

(2022) 07 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No.1148 Of 2022

Suvarna Shrikrishna Deore

APPELLANT

Vs

Bharat Petroleum Corporation Ltd And Others

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 15(3)
Specific Relief Act, 1963 — Section 41(h)

Citation : (2022) 07 BOM CK 0011

Hon'ble Judges : Dipankar Datta, CJ; Ravindra V. Ghuge, J

Bench : Division Bench

Advocate : Shailesh P. Brahme, A.P. Bhandari

Judgement

Dipankar Datta, CJ

1. Bharat Petroleum Corporation Ltd. (hereafter "BPCL" for short), by issuing an advertisement dated 25-11-2018, had invited applications from eligible candidates interested to obtain allotment of dealership for retail outlets (petrol pumps) at several locations across Maharashtra. One of such locations was indicated in the advertisement as follows:

Territory	District	Location	Description	Type of Mode of selection	Category	RO Name
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Manmad	Jalgaon	On SH4 from Amalner to Chopda	RHS Regular Draw of Lots	SC		
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2. The petitioner belongs to a Scheduled Caste community (SC). She also has visual impairment to the extent of 40 % and has been certified by the

Government of Maharashtra as a physically handicapped candidate (PH). Aspiring for the dealership in question, the petitioner had offered her candidature by applying in the prescribed format on 21-12-2018. In course of draw of lots, which was the mode of selection, the petitioner had to compete with 5 (five) others. Fortune smiled on the petitioner. At the draw of lots, she was successful. Vide e-mail dated 27-11-2019, the petitioner was informed of her selection for the subject dealership. Having been called upon, the petitioner on 07-11-2019 deposited a sum of Rs.30,000/- pursuant whereunto spot inspection of the site offered by her was conducted. Thereafter, her status was shown on the official website of BPCL as "selected". The Territory Manager (Retail), Manmad of BPCL by his communication dated 07-11-2019 requested the Caste Verification Scrutiny Committee, Pachora to verify the caste certificate of the petitioner to facilitate submission by her of the certificate of validity. The petitioner was issued a certificate of validity of caste dated 10-12-2019 by the Caste Certificate Scrutiny Committee, Jalgaon which she submitted immediately thereafter. This was allegedly followed by several oral representations by the petitioner to BPCL for allotment of the retail outlet dealership by issuing Letter of Intent (LoI) in view of her selection. However, since such oral representations did not yield any result, the petitioner through her advocate sent a legal notice dated 07-12-2021, calling upon the Territory Manager (Retail) BPCL, Manmad to proceed for allotment of the retail outlet in her favour. The legal notice too did not evoke any response, prompting the petitioner to invoke the writ jurisdiction of this Court on 17-01-2022 seeking inter alia the following relief:

"(C) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to issue the retail outlet dealership at SH4 from Amalner to Chopda RSH within 5KMS of Amalner, in pursuance to advertisement dated 25.11.2018 within stipulated period.

In the alternative

(D) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to issue the retail outlet dealership at any suitable place in the Jalgaon district within stipulated period.

(E) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to compensate the loss caused to the petitioner for not allotting the retail outlet dealership at SH4 from Amalner to Chopda RSH within 5KMS of Amalner, in reasonable period by directing the respondents to paying an amount of Rs.10,00,000/- towards compensation. "

3. An affidavit-in-reply of the respondents 1 and 2 [BPCL through Territory Manager (Retail), Manmad and the Area Manager, BPCL, Jalgaon Division, Jalgaon], is on record. The facts pleaded in the writ petition about the petitioner's selection are not disputed. However, paragraphs 5, 6 and 7 of the said affidavit are relevant and hence quoted hereunder:

"05. I say that, as per procedure mentioned above, answering respondent has

advertised location 'On SH4 from Amalner to Chopda RHS within 5Km from Amalner'. Subsequently, as per procedure, Scrutiny of documents was carried out by Land Evaluation Committee on 26.11.2019.

During Land evaluation by the land evaluation committee it was noticed that the State Highway number mentioned in advertisement is SH4 instead of SH14. LEC report (Annexure-W1) is enclosed as Annexure – 2.

It is submitted that there exist no SH-4 on the advertised sketch 'Amalner to Chopda RSH within 5 KMS of Amalner'. SH-4 passes through 3 districts i.e. Nandurbar – Dhule – Jalgaon (Taloda – Prakasha – Shahada – Kukawel – Vadali – Shirpur – Hatede – Chopda – Raver – Burhanpur) while the advertised sketch Amalner to Chopda RSH within 5 KMS of Amalner falls on SH-14.

6. I say that, in view of said discrepancy, selection process of the subject location was kept on hold. Due to technical/typographical error in the advertisement the answering respondents have taken the decision of dropping the subject location.

7. I say that the answering respondent is a Government of India Company; the selection process is required to be carried out in a transparent manner. Once it is discovered that there is technical/typographical error in the Advertisement, it was not possible for answering respondent to continue with the selection process.

Furthermore, the general conditions pertaining to that Advertisement at page no. 32 of the Brochure reads that the company reserves the right to cancel/withdraw/ amend the advertisement or extend the due date at its sole discretion without assigning any reason."

(bold in original)

4. It is on the basis of the aforesaid pleaded cases of the petitioner and the respondents that they have proceeded for trial and we are tasked to decide whether the petitioner is entitled to relief, as claimed.

5. Mr. Brahme, learned advocate appearing for the petitioner, contended that the respondents have acted arbitrarily. According to him, merely because the number of the State Highway has been erroneously indicated in the advertisement dated 25-11-2018 cannot form a valid reason for not giving effect to the selection of the petitioner. This, he contended, is because of the specific requirement of BPCL, as indicated in the advertised location, that the site for the retail outlet must be within 5 Kms of Amalner between Amalner and Chopda RHS. Since Amalner to Chopda RHS has been specifically referred to in the advertisement, the mere fact that SH14 ought to have been indicated in the advertisement and not SH4 would not make a difference, particularly when candidates have been made aware of the exact location of the site, i.e., within 5 Kms of Amalner towards Chopda RHS.

6. Mr. Brahme brought to our notice a decision of a co-ordinate Bench of this Court dated 13-02-2019 in Writ Petition No. 7727 of 2018 (Manisha Atul Borse

Vs. Hindustan Petroleum Corporation Ltd. and another). He pointed out that there too, the location had not been disclosed precisely, yet, the co-ordinate Bench proceeded to grant relief considering the fact that the location was properly identifiable and that no discrepancy existed with regard to the identification of the location.

7. While urging us to overlook the claim of the respondents that they have a right to cancel the process at any time and that the respondents have taken a decision to drop the subject location from the process of allotment of dealership, Mr. Brahme prayed for relief as claimed in the writ petition.

8. Per contra, Mr. Bhandari, learned advocate appearing for the respondents, placed reliance on the averments made in the affidavit-in-reply and contended that the petitioner has no indefeasible right to seek allotment of the subject dealership in view of the error in the advertisement. He further contended that because of such error, there could have been other interested applicants who might have been misled leading to non-submission of any application by them. Referring to the fact that BPCL is a Government company, he also contended that it is required to carry out the process of selection in a fair and transparent manner and once it has been discovered that the advertisement qua the subject dealership contained an error in description of the location, the respondents took a well-considered and prudent decision not to take the selection process to its logical conclusion but to abort it midway.

9. Mr. Bhandari invited our attention to the particular clause in the brochure for selection of dealers for regular retail outlets dated 24-11-2018 to contend that BPCL reserves the right to cancel, withdraw or amend the advertisement at its sole discretion without assigning any reason. This aspect of the matter was considered by a learned Judge of the Kerala High Court in the decision reported in 2021 SCC OnLine Ker 1875 (Haroon A.K. Vs. Indian Oil Corporation Ltd., represented by its Managing Director and Another) on which reliance was placed. It has been held there that as long as final allotment of dealership is not made by the company, the petitioners do not have any vested right to start the retail outlets.

10. Reliance was further placed by Mr. Bhandari on the decision of a co-ordinate Bench of this Court dated 08-06-2021 in Writ Petition (Stamp) No. 9434 of 2021 (Mrs. Aruna Ambadas Awatade Vs Union of India) where, upon consideration of the rival claims, the Court declined to interfere and relegated the petitioner to agitate her grievance before an appropriate forum to seek remedies against the respondents.

11. Mr. Bhandari also invited our attention to a co-ordinate Bench decision of this Court [to which one of us (Ravindra V. Ghuge, J.) was a member] dated 23-11-2021 in Writ Petition No. 6254 of 2020 (Laxman S/o. Gorakh Waghmare Vs. The Union of India and others) to persuade us not to interfere.

12. Responding to our query as to how many applications on an average BPCL

receives in respect of its advertised locations, Mr. Bhandari put the figure, on a conservative estimate, at 40 (forty). Considering the fact that the subject dealership at the advertised location, i.e., between Amalner and Chopda RHS, is reserved for a member of the SC community who is also a PH candidate, we had put a query to Mr. Bhandari as regards the number of applications usually received by BPCL in respect of correctly advertised locations, which are reserved for candidates belonging to both such categories (SC and PH). To answer this query, Mr. Bhandari sought for a short adjournment to return with proper instructions.

13. The aforesaid contentions of the parties were raised before us yesterday, whereupon the deliberations as indicated in the preceding paragraph followed.

14. Today, Mr. Bhandari has placed before us a document generated from the office of Mr. Abhijeet Chavan, whose e-mail id is abhijeetchavan@bharatpetroleum.in. The document is taken on record and marked 'X' for identification. Information that has been made available reads as under:

State Name

Territory

District Name

Name Of Location

Category

Type of Site

Applied Count

MAHARASHTRA

Nagpur

NAGP6UR

Village Lava on Khadgaon Rd. from Vasant vihar colony to Khadgaon on either side.

SC PH

CFS

8

MAHARASHTRA

Ahmednagar

JALNA

Vil. Raja Takli, Tal Ghansawangi, Dist. Jalna, Other than NH and SH.

SC PH

CFS

3

MAHARASHTRA

Nagpur

AMRAVATI

Chikhaldara

SC PH

CFS

5

MAHARASHTRA

Goa

KOLHAPUR

Ambewadi to Tiları Nagar on Karve to Tilarınagar Highway in Chandgad taluka Kolhapur

SC PH

CFS

2

MAHARASHTRA

Pune

PUNE

FROM BHOSE VILLAGE TO CHOUPHULA VILLAGE ON RHS FROM BHOSE, ON TALEGAON SHIKRAPUR ROAD

SC PH

CFS

6

MAHARASHTRA

Solapur

PARBHANI

AT VILLAGE CHIKHALTHANA (BK) ON DEOGAON PHATA-SELU ROAD TALUKA
SELU DIST PARBHANI

SC PH

CFS

9

EITHER SIDE

MAHARASHTRA

Thane

NASHIK

Sinnar to Baragaon Pimpri within 5 km from Baragaon Pimpri Tal - Sinnar

SC PH

CFS

4

MAHARASHTRA

Ahmednagar

AHMEDNAG AR

Karandi on Parner-Kanhoor road

SC PH

CFS

7

MAHARASHTRA

Manmad

JALGAON

On SH4 from Amalner to Chopda RHS within 5km from Amalner.

SC PH

CFS

6

MAHARASHTRA

Manmad

BULDHANA

Either side on NH-753E BULDHANA KM STONE- 5 TO BULDHANA KM

STONE - 12 from Buldhana towards Ajanta

SC PH

CFS

10

15. From the tabular statement as above, it would appear that for 10 (ten) advertised locations reserved for SC PH category, which includes the location for the subject dealership, the application count is 60 (sixty). Therefore, the average comes to 6 (six) applications for each advertised location. For the subject dealership too, 6 (six) valid applications were received by the respondents. These figures are sufficient to negate the contention of Mr. Bhandari that continuation of the process for the subject dealership would amount to denial of opportunity to other candidates who could have applied for the subject dealership but may not have so applied considering the typographical error in mentioning of the number of the State Highway in the advertisement.

16. That apart, it has not been brought to our notice that any interested applicant had approached BPCL, immediately after the advertisement was issued and even beyond the last date for submission of applications, seeking clarification to clear any confusion created in his/her mind in pursuance of the error in the advertised location or calling upon BPCL to abort the process of selection because of misconception that prevented him/her from putting in an application. The presumption that can validly be drawn from such a circumstance is that none, apart from the 6 (six) applicants, had shown interest for competing for allotment of the subject dealership. BPCL, we are inclined to hold, visualized an imaginary situation of others being deprived without there being any material on record.

17. We can also take judicial notice of the fact that SH4 covers a major part of northern Maharashtra. It has its origin from the side of the Gujarat-Maharashtra border and extends almost to the Maharashtra-Madhya Pradesh border. SH4, stretching from West to East, has Chopda almost at the mid-point of such highway. However, SH14 stretching from South to North diagonally with a right tilt, inter alia, connects Mehergaon and Vaijapur via Dhule, Amalner and Chopda. In view of the fact that the advertisement required a site to be offered by the applicant interested in obtaining the allotment of the subject dealership on the stretch of the State Highway between Amalner and Chopda and more particularly, within a distance of 5 Kms off Amalner towards Chopda, the fact that the digit '1' was not printed before the digit '4' in the advertisement to denote the exact State Highway was, for all purposes and intents, an insignificant error which did not result in any inequality leading to deprivation of any prospective applicant. If indeed any prospective applicant had a doubt and felt confused as to how a site within 5 Kms off Amalner towards Chopda could be located on SH4,

the normal reaction of any prospective applicant that one would expect is to raise a query to that effect. The very fact that no such query was raised from any quarter leads us to infer that none felt misled by reason of the error in the advertisement.

18. We are conscious that a mere selection does not vest a candidate with an indefeasible right of appointment/allotment. Ordinarily, the course adopted by the Courts in Haroon A.K. (supra) and Mrs. Aruna Awatade (supra) would be the rule. However, that does not give BPCL the licence to act in an arbitrary manner. We can hardly ignore that the subject dealership was reserved for two categories, viz. SC and PH. The requirement of the advertisement was such that a site had to be offered between Amalner and Chopda RHS, but within 5 Kms of Amalner. Anyone having a plot of land beyond such 5 Kms distance of Amalner and offering it would have been ineligible. Even for such a small stretch, we find that in all 6 (six) applicants offered their candidature. As has been noted above, 6 (six) is the average number of applications received by BPCL for advertised locations in Maharashtra reserved for SC and PH. That the petitioner satisfies both categories of reservation coupled with the fact that she has obtained validation of her caste status are factors which cannot be brushed aside from our consideration. Over and above that, the petitioner is a woman. Article 15(3) of the Constitution enables the State to make special provisions for women. Instead of taking a decision not to carry forward the selection process, BPCL being an Article 12 authority ought to have taken recourse to Article 15(3) of the Constitution and invoked its special power. By not taking recourse to the same despite the enabling provision in this behalf, the process of decision-making of BPCL most certainly suffers from illegality and arbitrariness apart from irrationality which are accepted grounds of judicial review. When the entire country has been initiating measures by designing schemes for upliftment of women, BPCL's decision not to carry forward the process resting on an insignificant typographical error is a retrograde step and does not commend to us to be legally justifiable.

19. The decision in Laxman S/o. Gorakh Waghmare (supra), cited by Mr. Bhandari, has been perused. The co-ordinate Bench declined to interfere finding that the petitioner therein had offered a land which was unsuitable for the retail outlet dealership leading to his disqualification. That is not the case here and, therefore, reliance placed on such decision by Mr. Bhandari is wholly misplaced. On the contrary, reliance placed by Mr. Brahmeon the decision in Manisha Atul Borse (supra) is apt. The observations made by the co-ordinate Bench in paragraphs 5 and 7 are indeed relevant for the purpose of holding the contentions raised by Mr. Bhandari to be without substance.

20. Haroon A.K. (supra) and Mrs. Aruna Ambadas Awatade (supra) are decisions where the Kerala High Court and this Court, respectively, declined to exercise discretion in view of the facts obtaining therein. Such facts do not have any resemblance to the facts at hand. In any event, notwithstanding the power of

cancellation that BPCL has reserved unto itself, such power has to be exercised with care, caution and circumspection and not on the whims and caprice of an officer. Law is well settled that a power, which is drastic in nature, should be exercised sparingly and only in exceptional cases. This case definitely does not call for exercise of such drastic power, more so when the respondents did not have in mind the factors in favour of the petitioner that we have discussed supra.

21. We will fail in our duty if we do not place on record that Mr. Bhandari cited the decision of the Supreme Court reported in 2022 SCC OnLine SCC 336 (M/s. N.G. Projects Limited Vs. M/s. Vinod Kumar Jain & Others) in support of the contention that the petitioner must be relegated to a suit for damages. Strong reliance has been placed by Mr. Bhandari on paragraph

23 of the decision, reading as follows:

"23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work."

(emphasis placed by Mr. Bhandari)

22. The decision in M/s. N.G. Projects Limited (supra), in our considered opinion, has no application in the facts and circumstances of the present case for more reasons than one. First, it was a case where the State of Orissa had paid a sum close to Rs.4 crore to the appellant (although the appellant had submitted bills of work of Rs.8.5 crore) when the order of the High Court, under challenge, came to be passed. It is in such a circumstance that the Supreme Court was of the view that the claim of the respondent/writ petitioner arising out of unlawful/ wrongful exclusion from the tender should have sounded in damages. Secondly, the dispute arose out of a tender related to an infrastructure project. The Supreme Court, referring to section 41(ha) of the Specific Relief Act, 1963 expressed the opinion that the High Court would have been well advised to hold

its hand to stay the construction of an infrastructure project in view of the intent of the Legislature that infrastructure project should not be stayed by courts. The schedule appended to the Specific Relief Act, 1963 does not include retail outlet in "the category of projects and infrastructure sub-sectors". Even otherwise, if the relief that the petitioner seeks before us were granted, it would facilitate the installation of a retail outlet instead of postponing such installation. This would be in consonance with the legislative intent and the statutory provisions engrafted in such enactment. Thirdly, it needs to be noticed that the decision of the Supreme Court reported in (1994) 6 SCC 651 (Tata Cellular Vs. Union of India) whereupon strong reliance was placed in M/s. N.G. Projects Limited (supra) did, in fact, lay down the law that arbitrariness could be a ground for interference and interference was made precisely citing such ground (paragraph 151). It is, therefore, futile to allege that the decision in M/s. N.G. Projects Limited (supra) debars a challenge from succeeding despite a valid ground of arbitrariness in the process of decision-making being urged. To set right the process of decision-making, we do feel the urge to interfere for the reasons aforesaid and see no reason to hold that the decision in M/s.N. G. Projects Limited (supra) would in any manner restrict exercise of our discretionary jurisdiction.

23. Having regard to the findings reached by us supra that there has been arbitrariness, illegality and irrationality in the decision-making process of the respondents, together with the last moment clarification provided by Mr. Bhandari at the concluding stages of the hearing that the decision not to carry forward the subject dealership has been sent for approval in January, 2022 to the superior authorities but is yet to be approved, we dispose of the writ petition by directing the respondents to process the application of the petitioner in accordance with law and to issue the LoI within a period of four weeks from date of a receipt of a copy of this judgment and order. Further follow up action shall be taken by the petitioner as well as the respondents thereafter in accordance with law, and provided all other eligibility criteria are satisfied, the subject dealership will be allotted to the petitioner as early as possible.

24. The parties shall, however, bear their own costs.