

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 2829 of 2020

Date of Decision: 09.11.2020

Meena Yadav

... Petitioner(s)

Versus

Hindustan Petroleum Corporation Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for respondents No.1 and 2.

Mr. Amit Jhanji, Advocate
for respondent No.3.

Anil Kshetarpal, J.

Constitution's vision of justice enshrined in Article 14 of the Constitution of India provides that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Basis structure of the Constitution provide that there shall not be any discrimination between any one including the haves and have-nots. With such cherished vision, the Constitution was adopted by the Constituent Assembly on November 26th, 1949. Fundamental rights are enlisted in Part III of the Constitution which starts with Article 12 defining “the State” so as includes not only the authorities of Central and State governments but also takes within its sweep all local or other institutions controlled by the governments. The public servants or officials of the public sector undertaking enjoy immense discretion while distributing state's

largesses. No doubt public sector undertakings are manned by human beings who are not infallible, however when the decisions so taken are found entirely arbitrary and unconscionable, then the Court is compelled to make certain observations. With the authority and power to decide comes a big responsibility to decide correctly. Unless the institutions hold such person(s) who have been conferred such authority accountable for their patently arbitrary and unconscionable decisions, it is becoming difficult to rein in. In the present case, it has been found that the impugned decision taken falls in aforesaid category. The petitioner herein is pitted against wife of a politician who was a Minister in the State Government. This Court leaves it to the respondent -oil company to take suitable steps.

Through this writ petition filed under Article 226 of the Constitution of India, the writ petitioner prays for issuance of a writ in the nature of certiorari, quashing the impugned communication dated 17.08.2019 declaring her ineligible for the allotment of the retail outlet dealership (Fuel Station) under Hindustan Petroleum Corporation (hereinafter referred to as “the Corporation”).

In the considered view of this Court, the following questions need adjudication:-

- 1) Whether it is appropriate for a Public Sector Undertaking to cancel the letter of intent for allotment of a Fuel Station for the reason which is not attributable to the successful applicant apart from being illegal and unauthorized?
- 2) Whether the order resulting in cancellation of the letter of intent passed in violation of the principles of natural justice is

sustainable?

FACTS:

The respondent No.1-Corporation issued an advertisement on 25.11.2018 inviting applications for the allotment of retail outlet proposed to be set up at various locations identified by it. In this case, location identified is within 1 Km. from Gopal Dev Chowk on Rewari Narnaul Road NH-11. The petitioner submitted an application under “DC/”B” category alongwith requisite fee of Rs. 10,000/-. This category denotes that it is a dealer owned site. It is permissible that the land/site may be owned by the applicant or his or her family members as specified in the brochure of Selection of Dealers for Regular and Rural Retail Outlets. In the application the detail of the land offered for setting up of retail outlet was disclosed. A draw of lots was held on 30.01.2019 and the petitioner turned out to be lucky. Two communications in this regard were forwarded to the petitioner on 30.01.2019 (Annexure P3 & P4) informing her of the result of draw of lots with a request to remit a sum of ₹ 50,000/- towards initial security and submit a set of documents specified viz a copy of documents of ownership/lease rights of the land offered for setting up of the fuel station and a sketch of the offered land with the dimensions. The petitioner did comply with the requirements as directed within the prescribed period. Vide communication dated 27-02-2019, the petitioner was intimated that the Land Evaluation Committee will visit the site and inspect the site offered for establishing a Fuel Station on 06.03.2019. A three members Land Evaluation Committee came and inspected the site. Thereafter, on 17.08.2019 the petitioner was intimated that she has been found ineligible for the following

reason:-

“2. *This is to inform you that the Land Evaluation Committee visited the site offered by you on 06-Mar-2019 and found the same to be not meeting the required norms as detailed below:*

Offered land does not meet NHAI norms since there is a median cut present at 68 meters from the offered site towards Rewari side”.

The petitioner submitted a representation on 19.09.2019 wherein it was specifically mentioned in the communication that she had received the communication through e-mail only one week before the date of representation. It was pointed out that on or after 06.03.2019, there is no median cut present within 100 meters of the proposed site and this fact can be re-verified on re-survey. The petitioner did not hear any response and therefore, filed two applications under the Right to Information Act, 2005. One was submitted to the respondent Corporation, whereas second application was submitted to the National Highway Authority of India. On 16.12.2019, the Corporation informed the petitioner that respondent No.3 is a successful candidate, however, the information regarding her father's/husband's name and complete address of the successful candidate was withheld claiming to be exempted under Section 8.1(d) of the 2005 Act being information pertaining to commercial confidence, trade secrets and the disclosure would harm the competitive position. The application submitted by the petitioner to the National Highway Authority of India was forwarded to the Project Director, National Highway Authority of India, Rewari, which

in turn forwarded to the Haryana State Roads and Bridges Development Corporation Limited, Rewari. On 10.01.2020, the petitioner was informed by the Haryana State Roads and Bridges Development Corporation Limited that there is no authorized median cut within a distance of 1 Km. from Gopal Dev Chowk on Rewari Narnaul Road NH-11 and the entire work of laying the road has since been completed therefore the entire management stands transferred to ADB/NHAI. Relevant part of same is extracted as under:

“In this connection, it is to inform you that as per record available in this office, no authorized median cut within 1 km have been provided from Gopal Dev Chowk on Rewari Narnaul Road NH-II District Rewari. Since the road work has been completed and has been transferred to ADB/NHAI, therefore, further information may be taken from their office”.

The petitioner filed the present writ petition on 29.01.2020, which came up for hearing on 03.02.2020, when notice of motion and notice regarding stay was issued.

Two separate written statements have been filed. Respondents No.1 and 2 have filed a joint written statement whereas respondent No.3 a separate written statement. On 04.11.2020, detailed arguments of learned counsel representing the parties were heard through video conference. After conclusion of oral submissions the learned counsels were given liberty to file the synopsis and gist of arguments within a period of 48 hours. Counsels representing respondents 1&2 and respondent No.3 have forwarded the written submissions.

The site in question offered by the petitioner is located at a

distance of 380 meters from Gopal Dev Chowk located on Rewari Narnaul Road, NH-11 towards Rewari side. National Highway 11 is a dual carriage way with the median strip separating the road. Such highway is also called divided highway, which has two separate paved surfaces side by side with a median or physical divider or barrier in between. Such median is used to separate the traffic going in opposite direction. The median strip is some sort of physical divider of the road. The phrase used by the official respondents while rejecting the candidature of the writ petitioner is that “there is a median cut present at 68 meters”. The median cut is a break/gap or absence of median in a dual carriage way. This cut/break/gap is normally kept in order to allow the vehicles going in one direction to take a U-turn or cross over to the other part of paved surface to take the vehicles in the opposite directions.

On 25.11.2018, three Public Sector Oil Companies issued a brochure for Selection of Dealers for Regular and Rural Retail Outlets. In Clause 14, the procedure for selection has been delineated. In the present case Clause 14(H) is relevant, which is extracted as under:

“H. Land Evaluation:

The concerned Divisional /Regional/Territory Office shall inform the selected candidate thru email/SMS at least 10 days before the day of visit by LEC for site evaluation. In case of no response/non-availability of the selected applicant, the candidature shall be cancelled under intimation to the selected candidate through SMS/e-mail.

Evaluation of the offered land will be carried out to ascertain

land being in advertised area and suitable for development of RO – meeting norms. The parameters under which land will be evaluated by Land Evaluation Committee for suitability are:-

- a) Land in advertised area / stretch*
- b) Land dimensions as per requirement*
- c) Land meets NHAI norms (for sites on NH)*
- d) Land has no HT line (>11 KVA) crossing.*

Land not meeting any of the above parameters will not be considered and will be rejected.

Note: Offered land should have minimum frontage & area as specified in advertisement. Minimum Depth perpendicular to the frontage at least at one place, should be available as specified in advertisement.

In case the offered land is found to be suitable, the LEC will submit the recommendation to the Divisional/Regional/Territory head for carrying out FVC of the selected candidate.

In case land is not found suitable, the selected candidate will be informed about his ineligibility and selection process will be continued with the balance applicants. However, the candidate would be considered for selection along with Group 3 applicants and intimation will be sent to the candidate”.

It is the case of the corporation that Ministry of Road Transport and Highways has issued a circular to the effect that while considering the proposal for new Fuel Stations, the guidelines as specified should be kept in mind. Under Clause 4.5.3, it has been provided as under:-

“4.5.3. There shall not be any median gap on a divided carriageway within a distance of 300 m on each side of the fuel station. This minimum distance i.e. 300 m shall be measured between the start of the median gap and the nearest tangent point of access/egress road of the fuel station, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the National Highway.

This stipulation shall be applicable for such median gaps, which are located neither in front of nor in proximity of any intersection or intersecting roads. For intersecting road median gaps or median gaps in proximity of intersections, the provisions stipulated under para 4.5.1 and para 4.5.2 shall apply”.

In the present case, the requirement is that there should not be any gap/break/cut in the median upto a distance of 300 meters so as to provide safe length for weaving/mixing of traffic.

The application filed by the petitioner has been rejected on the ground that there is a gap/break/cut in the median at the distance of 68 meters towards Gopal Dev Chowk from the site offered by the petitioner. It would be noted here that in the meantime a fresh draw of lots has been held and respondent No.3 has been declared successful. As per memo of parties she is claimed to be wife of an Ex-MLA and Minister to the Government of Haryana.

The official respondents have contested the writ petition on the ground that on the day when the Land Evaluation Committee visited the site,

there was a gap/break/cut in the median. It is the case of the petitioner that since respondent No.3 is powerful in every sense, therefore, an illegal median was created overnight in order to create an excuse to disqualify her.

In these circumstances, this writ petition has come up for decision. At this stage, it is important to note that as per brochure, the applications received are divided in three groups. Group-I represents the applications submitted by the land owners/lessees who have concrete proposal of the site being offered for setting up of the Fuel Station/Petrol Pump, whereas group No. II represents the applicant/candidates who have an offer of taking the site on lease and group-III represents that the candidate does not offer site. As per the written statement filed by the official respondents, in group No. I, four applications were received including that of the petitioner and respondent No.3. In group No.II, only one application was received. Annexure R1, annexed with the written statement filed by the official respondents, is the report of Land Evaluation Committee. The reason for not approving the site has already been extracted. This report is signed by the three members Committee on 15.03.2019. Annexure R2 is signed by the petitioner. Careful perusal whereof shows that a rough layout plan has been drawn. It has been shown that there is a gap/cut/break in the median at a distance of 68 meters once one travels from the site in question to Gopal Dev Chowk. This document is also signed by 3 members of the Land Evaluation Committee on 15.03.2019.

As noticed above, the Haryana State Roads and Bridges Development Corporation Limited has reported that there is no authorized median cut/gap/break within 1 Km. from Gopal Dev Chowk on Rewari

Narnaul NH-11. Thus, it is obvious that the gap/break/cut in the median is not authorized. In these circumstances, the question arises as to whether the petitioner could be disqualified on account of illegal and unauthorized cut/gap/break in the median.

Mr. Raman Sharma, Advocate, Learned counsel while appearing for the Corporation has defended its action on the ground that on the day of visit, the gap/break/cut in the median was in existence and therefore, the Land Evaluation Committee had no choice but to recommend her disqualification. It has been submitted that the information from the National Highways Authority of India that there is no authorized gap/cut in the median has been supplied only in the month of January, 2020 and therefore, now her application can only be considered in group No.III.

On the other hand, Mr. Amit Jhanji, Advocate, learned counsel representing respondent No.3, has contended that the terms & conditions of the advertisement are binding and therefore, once there was a cut/gap/break in the median, the petitioner has correctly declared ineligible. It is further submitted that the petition is not maintainable because the petitioner has a efficacious remedy of filing complaint under Clause 18 of the brochure. It has further been contended that the guidelines issued subsequently cannot be applied retrospectively. He in support of his contentions relies upon three judgments of the Supreme Court in *Sajeesh Babu K. v. N.K.Santhosh and Others (2012) 12 SCC 106*, *Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and Others (2010) 3 SCC 732* and *Commissioner of Income Tax and Others v. Chhabil Dass Aggarwal (2104) 1 SCC 603*.

Discussion:-

No doubt, the terms of the advertisement are binding and if there is authorized cut/break/gap in the median, the site proposed by the candidate cannot be approved. However, the question is whether the cut/gap/break in the median is authorized or not and whether because of an unauthorized gap/cut/break created by someone else, it was appropriate for the official respondent to reject the site offered by the petitioner and that also without giving her an opportunity to explain her stand. In the present case, from the facts available on the record, it is apparent that the cut/break/gap in the median is not authorized. The Haryana State Roads and Bridges Development Corporation Limited has already given in writing that there is no provision of median upto a distance of 1 Km from the Chowk.. Thus, in these circumstances, the question is whether the alleged existence of unauthorized gap/cut/break in the median should have resulted in her disqualification or not. It is not the case of any of the respondents that the petitioner is responsible for creating cut/gap/break in the median. In such situation, in the considered view of this Court, the answer to the aforesaid question has to be in favour of the petitioner. Before taking decision to establish a fuel outlet, the evaluation of the site plays a significant role. The oil company always looks for a suitable site so as to maximize its sale. However, oil company is also bound to follow the guidelines issued by the Ministry as well as the National Highways Authority of India. Once the conclusion is inescapable that the cut/gap/break in the median is unauthorized, it has to be treated non-existent in the facts of the case or ignored while considering the application. The corporation after having

come to know of the fact that the cut/break/ gap in the median is unauthorized should have given opportunity to the petitioner to get it removed. In this situation, obvious conclusion is that the order passed by the oil company declaring the petitioner to be disqualified is wrong.

Learned counsel for the private respondent has relied upon Annexures R1 and R2 to contend that once the petitioner herself has signed the document Annexure R2 at the time of visit of the Land Evaluation Committee and she never informed the members of the said Committee that the gap/cut/break in the median is unauthorized, therefore, the petitioner is estopped from taking up this plea. This Court has carefully examined the documents. Annexure R1 is the report of the Land Evaluation Committee dated 15.03.2019. On this report, the petitioner is not alleged to have signed. Now let us come to Annexure R2. This is rough layout sketch of the land offered by the applicant. It is signed by the applicant at a designated place. This document is on already printed form. It is the case of the respondents that the Land Evaluation Committee visited for site inspection of the site on 06.03.2019. Annexure R2 bears 15.03.2019 as its date. All the three members of the committee have signed the same on 15.03.2019. It is not the case of the respondents that on 15.03.2019 the petitioner was called in the office or the site was re-inspected. Thus, it is obvious that on 06.03.2019, the layout sketch of the land offered by the applicant was got signed from the applicant and thereafter, filled up by the Land Evaluation Committee. Hence, the petitioner got no opportunity to explain her stand. The petitioner for the first time was informed that she has been declared ineligible vide communication dated 17.08.2019 i.e. after a period of more than five months

from the date of site visit. The petitioner, in her representation dated 19.09.2019 claims that she has received this communication through e-mail only a week back.

Be that as it may. In the present case, the petitioner was never given an opportunity to explain her position before declaring her ineligible vide communication dated 17.08.2019. The petitioner submitted a representation on 19.09.2019. Therefore, the petitioner cannot be estopped from contending that the report is wrong. From the proceedings recorded by the Land Evaluation Committee, it is apparent that neither the attention of the petitioner was drawn towards the alleged gap/break/cut in the median nor her explanation thereon was sought. The members of the committee did not take trouble to check the status of the cut/gap in the median from the National Highways Authority of India. The members of the Land Evaluation Committee, before declaring the petitioner ineligible, were atleast expected to grant an opportunity of hearing in order to hear her stand. They were also expected to verify the facts from the National Highways Authority of India. In the present case, the members of committee chose to bye-pass/cold shouldered the aforesaid procedure which is in accordance with the principles of natural justice. Aforesaid discussion also answers the contention of learned counsel appearing for the corporation.

The second argument of learned counsel for respondent No.3 is with reference to the alternative remedy. No doubt, before entertaining any writ petition under Article 226 of the Constitution of India, which is an extraordinary remedy, the Court has evolved a self-imposed rule of not entertaining petitions if the effective alternative remedy is available. The

Courts have also been recognizing some exceptions to the aforesaid self imposed rule, i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental procedure of the judicial procedures or has resorted to invoke the provisions which are repealed or when an order has been passed in total violation of the principles of natural justice. Even absence of effective alternative remedy is one of the grounds to entertain a writ petition. However, whenever a statutory forum is created by law for redressal of grievance, then the writ court is expected not to entertain the writ petition ignoring the statutory dispensation.

In the present case, the grievance redressal forum is not statutory. What has been provided is that a complaint accompanied by a fee of ₹ 5,000/- can be submitted, which shall be considered by the authority. It is further provided that the complaint can be filed only within a period of 30 days from the declaration of the results. In the considered view of this Court, this writ petition cannot be disposed of only on the ground that there is an alternative remedy available, particularly when the writ petition has been entertained, written statements have been filed and final arguments have been heard. It is apparent that principles of natural justice have been violated. The official respondents have not objected to the maintainability of the writ petition on the ground that the petitioner has an alternative remedy. Hence reliance placed by learned counsel for respondent No.3 on the judgment in *Commissioner of Income Tax and Others v. Chhabil Dass Aggarwal* (*supra*) is not applicable because in the aforesaid case the Supreme Court found that the High Court erred in entertaining the writ

petition under Article 226 of the Constitution of India particularly when alternative statutory remedies were available to the aggrieved person. The cases were arising from the Income-tax Act. The Court noticed that the Act provides for filing statutory appeal and the Court found that the writ petition failed to claim that such alternative remedy is either ineffective or non-efficacious. In view of the aforesaid facts, the judgment cited by learned counsel for respondent No.3 is not applicable.

Next objection of learned counsel for respondent No.3 is with respect to the subsequent guidelines issued by the Ministry of Petroleum on 23.09.2019 amending the Dealers Selection Guidelines. It has been provided that an opportunity of 100 days shall be provided to a successful candidate whose candidature has been rejected. It would be noted here that the aforesaid guidelines have been issued in order to fulfill the requirements of the principles of natural justice. In other words, the circular gives an opportunity to a candidate who has been declared successful in draw of lots but subsequently rejected, to make a representation and take remedial steps to remove the deficiency, if any, pointed out. In any case, this Court does not propose to enter in that controversy because subsequent instructions are being made applicable.

The court has also examined 2 other judgments in Sanjeesh Babu(Supra) and Secretary and Curator, Victoria Memorial Hall(Supra). In both the judgments Hon'ble Supreme Court laid down that once the expert committee takes a decision, the courts in normal circumstances should not interfere. With highest respect to their lordships, the judgments relied upon are not applicable to the facts of the present case. As a ratio decidendi it has

not been laid down that the courts are debarred from interfering even if the report is patently arbitrary and perverse.

At this stage, it is appropriate to notice that learned counsel for the petitioner has very forcefully submitted that site owned by respondent number 3 is dead opposite to the site offered by the petitioner and hence suffers from same disqualification, however, in absence of pleadings in this regard, this court refuses to go into the aforesaid aspect.

In view of the aforesaid discussion, the writ petition, filed by the petitioner, is allowed. The communication dated 17.08.2019 is set aside/quashed. The respondent-Corporation would be held at liberty to move ahead in accordance with the law.

(Anil Kshetarpal)
Judge

November 09, 2020
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No