

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 01st October, 2018

+

LPA 627/2016 & CM APPL. 41855/2016

M/S MASAUHRI SERVICE STATION

..... Appellant

Through: Mr. Sanat Kumar, Sr. Adv. and
Mr. Dinkar Kumar, Adv. along with
appellant in person.

versus

BHARAT PETROLEUM CORPORATION LTD & ANR.

..... Respondents

Through: Mr. Sudhir Chandra, Sr. Adv. with
Mr. Anil Kumar Batra, Mr. P. Sinha
& Mr. Rudra Dutta, Adv. for
R-1/BPCL.
Mr. Vikram Jetly, CGSC for
R-2/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

RAJENDRA MENON, CHIEF JUSTICE (Oral)

1. Seeking exception to an order passed by the learned writ court on 07.07.2016 in W.P.(C) No.2011/2015, this appeal is filed by the appellant. The facts in brief go to show that the appellant was allotted a retail outlet dealership by respondent No.1/Bharat Petroleum Corporation Ltd. initially at Azadpur and relocated to Shanti Path in the year 2010. By the impugned

order passed on 24.02.2015, the appellant was directed to relocate the unit at Azadpur. Seeking a mandamus for quashing this order dated 24.02.2015 and restraining respondent No.1/Bharat Petroleum Corporation Ltd. from taking over physical possession of appellant's petroleum outlet at Shanti Path, Moti Bagh, New Delhi and relocating it at Azadpur, the appeal in question was filed.

2. Initially, the appellant was given the outlet in the year 1999 at Azadpur. The appellant operated the same at Azadpur upto 2010-11. The appellant was directed to shift it to Shanti Path in the year 2010 vide communication dated 16.04.2010 and now when the appellant is being relocated back to Azadpur the appeal is filed.

3. The writ court examined various aspects of the matter and dismissed the writ petition. Dismissing the same, the appeal in question is filed and during the course of hearing of this appeal, the appellants indicated to this Court that they would be satisfied if they are directed to operate the dealership again from Azadpur.

4. On 11.01.2018, the proceedings of this Court read as under:

“Learned counsel appearing on behalf of the appellant, on instructions, states that they are willing to operate the dealership from Azadpur. Mr. Sudhir Chandra, learned Senior Counsel appearing on behalf of respondent No.1 states that he would seek instructions in this behalf.

At request of respondent No.1, in order to enable them to obtain instructions, the hearing of the appeal is adjourned.

List on 01.02.2018.”

5. On instructions, the counsel representing the Bharat Petroleum Corporation Ltd. on 18.04.2018 informed the Court that they are willing to

abide by their communication dated 24.02.2015 'Annexure P' in the present appeal, subject to stand of the concerned Ministry. The order passed on 18.04.2018 reads as under:

“Although Mr. Sudhir Chandra, learned senior counsel appearing on behalf of BPCL on instructions states that they are willing to abide by their communication dated 24th February, 2015 annexed as Annexure 'P' to the present appeal it would be subject to the stand of the concerned Ministry.

Mr. Jetly, learned Central Government Standing Counsel appearing on behalf of the Union of India prays for time to obtain instructions in this behalf.

At request of learned counsel appearing on behalf of the Union of India, the hearing of the appeal is adjourned to 30th August, 2018.”

6. Today also, the Bharat Petroleum Corporation Ltd. makes a stand before this Court that they are willing to abide by the decision of 24.02.2015. They have nothing to say with regard to relocation of the appellant at Azadpur. They also say that the petroleum outlet at Azadpur has not been allotted to anybody. It is still functional under the control of respondent No.1 and the respondent No.1/Bharat Petroleum Corporation Ltd. is carrying out the activities of the petroleum outlet. The counsel for the Union of India says that there being violation of the guidelines in the matter of allocation of the outlet at Azadpur, they are not agreeable to the same. However, we find that when the matter was pending before the writ court, both the Union of India and the Bharat Petroleum Corporation Ltd. were willing to permit the appellant to go back to Azadpur and till date the allotment originally made at Azadpur has not been cancelled, except for the fact that in the counter affidavit filed before the writ court the Union of India

had tried to indicate that there was certain violation of guidelines in making the allocation at Azadpur but this was never cancelled and therefore the position that emerges as on date is that the appellant was allocated the outlet at Azadpur in the year 1999. Appellant carried out the activities at Azadpur upto 2010. In the year 2010 appellant was relocated to Shanti Path. Thereafter, by the impugned order passed on 24.02.2015, appellant was directed to go back to Azadpur. Appellant challenged this in the writ petition. His writ petition is dismissed and now in this appeal he gives up this challenge and is willing to go back to Azadpur. The petroleum outlet has not been allotted to anybody. It is still in the custody of the respondent No.1/Bharat Petroleum Corporation Ltd. and they have no objection in handing it over to the appellant. That being so, now the only question before us is that in the light of the objections raised by the Union of India, can the appellant's right to go back to Azadpur be denied.

7. In our considered view, this is not permissible for the simple reason that the allotment of outlet at Azadpur has not been cancelled. The Union of India agreed to permitting the appellant going back to Azadpur before the writ Court and now they have only stated that there are certain violation of the guidelines. If that be so, the Union of India or the competent authority is required to follow the due process of law and cancel the allotment or the permission granted at Azadpur and until and unless the cancellation is not effective the appellant cannot be prevented from going back to Azadpur. That being so, we see no reason now to disallow this appeal of the appellant.

8. Keeping in view the totality of facts and circumstances, we dispose of the appeal in the following manner:

- (i) The appellant's prayer for giving up the challenge to the

impugned order dated 24.02.2015 is accepted;

- (ii) The order passed by the writ court has been affirmed;
- (iii) Bharat Petroleum Corporation Ltd. shall hand over the outlet to the appellant within 15 days from today and, if advised, Union of India may proceed in accordance with law in case they feel that the permission granted to the appellant at Azadpur requires to be terminated;
- (iv) Till such termination does not take place in accordance to the requirements of law, the appellant's right to carry out the activities at Azadpur shall not be interfered with.

9. With the aforesaid, the appeal stands disposed of. The pending application also stands disposed of accordingly.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 01, 2018

kks