
(2008) 12 RAJ CK 0026
In the Rajasthan High Court

Uma Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2009) 2 RLW 1843

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In this case, the petitioner is challenging the order impugned dated 16.11.2007 Annexure-9 and prayed that the respondents may be directed to issue letter of intent to the petitioner at an early date because he has been placed at Sl. No. 1 in the merit of panel for allotment of retail outlet at Toshina Tehsil Deedwana, District Nagaur.

2. The case of the petitioner is that he applied in pursuance of Annexure-1 for allotment of retail outlet dealership and after due formalities and interview held on 14.9.2006, the petitioner was placed at Sl. No. 1 in the panel by the Committee constituted by the Corporation for the said purpose. According to the petitioner, he proceeded for obtaining conversion of the land from agriculture to commercial and as such approached the District Collector and obtained No Objection Certificate from the Gram Panchayat. The District Collector also proceeded to obtain further report from the Tehsildar Deedwana by communication dated 7.10.2006. In pursuant to communication dated 7.10.2006 Annexure-4, originated by the District Collector, the report was submitted by Public Works Department to the Tehsildar Deedwana. Consequently, the Tehsildar, Deedwana submitted a report and recommended to the District Collector, Nagaur for conversion of the land bearing Khasra No. 1162/1141 measuring 1225 sq. mtrs. for commercial purposes (for installation of the petrol pump) on 27.10.2006.

3. The petitioner approached the respondent Corporation and Divisional Manager, Ajmer for issuing of letter of intent and made several requests from time to time but no letter of intent has been issued inspite of the fact that the petitioner was at Sl.No. 1 in the panel.

4. The petitioner filed a representation before -the respondents for issuing letter of intent on 22.5.2007 but letter of intent was not issued and later on respondent No. 3 Divisional Manager informed the petitioner by communication dated 16.11.2007 that the letter of intent cannot be issued to him as there was a complaint filed by one Ugma Ram S/o Deva Ram regarding the dealership. However, subsequently, after enquiry, the alleged complaint was not established but before issuance of letter of intent, certain new guide lines for setting up retail outlet was received and as per the said guidelines, the minimum sales potential required to establish retain outlet in D-2 class of market Toshina was 110 kl per month, therefore, village Toshina for which the assessed potential was 84 KL per month was not meeting volume norms given by the Headquarters.

5. The case of the petitioner is that first of all letter of intent was withdrawn on the basis of a false complaint but upon enquiry the said complaint was found to be false and was not established but rejection of issuance of letter of intent is on the basis of new guidelines issued after completion of formalities and placing the name of petitioner at Sl. No. 1 in the panel, therefore, prospective guidelines issued after finalization of the matter cannot be made applicable retrospectively. In this matter, it is clear from the facts that first of all respondents detained letter of intent on the basis pf false complaint and then on the basis of new guidelines framed by the respondent Company which is illegal and have no foundation to stand. More so, the action of the respondent Company is violative of fundamental rights of the petitioner granted under the provisions of Constitution of India.

6. It is argued by learned Counsel for the petitioner that there is no lapses on part of the petitioner but for technical grounds unnecessarily the respondent Company is harassing the petitioner and not issuing letter of intent which is not justified.

7. Per contra, learned Counsel appearing on behalf of respondent Company vehemently argued that although the petitioner was placed at Sl. No. 1 and before issuance of letter of intent, a complaint was received by one Ugma Ram but upon investigation the said complaint was not established but subsequently new guidelines were issued by the Company under which the petitioner is not entitled to get letter of intent in his favour, so also, the respondent Company is not under obligation to issue letter of intent as per new guide lines issued by the company for retail outlet.

8. Learned Counsel for the respondent has invited the attention of this Court towards the judgment reported in J.R. Raghupathy and Others Vs. State of A.P. and Others, and submitted that High Court cannot sit in appeal over the

government decision and proceed to evaluate the merits and demerits of such decision. It is argued that no mandamus can be issued to enforce the administration instructions as such the Company is within its competence to deny the letter of intent on the basis of newly framed guidelines, therefore, this writ petition may be dismissed as the petitioner cannot claim the letter of intent and allotment of retail outlet as a matter of right.

9. I have considered the rival submission made by both the parties. In my opinion, the reasons for denial is not tenable before eye of law because there was no lapses on the part of the petitioner. More so, the letter of intent was not issued before receiving new guidelines on the ground that a false complaint was lodged against the petitioner, which is subsequently not established upon investigation and now on the basis of new guidelines, which is framed obviously after completion of process of existing allotment for which the petitioner is claiming his right, therefore, denial to issue letter of intent and allotment of retail outlet to the petitioner is totally violative of Articles 14 and 21 of the Constitution of India. In the impugned order or in the reply, no lapses are pointed out by the respondents against the petitioner. More so, if retail outlet will not be allotted to the petitioner, then, complainant will obviously succeed in his object for not granting allotment of outlet in favour of the petitioner. Further, the new guidelines cannot be made applicable retrospectively. Therefore, the Tender which is filed by the petitioner in pursuance of Annexure-1, was to be decided according to the existing terms and conditions. In this view of the matter, there is legal rights created in favour of the petitioner and the petitioner is very much entitled to get letter of intent, so also allotment of retail outlet as he was placed at Sl. No. 1 in the panel after completion of process of allotment.

10. With regard to the judgment in case of J.R. Raghupathy's case (supra) cited by learned Counsel for the respondents, it is true that the High Court cannot sit upon the policy decisions taken by the respondent Company as an appellate authority but at the same time, the Court is required to see upon the facts of the particular case whether any rights of the petitioner is infringed or not. Obviously the facts of this case clearly reveal that the petitioner has been denied the allotment of retail outlet on illegal premise and in violation of Article 14 and 21 of the Constitution of India, so also on the basis of false complaint which was found to be false in enquiry.

11. In this view of the matter, this writ petition is allowed. The impugned order Annexure-9 dated 16.11.2007 is hereby quashed and set aside and the respondent Company is directed to issue letter of intent forthwith as per the petitioner's merit in the panel and allot the retail outlet at Vilage Toshina Tehsil Deedwana District Nagaur. No order as to costs.