
(2009) 04 RAJ CK 0006
In the Rajasthan High Court

Ramesh Chand Trivedi

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 04 RAJ CK 0006

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner with the grievance that selection process was finalized by the respondent-Bharat Petroleum Corporation Ltd. for allotment of LPG Distributorship for Phulera, District Jaipur in pursuance of advertisement dt.31st August, 2000 where petitioner was placed in the select panel at No. 2 and Naveen Gupta, who was at No. 1 in the panel, was awarded LPG Distributorship which was cancelled finally on the recommendations made by the committee constituted by the apex court in 2007 [Ann.3], still he has not been considered and respondents have issued a fresh advertisement dt.3/11/07.

2. Respondent-Company M/s. Bharat Petroleum Corporation Ltd. issued advertisement dt.31st August, 2000 for selection of LPG Distributorship for various places including Phulera, District Jaipur. Petitioner being one of the aspirant submitted application and participated in the process of selection initiated by the respondents and after examining his eligibility and other requirements in terms of advertisement, he was found suitable and placed at No. 2 and Naveen Gupta was placed at No. 1 in the select panel prepared by the respondents on 2nd March, 2001. It appears that there were certain complaints made against Naveen Gupta in regard to selection undertaken by the respondents and under the orders of apex court dt.20/12/02 reported in Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., committee was constituted of Hon'ble Mr. Justice S.C. Agrawal & Mr. Justice P.K. Bahri. The

committee examined the allotment of distributorship of Naveen Gupta and finally in Para 48 of its report Ann.3, it was observed that the selection of the allottee i.e. Naveen Gupta by the Dealer Selection Board stands vitiated on account of arbitrarily high number of marks awarded to the allottee i.e. Naveen Gupta. Further observed that allotment was made in favour of the allottee because of certain extraneous considerations. Operative part of recommendations made by the committee constituted under the orders of apex court, is reproduced as under:

In the circumstances, the Committee is of the view that the selection of the allottee by the DSB is vitiated on account of arbitrarily high number of marks awarded by the DSB to the allottee. An inference has to be drawn that the allotment made in favour of the allottee was influenced by extraneous considerations.

3. In compliance of report which was finally-accepted by the apex court vide its judgment dt.12/1/07 and accordingly, in terms thereof, allotment of LPG Distributorship for location at Phulera, District Jaipur, was cancelled in 2007 and at this stage, the petitioner, who was at No. 2 in the panel, submitted representation and also served legal notice Ann.4 with the grievance that once Naveen Gupta who was placed at No. 1 in the panel because of extraneous considerations as observed by the committee in its report, his allotment stands cancelled and he being next in the panel may be considered for allotment of LPG Distributorship, but when his efforts failed, he approached this Court by filing instant petition.

4. While notices were issued by this Court, by an interim order dt.30/11/07 respondents were restrained from making selection/allotment of LPG Distributorship initiated in pursuance of advertisement dt.3/11/07.

5. Counsel for petitioner contends that once the empaneled applicant No. 1 was placed because of extraneous consideration has been cancelled by the respondents, he being at No. 2 in the select panel, respondents were under an obligation to consider the petitioner for allotment of LPG Distributorship for location at Phulera and making fresh selection by an advertisement dt.3/11/07, in the facts of instant case, is not called for and their action is in violation of Article 14 of the Constitution of India.

6. However, notices of the petition were duly served upon the respondents on 7th July, 2008, but no reply to the writ petition has been filed so far despite sufficient opportunity afforded.

7. However, counsel for respondents submits that in terms of Para 4.15 of the guidelines laid down by the respondents for allotment of LPG Dealership/ Distributorship once the applicant in the panel on his allotment commissioned, panel stands exhausted and any change in circumstances at a later point of time will not permit the applicant who is next in the panel to seek consideration out of panel which stands exhausted.

8. Counsel further submits that Naveen Gupta empaneled applicant No. 1 was allotted LPG Distributorship somewhere in 2001 which was commissioned, but was finally cancelled as per report of the committee submitted to the apex court Ann.3 in 2007. As such, the panel stands exhausted and the petitioner, who is claiming himself at No. 2 in the panel, in no manner can claim distributorship of LPG merely on account of his empanelment.

9. I have heard counsel for parties and with their assistance perused the material on record.

10. Petitioner, who participated in the selection process initiated by the respondents for allotment of LPG Distributorship for Phulera, District Jaipur in pursuance of advertisement dt.31st August, 2000, was placed in the select panel at No. 2 and so far as empaneled applicant No. 1 is concerned, he after allotment of distributorship commissioned somewhere in 2001 and the committee which was constituted under the orders of Hon''ble Apex Court, examined the case of empaneled applicant Naveen Gupta and finally-observed that selection of the allottee i.e. Naveen Gupta by the Dealer Selection Board stands vitiated on account of arbitrarily high number of marks awarded to the allottee i.e. Naveen Gupta and inference can be drawn about allotment being made in favour of allottee was influenced by extraneous considerations and in terms of recommendations of the committee, his selection was finally cancelled in 2007.

11. As per guidelines laid down by the respondents, relevant Para 4.15 on which counsel for respondents has given much stress, is reproduced as under:

4.15 Validity of Merit Panel-(MOP's letter No. P.19011/10/82-IOC dated 7.11.1985)

The validity of panel ceases to exist once the concerned dealership/distributorship is commissioned. In other words, the panel should be valid only upto the point a dealership/distributorship has not been commissioned.

12. From guidelines, it clearly emerges that panel stands ceased after distributorship is commissioned and rightly so, when process stands finalized and distributorship/dealership being commissioned, panel cannot be further utilized for allotment.

13. But, if applicant Naveen Gupta who got himself empaneled because of certain extraneous considerations as observed by the Committee constituted under orders of Apex Court and on account of which LPG distributorship was cancelled by respondents, that certainly has denied fair consideration and petitioner who was otherwise entitled to be empaneled in process of selection at S. No. 1 but because of extraneous considerations of the Board, his position was relegated at S. No. 2 which has deprived him of his legitimate right and placement in the panel prepared by the Board. In the opinion of this Court, petitioner who in ordinary course was required to be placed at S. No. 1, certainly his right of fair consideration has been seriously jeopardised for LPG distributorship and he is

certainly entitled for consideration in terms of selection made by respondents and Clause 4.15 reference whereof has been made by respondents, in the facts of instant case will not deprive the incumbent of his right accrued, who is otherwise entitled for LPG distributorship in accordance with norms & standards laid down by the respondents.

14. Consequently, writ petition stands allowed. Respondents are directed to consider the petitioner for LPG Distributorship for location Phulera, District Jaipur in pursuance of his selection made by the respondents in terms of advertisement dt.31/8/2000. Necessary orders be passed within two months from today. No costs.