
(2015) 09 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11483/2012

Krishna Devi

APPELLANT

Vs

The Hindustan Petroleum Corporation and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 09 RAJ CK 0113

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Vivek Shrimali, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Petitioner, an unsuccessful aspirant for retail outlet dealership near Kotri Phata on main road from Kotri Phanta to Kolayat, District Bikaner, Rajasthan, under Open Women Category, has laid this writ petition under Article 226 of the Constitution of India for quashing impugned communications dated 22nd of August, 2012 (Annex.3) and dated 15th of October, 2012 (Annex.5). Further, a consequential relief is craved for by the petitioner to restore the marks awarded to her as well as third respondent under the head "Land and Infrastructure" for issuance of letter of intent for the retail outlet in her favour.

2. The facts, apposite for the purpose of this writ petition, are that respondent, Hindustan Petroleum Corporation (for short "HPCL") issued an advertisement inviting applications for grant of retail outlet on 19th September, 2011 under Open Women Category for the location mentioned supra. Being eligible, the petitioner submitted her application form along with the map of proposed site for outlet situated in Khasra No. 97 measuring 0.72 bigha. It is averred in the writ petition that entire land of Khasra No. 97 belongs to her and the site proposed for said retail outlet is located somewhere in the middle of the said khasra. It is also submitted that no road is existing around the said khasra except the main

Kolayat road for which retail outlet has been notified. In support thereof, certificate issued by the concerned Tehsildar dated 4th of September 2012 is also annexed. After submission of application form, a Committee of HPCL before interview inspected the sites proposed by all the applicants for adjudging suitability of the land offered. Precisely, the object of the site inspection was to facilitate awarding of marks for land and infrastructure to the applicants. Subsequent thereto, the petitioner was called for interview on 16th December, 2011 and the selection committee awarded her 76.75 marks by adjudging merit position as first.

3. It appears that there was some cause of acrimony to the third respondent against merit position of the petitioner and that prompted her to lodge a complaint before HPCL. As per the version of petitioner, she was never apprised about the complaint, nor any opportunity of being heard was afforded to her by HPCL and abruptly by a communication dated 22nd of August, 2012, a decision to her detriment was communicated. In the aforesaid communication, the marks awarded to the petitioner were substantially reduced and 76.75 marks awarded to her were substituted by 47. The communication also gave profound shock to the petitioner inasmuch as marks awarded to third respondent were increased from 75.71 to 84.65, altering the merit position to her advantage, and she was elevated to first position in the merit. This sort of communication tempted the petitioner to submit reply, and along with the reply petitioner also submitted a copy of the certificate issued by Tehsildar as well as map of the land in question. As per the version of petitioner, after receipt of her reply, no further communication was addressed to her nor any opportunity of being heard was extended to her and by communication dated 15th October, 2012 she was asked to appear for fresh interview for the said location on 29th October, 2012 due to cancellation of earlier merit panel.

4. It is asserted by the petitioner in the petition that cancellation of merit panel and holding a fresh interview is nothing but a farce to deprive the petitioner from her legitimate expectation pursuant to earlier merit panel. It is also contended by the petitioner that cancellation of the panel prepared earlier, without observance of principles of natural justice, is unwarranted. The petitioner has once again reiterated that before interview site was inspected by the committee of HPCL and before revising marks, no endeavour was made by the Committee of HPCL to inspect the site afresh and even the certificate issued by Tehsildar indicating no way abutting the land of the petitioner except main road, has not been taken into consideration. The petitioner has also set out a specific case that while increasing the marks awarded to third respondent by Selection Committee nothing was conveyed to her and every exercise was undertaken by HPCL clandestinely behind her back. While referring to Clause 19 of the Procedure provided for Grievance/Complaint Redressal System, petitioner has categorically averred that the procedure provided therein has not been adhered to by HPCL in letter and spirit inasmuch as Clause 19(b) has been given complete go-bye. It is further submitted by the petitioner that altering the merit position of the empanelled

candidates without spelling out reasons is de hors the guidelines of HPCL. At the cost of repetition, the petitioner has once again reiterated violation of principles of natural justice, i.e., audi alteram partem.

5. The respondent-HPCL in its return has stoutly defended the impugned orders. Joining issue with the petitioner on her securing 76.75 marks and standing first in the empanelled candidates, respondent has submitted that the said list was provisional. It is submitted by the respondent that after declaration of the provisional marks by the selection committee, some complaints were received including complaint from third respondent and thereupon all the complaints were forwarded to the Grievance Redressal Committee for further inquiry. As per version of the respondent-HPCL, third respondent in her complaint alleged that the land offered by petitioner is not congenial for retail outlet inasmuch as a road is passing through Khasra No. 97-98 abutting the land of petitioner situated in Khasra No. 97. Thereafter, while adverting to the proceedings undertaken by Grievance Redressal Committee, respondent-HPCL has submitted that a letter is sent to Tehsildar, Kolayat on 06.03.2012, seeking clarification about the road existing within 100 mtrs. from the plot offered by the petitioner. In response to the same, Tehsildar Kolayat, by its letter dated 26.03.2012 clarified that as per the revenue/Government record, a road is existing there since 13.10.2010. The Grievance Redressal Committee, in the background of communication of Tehsildar concerned, tentatively formed an opinion that the land offered by petitioner is not meeting PWD norms as the same falls on intersection point. However, as per the version of HPCL, final decision in this behalf was deferred till receipt of requisite comments from the petitioner. The requisite communication of Tehsildar concerned dated 16.03.2012 is also placed on record by the HPCL. In the same breath, as per respondent-HPCL, complaint of third respondent is also investigated and for clarifying the position about suitability of land offered by her, requisite report from the Tehsildar, Kolayat is solicited. On receiving the report of Tehsildar dated 26th of March, 2012, the Grievance Redressal Committee found that third respondent is also entitled for full 35 marks under the head "Land and Infrastructure", having requisite partition of the land with clear title in her name. This followed consequence and the marks of third respondent were increased to 84.61. It is further submitted in the reply that on receipt of comments and clarification from the petitioner about the land offered by her, her original numbers were also restored and finally on re-allocation of marks third respondent stood first in the panel and petitioner was relegated to second position. In substance, the respondent-HPCL has submitted that the Grievance Redressal Committee has examined every complaint objectively and thereafter corrected merit position and the same is placed on record as Annex.R/2/5. As regards communication dated 15.10.2012, it is averred by the respondent-HPCL that it has resorted to recalling the eligible applicants for fresh interview in terms of para 19(b)(2) of the brochure. The allegation of non-observance of principles of natural justice is completely repudiated by the respondent. In the return, allegation of petitioner, that holding of fresh interview is a farce is also countered

with full emphasis. It is also submitted in the return that petitioner's claim for affording opportunity of hearing in the matter of increase in marks of third person is wholly untenable. Describing the guidelines as magna-carta for selection process, it is submitted that the same does not contemplate for providing opportunity of being heard in such contingency. All the grounds urged by the petitioner in support of her contentions are also refuted.

6. Third respondent also submitted reply to the writ petition raising certain preliminary objections castigating the petitioner for not approaching the Court with clean hands. It is submitted that the petitioner is guilty of misprision. Adverting to the merits of the case, third respondent has stoutly defended her selection and merit position in the revised interview. While reiterating the stand of the official respondent-HPCL, third respondent has submitted that petitioner is unnecessarily harping on the principles of natural justice insofar as increase in the marks awarded to answering respondent is concerned. As per the version of third respondent, if any error crept in to her detriment, its correction cannot furnish any cause of grievance to the petitioner to take shelter of principles of the natural justice. It is also averred in the reply that petitioner has miserably failed to point out any irregularity or illegality in the process undertaken by respondent-Corporation, therefore, in want of violation of any of petitioner's legal rights, petition is not maintainable. A specific objection is also raised in the reply that petitioner has not raised any grievance against the fresh interview conducted by HPCL, therefore, no relief can be granted to her.

7. Petitioner thereafter submitted rejoinder to the reply submitted by third respondent and refuted all the preliminary objections. In the rejoinder, harping on the first interview, petitioner has asserted that as a consequence of first interview, there was a legitimate expectation of the petitioner for allotment of retail outlet and the said expectation has been put to jeopardy by the respondent-HPCL in an wholly arbitrary and unreasonable manner. On merits, while refuting the averments contained in the reply of third respondent, the petitioner has reiterated the submissions made in the writ petition.

8. I have heard learned counsel for the parties and perused the materials available on record.

9. In a fierce legal battle for allotment of a retail outlet, petitioner and third respondent have locked horns with full gusto. While the petitioner is castigating official respondent-HPCL for its alleged dubious role, third respondent is defending its action. Respondent-HPCL has also made sincere endeavour to defend its action by placing reliance on Dealer Selection Guidelines, which, according to it, is magna-carta for selection process. Placing heavy reliance on the Dealer Selection Guidelines, respondent-HPCL has stoutly defended the role of the Grievance Redressal Committee to persuade this Court for non-suiting the petitioner.

10. The grievances of the petitioner against the impugned action of the

respondent-HPCL, are essentially aimed against communication (Annex.3) and Annex.5. At the outset, it may be observed that though communication (Annex.3) in substance is detrimental to the interest of the petitioner, but its impact on the final selection and awarding of marks to the respective incumbents is not visible. If the communication (Annex.3) is examined in letter and spirit, then per-se it appears to be an adverbial in character to the candidature of the petitioner for retail outlet inasmuch as her marks awarded by the selection committee are substantially reduced. May it be that the communication (Annex.3) is not happily worded but considering the submission of HPCL that it was a tentative decision having no ramification on the outcome of the selection, in my opinion, it is not desirable to examine the legality and propriety of said communication. It is needless to observe here that this communication was addressed to the petitioner before soliciting her reply/explanation for awarding her marks under the head "Land and Infrastructure". Subsequently, after considering reply/explanation of the petitioner, respondent-HPCL has restored the marks awarded to the petitioner by selection committee under the aforesaid head and as such the grievance which emerges out is merely ornamental and superfluous, which cannot be made subject-matter of judicial scrutiny under the extraordinary jurisdiction of this Court. The second part of the grievance of the petitioner relates to enhancement of marks of the third respondent under the head "Land and Infrastructure" and for that purpose the entire argument of the petitioner hovers around violation of principles of natural justice. I am at complete loss to say that if third respondent has voiced her grievance against inadequate awarding of marks to her under the head "Land and Infrastructure", there cannot be a genuine and legitimate grievance of the petitioner in this behalf. Moreover, while considering reply/explanation of the petitioner, the Grievance Redressal Committee has made sincere endeavour to keep the marks awarded to the petitioner intact while recording its satisfaction, obviously it is rather difficult to comprehend that why such a treatment may not be meted out to third respondent. The cumulative reading of reply submitted by the official respondent as well as third respondent makes it amply clear that the selection committee while evaluating marks for third respondent had not considered her case objectively and that resulted in awarding her less marks. After considering the communication of the Tehsildar concerned, showing the perfect title of third respondent on the land in question on the strength of a gift-deed, the Grievance Redressal Committee objectively reassessed her marks and the said action of the Grievance Redressal Committee, in my considered opinion, cannot be faulted.

11. Well it is true that principle of natural justice is a great humanizing principle and it postulates with clarity and precision that no-one should be condemned unheard but then redressal of grievances of third respondent from any stretch of imagination cannot be construed as condemning the petitioner unheard. Therefore, the argument canvassed on behalf of the petitioner vociferously about violation of principles of natural justice appears to be quite alluring but not of substance and in the backdrop of facts and circumstances of the instant case,

such an argument cannot be countenanced.

12. The petitioner has also invoked doctrine of legitimate expectation for claiming reliefs. It is trite that legitimate expectation is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. In the backdrop of facts and circumstances of the case, I have no hesitation to say that the so-called legitimate expectation of the petitioner is pseudo expectation in absence of any established practice of the respondents, in this behalf. Therefore, this ambitious plea of the petitioner to romp in doctrine of legitimate expectation appears to be quite alluring but not of substance and therefore, merits rejection.

13. Now switching on to the impugned communication (Annex.5), petitioner's principal contention is that the said communication is bereft of any reason. May it be that communication (Annex.5) in true sense is not satisfying the requirements envisaged under Clause 19(b) of the Dealership Guidelines, but it has not prejudiced the cause of the petitioner inasmuch as HPCL has declared the final panel on the basis of investigation by the Grievance Redressal Committee. As a matter of fact, considering the seriousness of the issue and certain pitfalls in the selection process being not in accordance with the guidelines, HPCL has resorted to a fair and transparent method of calling the respective applicants/aspirants for re-interview. Under Clause 19 of the Dealership Guidelines under the caption "Grievance/Complaint Redressal System", Complaints are classified in two categories which are Complaints not substantiated and Established complaint. Sub-clause (a) under the heading established complaint clearly envisage the procedure for calling the candidates for re-interview. For convenience, relevant excerpt of clause 19 of the Dealership Guideline throwing light on the controversy involved is reproduced as under:-

(ii) Established complaint. Action will be taken as under:

a) In case the selection process for a location was found to be not in accordance with the laid down guidelines resulting in wrong selection of first empanelled candidate, the merit panel will be cancelled and all the candidates who have appeared for the original interview only will be called for the re-interview.

b) In case the dealer selection was done as per laid down guidelines and complaint against the first empanelled candidate is established, action will be taken to cancel the selection of the first empanelled candidate and issuance of LOI to the next candidate in merit panel. Similar action will be taken in case of established complaint against second empanelled candidate also.

c) If complaint is established against all the empanelled candidates, the location

will be re-advertised if it is viable.

14. In that background, on objective analysis, there remains no room of doubt that HPCL has not acted arbitrarily or unreasonably or de hors the guidelines by asking the candidates to appear for re-interview. HPCL, in fact, has resorted to a transparent and democratic method of selection which by no stretch of imagination can be categorised as infirm, fanciful or capricious warranting interference by this Court in exercise of extra-ordinary equitable jurisdiction.

15. There is yet another facet of the matter that in the process of re-interview, petitioner appeared voluntarily without any demure but has very conveniently concealed this fact from the Court. If the averments contained in the writ petition are examined threadbare, then it would ipso facto reveal that there is no whisper in the entire petition that petitioner has appeared in the process of re-interview.

16. It is needless to observe that jurisdiction under Article 226 of the Constitution of India is founded on equitable considerations and any aggrieved individual approaching the Court is obliged to disclose all the facts which are material and germane to the matter. Any attempt of misprision, on the part of an incumbent seeking redressal from this Court by invoking extraordinary jurisdiction, cannot be excused.

17. In totality, I am not persuaded to find any infirmity in the selection process carried out by the respondent-HPCL and so also in resorting to the process of re-interview of respective candidates. That apart, a very vital fact, that petitioner has appeared in the re-interview, and offered her candidature without protest, has made me to believe that she took a chance with the hope of an affirmative outcome and as such now it is not in fitness of things to examine the entire process and re-interview, which otherwise is also in terms of the dealership guidelines. That being the position, there is apparently no scope for interference in the matter.

18. Resultantly, the writ petition fails and same is, hereby, dismissed.