

(2009) 01 MP CK 0014
In the Madhya Pradesh High Court

Mohan Auto Supply Centre

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Citation : (2009) ILR (MP) 1898 : (2009) 3 MPHT 465 : (2009) 2 MPJR 625 :
(2009) 2 MPJR 407 : (2009) 2 MPLJ 625

Hon'ble Judges : Brij Mohan Gupta, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Appellant/petitioner M/s Mohan Auto Supply Centre filed a Writ Petition through Partner Mohanlal Nigotia praying for the relief to quash the order of termination of dealership (P-1), dated 10th August, 2007.

It is averred in the petition that petitioner-Firm is the dealer of respondent No. 1-Company. Earlier dealership was of ESSO. ESSO merged into the respondent-Company, i.e., M/s. Hindustan Petroleum Corporation Limited. Respondent-Company wanted to open outlet at Malanpur Industrial area. Respondent No. 1-Company requested the petitioner to arrange for suitable land. Assurance was given to provide the dealership of the retail outlet on making the land available. Petitioner requested his brothers to provide a piece of land admeasuring 150 ft. x 150 ft. = 22500 sq. ft. to the respondent-Company for establishing retail outlet. A lease deed (P-3) for a period of 30 years at the premium of Rs. 4500/- per month was executed. On 25-4-2003, the Company issued a Letter of Intent for appointing the petitioner as its dealer at Malanpur. Initially the said dealership was for a period of one year. It was promised that dealership will be made permanent. Petitioner obtained licence (P-6) under M.P. Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980, spent amount and employed 12 persons. Due to efforts made by the petitioner sale of petrol as well as that of diesel increased. Award of best performance was also given to the petitioner. Without there being any complaint, all of a sudden, letter (P-1) was

issued on 10-8-2007, which was received by the petitioner on 3-9-2007, by which the petitioner was informed that his dealership has been terminated. Petitioner filed the representation (P-8), but of no avail. Hence, the Writ Petition has been preferred submitting that the order is illegal and arbitrary. No opportunity of hearing has been given. Order is not speaking one. Land was given on lease by the brothers of the petitioner. Thus, there was expectation of grant of outlet. The action is not based on any rhymes or reasons.

Learned Single Judge vide order dated 26-9-2007 dismissed the petition on the ground that the arrangement entered into with the petitioner was a stop gap arrangement till appointment of regular incumbent at Malanpur. No right accrued to the petitioner. Appointment was a temporary one. By the impugned order, ad hoc arrangement was terminated. The appointment was made without following due process. Writ Petition has been dismissed. Review petition was preferred, that too has been dismissed. Consequently, the Writ Appeal has been preferred.

Shri Piyush Kalra, learned Counsel appearing on behalf of the appellant/petitioner has submitted that as per Clause 12 of the policy of Hindustan Petroleum Corporation Limited, preference is to be given to the applicants offering the suitable land. There was no reason to terminate the agency. Lease deed was executed in favour of Hindustan Petroleum Corporation Limited for a period of 30 days on the understanding that allotment of the outlet would be made on priority basis. The outlet should have been allotted to the petitioner. The ad hoc or temporary arrangement is not provided in the policy. It was special arrangement entered into with the petitioner. Considering the provisions of long term lease deed, action of terminating the ad hoc dealership could not be said to be sustainable. Consequently, the impugned order passed by the learned Single Judge deserves to be quashed.

Shri Harish Dixit, learned Counsel appearing on behalf of the respondents has submitted that the policy provided for preference to be given to the applicants offering the suitable land. The provision in the policy does not oust the process of regular selection. Advertisement has been made, in fact, duly selected incumbent has been appointed as dealer. It is apparent from the arrangement entered into with the petitioner that it was stopgap arrangement till the selection of regular incumbent after due process of selection. Petitioner was not the lessor. His brothers had leased out the land. Thus, it could not be said that the petitioner was having any right to continue the ad hoc arrangement, which was resorted to without following any kind of process of selection. In the matter of distribution of public largesse, due selection has to be made as per the policy. Even otherwise, no right is reserved by the lessor in the lease deed that the outlet was to be allotted to them without following the due process.

Firstly, we consider policy. Shri Piyush Kalra, learned Counsel for the appellant/petitioner has placed reliance on Clause 12 of the guidelines for selection of the retail outlet, which is quoted below:

12. Preference for applicants offering suitable land:

Availability of suitable land for setting up of retail outlets at the advertised location is the essence of the dealership. Wherever, it has been indicated in the advertisement that land is also required at the advertised location, the applicants who readily have suitable site available for setting up of Retail Outlet or have a firm commitment from the land owner for purchase/lease of site, considering the location of the land from the point of view of suitability from technical and commercial angle and rates acceptable to HPCL, applicants willing to transfer the land on ownership/long term lease to HPCL would be given preference, while awarding marks under the head "Land and infrastructure". The above is subject to considering the location of the land from the point of view of suitability from technical and commercial angle and rates acceptable to HPCL. However, the land and details offered alongwith the application alone will be considered for this purpose and the applicant will not be given the opportunity to offer any other land subsequently.

However, if an applicant, after selection, is unable to provide the land indicated in the application within a period of two months from the date of Letter of Intent (LOI), HPCL will have the right to cancel the allotment of dealership made to the applicant. The suitability of the land offered by the applicant will be decided by HPCL. However, there is no commitment from HPCL for taking the offered land from the applicant.

In case of lease, the same will be for a period of minimum 15 years with renewal option for another 15 years at the discretion of company. However, if need arises, some outlets can be developed by HPCL as dealer owned without taking the land on lease, if specified in the advertisement.

It is apparent from the reading of Clause 12 and the other provision of the policy, allotment cannot be made by passing selection process. Clause 12 itself provides that advertisement has to be issued and thereafter preference can be given while awarding marks under the head "Land and infrastructure". Giving of outlets on ad hoc/temporary basis is not contemplated to the applicants offering suitable land in Clause 12 of the guidelines for selection of retail outlet dealers. The Letter of Intent (A/2), which was issued to the petitioner on 6-5-2003 clearly provides that process of zeroing on the dealer by selection in accordance with the established policy of Hindustan Petroleum Corporation Limited was underway. In the meanwhile, with a view to avoid inconvenience to the motoring public, the petitioner was given the right to operate the said retail outlet purely on temporary basis till such time as the respondent-Corporation is in a position to appoint a regular dealer. Accordingly, the petitioner was appointed as a temporary dealer purely on temporary basis without any claim for entitlement of regular dealership. Condition Nos. 1 to 4 of Letter of Intent (A/2) are material, which are quoted below:

(1) Our Retail Outlet at Malanpur is currently inoperative and we are in the

process of zeroing on the dealer by selection in accordance with our Corporation's establishment policy.

(2) In the meanwhile, with a view to avoid inconvenience to the motoring public, we had discussions with you on 5-5-2003 at Bhopal when you consented to operate the said retail outlet purely on a temporary basis till such time we are in a position to appoint a regular dealer.

(3) Accordingly, we hereby appoint you as a temporary dealer to operate the said outlet solely on temporary basis subject to termination by either party giving to the other 15 days written notice in that behalf.

(4) The Retail Outlet business will be conducted by you purely on temporary basis without any claim of entitlement for regular dealership.

It is apparent from the Letter of Intent dated 6-5-2003, which has been accepted by the petitioner that the arrangement was purely temporary without any claim of entitlement for regular dealership. It was purely a stopgap and temporary arrangement till the appointment of regular dealer, for which the process was underway as mentioned in the condition No. 1 of the Letter of Intent. It is not disputed at Bar that the petitioner is feeling aggrieved with the appointment of dealer, whose appointment has not been questioned in the instant writ petition, preferred by the petitioner. The termination of ad hoc appointment of the petitioner could not be said to be illegal or arbitrary. In the matter of distribution of the public largesse, like such outlets, the due process of selection cannot be given a go-by. Clause 12 itself contemplates that only preferential treatment has to be given to the applicant by awarding certain additional marks under the head "Land and infrastructure". In case the prayer of the petitioner is allowed, it would amount to illegality and arbitrariness in action and would be violative of concept of fairplay action, particularly in the matter of distribution of public largesse if outlet is given without selection process to an incumbent. Thus, in our opinion, the petitioner has no right to continue with the outlet, the arrangement itself was purely ad hoc. Even otherwise, the petitioner is not the owner of the land. As per the averments made in petition, land was owned by his brothers, may be that he has persuaded his brothers to execute the lease deed entered into by the lessor, there is no stipulation in the lease deed also that the outlet would be given to the lessor or to any of their relative on priority basis without undergoing due selection process prescribed under the policy. Thus, by mere execution of the lease deed for a period of 30 years, no absolute right had accrued in favour of the lessor or in favour of any person claiming on their behalf to obtain the outlet by ousting the regular selection process and other incumbents.

Shri Kalra, learned Counsel for the appellant/petitioner has placed reliance on a decision of the Apex Court in Poonam Kumari Vs. Jai Prakash Pandey and Others, , in which the Apex Court has declined to interfere in the matter for the reasons mentioned in Paras 5 to 12 of the order. Certain irregularities were found in the process of regular selection, which was undergone. In the instant case,

regular selection process is not under scan and that has not been assailed. Beside, that in Poonam Kumari (supra) before the Single Judge, the respondents were not noticed, hence the decision renders no help to the aforesaid submissions espoused by the learned Counsel appearing on behalf of the appellant/petitioner. He has also referred to Single Bench decision of this Court in W.P. Nos. 10657/04, 11165/05 and 11166/05, in which this Court has issued a direction to consider the case of the petitioner therein. However, there was no adjudication with respect to the rights of the parties. Decision simply refers to the Clause 2 of the guidelines. This is not the case set up in the instant case that location being commercial viable, the award of direct dealership should be made to the appellant/petitioner. In the instant case, from the Letter of Intent itself it is clear that it was temporary and stopgap arrangement with clear understanding that regular incumbent was to be appointed after due process of selection.

Considering Clause 12 of the Policy, as quoted above, and also the lease deed coupled with the Letter of Intent, we do not find that any exclusive right was accrued in favour of the petitioner. We do not find any error in the order passed by the learned Single Judge dismissing the writ petition.

We may also place on record, that the decision of the Division Bench of this Court in Writ Appeal No. 602/07 (Badri Prasad Soni and Anr. v. Union of India and two Ors.), decided alongwith the other Writ Appeals vide order dated 7-5-2007 has also been placed on record, in which the question has been elaborately considered with reference to the such lease agreement and effect of such lease agreement on the outlets to be given, and the similar submissions raised as raised by the Counsel for the appellant were not accepted by the Division Bench in the aforesaid order.

Consequently, we do not find any merit in the Writ Appeal. Writ Appeal being devoid of merit is hereby dismissed. No costs.