

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Krishna Rao**

MAT 1127 of 2021

Santosh Kumar Singh

-Versus-

Bharat Petroleum Corporation Limited & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das

.....For the Appellant

Mr. Surajit Nath Mitra
Mr. Rajarshi Dutta
Mr. Bimalendu Das
Mr. Shomak Das

.....For the BPCL

Heard on : 17.03.2022 & 26.08.2022

Judgment on : 22.12.2022

Krishna Rao, J.:-

This appeal is directed against the order passed by the Learned Single Judge in WPA No. 6101 of 2018 dated 1st October, 2018 wherein the writ petition filed by the appellant was dismissed.

Bharat Petroleum Corporation Limited (herein after referred to as “BPCL”) had invited application for allotment of Retail Outlet Dealership at Singur District, Hooghly, West Bengal under the Schedule Tribe category. The proforma respondent being the candidate for Schedule Tribe had applied for the dealership. BPCL had selected the proforma respondent for allotment of Retail Outlet dealership and issued Letter of Intent in favour of proforma respondent for the proposed MS/HSD retail outlet dealership at Singur District. Before execution of agreement, the Ministry of Petroleum and Natural Gas has framed a scheme on 6th September, 2006 wherein all temporary COCOs (Company Owned Company Operated) without involving court cases or complaint shall be offered to the pending Letter of Intent holder under the Corpus Fund Scheme, which includes Schedule Caste/ Schedule Tribe category on priority basis.

On 27th July, 2009 BPCL had issued a letter to the proforma respondent informing that as the proforma respondent had not submitted suitable offer for proposal for land for development of retail outlet and the BPCL had decided to offer a complete and readymade retail outlet in lieu of the subject location at Chinpai, Birbhum, Opposite to Barkreswar Power Plant on NH-60. On 25th June, 2009 after withdrawing earlier Letter of Intent dt. 5th December, 2001, the BPCL had issued another Letter of Intent to the proforma respondent for Chinpai, Birbhum. On 24th October, 2009, the BPCL had issued letter of appointment in favour of the proforma respondent. After issuance of offer of appointment, an agreement was also entered between the proforma respondent and BPCL. The proforma

respondent by a letter dt. 22.7.2011 informed the BPCL that he is facing difficulties to run the said outlet and requested the authorities to allow him to run his Retail Outlet at Birbhum instead of Chinpai.

On 15th July, 2014, the proforma respondent had informed the BPCL that due to paucity of fund he is not able to run the outlet and requested the Oil company to allow him to bring a partner in the said retail outlet business who will invest some fund to run the outlet.

On 10th September, 2014, the Oil Company informed the proforma respondent that only after re-opening of the retail outlet the prayer of the proforma respondent will be considered for bringing partner in the said business and the Oil Company had also directed the proforma respondent to pay Rs. 9,60,086/- towards the EMI of the Corpus Fund Loan of Rs. 14,32,092/- given by the BPCL vide agreement dt.27.07.2010.

According to guidelines of the Oil Company after five years from the date of commissioning of retail outlet, the proprietor can be allowed to bring new partner in the dealership business by changing the status of proprietorship to partnership. Being aggrieved with the letter dt. 10th September, 2014, the petitioner had preferred a writ petition before this Hon'ble Court and the Learned Single Judge had disposed of the writ application of the petitioner directing to repay the amount of Rs. 9,60,086/- within four weeks and also directed the BPCL to induct the petitioner as partner of the retail outlet dealership in accordance with the guidelines.

After the order passed by the Learned Single Judge, the proforma respondent had deposited the amount and after completion of all formalities, the proforma respondent was allowed to induct the petitioner as partner in the said outlet business.

On 18th March, 2017, the proforma respondent had submitted an application to the BPCL for his resignation from the retail outlet dealership business on the ground that he is not getting any profitable business for the said outlet. Vide communication dt. 30th May, 2017, the BPCL has not allowed the request made by the proforma respondent for his resignation.

On 20th June, 2017, the petitioner had made representation to the BPCL informing that the petitioner had also invested huge amount in the said outlet business as partner and the petitioner is ready to continue the said outlet business and requested to accept the resignation of the proforma respondent and to allow the petitioner to run the said business as Sole Arbitrator.

The BPCL has not accepted the resignation of the proforma respondent as well as not allowed the petitioner to run the retail outlet dealership as sole proprietorship and thus the petitioner had filed writ petition but the Learned Single Judge had dismissed the writ petition filed by the petitioner.

Mr. Debabrata Saha Roy, Learned Counsel, representing the petitioner submits that as per Clause "G" of the policy guidelines for re-constitution of retail Outlet / SKO-LDO Dealership deals with the provisions for

retail Outlet/SKO-LDO Dealership deals with the provisions for reconstitution of Commissioned Dealership. Mr. Saha Roy further submits that from the plain reading of the said clause, which is the only provision in the guidelines regarding resignation of partner, it would be crystal clear that immaterial to the fact a partner of a partnership firm, whether he belongs to SC/ST or General category may resign from retail outlet dealership business by transferring his entire share in favour of the existing partner whether or not the existing partner belongs to SC/ST or General category.

Mr. Saha Roy further submits that said clause also suggests that however, in case of induction of outside category partner in SC/ST dealership, the share of incoming outside category partners will be restricted to 25% but the present case is not involving induction of partner. Induction of partner, in the present case has been done long back following the ration of 75% and 25%.

Mr. Saha Roy submits that the word Resignation and Induction should be read separately as both the words having two different definitions. Mr. Roy relied upon the judgment reported in (2007) 3 SCC 720 (Sanjay Singh & Another -versus- U.P. Public Service Commission & Another) and submits that the Court cannot add words to a statute or read into the statute if the words are not in the statute.

Mr. Surajit Nath Mitra, Ld. Senior Counsel representing the Oil Company, submits that the company had published the advertisement in the year 2001 for appointment of Retail Outlet Dealer and in the said advertisement it was categorically stated that the vacancy in question is

reserved for a Scheduled Tribe Candidate and the private respondent being the Scheduled Tribe Candidate was granted dealership. Due to the financial crisis, the proforma respondent had inducted the petitioner as financing partner and the maximum share of the petitioner as general candidate is 25% and the remaining share of 75% is of the Scheduled Tribe Candidate, i.e. the private respondent.

Mr. Mitra submits that as the vacancy was notified for the Scheduled Tribe Candidate and thus the prayer of the petitioner for running the Outlet Dealership business as sole proprietorship cannot be accepted.

Mr. Mitra submits that the petitioner can be permitted if, the Schedule Tribe Candidate holds maximum share in the business. Mr. Mitra submits that revised company guidelines came into force with effect from 4th July, 2018 and the said guidelines has to be read as a whole. Clause 12 of the guidelines relating to Reconstruction of Commissioned Dealership mentioned in the general condition for induction of outside category partner in Schedule Caste/Schedule Tribe dealership and as per the said guidelines, the SC/ST incumbent should hold at least 75% of the total share.

Mr. Mitra submits that the petitioner and the private respondent has submitted an affidavit before the company declaring that under the partnership, the dealer will not make any change in the constitution of the firm without prior permission of the Oil Company. In the said Partnership Deed it is clearly mentioned that if any of the partners intend to retire from the partnership, prior permission of the Oil Company will be obtained and

they will not change the constitution of partnership without the approval of the Oil Company.

Mr. Mitra has relied upon following judgments :

- i. (2019) 14 SCC 1 (*Hammad Ahmed -versus- Abdul Majeed & Ors.*)
- ii. (1975) 3 SCC 322 (*Swantraj & Ors. -versus- State of Maharashtra & Ors.*)
- iii. (2012) 8 SCC 216 (*Michigan Rubber (India) Ltd. -versus- State of Karnataka & Others.*)
- iv. (2015) 7 SCC 728 (*Joshi Technologies International INC -versus- Union of India & Ors.*)

Heard the learned counsel for the respective parties, considered the materials on record and the judgments relied by the parties.

Appellant has relied upon Clause “G” (3) of the guidelines dt. 4th July, 2018 which read as follows :

“G. RECONSTITUTION OF COMMISSIONED DEALERSHIPS

1. *There will be no restriction of time period for reconstitution of commissioned dealership. However, up to 3 years of commissioning of a dealership, reconstitution will be permitted for induction of minority partner(s) including outside partner(s), with maximum share of incoming partner(s) restricted up to 49% (except in case of induction of outside category partners in SC/ST dealerships wherein the share of incoming outside category partner(s) will be restricted to 25%). There is no restriction on shareholding of the partner(s) in the dealership after 3 years of commissioning (except in case of induction of outside category partner(s) in SC/ST dealerships wherein the share of incoming outside category partner (s) will be restricted to 25%).*
3. *The Sole Proprietor/ all Partner(s) can resign from the dealership after 3 years of holding dealership and transfer his/her/their shareholding in favour of family member(s)/ existing partner(s)/outside partner(s). However, in case of induction of outside category partner(s) in SC/ST dealerships, the share of incoming outside category partner(s) will be restricted to 25%.”*

Counsel for the respondent Oil Company relied upon Clause 12 of the guidelines which reads as follows :

“12. General condition for induction of outside category partner in SC/ST Dealership: For dealerships belonging to SC/ST category, the dealer may make a request to induct minority partner from outside his/her category, in such cases the SC/ST dealer may be allowed to induct minority partner(s) from outside his/her category. However at any point of time i.e., before or after reconstitution, the shareholding of persons belonging to the category under which the subject dealership was allotted should be at least 75 % of total shares. If non-SC/ST spouse of SC/ST dealer is inducted as partner in dealership, his/her share in the dealership shall be counted as SC/ST share.

In case of death/permanent incapacitation of SC/ST dealer, total share of the deceased/incapacitated dealer can be transferred to Non-SC/ST spouse or Non-SC/ST children {legal heir(s)} as the case may be, which would be counted as SC/ST share.

In case of death/permanent incapacitation of SC/ST partner in a SC/ST category dealership having partner from outside the category of the dealership, and where there is no legal heir (s)/nominees(s) or legal heir(s)/ nominee(s) have expressed their unwillingness, in such cases the share of the deceased/ incapacitated SC/ST dealer can be transferred to any other person(s) belonging to the same category, there by maintaining the same category share at minimum 75%.”

The only question before this Court is whether the Retail Outlet Dealership allotted to the proforma respondent under the category Schedule Tribe (subsequently transferred as Partnership Business) can be changed as sole proprietorship in the name of appellant who is not the Schedule Tribe candidate.

Admittedly, the advertisement was made for allotment of Retail Outlet Dealership for the Schedule Tribe Candidate and accordingly the proforma respondent being the Schedule Tribe Candidate succeeded in getting allotment of Retail Outlet dealership. After the allotment, the proforma respondent was facing difficulties to run the said business due to financial

hardship and subsequently in terms of the order passed by the Learned Single Judge in previous proceedings and in terms of the guidelines, the Oil Company had allowed the proforma respondent to enter into partnership with the appellant for smooth running of the said business and as per guidelines the share of the appellant was only 25% and the proforma respondent is having share of remaining 75% share.

Clause 8 of the guidelines reads as follows :

- “8. LOI holder(s) belonging to SC/ST category, can make a request to induct minority partner(s) from outside his/her/their category. In such cases the SC/ST LOI holder(s) may be allowed to induct minority partner(s) from outside his/her/their category. However at any point of time i.e. before or after reconstitution, the shareholding of persons belonging to the category under which the subject dealership was allotted should be at least 75% of total shares. If non-SC/ST spouse of SC/ST LOI holder(s) is inducted as partner, his/her share in the dealership shall be counted as SC/ST share.

In case of death/permanent incapacitation of SC/ST LOI holder(s), total share of the deceased/incapacitated LOI holder(s) can be transferred to their Legal heirs. In case of transfer of share to Non-SC/ST spouse or Non-SC/ST children (legal heirs) the same would be counted as SC/ST share.

In case of death/permanent incapacitation of SC/ST partner (in a SC/ST category dealership having partner from outside SC/ST category) and where there is no legal heir (s) or legal heir(s) have expressed their unwillingness, in such case the share of the deceased/ incapacitated SC/ST dealer can be transferred to any other person (s) belonging to the same category, there by maintaining the same category share at minimum 75%.”

The appellant was inducted as minority partner being the outside category in terms of clause 8 above. In the same clause it is clarified that :

“In case of death/permanent incapacitation of SC/ST partner (in a SC/ST category dealership having partner from outside SC/ST category) and where there is no legal heir (s) or legal heir(s) have

expressed their unwillingness, in such case the share of the deceased/incapacitated SC/ST dealer can be transferred to any other person (s) belonging to the same category, there by maintaining the same category share at minimum 75%.”

In clause 1 of the guidelines it is also mentioned that :

“1. Reconstitution of Retail Outlet dealerships will be permitted only once, except in case of death and incapacitation, at LOI stage.”

The judgment relied upon by Learned Counsel for the respondents Oil Company in the case of Hammad Ahmed (Supra), the Hon’ble Supreme Court held that :

“46. The well-known principle of interpretation of document is that one line cannot be taken out of context. It is a cumulative reading of entire document which would lead to one conclusion or the other. Some of the judgments relevant for determining as to the principle of interpretation of documents are delineated hereinafter. One of the judgments relating to the interpretation of documents is DDA v. Durga Chand Kaushish [DDA v. Durga Chand Kaushish, (1973) 2 SCC 825]. It was held that the meaning of the document or of a particular part of it is to be sought for in the document itself. The Court held as under : (SCC pp. 832-33, paras 19-21)

“19. Both sides have relied upon certain passages in Odgers' Construction of Deeds and Statutes (5th Edn. 1967). There (at pp. 28-29), the First General Rule of Interpretation formulated is: ‘The meaning of the document or of a particular part of it is therefore to be sought for in the document itself’. That is, undoubtedly, the primary rule of construction to which Sections 90 to 94 of the Indian Evidence Act give statutory recognition and effect, with certain exceptions contained in Sections 95 to 98 of the Act. Of course, “the document” means “the document” read as a whole and not piecemeal.

20. The rule stated above follows logically from the Literal Rule of Construction which, unless its application produces absurd results, must be resorted to first. This is clear from the following passages cited in Odgers' short book under the First Rule of Interpretation set out above:

Lord Wensleydale, in Monypenny v. Monypenny said:

‘the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed : a most important distinction in all cases of

construction and the disregard of which often leads to erroneous conclusions.'

Brett, L.J., Meredith, In re, ex p Chick [Meredith, In re, ex p Chick observed:

'I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke ... They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used.'

21. Another rule which seems to us to be applicable here was thus stated by this Court in Radha Sundar Dutta v. Mohd. Jahadur Rahim [Radha Sundar Dutta v. Mohd. Jahadur Rahim : (AIR p. 29, para 11)

'11. Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat".'

47. *Therefore, the entire 1948 Deed as amended in the year 1973 has to be read together to find out the process of appointment of Chief Mutawalli."*

In the case of Swantraj (Supra), the Hon'ble Supreme Court held that:

"9. *The only surviving issue is whether the medicines in this case were stocked for sale in the house of Jaswani at Yeotmal. Admittedly, they were kept not for sale in those premises. Admittedly, they were meant for sale eventually to rural retailers elsewhere. If so, were they stocked for sale? Either contention has some claims to acceptance but what must tilt the balance is the purpose of the statute, its potential frustration and judicial avoidance of the mischief by a construction whereby the means of licensing meet the ends of ensuring pure and potent remedies for the people. This liberty with language is sanctified by great Judges and textbooks. Maxwell [Magdalen College case, (1616) 11 Rep 66-b & of Jeffries v. Alexander, (1860) 8 HLC 594 — Maxwell on the Interpretation of Statutes — 12th Edn. p. 137] instructs as in these words:*

"There is no doubt that 'the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud."

In the case of Michigan Rubber (India) Limited (Supra), the Hon'ble Supreme Court held that :

“35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.”

Clause “G” (3) cannot be read in isolation. It is to be read along with all the clauses of the guidelines. After going through the entire clauses of the guidelines and the advertisement this Court finds that :

- a. The Oil Company has invited application for allotment of Retail Outlet dealer to a particular category i.e. the Schedule Tribe Category.*
- b. Subsequent to the allotment of Retail Outlet Dealer, in case the Schedule Tribe Candidate is incapacity of running the said business he can induct an outside partner and the share of the outside partner cannot be more than 25% and the Schedule Tribe candidate shall maintain 75% of his share.*

- c. *By resigning from the Retail Outlet Dealership, the proforma respondent is attempted to made over the Retail Outlet Dealership business to the petitioner who is not entitled to have Retail Outlet Dealership from the Oil Company under Schedule Tribe Category.*

The judgment relied by the appellant in the case of Sanjay Singh (Supra), it is clarified that “It is well settled that courts will not add word to a statute or read into the same statute a word not in it.” The said judgement will not support the case of the appellant as if, all the clauses of the guidelines read together, it is clarified that the reconstruction of Retail Outlet Dealership in case of death/ permanent incapacitation of ST partner, in such case the share of Schedule Tribe dealer can be transferred to any other person belonging to the same category, thereby maintaining the same category share at minimum 75%.

In view of the above, this Court is of considered view that the Learned Single Judge has not committed any error and the same does not require any interference.

MAT No. 1127 of 2021 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)