

(2010) 04 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 1276 of 2009

Rahul Ashok Sonalkar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 5 BomCR 803

Hon'ble Judges : Rebello Ferdino I., J;Bhatkar Mridula, J

Bench : Division Bench

Advocate : D.A. Nalawade and Ravindra Lokhande, for the Appellant; G.S. Godbole and Pallavi Dabholkar for respondent Nos. 2 to 4 and Yatin R. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Rebello Ferdino I., J.—Rule. By consent of parties heard forthwith.

2. Petitioner was one of the applicants for LPG distributorship in Sangola, District Solapur, Maharashtra. In the selection done, respondent No. 5 was selected and given allotment. Pursuant to news item which appeared in the Indian Express, Government of India took a decision to cancel all allotments made with effect from January, 2000 consequent to the criticism in the Press and in Parliament. The cases were reviewed on 5.8.2002 by the then Prime Minister. Prime Minister directed the Ministry of Parliament and Natural Gas to cancel the allotments made with effect from January, 2000 and the formal order was issued by the Government of India Ministry of Petroleum and Natural Gas on 9.8.2002 cancelling all allotments. The allotment of respondent No. 5 was also cancelled.

3. Several petitions were filed before the various High Courts which were transferred and heard by the Supreme Court. The Supreme Court by its judgment in Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., decided on 28.12.2002 set aside the order of termination except in respect of some allotments. In respect of these allotments a Committee was appointed to

go into those cases.

4. On the report being submitted, the matter came up before the Supreme Court in *Mukund Swarup Mishra Vs. Union of India (UOI) and Others*, which was decided on January 12, 2007. The Supreme Court after considering the report in respect of the States referred to therein, passed an order. In the case of State of Punjab, there were six applications by non allottees and they were rejected as the Court observed that they are not concerned with non allottees. In so far as the remaining cases are concerned, they were adjourned with a direction to the registry to place that matter before the Chief Justice of India for listing the matters before the Appropriate Bench. Thereafter the Supreme Court in Transfer Case No. 100/02 *Mukund Swarup Mishra (supra)* along with other transferred cases by judgment dated 7.11.2008 dealt with some of the remaining States.

In so far as Maharashtra is concerned, the cancellation of allotment done in favour of respondent No. 5 was upheld. The Committee had submitted its report on 29.9.2004. The Committee was pleased to hold "on account of failure on the part of the allottee to disclose this material before the DSB at the time of interview, selection of the allottee cannot be sustained". The Committee then went to observe that in the circumstances, the Committee has not considered it necessary to go into the question with regard to evaluation of merit of the allottee and other two applicants on the merit panel. 5. Petitioner participated in the proceedings before the Committee. Pursuant to the directions of the Supreme Court, respondent No. 2 to 4 cancelled the allotment done in favour of respondent No. 5. Petitioner by his letter dated 19.12.2008 represented to Hindustan Petroleum Corporation Limited (HPCL) that the dealership should be allotted to him. Petitioner was informed that in all locations where the selections were cancelled and the cancellation confirmed by the Supreme Court, they have been readvertised by the respective oil companies. Accordingly with regard to the said location of Sangola II, the same will be advertised and if interested petitioner can submit his application on release of the said advertisement. The clarification was issued in respect of the earlier letter of 29.1.2000 where it was pointed out that it had inadvertently been mentioned that the subject location has already been readvertised.

5. Petitioner is aggrieved by the action of the respondent Nos. 2 to 4 in not making allotment to the petitioner on the ground that he was second in the merit list and if allotment in favour of respondent No. 5 was cancelled, he would be entitled to the dealership.

6. A reply has been filed on behalf of respondent Nos. 2 to 4. The principal contention as urged in the reply is that the location was to be readvertised and the petitioner if interested can apply. An additional affidavit was filed by Shri. P.N. Kanth, Senior Regional Manager, Pune H.P.C.L., annexing with the reply the communication dated 17.4.2007 which was addressed to the Director (Marketing) of Indian Oil Corporation Limited. The contents of the said communication reveal that in respect of those locations where selection of LPG

agencies has been cancelled by the Supreme Court, a fresh advertisement should be issued. It is also set out that in all such cases they either have been readvertised or would be readvertised and no exception had been made and H.P.C., has not given any of its distributorship to second or the next candidate. In so far as HPCL is concerned, it is pointed out that 14 HP gas distributorships were terminated through out India as per the judgment of the Supreme Court.

7. At the hearing of this petition, on behalf of the petitioner the learned Counsel submits that the petitioners had a legitimate expectation that once allotment done in favour of respondent No. 5 was cancelled, the petitioner being at Sr. No. 2 in the merit list, ought to be allotted the agency. Reliance is also placed in the judgment of the Supreme Court in Ritu Mahajan Vs. Indian Oil Corporation and Others, . It is further submitted that the letter dated 17.4.2007 is addressed to the Indian Oil Corporation and not to HPCL and consequently the same is not binding on HPCL.

On the other hand on behalf of respondent Nos. 2 to 4 the learned Counsel has submitted that as a matter of policy, HPCL is following the decision as communicated in the communication dated 17.4.2007. Though it is addressed to Indian Oil Corporation, nonetheless the decision was taken by CMD's of all Public Sector Oil Companies on 3.4.2007. A copy of the communication was forwarded to HPCL and HPCL is following the same. Explaining the judgment in Ritu Mahajan (supra) it is pointed out that in that case the Committee had considered relative merits of the candidates and in these circumstances, the relief was granted. In the instant case, it is pointed out in Para 29 of the report in so far as allotment done to respondent No. 5 the relative merits was not considered. At any rate it is submitted that the cancellation was in the year 2002. Petitioner did not challenge his non selection but has approached the Court only in the year 2009. In the light of that, it is submitted that this Court should not exercise its extra ordinary jurisdiction.

8. We have heard the learned Counsel for the parties and the respective contentions that were urged. It is true no doubt that in terms of the policy for allotment it was upheld by the Supreme Court in Onkarlal (supra). In the normal course on cancellation of an allotment, the next in order of merit ought to be given the allotment. In the instant case, however, petitioner did not challenge the allotment in favour of respondent No. 5 except as to participating into the inquiry which was ordered and done by the Committee pursuant to the judgment in Onkarlal and others. The Supreme Court itself in Mukund Swarup Mishra Vs. Union of India (UOI) and Others, , in Para 36 dealing with the State of Punjab rejected six applications by non allottees. In the instant case the learned Supreme Court while upholding cancellation in favour of respondent No. 5 only directed Public Sector Oil Companies to conduct consequential action. The consequential action does not include allotment in favour of persons like petitioners who themselves has chosen not to challenge the allotment in favour of respondent No. 5.

We have considered the judgment in Ritu Mahajan (supra) and in our opinion, it is clearly distinguishable. In the first instance, the appellant herein had not challenged his non selection and selection of another candidate. In Ritu Mahajan (supra), the petition was disposed of on 1.2.2002, even before the decision taken by the Prime Minister to cancel the allotments. The appellant against the order preferred an appeal to the Supreme Court. The Hon"ble Supreme Court considering the report of the Committee noted that the Committee itself had found that the appellant (Ritu Mahajan) was at Sr. No. 1 whereas 5th respondent was at Sr. No. 2. It is in that context that the Hon"ble Supreme Court passed an order setting aside the allotment in favour of 5th respondent in that case and allotted retail outlet dealership in favour of the appellant before it. The appellant before the Supreme Court was thus diligent in prosecuting his rights. Unlike the present case, where the petitioner chose not to challenge the allotment. The Supreme Court did not consider the issue of allotment in favour of petitioner but was considering whether the cancellation of allotment in favour of respondent No. 5 could be upheld. The petitioner thus can claim no benefit. The petitioner had further approached this Court only after the policy decision has been taken to readvertise. That policy decision is also not the subject-matter of the challenge before us.

9. In our opinion on the facts of the present case, it cannot be said that petitioner had a legitimate expectation that on cancellation of the allotment in favour of respondent No. 5, the petitioner would be allotted dealership. The HPCL along with other Public Sector Oil Companies have taken a policy decision pursuant to which Government of India have issued directions and which HPCL has followed. The action cannot be said to be arbitrary.

10. In the light of the above, we find no merit in this petition. Rule discharged. In the circumstances of the case, there shall be no order as to costs.