

(1990) 01 AHC CK 0040
In the Allahabad High Court
Case No : Writ Petition No. 4848 of 1988

Vinod Kumar Mittal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 229, 311
Evidence Act, 1872 — Section 115
Specific Relief Act, 1963 — Section 14(1)

Citation : AIR 1991 All 1

Hon'ble Judges : Virendra Kumar, J;S.C. Mathur, J

Bench : Division Bench

Advocate : Umesh Chandra, Rakesh Srivastava, Sandip Dixit and Krishan Chandra, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Mathur, J.—This petition is directed against the order of the Deputy General Manager (L.P.G.) of the Indian Oil Corporation Limited, Annexure 14, whereby he has cancelled/withdrawn the letter of intent dated 30th August 1986, Annexure 4, offering the petitioner distributorship of Liquified Petroleum Gas at Aminabad, Lucknow. The petition has arisen in the circumstances hereinafter indicated.

2. On 25th July, 1984 the Indian Oil proportion issued advertisement inviting applications for the distributorship in question. It was mentioned in the advertisement that the applicant should not be a near relation of an existing dealer or distributor of any oil company. The near relations were not specified on the advertisement itself but the advertisement indicates that they are mentioned in the pro forma on which application was to be submitted. In response to this advertisement the petitioner applied for the distributorship in question. Apart from the petitioner others had also made applications. The candidates were interviewed on 12th December, 1985 by the Oil Selection Board at Lucknow. Thereafter the petitioner received letter dated 30th August, 1986 Annexure 4

from the Chief L.P.G. Manager of the Corporation offering the distributorship in question to the petitioner. This letter has been described as letter of intent. The letter required the petitioner to do certain things in order to entitle him to get the distributorship. The first requirement was to procure a suitable plot of land measuring 32M X 29M either by purchase or lease. In the event of procurement of the plot on lease the initial period of lease was required to be ten years with renewal option thereafter for a minimum period of five years. The land was to be procured for construction of godown and showroom. The petitioner was also required to obtain telephone connection. This the petitioner was required to do within four months from the date of the letter. The godown site and the showroom were required to be cleared by the Lucknow Divisional Office of the Corporation. The godown site was required to be as close to the showroom as possible. Within the same period of four months the petitioner was required to make all financial and other arrangements for operating the distributorship. The petitioner was enjoined to make all efforts to commission the distributorship within six months from the date of the letter. The petitioner was warned that in case the progress made by him was not found to be satisfactory the offer was liable to be withdrawn. This warning was repeated in paragraph 4 of the letter in following terms:--

"4. This letter is merely a letter of intent and is not to be construed as a firm offer of distributorship to you. If we find that the progress being made by you towards the above is not to our satisfaction, this offer is liable to be withdrawn."

Paragraph 3 of this letter also bears reproduction. It reads as follows:--

"3. The distributorship to you will, on your complying with the conditions spelt out hereinbefore, be confirmed/formalised by an appointment letter followed by the signing by both you and us of our standard Distributorship Agreement.

From this it would appear that a Distributorship Agreement was to be entered into between the parties after the formalities mentioned in the letter of intent had been completed.

3. The petitioner states that on receipt of this letter he took various steps to comply with the requirements specified in the letter. He accordingly acquired land at Mohni Purwa for construction of godown. This land was situate about 4 K.M. from Aminabad, Lucknow, where the petitioner was required to have his showroom. On 31st October, 1986 the Senior Divisional Manager of the Indian Oil Corporation Ltd. wrote to the Deputy Chief Controller of Explosives for grant of provisional licence to the petitioner for Construction of L.P.G. godown. In view of this recommendation the Deputy Chief Controller, Explosives granted approval to the plan submitted by the petitioner for construction of godown for storage of L.P.G. cylinders. The godown was inspected by the officers of the Corporation and thereafter the Deputy Chief Controller, Explosives, North Circle, Agra granted licence to the petitioner on 20th October, 1987 for storage of L.P.G. Cylinders at the said godown. For the purpose of showroom the petitioner acquired a

premises at 25 Old Nazirabad Lucknow at a monthly rent of Rs. 700/-. The petitioner took loan of Rs.50,000/- from the State Bank of India Hazaratganj Branch, Lucknow. He also obtained the phone connection, paying Rupees 500/- per month as rent for the apparatus. He got the godown insured for Rs. 5 lacs and the showroom for Rs.50,000/-, paying the premium of Rs. 2783/- and Rs. 2551 - on the insurance policies respectively. The business name of M/s. Aminabad Gas Service suggested by the petitioner was approved by the Manger (LPG) of the Corporation through his letter dated 29th April, 1987. The Senior Area Manager, Indian Oil Corporation Ltd., (Marketing Division), Northern Region required the petitioner through telegram dated 26th October, 1987 to attend a training course at Delhi. The petitioner successfully completed the course. Earlier the petitioner's Mechanic and Deliverymen were also given relevant training at the cost of the petitioner. The petitioner got himself registered with the Sales Tax authorities for purpose of Sales Tax assessment for the year 1987-88. The petitioner asserts that on 18th January, 1988 Sri S.K. Singh, Senior Area Manager (LPG), Indian Oil Corporation Ltd. Lucknow sent a completion report to the Deputy General Manager (LPG), New Delhi stating therein that the petitioner has completed all the formalities for the commissioning of the distributorship. According to the petitioner in view of the completion report sent by the Senior Area Manager he was eagerly waiting for the formal grant of distributorship but instead of getting the same he received the impugned order letter dated 6th June 1988 from the Deputy General Manager (LPG). The impugned letter gives only one reason for withdrawing/ cancelling the letter of intent. It mentions -- "It has come to our knowledge that one of your relatives is running dealership/ distributorship of oil companies." After making this observation it is further mentioned --"Since you have deliberately given a wrong information/suppressed facts in our application from which disqualifies you from the award of subject LPG distributorship, I hereby order that aforesaid letter of intent issued to you stands cancelled/withdrawn with immediate effect."

4. On receipt of the above letter the petitioner filed the instant writ petition on 22nd June, 1988 praying for quashing of the same and for issuance of a writ of mandamus to command the opposite parties to grant the distributorship to the petitioner. On the same day an interim order was passed restraining the opposite parties from granting L.P.G. distributorship in respect of Aminabad, Lucknow to any other person.

5. In the writ petition the petitioner has denied the allegation of close relations having dealership/distributorship of Oil Companies. He has specifically stated that none of his close relations as mentioned in the printed pro forma has dealership/distributorship of Oil Companies. The petitioner has further made/ the grievance that the statement of relationship is bald as neither the name of the alleged relation has been disclosed nor his relationship with the petitioner. The action of withdrawal/cancellation of the intent has been described as arbitrary. Principle of Promissory estoppel has also been invoked on the ground that the petitioner acted upon the assurance contained in the letter of intent and altered

his position by making substantial financial investments.

6. In the writ petition the petitioner has impleaded the following five as opposite parties:--

1. Union of India through the Secretary, Ministry of Petroleum;
2. Indian Oil Corporation Ltd.,
3. Oil Selection Board,
4. Deputy General Manager (LPG), and
5. Senior Area Manager (LPG).

7. The writ petition has been contested on behalf of opposite parties 2, 4 and 5. On behalf of these opposite parties counter affidavit has been filed by the Chairman of Oil Selection Board. In the counter affidavit the various steps taken by the petitioner and the Corporation stated in the petition have not been disputed. Indeed lack of knowledge has been pleaded in respect of some of the facts like obtaining of loan from the State Bank of India. However, in the absence of positive denial the petitioner's assertion has to be accepted. Thus there is no dispute between the parties that the petitioner completed all the formalities which he was required to complete by letter of intent dated 30th August, 1986 ? and there was no default on his part. Indeed it was one of the requirements for eligibility of distributorship that none of the relations specified in the pro forma should have a dealership or distributorship in his name. In the counter affidavit it is stated that the Oil Selection Board, after recommending petitioner's name, received complaints that some of the relations of the petitioner were having dealership/distributorship and accordingly investigation was made into this allegation which revealed that the petitioner was son of the elder sister of Sri D.P. Bohra who had dealership/distributorship in the names of several of his close relatives. The name of these relations, it is contended on behalf of the opposite parties, were not disclosed by the petitioner in his application for the dealership. The names of the relations of Sri. D.P. Bohra who had distributorship/dealership have not been disclosed in the counter affidavit only their relationship has been disclosed. The relationship is stated to be brother, nephew, brother-in-law and co-brother. Thus brother, nephew, brother-in-law and co-brother of Sri D. P. Bohra are alleged to be having dealership/distributorship of one or the other oil company. In view of the facts disclosed during investigation the Selection Board was of the opinion that the petitioner had suppressed a material fact and therefore the recommendation in his favour deserved to be recalled. The Selection Board was of the opinion that distributorship should not be monopoly of one family. The impugned order has been claimed to have been passed in public interest. It is denied that the order is arbitrary or that it was passed mechanically. It is asserted that the order has been passed on consideration of relevant facts. Principle of Promissory Estoppel, it is claimed, is not attracted. It is asserted that there are no statutory rules governing grant of distributorship

and the matter is purely contractual and therefore writ petition is not maintainable.

8. In the rejoinder affidavit filed by the petitioner he has not denied that his mother is the sister of Sri D.P. Bohra. However, he points out that this is not one of the relationships mentioned as a disqualification in the pro forma of the application. On this basis he urges, there was no obligation on his part to disclose the said relationship. Accordingly it is pressed that the petitioner is not guilty of suppression of any material fact. Regarding the investigation or enquiry conducted by the Oil Selection Board, the petitioner asserts that the same was held in violation of principles of natural justice as the petitioner was not associated therewith and no opportunity of hearing was given to him. It is pointed out that even copy of the report, if any, submitted by the investigating team has been supplied to the petitioner.

9. In view of the pleadings of the parties the first question that arises for consideration is whether the petitioner bore with Sri D.P. Bohra or his relations who held dealership/ distributorship in their name any relationship and if so its effect. In paragraph 6 of the counter affidavit, clause 6 of the application form has been reproduced which reads as under:--

"Relationship with Oil Company Dealer/ Agent/Distributor

Are you or any of your close relations, as under, dealers/agents/distributors or partners in any dealership/agency/distributorship of any oil company in any petroleum products in the country"?

- i) Spouse
- ii) Father/Mother
- iii) Brother/Sister
- iv) Son/Daughter
- v) Son-in-law/Daughter-in-law,
- vi) Parents-in-law

If so, please indicate:

- a) Which company
- b) Location
- c) Your relationship

If any, enclose an affidavit as per the format as Appendix-A"

As already pointed out the petitioner has not disputed that his mother is the sister of Sri D.P. Bohra. In this manner, petitioner is D.P. Bohra's sister's son. This relationship is not mentioned as a prohibited relationship in clause 6 of the

application which has been reproduced hereinabove. Accordingly there was no occasion for the petitioner to indicate his relationship with Sri D.P. Bohra. The relationship which was required to be disclosed was the one specified in clause 6 of the application. The petitioner cannot, therefore, be charged with suppression of a material fact.

10. From the averments made in the counter affidavit, it appears that the case of the contesting opposite parties is that Sri D.P. Bohra is the actual owner of the dealerships/ distributorships which are in the names of his close relations. Amongst his relations who had distributorship/dealership are allegedly his brother, nephew, brother-in-law and co-brother. Brother does fall in the prohibited degree mentioned above. In that event the mis-statement, if any, has been done either by Sri D.P. Bohra or by his brother. The opposite parties do not appear to have taken any action against either Sri D.P. Bohra or his brother who obtained dealership/distributorship by mis-stating the facts or by suppressing material facts. The burden of mis-statement or suppression by Sri D.P. Bohra or his brother cannot be thrown upon the petitioner.

10A. It is now well settled law that even administrative actions which affect the rights of a citizen should be taken in accordance with the principles of natural justice. One of the principles of natural justice is that before taking adverse action, opportunity of hearing should have been given. Admittedly in the present case no such opportunity was given. The letter of intent was not cancelled/ withdrawn on the ground of any administrative exigency but on the sole ground that there was misconduct on the part of the petitioner inasmuch as he did not disclose his relationship with Sri D.P. Bohra. Perhaps if an opportunity of hearing had been given to the petitioner he would have brought it to the notice of opposite parties that the charge levelled against him is misconceived and cannot be levelled in view of the specification of relations in clause 6 of the application form. This opportunity was denied to him as he was not associated with the investigation made on the basis of complaints received by the Oil Selection Board.

11. Learned counsel for the opposite parties has, however, contended that the matter between the parties is contractual and no writ petition can lie. It is also his plea that distributionship of the Oil Company is in the nature of a contract of personal service and such a contract cannot be enforced in view of the provision contained in Section 14 of the Specific Relief Act, 1963. His specific plea is that since the contract cannot be specifically enforced, the mandamus prayed for cannot be issued and if mandamus cannot be issued, quashing of order dated 6-6-1988 would be an exercise in futility. In support of his plea, learned counsel has cited -

1. S.B. Dutt Vs. University of Delhi, ,
2. Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, ,
3. Radhakrishna Agarwal and Others Vs. State of Bihar and Others, ,

4. Kiritkumar Gandadal Shah Vs. Indian Oil Corporation Ltd., , and

5. 1985 Lucknow Civil Decisions 54 Teja Singh Vastu Engineering Consultant, New Delhi and another v. State of U.P. and others.

12. The learned counsel for the petitioner on the other hand submits that the matter is not yet contractual inasmuch as contract has not so far been executed and it was to be executed only after completed of the formalities mentioned in the letter of intent by the petitioner. It is also his submission that there is no bar to mandamus being issued to command the administrative authority to execute contract if the contract is refused to be executed on arbitrary grounds. For making his submission the learned counsel for the petitioner relies upon the following authorities.

1. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ,

2. Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., ,

3. Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , and

4. State of Bihar and Another Vs. Usha Martin Industries Ltd., .

13. Section 14(1)(d) of the Specific Relief Act relied upon by the learned counsel for the opposite parties reads as follows:--

"14. Contracts not specifically enforceable-

(1) The following contracts cannot be specifically enforced, namely:--

(d) A contract the performance of which involves the performance of a continuous duty which the Court cannot supervise."

In view of the above provision a contract of personal service like the one involved in the present case cannot be specifically enforced. But there are well recognised exceptions to this rule and some of these are:--

(1) When the service is governed by Art. 311 of the Constitution; (2) When it is governed by the provisions of the Industrial Disputes Act or any other constitutional or statutory provision; and (3) When the employer/ Master is "State" within the meaning of Art. 12 of the Constitution. Such employer/ Master is subject to the mandate of Art. 14 of the Constitution and cannot take shelter u/s 14(1)(d) of the Specific Relief Act so as to arbitrarily exclude a citizen from a source of livelihood. This would be particularly so when the matter is still at the, administrative stage and does not involve any dispute regarding breach of the terms of the contract. Once the contract of service has been executed, the rights and obligations of the parties will, of course, be regulated by the terms of the contract and no writ petition will lie for enforcement of those rights and obligations. Admittedly the Corporation is "State" within the meaning of Art. 12 and contract of distributorship has not been executed so far. Arbitrary exclusion of the petitioner from distributorship is therefore amenable to the writ jurisdiction under Art. 226. On the facts of the present case the action of

cancelling/withdrawing the letter of intent is arbitrary and therefore the petition is maintainable.

14. The facts of the present case are very much akin to the facts of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., in which their Lordships issued a mandamus requiring the Gujarat State Financial Corporation to release the loan of Rs. 10 lacs which they had promised to advance but had later refused to advance. Their Lordships found that the Corporation retraced its step on non-existent ground. Their Lordships also found that in pursuance of the solemn undertaking given by the Corporation, the respondent had taken various steps and invested money and, therefore, the principle of promissory estoppel was attracted. In the case on hand also the cancellation/withdrawal of the letter of intent is based on non-existent ground and acting upon the letter of intent the petitioner has invested substantial amounts indicated here-in-above. Therefore, Art. 14 is attracted as well as the principle of promissory estoppel. The only difference between the case on hand and the case dealt with by their Lordships appears to be that there was a statutory duty of the Finance Corporation to advance loan. In the present case our attention has not been drawn to any statutory provision dealing with the grant of distributorship. However, that in our opinion is not sufficient to throw out the petitioner's petition as Art. 14 contains constitutional mandate which no State authority can afford to ignore.

15. According to the learned counsel for the opposite parties the present case falls within the third category of cases referred to by their Lordships of the Supreme Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and in such cases the remedy under Article 226 is not available. The categorisation of cases by their Lordships is as follows:--

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in case where on assurance or promise made by the State he has acted to his prejudice and predicament but the agreement is short of contract within the meaning of Art. 229 of the Constitution.

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

16. In our opinion the present case is not covered by category iii but is covered by category i in as much as the agreement between the parties is short of contract which is yet to be executed. This authority still holds the field and by application of the law laid down in the case, the present writ petition is maintainable.

17. In the present case the first prayer of the petitioner is to quash the

impugned order dated 6th June, 1988, Annexure 14 by issuing a writ of certiorari, and the second prayer is to issue a writ of mandamus to command the opposite parties to grant the distributorship in question to the petitioner. Learned counsel for the opposite parties had submitted that even if the first relief could be granted to the petitioner, the second relief cannot be granted. For the reasons already indicated the second relief too can be granted. In almost similar circumstances mandamus of the nature prayed for by the petitioner was issued by a learned single Judge of the Gujarat High Court in Kiritkumar Gandlal Shah Vs. Indian Oil Corporation Ltd., . In this case also the rejection of the petitioner's claim of dealership was found to be arbitrary. After recording this finding the petition was allowed and the respondent was directed to grant dealership to the petitioner.

18. Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others, relied upon by the learned counsel for the opposite parties has no application to the facts of the present case. In that case a non-statutory concluded contract was sought to be enforced through petition under Article 226 of the Constitution. It was in that context that their Lordships held that the writ petition was not maintainable. In the present case, as already held, the contract is not concluded

19. Teja Singh Vastu Engineering Consultant, New Delhi v. State of U.P. 1985 LCD 54 (supra) is also a case of concluded contract and the petitioner challenged the validity of the cancellation thereof,

20. Dr. S. Dutta v. University of Delhi AIR 198 SC 1050 (supra) does not deal with enforcement of contract and has no application to the facts of the present case.

21. For the aforesaid reasons we are of the opinion that the petitioner is entitled to both the reliefs claimed by him. The order dated 6th June, 1988 is liable to be quashed as it is based on non-existent fact and a mandamus deserves to be issued as the petitioner has completed all the formalities mentioned in the letter of intent and the opposite parties had not indicated any disability which may disentitle the petitioner from obtaining the distributorship.

22. In the view of the above, the writ petition is allowed and the order dated 6th June, 1988, Annexure 14 issued by the Deputy General Manager (LPG) on behalf of the Indian Oil Corporation Limited is hereby quashed. A writ of mandamus is issued commanding the opposite parties to grant to the petitioner the distributorship in question. The petitioner shall be entitled to recover its costs from the Indian Oil Corporation Ltd., Opposite Party No. 2.

23. Petition allowed.