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**(2023) 03 UK CK 0063**

**In the Uttarakhand High Court**

**Case No : Special Appeal No. 51 Of 2023**

Bharat Petroleum Corporation Limited And Another

APPELLANT

Vs

Deepak Saini & Another

RESPONDENT

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**Date of Decision : 24-03-2023**

**Acts Referred:**

**Citation : (2023) 03 UK CK 0063**

**Hon'ble Judges : Vipin Sanghi, CJ;Alok Kumar Verma, J**

**Bench : Division Bench**

**Advocate : Pradeep Kumar Chauhan, Ajay Veer Pundir, Mamta Bisht**

**Final Decision : Dismissed**

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## **Judgement**

Vipin Sanghi, CJ

1) Issue notice.

Learned counsel appears and accepts notice on behalf of the respondents.

2) Counsel for the respondents fairly does not oppose the application seeking condonation of delay in filing the present appeal. Accordingly, the delay condonation application (IA No. 01 of 2023) is allowed. The delay is condoned.

3) The present special appeal is directed against the judgment rendered by the learned Single Judge, in Writ Petition (M/S) No. 950 of 2020, dated 07.01.2023. By the impugned judgment, the writ petition preferred by respondent No. 1 has been allowed by the learned Single Judge. The orders impugned in the writ petition dated 23.05.2020 and 12.06.2020, issued by the appellants were quashed, and a direction was issued to the appellants to commission the retail outlet of the respondent / writ petitioner on the plot offered by him for the said purpose.

4) The brief facts have been taken note of in the impugned judgment. We reproduce the same here-in-below:

"The facts of the case are not disputed in this case. They may be narrated in a chronological manner as hereunder:

On 25.11.2018, the respondent No. 1, i.e., Bharat Petroleum Corporation Limited (hereinafter referred as BPCL) publish an advertisement inviting applications for grant of Retail Outlet Dealership of BPCL for the location between 17-25 kilometers on the State Highway-28, (Puhana Jhabrera Gurukul Narsan Road), District Haridwar for the persons belonging to the Other Backward Class. The petitioner submitted an application in pursuance of the aforesaid advertisement. On 11.02.2019, the Assistant Engineer, Construction Division, PWD Roorkee issued a letter to the effect that the land offered by the petitioner situates between 17-25 kilometers of the aforesaid road.

On 09.03.2019, the land evaluation committee of BPCL visited the site and after satisfying itself the respondent No. 2 issued the letter of intent in favour of the petitioner. In course of such visit the officials of BPCL satisfying themselves that the location of proposed Retail Outlet is suitable and installed the required assets (machineries etc.) at the proposed site. On 25.04.2019, the Executive Engineer, Construction Division, PWD Roorkee issued a No Objection Certificate, NOC, for establishment / construction of Retail Outlet Dealership of BPCL at the proposed site. The District Magistrate, Haridwar issued the NOC to the petitioner.

On 13.06.2019, the Assistant Engineer, Construction Division, PWD Roorkee wrote a letter dated 13.06.2019 to the respondent No. 2 apprising that the some places mile stones are missing, but at the time of advertisement for petrol pump at the concerned mile stones 17 kilometer was written, as well as the NOC was issued to the petitioner. Thus, the Assistant Engineer, Construction Division, PWD Roorkee, clarified that No Objection Certificate issued to the petitioner is correct. On 15.06.2019, the respondent No. 2 issued a letter to stop further constructions of the petrol pump. Feeling aggrieved by the said order, the petitioner preferred a writ petition before this Court being WPMS No. 1829 of 2019. On 27.08.2019, a Coordinate Bench of this Court disposed of the same by passing the following order:

"7. One thing is apparent that the mile stone has been changed and the exact location of the site of the petitioner is not between 17 to 25 mile stone, but around 15 No. mile stone. This can be a deliberate attempt on the part of the petitioner, who along with certain officials including the officials of the Public Works Department has done this mischief. In case this is so, a serious action must be taken. However, in case the mile stone has been changed due to strengthening and widening of the road, the petitioner has nothing to do with that and minor dislocation of petrol pump within two kilometers will not affect the location.

8. In view thereof, writ petition is disposed of with the direction to the Chief Engineer, Public Works Department to conduct an inquiry in the matter. In case he finds that the petitioner has no role to play in displacement or dislocation of

the mile stone he should issue fresh letter to the oil company, which shall be considered by the oil company in accordance with law. However, in case it is detected that mischief was done by the petitioner and he was in connivance of with the officials of Public Works Department, an appropriate action be taken against the petitioner as well as against the concerned officials of the Public Works Department. Let the inquiry be completed as expeditiously as possible but definitely within a period of three weeks from the date of production of a certified copy of this order.”

5) From the above, it can be seen that the appellants were required to enquire into the involvement of the respondent / writ petitioner in the alleged mischief with regard to the location of the plot offered by him for setting up the retail outlet. In pursuance of the aforesaid order, the Chief Engineer, Public Works Department, made an enquiry, and submitted the report dated 18.10.2019. Though the said report found that the retail outlet established by the respondent / writ petitioner was at 15.4 Km., which is outside the advertised stretch, at the same time, he also did not find the involvement of the writ petitioner in the making of the earlier report. The learned Single Judge has paraphrased the report prepared by the Chief Engineer, PWD in paragraph 6, which reads as follows:

“Pursuant to the aforesaid order passed by this Court, the Chief Engineer, Public Works Department made an inquiry. The report of the said inquiry dated 18.10.2019, reveals that the Retail Outlet, established by the petitioner, is at 15.4 km, which is beyond the advertised stretch. The said finding clearly indicates that the Retail Outlet established by the petitioner is beyond the advertised stretch with keeping in a hand further stated that in his report that some tempering/interpolation was done in the mile stone by changing the numbers. He has further stated that the mile stone Nos. 4, 17 and 25 are altogether missing. Thus, a perusal of the report in the Chief Engineer has expressed his opinion that foul play has been committed by some miscreants, however, who has committed this foul play could not be ascertained in the absence of any evidence. This report of the Chief Engineer, Public Works Department was sent to the BPCL, but it did not take any decision, therefore, the petitioner approached this Court for the second time by filing WPMS No. 3416 of 2019, wherein a Coordinate Bench took into consideration all the aforesaid facts and directed that the respondent No. 1 therein, who is the respondent No. 2 herein, to consider the report dated 18.10.2019, of the Chief Engineer, Public Works Department and take an appropriate decision, in accordance with law, within a period of four weeks from the date of production of certified copy of the order. Thereafter, the respondent No. 1 took a decision and rejected the application of the petitioner by holding as follows:

“In view/consideration of the above clauses and as the land is not found to be suitable/not meeting the criteria as set out in the advertised stretch, we regret to inform you that your candidature has been found ineligible and the LOI issued by

us for establishing the RO is withdrawn. However, your candidature may be get considered for selection in the following future event along with Group 3 applicants as per the applicable guidelines as under in brochure for Selection of Dealers for regular and Rural Retail Outlets-2018 dated 24th Nov,2018, Page No. 8."

6) Since the respondent was not found to be involved in the making of any false report, the learned Single Judge has allowed the writ petition. The basis of the said judgment is found in paragraph 8. Paragraph 8 reads as follows:

"In that view of the matter, the action of the respondent in recalling the LOI issued in his favour appears to be contrary to the orders passed by this Court. Moreover, it is seen that once LOI is already issued this petitioner's land was verified by the officials, machineries were installed after incurring heavy cost that too incurred by the respondent themselves. An order refusing the relief claimed by the petitioner not only cause irreparable loss and inconvenience to the petitioner, but it will also cause financial loss and hardship to the respondent No. 1."

7) The submission of learned counsel for the appellants is that the respondent / writ petitioner has misrepresented with regard to the location of his plot, as it was not falling within the advertised stretch of 17-25 Kms. He submits that subsequent investigation has established the fact that the plot of the respondent / writ petitioner is at 15.4 Km., i.e., outside the advertised stretch.

8) We are not inclined to interfere with the impugned judgment for the reason that the appellants have themselves to blame for not properly conducting due diligence in relation to the location of the plot offered by the respondent / writ petitioner, for setting up the retail outlet in Khasra No. 1105/1685, Village Jhabrera, Tehsil Roorkee, District Haridwar. It was for the appellants to carry out due diligence in this regard, which they did, and they were satisfied that the plot offered by the respondent fell within the advertised stretch. On that basis, they proceeded to issue the Letter of Intent in favour of the respondent / writ petitioner, where after, the petitioner also obtained the No Objection Certificate from the PWD, as well as the District Magistrate etc. The respondent / writ petitioner has also invested moneys in establishing the retail outlet. Only thereafter, the appellants have woken up to the issue of the location of the retail outlet not being within the advertised stretch. If the appellants found the plot to be falling within the advertised reach, there is no reason to assume that the respondent / writ petitioner was not similarly under the belief that his plot fell in the advertised stretch. It is not the case of the appellants that the writ petitioner colluded with any of their officers, who carried out due diligence and gave their clearance. Since the respondent / writ petitioner has not been found to be party to any fraud, or misrepresentation, in our view, the respondent / writ petitioner was entitled to the relief granted by the learned Single Judge.

9) We, therefore, do not find any merit in this appeal. The same is, accordingly,

dismissed.