

(2018) 07 DEL CK 0126

In the Delhi High Court

Case No : W.P.(C) 8299 OF 2009, 129 OF 2011 and CM No. 5116 OF 2009, 251 OF 2011

Bayerische Motoren Werks Ag @APPELLANT@Hash Madan Walia & Anr

Date of Decision : 09-07-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 43, 58, 59, 63

Citation : (2018) 07 DEL CK 0126

Hon'ble Judges : VIBHU BAKHRU, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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VIBHU BAKHRU, J",.....

IntroductionÂ,.....

1. The petitioner has filed these petitions, essentially, to seek allotment of a Petroleum Retail Outlet of Hindustan Petroleum Corporation Limited",.....

(hereafter HPCLâ??). In W.P.(C) 8299/2009, the petitioner, inter alia, prays for implementation of the judgment dated 10.12.2008 passed by the Chief",.....

Commissioner for Persons with Disabilities (hereafter Chief Commissionerâ??), whereby the Municipal Corporation of Delhi (hereafter MCDâ??) was",.....

directed to allot suitable land for operating a retail petroleum outlet, in favour of the petitioner. The petitioner further prays that HPCL be directed to",.....

issue a fresh Letter of Intent (LOI) for allotment of a retail outlet to the petitioner without any condition for providing land for the said outlet. In,.....

W.P(C) 129/2011, the petitioner challenges the letter dated 10.10.2007 issued by HPCL cancelling the LOI dated 05.04.2006 for failure on the part of",.....

the petitioner to provide a suitable land.Â Â,,,,,,

2. The controversies involved in the present petitions are connected, inasmuch as the petitioner's relief for seeking allotment of land is in aid of the" ,,,,,,

petitioner securing and allotment of retail outlet by HPCL. Therefore, the said petitions were taken up together.Â Â" ,,,,,,

3. The petitioner is blind and falls under the category of Persons with Disabilities. At the material time, when W.P (C) 8299/2009 was filed, the" ,,,,,,

petitioner was a senior citizen (63 years of age). He has filed the petition [W.P. (C) 8299/2009] on the basis that he was entitled for preferential,,,,,,

allotment of land at concessional rate for running a retail outlet, in terms of Section 43 of the Persons with Disabilities (Equal Opportunities, Protection" ,,,,,,

of Rights and Full Participation) Act, 1995, particularly, since the petitioner had been issued a LOI dated 05.04.2006 by HPCL. Â The said LOI was" ,,,,,,

cancelled by HPCL by a letter dated 10.10.2007. However, the petitioner claims that the said letter was not communicated to the petitioner and he" ,,,,,,

became aware of the same during the pendency of the proceedings in respect of W.P.(C) 8299/2009. This led the petitioner to file the second petition,,,,,,

â?" W.P.(C) 129/2011 â?" impugning the letter dated 10.10.2007 issued by HPCL cancelling the LOI dated 05.04.2006.Â Â ,,,,,,

4. HPCL issued an advertisement on 28.03.2001 captioned NOTICE FOR DEALERSHIP FOR RETAIL OUTLET, inter alia, stating that it proposed" ,,,,,,

appointing dealers for Company Owned Retails Outlets on sites owned/leased to the Company â?" HPCL. The advertisement indicated that the said,,,,,,

outlets were to be located at four locations in Delhi: Delhi-6, Delhi-7, Delhi-13 and Delhi-11. The outlet at Delhi-11 was reserved for persons falling" ,,,,,,

under the Category Scheduled Caste (Women) and the outlet at Delhi-6 was reserved for persons falling under the category of Physically,,,,,,

Handicapped.,,,,,,

The outlets at other two locations were under the Open category. The advertisement also indicated that for locations falling under Sr. Nos. 1, 2 and 3" ,,,,,,

(that is, locations at Delhi-6, Delhi-7 and Delhi-13), the candidates should indicate the details of the land, which he/she may make available for the" ,,,,,,

outlet. The controversy involved in these petitions relates to the location at Delhi-6.Â ,,,,,,

5. The petitioner submitted an application under the Category of Physically Handicapped, for allotment of a retail outlet. In its application, the petitioner" ,,,,,, stated that he would arrange site as per the Rules and Regulations of HPCL. The relevant extract of his application is set out below:- ,,,,,,

16.Â FOR RETAIL OUTLETS/2-3 WHEELER MS OUTLET DEALERSHIP ONLY ,,,,,,

(i)Â Do you have a suitable site readily available or can you arrange one in the area advertised within six months, if selected? If yes, please give" ,,,,,, details ,,,,,,

Â Ans.Â I will arrange as per Rules & Regulations ofÂ Â Â Hindustan Petroleum ,,,,,,

6. The petitioner was called for interview for allotment of a site in Delhi-6 and the merit list was issued on 27.02.2004. As per the merit list, the" ,,,,,,

petitioner was ranked at the third position.Â The site offered by the candidate placed on the second position was not found suitable.Â However, she" ,,,,,,

was also issued an LOI dated 18.07.2005 with a specific condition to provide land within a period of two months.Â Since she could not provide the ,,,,,,

land for the site as required, the said LOI was cancelled. The petitioner sent several letters complaining that he was entitled to be issued an LOI" ,,,,,,

immediately as the site as offered by the candidate placed at position no. 2, was found unsuitable.Â Â" ,,,,,,

7. The petitioner was issued an LOI dated 05.04.2006 offering a retail outlet dealership to the petitioner on the terms as set out therein. This included ,,,,,,

the condition that the petitioner would make available a suitable plot of land as indicated by him within a period of two months from the date of the ,,,,,,

letter after getting suitable clearance from HPCL in this regard. It was also stated that the petitioner was also required to transfer the ownership of ,,,,,,

land or transfer on long lease for a period of 15 years with one renewal option for the next 15 years, under such terms and conditions as may be" ,,,,,,

agreed between the parties.Â Â ,,,,,,

8. The petitioner was aggrieved by the said condition and sent a letter dated 11.05.2006 to HPCL, inter alia, objecting to the specific conditions for" ,,,,,,

providing land. In the meanwhile, the petitioner also sent several letters to various authorities including the Minister for Petroleum and Natural Gas." ,,,,,,

The petitioner claims that he had not offered to provide any land and, therefore, was also not awarded any marks for the same in the interview held" ,,,,,,

for selection of a dealer pursuant to the advertisement dated 28.03.2001.Â,,,,,,

9. On 20.06.2006, HPCL sent a letter informing the petitioner that advertisement in question was issued for four locations out of which one was under" ,,,,,,

the category for Physically Handicapped. Two locations were under Open category and one was under the Scheduled Caste (Women) category.Â It,,,,,,

was further explained to the petitioner that the Ministry of Petroleum and Natural Gas had issued an Office Memorandum dated 09.10.2000 to provide,,,,,,

a transparent, uniform, fair and faster procedure for selection of a suitable candidates and as per the said Guidelines all other categories except SC/ST" ,,,,,,

Candidates were required to provide land and certain other infrastructure for being appointed to manage the retail outlet. It was stated that there was,,,,,,

a Corpus Fund Scheme for giving financial assistance by Oil Companies but that scheme was applicable only to ST/SC dealership/ distributorship. ,,,,,,

HPCL further clarified that the petitionerâ??s application for dealership was under Physically Handicapped category and advertisement clearly,,,,,,

specified that candidates for locations at Serial No. 1, 2 and 3 were required to furnish the details of land which he/she would make available for the" ,,,,,,

retail outlet.Â ,,,,,,

10. The petitioner responded to the aforesaid letter on 10.07.2006 by stating that he was not in agreement with the contents thereof.Â However, he" ,,,,,,

also stated that he had come across a piece of land in village Kanjhawala, Delhi which appeared to be suitable for setting up of a retail outlet and" ,,,,,,

requested HPCL to inspect the same and if found suitable, he would take the said land on lease/purchase from the owner.Â Â" ,,,,,,

11. Apparently, a team from HPCL inspected the site offered by the petitioner. However, the same was not found to be commercially viable.Â" ,,,,,,

SR.

NO.Â",LOCATION,TOWN/AREA,"REVENUE

DISTT.",STATE,MKTG.,CATEGORY

1.,Delhi-6,Delhi,Delhi,"National

Capital

Territory

of Delhi","1999-

2K","Physically

Handicapped

2.,Delhi-7,Delhi,Delhi,-do-,"1999-

2K",Open

3.,Delhi-13,Delhi,Delhi,-do-,"1999-

2K",Open

4.,Delhi-11,Delhi,Delhi,-do-,"1999-

2K","Schedule

Caste

(Women)

31. In view of the above, the very foundation of the petitioner's claim for an allotment of land from MCD stands eroded and it is not necessary to",,,,,,

examine whether, in fact, any site for a petroleum retail outlet is available with MCD (or its successors including NorthMCD). In any view of the",,,,,,

matter, the petitioner cannot claim a preferential right for allotment of any particular site.Â At best, the petitioner can claim that a scheme for",,,,,,

preferential allotment of land at concessionaire rates be framed for persons with disabilities.Â The petitioner, of course, would have full right to",,,,,,

participate in preferential allotment of land along with other similarly placed persons. However, the petitioner cannot claim that he is entitled to",,,,,,

allotment on account of his disability.Â Surely, if this was so, other persons with similar disabilities would be equally entitled for allotment of land.Â",,,,,,

32. This Court is also of the view that the directions issued by the Commissioner are also unsustainable. Section 58 of The Persons with Disabilities,,,,,,

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 specifies the functions of the Chief Commissioner. Section 59 of the said",,,,,,

Act also enables the Chief Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities.,,,,,,

Section 58 and 59 of the said Act are set out below:-,,,,,,

â??58. Functions of the Chief Commissioner.â?"The Chief Commissioner shall,,,,,,

(a) coordinate the work of the Commissioners;Â,,,,,,

(b) monitor the utilization of funds disbursed by the Central Government;Â,,,,,,

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;Â,,,,,,

(d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.,,,,,,

59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities."Without prejudice to the.,,,,,

provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into.,,,,,

complaints with respect to matters relating to".,,,,,

(a) deprivation of rights of persons with disabilities;.,,,,,

(b) non-implementation of laws, rules, byelaws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments",,,,,

and the local authorities for the welfare and protection of rights or persons with disabilities, and take up the matter with the appropriate authorities.",,,,,

33. It is apparent from the above that the Chief Commissioner is not empowered to give a specific direction for allotment of a land to any particular.,,,,,

person as has been done in this case.Â.,,,,,

34.Â In Shah Afzal (Md.) v. Medical Council of India & Anr.: 2010 VI AD (DELHI) 762, a Division Bench of this Court had examined the role of",,,,,

the Chief Commissioner and had observed as under:-.,,,,,

27. We also notice that Section 59 begins with the word without prejudice to the provisions of Section 58 and empowers the Chief Commissioner to.,,,,,

look into the complaints (either on his own motion or on an application by an aggrieved person or otherwise) with respect to matters relating to (a),,,,,

deprivation of rights of persons with disabilities; (b) non-implementation of laws, rules, byelaws, regulations, executive orders, guidelines or instructions",,,,,

made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities and to take.,,,,,

up the matter with the appropriate authorities. We are mindful of the fact that we are dealing with a beneficial legislation and, therefore, the provisions",,,,,

should be interpreted and construed in a manner which advances the benefits given under the said legislation. Consequently, the powers and functions",,,,,

of the Commissioner would have to be given the widest amplitude possible within the four corners of the provisions of the said Act itself. We cannot,".,,,,,

of course, while giving a liberal interpretation, travel beyond the provisions of the Act or some other statutory provisions which could never have been",,,,,

the intention of Parliament. Therefore, the expressions look into complaints and to take up the matter with the appropriate authorities cannot be" ,,,,,,

elevated to the status of a case in court and an order or judgment passed by a court. The Chief Commissioner is certainly required to and is ,,,,,,

empowered to look into any transgression of the rights of persons with disabilities as also to examine the issue of nonimplementation of laws etc. ,,,,,,

which are for the welfare and protection of rights of persons with disabilities, but, having considered the complaint, the Chief Commissioner is required" ,,,,,,

to take up the matter with the appropriate authorities so as to prevent and or remove any deprivation of rights of persons with disabilities and also to ,,,,,,

ensure implementation of the laws for the welfare and protection of the rights of persons with disabilities. There is no doubt that, for certain purposes," ,,,,,,

the Chief Commissioner as also the Commissioners, by virtue of Section 63 of the said Act, have been given certain powers of a civil court while" ,,,,,,

trying a suit. However, such powers are exercisable by the Chief Commissioner for summoning and enforcing the attendance of witnesses, requiring" ,,,,,,

the discovery and production of any documents, requisitioning any public record or copy thereof from any court or office, receiving evidence on" ,,,,,,

affidavits and issuing commissions for the examination of witnesses or documents. The powers are limited to such matters only and do not entail that ,,,,,,

because such powers in certain matters have been given to the Chief Commissioner and the Commissioners, as the case may be, they are to be" ,,,,,,

equated with civil courts. That is certainly not the intention of the legislature and that is not how we read it. ,,,,,,

28. xxxxxÂ Â xxxxxxxxxxxxÂ Â xxxxxxxxxxxx ,,,,,,

29. Going back to Section 59 of the said Act, we find that the Chief Commissioner has only been empowered to look into complaints and to take up" ,,,,,,

the matter with the appropriate authorities. Once the Chief Commissioner has looked into the complaint and has come to a decisionâ?? and thereupon ,,,,,,

the Chief Commissioner takes up the matter with the appropriate authorities, the said authorities cannot contend that the view of the Chief" ,,,,,,

Commissioner can be totally ignored or side-stepped. We feel that once the Chief Commissioner takes a view on a particular complaint and then takes ,,,,,,

up the matter with an appropriate authority, if such view is permissible in law,

then the appropriate authority would be obliged to redress and remove" ,,,,,,

the grievance of the complainant. In case the concerned authority does not take any action whatsoever, it would then be open to the aggrieved person" ,,,,,,

to approach the High Court under Article 226 for an appropriate writ, direction or order, if he makes out a case of deprivation of a right or non-" ,,,,,,

implementation of laws, rules etc. providing for the welfare and protection of rights of persons with disabilities. But, this does not mean that the order" ,,,,,,

or direction given by the Chief Commissioner, by itself, is elevated to the status of an order passed by a court.Â" ,,,,,,

35. As stated above, the Chief Commissioner could take up the matter with the concerned authorities to ensure that an appropriate scheme is made to" ,,,,,,

provide preferential treatment to persons with disabilities in allotment of land; however, no specific directions to provide preference to the petitioner" ,,,,,,

could be issued. The petitioner has no right whatsoever to seek preference over other persons with similar disabilities.Â" ,,,,,,

36. In view of the above, the petitions are dismissed. The pending applications are disposed of. The parties are left to bear their own costs." ,,,,,,