

(2002) 02 RAJ CK 0086
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4312 of 2001

Nemi Chand Kajala

APPELLANT

Vs

Hindustan Petroleum Corp. Ltd. and Others

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 RLW 1107 : (2002) 2 WLC 526

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : S.M. Mehta and Anil Mehta, for the Appellant; A. Kasliwal and Amod Kasliwal, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The petitioner in the instant writ of mandamus seeks following relief.

(i) the Selection of respondent No.3 for distribution of Petroleum Products at Village Palsana Distt. Sikar be quashed and set aside.

(ii) The respondents 1 and 2 be directed to award Petroleum Dealership relating to village Palsana in pursuance to advertisement (An-nexure-1) to the petitioner.

2. The facts as depict in the writ petition are as under-

(a) the Hindustan Petroleum Corporation Limited (in short HPCL) invited applications under the Open General Category from eligible persons for appointment of dealership of Retail Outlet for the village Palsana in Sikar District. As per Clause (e) of the said advertisement income of the candidate for the financial year 1996-97 was not to exceed Rs. 2.00 lacs per annum.

(b) The petitioner applied for allotment of the aforequoted dealership of Retail Outlet and was called for interview which was held on August 21, 2001. The name of the petitioner figured at S.No. 2 in the merit. The respondent No.3 who

at S.No. 1 in the merit list was awarded dealership for Diesel and Petroleum Outlet for area of Village Palsana. The petitioner's contention is that the respondent No.3 submitted incorrect facts and information about the proof of his income to the respondent No. 2.

(c) The petitioner applied for documents submitted by the respondent No.3 to the Income tax authorities for the relevant financial year, but the authorities refused to give any proof. However the petitioner could procure and place before respondent No.2 the returns of the respondent No.3 for the year 2000-2001 and 1999-2000 showing the gross income. The respondent No.3 was also deriving income from HUF and has been in the possession of 8 vehicles, 4 brick kilns-and land measuring 700 Bighas in village Theekariya.

3. The respondents 1, 2, and 3 submitted separate replies to the writ petition. In the reply submitted by the respondent No. 1, preliminary objection was raised to the effect that the respondent No.3 was found eligible and suitable as per the guide lines contained in Manual for selection of dealers and distributor. The petitioner did not have any vested legal right to challenge the selection, when the selection is strictly in continuity with the guidelines. The maintainability of the writ petition is also questioned on the ground that the petitioner has approached directly to this Court complaining about the selection of respondent No.3 without giving any notice of demand of justice to the Chairman of the DSB for redressal of his grievance as provided in para 3.15 of the Grievance Redressal System. Thus the petitioner failed to avail the alternative remedy available in the guide lines which is equally speedy and efficacious. The allegations levelled against the respondent No.3 in the writ petition have been denied.

4. The respondents No. 2 and 3 reiterated the submissions raised in the reply to the writ petition submitted by the respondent No.1. The respondent No.3 placed on record his income certificate, showing his income to be Rs. 63,018/- certified by the Chartered Accountant as well as the copy of the return for the relevant year 1997-98. The respondent No.3 has also filed a copy of the affidavit of Shri Gheesu Lal son of Ramu Singh for making available the land measuring 165 x 165 for purposes of establishment of Retail Outlet at Palsana. The respondent No.3 also filed written submissions stating therein that on November 2, 2001 Letter of Intent was issued in favour of the respondent No.3 and on January 2, 2002 the Retail Outlet has been commissioned and the respondent No.3 is presently selling the petroleum produces of HPCL.

5. The petitioner submitted rejoinder to the replies filed by the respondents reiterating the facts stated in the writ petition.

6. I have pondered over the submissions advanced before me by the learned counsel for the parties and scanned the material on record.

7. A writ of mandamus is controlled by equitable principles. It is of very ancient origin, dating back to the time of Edward II. The term "mandamus" seems gradually to have been confined in its application to the judicial writ issued by

the King's Bench, which has by steady growth developed into the writ of mandamus. It is a high prerogative writ and is granted to amplify justice and to preserve a right where there is no specific remedy. The writ of mandamus can not be demanded *ex debito justitiae* but it is issued only in the discretion of the court. There are four pre-requisites essential to the issue of the writ of mandamus:

- (i) whether the petitioner has a clear and specific legal right to the relief demanded by him;
- (ii) whether there is a duty imposed by law on the respondent;
- (iii) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent;
- (iv) whether the petitioner has any remedy; other than by way of mandamus for the enforcement of the right which has been denied to him.

A writ of mandamus is not granted for the mere asking of it. The hypothesis and the basic requirements for the issue of such a writ are that a public body is refusing to do its public duty or it is acting in excess of its authority or openly violating the principles of natural justice. Before issuing the writ of mandamus, demand for justice from proper authority and its refusal is necessary. The requirement that there must be a previous demand and denial of the right sought to be enforced by a petition of mandamus is not merely a technical point. It is a point of substance which must be taken into consideration by the court when it issues a writ of mandamus. For issue of mandamus a demand for justice and its refusal is a condition precedent. Their Lordships of the Supreme Court in *Saraswati Industrial Syndicate Ltd. etc. v. Union of India* (1), indicated that as a general rule the writ will not be granted unless the party complained of has known what it was he was required to do, so he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that such demand was met by a refusal.

8. A petition for a writ of mandamus must be supported by an affidavit sworn by the petitioner, stating his right in the matter in question, his demand of justice and the denial thereof. The writ of mandamus is not granted on the slippery base of facts.

9. Undeniably the petitioner has approached this court for redressal of his grievance without serving notice for demand of justice on the respondents Hindustan Petroleum Ltd. and the Dealer Selection Board. Grievance of the petitioner may be redressed in "Grievance redressal System" provided by para 3.15 of the Guidelines contained in Manual for selection of dealers and distributors of various oil companies. As the petitioner has efficacious alternative remedy and he has rushed this court without first serving notice for demand of justice on the respondents, the exercise of the writ jurisdiction for issuing the

writ of mandamus would not be possible.

10. Consequently the writ petition stands dismissed without any order as to costs.