
(2014) 08 MP CK 0159
In the Madhya Pradesh High Court
Case No : W.P. No. 4966/2012

Dharam Singh Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 08 MP CK 0159

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : V.K. Bhardwaj, Sr. Advocate and Anvesh Jain, Advocate for the Appellant; Harish Dixit, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rohit Arya, J.—By this petition under Article 226 of the Constitution of India challenge is made to the legality, validity and propriety of award of marks dated 13/1/2012 (Annexure P/1) to the petitioner under various heads by the Selection Committee and communication of rejection of candidature of the petitioner dated 28/5/2012 (Annexure P/2) in the matter of allotment of retail outlet dealership.

2. By the impugned communication it is informed that petitioner is awarded "0" marks for the land and also "0" marks under some more heads viz. experience and for fixed and movable assets by the Grievance Redressal Forum vide its order dated 28/5/2012 while deciding the petitioner's representation in compliance of order of this Court dated 24/4/2012 passed in W.P. No. 1079/2012. By the aforesaid communication it was informed that during investigation it was found that land offered by the petitioner falls on State Highway No. 2; whereas, location was advertised for Hamara Pump and Hamara Pump cannot be put on State Highway, rejection of site is in line with the guidelines. Further as per documents provided a 33 KV line exists at a distance of 52 metres from the centre of the road and version of the petitioner that land is

situated at a distance of 30 metres from the centre of the road, in such an event the 33KV line shall pass over the land offered, and therefore, such land is not suitable as per the guidelines for installation of retail outlet dealership. The proposal of the availability of land was rejected.

3. The main contention of the petitioner is to the effect that respondents despite repeated requests have not conducted spot inspection before rejecting petitioner's claim for availability of land. Hence, there should be a spot inspection before rejection of petitioner's candidature for allotment of retail outlet dealership. It is therefore, prayed that respondents be called upon to hold a spot inspection to verify whether a 33 KV electric line passing through the land offered by the petitioner.

4. Respondents No. 2 and 3 have filed counter affidavit and denied the averments made in the petition. It is submitted that as per the guidelines for selection of retail outlet dealership, the duly constituted experts committee, on 17/12/2011 conducted inspection of the land offered by the petitioner and found that from centre point of State Highway No. 2 a 33 KV electric line is passing. This report is duly signed by the petitioner. Hence, the contention of the petitioner that spot inspection ought to have been conducted is in fact and in effect factually incorrect and misconceived. It is submitted that petitioner was present on spot on 17/12/2011 and duly signed the spot inspection report.

5. At this stage counsel for the petitioner has cited judgment of Apex Court in the matter of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others,

6. Facts of instant case are entirely different, and therefore, aforesaid judgment is of no help to the petitioner.

7. Considering the entire material on record, this Court is of the opinion that petitioner himself was present at the time of spot inspection of the site on 17/12/2011 where the spot map was also prepared and petitioner has duly signed the report alongwith the committee members. Therefore, no grievance can justifiably be made as regards verification of site of land offered. The rejection of candidature on this score is found to be in accordance with the guidelines issued by the HPCL on the premise that a 33 KV high tension line is passing through the land offered by the petitioner. The decision of the committee cannot be said to be arbitrary or illegal. It is settled law that in the matter relating to award of dealership by the Oil Corporations for opening of retail outlet or distribution of LPG etc. are business transactions with commercial orientation which are regulated and controlled by terms and conditions well advertised while inviting applications through public notice. Rejection or acceptance of candidature for the aforesaid purposes in accordance with guidelines, terms and conditions made known to the applicants, and thus cannot be subject matter of judicial review unless and until the decision making process is found to have been vitiated by element of arbitrariness which is anti thesis rule of law.

Regulation and award of retail outlet dealership on such terms and conditions, is an exclusive right of Oil Corporation and the decision so taken is beyond the purview of judicial review. However, decision making process must conform to fair play and satisfy the requirement of Article 14 of the Constitution of India. Law in this regard is well settled and reference may be made to decision of Hon"ble Supreme Court in K. Vinod Kumar Vs. S. Palanisamy and Others, relevant para 11 thereof reads as under:-

"11. The law is settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision-making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process. The capability of the appellant herein to otherwise perform as an LPG distributor is not in dispute. The High Court was not, therefore, justified in interfering with the decision of the Selection Board and the decision of BPCL to issue the letter of allotment to the appellant herein."

8. Hence, no illegality can be said to have been committed by Oil Corporation while awarding "0" marks and rejecting candidature of the petitioner. Under such circumstances no illegality can be said to have been committed warranting interference of this Court under Article 226 of the Constitution of India. Petition sans merits is hereby dismissed.