

(2009) 04 DEL CK 0616

In the Delhi High Court

Case No : Writ Petition (C) 12578 of 2006

Ms. Versha Malhotra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2009) 04 DEL CK 0616

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunil Mittal Kuldeep Singh and Kshitij Mittal, for the Appellant; Shilpa Singh, Victor Vaibhav Tandon for respondent No. 1 and D.K. Nag, for respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioner seeks quashing of the letter dated 23.02.2006 by which the respondents 2 and 3 withdrew the letter of intent, granting her allotment, of a retail dealership.

2. Briefly the facts are, that in response to second respondent's (hereinafter called 'HPCL') advertisement, dated 28.03.2001 inviting applications for allotment of retail outlet dealership to those in the 'physically handicapped' category, the petitioner had applied being so eligible. After verifying her application along with others, HPCL found her suitable and issued a letter dated 18.07.2005 intimating that it proposed to offer the retail outlet dealership. Clause 2.1 of the said letter reads as follows:

2.1 You have stated in your application form/during the interview that you are willing to transfer the land ownership/long lease to HPCL at the rates acceptable to HPCL. Accordingly, you will make available a suitable plot of land as indicated by you within a period of TWO months from the date of this letter, after getting suitable clearance from us in writing for the particular plot of land. You are

required to transfer the land on ownership/long lease for a minimum period of 15 years with one renewal option for the next 15 years under such terms and conditions as may be agreed upon between you and HPCL. In case you fail to make available the suitable land within 2 months, this offer is liable to be withdrawn. However, there is no commitment from HPCL for taking the said land from you.

HPCL will develop the Retail Outlet on the said plot of land and provide the same to you with certain facilities like Sales Room, Storage Tank and pump etc. as early as possible.

Clause 2.7 of the said letter ended in the following manner:

Clause 2.7 This letter is merely a Letter of Intent and is not to be construed as firm offer of Dealership to you....

The proposal made will stand automatically withdrawn and cancelled on the happening of any of the following events:

- a) In case you receive at any time or have received a Letter of Intent for any other Dealership or Distributorship from our company or any other Oil Company, either in your individual capacity or in partnership with any other individual(s)
- b) If it is found that you have suppressed and/or misrepresented any facts in your application/at the time of interview.
- c) In the event of death if you are an individual.

The Dealership in your favour will be confirmed/formalized by an Appointment Letter followed by the signing of our standard Dealership Agreement after the facilities are made available and you are in position to commence the operation of the Dealership.

3. The petitioner offered two sites for setting up the retail outlet at Najafgarh by letter dated 31.08.2005. HPCL wrote back on 12.09.2005 stating that its Area Sales Manager had visited the site along with the petitioner's brother, and determined that they were unsuitable. The brother had assured that another site would be shown within a couple of days. The letter further indicated as follows:

While on the subject, we also wish to mention that no land papers nor any firm commitment on land was with him during the visit. Since the time is running fast, you are requested to take necessary action immediately in offering a suitable site for further necessary action at our end.

4. The petitioner, in response to HPCL's letter wrote back on 12.09.2005 stating that she had identified one more site at Rama Vihar, Kanjhawala Road. She wrote another letter on 20.09.2005 to HPCL complaining that she was being pressurized to provide a site at Dwarka Road which was not feasible. In the letter of 12.12.2005 she claims to have written to HPCL stating that she had identified one more site to setting up the retail outlet at Village Alipur Main Road, National

Highway, G.T. Road. In these circumstances on 22.03.2006, the respondents issued the impugned letter, which reads as follows:

Ms. Versha Malhotra

16/37, Geeta Colony

Delhi 110031

Sub: Withdrawal of Letter of Intent dated July 18, 2005 issued for Delhi ? 6 Distt. Delhi, State Delhi under PH Category

Dear Madam,

This has reference to our Letter of Intent No. DRO:RET:RLA dated July 18, 2005 for Retail Outlet Dealership under `PH? category.

As per Clause 2.1 of the Letter of Intent, you were required to make available a suitable plot of land within a period of 2 months from the date of LOI after getting suitable clearance from us for a particular plot of land. However, you have failed to fulfill the above said condition even after expiry of over 8 months.

Therefore, our LOI No. DRO:RET:RLA dated July 18, 2005 stands withdrawn/ cancelled. Please acknowledge receipt of this letter.

5. The petitioner contends that HPCL acted in an arbitrary and unfair manner, withdrawing the letter of intent. It is submitted that the petitioner had given various options to HPCL, whenever it objected to the sites shown. In these circumstances, the impugned action is discriminatory and defeats the purpose for which allotment was made, i.e. betterment of the lot of physically handicapped or disabled persons. The petitioner relies upon a letter written on 10.05.2006 by a Technical Evaluation Team, to the following effect:

DGM-I/C(RM) General Manager?s Office

North Zone BU-Retail North Zone

REF: SNS:E&P:NZ

MAY 10, 2006

Technical Committee Visit to The Proposed Retail Outlet Site Offered by Mrs. Varsha Malhotra

Please find enclosed herewith the technical evaluation of the proposed site offered by Mrs. Varsha Malhotra. The proposed site offered is on NH-I and is now falling on a service lane. Full report along with site sketch is attached herewith for your ready reference. The proposed site has a kachha road just beside it. This road is connecting the NH-I and Alipur road and many properties are situated on this road having openings/approach from this road.

The Committee has also seen the retail outlet of M/s Bharat Petroleum

Corporation Ltd. which is approximately 1 KM away on the opposite side of NH-I. The BPC outlet is approximately 500 meters from the inter-section of NH with Alipur Jindpur Road. The BPC outlet has an asphalted passage beside it, however, this passage seems to be not a thorough fare and is not connected any road. This passage is use as an approach to the godowns which are constructed jut behind this BPC outlet and it gets terminated in the godown area situated there. The BPC outlet is commissioned and is selling products. Apparently, they have the NHAI approval.

The above is for your kind information.

S.N. Sharma R.K. Jindal Atul K Sharma

SR. Manager Manger-Engg EXE. Sales Officer.

6. The evaluation, by the Committee, was apparently done in respect of the plots shown by the petitioner; the details of the evaluation which contained in a table annexed to the said letter dated 10.05.2006; it reads as follows:

details of Sites Shown by LOI Holder

Smt. Vershal Malhotra

	DATE	LOCATION	TECH.	COMMITTEE	REMARKS
	09.09.2005	Nazafgarh-Bijwasan	N/A		The sites were Road visited by ASM, Sh. Rajesh Mehtani alongwith the brother of the LOI holder. It was observed that both the sites offered are 2.5 to 3 KMs inside the main NZF/BJW road and there was not much traffic, to this Mr. Malhotra suggested that he will look for a site somewhere else in East Delhi.
	27.01.2006	V. PUR (NH-1)	RKJ/RLA/AKS		The Site does not meet MOST norms and this was conveyed to the brother of LOI holder.
	27.01.2006	V. Singhola (NH-1)	RKJ/RLA/AKS		The site was within 1 KM from Delhi- Haryana Check Post and thus was not meeting the norms and this was conveyed to the LOI holder's brother.
	24.02.2006	Alipur-Bhakhatawar	RKJ/RLA/AKS		This site was Road approved and the brother of LOI holder was asked to submit the land documents.

We may wish to mention here that at no point of time there was any firm commitment from the land owners nor the documentary details were submitted.

Visits of Tech. Committee were organized even on short notices to facilities the process of site selection.

7. It is submitted that once evaluation of the various sites was done by the

Technical Team which found that at least one plot i.e. Alipur Bhaktawar Road was suitable, the HPCL acted in arbitrary and mechanical manner without applying its mind, in withdrawing the offer by the impugned order/letter of 22.03.2006.

8. The HPCL, in its counter affidavit, does not dispute having issued the letter of intent to the petitioner. It contends however, that in terms of that letter, in the event of the allottee or LOI holder failing to make available a suitable commercially viable plot within two months, the offer was liable to be withdrawn. The HPCL contends that the petitioner failed to provide a suitable plot of land even after lapse of eight months from the grant of the LOI. It therefore was left with no option but to withdraw or cancel the letter of intent. The HPCL also claims to have issued a LOI to the next empanelled candidate Mr. Jaikishan Aggarwal. It is further argued that LOI is merely an invitation to offer which does not crystallize into a binding promise and unless the LOI allottee complies with the terms and fulfills the requisite conditions there is no binding contract. One of the most essential conditions, it is contended was the obligation to offer a suitable plot.

9. In a supplementary affidavit filed on 28.11.2007, the HPCL contends that concerned premises were inspected and evaluated by the Technical Committee but were rejected as they did not fulfil the norms prescribed by the Petroleum Ministry. It is claimed that the petitioner had complained in the meanwhile that the LOI was not being issued; consequently the Technical Committee visited the site on 21.04.2006 and rejected it from the angle of feasibility. The copy of the said Technical Committee's Report, indicating the brief reasons for rejection was produced on the record on 04.10.2007, which reads as follows:

Importance of location :(Historical place/Halting point etc.)

Location is on the LHS OF NH1, NOC from NHAI is must.

10. Besides relying upon the averments it is argued on behalf of the petitioner that the ground urged in support of the impugned cancellation are utterly arbitrary and irrelevant. It is contended that the essential purpose or objective for seeking applications was a welfare measure aimed at upliftment of physically handicapped persons. Owning a suitable land could only have been a point of preference and not an essential condition for allotment as was being treated by the respondent HPCL. It was further argued that HPCL was shown no less than four separate plots on which the outlet could have been conveniently located. The Technical Committee had cleared or approved one of them even as late as in February 2006, after an inspection. Under these circumstances, the withdrawal of the LOI constituted an unreasonable and arbitrary act.

11. The HPCL during the hearing submitted that the petitioner cannot found an enforceable claim since only LOI had been issued to her on 18.07.2005. Clause 2.1 of the said LOI clearly stipulated that she had to make available suitable land within two months. The plots initially shown by her were deemed unsuitable. She made a complaint; later on offered and showed other plots. It was further

contended that the letter dated 31.08.2005 written by her which was on the record (produced on 04.10.2007) contained a noting that the site visits were done on 09.09.2005 along with petitioner's brother. The noting on that letter itself disclosed that the two sites were 2.5 to 3 kilometers inside the main road and that there was not much traffic. The site offered later, in Village Alipur as well as the one at Village Singhola were determined as unsuitable. It was argued that even though the Alipur Bhaktawar plot was tentatively approved, the petitioner's brother was asked to submit land documents. Yet it is also contended that the document relied upon by the petitioner, Annexure to the Technical Committee's evaluation dated 10.05.2006, clearly stipulated that at no point of time was there any commitment from the land owner nor any details were submitted. Even in respect of the last plot 'cleared in principle' the remarks clearly stated that the petitioner's brother was asked to submit the land documents.

12. Learned Counsel for the respondent relied upon the original record, particularly internal correspondence dated 07.12.2005 of the Chief Regional Manager stating that HPCL's efforts to contact the LOI holder and her brother had failed and that even at the stage of completion of two months period on the recommendation of the Ministry of Petroleum and Natural Gas, the petitioner was called upon to the office and a detailed discussion, in respect of the provision for land took place. The HPCL refers to a letter written by the Chief Regional Manager to the DGM (Retail (M) recommending that despite the time granted suitable plot had not been given. This letter also referred to some complaints made by the petitioner. In answer to this the DGM (Marketing) on 13.01.2006 stated that even though two months period of LOI validity had expired, it would be desirable to inspect the sites, offered on 15.09.2005 and 12.12.2005. It is submitted that in these circumstances the inspection of the site took place yet the petitioner failed to take steps for offering a suitable plot; she cannot merely rely upon the determination of the Technical Committee but had to show that the land records and documents required to be furnished by her, were not ever furnished or offered to the HPCL.

13. The above discussion would show that this Court is not confronted with disputed facts. That the petitioner was allotted the LOI on 18.07.2005; that she initially offered two sites for inspection and later some more sites, were not denied. What is disputed by HPCL is that cancellation of its offer, is arbitrary or in any manner violates the petitioner's right.

14. The HPCL no doubt argues that since the LOI itself did not amount to binding agreement and merely constituted an offer, and its withdrawal left the petitioner with no rights. It does not fortunately argue that in such case the standards implicit in Article 14 do not apply at all. It is some decades past that the theory about judicial review not encompassing contractual actions or acts pertaining to contracts, by State agency has been discarded. In these circumstances, even in the contractual sphere acts leading up to the contract or an award of a contract

can be scrutinized by application of public law standards. Thus, regardless of the character and nomenclature, a State Agency, donning whatever mantle, it chooses is prohibited from acting on irrelevant considerations or from taking any unreasonable decision. Therefore, the argument that the impugned order to the extent, withdrawing the letter of offer is insusceptible of challenge, under Article 226 cannot be sustained any longer. Judicial review is not usually about the merits, or other qualitative aspects of executive decisions, but whether it was arrived at legally, in accordance with provisions of law, wherever prescribed, and whether it was taken in accordance with the procedure applicable, and not vitiated for consideration ? by the decision maker ? of extraneous or irrelevant factors, or want of bona fides. Absent these factors, the court?s jurisdiction to decide about the ?unwisdom? or ?imprudence? of a decision or measure does not exist, in judicial review.

15. In this case, the invitation to apply, published in the notice by HPCL, after spelling out various eligibility criteria relatable to age, income details, preference and other essential conditions also stated that ?further, details of the eligibility criteria and conditions as mentioned in the application form shall apply?. Further to this the letter of intent by Clause 2.1 enjoined the LOI that ?you will make available a suitable plot of land as indicated by you within a period of two months from the date of this letter...in case you fail to make available the suitable land within two months, this offer is liable to be withdrawn?. In view of these two stipulations the petitioner cannot contend her lack of her awareness about the responsibility to make available a suitable plot of land within two months, of issuance of the LOI. In fact there is no contemporaneous letter or communication by her, stating that such a condition was onerous or had caused her hardship. On the contrary the correspondence exchanged shows that the petitioner was willing to comply with the condition and offered as many as four plots. Therefore, the only question which the Court has to decide is whether the HPCL unreasonably withdrew or cancelled the LOI even though she had offered a plot of land for the outlet.

16. A careful reading of the chart annexed with the Technical Committee?s Evaluation Report reveals that out of four plots offered by the petitioner, three were rejected as unfeasible. The fourth i.e. Alipur Bhaktawar plot was deemed suitable. Significantly, however, in two places in the same document the need to produce relevant and property documents had been emphasized. These requirements cannot be termed as fanciful or entirely irrelevant because Clause 2.1 of the LOI itself states that ?you are required to transfer the land on ownership or long lease for a minimum period of 15 years with one renewal option for next 15 years under such terms and conditions as may be agreed upon between you and HPCL?.

17. Now when the petitioner was issued with the LOI, the need to offer a suitable plot and lease to the HPCL was known to her; at least it became well known with the issuance of the LOI on 18.07.2005. The correspondence exchanged between

the parties, particularly, the letter dated 12.09.2005 also shows that the need to disclose and produce proper documents was emphasized. The petitioner is also not challenging the statement made in the evaluation by the Technical Committee in respect of the Alipur Bhaktawar road plot that the site was approved and that her brother was asked to submit land documents. Having regard to the scheme whereby the LOI was to enter into an agreement where the land had to be committed for the retail outlet for a long duration, the HPCL's insistence of proper documents is not only germane but reasonable. Consistent with its commitment as a public sector corporation the HPCL made its policy of awarding retail dealership being conditioned upon proper documents being furnished along with a suitable site. Such condition requiring the LOI holder to disclose the state of ownership of the property is of material significance; after all if either the possession or title were defective, the Corporation could be exposed to threat of action or legal proceedings towards its dispossession which would not be in its interest or perhaps in the public interest. All the materials on record point to the petitioner's awareness of these requirements and her inability to satisfy them.

18. In the circumstances, it is held that the petitioner's complaint about arbitrariness by HPCL is devoid of merit. In view of the above discussion, the writ petition cannot succeed; it is accordingly dismissed.