

(2021) 10 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 6101 Of 2018

Santosh Kumar Singh

APPELLANT

Vs

Bharat Petroleum Corporation Limited & Ors.

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Citation : (2021) 10 CAL CK 0008

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, Subhankar Das, Neil Basu, Surojit Nath Mitra, Rajarshi Dutta, Bimalendu Das, Shomrita Das

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner prays for a direction upon the respondents to rescind, cancel and/or withdraw the communication dated 30th May, 2017 issued by the Territory Manager (Retail), Durgapur, BPCL whereby the prayer of the private respondent for accepting his resignation has not been allowed.

The petitioner has made a further prayer to allow him to continue the retail dealership at Chinpai, Birbhum as sole proprietor upon acceptance of the resignation of the private respondent.

The brief facts of the case are as follows:

In response to an advertisement published by Bharat Petroleum Corporation Limited (BPCL for short) on 12th August, 2001 for appointment of Retail Outlet Dealer (Petrol Pump) (Company Owned) at Singur, Hooghly, reserved for Scheduled Tribe category, the private respondent applied and became successful. A Letter of Intent dated 5th December, 2001 was issued in his favour. Though Letter of Intent was issued, but BPCL did not take any step for setting up of the Retail Outlet Dealership.

A Scheme was framed by the Ministry of Petroleum and Natural Gas on 12th December, 2006 to hand over Company Owned and Company Operated (COCO) Retail Outlet Dealership to the pending Letter of Intent holders under Scheduled Tribe category. After three years of publication of the Scheme, BPCL offered the outlet in favour of the private respondent at Chinpai, Birbhum on 29th July, 2009.

A letter of appointment was issued in favour of the private respondent on 24th October, 2009 and an agreement was executed between the parties i.e, BPCL and the private respondent.

The private respondent claimed to have suffered severe financial losses in the business. The private respondent thereafter approached BPCL for inducing a financial partner for injecting finance to the business which was incurring huge financial loss. The proposal of the private respondent was not accepted by the Company. A writ petition was filed before this Court being WP 31253 (W) of 2014 and the same stood disposed of by an order dated 25th April, 2016 by directing the petitioner therein, that is the private respondent herein, to repay the outstanding dues within a specified time. BPCL was directed to consider the proposal of the private respondent for reconstitution of commissioned dealership/distributorship in accordance with law after giving an opportunity of hearing and to pass a reasoned order.

The outstanding dues were cleared and the prayer of the private respondent for reconstitution of the commissioned dealership stood allowed subject to payment of Rs. 5,00,000/- (Rupees Five Lac) only as reconstitution fee. A partnership deed between the petitioner and the private respondent was registered. The partnership of the petitioner and the private respondent started functioning from the month of November, 2016. On 18th March, 2017 the private respondent submitted his resignation to BPCL, which the Company refused to accept. From the date of submission of resignation, the private respondent remained aloof from the business and the petitioner alone is running the business as sole proprietor.

The petitioner is aggrieved by the act of the Company in not accepting the resignation of the private respondent. According to the petitioner, he invested huge sum of money in the business and if the business is terminated at this stage then the petitioner will suffer enormous financial loss. The petitioner relies upon the policy of the Company dated 4th July, 2018 which permits resignation of partners.

It has been submitted that according to Clause G(3) relating to Reconstitution of Commissioned Dealership as mentioned in the policy guidelines which came into effect from 4th July, 2018, the sole proprietor/ all partner(s) can resign from the dealership after three years of holding dealership and transfer his/ her/their shareholding in favour of family member(s)/existing partner(s)/outside partner(s).

According to the petitioner, as the policy guideline of the Company permits

resignation of a partner after three years of holding dealership, accordingly, the Company ought to accept the resignation tendered by the private respondent and permit the petitioner to continue the business as sole proprietor.

The learned advocate representing the Company relies upon the advertisement published by the Company in the year 2001 for appointment of Retail Outlet Dealer. It has been highlighted that the vacancy in question is reserved for a Scheduled Tribe candidate. The original applicant that is the private respondent herein being a Scheduled Tribe candidate was granted the dealership. Because of financial crisis he inducted the petitioner as a financing partner. The maximum share in the partnership firm that is 75% was held by the Scheduled Tribe candidate and the balance 25% was held by the petitioner, a general category candidate. As the vacancy in question is reserved for Scheduled Tribe candidate, accordingly the prayer of the petitioner for running the business as sole proprietor cannot be accepted.

It has been submitted that in the unlikely event of the partnership firm being reconstituted, the same may be permitted only if a Scheduled Tribe candidate holds the maximum share in the business.

It is the further submission of the Company that the revised policy guidelines of the Company which came into effect from 4th July, 2018 has to be read as a whole. Clause 12 of the said guidelines relating to Reconstitution of Commissioned Dealership mentions the general condition for induction of outside category partner in Scheduled Caste/Scheduled Tribe dealership. It mentions that shareholding of persons belonging to the category reserved for SC/ST should be at least 75% of the total shares.

It has been submitted that the petitioner and the private respondent has filed an affidavit before the Company declaring that under the partnership agreement the dealer will not make any change in the constitution of the firm without prior written approval of the Corporation. The Deed of Partnership of the firm dated 17th September, 2016 between the petitioner and the private respondent clearly lays down in paragraph 24 that, if any of the partners intend to retire from the partnership, then prior permission of the Corporation has to be taken. No change in the constitution of the partnership deed will be made without prior approval of the Corporation. Prayer of the private respondent for acceptance of his resignation has rightly been turned down by the Company.

The respondents rely upon the judgment of the Hon'ble Supreme Court in the matter of *Michigan Rubber (India) Ltd. -vs- State of Karnataka & Ors.*; (2012) 8 SCC 216 paragraph 35 wherein the Court held that the Courts cannot interfere with the terms of the tender prescribed by the Government. The Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere.

The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties and have perused the documents relied upon by them.

The advertisement which was published in the year 2001 was restricted to Scheduled Tribe candidates. The private respondent, being a Scheduled Tribe candidate, applied in response to the said advertisement. He was successful and a Letter of Intent was issued in his favour in December, 2001. The Company in terms of the guidelines framed by the Ministry of Petroleum and Natural Gas offered temporary COCO Retail Outlet Dealership to pending Letter of Intent holders according to priority. Pending allottees, LOI holders of Corpus Fund Scheme (SC/ST category) of dealership were taken into consideration.

The initial Letter of Intent which was issued to the private respondent for the proposed Retail Outlet at Singur was withdrawn on 25th September, 2009 and a fresh letter of appointment was issued in favour of the private respondent on 24th October, 2009 in respect of the Retail Outlet Dealership at Chinpai in the district of Birbhum opposite to the Bakreswar Power Plant of NH 60 under the Scheduled Tribe category.

The private respondent was facing financial crunch in running his business. Accordingly, he applied before the Company for inducting a financial partner which was initially not accepted, but subsequently in terms of the order passed by the Court the prayer for inducting financial partner was accepted by the Company. A partnership deed was executed between the partners i.e, the petitioner and the private respondent. Paragraphs 24 and 25 of the deed of partnership specifically mentions that no change in the constitution of the partnership deed will be made without prior approval of the Company and if any of the partners intend to retire from the partnership firm, prior permission of the Company has to be obtained.

The private respondent accordingly sought permission from the Company for retiring from the partnership business. The private respondent submitted his resignation in March, 2017 and thereafter he remained disassociated from the business. Surprisingly, the private respondent has not approached the Court praying for acceptance of his letter of resignation. It is the petitioner who holds only 25% share in the partnership business, has approached this Court with a prayer for accepting the resignation of the private respondent and to permit him to continue the business as sole proprietor.

The prayer for resignation stood disallowed only on the ground that the vacancy in question was reserved for a Scheduled Tribe candidate. As the Scheduled Tribe candidate, that is, the private respondent herein was the original allottee he cannot be allowed to resign from the business and the petitioner herein being a general category candidate cannot be permitted to run the business in the absence of a Scheduled Tribe partner.

Admittedly, the vacancy in question was reserved for Scheduled Tribe candidate. Allowing the petitioner to run the same as sole proprietor will amount to

changing the classification of the vacancy. Reserved vacancy cannot be de-reserved in such a manner. A formal order of de-reservation has to be made prior to de-reserving a reserved category vacancy. The petitioner at the very first instance was ineligible to run the business, independently, being a general category candidate. Had it not been for the private respondent, the petitioner would not have got the chance to start the business, far less continue with the same.

It is settled law that things which cannot be done directly cannot be done indirectly. Permitting a general category candidate to run a vacancy reserved for Scheduled Tribe will amount to doing an act which was not initially permissible.

Submission of the petitioner that as the Company permitted reconstitution of dealership by inducting the petitioner as 25% shareholder of the business, the nature of vacancy changes to a general category vacancy, is not accepted by the Court. As the vacancy was reserved for a Scheduled Tribe candidate the Company consistently insisted that the maximum share of the business remains with the Scheduled Tribe candidate. The petitioner merely happens to be the minor shareholder with 25% share in the business. It may be, that the petitioner invested huge sum of money in running the business, but the same does not change the status of the vacancy in any manner. The vacancy remains earmarked for Scheduled Tribe candidate.

The policy guideline of the Company which came into effect on 14th July, 2018 has to be read as a whole. Only a single provision relating to resignation of partner from the dealership cannot be read in isolation of other clauses which are equally relevant for the purpose of giving an effective meaning to the guidelines. The guidelines permit resignation of partners in favour of existing partners. But the same has to be read in conspectus of a vacancy reserved for Scheduled Tribe candidate. The clauses of the policy guidelines relating to reconstitution of commissioned dealership has to be read in conjunction with each other. A holistic reading of the various clauses of the policy guidelines makes it abundantly clear that in case of reserved vacancies the maximum share in the business has to be held by the reserved category candidate and not by the general category candidate.

Accordingly, the decision of the Company in refusing to accept the prayer of resignation of the private respondent and consequently not permitting the petitioner to run the business as sole proprietor does not call for any interference.

The petitioner has neither challenged nor is aggrieved by any of the clauses mentioned in the policy guidelines and accordingly no comment is being made in respect of the decision relied upon by the Company in support of the policy.

The writ petition fails and is hereby dismissed.

WPA 6101 of 2018 is dismissed.

Urgent certified photo copy of this judgment, if applied for, be supplied to the

parties expeditiously on compliance of usual legal formalities.