

(2007) 02 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (C) No. 17300 of 2006 and CMs 14207 and 15316-17 of 2006

K. Rajabansi Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) CriLJ 1471 : (2007) 137 DLT 500 : (2007) 94 DRJ 426

Hon'ble Judges : Mukul Mudgal, J; Aruna Suresh, J

Bench : Division Bench

Advocate : P. Niroop, A. Subba Rao and A.T. Rao, in CM No. 15316-15317/0, for the Appellant; Manoj Ohri and Parijat Sinha, R. read Sinha and Snehashish Mukherjee for Respondents 2-3, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned Counsel for the parties the writ petition is taken up for final hearing.

2. The brief facts narrated in the writ petition read as follows:

(i) This writ petition had been filed seeking relief against a tender notice dated 18th July 2006 for the sale of an LPG dealership, being auctioned by virtue of the order dated 29th August 1997 in W.P.(C) 4003/1995 in the case of Centre for Public Interest Litigation v. Union of India as clarified and amended by orders dated 11th September, 1998 and 23rd September 1998. In pursuance of the said tender notice, the LPG dealership at Mylavaram, Krishna District, Andhra Pradesh was to be auctioned on 21.8.2006 without including the land and structures as part of the dealership.

(ii) The petitioner was allotted the LPG Distribution dealership vide proceedings No. F P-19015/34/95-IOC dated 1st June 1995 by the Ministry of Petroleum and Natural Gas, Government of India. Based on the said letter of intent the

petitioner procured land from her husband and constructed a godown and showroom. After the petitioner commenced business, a public interest litigation was filed before this Hon"ble Court, questioning the allotment of Petrol Pump/ Gas Agencies out of the discretionary quota of the Hon"ble Minister for Petroleum. As per the said directions, the Government of India/concerned Oil Company were to take over pumps/distribution premises from similarly placed persons like the petitioner whose allotments were cancelled by assessing the market value of land and if it belonged to the allottee, the constructions made thereon. In the event of consent being given for both the land and the structures built on the land, they were to be sold at a public auction, and if the amounts received in the auction were in excess of what was to be paid to the allottee then the excess was to be deposited in the Hon"ble Prime Minister's Relief Fund.

(iii) On 1st December 1997, the possession of the premises of M/S Sruthi Gas Agency was taken over the Oil Company. In a communication dated 10th October, 1998, the Oil Company asked the Petitioner whether:

- a. The petitioner had any legal right over the godown and showroom, possession of which was handed over to the Oil Company,
- b. In the existence of such a right, the petitioner was willing to sell this interest in the properties in an auction as directed by the Hon"ble High Court at Delhi,
- c. In the absence of such a right, whether the person who had a legal interest in the said properties was agreeable to disposal of the same in an auction.

(iv) In a reply dated 20th October 1998 to the above-discussed communication the petitioner acquiesced to the auction of the dealership in the name of M/S Sruthi Gas Agencies Mylavaram, also stating that her husband did not have any objection whatsoever.

(v) The petitioner claims that it is only on 12th November 1998, that she noticed that respondents 2 and 3 are auctioning only the license of the dealership and not the property and structures thereon despite previous acquiescence from her husband who is the owner of the land and consented to the land and structure being auctioned along with the dealership. With regard to the communication dated 12th November, 1998 the petitioner filed WP(C) 32646 of 1998 in the Andhra Pradesh High Court and was granted an interim order. An application was moved to vacate the said interim order and the Hon"ble High Court at Hyderabad passed an order on 3rd August 2005 clarifying that the status quo ordered earlier operated only with regard to the auction of the property and did not extend to other matters.

(vi) The Oil Company, issued a notification dated 23rd August 2005 setting out the tender schedule only for the dealership and not for the land and structure thereon which was challenged before the Andhra Pradesh High Court in W.P.(C) No.20211/2005 and was disposed off with the direction that the Oil Company should reconsider the matter after taking into account the objections of the

Petitioner. Since another notification was issued with only the dealership being put to auction the petitioner filed another writ petition (C) No.15720/2006 before the Andhra Pradesh High Court. However in absence of a conclusive understanding of the directions of this Hon"ble High Court, the petitioner was granted the liberty to approach the Hon"ble High Court at Delhi for redressal of her grievance in light of the judgment dated 29th August 1997 in WP(C) 4003/1995 later clarified and amended by orders dated 11th September, 1998 and 23rd September 1998.

3. Before we go into the merits of the matter, we are required to deal with the preliminary objection raised by Mr. A. Subba Rao, the learned Counsel appearing on behalf of D. Sriram Reddy/applicant in CM No. 15316/2006 filed by the applicant for his impleadment in the array of the parties as respondent. He has submitted that the petitioner has suppressed vital and material facts and deliberately not made the applicant a party in this Court and has got an interim order which affected the allotment of the petrol pump to him. The applicant states that he was a successful bidder in the auction held on 21st August, 2006 and has already deposited 10% of the bid amount.

4. It is stated by the applicant in the application that the petitioner has got an order dated 18th August, 2006 from Andhra Pradesh High Court in WP No. 15720/2006 which reads as follows:

Post this petition on Friday.

Meanwhile, it is ordered that pursuant to the impugned auction Notification dated 18.7.2006, the auction may go on, but no dealership agreement shall be entered into with the successful bidder, until further orders of this Court.

All the participating bidders shall be notified as to the pendency of the W.P.

5. It is stated by the learned Counsel for the applicant that the applicant had become the higher and thus the successful bidder and since he had not been made a party to the writ petition No. 15720/2006 filed by the petitioner in the Andhra Pradesh High Court, he moved W.P.M.P. No. 25247/2006 in WP No. 15720/2006, seeking impleadment and for vacation of interim order passed in the said writ petition. When the writ petition came up for hearing in the Andhra Pradesh High Court, the petitioner sought withdrawal of the writ petition and on 6th November, 2006, the writ petition was dismissed as withdrawn with liberty to the petitioner to approach the appropriate Court having jurisdiction. It is stated that in view of the above, the petitioner was fully aware of the fact of applicant being the highest successful bidder. Thereafter, a civil suit was filed by the petitioner being O.S. No. 3409/2006 in the Junior Civil Judge, Vijayawada, seeking to restrain the respondents 2 and 3 herein by permanent injunction from entering into the contract with the applicant herein in relation to the LPG dealership. wherein the applicant was made the third defendant. The affidavit in support of the application was sworn on 6th November, 2006 and filed on 14th November, 2006 and the injunction application was posted on 21st November,

2006.

6. It is stated that in the meanwhile, the petitioner filed the present writ petition in this Court on 16th November, 2006 without deliberately impleading the applicant as party/respondent and on 20th November, 2006 a stay of notification dated 18th July, 2000 was granted and the respondents 2 and 3 herein were restrained from acting on the said notification. It is, Therefore, submitted that non-joining of the applicant on the part of the petitioner was planned and deliberate and dishonest and has been done by the petitioner to unfairly scuttle and frustrate the award of dealership in favor of the applicant. He further submits that Therefore taking into account the above facts and the fact that the petitioner had concealed the fact in the writ petition, that a Civil Suit was filed in the Vijayawada Civil Court for a relief similar to that in the present writ petition, is sufficient to dismiss the present writ petition.

7. We asked Mr. Niroop, the learned Counsel appearing for the petitioner as to whether he was prepared to make a statement that no order passed in this writ petition would affect any rights of the applicant and in case he made such a statement, we would consider dismissing the impleadment application. However, Mr. Niroop refused to make such a statement and in this view of the matter, we have no option but to allow the application for impleadment being CM No. 15316/2006, as according to the stand and indeed the relief sought by the petitioner, the applicant shall be affected by the result of the writ petition. Accordingly, the application is allowed and the applicant is impleaded as respondent No. 4. Mr. Niroop further sought to explain the simultaneous filing of civil suit in Vijayawada and the writ petition in this Court by stating that there was some communication gap while filing the civil suit at Vijayawada and the writ petition in this Court. In our view this is a wholly untenable plea as the writ petitioner and the plaintiff are one and the same person and consequently it cannot be pleaded that there was any communication gap.

8. Taking into account the above sequence of events that the petitioner did not implead the newly added respondent No. 4 who was a successful auction purchaser, deliberately in this Court inspire of having made him a defendant No. 3 in a Civil Court at Vijayawada, clearly and vividly demonstrates that the petitioner has concealed material facts from this Court by not disclosing the filing of the Vijayawada suit and attempted to steal an unfair march over respondent No. 4 by securing an order from this Court which vitally affects the respondent No. 4 without joining him inspire of the fact that the petitioner was fully aware of the rights accrued to the respondent No. 4 by his being a successful bidder. The applicant was also fully aware of the impleadment application filed by the respondent No. 4 in the Andhra Pradesh High Court where before such an impleadment application and the prayer to vacate the interim relief could be considered the petitioner withdrew W.P. 15720/2006 on 6th November, 2006 with liberty to move the appropriate Court. Almost simultaneously the petitioner adopted a two pronged approach and filed a civil suit before the Vijayawada Civil

Judge on 6th November, 2006 seeking to restrain the respondents No. 2 and 3 herein from awarding the LPG dealership to respondent No. 4. The writ petition in this Court was filed on 16th November, 2006 and interim order was passed on 20th November, 2006. The petitioner's stance of avoiding to make the respondent No. 4 a party was thus deliberate to seek an unfair advantage and this conduct is compounded by the fact that having chosen to make the respondent No. 4 as the 3rd defendant in the Vijaywada Court he was not joined as a party here and an interim order directly affecting his allotment was made. The petitioner's unfairness is further reinforced by concealing from this Court the filing of the civil suit with reliefs similar to those claimed in the writ petition. Accordingly, we are satisfied that petitioner's conduct is such which is wholly unworthy of the exercise of writ jurisdiction in her favor owing to her conduct and there is no equity in her favor. The writ jurisdiction under Article 226 of the Constitution being equitable in nature cannot be and ought not to be exercised in favor of a petitioner who has abused the judicial process. Accordingly, the writ petition is dismissed by accepting the preliminary objection of the respondent No. 4 on this short ground. In view of the conduct of the petitioner the petitioner shall pay within four weeks from today a cost of Rs. 5,000/- each to the respondents No. 2 and 3 on one hand and Rs .5000/- to respondent No. 4. Mr. Parijat Sinha on behalf of respondents No. 2 and 3 in fact submitted that even on merits the petitioner had no cause as he had failed to satisfy the conditions put in the letter sent to her by respondents No. 2 and 3. However, we are not advertng to the writ petition on merits as the writ petition is being dismissed due to the inequitable conduct of the petitioner. All pending applications also stand disposed of accordingly.