
(2004) 10 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 12372 of 2003

Lalit Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Citation : (2004) 4 PLJR 836

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Niraj Kumar and Prakash Kumar, S.S. Asghar Hussain and Pradeep Narain Kumar, for the Appellant; Madhuresh Prasad, for the Respondent Nos. 2 to 4 and Mr. Ravi Ranjan for the Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The petitioner though selected by the Dealer Selection Board as the first candidate, failed to get the MS/HSD retail outlet dealership of Bharat Petroleum Company Ltd. at Sarauni in the district of Saharsa as a result of his inability to make available a suitable land for setting up the dealership within the stipulated time. Aggrieved by the withdrawal of the letter of intent by the Petroleum Company, he has come to his Court seeking its intervention in his favour. The relevant facts of the case are partly admitted and are partly in dispute. These are brief and may be stated thus. In pursuance of the petitioner's selection by the Dealer Selection Board, the Petroleum Company issued a letter of intent dated 29.6.2002 (Annexure-1). In the letter of intent the petitioner was asked to arrange a suitable piece of land measuring 150 feet x 100 feet (dimension of the plot) at the main road near Sarauni within two months from the receipt of letter and to develop the land and construct structures on it as per the Company's design and specifications after obtaining clearance from the Petroleum Company. It was further stipulated that:

"in case you fail to make available the suitable land within two months, this letter of intent is liable to be withdrawn. However there is no commitment from Bharat

Petroleum Corporation Ltd. for taking the said land from you."

2. According to the petitioner, the letter of intent was received by him on 15.7.2002 and on the same day he offered a piece of his ancestral land as required in the letter of intent but it was rejected as unsuitable from the commercial point of view by the Officials of the Company. The petitioner was advised to find out an alternate piece of land suitable for setting up the retail dealership.

3. Before any development in this matter could take place, the Central Government decided to cancel all allotments of dealerships, vide letter No. P-19011/4/2002 ICC, dated 9.8.2002 that were under process. Following the decision of the Central Government, the respondent-Petroleum Company recalled its letter of intent dated 29.6.2002 by its letter dated 13.8.2002. Later, on the basis of the judgment of the Supreme Court passed on 20.12.2002 in the controversy relating to grant of dealerships by the Petroleum Companies, the respondent-Company by its letter dated 27.1.2003 cancelled its letter of 13.8.2002, thereby restoring the earlier letter of intent issued in favour of the petitioner. According to the petitioner, the letter of 27.1.2003 was received by him on 6.2.2003.

4. From this stage, the matter enters into the arena of disputed facts. According to the petitioner, on receipt of the letter dated 27.1.2003, he talked to the Area Sales Officers over telephone and requested him to inspect certain sites that the petitioner was willing to offer but no inspection was made without giving any reasons. He finally visited the office of the Territory Manager (Retail) on 26.3.2003 and requested for inspection of the site but by that time the period of sixty days was over and hence, he was asked to submit a request letter for extension of the time given in the letter of intent. As advised in the office, he wrote a letter requesting for extension of time and gave another letter, modified as advised by the Officers of the Company, on 29.3.2003. No inspection, however, was made and on 30.3.2003, he was given a notice to show cause why the letter of intent may not be withdrawn for his failure to provide a suitable land as stipulated in it. The petitioner gave his show cause on the same day. The Petroleum Company on a consideration of the show cause rejected it and by letter dated 11.10.2002 (Annexure-8) withdrew its letter of intent issued in favour of the petitioner. In the letter of 11.10.2003, the explanation given by the petitioner is considered in detail and it is turned down point by point. The relevant portion from the letter of 11.10.2003 is reproduced below:

"We have carefully gone through the contents of your letter dated 30.4.2003 and have the following comments to offer:

A) Your claim that the period between 15.7.02 to 12.8.02 i.e. 27 days should not be considered within the overall period of 2 months available to you for arrangement of land is not acceptable. You were advised to search for suitable piece of land much before issuance of LOI i.e. at the time of FIR itself. In any

case you should have started the process of identification from date of LOI i.e. 29.6.02.

B) Even if we agree that the restoration of LOI dated 27.1.03, was received by you on 6.2.03, the revised period would be for 33 days as 27 days had already elapsed, which means that you should have arranged for land before 11th March, 03.

C) In any case, even if we calculate 60 days period from 6.2.03, i.e. the day on which the letter restoring LOI was received by you, you should have offered to us land by 6.4.03.

D) The only written communication from your end which we have in our records are the 2 letters dated 26.3.03 and 29.3.03 wherein you have said that you were not able to identify suitable piece of land for construction of RO which implies that you accepted your failure to arrange suitable land within the stipulated period as per clause 2 of LOI.

Under the circumstances, we regret the explanation submitted by you is not found satisfactory and therefore, we are constrained to withdraw our LOI dated 29.6.02 read with our letter dated 27.1.03. Accordingly, LOI dated 29.6.02 stands withdrawn."

As regards the petitioner's assertion that on restoration of the letter of intent by letter, dated 27.1.2003, received by him on 6.2.2003, he requested the Area Manager a number of times over telephone to inspect some other alternate sites, it is firmly denied by the respondents.

5. According to the counter affidavit filed on behalf of the Company, the only communication received by the respondent-Corporation from the petitioner were letters dated 26.3.2003 and 29.3.2003 in which the petitioner accepted his inability to arrange for fresh suitable lands within the stipulated time and requested for granting extension period of 90 days for the purpose.

6. In this state of disputed facts, this Court finds it difficult to accept the petitioner's statement that on restoration of the letter of intent he offered alternate sites but the respondent-Company did not hold inspection despite requests made by him over telephone. It may be noted here that there is no case of malafide, much less any material in support of such an allegation. No official of the company is said to be harbouring any malice or ill will against the petitioner and there was no reason for them to frustrate the petitioner's claim despite his selection by the Dealer Selection Board. In these facts and circumstances, the Court is unable to hold that the action of the respondent-company in withdrawing its letter of intent given to the petitioner was unreasonable, arbitrary, bad or illegal.

7. Moreover, after the withdrawal of the letter of intent issued to the petitioner another letter of intent was given to the intervenor Mantun Kumar, who was the number two candidate on the select panel. He provided a suitable land within the

stipulated time and the grant of dealership has now concluded in his favour.

8. For all these reasons, this Court is of the opinion that it would not be proper, appropriate and desirable to interfere in the matter and to up-set an arrangement that is already settled. No relief(s), therefore, can be granted to the petitioner. This writ petition is dismissed.