
(2010) 11 AHC CK 0279

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12456 of 2007

Sushma Pathak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2011) 1 ADJ 416

Hon'ble Judges : Sunil Ambwani, J;Pankaj Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri V.B. Upadhyaya, learned senior counsel assisted by Sri Ashok Tripathi for the Petitioner. Sri Prakash Padia, appears for Respondent Nos. 2 and 3 - Bharat Petroleum Corporation Ltd.

2. The Petitioner is aggrieved by the letter of Territory Manager (Retail), Meerut of Bharat Petroleum Corporation Ltd (hereinafter called as the BPCL) dated 5.9.2006 withdrawing the Letter of Intent (LOI) dated 10.2.2001 for the proposed MS/HSD Retail Outlet Dealership at Kaushambi, District Ghaziabad.

3. Brief facts giving rise to the writ petition are that the Petitioner applied in pursuance to the advertisement issued in the year 2001 published in daily newspapers, for proposal to appoint retail outlet dealer for kerosene-L.D.O. at locations given in the advertisement in the State of U.P. Item No. 4 in the advertisement, was in respect of retail out dealership at Kaushambi in District Ghaziabad, in open general category, for which last date for receipt of application was 10.10.2000. In respect of details of the land and the location, the advertisement provided as follows:

Applicable for Retail Outlet Dealerships only (Not Applicable for locations reserved for SC/ST Categories): The applicant should furnish, alongwith the application, details of land which he/she may make available for the dealership, considering the location of the land from the point of view of commercial angle.

Applicants willing to transfer the land on ownership/long lease to the oil company at the rates acceptable to the oil company would be given preference. If an applicant, after selection, is unable to provide the land indicated by him/her earlier, within a period of 2 months, the allotment of the dealership made to him/her would be cancelled.

4. In Para 12 of the advertisement, applicable for locations reserved for SC/ ST categories, the oil company made a provision for the following facilities as per prevalent policies for retail outlet dealership, and which provided for (a) land and its development (b) Sales room (c) Drive way (d) Compound wall, etc.

5. The Petitioner was selected and was issued a letter of intent dated 10.2.2001. Para 10 of the letter of intent provided that the letter is merely a letter of intent, and is not to be construed as a "firm offer" of dealership. The dealership will be on Petitioner's complying with the terms and conditions spelt out in the letter of intent, and confirmed/formalized by an appointment letter, followed by signing of dealership agreement by both the parties.

6. The Petitioner could not arrange for the land. It is alleged in the writ petition that the land was either not available or could not be provided by the Ghaziabad Development Authority (hereinafter called as the "GDA") to the Petitioner. The Petitioner also made a request to the Respondent - BPCL for approaching the GDA for land on the proposed site. The BPCL by its letter dated 17.3.2001, requested the Vice Chairman of the GDA, to provide for a suitable land for establishment of retail outlet. In response to the said request, the GDA vide letter dated 13.8.2001 informed the BPCL, that it has no land at Kaushambi for retail outlet. The matter thereafter remained pending for several years, in which the Petitioner repeatedly requested the BPCL to provide suitable land for establishment of retail outlet.

7. During the pendency of the correspondences, to provide land for establishing retail outlet, the Ministry of Petroleum & Natural Gas, Government of India reviewed the marketing guidelines vide its letter dated 17.11.2005, in order to make more objective and transparent on various aspects of marketing of petroleum products. The guidelines provided for (i) Reconstitution/resitement/revival of dealerships/ distributorships; (ii) Allotment of retail outlets to landowners on the basis of direct offers of land.

8. The policy of resitement of dealerships/distributorships, was divided into two stages viz., LOI stage, and the stage where dealership had commenced. The resitement at LOI stage was provided as follows:

Resitement of dealerships/distributorships

I. Resitement at LOI stage

1. No resitement shall be allowed at Letter of Intent (LOI) stage, as it defies logic and reflects poorly on the marketing plan of OM Cs. Even justifications like road widening, etc., may not be valid as the OM Cs are expected to know in advance

such possibilities. The plea of certain old marketing plan location losing its viability, necessitating resitment at LOI stage, may also not be tenable because, in such cases, the OM Cs can always re-asses the viability of locations before initiating the selection process.

2. However, in respect of old cases of LOI holders, eligible for benefits under corpus fund scheme, change of location may be considered by OM Cs in the same class of market and preferably within same district, depending on merit of the case, when efforts of the OMC concerned for acquisition of land in the advertisement locations have failed.

3. In fresh cases, with effect from 27.10.2005, OM Cs 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. A separate procedure was provided in Annexure-IV to the review of marketing guidelines dated 17.11.2005, regarding procedure to deal with direct offers of land received by the OM Cs from land owners for setting up of retail outlets. The said policy is quoted as under:

Procedure to deal with direct offers of land received by the OM Cs from land owners for setting up of retail outlets.

Existing guidelines of OM Cs have a provision for award of retail outlet dealerships to land owners, based on offers of land received from the latter. The following procedure which the Government had advised (vide Ministry of Petroleum & Natural Gas letter No. P-19011/1/2004-IOC dated 22.2.2005) the OM Cs to follow in such cases, is reiterated:

The OM Cs should, after receipt of direct offers of land, assess the viability of the location and if the same is found viable, OM Cs must release an advertisement in 2 leading newspaper, which are in circulation in the area, stating the fact that they have received offer (s) of land for dealerships etc., and are inviting similar offers from others. Further, these advertisements must indicate that final selection of the dealer will be on the basis of evaluation of the lands offered and evaluation of the candidates in respect of other parameters as provided for in the guidelines.

10. The Petitioner approached the Central Government for consideration of her case under the revised guidelines. The Under Secretary to the Government of India, Ministry of Petroleum & Natural Gas, sent a letter dated 16.1.2006 to the Director (Marketing) BPCL Mumbai with a copy to the Petitioner requesting to take final decision on the subject viz., retail outlet dealership at Kaushambi, District Ghaziabad(U.P.), under open category, marketing plan 1993\\96, as per policy framed by the BPCL and convey it to the LOI holder by way of a speaking order.

11. In the meantime, the BPCL had sent a notice dated 29.8.2005, seeking explanation from the Petitioner as to why the LOI may not be withdrawn for

failure on her part to provide suitable land for setting up of the retail outlet in the advertised location i.e. Kaushambi, District Ghaziabad. The Petitioner submitted her reply on 28.9.2005, alleging that the land was to be provided by the BPCL, and that since the BPCL has failed to provide the land, the fault clearly lie with the BPCL, for which LOI could not be withdrawn. By the said explanation, the Petitioner stated that she had purchased a land at Hapur-Bulandshahar highway, and she may be permitted to establish the retail outlet at the new place. The Territory Manager (Retail), BPCL, Meerut in response to the Petitioner's explanation dated 28.9.2005, informed her vide letters dated 25.11.2005 and 21.6.2006, that it was not possible to consider the change in location from "Kasushambit" to the site offered by the Petitioner i.e. on Hapur - Bulandshahar Road. The Petitioner was directed to arrange for a suitable land at Kaushambi. When the Petitioner could not arrange the land at Kaushambi, the Territory Manager (Retail), BPCL, Meerut, vide letter 5.9.2006 cancelled the LOI, giving rise to the writ petition, stating as follows:

You are aware that it is your responsibility to provide land for installation of the retail outlet and you had also procured land at Hapur - Bulandshahar road but same was not acceptable to the company since it was beyond the advertised location. The company in order to help you out was also trying to locate a site for you and was taking necessary steps with Ghaziabad Development Authority. But this fact will not absolve you of your responsibility to arrange land yourself for installation of the retail outlet. You had been requested by the company time and again for arranging the land for the retail outlet but you failed to do so.

Since you have failed to provide land for Retail outlet in the trading area and the explanation given by you is not acceptable, therefore, the company has no option but to withdraw the LOI awarded to you.

The LOI therefore granted to you on 10.2.2001 stands withdrawn with immediate effect.

12. Learned Counsel for the Petitioner submits that under the advertisement and policy guidelines, it was not mandatory for the Petitioner to provide land for retail outlet. He submits that the company could not compel the Petitioner something which was impossible. The land was not available in Kaushambi. The Company tried to help the Petitioner but that the GDA did not provide land at Kaushambi. The impugned order has been passed in violation of the principles of natural justice. The BPCL has also not considered the resitement in accordance of the review of the marketing guidelines dated 17.11.2005. He would submit that the review of the marketing guidelines made on 17.11.2005, became operative and were applicable to the cases of resitement at LOI stage in respect of old cases The Petitioner's case was not considered on merits.

13. Sri Prakash Padia, counsel for the Respondents submits that the provision of land, for retail outlet was one of the conditions for allotment of retail outlet dealership The advertisement and policy guidelines have clearly mentioned that

the land would be provided by the applicant. Where the applicant already possessed the land, and was ready to offer the land acceptable to the company, preference will be given to such applicant. In the present case, he submitted that, the Petitioner has promised to offer land, and was thus given preference. He relies upon para 4.13 procedure for selection of dealers/distributors dated 9.10.2000, which has to read with advertisement for the purpose of selection of the applicant, and for issuing LOI.

14. Sri Prakash Padia submitted that the Petitioner had fully understood the policy. When she could not arrange the land, she took up a wrong stand that the land for setting up of retail outlet was to be provided by the BPCL. The category mentioned in the advertisement dated 22.8.2000 (Annexure-SCA-I to the supplementary counter affidavit), in which the lands offered by the company to the persons for retail outlet dealership is a special category. The Petitioner applied for retail outlet in open general category for a site in Kaushambi. She could not make the land available for several years. Thereafter she approached for resitement at a place, which falls outside of the site, offered in the advertisement. The Company had no option but to cancel the LOI. He would submit that the LOI is not a concluded contract. It is only an invitation of offer, which could be converted into a contract, only if the terms and conditions spelt out on the advertisement and the guidelines were complied with by the applicant.

15. We have considered the respectful submissions, and do not find any merit in the argument of the Petitioner that the land in the present case was to be provided by the company. The advertisement and policy guidelines clearly provided, without any ambiguity, or doubt, that for open general category, the land was to be made available for the retail outlet dealership, by the applicant. The BPCL was required to consider the location of the land from the point of view of commercial angle, at the rates acceptable to the oil company, and if an applicant, after selection, was unable to provide the land indicated by him/her earlier, within a period of 2 months, the allotment of dealership could be cancelled.

16. In the present case, the Petitioner was selected on the ground that she was ready to provide land, and after getting the LOI. When she could not fulfil her assurance, she made an attempt to shift the burden of providing land on the company. The review of marketing guidelines dated 17.11.2005 provided for resitement of the LOI holders, eligible for the benefits under corpus fund scheme. The change of location in the same class of market and preferably within same district was dependent upon the merit of the case, when efforts for acquisition of land in the advertised locations had failed

17. In the present case even if for argument's sake the review of marketing guidelines dated 17.11.2005 are held to be applicable to the LOI dated 10.2.2001, the decision to relocate the site was to be taken at the discretion of the Oil Company (BPCL). It was open to the BPCL, to consider each case on the basis of review of marketing guidelines, provided the resitement was considered

in the same class of market and preferably within same district. The Petitioner insisted for providing the land by the company and did not entirely rely upon the review of marketing guidelines for resitement. The arrangement of the land made by her was beyond the advertised location, and was not found appropriate for resitement by the BPCL. In case of resitement at a non-advertised site, the Company was required to make fresh offer to general public. In such a case, all those persons, who could not apply for the revised location, will get a right to apply. The Company, therefore, did not have discretion to relocate the site, which was not advertised. In the present case Hapur-Bulandshahar road was not advertised. It was thus not open for the company to accept the offer of the Petitioner for relocating the site at Hapur-Bulandshahar road.

18. In the present case, the principle of natural justice were fully served as the parties were in correspondence and the Petitioner was given notice on 29.8.2005 to explain as to why LOI may not be withdrawn. The Petitioner's reply was taken into consideration before cancellation of LOI.

19. We therefore do not find any error or arbitrariness in the discretion exercised by the BPCL in refusing to relocate the place at the place, which was not advertised, and to withdraw the LOI.

20. In the end, Sri V.B. Upadhyaya, counsel for the Petitioner requested to permit the Petitioner to relocate the site at Hapur-Bulandshahar road SH-18 on the basis of fresh advertisement issued by BPCL dated 15.10.2010 at item No. 694. The advertisement dated 15.10.2010 shows that the applications have been invited from all eligible persons. If any such direction is issued to allow the Petitioner to set up retail outlet dealership at Hapur - Bulandshar Road SH-18 under open general category, the rights of other eligible persons will be affected. The Petitioner's request for relocation of the site at Hapur-Bulandshahar Road SH-18 under fresh advertisement is therefore rejected. It is always open to the Petitioner to apply for fresh consideration, if she fulfils all the conditions in accordance with fresh advertisement, and the guidelines under which the selection may be made.

The writ petition is dismissed.