
(2015) 04 MP CK 0014
In the Madhya Pradesh High Court
Case No : Writ Petition 13490/2013

Devesh Kumar Jain

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 MP CK 0014

Hon'ble Judges : K.K. Trivedi, J.

Bench : Single Bench

Advocate : Rajendra Tiwari, Learned Senior Counsel assisted by Rohit Jain, for the Appellant; Anoop Nair, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Trivedi, J.—By this petition under Article 226 of the Constitution of India the petitioner has called in question the rejection of his application for grant of "Hamara Pump", a retail outlet by the respondents for supply of the petroleum product.

2. It is contended by the petitioner that in the newspaper in Hindi an advertisement was issued vide Annexure P/2. The conditions mentioned in the said advertisement were such that the availability of the land for establishing such a petrol pump was required to be shown. The petitioner under the impression that he can offer the land situated at National Highway as well gave the information regarding the land for establishing such a petrol pump in terms of the provisions indicated in the Hindi version of the advertisement. However, the application of the petitioner was rejected only because in the English version specific condition was levelled that the site offered for the location shall not be on National Highway or State Highway. It is further contended that imposition of such a condition which was not specifically mentioned in the Hindi version of the advertisement was bad in law. When the application was not considered, the petitioner made a representation and he was informed that for the land he was

given zero marks and his application was not considered. It is contended that the petitioner has two lands and had he been informed about the fact that the land offered by him could not be considered, he would have offered the other land available with him, which, according to the norms of the respondents, was not in the area where allotment of petrol pump was not permissible. This being so, it is contended that the action of the respondents is per se illegal.

3. The respondents have come forward with their stand that they have categorically provided that if there are discrepancies in the Hindi or English version of the advertisement or scheme, only the English version would be acceptable. In the advertisement so published by the respondents in English this condition was specifically mentioned. The petitioner though has two sites, but has offered the one site which is situated on the Highway, which was not acceptable and, therefore, the application of the petitioner was rightly rejected. It is contended that in view of the law laid down by several Courts, such a claim of the petitioner cannot be granted and the writ petition is liable to be dismissed.

4. Heard learned counsel for the parties, perused the record and laws.

5. First of all the scope of interference by this Court while exercising writ jurisdiction under Article 226 of the Constitution of India in such contractual matters, has to be examined. The Apex Court in the case of Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Ltd. and Others, , after summarising all previous views has held in para-19 thus :-

"19. We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast changing economic/market scenario are some of the pitfalls that may occur."

This law has been made applicable in the case of Rajesh Kumar Rathore and others vs. Indian Oil Corporation Limited and others, Writ Petition No. 10938/2014 by this Court and thus it is necessary to examine the factual aspects in the present case to see whether it is a case where exercise of such power of judicial review of action of respondents is necessary or not.

6. The only controversy involved in the present writ petition is whether the petitioner has mislead the respondents by not giving right information or not, and whether even when there was an alternative site available with the petitioner, straightway his application could be rejected by the respondents or not. The first issue is with respect to giving information or making wrong statement. True it is that the advertisement was issued by the respondents in two languages. When was the requirements and for which area the

advertisement was issued, has to be kept in mind. It is clear from the advertisement that the same was published for the areas in rural region. If the "Hamara Pump" was to be established in the rural area, where commonly Hindi language is more popularly used and in fact Hindi is the only language known by the people of such area, if any restriction in the matter of offering plots for such petrol pump was to be prescribed with respect to the situation of the land, it should have been mentioned in the Hindi version. Merely because such a condition was mentioned in the English version and since it was said that the English version will prevail, the rejection of the application is not to be treated as just and proper. The brochure itself was in English. However, in the brochure such a condition is not prescribed as is not pointed out by the respondents by producing the said brochure. The Hindi version was not containing such a condition. Therefore, even if the land was shown by the petitioner on the area where it was not acceptable, it was necessary on the part of the respondents to ask the petitioner whether he was willing to offer any alternative site or not and straightway his application should not have been rejected.

7. Learned senior counsel appearing for the petitioner has relied in the case of Dolly Chhanda Vs. Chairman, JEE and Others, wherein the Apex Court has held that if a benefit is claimed the proof of the same should be produced on the date fixed. However, depending on the facts of a case, there can be a relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of the candidature. It is also to be noted that where the caste certificate was not found valid or acceptable because of the fault of issuing authority, the rejection of candidature by not accepting subsequent corrected caste certificate, which was produced at a later stage was also held to be unjustified and improper action of the authority by the Apex Court. Drawing the said analogy, it is contended that in the map submitted by the petitioner, both his lands one on the highway and other one on the appropriate acceptable place, were shown. If the proposed land on highway was not acceptable, at least petitioner should have been asked whether he has any other suitable land to offer or not. Since the mistake was on the part of respondents of not making the specific restriction about situation of plot in Hindi version of advertisement, this was the necessary requirement and straightway application of petitioner 6 was not be rejected. Such an act of respondents is neither just nor proper action.

8. Trite it is that the general rule is that while applying for any such grants, a person must possess eligibility qualification on the last date so fixed, which must be either in the brochure or in the application form so that the applicant may ascertain as to what he is required to produce. However, there is no rule nor is the requirement of law that the proof of such fact should also be produced at the time of submitting the application. The proof can be given at a later stage. The petitioner while submitting the application form has given the description of the land. If that land was not acceptable as there was any restriction on the place by

the respondents, at least the petitioner should have been informed about the said fact so that he could have offered the alternative land which the petitioner possessed in the very same area, but out of the restricted place. Had it been done, the petitioner would have offered the land which he possessed within the same area but not on the State Highway. In that event, his application for allotment of "Hamara Pump" would not have been rejected in the manner it has been. These aspects have been considered by this Court that appropriate opportunity should be given to explain such shortcomings, as is held in the case of Mithlesh Bais vs. Indian Oil Corporation and others, [2012 (1) MPLJ 714].

9. In view of the aforesaid, the impugned order dated 2.5.2013 (Annexure P-1) stands quashed. The respondents are directed to reconsider the application of the petitioner after permitting him to offer an alternative site for establishment of "Hamara Pump". In case after due scrutiny if it is found that the petitioner fulfill the eligibility criteria, his application be considered afresh and appropriate orders be passed in that respect within a period of three months from the date of this order.

10. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.