
>
> *b) Direct the Respondent no.1 Corporation to re-draw the Seniority list on the basis of the date of Interview.*

> c) *Quash the letter of appointment if any issued by the Respondent No.1 Corporation to the Respondent No.2 for the site COCO Saidpur, Village Saidpur Wazirpur – Farukhnagar Road, District Gurgaon (Haryana).”*

2. The aforementioned reliefs have been sought by the petitioner in the background of the following broad facts.

3. The two oil marketing companies, namely, IBP Co. Limited (in short ‘IBP’) and IOCL had invited applications against advertisements issued for award of retail outlet dealership under the Corpus Fund Scheme, *inter alia*, under SC/ST category in respect of the State of Haryana.

3.1 IBP issued its advertisement on 11.2.2004, while IOCL issued its advertisement on 13.2.2004. The last date for submission of applications, insofar as IBP was concerned, was fixed as 12.3.2004, while the last date for submission of applications by IOCL was fixed as 15.3.2004.

3.2 Respondent No.2 filed his application with IBP for award of dealership of a retail outlet at Ballabhgarh City (WML), Faridabad (District), Haryana.

3.3 In the usual course, both respondent No.2 and the petitioner were invited for interviews by IBP and IOCL, respectively, by their duly constituted committees.

3.4 Consequent to the interviews being conducted, IBP issued a Letter of Intent (LOI) dated 31.8.2004, in favour of respondent No.2. Via this LOI, IBP offered to respondent No.2, a dealership of retail outlet situate at Ballabhgarh City (WML), Faridabad, Haryana, subject to the terms and conditions contained therein, including payment of licence fee, as may be decided from time to time for developing the said retail outlet and providing the same to respondent No.2 along with a sales room, storage tank, pumps and air facility, etc. — necessary for operating the dealership.

3.5 Likewise, IOCL issued a LOI dated 30.9.2004, in favour of the petitioner, whereby, she was offered a dealership of the retail outlet situate at Haily Mandi-Pataudi Road, Gurgaon, subject to the fulfillment of the terms and conditions contained therein, and payment of licence fee. As in the case of respondent No.2, IOCL too, intended to hand over a retail outlet to the petitioner comprising a sales room, storage tank, pumps and air facility, etc. — necessary for operating the dealership.

3.6 As events evolved in 2007, IBP merged with IOCL. The record shows that IOCL was unable to hand over a developed site for running a retail outlet to the petitioner and other similarly circumstanced applicants. However, interestingly, IOCL kept the LOIs issued in favour of various applicants, which included the petitioner, alive.

3.7 Perhaps exasperated with the delay, on 28.9.2011, the petitioner took recourse to the Right to Information Act, 2005 (in short 'RTI Act') by preferring an application in that behalf, whereby she chose to raise a query with regard to LOIs issued concerning the retail outlets. The Public Information Officer, vide a response dated 3.11.2011, attempted to provide the necessary information.

3.8 Since, the petitioner was not satisfied with the response provided by IOCL, she preferred an appeal with the Appellate Authority appointed under the RTI Act, on 1.12.2011.

3.9 The Appellate Authority vide order dated 21.12.2011, directed the IOCL to provide necessary information with regard to the said LOIs.

4. Resultantly, vide communication dated 27.12.2011, IOCL provided the details qua the said LOIs to the petitioner. Pertinently, along with the necessary information appended to its communication sent in that regard, IOCL also referred to the LOI dated 30.9.2004, issued in favour of the petitioner, as also, the LOI dated 31.8.2004, issued in favour of respondent No.2.

4.1 The record shows that the since IOCL, despite persistent efforts, was unable to obtain land at the proposed site, the Union Ministry of Petroleum and Natural Gas (for short 'MPNG') intervened in the matter and via Policy letter dated 12.4.2012, permitted all the pending SC/ST LOI holders, as a one-time measure, to arrange for land, at the place of their own choice anywhere in the country, irrespective of State/Class of market, subject to the offered land meeting the requisite techno-commercial viability norms.

4.2 Pertinently, the aforementioned policy letter made it clear that if the LOI holders failed to utilise the option given to them within a period of one year, the LOI issued to them would stand cancelled. The contents of this policy letter were communicated to the petitioner by IOCL vide communication dated 26.10.2012, as also to every other LOI holder.

4.3 However, what was supposed to be a one-time measure with a life span of one year was infused with life from time to time. The last extension granted, extended its life span till 31.3.2018.

4.4 The communications sent by IOCL to the petitioner from time to time, in this behalf, are dated 17.10.2013, 1.7.2014, 7.4.2015 & 20.7.2016.

4.5 It appears that in the interregnum, MPNG, on 3.8.2016, approved certain amendments to the Company Owned and Company Controlled (COCO) divestment guidelines (hereafter referred to as 'COCO Guidelines'). Amongst others, one such amendment which was brought about, in effect, stipulated that the seniority for award of retail outlet would be determined based on the date of issuance of LOI. This aspect is adverted to in Clause (B)(4)(d)(iii) of the amended COCO Guidelines.

4.6 Besides this, in Clause (B)(4)(D)(iv), a provision was made that if the dates of LOIs issued to the applicants were identical, then, the date of interview will be taken as a deciding factor.

4.7 Evidently, on 6.2.2017, IOCL issued letters to the petitioner, respondent No.2 and other similarly placed LOI holders, offering them the option to choose temporary COCO retail outlets, out of those, which, had become available on account of another policy initiative of MPNG having been phased out.

4.8 Accordingly, the LOI holders were requested to send their acceptance accompanied by their preference, latest, by 28.2.2017.

4.9 Apparently, upon receipt of the aforesaid communication, both, the petitioner as well as respondent No.2, amongst others, sent their letters of acceptance along with their preferred lists of retail outlets. It appears that both, the petitioner and respondent No.2 chose or preferred the COCO retail outlet situate at Saidpur, Village Saidpur Wazirpur – Farukhnagar Road, District Gurgaon (Haryana) [in short 'Saidpur'].

5. The petitioner's letter of acceptance, which is dated 21.2.2017, was received by IOCL on 23.2.2017. IOCL, on receipt of the letters of acceptance from the LOI holders, prepared a seniority list based on the date of issuance of LOI and uploaded the same on its website.

5.1 Since, respondent No.2 was issued a LOI dated 31.8.2004, which, was prior to the date when the petitioner was issued her LOI, which is dated 30.9.2004, he was ranked senior to the petitioner as per the provisions of the amended COCO guidelines.

5.2 Having regard to the aforesaid, IOCL on 23.3.2017, issued a communication to respondent No.2, whereby, he was intimated that the COCO retail outlet situate at Saidpur, had been allotted to him.

5.3 Importantly, at an industry meeting on divestment of temporary COCOs and appointment of service provider for operation of COCOs, it was decided by IOCL along with other stakeholders, that those LOI holders, who, had not been considered for divestment of COCO, would be considered in the next round.

5.4 Furthermore, IOCL, parallelly, continued to interface with the concerned District Magistrate (D.M.), Gurgaon and Administrator, Haryana Urban Development Authority (HUDA), Gurgaon for allotment of suitable parcels of land for development of retail outlets at various places including Haily Mandi-Pataudi Road, Gurgaon.

5.5 This fact is evident upon perusal letters dated 24.3.23017 and 27.3.2017 addressed by IOCL to the D.M., Gurgaon and Administrator, HUDA.

5.6 In the meanwhile, since IOCL had conveyed to respondent No.2 that retail outlet at Saidpur had been allotted to him, he complied with the necessary formalities.

5.7 However, in the meanwhile, the petitioner got a whiff of the fact that allotment of the retail outlet at Saidpur had been made in favour of respondent No.2 and accordingly, took steps to move this court by way of the captioned writ petition under Article 226 of the Constitution. The court vide order dated 31.3.2017, while issuing notice in the writ petition, directed IOCL not to hand over physical possession of the plot (on which the said retail outlet had to be run), to respondent No.2.

6. Upon issuance of notice, IOCL filed its counter affidavit. Consequent thereto, arguments in the matter were heard on behalf of both, the petitioner, as well as IOCL.

7. I must indicate herein, that at the hearing held on 29.1.2018, Ms. Mala Narayan, who, appeared for IOCL, had conveyed to me that there

was a possibility of the validity period of the LOIs being extended further, which included the LOI issued to the petitioner.

Submissions of Counsel:

4. Arguments on behalf of the petitioner were advanced by Mr. Gaurang Kanth, while those on behalf of IOCL were advanced by Ms. Mala Narayan, as indicated above. Though, respondent no.2 was served and on some dates, represented by counsel, on the date when the matter was finally argued and reserved for judgment, there was no appearance on behalf of respondent No.2. Resultantly, the burden of defence was carried by IOCL.

9. The principal submission advanced by Mr. Kanth, on behalf of the petitioner, was that a determination of seniority based on the date of issuance of LOI was not a valid criterion. According to Mr. Kanth, as per Office Memorandum (O.M.) dated 9.10.2000, which was applicable to both, IBP and IOCL, the entire process of allotment had to be concluded within 145 days. It was submitted that after interviews were conducted, results had to be declared within 24 hours, followed by Field Inspection, which was required to be carried out on within 10 days of the interviews. Consequently, the LOI was required to be issued within 5 days of receiving a copy of the Field Inspection Report.

9.2 Hence, according to the learned counsel, after the interview was held, the entire process, which culminated with the issuance of the LOI had to be concluded within 15 days.

9.3 Mr. Kanth submitted that in the petitioner's case, while the interview was held on 21.7.2004, the LOI was issued on 30.9.2004 with a delay of 71 days, whereas, IBP, on the other hand, had held respondent No.2's interview on 6.8.2004, and had issued the LOI in his favour on 31.08.2004, after a gap of 24 days. In order to demonstrate that IOCL had not adopted a valid criterion, information gleaned via the RTI route was placed before me, in the form of the following tabular chart:

Name of the Applicant	Date of Interview (as per RTI)	Date of issuance of LOI	Delay in issuance of LOI
Ranjit Singh (Respondent no.2)	06.08.2004	31.08.2004	24 days
Kavita (Petitioner)	21.07.2004	30.09.2004	71 days
Sarita Singh	14.08.2004	30.09.2004	48 days
Neeraj Sonkar	17.08.2004	30.09.2004	45 days
Natasha Kumari	17.08.2004	30.09.2004	45 days
Uma Kant	24.09.2004	19.10.2004	26 days
Gurpreet Kaur	21.09.2004	03.11.2004	44 days
Manish Kumar	10/11.08.2004	22.11.2004	103 days
Renuka	06.10.2004	27.11.2004	53 days
Tina	20.09.2004	30.11.2004	71 days
Saroj Bala	23.09.2004/24.09.2004	27.12.2004	96 days
Tarun Kumar	07.10.2004	27.12.2004	82 days

Pawaria			
Manakshi Ranga	04.11.2004	27.12.2004	53 days
Dr. Pawan Kumar	03.11.2004	02.06.2005	192 days
Asha Rani	05.10.2004	06.06.2005	245 days
Neelam Kumari	22.09.2004	14.06.2005	266 days”

9.4 Based on the above, Mr. Kanth submitted that the date of issuance LOI ought not to be taken as the criterion for award of retail outlet. It was contented that the date of interview was a more viable and fair criterion. Furthermore, the learned counsel submitted that the policy based on which, IOCL had decided to adopt the date of issuance of LOI as the criterion for determination of seniority was an internal document and therefore, the petitioner had no occasion to challenge the same.

9.5 In view of the aforesaid submissions, Mr. Kanth said that the writ petition ought to be allowed in terms of the relief sought for therein.

10. On the other hand, Ms. Narayan largely relied upon the stand taken by IOCL in the counter affidavit filed on its behlaf. In particular, Ms. Narayan submitted that since the matter was in the realm of a contract, writ petition was not a viable remedy.

10.1 The learned counsel contended that the petitioner cannot claim an absolute and fundamental right to award of the dealership.

10.2 Furthermore, the learned counsel submitted that the difference in dates qua issuance of LOIs in the case of the petitioner and respondent No.2, occurred on account of the fact the LOI *qua* respondent No.2, was issued by IBP, which, in 2007, merged with IOCL.

10.3 According to the learned counsel, there was no *mala fide* intent in denying the petitioner its due. The counsel attempted to emphasise the fact that, on the other hand, IOCL had been making endeavours, on behalf of the LOI holders, to obtain land, so that the task of development of COCO retail outlets could be assigned to them, in accordance with LOIs issued to each one of the applicants.

10.4 Ms. Narayan submitted that the amended COCO Guidelines were applicable to all persons, who, had been issued LOIs under the Corpus Fund Scheme, *inter alia*, under the SC/ST category prior to 2014.

10.5 It was contended that since the amended COCO Guidelines were applicable to all pending LOI holders, seniority could be determined only on the basis of the provisions of the amended COCO Guidelines. It was the learned counsel's submission, that even after the amended Guidelines were placed on record, no attempt was made by the petitioner to challenge the same. In other words, since seniority had been fixed in accordance with the date of issuance of LOIs, no fault could be found with the action taken by IOCL.

Reasons:

11. According to me, the core issue, which, arises for consideration is: as to whether IOCL was right in adopting the date of issuance of LOIs as the criterion for determining the seniority *inter se* the LOI holders.

11.1 To consider this issue, for the moment, I intend to keep aside the fact that the petitioner chose not to challenge the amended COCO Guidelines, even though the same was brought on record by way of IOCL's counter affidavit as far back as on 25.7.2017, and the final arguments in the matter were heard only on 13.03.2018.

11.2 To examine this issue, I must address the gravamen of Mr. Kanth's argument, which is, that the criterion of adopting the date of issuance of LOI as the basis for fixing *inter se* seniority amongst LOI holders was bad in law.

11.3 As according to him, in terms of O.M. dated 9.10.2000, the entire process of allotment had to be completed within 145 days. The emphasis, as indicated above, was on the fact that after the interview was conducted and result was declared, the LOI had to be issued within 15 days of the result. In this context, Mr. Kanth stated that the date on which interviews were held and the result was declared was a better criterion for determining the seniority, as against the date of issuance of LOIs.

12. At first blush, this appears to be an attractive proposition. However, a closure look of the data, set forth above, would show that the dates of interviews for various LOI holders, also cannot offer a satisfactory

solution, as much would depend upon as to when the committee tasked with the job of holding interviews is to convene.

12.1 It is possible that the committee so constituted, is unable to hold interviews of all candidates on a given date. Therefore, merely, because interviews are held on different dates and results are declared thereafter, perhaps, on separate dates, would also not offer, a satisfactory criterion. The only reason that Mr. Kanth suggests that the date when the interviews were held and the results declared was a better criterion is because the petitioner's interview was held on 21.7.2004, whereas the interview of respondent No.2 was held on 6.8.2004.

12.2 However, what Mr. Kanth forgets is that respondent No.2 had filed his application for allotment of retail outlet with IBP, prior to its merger with IOCL.

12.3 Therefore, while respondent no.2's interview was held later, fortuitously, the LOI, in his case, was issued on a date earlier to that when IOCL issued the LOI in favour of the petitioner. The LOI, as indicated above, was issued on 31.8.2004 in favour of respondent no.2 while, IOCL issued the LOI in favour of the petitioner on 30.9.2004.

13. No doubt, the period of delay, as Mr. Kanth says, between the holding of interviews and the declaration of results and hence issuance of LOI, is not uniform, but the reasons for delay are not available on record.

13.1 There could be several reasons for delay including the delay on account of generation of Field Inspection Report. The record does not show as to who was responsible for the delay. That being so, in my view, no fault can be found with IOCL's action on this ground. IOCL, in its own wisdom, evolved a criterion, which, when applied, did not bear fruit for the petitioner. The fixation of criteria for determination of seniority falls within the domain of policy formulation. The courts have steered clear of interdicting policy formulated by the State and its instrumentalities unless it comes to a conclusion that it is patently unfair, discriminatory and irrational. I am unable to come to the conclusion that the policy falls foul of any of the aforesaid well established measures.

14. In this context, it is also important to note that are no malafides attributed to IOCL, as none can be attributed, given in the circumstances obtaining in this case.

15. Therefore, for the foregoing reasons, I am unable to persuade myself to interfere with the decision taken by IOCL, which is, to issue the allotment letter in favour of respondent No.2. For the very same reason, I am also not inclined to quash the seniority list as prayed for by the petitioner.

16. Accordingly, writ petition is dismissed.

17. The interim order dated 31.3.2017 will stand dissolved.

18. IOCL will, however, consider allotting a retail outlet to the petitioner in case a decision is taken to extend the validity period of LOIs generally, including that of the petitioner, if she otherwise meets the extant requirements.

14. There shall, however, be no order as to costs.

RAJIV SHAKDHER
(JUDGE)

AUGUST 14, 2018
pmc