**(2015) 07 MP CK 0055**

**In the Madhya Pradesh High Court**

**Case No :** WP-18814-2014

Mahendra Lodhi APPELLANT

Vs

Indian Oil Corporation RESPONDENT

**Date of Decision :** 03-07-2015

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 226, 298, 32

**Citation :** (2015) 07 MP CK 0055

**Hon'ble Judges :** S.K. Gangele, J

**Bench :** Single Bench

**Advocate :** D.K. Tripathi, Learned Counsel, for the Appellant; Aditya Adhikari, Senior Advocate assisted by Gajendra Singh, Learned Counsel, Advocates for the Respondent

**Final Decision :** Dismissed

## Judgement

S.K. Gangele, J—Heard.

2. The petitioner has filed this petition against the order dated 18.11.2014 (Ann. P.2).

3. An advertisement was issued for selection of Distributor/ Dealership of LPC under the RBGL at village Gunga, Tahsil Bairsia, District Bhopal Bhopal. The petitioner along with other persons had submitted the application for grant of distributorship. The petitioner was selected and he was directed to submit a Demand Draft of Rs. 20,000/-. Subsequently, the case of the petitioner was rejected vide Annexure P.1 by the Chief Area Manager on the ground that the petitioner did not have land of requisite dimensions as for the subjected advertisement at the location. The reasons assigned in the letter in regard to the rejection of the application of the petitioner are as under :

"You do not have land of requisite dimensions at the subject advertised location as per the advertisement. The land offered by you for construction of Godown vide Khesra No. 398/1 is less than 21 Mts x 26 Mts."

4. The question for consideration before this Court is that whether the rejection of the petitioner''s application on the basis of violation of condition is proper or not.

5. It is an admitted fact that the condition for grant of distributorship of the LPG was that a person having the land of minimum dimensions of 21 x 16 meters plot for construction of LPG Godown. The condition reads as under:

"a plot of land of minimum dimensions 21 M x 26 M for construction of LPG Godown for storage of 5000 Kg of LPG in cylinders at the advertised RGGLV location. The plot of land for construction of godown not meeting the minimum dimensions of 21 M x 26 M will not be considered."

Or

A ready LPG cylinder storage godown of minimum 5000 Kg capacity at the advertised RGGLV location.

The land should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals/Drainage/Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/Town and Country Planning Department etc.

6. Learned counsel for the petitioner fairly admitted that the petitioner did not mention the plot of requisite dimensions. The dimensions of petitioner''s plot was 22.1 x 15 meters. It is submitted by the learned counsel for the petitioner that the petitioner submitted the proof of ownership of the land and he had sufficient land in accordance with the advertisement. However, due to some mistake the petitioner could not mention the required dimensions of plot in the application. It is further submitted by the learned counsel for the petitioner that aforesaid condition was changed subsequently after a period of four months and condition which was introduced subsequently was that a person had sufficient land at the time of grant of distributorship.

7. Contrary to this learned senior counsel appeared on behalf of the respondent has contended that the petitioner did not fulfill the condition required for grant of distributorship. Hence, the application of the petitioner has rightly been cancelled.

8. The admitted fact of the case are that the petitioner did not mention the correct dimensions of plot, which was required as per policy for grant of distributorship. The plot which was mentioned by the petitioner along with the application is of 22.1. x 15.2 meters. The question is that whether the aforesaid condition can be waived or not.

9. It is well settled principle of law that in contractual matters the Court has limited powers for interference. If the action of the authorities is arbitrary and illegal then the Court can struck down the action. However, the Court has no power to substitute the conditions which are necessary for the purpose of

 

awarding the contract. The Supreme court in the matter of B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, AIR 2007 SC 437 : (2006) 2 CTLJ 247 : (2006) 10 JT 131 : (2006) 11 SCALE 526 : (2006) 11 SCC 548 : (2006) 8 SCR 11 Supp has held that if there are essential conditions of tender document, the same must be adhered too. The Supreme Court has laid down the following principles which would be considered by the court at the time of considering the legality and validity of decision in regard to award of contract :-

"66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :

(i) If there are essential conditions, the same must be adhered to;

(ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing.

(iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction..

(v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with. (vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint."

10. The Supreme Court further in the matter of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, AIR 1990 SC 1031 : (1990) 69 CompCas 746 : (1990) 1 SCALE 410 : (1990) 3 SCC 752 : (1990) 1 SCR 818 : (1990) 2 UJ 62 in regard to application of reasonableness and Article 14 has held as under :

"20. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, AIR 1977 SC 1496 : (1977) 3 SCC 457 : (1977) 3 SCR 249 . It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s. Radha Krishna Agarwal v. State of Bihar, (supra) at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the con- tract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether heating is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi- monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa Vs. State of Tamil Nadu and Another, AIR 1974 SC 555 : (1974) LabIC 427 : (1974) 1 LLJ 172 : (1974) 4 SCC 3 : (1974) 2 SCR 348 ; Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 ; R.D. Shetry v. International Airport Authority of India & Ors., [1979] 3 SCC 1 and also Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, AIR 1989 SC 1642 : (1989) JT 146 Supp : (1989) 1 SCALE 1157 : (1989) 3 SCC 293 : (1989) 2 SCR 751 : (1989) 2 UJ 419 . It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case...."

10. In the present case, the petitioner did not mention the correct dimensions of plot at the time of filling of the application. The petitioner was well aware that as per terms and conditions of the advertisement that he had to offer a land of particular area. He was negligent or he had not fulfilled the requisite qualification. In such circumstances, in my opinion, it cannot be said that the respondent has acted arbitrarily in issuing the order Ann. P.1. If any benefit is granted to the petitioner then it would affect the interest of other persons, who submitted their applications and fulfilled the requisite qualification for grant of distributorship.

11. The principle of law in regard to curable defect is that a technical or typographical error can be cured. The arguments advanced by the learned counsel for the petitioner that subsequently after a period of four months the policy was changed, hence, the petitioner is entitled to get the distributorship, cannot be accepted because both the parties agreed to enter into a contract on the terms and conditions, which were in existence at the time of awarding the contract.

12. In this view of the matter, there is no merit in this petition, it is hereby dismissed.

13. No order as to costs.