

(2003) 08 KAR CK 0078

In the Karnataka High Court

Case No : Writ Appeal No. 3029 of 2002 (GM-RES)

K. Indukumar

APPELLANT

Vs

G.M. Ravindra and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Citation : (2003) ILR (Kar) 3796 : (2003) 5 KarLJ 6 : (2003) 4 KCCR 2650

Hon'ble Judges : N.K. Jain, C.J.;H.G. Ramesh, J

Bench : Division Bench

Advocate : H. Billappa, for the Appellant; S.K. Venkata Reddy, for Caveator-Respondent-1 and Ramamohan Reddy, for Respondents 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

1. Appellant-respondent 7-K Indukumar, has filed this writ appeal against the order passed in W.P. No. 31997 of 2001, dated 22-3-2002, whereby the learned Single Judge directed to withdraw the letter of intent issued to him and also to issue letter of intent in favour of the candidate next in the merit list made by the Dealer Selection Board as per Annexure-C.

2. The necessary facts for the disposal of this appeal are that Bharat Petroleum Corporation Limited (for short, "BPCL") republished Annexure-A, an advertisement/notification inviting applications for dealership to set up a retail outlet (petrol pump) at Channapatna through local newspaper on 24-8-2000. The appellant along with others applied for dealership. Sixteen persons were short listed including the appellant. The Selection Board conducted the interview, made a list and submitted its recommendation vide order dated 29-3-2001 giving names of the appellant, respondents 1 and 6 in the list of merit. Considering the recommendation, a letter of intent was issued to the selected candidates on 30-4-2001 with various terms and conditions. The appellant's name was first in the merit list vide Annexure-C. A proposal catalogue was also issued vide Annexure-R. According to condition No. 16 in the catalogue, the dealer should

transfer the land on ownership/long lease to BPCL. The dealer should also make available a suitable plot of land within a period of two months from the date of the letter i.e., 20-4-2001, after getting suitable clearance from the BPCL, There is also a condition that the dealer should transfer the land on ownership/long lease for a minimum period of 30 years with one renewal option for next 5 years. It is further stated that in case the dealer fails to make available the suitable land within two months, the offer would be withdrawn. It is stated that after certifying that the appellant had complied with condition No. 16, the BPCL granted the dealership. The grant of dealership was challenged by the 1st respondent-petitioner, G.M. Ravindra, the next in the merit list, in the above writ petition.

3. The respondents filed their detail counter stating that the writ petition is not maintainable and also stated that on merits the order needed no interference. The learned Single Judge after hearing the parties found that the BPCL could sit in judgment over the direction issued by the Dealer Selection Board and also found that respondent 7 (appellant herein) had not fulfilled condition No. 16. As he had not complied with the instructions as contained in Annexure-R, the learned Single Judge issued directions as stated above. Hence, the writ appeal.

4. Sri Billappa, learned Counsel for the appellant submits that the learned Single Judge, without considering the statement of objections properly, has erred in coming to the conclusion that the conditions mentioned in Annexure-R were not complied with. It is further stated that the appellant was the successful candidate and the 1st respondent had no locus standi to file the writ petition that too after a long lapse of time on 14-8-2001. It is submitted that on receiving the letter of intent dated 29-3-2001 he has complied with the condition as mentioned in paragraph 16 of Annexure-R. It is submitted that the appellant had completed the entire process which is apparent from Annexure-R3 also. It is clear that the owners of the land had written letter to the Divisional Manager, BPCL referring to the licence granted to Indukumar to open the Petrol Bunk at Channapatna. They have stated that they have entered into a sale agreement to sell 10 guntas of land in Sy. No. 57 of Malur Village, Malur Hobli, Bangalore Rural District and they are ready to give this land to Indukumar, the appellant or the BPCL on lease for a period of 30 years. This letter is dated 14-5-2001 (Annexure-R3), which clearly shows that it is within the stipulated time. It is also stated that after the agreement of sale dated 11-5-2001, the site plan was approved on 19-11-2001 and Government granted permission on 15-2-2002, necessary sanction from the Deputy Commissioner for conversion of land for setting up of a retail outlet was obtained on 16-1-2002 and no objection by the District Magistrate was issued on 22-2-2002. Therefore, the order of the learned Single Judge is not sustainable.

5. Sri Ramamohan Reddy, the learned Counsel for the BPCL submits that they have filed counter, the appellant has complied with the condition and there is no violation and there is no question of withdrawing the letter of intent. He further submits that the learned Single Judge failed to appreciate the correct position

and wrongly interpreted the condition that absolute sale deed is necessary, which according to him is not necessary and otherwise also cannot be executed within such a stipulated time.

6. Sri Venkata Reddy, learned Counsel for the 1st respondent-petitioner, submits that as the advertisement pertains to a place at Channapatna only and nowhere else. The place where the appellant wants to have his dealership is Malur Village, Malur Hobli and hence it is not in strict compliance of the requirement: He submits that the learned Single Judge has rightly come to the conclusion that for want of absolute sale deed and in the absence of fulfilling the condition, the letter of intent has to be quashed and that the order of the learned Single Judge needs no interference.

7. In the rejoinder, learned Counsel for the appellant states that the condition has been complied within the stipulated time. It is also stated that otherwise also, it is within the discretion of the BPCL to withdraw the letter of intent for want of compliance. However, later the sale deed has been executed.

8. We have heard the learned Counsels for the parties and perused the material on record.

9. In the instant case, the facts are not in dispute. The only question for consideration is whether the conditions mentioned on Annexure-R1 are complied with or not.

10. According to the condition, the dealer has to indicate in his application as also at the time of interview, regarding the land. The dealer, within two months from the date of letter of intent, has to make available a suitable plot and get clearance in respect of that plot. Further, the dealer has to satisfy that the owner is willing to give long lease for a minimum period of 30 years with one renewal option for next 5 years. It is within the discretion of the BPCL either to accept or modify the terms and conditions of the agreement, or to withdraw the letter of intent if the conditions are not complied with. As per the materials available on record, it is clear that conditions have been fulfilled and they have been accepted.

11. So far as the argument of the learned Counsel for the 1st respondent that the place of dealership is different from what was called for through the advertisement is concerned, the same is not sustainable because, the learned Single Judge has not set aside the order on that basis. That apart, as per the argument of the learned Counsel for the BPCL, the advertisement was for the whole district and not in respect of any particular town as suggested. It is also seen that the learned Single Judge has not allowed the writ petition on this ground. Learned Counsel has not been able to satisfy that there is any ambiguity in selecting the place as per the advertisement. The learned Single Judge has set aside the letter of intent on the ground that the appellant has not shown the absolute ownership. In other words, the condition of showing the ownership is not complied with. As stated, there is no condition in Annexure-R1 that absolute ownership is necessary. A plain and simple meaning has to be given to the words

and while interpreting one cannot add to or subtract from the words in the agreement. What is required is, the dealer must comply with the condition of making available of suitable plot, within two months from the date of letter of intent. As stated, once it is shown and found that a suitable plot is available, the condition that the owner is willing to give long lease for a period of 30 years with one renewal of 5 years being fulfilled is also satisfied. Under the circumstances, interference by the learned Single Judge was not required. The interpretation of the learned Single Judge was that the BPCL is guilty of disobeying the direction of the Dealer Selection Board for want of absolute ownership, which is incorrect as not required and on this count the order of the learned Single Judge is not sustainable and is liable to be set aside.

12. In view of what we have discussed above and in the facts of the given case, the order of the learned Single Judge is set aside and the writ petition is dismissed.

Interim order dated 16-5-2002 stands discharged. Writ appeal is allowed with no order as to costs.