

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CWP-17270 of 2021
Date of Decision: 03.02.2023

Subhash Chander

....Petitioner(s)

Versus

Hindustan Petroleum Corporation Ltd. and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sardavinder Goyal, Advocate,
for petitioner.

Mr. Rishu Mahajan, Advocate,
for petitioner No. 2 (Jaskaranbir Singh).

Mr. Raman Sharma, Advocate,
for respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing of the impugned order/communication dated 24.03.2021 (Annexure P-9) passed by the respondents whereby the candidature of the petitioner for retail outlet of Hindustan Petroleum Corporation Ltd. has been rejected on the ground that no land has been offered by the petitioner for the development of retail outlet, whereas the findings recorded by the respondents are contrary to the facts on record because the petitioner had specifically offered the land on 30.06.2020 vide Annexure P-6 to P-8 and therefore the action of the

respondents was illegal and violative of Fundamental Right guaranteed under Article 19 of the Constitution of India. Further prayer is also made seeking directions to the respondents to consider the candidature of the petitioner and allocate the retail outlet of Hindustan Petroleum Corporation Ltd. in view of the aforesaid facts and circumstances.

2. The brief facts of the present case are that the respondents advertised for selection of dealers for regular and rural retail outlet on 14.11.2018 and regarding which a brochure for the aforesaid selection is annexed with the present petition as Annexure P-1 which laid down various guidelines on selection of dealers for regular and rural retail outlets through draw of plots/bidding process. The petitioner applied for the aforesaid retail outlet vide application dated 24.12.2018 (Annexure P-2) in the category of 'Open Physically Handicapped'. The petitioner is stated to be physically handicapped to the extent of 70% and regarding which his disability certificate is also attached alongwith the present petition vide Annexure P-11 which is not in dispute by the respondent-Corporation. As per the selection process, the applicants are generally divided into three groups. The candidates who apply in Group 1 hold land either by way of ownership or by way of long lease and candidates who fall in Group 2, they have some concrete commitment to offer land as aforesaid and candidates who fall in Group 3 are those candidates who do not have land at the time of filing of the application but thereafter an opportunity is given to them for offering of the land. The selection process gives priority to Group 1 and 2 and firstly Group 1 is considered and thereafter in default of the same, Group 2 is considered and in case there is no candidate available from Group 1 and 2,

then all the applications are put in a common pool which comprises of Group 3. The petitioner in the present case applied in Group 3 only. It is an admitted position that there was no candidate in Group 1 and 2 but there were about total five candidates who were in Group 3 out of which the petitioner was one of the candidates and therefore the further process started accordingly. As per the brochure, the procedure is to be followed by way of transparent online process for the purpose of draw of plot/bidding opening which is so stated in the introduction of the brochure itself. Thereafter, the entire process is based upon communication through online portal which is a common portal for the selection process. The communication is done between the common portal of the respondent Corporation and the registered email ID and the mobile number of the concerned candidate. It has also been provided in the brochure that the status of the application would be communicated through the email ID/mobile number provided by the applicants while registering on the portal. Under the heading of selection through draw of lots/bidding, the brochure also provides that in case of allocations involving selection through draw of lots, if there is only one eligible applicant, no draw of lots is required. The lone eligible applicant would be declared as selected and email will be triggered by the website to the single eligible applicant's email ID. In this way the entire communication is through the email ID for the purpose of providing transparency in the system.

3. Since the petitioner had applied in Group 3 and he was yet to offer land which was in accordance with the selection procedure, he was communicated by the respondent Corporation through email vide Annexure P-3 dated 22.01.2020 that he has not offered any land in the application for

the development of the aforesaid outlet and was advised to submit his offer for a suitable land in the advertised location/stretch meeting the laid down criteria. It was further provided in the letter that the requisite details regarding the plot proposed are to be offered through online portal within three months from the date of this letter. It was further stated that the petitioner will also be required to submit a confirmatory letter from an advocate in Appendix III B giving details of the land offered as it is done in Group 1 and 2 and also affidavit in Appendix III A, if it was so applicable. It was also stated in the letter that in case he fails to submit his offer for a suitable land through the web portal within a period of three months from the date of the letter, then his application was liable to be rejected. Thereafter, i.e. on 25.05.2020 the petitioner vide Annexure P-5 through email sent a letter to the official of the respondent Corporation that he has already applied in Group 3 without land and that the Corporation has given him an opportunity for submission of land documents and he already has suitable land as per the advertisement and is also willing to provide the same. However, due to Covid-19, the Government offices, i.e. Tehsil Adampur was closed and there was no progress and he was unable to submit the land papers and as per given time or upto 22.04.2020 and therefore a request was made to extend the date of final submission of documents, so that he can prepare the land documents when the Tehsil is open.

4. On 23.03.2020, there was a sudden complete lock-down in the entire country due to spread of Covid-19 pandemic. Thereafter, in some parts of the country, curfew was also imposed at different intervals of time and the Government offices did not work regularly. Not only this, people were also

scared of going outside their houses due to sudden onset of Covid-19 pandemic. The Government of India vide Annexure P-4 dated 24.03.2020 issued orders in this regard by stating that the World Health Organisation has declared Covid-19 as 'Pandemic' and various authorities were directed to ensure that advisories and various other effective measures to prevent the spread of aforesaid pandemic be adhered to. Various orders were passed by the Government of India including directions from the National Disaster Management Authority for preventing the spread of the aforesaid disease. From time to time, such directions were issued by categorizing various zones into green, red and orange zones and also some of the places as hot spots and at various places even containment zones were also made.

5. Therefore on 25.05.2020 vide Annexure P-5, the petitioner wrote a letter that in view of the Covid-19 pandemic, he was not able to offer the land which is otherwise available with him and date be extended for final submission of documents. A lease deed pertaining to 3 kanals and 17 marlas as required by the Corporation was also executed on 27.06.2020 (Annexure P-6). The requisite certificate/confirmatory letter from the advocate for the purpose Annexed III B was also prepared vide Annexure P-7 alongwith aks-sijra.

6. Thereafter, on 30.06.2020 the petitioner vide Annexure P-8 submitted all the aforesaid documents which included copy of the lease deed, confirmatory letter from an advocate as per Appendix-III B, copy of aks-sijra of the aforesaid land and copy of email communications to the Head of Regional Office of the respondent Corporation. The said letter alongwith the documents were received by the respondent Corporation on 30.06.2020

which is clear from the stamp of the respondent Corporation on the aforesaid letter and the receipt of the same has not been disputed by the respondent Corporation in the present case. However, such an offer letter alongwith the aforesaid documents were given to the respondent Corporation in physical form.

7. Thereafter, vide impugned order Annexure P-9, the respondent Corporation vide letter dated 24.03.2021 rejected the candidature of the petitioner on the ground that he has been found to be not eligible for the allotment of retail dealership. The said candidature was rejected on the ground that he had not offered any land in the application for the development of the retail outlet and no offer of land has been received from the petitioner. The contents of the aforesaid impugned letter dated 24.03.2021 is reproduced as under:-

- “1. Please refer to your application received by us as Application form No. 15456521101245 on the subject.
2. You had not offered any land in the application for the development of the subject Retail Outlet. Vide our letter dated 24-Jul-2020, you were advised to offer land in the advertised location/stretch. However, no offer of land has been received from you.
3. In view of the above, we regret to inform you that your candidature has not been found to be eligible for allotment of the above RO Dealership.
4. In case you have any grievance against the rejection of your candidature as mentioned above, you may make your representation within 10 days from the date of this letter.”

8. Learned counsel for the petitioner submitted that the respondent Corporation has acted in a totally arbitrary and irrational manner. He further submitted that the petitioner is 70% physically handicapped person and he applied in Group 3 category for allotment of retail outlet for the purpose of earning his livelihood and the respondent Corporation is a Public Sector Undertaking and therefore ought to have considered the peculiar circumstances of the case and ought not have rejected the candidature of the petitioner purely on hypertechnical grounds. He submitted that it was not because of the fault of the petitioner that he did not supply the necessary documents pertaining to the land and other documents within the stipulated period of three months which otherwise expired on 22.04.2020 because on 23.03.2020 the entire country faced lock-down and it was beyond the control of the petitioner to have done so and particularly in view of the fact that the offices of Revenue were closed and people were advised social distancing and it was only because of the aforesaid extraordinary circumstances that he was not able to supply the documents or even to execute the lease deed. He further submitted that the bonafide of the petitioner cannot be doubted in view of the fact that immediately when there was a little normalcy in the situation pertaining to Covid-19, he immediately got the lease deed executed vide Annexure P-6 dated 27.06.2020 and immediately thereafter he submitted the entire documents alongwith the offer on 30.06.2020 vide Annexure P-8 which is not disputed by the respondent Corporation till date and therefore submitted that the impugned order Annexure P-9 be quashed and the respondent Corporation be directed to consider the case of the petitioner and process the same in accordance with law by ignoring the

aforesaid technicalities which have been raised by the respondent-Corporation.

9. On the other hand, learned counsel appearing on behalf of the respondent Corporation submitted that in fact the respondent Corporation was also conscious of the fact that that due to Covid-19 pandemic, there was a lock-down in the country and thereafter there was partial working of Government offices and people were advised social distancing and it was due to this reason that vide Annexure R-1 which has been attached alongwith the reply to the present petition, which is dated 24.07.2020 that an email was sent to the petitioner that it has been now decided to give one more opportunity on one time basis to the applicants of such locations, to which no response has been received from any applicant to offer land through the online portal. Such letters were sent by automatic process through the portal which is a computer generated email not only to the petitioner but also to the remaining four candidates as well. He submitted that thereafter the petitioner did not avail of the opportunity of three more months which were given by the respondent Corporation and did not submit the requisite documents on the online portal despite the fact that the portal remained open for further three months and that is why the impugned order was passed on 24.03.2021 whereby his candidature was rejected. Learned counsel referred to the contents of the brochure to state that all the communications are to be done by way of email and therefore since the petitioner did not avail the opportunity given to him, his petition is liable to be dismissed. He further submitted while referring to the reply filed by the respondent Corporation that there is no dispute that the petitioner had submitted all the requisite

documents including the land confirmatory letter, copy of aks-sijra and copy of email communication in a physical form to the respondent Corporation on 30.06.2020 which is prior to 24.07.2020 and which has been so acknowledged by the respondent Corporation by putting a stamp on the same. He submitted that it has been specifically stated in the reply that the petitioner was **orally** advised that because of Covid-19 lock-down another opportunity would be provided to the applicants. He submitted that adequate opportunity was granted to the petitioner not once but twice but he failed to apply for the same through online portal and therefore the petition is liable to be dismissed.

10. I have heard the learned counsel for the parties.

11. The basic issue involved in the present case was effect of submission of documents by physical mode instead of submitting through online portal. The dates and the facts as aforesaid are not in dispute. The stand which has been taken by learned counsel for the petitioner is that it was beyond the control of the petitioner initially due to onset Covid-19 which was declared as 'Pandemic' by the World Health Organization that he was not able to apply online within stipulated three months till 22.04.2020 and thereafter immediately in the month of June 2020, he got all the documents including the lease deed and submitted the same to the respondent Corporation through physical mode which has not been disputed by the respondent Corporation.

12. On the other hand, the case of the respondent Corporation is that they are bound by the contents of the brochure according to which all the communications have to be through email and the petitioner was granted

another opportunity vide Annexure R-1 to which he did not avail. During the course of arguments, learned counsel for the petitioner has specifically stated on instructions that the petitioner did not receive aforesaid email Annexure R-1 and he was not aware of the aforesaid email. During the course of arguments, he also submitted that the averment which has been made by the respondent Corporation in the reply that he was orally advised to submit online, is also factually incorrect because no officer of the Corporation had orally advised the petitioner in this regard.

13. There were five candidates in Group 3 category. As per learned counsel for the respondent Corporation, the remaining four candidates have not supplied any documents at all till date. A perusal of the brochure attached with the present petition (Annexure P-1), would show that in case there is only one eligible applicant, then no draw of lots is required and the eligible applicant would be declared as selected. In other words, had the application of the petitioner been accepted, then even as per the Corporation, the case of the petitioner would have been further processed for being allocated. His case was rejected only due to sole reason that he did not deposit documents through online portal and he has given documents in the physical form.

14. The brochure which has been attached alongwith the present petition (Annexure P-1) provides for guidelines on selection of dealers for regular and rural retail outlets through draw of lots/bidding process and is certainly applicable to both the parties, i.e. the Corporation and the prospective bidders/ allottees and ordinarily all of them should comply with the aforesaid guidelines. However, in the present facts and circumstances, it is undisputed that on 23.03.2020 there was a total lock-down in the country

and thereafter even curfew was also imposed in various areas and the entire activities were not only restricted but also curtailed to a large extent. The Government offices including Revenue Department were not working. As per Annexure P-10, for a number of times the Hon'ble Supreme Court of India even passed orders for extending the period of limitation for various suits, applications and appeals etc. However, those directions were applicable to judicial proceedings but the present case does not fall in that category because it was only an administrative action. However, the fact remains that the respondent Corporation is a Public Sector Undertaking and is not a purely private organization. Initial application was submitted by the petitioner online vide Annexure P-2 on 24.12.2018 in accordance with terms and conditions of Brochure. After, onset of Covid-19 epidemic, the petitioner had submitted all the documents which were required by the respondent Corporation in the physical form and acknowledged by the respondent Corporation. The respondent Corporation ought to have applied its mind with regard to the effect of the same, although considering the guidelines but would not have ignored the effect of natural calamity which was faced not only by India but by the entire world. A perusal of the impugned order Annexure P-9 would show that it is not only a result of non-application of mind, but it is also factually incorrect and in paragraph 2 thereof, it has been so stated that the petitioner has not offered any land in the application for the development of retail outlet. However, admittedly the respondent Corporation had received all the documents including the application from the petitioner way back in June 2020 which was about nine months ago and the same has not been disputed by the Corporation itself in the reply. It has

been further stated in paragraph 2 of the impugned order that no offer of land has been received from the petitioner which is again factually incorrect.

15. This Court is of the view that the respondent Corporation especially being a Public Sector Undertaking could not have shut its eyes to the extraordinary circumstances of natural calamity which was being faced not only by India but the entire world during that time and at least should have considered the effect of submission of the requisite documents and the application by the petitioner in the physical form which is otherwise not disputed by them and therefore the respondent Corporation has acted in an arbitrary and fanciful manner besides being insensitive and more particularly when the petitioner was 70% handicapped.

16. The argument which has been raised by learned counsel for the respondent Corporation that it was because every communication has to be made by way of email and because of that reason the candidature of the petitioner was rejected, is also unsustainable. In such like situation, the Corporation cannot be permitted to reject the candidature of a candidate on the basis of aforesaid reason by not even considering the effect of the same in the impugned order. It was the duty of the respondent Corporation to have at least considered the effect of submitting the entire documents to the Corporation in physical form.

17. When earlier the petitioner was communicated vide Annexure P-3 dated 22.01.2020 for submission of documents within three months, but he did not submit due to onset of Covid-19, the portal of respondent Corporation remained open for three months and thereafter the petitioner submitted the same in June 2020 in physical format. The closing of portal

after three months with effect from 22.01.2020 has been duly acknowledged by the respondent Corporation in its reply.

18. In addition to the above, the reliance which has been placed upon the brochure (Annexure P-1) are the guidelines on the selection process and the same is evident from the first line of the aforesaid brochure which is as follows:-

“Guidelines on selection of dealers for regular & rural retail outlets through draw of lots/bidding process.”

19. The learned counsel for the respondent Corporation referred to a judgment of the Hon'ble Supreme Court in **Common Cause: A Registered Society versus Union of India** 1996(6) SCC 530 to contend that the procedure of allotment should be just, fair and non-arbitrary. However, in the facts and circumstances of the present case, by considering the documents submitted by the petitioner in a physical form due to extraordinary circumstances arising out of natural calamity cannot be said to be non-transparent. The Corporation could have uploaded the same on portal for making them available for other persons or may be for inviting objections.

20. The learned counsel also referred to another judgment of the Supreme Court in **Bharat Petroleum Corporation Ltd. and others versus Swapnil Singh** (Civil Appeal Nos.6928-6929 of 2015 (Arising out of SLP (c) Nos.15953-15954 of 2014) date of decision 08.09.2015) to contend that terms and conditions of Brochure are binding. However, the aforesaid judgment is totally distinguishable from the present case. In that case, the condition was that the applicant must be owner of a specified area of land or

must have a registered lease deed on the date of application which he did not have and therefore his candidature was cancelled. However, in the present case, the only objection of Corporation was that the petitioner did not submit documents by online portal system.

21. It is true that normally the parties should abide by the guidelines but that does not mean that in such peculiar and extra-ordinary circumstances pertaining to natural calamity affecting the entire world that the Corporation should be permitted to remain insensitive to the same. No prejudice could have been caused to the respondent Corporation in case they could have at least considered the effect of the aforesaid submission of documents in physical form. Adherence to the guidelines is a matter of procedure which should be followed in ordinary circumstances but present is a case of extra-ordinary circumstance and no fault can be attributable to the petitioner.

22. The argument raised by learned counsel for the Corporation that guidelines are mandatory in nature could weigh higher had there not been any aforesaid extraordinary peculiar situation. Even if they are mandatory in nature, it is a matter of procedure only. However, this Court in the present extraordinary exceptional and peculiar circumstances, deem it fit and proper to invoke the Doctrine of Substantial Justice and therefore all the matters of procedure and technicalities will become subservient to the dominant factor of Substantial Justice which has to prevail.

23. Hon'ble Supreme Court in Vidya Devi versus State of Himachal Pradesh and others (2020) 2 SCC 569 observed that in a case where the demand for justice is so compelling, a Constitutional Court would exercise its jurisdiction with a view to promote justice and not to defeat it.

24. In view of the aforesaid totality of circumstances and in the light of peculiar circumstances of the present case, the present petition is allowed and the impugned order/communication dated 24.03.2021 (Annexure P-9) is hereby set aside. The respondent Corporation is hereby directed to continue and finalize the process of selection in accordance with law within four months and without raising any objection with regard to the fact that the petitioner had supplied documents by physical mode and not by online portal. The status of all relevant documents of the petitioner may be uploaded on Portal to ensure transparency.

25. The aforesaid directions are being issued in peculiar facts and circumstances of the present case considering the exceptional extraordinary circumstances due to Covid-19 pandemic and it would not be deemed to be any observation with regard to the sanctity and enforceability of the aforesaid brochure.

(JASGURPREET SINGH PURI)
JUDGE

February 03, 2023

dinesh	Whether speaking	:	Yes/No
	Whether reportable	:	Yes/No