

(2010) 05 AHC CK 0147
In the Allahabad High Court
Case No : Writ Petition No. 4676 (M/B).of 2010

Alok Kumar Dixit and another	Vs	APPELLANT
Hindustan Petroleum Corporation Ltd. and others		RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0147

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Pradeep Kant And Ritu Raj Awasthi, JJ.—Heard the learned Counsel for the petitioners Sri O.P. Srivastava, Sri Sunil Sharma for respondents 1 to 3 and Sri J.P. Maurya for the Union of India.

2. We do not find it necessary to issue notice to respondent No. 5, in view of the proposed order.

3. The petitioners are aggrieved by the cancellation of selection made by the Hindustan Petroleum Corporation Ltd. (hereinafter referred to as "the Corporation") for allotment of the retail outlet at Colonelganj (lying between milestone 216 to 219, Gonda Lucknow road at SH1A).

4. The Corporation had issued an advertisement inviting applications from the willing and eligible persons for allotment of the HPCL retail outlet (Petrol Pump)/ SKOLDO dealership. The petitioners applied for allotment of dealership in partnership, of the site shown at Serial No. 70 i.e., Colonelganj, Gonda, Lucknow Road at SH1A, between milestone 216 to 219 under the Mugalsarai Region in the prescribed proforma.

5. The petitioners were called for interview alongwith other persons, but they were awarded zero marks under the head "Land and Infrastructure". The marks were declared on 8.10.2009.

6. The petitioners after knowing the fact that they have been awarded zero

marks aforesaid, submitted a representation on 16.10.2009 and also filed a writ petition on 6.11.2009, bearing No. 10227 (MB) of 2009 challenging the aforesaid comparative merit/marksheet dated 8.10.2009.

7. As per the own policy of the Corporation, as also the directives issued by the Court, the representation/objection preferred by the petitioners was considered. On considering the said representation, it has been found by the Corporation that the description of the site (location) of the proposed retail. Out let in the advertisement was vague, which has resulted into misgiving/misunderstanding of the sites and, therefore, the said selection be cancelled and be again advertised precisely detailing the site for which the selection is to be made.

8. Sri O.P. Srivastava, learned Counsel for the petitioners, assailing the aforesaid order submitted that the petitioners' site was on the exact location, as advertised by the Corporation and, therefore, the cancellation of selection on this ground is nothing but a device to deny the petitioners, the dealership, to which they were otherwise entitled, as they ought to have been awarded 35 marks, but they were awarded only zero marks.

9. Sri Sunil Sharma, appearing for the Corporation, drawing the attention of the Court to the order passed, submitted that though the petitioners' site itself was not on the prescribed place, the same being in village Sakraura, he also pointed out that out of five applicants under the advertisement, four of them were not having the sites at the place advertised and one applicant who had the land at the desired location i.e., Colonelganj, was not having the land of the required measurement. That being so, the Corporation had no option but to cancel the entire selection. In support of his submission, Sri Sunil Sharma relies upon a Division Bench judgment of this Court in the case of Khalid Mohammad Khan v. Union of India and another, 2009 (27) LCD 533 wherein it has been held as under:

"14. Lastly, in regard to the plea of the petitioner that the cancellation has been done arbitrarily for no basis, suffice would be to mention that the Corporation has not favoured any person for grant of Kisan Sewa Kendra. The Corporation in his own wisdom has thought that location Banaganj is not upto its expectation and is not viable for any reason whatsoever and, therefore, this Court would not enter into the question as to whether the Kisan Sewa Kendra could be established at Babaganj or not and if so, whether it would have been in the interest of the Corporation or not. It is purely a policy decision of the Corporation as to where the location of Kisan Sewa Kendra should be established."

10. The advertisement issued stated that the location/site should be Colonelganj, lying between milestone 216 to 219 from GondaLucknow road at SH1A.

11. On enquiry, the Corporation found that though this land appears to be in the stretch of 3 kilometers but, in fact, out of 3 kilometers, only 1.6 kilometers area falls within the jurisdiction of Colonelganj Nagar Palika, which is an urban area and the plots are limited in number. The rest of the land falls under different

villages and that such a description of the land/site has given very less option to the applicants for choosing a site. This observation is supported by the fact that out of the five total applications, on technical evaluation being made by the Technical Committee, it was found that out of five applicants, the land of four applicants were not in Colonelganj, but in village Pipri and village Sakraura, and only one person was having the land in Colonelganj but of lesser dimension.

12. The petitioners though say that village Sakraura falls on Colonelganj Gonda road and, therefore, this observation is wrong, but we are of the considered opinion that the decision where the site should be allocated and where the retail outlet is to be established, lies exclusively within the domain of the Corporation.

13. The Corporation, on considering the representation of the petitioners found that there was vagueness in the advertisement issued and that it also limits the availability of land and the right of the applicants to chose a land within the given area and, therefore, the Corporation thought of cancelling the selection made.

14. Whenever an advertisement is issued inviting applications for allotment of retail outlet, the purpose of such an advertisement with wide publicity is that all willing and eligible persons who intend to take the retail outlet are given an opportunity to apply, so as to select the best of them and so far the site/location is concerned, it is for the Corporation to decide, where the outlet should be established.

15. We do not find any ground for taking any exception to the decision taken by the Corporation in this regard for the reasons stated in the order passed by the Corporation. The petitioners cannot say that any vested right had accrued to them, even if it is presumed that their land may be treated as land on the site shown. The Corporation considering the entire aspects of the matter, found that none of the persons were eligible for the purpose.

16. We, thus, do not find any ground to entertain the petition.

17. In case, a fresh advertisement is issued, the petitioners may also apply for the same, if they are otherwise eligible.

18. With the aforesaid observations, the writ petition is dismissed.