

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-4121-2019 (O&M)
Date of decision: 04.09.2019

Vandana Nirman

...Appellant

Versus

Indian Oil Corporation Limited and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vivek Singla, Advocate,
for the appellant.

Mr. Ashish Kapoor, Advocate,
for the caveator-respondent.

JAISHREE THAKUR, J.

1. By way of the instant regular second appeal the plaintiff-appellant herein seeks to challenge the judgment and decree dated 25.09.2018 passed by the Civil Judge (Sr.Divn.), Rohtak whereby suit for declaration and consequential relief of permanent injunction and mandatory injunction was dismissed, and the subsequent dismissal of the appeal by judgment and decree dated 16.08.2019 by Addl. District Judge, Rohtak.

2. In brief, the facts are that the appellant instituted a suit claiming that she had applied for allotment of distributorship in

response to an advertisement dated 20.11.2013, belonging to SC category, she applied under the said category. Having a plot measuring 29m x 29m she submitted an application which was accepted and she was permitted to participate in the draw of lots held on 24.08.2016. She was declared as a successful candidate and was asked to deposit ₹ 50,000/-, which was duly deposited by her. A field verification was done and it was found that the information given by her in the application was false /incorrect/ misrepresented affecting her eligibility and, therefore, the amount of ₹ 50,000/- was refunded along with cancellation of her candidature. Aggrieved, a suit was filed stating therein that she had applied for the said LPG distributorship along with the relevant documents and that in the document she has clearly mentioned that she owned land measuring 29m x 29 m and had sufficient area for the construction of a godown which would have the capacity of 8000 kg LPG cylinders. It was submitted that subsequent to the submission of her application, she had also taken adjacent area of land measuring 1m x 29 m and, therefore, the letter dated 15.12.2016 cancelling her candidature and refunding the earnest amount was illegal. It was further argued that after she had been asked to deposit a sum of ₹ 50,000/- by the defendants, it would be deemed that they had accepted her offer and were now estopped from cancelling her candidature.

3. The suit was contested and written statement was filed in which it was contended that though the appellant had applied for

LPG distributorship in the SC category with a plot measuring 29m x 29 m, the said plot was not in conformity with the requirement of the defendants. It was submitted that as per the brochure and the advertisement, the land required was 25m x 30 m and even though the appellant herein subsequently purchased land, she did not have the land as specified in the advertisement and the brochure.

4. The trial Court on appreciation of the evidence came to hold that on the date of submission of the application, the plaintiff-appellant was not having land measuring 25m x 30m and she had taken 1m x 29m of land subsequent to the submission of the application. The trial Court dismissed the suit holding that the plaintiff-appellant was aware that she was not having the plot measuring 25m x 30m, as required by the defendants. The Appellate Court too dismissed the appeal.

5. Aggrieved, the instant appeal has been filed.

6. Mr. Vivel Singla, learned counsel for the appellant would contend that both the Courts have erred in holding that the appellant did not possess suitable land and that in fact the land owned by her which had a dimension of 29m x 29m with an additional land of 1 Marla was more than the land as sought by the respondents. It is argued that if the building plan of the godown that is to be constructed is superimposed upon the land in possession of the appellant, it would reflect that the land as held by the appellant is sufficient to meet the needs of the godown. It is also argued that after

having accepted the application and declaring her successful by depositing a sum of ₹ 50,000/-, the respondents were now estopped from cancelling her candidature. It is also submitted that her application had clearly mentioned that she owned land measuring 29m x 29m which fact was in the knowledge of the scrutiny committee and, therefore, after having accepted her candidature the same could not be rejected on the ground that the land did not fall within the specifications as mentioned in the brochure. The counsel also pleads the doctrine of legitimate expectations.

7. Appearance has been caused by Mr. Ashish Kapoor, Advocate, for the respondent-Indian Oil Corporation Limited, who are on a caveat. Learned counsel appearing on behalf of the respondents argues that an advertisement was issued in which it had clearly been mentioned that the plot as required was to measure 25m x 30m, which fact was also mentioned in the brochure. It was during the field verification conducted by the respondents that it was found that the plaintiff-appellant did not have the requisite plot measuring 25m x 30 m and it is on this ground that her candidature was rejected. The additional land of 01 Marla was made available to the appellant only after field verification had been done and, therefore, her candidature was rejected. Counsel for the respondents also argues that there was no concluded contract between the parties and, therefore, the argument of estoppel or legitimate expectation would not be available to the appellant.

8. I have heard learned counsel for the parties and have perused the judgments of both the Courts below dismissing the suit of the appellant and find no infirmity in the same. The Courts below have gone into the pleadings and the evidence led before the trial Court and have rightly come to the conclusion that the appellant did not possess a plot of the requisite dimensions as stipulated in the advertisement and the brochure issued. There is no dispute that name of the appellant was cleared and she was allowed to participate in the draw of lots, but if she did not fulfill the conditions as specified in the advertisement and the brochure, she would not be entitled to allotment of the LPG distributorship. Reliance in this regard can be placed upon a judgment rendered by the Supreme Court in ***Bharat Petroleum Corporation Ltd. and others vs. Swapnil Singh 2016(1) Cal. L.T. 58***. Furthermore, it has to be noted that merely being allowed to participate in the process of bidding by submission of tenders would not give an undisputable right to the appellant herein for allotment of the distributorship. The Supreme Court in ***Dresser Rand SA vs. M/s Bindal Agro Chem Limited and Anr. (2006) 1 SCC 751*** has held that invitations of bid by themselves are neither agreements nor contracts. Process of bidding or submission of tenders would result in a contract only when such bid or offer is accepted by the first party which had invited the bid or offer. Merely because the respondents had agreed to field verification, it would not mean that they had accepted her tender and a concluded contract

came into existence.

9. An argument has been raised regarding '*legitimate expectation*', which is wholly un-sustainable. According to this doctrine, the public authority can be made accountable in lieu of a 'legitimate expectation'. It was meant to protect against both a procedural illegality and a substantive interest. The doctrine is based upon the basic principles of natural justice, invoked to prevent abuse of power — the requirement is fairness in action, a fundamental tenet of administrative law. A person may have a reasonable or legitimate expectation of being treated in a certain way by the administrative authorities owing to some consistent practice in the past or an express promise made by the concerned authority. Merely because the name of the appellant was passed by the scrutiny committee and she was successful in the draw, she was not declared successful as the basic requirement of having the requisite land was not met. The respondents had to act in consonance with the brochure and the advertisement, or would have to face the consequence of their action of being unfair to others. There was no promise made nor any contract concluded. Both the Courts below have rightly come to the conclusion that no injunction can be allowed to the plaintiff-appellant against the respondents.

10. Resultantly, the learned counsel for the appellant has failed to point out any jurisdictional error or patent illegality apparent on the record of the case in either of the impugned judgments passed by the

learned Courts below. The learned Courts below have recorded concurrent findings of facts. Thus, there is no scope for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC because there is no question of law, much less substantial question of law thereof, found involved in the instant appeal.

11. The Regular Second Appeal is dismissed being without merit.

04.09.2019*Satyawan***(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.