
(2016) 07 SHI CK 0124
In the High Court Of Himachal Pradesh
Case No : CWP No. 7084 of 2010

Shri Rajnish Sonkhla

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 HimLR 1978

Hon'ble Judges : Mr. Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. Ramakant Sharma, Senior Advocate with Ms. Soma Thakur, Advocate, for the Petitioner; Mr. K.D. Sood, Senior Advocate with Mr. Sanjeev Sood, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J. - Aggrieved by the cancellation of Letter of Intent (for short "LOI") for proposed retail outlet of Indian Oil Corporation at Ajhouli More, District Una, H.P., the petitioner has filed this petition, claiming therein the following reliefs:-

"(i) That the order/communication dated 26th July, 2010 (annexure P-4) passed by the respondent may be quashed and set aside.

(ii) The records of the case be summoned.

(iii) The respondent-Corporation be directed to award the retail outlet dealership at location Ajhouli More, District Una, H.P. under the category of Scheduled Caste, Marketing Plan:

SRMP 2003-05 to the petitioner in pursuance to the Letter of Intent dated 20th February, 2008 (annexure P-2).

(iv) That the damages be awarded in favour of the petitioner and against the respondent."

The facts in brief may be noticed.

2. On 28.1.2005, respondent issued an advertisement for allotment of its retail outlet dealership at location Ajhouli More, District Una and the same was reserved for the Scheduled Caste category. As the petitioner fulfilled all the conditions of eligibility criteria, he accordingly applied and was interviewed by the respondent on 15.12.2006, wherein he secured the highest position.

However, in the year 2007 one Sh. Suresh Chander questioned the selection of the petitioner by filing a complaint with the respondent.

The respondent by their letters dated 5.3.2007, 25.4.2008 and 26.10.2006 (Annexures P-6 to P-8) informed the complainant that the selection of the petitioner had been made in a fair and transparent manner strictly in accordance with the guidelines and prescribed norms. During the integrum, even Letter of Intent was issued in favour of the petitioner vide letter dated 20.2.2008.

However, the respondent vide letter dated 26.7.2010 (annexure P-4) abruptly cancelled the aforesaid LOI, constraining the petitioner to file the instant petition for the reliefs as already set out herein above, on various grounds taken in the memo of writ petition.

3. The respondent contested the petition by filing reply, wherein the factual matrix has not been denied. But it has been averred that though the petitioner was empanelled as No. 1 candidate in the interviews held on 15.12.2006, pursuant to which Letter of Intent dated 20.2.2008 had also been issued in his favour, but thereafter it transpired that there was a mail dated 25.11.2005 from the Head Office, wherein it was mentioned that the advertisement of the location under "Corpus Fund Scheme", where interviews were yet to be conducted should be cancelled. It was further averred that as per the policy of the respondent, interviews of any location rooted under Corpus Fund were to be conducted only after procurement of land had been made for setting up of the retail outlet. Whereas in the location in question, which was advertised under the Corpus Fund Scheme category, land had not been procured till the time of interview and therefore, it was decided to cancel the Letter of Intent, so issued in favour of the petitioner. It was further claimed that the Letter of Intent merely expressed an intention to enter into a contract with the petitioner, but the same did not in any manner create a binding legal relationship between the petitioner and the respondent at this stage and therefore, the respondent was fully justified in cancelling the Letter of Intent. I have heard learned counsel for the parties and have also gone through the records of the case.

4. It is evident from the letters Annexures P-6 to P-8 (supra) that till as long as 26.10.2009, the respondent itself had been supporting and justifying the selection of the petitioner. It is only on 26.7.2010 that abruptly the LOI in favour of the petitioner was cancelled, that too, without any apparent reason as would be evident from the contents of letter, relevant extract whereof reads thus:-

"Please refer to the Letter of Intent issued in your favour vide out letter No. SML/LOI/Ajouli More dated 20.02.2008 for proposed Retail Outlet Dealership at location Ajhouli More, Distt. Una (HP).

The matter was perused and found that the selection was not in line with the laid down selection guidelines. Accordingly we are hereby cancelling the subject Letter of Intent.

The above is being issued without any prejudice and is in the interest of the Corporation."

5. Though, learned counsel for the respondent would try to justify and offer explanation for passing of the order. But, then there can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that an Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision of the Hon''ble Supreme Court titled *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi* (1978) 1 SCC 405, of which the following paragraph deserves extraction:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (1952) 1 SCR 135: Public orders publicly made, in exercise of statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.

Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

6. In addition to the aforesaid, it is not even in dispute that the advertisement in question was issued on 28.1.2005 i.e. earlier to the mail dated 25.11.2005 and it is settled law that all administrative orders ordinarily are to be considered prospective in nature and when a policy decision is required to be given retrospective operation, it must be stated so expressly or by necessary implication. Reference in this regard can conveniently be made to the decision of Hon''ble Supreme Court in *Kusumam Hotels Private Limited v. Kerala State Electricity Board and others*, (2008) 13 SCC 213, wherein it was held that the

statute or a direction issued there under is presumed to be prospective only unless retrospectivity is indicated expressly or by necessary implication.

Relevant observation reads thus:-

"36. The law which emerges from the above discussion is that the doctrine of promissory estoppel would not be applicable as no foundational fact therefor has been laid down in a case of this nature. The State, however, would be entitled to alter, amend or rescind its policy decision. Such a policy decision, if taken in public interest, should be given effect to. In certain situations, it may have an impact from a retrospective effect but the same by itself would not be sufficient to be struck down on the ground of unreasonableness if the source of power is referable to a statute or statutory provisions. In our constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication. It is a principle of the rule of law. A presumption can be raised that a statute or statutory rule has prospective operation only."

7. That apart, a valuable right in favour of the petitioner was already accrued when not only his case was considered as per the terms and conditions as prevailing on the date of the advertisement, but thereafter even LOI has also been issued in his favour, that too as far back as on 20.2.2008 and therefore, the benefit accrued in favour of the petitioner cannot be unilaterally withdrawn by the respondent, that too, only on the ground of change of criteria, which otherwise is not applicable to the instant case. The respondent is in fact estopped from questioning, much less cancelling the LOI already issued in favour of the petitioner.

8. Now advertent to the contents of letter dated 24.11.2005 received through mail dated 25.11.2005, it would be noticed that in terms of Annexure-II dealing with resitment of dealerships/ distributorships, clause 3 thereof reads thus:-

"3. In fresh cases, with effect from 27.10.2005, OMCs should acquire land before advertising for the selection of dealers eligible under the Corpus Fund Scheme. In such cases, a change of location at LOI stage shall not be permitted."

9. Evidently, the instant case could not have otherwise been considered as a fresh case as admittedly the advertisement already stood issued and published much earlier to this on 28.1.2005. In such circumstances, therefore, even if at all the terms and conditions of the letter dated 24.11.2005 have any application, the same would only be applicable prospectively w.e.f. 27.10.2005.

10. In view of the aforesaid discussion and for all the reasons stated herein above, I find merit in this petition and consequently the same is allowed and accordingly the order/communication dated 26.7.2010, whereby the Letter of Intent issued in favour of the petitioner was ordered to be cancelled, is quashed and set aside and the respondent Corporation is directed to award the retail outlet dealership in question to the petitioner.

The petition stands disposed of, so also the pending application(s), if any.