(2014) 05 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 9509, 9510 and 9764/2006, 482 and 1208/2007

Deepak Gupta and Others APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2014) 05 RAJ CK 0055

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : R.P. Garg, S.N. Kumawat and Manvendra Singh Shekhawat, for the Appellant; Sudhanshu Kasliwal, Senior Counsel assisted by K. Verma, A.K. Bhargava, Ravindra Mathur and S.S. Raghav, for the Respondent

Final Decision : Disposed off

Judgement

M.N. Bhandari, J.?Since all these writ petitions involve common question of facts and law, thus, they have been heard together and are being decided by this judgment.

2. The respondent-Indian Oil Corporation issued an advertisement dated 22.09.2002 to invite applications for long term lease/outright purchase to establish new petrol pumps. The petitioners made an application for long term lease. A lease agreement was then executed followed by a contract/agreement for maintenance and haulage. In pursuance of the aforesaid contract, the respondent-Corporation established a retail outlet and allowed the petitioners to maintain and operate it. The respondents then changed their policy on 06.09.2006, where a decision was taken to give retail outlet dealership of the petrol pumps run on the pattern of Company Owned-Company Operated (for short, ''the COCO''). The petitioners are aggrieved by the said policy and prayed for grant of retail outlet dealership in their favour.

3. It is submitted that when the advertisement was issued followed by lease

agreement, an understanding was made between the parties for grant of retail outlet dealership in favour of the landholders. Even letters were exchanged for the aforesaid purposes and finally the petitioners were allowed to operate petrol pumps under the agreement for maintenance and haulage. In view of the above, the petitioners are operating the petrol pumps for last many years, but with a change of policy, the intention of the IOC is to give retail outlet dealership to others and that too on the land belonging to the petitioners. If at all, the respondents intent to allot retail outlet instead of running it as COCO, a priority should be given to the petitioners as they are not only operating the petrol pumps for last many years, but have gained experience also. Thus, no fruitful purpose will remain to induct a new person. In the background aforesaid, the policy dated 06.09.2006 deserves to be struck down.

4. It is further submitted that not only the lease agreement but the contract for maintenance and haulage is on certain terms and conditions. The petitioners cannot be precluded to terminate the lease agreement or to seek rights arising out of contract for maintenance and haulage. In case of termination of lease, establishment of a retail outlet run as COCO would not continue. It would be detrimental to the interests of both the parties. Taking into consideration the overall facts, this Court should command the respondents with direction to allot retail outlet dealership in favour of the petitioners.

5. Learned counsel for the petitioners have given reference to the letter dated 07.02.2003 to show procurement of land with assurance for grant of retail outlet dealership to the petitioners.

6. Mr. S.N. Kumawat, the learned counsel has given further reference to the new policy dated 04.09.2003, which reiterate rights in favour of the landholders for grant of retail outlet dealership. According to him, the policy aforesaid has not been superseded subsequently, thus, it operates and their rights should be considered in the light of the said policy. It is lastly contended that it is a hard case for the petitioners who leased out their land on very meager monthly rent with a hope to get employment in the shape of retail outlet dealership.

7. Mr. R.P. Garg, the learned counsel has lastly contended that the petitioners would be discriminated if retail outlet is not allotted to them on the land so leased out, moreso when similarly placed landholders have been allotted retail outlet dealership and the above fact has not been denied by the respondents. Thus, there would be violation of Article 14 of the Constitution of India if the petitioners are not given same treatment, as has been allowed in favour of the other leaseholders. The parity demands same treatment to the similarly placed persons. Accordingly, even if interference is not made in the policy dated 06.09.2006, the respondents may be directed to act without discrimination with the similarly placed candidates.

8. Mr. Sudhanshu Kasliwal, the learned Senior Counsel, appearing on behalf of the respondents, on the other hand submits that all the issues raised by the

petitioners herein, have already been deliberated and decided by the Hon''ble Apex Court in the case of Mohd. Jamal Vs. Union of India (UOI) and Another, . Reference of various paras of the said judgment has been given to show that all the arguments raised by the petitioners have been dealt with therein, which includes even the argument regarding doctrine of promissory estoppel. In view of the above, it is not open for this Court to ponder upon the issues again, once settled by the Apex Court.

9. It is submitted that the advertisement was issued in the year 2002, thus, it was not under the policy subsequently issued in the year 2003 but was in reference to the policy existing in the year 2002. There was no provision to allot retail outlet dealership to the landholders. Even there was no indication to this effect in the advertisement, so issued on 22.09.2002. The landowners were invited for long term lease or sale of land. The petitioners readily offered their land for long term lease and accordingly lease agreement was executed between the parties. As per the subsequent agreement for maintenance and haulage, the petitioners were allowed to operate the petrol pumps. It was not by grant of retail outlet dealership but by retaining the petrol pump on Company Owned-Company Operated system. The petitioners were never assured for grant of retail outlet dealership. Clarifying the letter dated 07.02.2003, he submits that cognizance was taken on certain offers given by the landowners with precondition for award of retail outlet dealership, but the said offer was never accepted or agreed upon. In the background aforesaid, the letter dated 07.02.2003 has wrongly been taken to be assurance or promise for award of retail outlet dealership. In view of the above, what was agreed between the parties was to take the land on rent and allow the petitioners to operate the COCO petrol pump on maintenance and haulage basis. The Government of India then changed the policy on 06.09.2006 and as per the said policy, the respondents are under compulsion to discontinue Company Owned Company Operated system in phase manner. The issue aforesaid was also considered by the Apex Court. In view of the above, no ground remains to accept the prayers made in the writ petitions.

10. It is also submitted that the issue regarding grant of retail outlet dealership to few landholder was also the issue taken up before the Apex Court. It was not answered favourable to the petitioners. The parity can be claimed by a person who is similarly placed. The petitioners have made allegation regarding grant of retail outlet dealership to few landholders without giving details as to what were the terms and conditions on which such treatment was given. The claim of parity is thus on vague pleadings. Accordingly, no case is made out in favour of the petitioners for grant of relief, as sought for.

11. I have considered the rival submissions of the parties and perused the record.

12. It is not in dispute that the advertisement was issued by the respondents on 22.09.2002 to invite applications for long term lease/purchase of land to establish new petrol pumps. The petitioners had submitted applications followed

by execution of lease agreement. A further agreement/contract for maintenance and haulage was also entered between the parties. As per the terms and conditions of the said agreement, the petitioners were allowed to operate the petrol pumps on maintenance and haulage basis. The agreement was renewable on year to year basis with mutual consent of the parties. There are other terms and conditions of the agreement, but I am not required to go deep in those terms as it is not a case for specific performance but to challenge the policy dated 06.09.2006.

13. All the issues raised by the petitioners herein, which includes application of promissory estoppel, change of policy from time to time and all other facts were raised before the Hon''ble Apex Court and have been dealt with in the case of Mohd. Jamal(supra). The relevant paras of that judgment are reproduced hereunder for ready reference to show that the issues have already been deliberated and decided by the Apex Court, thus cannot be decided again by this Court:--

"15. Mr. Ghosh submitted that various other decisions were taken both by the Oil Company as well as the Ministry concerned by which fresh guidelines were also framed for selection of retail outlets and SKO-LDO (Super Kerosene Oil - Light Diesel Oil) dealers. Learned Counsel submitted that by a policy circular No. 05/0405 dated 30.3.2005, introduced by the Oil Company, existing land owners of the concerned Jubilee Retail Outlets and the Company Owned and Company Operated Outlets were disqualified from being appointed as dealers, although, the same was never communicated to the Appellant. Mr. Ghosh submitted that, in the meantime, the temporary arrangement which had been arrived at in the case of the Appellant, Mohd. Jamal, has been continuing on the strength of orders passed by this Court. Mr. Ghosh also urged that on 6th September, 2006, the Oil Company formulated a new policy whereby the concept of offering dealership to land owners was abandoned to the prejudice of the land owners whose Letters of Intent for dealership were pending and where lands had also been taken on long term lease by the Oil Company at low rates of rent, on the assurance that dealership under the land owners category would be given to them. By virtue of the new policy, the Oil Company proposed to run outlets on their own and/or through Labour Contractors, in supersession of all earlier policy guidelines.

17. The main ground of challenge canvassed by Mr. Ghosh on behalf of the Appellant, Mr. Jamal, and other similarly placed Appellants, was that having acted on the basis of a policy by which the Respondent Oil Companies had offered full dealership to land owners and having caused such land owners to alter their position to their disadvantage, the Oil Companies were now estopped from going back on their promise. Mr. Ghosh urged that the decision to discontinue the grant of dealership and to introduce the new concept of COCO outlets, to be run by the Maintenance and Handling contractors, could not be used to the disadvantage of those land owners in whose favour a decision had

already been taken to issue Letters of Intent for grant of dealership. Mr. Ghosh submitted that these cases were clearly covered by the doctrine of promissory estoppel, inasmuch as, in these cases the land owners had altered their positions to their detriment in several ways. Mr. Ghosh submitted that in most cases the rates of rents at which the lands were offered to the Oil Companies were extremely low and did not reflect the market rental of such lands, which is one of the indications that a promise had been made to the land owners that they would be granted dealerships in respect of the said lands, which was in tune with the policy, which had been declared by the Oil Companies earlier.

18. Mr. Ghosh submitted that in other cases the landlords had invested large sums of money, as in the case of Mohd. Jamal, in preparing the land offered for operating the retail outlets of petroleum and petroleum products, ostensibly on the promise that they would be granted dealership for running the said outlets. Mr. Ghosh submitted that acting on such promise the Appellant, Mohd. Jamal, spent more than Rs. 27 lakhs to prepare the site for running the retail outlet and it would not be unreasonable to accept the case made out on his behalf that such expenditure was incurred in lieu of such promise. In certain other cases, the land owners had been persuaded to enter into long term lease agreements, again at nominal rents, on the assurance that their nominees would be appointed as Maintenance and Handling Contractors of the different COCO units, pending the decision to grant full dealership in respect of such retail outlets, in keeping with the earlier policy of reducing the number of COCO units and retaining a few to be run by the Oil Companies as model outlets.

23. Various other decisions have also been cited in support of the aforesaid doctrine of promissory estoppel or equitable estoppel, but it will suffice to refer to one of the latest decisions in this regard in State of Bihar and Others Vs. Kalyanpur Cements Ltd., , wherein it was emphasized that in order to invoke the aforesaid doctrine, it has to be established that a party had made an unequivocal promise or representation by word or conduct, to the other party, which was intended to create legal relations or affect the legal relationship to arise in the future, and that the party invoking the doctrine has altered its position relying on the promise.

24. Mr. Ghosh submitted that having held out a promise to grant a dealership to the Appellant and the other Appellants in the connected matters, in respect of the lands offered by them for setting up retail outlets for the sale of petroleum and petroleum products and having acted thereupon just prior to the stage of grant of Letters of Intent, it was no longer available to the Oil Companies to renege on their promise, particularly when the aspirants for dealership had altered their position and had spent enormous sums of money to make the sites ready for setting up the retail outlets. As was observed in the M.P. Sugar Mills case (supra), it was not even necessary for the land owners to have suffered any prejudice on account of such alteration. It was sufficient that, pursuant to the promise made of grant of dealership, they had altered their position and had

spent large sums of money to make the sites ready for occupation.

35. While the aforesaid arrangement was continuing, on 6.9.2006, the Ministry of Petroleum and Natural Gas issued a Notification directing all the marketing companies to phase out the existing COCO retail units within a year.

39. Appearing for two of the Appellants in respect of Civil Appeal @ SLP (C) No. 20908 of 2011 (Kamar Ahmed Yusuf Lulat and Ors. v. IBP Co. Ltd. and Ors.) and Civil Appeal @ SLP (C) No. 22831 of 2011 (Jaswantsinh A. Rana (D) by L.Rs. and Ors. v. IBP Co. Ltd. and Ors.), Mr. Sunil Gupta, learned Senior Advocate, also based the claim of the Appellants on the doctrine of promissory estoppel. In fact, the case of the two Appellants is the same as the case of most of the Appellants and Writ Petitioners, where the learned Single Judge had allowed the Writ Petitions while the Division Bench reversed the same on the ground that all the writ petitions had been disposed of by a common reasoning. Mr. Gupta contended that the new policy formulated on and from 10th August, 2002, was really a culmination of the earlier policy of the Oil Companies dated 31.5.2001, which provided for grant of full dealership in respect of the lands offered by new applicants. As in the case of the other claimants, the claim of the Appellant did not fructify on account of the change in policy and was kept in abeyance also, as there was a further change in the policy by which the Oil Companies decided to phase out the COCO units which were being run by Maintenance and Handling Contractors. Mr. Gupta referred to the "comfort letters", which had been provided by the Government, assuring the land owners that the decision to run the COCO units with the help of the Maintenance and Handling Contractors, was only a temporary arrangement and as soon as it would be possible, the land owners would be given the first option for dealership in respect of the retail outlet. Mr. Gupta also relied on the decisions of this Court on the doctrine of promissory estoppel and legitimate expectation cited by Mr. Pradip Ghosh, Mr. Rana Mukherjee and the other learned Counsel and urged that the directives issued by the Oil Company on 6.9.2006 were liable to be quashed.

47. Supplementing the submissions made by the learned Attorney General, Ms. Meenakshi Arora, learned Advocate, submitted that the cases being heard in this batch of matters can be divided into four categories, namely:

(i) Agreements entered into between the Oil Companies and the land owners prior to 8.10.2002;

(ii) Maintenance and Handling contracts signed between 8.10.2002 and 5.2.2003;

(iii) Offers made by land owners and lease Agreements executed within the aforesaid period;

(iv) Petrol pumps commissioned upon lease being executed after the new Policy came into existence on 5.2.2003.

48. Ms. Arora submitted that prior to the Policy No. 319 dated 8.10.2002, the Oil Companies granted dealership in respect of retail outlets on the basis of

applications invited for the said purpose. Several land owners had responded to the said applications and had offered their lands to the Oil Companies for setting up retail outlets on main Highways. However, the Oil Companies were also considering a scheme whereby they would be able to retain control over the various retail outlets by operating them as Company Owned and Company Operated (COCO) units, which provided for retail outlets to be owned fully by the Oil Companies, but the operation thereof was outsourced to M & H contractors, who would not have any right to dealership of the

49. Ms. Arora submitted that the cases of the applicants in the third category would have to be treated differently from applicants whose claims were based on decisions to grant dealership which had been arrived at prior to 8.10.2002. In certain cases, on the basis of the leases granted, petrol pumps had already been commissioned and were functioning, but with the help of M & H contractors. Ms. Arora submitted that once the policy to grant full dealerships was suspended and the new policy was adopted in September, 2003, barring a few cases no further dealerships were given in respect of the retail outlets and all the units were, thereafter, run as Company Owned and Company Operated units where the Company retained control of the outlets, but left the day to day management thereof to the contractors.

57. The said guidelines referred to grant of dealership which is completely different from the grant of long-term leases by the land owners to the Oil Companies upon the condition that the same could be used by the lessees in any way they liked, which included the right to sublet the demised plot. The concept of Company Owned and Company Operated outlets was sought to be introduced on 6.9.2003, in supersession of Policy No. MDPM-319/02 dated 8.10.2002 and the two cannot be co-related unless a link can be established by the Appellants that they had entered into the lease agreements with the Oil Companies upon the understanding that once the earlier policy was restored, the land owners would be given the option of having the COCO units converted into regular retail outlets.

58. In order to appreciate the difference between the two concepts, it has to be understood that the concept of a dealership in respect of a retail outlet is completely alien to the concept of a COCO unit. While the former deals with the right of the dealer to independently operate the retail outlet, in the case of a COCO unit, the entire set up of the retail outlet is owned by the Oil Companies and only the day-to-day operation thereof is outsourced to a M & H Contractor. With the discontinuance of the earlier policy of granting dealerships in respect of retail outlets and the introduction of a new policy awarding M & H Contracts in respect of the COCO outlets, in our view, the land owners who had entered into fresh lease agreements after the policy to grant dealerships had been suspended, cannot now claim any right on the basis of the earlier policy in the absence of any Letter of Intent having been issued thereunder. Had any Letter of Intent, which tantamounts to grant of dealership, been issued and then in respect of the

same lands COCO units were established, the situation would have been different. Placed in such a position, the land owners cannot claim any relief in these proceedings and, if any loss or damages have been suffered by them on account of the assurance earlier given regarding grant of dealership, particularly in making the sites ready therefor, the remedy of such applicants would lie elsewhere. The policy guidelines and, in particular, Clauses 1.2 and 1.2.2 thereof are not available to the Appellants and the Petitioners in these proceedings, which are concerned mainly with COCO units which have no connection with the concept of dealership.

59. We are inclined to hold that the doctrine of promissory estoppel and legitimate expectation, as canvassed on behalf of the Appellants and the Petitioners, cannot be made applicable to these cases where the leases have been granted by the land owners on definite terms and conditions, without any indication that the same were being entered into on a mutual understanding between the parties that these would be temporary arrangements, till the earlier policy was restored and the claim of the land owners for grant of dealership could be considered afresh. On the other hand, although, the nominees of the lessors were almost in all cases appointed as the M & H Contractors, that in itself cannot, in our view, convert any claim of the land owner for grant of a permanent dealership. As has been indicated hereinbefore, even the M & H Contractor had to submit an affidavit to the effect that he did not have and would not have any claim to the dealership of the retail outlet and that he would not also obstruct the making over possession of the retail outlet to the Oil Company, as and when called upon to do so. The decisions cited on behalf of the Appellants/Petitioners, are not, therefore, relevant for a decision in these cases. Although, the Appeals have been filed on account of the denial to the land owners of the grant of dealership in respect of the lands demised by them to the Oil Companies, the entire focus has shifted to COCO outlets on account of the fresh lease agreements entered into by the Appellants with the Oil Companies which has had the effect of obliterating the claim of the land owners made separately under earlier lease agreements. The claims of the Appellants/Petitioners in the present batch of matters have to be treated on the basis of the agreements subsequently entered into by the Oil Companies, as submitted by the learned Attorney General."

14. The perusal of the above paras reveals that the issues have been dealt with even in reference to the policy of the year 2003 and subsequent policy of 2006. Therein similarly placed petitioners had raised all the issues for consideration of the Apex Court and have been decided. I could have dismissed the writ petitions by covering the matter by the judgment(supra). The fact however is that one matter is still pending before the Apex Court, as stated by the Counsel for the petitioners. If that is so, the petitioners can always seek benefit of the judgment, if comes in their favour, but at this stage, no favourable judgment exists in regard to the issues raised herein.

15. The issue of parity has also been raised by the Counsel for the petitioners. According to them, no denial to the pleadings exists. The question of parity can be considered if one is similarly placed and not otherwise. It is stated that the lease agreement between the parties was executed in pursuance of the same advertisement, out of which few landholders have been given retail outlet dealership. The name of the firms have also been mentioned by the petitioners. However, I am not inclined to accept the prayer raised by the petitioners inasmuch as the respondents are under an obligation to manage their affairs as per the policy framed by the Government of India and as per the aforesaid policy, retail outlet dealership cannot be given to the landholders as a matter of right. If the respondents have acted in violation of the policy decision of the Government of India, then the illegality cannot be perpetuated by the Court. The claim of parity can be made based on rights given under the provisions of law or under the order/circular/notification of the Government or of the respondents, but not based on the illegalities committed by the respondents by acting in violation or in contravention of the policy decision of the Government of India. Accordingly, the argument aforesaid is not accepted by this Court.

16. The question now comes regarding equity and other issues relating to terms of the agreement. I find it to be a hard case for the petitioners, who had leased out their land on nominal rent and were operating the petrol pumps for last many years, but in view of the change of policy, favourable directions cannot be given by this Court. However, while dismissing the writ petitions, it needs to be observed that if a firm was operating the petrol pump for last many years, the presumption goes that it has gained experience and with the proper establishment, they were working to get maximum proceeds to the benefit of the respondent-Corporation.

17. In the background aforesaid, it is up to the respondents and even for the Union of India to decide whether ousting such persons without some rider would be in the interest of the Corporation or it would be against it. I am not giving direction to the respondents to give priority to the petitioners, if the advertisement is issued for retail outlet dealership but marks are provided for infra and even for the experience, the respondent-Corporation would obviously evaluate the case of the petitioners-Company properly for grant of retail outlet dealership in pursuance of the new policy under which the respondents are under an obligation to manage their affairs.

18. With the aforesaid observations, all the writ petitions are disposed of.