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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 451/2018, CM Nos. 33530/2018 and 33531/2018
JAI KISHAN AGGARWAL

..... Appellant

Through: Mr. Keshav Dayal, Sr. Adv. with Mr.
Gagan Mathur, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. H.S. Phoolka, Sr. Adv. with Mr.
Mukesh Gupta, Adv. for R-2/North
DMC
Mr. Rajiv Kapur, Adv. with Ms.
Khushboo Kapur & Ms. Divya Singh,
Adv. for R-3

AND

+ LPA 452/2018 & CM. Nos. 33537/2018 and 33538/2018
JAI KISHAN AGGARWAL

..... Appellant

Through: Mr. Keshav Dayal, Sr. Adv. with Mr.
Gagan Mathur, Adv.

versus

HINDUSTAN PETROLEUM CORP LTD
& ORS

..... Respondents

Through: Mr. Rajiv Kapur, Adv. with Ms.
Khushboo Kapur & Ms. Divya Singh,
Adv. for R-2 & 3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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21.08.2018

CM No. 33531/2018 in LPA 451/2018

CM No. 33538/2018 in LPA 452/2018

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

LPA 451/2018 & LPA 452/2018

1. These two appeals have been filed by the appellant challenging the common order dated July 09, 2018 passed in W.P.(C) No. 8299/2009 (LPA No. 451/2018) and W.P.(C) NO. 129/2011 (LPA No. 452/2018).
2. The W.P.(C) No. 8299/2009 was filed by the appellant inter-alia praying for implementation of judgment dated December 10, 2008 passed by the Chief Commissioner for Persons with Disabilities (for short 'Chief Commissioner') whereby the Municipal Corporation of Delhi (for short 'MCD') was directed to allot a suitable land for operating retail petrol pump outlet in favour of the appellant.
3. In W.P.(C) No. 129/2011, the appellant had challenged the letter dated October 10, 2007 issued by the HPCL cancelling the LOI dated April 05, 2006 for failure on the part of the appellant to provide a suitable land. The brief facts as noted from the impugned order are, HPCL issued an advertisement on March 28, 2001 for allotment of a dealership for retail outlet inter-alia stating that it proposed to appoint dealers for retail outlet on sites owned / leased to the Company-HPCL. The outlet at Delhi-6 was

reserved for persons falling under the category of physically handicapped. The appellant submitted an application under category of physically handicapped for allotment of retail outlet. In his application, the appellant stated he would arrange a site as per the rules and regulations of HPCL. The relevant extract is as under:-

"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."

4. Pursuant to the process of interview, the appellant was ranked third in the merit. The site offered by the candidate placed on the second position was not found suitable, and the LOI was cancelled. The appellant was issued the LOI on April 05, 2006 on the terms as set out therein, which included the condition that appellant would make available suitable plot of land within a period of two months. It was also stated that the appellant 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.

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5. On May 11, 2006, the appellant being aggrieved by the said condition, sent a letter to HPCL inter-alia objecting to the specific condition for providing land. It was the case of the appellant that he did not offer to provide land and therefore was also not awarded any marks for the same in the interview held for selection of a dealer. A letter dated June 20, 2006 was sent by HPCL informing the appellant that candidates were required to provide land and certain other infrastructure for being appointed to manage the retail outlet. The appellant responded to the said letter on July 10, 2006 by stating, he was not in agreement with the contents thereof. However, he also stated that he had come across a piece of land in village Khanjhawala, Delhi, which appears to be suitable for setting up of a retail outlet and requested the HPCL to inspect the same and if found suitable, he would take the land on lease / purchase from the owner. Pursuant to the inspection, the said land was rejected by HPCL as being not commercially viable. It appears, the appellant had also offered two sites at Naniwala Bagh, Azadpur and Rajan Babu T.B. Hospital, Road No.45. Both the sites were rejected. The appellant continued to pursue with the MCD for allotment of site for setting up of retail outlet pursuant to LOI issued to him but his efforts were in vain.

6. On April 02, 2008, he filed a complaint against the MCD and Chief Town Planner before the Chief Commissioner. The said proceedings culminated in the order dated December 10, 2008. Suffice to state that the Chief Commissioner directed MCD to allot a suitable land under its jurisdiction to the appellant for setting up of a petrol pump within 30 days of 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 (for short 'Act of 1995') in favour of the persons with disabilities within a period of 60 days and to publicize the same. In the meanwhile, HPCL cancelled the LOI of which a reference is made above.

7. The learned Single Judge on the aspect of cancellation of LOI in paras 28, 29 and 30 held as under:-

"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

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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.”

8. Insofar as writ petition, wherein he sought implementation of the judgment dated December 10, 2008 passed by the Chief Commissioner is concerned, the learned Single Judge has, in para 31 held as under:-

“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

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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."

The learned Single Judge dismissed the writ petition No. 8992/2009 as well.

9. Mr. Keshav Dayal, learned Senior Counsel appearing for the appellant contends that there was no obligation on the part of appellant to offer the land while seeking allotment of a retail outlet. We are unable to agree with the said submission of Mr. Dayal for the following reasons:

- (i) the appellant himself in his application clearly stated (as reproduced above) that he would arrange the site as per rules and regulations of the HPCL;
- (ii) the advertisement issued by the HPCL was for appointment of dealers for Company owned retail outlets on site owned by the Company / leased to the Company. The note in the advertisement clearly stipulated as under:-

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"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."

iii. the LOI issued to the appellant clearly stipulated that the appellant shall make available a suitable plot of land within two months from the date of the letter i.e April 05, 2006.

iv. the appellant himself offered initially site at Khanjhawala, which was rejected being not commercially viable. He had further offered two sites at Naniwala Bagh, Azadpur and Rajan Babu T.B. Hospital, Road No.45. Those were also rejected.

v.. the very fact that the appellant had filed a petition before the Chief Commissioner for allotment of a suitable land for operating retail petrol pump outlet in his favour would demonstrate that it is his own case that he was required to offer the land for the operation of the

petrol pump outlet.

10. Hence, this plea of Mr. Dayal does not impress this Court. The learned Single Judge had rightly in paras 28 to 30, as reflected above rejected the plea.

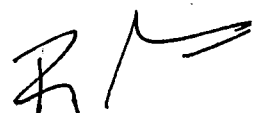
11. The second submission of Mr. Dayal is that Chief Commissioner is within his power to direct the allotment of plot to the appellant. This submission is also liable to be rejected firstly on the ground that such a direction is contrary to Sections 58 and 59 of the Act of 1995 and also such direction is in violation of Article 14 of the Constitution, as the same amounts to discrimination as held by the learned Single Judge in para 29 of the impugned order.

12. The two submissions as made by Mr. Dayal being without any merit and which have been succinctly dealt with by the learned Single Judge, we find no merit in the appeals. The same are dismissed. No costs.

CM No. 33530/2018 in LPA 451/2018 (for stay)

CM No. 33537/2018 in LPA 452/2018 (for stay)

Dismissed as infructuous.


CHIEF JUSTICE


V. KAMESWAR RAO, J

AUGUST 21, 2018/ak