

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.3787 OF 2017

Mrs. Sangita Chandrakant Aundhe ..Petitioner
Versus
Mrs. Neelam Vijay Gorad and Ors. ..Respondents

**WITH
WRIT PETITION NO.7574 OF 2018**

M/s. Indian Oil Corporation Limited ..Petitioner
Versus
Mrs. Nilima Vijay Gorad and Anr. ..Respondents

Mr. G. S. Godbole i/by Shruti Tulpule, for the Petitioner in WP No.3787/2017.

Mr. Siddharth C. Wakankar, for the Respondent No.1 in both Petitions.

Mr. Sunil Gangan a/w S. M. Seegarla, Swapnil Shikhare & Shalaka Chamboowala i/by RMG Law Associates, for Respondent Nos.2A to 2C in WP No.3787/2017 & for Petitioner in WP No.7574/2018.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th APRIL, 2022

PC.

1. Both these petitions can be disposed of by this common order by consent of the parties.

2. The order of temporary injunction restraining petitioner thereby acting further in furtherance of issuance of Letter of Intent dated 3rd January, 2014 issued in favour of the petitioner in Writ Petition No.3787 of 2017 by the petitioner in Writ Petition No.7574

of 2018, Indian Oil Company is subject matter of challenge.

3. Facts necessary for deciding both these petitions are as under :-

Petitioner/Indian Oil Company/defendant No.1 in RCS No.532 of 2014 started selection process for appointment of petroleum dealer. It appears that the dealership was to be appointed on 'B' site basis viz. land and infrastructure to be provided by the dealer and the company was to charge the licence fees. The petitioner/selected candidate along with original plaintiff/respondent participated in the selection process.

4. It is claimed that the respondent/plaintiff was allotted zero mark under the heading of capacity to generate business and financial capacity. Considering the contentions of rival parties, Trial Court noticed that the petitioner/ Indian Oil Company has acted arbitrarily and proceeded to issue Letter of Intent in favour defendant No.2, which is confirmed by the Appellate Court.

5. While assailing order of injunction, Mr. G. S. Godbole, learned counsel appearing for the private party i.e. defendant No.2 would urge that the Letter of Intent is issued on 3rd January, 2014. He would further urge that the relief which is claimed in the suit is declaratory in nature. If such relief is considered in the backdrop of Section 34 of the Specific Relief Act, even if said relief is granted, respondent/plaintiff cannot be neither benefited nor the petitioner/

defendant. According to him, initially the respondent/plaintiff initiated suit being RCS No.66 of 2013 before the Court of Civil Judge, Junior Division at Vaduj, District Satara. However, the plaint was returned and a fresh suit was initiated being RCS No.532 of 2014. He would urge that till the grant of temporary injunction on 21.04.2014, there was no injunction in operation for a considerable period of more than one year. He would further urge that the petitioner has already acted on Letter of Intent on 3rd January, 2014, as the plot which was offered by her is already developed by installing underground fuel tanks etc. Learned counsel would then urge that if permitted by this Court, he shall be maintaining accounts of the business of the petrol pump provided the injunction is vacated by this Court and further allotment of dealership shall be subject to final outcome of the suit. Drawing support from the judgment of Apex Court in the matter of ***Uttar Pradesh Avas Evam Vikas Parishad and Ors. Vs. Om Prakash Sharma*** reported in **(2013) 5 SCC 182**, particularly, paragraphs 35 and 36, he would urge that the relief of declaration sought under Section 34 of the Specific Relief Act is discretionary and in case if the respondent's suit fails, the petitioner will be at lost. He has also sought support from the judgment of ***Jagdish Mandal Vs. State of Orissa and Ors.*** reported in **(2007) 14 SCC 517**, particularly, paragraph 22, the relief of administrative action is permissible, in case, if the authority has acted *mala fide* or with an intention to favour someone; the decision taken is such that no responsible authority acting reasonably and in

accordance with relevant law could have reached/or the decision is not in public interest.

6. As such, according to Mr. G. S. Godbole, orders impugned passed by both the Courts below are liable to be set aside, thereby permitting the petitioner to go ahead with the installation of petrol pump and further should have proceeded to operate the business subject to final outcome of the suit.

7. Counsel for the petitioner/Indian Oil Corporation submits that aforesaid documents which were produced by the plaintiff and considered by the Trial Court are not discussed as the effect of the said documents over the merits of the matter are not appreciated. He would further claim that in contractual matter, the Court below ought not to have granted temporary injunction. As such, according to him, orders impugned are liable to be quashed and set aside.

8. Considered submissions.

9. The fact remains that the injunction is in operation against the petitioner from 3rd March, 2014 i.e. subsequent to the issuance of Letter of Intent dated 3rd January, 2014. If we appreciate the conditions which are incorporated in the Letter of Intent, I hardly notice that there is concluded contract in favour of the petitioner/defendant No.2 by the defendant No.1/Indian Oil Company. Rather, defendant No.1 has put the defendant No.2 to

notice that the Letter of Intent be not considered as concluded contract as the same is subject to compliance of certain conditions.

10. But for the contention that the Letter of Intent to some extent was acted upon, I hardly notice any concluded contract in favour of the defendant No.2.

11. As stated herein-above, the aforesaid order of injunction dated 21.04.2014, which is subsequently confirmed by the Appellate Court i.e. learned District Judge is in operation and as such there operates injunction for about last eight years. The Court is required to be sensitive to the fact that while awarding zero mark to the respondent/plaintiff under the heading of capacity to generate business and financial capacity, the bias/*mala fide* approach of the respondent/Indian Oil Company can be *prima facie* inferred. With the assistance of the learned counsel for the petitioner/Indian Oil Company, I have perused the report of the Investigating Officer. The said report contains self contradictory observations by the Investigating Officer on the financial status and capacity to generate business.

12. While awarding zero mark under the heading of capacity to generate business and experience, both i.e. petitioner/defendant No.2 and the plaintiff/respondent were in almost same business and still the respondent/plaintiff was awarded zero mark. Apart from above, the plaintiff has produced the copies of fixed deposit certificates pledged by her husband and father-in-law in her favour,

however, same has been arbitrarily discarded by the selection committee which *prima facie* appears to be purely in favour of the petitioner/defendant No.2. As such, it can be inferred that the selection committee of defendant No.1/Indian Oil Company has acted in *mala fide* manner purely with an intention to favour the defendant No.2. Rather the decision of the selection committee to be termed as such that no responsible authority acting reasonably and in accordance with relevant law could have reached.

13. Mr. G. S. Godbole, counsel appearing for the petitioner though has taken shelter of Section 43 of the Specific Relief Act so as to substantiate his claim that in absence of concluded contract, the suit ought not to have been entertained, the fact remains that the suit was brought into action at an appropriate stage, as already Letter of Intent is issued. As such, the intentions of the petitioner/Government of India Oil Company are quite clear about their intention to appoint defendant No.2 as its dealer. As such, the support drawn from the Apex Court judgment in the matter of *Uttar Pradesh Avas Evam Vikas Pradesh (supra)*, will be of hardly any significance.

14. Though counsel for the petitioner Mr. G. S. Godbole has drawn support from the Apex Court judgment in the matter of *Jagdish Mandal (supra)* to claim that there are very restrictive scope while causing interference in the administrative decisions under judicial review, the fact remains that the process adopted in the

matter of selection of the defendant No.2 by defendant No.1 appears to be intended to favour her by awarding zero mark to the respondent/plaintiff. As a consequence of above, the arbitrary approach on the part of the respondent/selection committee as the selection committee appears to have acted irresponsibly so as to affect the public interest.

15. The aforesaid considerations have prevailed before both the Courts below while concurrently granting temporary injunction against the petitioner.

16. Petitioner/Indian Oil Company is required to conduct themselves in transparent manner which they have failed to as could be inferred from the observations by both the Courts below.

17. In the aforesaid background, in view of concurrent findings recorded against the petitioner, I hardly see any reason or ground which warrants interference.

18. Both these petitions as such fail, dismissed.

19. Since the suit is pending about last more than seven years, hearing of the same is expedited as jointly prayed.

[NITIN W. SAMBRE, J.]