

(2017) 02 RAJ CK 0014
In the Rajasthan High Court
Case No : 2103 of 2006

Chand Mohd. S/o Shri A.N. Khan	Vs	APPELLANT
Hindustan Petroleum Corporation Ltd		RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Citation : (2017) 02 RAJ CK 0014

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : R.N. Mathur, ?Deepesh Sharma, Arshab Sharma, Praveen? Balwada, Krishna Verma

Final Decision : Dismissed

Judgement

1. The petitioners have preferred this writ petition assailing the action of the Hindustan Petroleum Corporation Limited (hereinafter referred to as "the HPCL") issuing a Letter of Intent (in short, "the LOI") to respondent No.4, a candidate from SC category, for setting up a retail outlet of petrol/diesel on the land bearing Khasra No.114/2/1 at Village Pahadi, Tehsil Newai which belongs to them and had been leased out to the HPCL. It is claimed by the petitioners that if at all the respondents had to allot the retail outlet to some other person, it should have been allotted to petitioner No.3, who is the co-owner of the land falling in physically handicapped woman category belonging to OBC.

2. The brief facts of the case are that the respondent-

HPCL in the first stage had issued an advertisement on 01.06.2001 inviting applications from the land owners for offering the land on lease or one time purchase for the purpose of establishment of retail outlet at various districts in Rajasthan. The petitioners had offered their land and a lease agreement had been entered into between the HPCL and the petitioners which provided that the land shall be used for the purpose of establishment of petrol pump/retail outlet and there was a condition also in the said lease agreement that the lessee shall be at liberty to license, or sublet or underlet or part with possession of the demised premises or any part thereof for use for all or any of the purposes aforesaid, without the consent or concurrence of the lessor. The agreement was entered into on 27.05.2002. In pursuance of the said agreement, the land was handed over to the HPCL which started their own retail outlet and petrol pump on Company-Owned-Company-Operated (COCO) basis.

3. The dispute started only when the advertisement was issued again by the HPCL on 02.12.2005 mentioning retail outlets at various places to be allotted category-wise in Udaipur region and Jaipur region. In the area which falls under Udaipur region, as many as 158 retail outlets were advertised. Although the specific retail outlet at Village Pahadi in Newai, District Tonk was not mentioned but it was mentioned at Item No.44 about a retail outlet at Newai in District Tonk, which was reserved for SC category and also mentioned that it shall be developed by the company under the company ownership. From the perusal of the advertisement, it is also seen that there were other places which had been categorised for physically handicapped woman, for SC woman and other categories too.

4. The contentions of the learned Senior Counsel

appearing for the petitioners in the aforesaid facts are twofold. Firstly, it is contended that the advertisement was wholly vague and did not specify the area where the petitioners had leased out their land for the purpose of petrol pump in Village Pahadi, Teshil Newai, District Tonk. It is submitted that in the earlier advertisement by which they had earmarked the area in District Tonk, it was specifically mentioned that they wanted a land in Newai on NH-12 within 5 kms. range. He has also taken this Court to the advertisement of 2005, wherein in other different places the proposed retail outlet has been specified to the extent of even range of 1 km. or at least the village has been specifically mentioned where the proposed retail outlet shall be established, however for Newai this aspect was completely absent. More so the locations reserved for SC/ST persons in the advertisement released by the HPCL on 02.12.2005 would show that out of total 166 retail outlets, 46 had been reserved for SC/ST category, which was far too excessive. It is stated that as per the respondents' own policy of allotment to reserved category persons, only 25% of the total number of retail outlets proposed, could be for reserved category and the same could not have been for 28%, which is far too excessive.

5. It is submitted further that there is no such provision of quota for SC/ST candidates which can be continued from one year to another on roster basis. It is submitted that although they may not challenge the reservation for SC category with regard to retail outlets, but it is submitted that such a provision is not available under the Constitution and at best can be said to be a policy decision of the HPCL which does not have any statutory force. Thus, when there was a physically handicapped person belonging to woman category available for the site and had claimed taking

into consideration that there is already a policy of land owner being allotted the petrol pump, petitioner No.3 ought to have been granted the LOI for the land belonging to her to start the retail outlet.

6. Learned Senior Counsel further submits that a preferential right is available to the petitioner with regard to doing of business of self employment once she is ready to perform the said work and no other person could have been considered depriving her right. However the respondents' action has resulted in deprivation of self employment to a physically handicapped woman.

7. It is further submitted that the SC category petrol pumps were otherwise available without there being any claim from the landowners and petitioner No.3 has been denied her claim wrongfully. It is contended that there is no equitable distribution and when she submitted her representation and no action was taken, she approached this Court by filing a writ petition before this Court. This Court by way of order dated 02.02.2006, directed the respondent-HPCL to consider the representation of the petitioner but when she was not communicated about the decision and the LOI was being issued to respondent No.4, she has preferred this writ petition.

8. The second submission of the petitioners is with regard to choosing the discretion exercised by the respondents in earmarking the sites for the SC/ST persons. It is submitted that while in Jaipur region there was not even a single site earmarked for SC category, it is only in Udaipur region that sites had been earmarked for different reserved category persons. However it is submitted that no valid and cogent criteria for earmarking the sites for the petrol pumps has come forward. No reasons have

also come forward to show as to why the site at Newai has been earmarked for SC category alone and not for physically disabled woman category. Thus it is submitted that the action of the respondents is arbitrary and any allotment which may have been done on the said basis deserves to be set aside.

9. Learned Senior Counsel for the petitioners has also relied upon a judgment of the Delhi High Court in Writ Petition(C) No.358/2007, dated 16.01.2007, wherein it was held as under:-

"The only question to be considered is as to whether the petrol pump located on the land of petitioner no.1 and being run by petitioner no.2 can be assigned or transferred to any third party by the Oil Company on the land of petitioner no.1 without the consent of petitioner no.1. Indisputably the answer to this question would be in the negative. The Oil companies are free to deal with their contract in accordance with law but cannot assign the running of the petrol pump to a third party on the land of petitioner no.1 without the consent of petitioner no.1. This is so as the land of a citizen cannot be taken away except in accordance with law."

10. Learned Senior Counsel has also relied upon the brochure issued by the HPCL dated 01.11.2004, which provides for reservation only upto 25% for SC/ST candidates. However the ratio of SC/St has not been provided therein and thus the discretion vested with the HPCL has been exercised wrongfully.

11. The respondents-HPCL have submitted their reply and it is contended that the terms and conditions of the lease agreement clearly provided that the petitioners would not, in any manner, assail with regard to subletting of the land to third party. Relying upon the condition noted above, it is further submitted that such condition incorporated in the agreement was clearly stipulated in the advertisement dated 01.06.2001 itself. Hence, now the petitioners do not have a locus standi to challenge the selection of respondent No.4 and at their instance the writ petition

would not be maintainable. It is further submitted that preferential right is not a right and there has been no contravention of legal or fundamental right. Thus the writ petition under Article 226 of the Constitution of India would not be maintainable and the same may be dismissed.

12. It is further submitted that the site at Newai in District Tonk was reserved for SC category. The decision to reserve a particular location for a particular category vests with the HPCL and they are the persons who have the expertise to decide which retail outlet should be allotted to a particular category. It is further contended that allotment of retail outlet under the reserved category is the policy of the Government and the respondents being a Government of India enterprise are bound to follow the said policy. There is roster laid down in the various locations for which no particular person has any say. The candidates of SC/ST category are not assessed on the parameters of providing land and infrastructure as well as the finance. The HPCL ensures handing over of retail outlet to the candidates of SC/ST category for locations which are complete with all facilities and superstructure including the land. For this purpose, a Corpus Fund Scheme is applicable. Learned counsel also relies upon a circular dated 30.11.2005 issued in line with the direction of MOP & NG directing that all the existing retail outlets being run as COCO or on ad hoc basis to be allotted to the candidates of SC/ST category.

13. It is further submitted that respondents-HPCL were not obliged to provide land and infrastructure to candidates of physically handicapped category, thus fully developed petrol pumps can only be earmarked for SC/ST category and not for physically handicapped category. No impression was given to the petitioners while taking their land on lease that they would be

later on allotted the LOI for setting up the petrol pump. It is further stated that HPCL has not granted dealership to the landlord just because he had offered his land either on lease or outright to sale to Corporations. The decision was already taken on the representation and it was informed that the company policy dated 01.11.2004 which was relevant for landlord link for retail outlets was withdrawn vide letter dated 27.12.2004 and therefore it could not materialised. As regards respondent No.4 who was allotted the said retail outlet is concerned, it is submitted that he was placed at No.1 in the merit. In the circumstances, it has been prayed that the writ petition may be dismissed.

14. Learned counsel appearing for respondent No.4 has adopted the same arguments and has further stated that no right was available much less preferential right of the petitioners to get the retail outlet at Newai as the advertisement did not relate to the said category.

15. After taking into consideration the submissions of learned counsel for both the sides, it is seen that the advertisement dated 02.12.2005 lays down category-wise sites for different places and districts in Rajasthan. However the respondents have not been able to explain as to how and in what manner the roster had been applied for reservation to SC/ST, physically handicapped and other categories of reserved persons with regard to different sites.

16. A look at the various sites in one district would show that in Ajmer district while two sites have been reserved for SC category, other sites are for open and for woman. In Udaipur district, two different villages have been shown to be allotted retail outlet for different categories, however criteria for such an allotment has not been clarified. Though in reply, it has been

stated that the HPCL shall be developing a fully developed site for SC/ST candidates, whether all the sites which have been earmarked were already full developed before being earmarked under the advertisement dated 02.12.2005 is not asserted.

Apparently, there is much room for discretion with the authorities in allotting the retail outlet, which leaves a room for arbitrariness and nepotism which breeds corruption at large.

17. Coming to the facts of the case, the advertisement also does not show the specific site at Newai while at other places a specific cite was given. No reasons have come forward to counter this submission raised by the petitioners except to the extent that the petitioners were having knowledge that the site at Newai is the one which had been taken on lease from the petitioners. The petitioners were claiming that the site which was shown to be on their land should be allotted to them for the purpose of starting the retail outlet. They were also ready to abide by the conditions of the Corporation but as has been submitted by the respondents, they reserved it for SC category as it was fully developed site of the HPCL which could be given over to a SC candidate as per their own policy.

18. So far as the submission of the learned counsel for the petitioners regarding excessive reservation for SC/ST category in regard to allotment is concerned, the same also does not have force. The brochure dated 01.11.2004 which provides for reservation only upto 25% for SC/ST candidates, can only be said to be guidelines, however a departure therefrom, would not create any right as the guidelines do not have any statutory force. A preferential right for claiming a site to a physically handicapped person, is also not made out, more so when the criteria for allotment of retail outlet to SC/ST candidate is after completing all

facilities and superstructure including the land. Clause headed in the lease deed appears to be for such purposes only.

19. This Court does not find that there is anything wrong in the decision of the respondents in allotting a particular site which was fully developed to a SC/ST category person. The policy decision which has been placed on record and the Circular dated 30.11.2005 are not subject matter of challenge by the petitioners.

20. All the more the conditions in the lease deed clearly gave the HPCL an exclusive power to allot, assign or sublet the site to any other person and merely because the petitioners claimed preference it being their own land, does not create any right in favour of the petitioners. If the petitioners were interested to have a retail outlet, they could have very well incorporate such a condition at the time of giving out their land on lease to the HPCL as it is at that time only i.e. 2001, that the petitioners knew that their land would be used for the purpose establishment of a retail outlet. It does not concern whether the retail outlet is given to "A", "B" or them. Had the site been in open category site, perhaps the petitioners may have had a preferential claim, however as it was a reserved site and has already been allotted ultimately to a reserved category candidate, no right can be said to have been infringed.

21. Consequently, the writ petition being devoid of merit is dismissed.