
(2004) 04 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 31905 of 2002

Vinod Kumar Sharma

APPELLANT

Vs

Dealer Selection Board and Others

RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 AWC 3431

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : S.K. Pandey and Ajay Bhanot, for the Appellant; Prakash Padia, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed praying for a writ of certiorari to quash the appointment of respondent No. 3 by order dated 22.3.2002 as retail outlet dealer of Indian Oil Corporation for the area between Rijore and Jasrana district Etah.

2. Heard learned counsel for the parties.

3. The respondent No. 2 Indian Oil Corporation Ltd., advertised in the news paper inviting applications for appointment of retail outlet dealer. True copy of the advertisement is Annexure-1. One of the places where the retail outlet was to be set up was at Etah Shikohabad Road between Rijore and Jasrana. Admittedly the petitioner did not apply as stated in para 6 of the petition. He has alleged that he was not in a position to purchase an appropriate site in the area mentioned in the advertisement. It is admitted that the respondent No. 3 has been appointed as retail outlet dealer for the said area on 22.3.2002. In para 10 of the petition it is alleged that In pursuance to his selection as dealer the respondent No. 3 sought to purchase a plot of land to set up the retail outlet. However, it is alleged that respondent No. 3 did not purchase any land situated

between Rijore and Jasrana where the retail outlet dealership was to be set up but purchased land in village Nidhauri Khurd near Etah to Rijore Road. True copy of the sale deed dated 5.7.2002 is Annexure-2. It is alleged that the respondent Corporation is in collusion with respondent No. 3 and has allowed him to establish the retail out let at the aforesaid place. Hence, this petition.

4. A counter-affidavit has been filed by the Corporation. It is alleged in para 5 of the same that the petitioner has no right to file this writ petition as he did not apply for the dealership. In para 6, it is alleged that there is a slight change in the location where the retail outlet was to be established and it is approximately 12 kms. away from the site between Rajore and Jasrana. The other candidates who were interested in the dealership had already applied. The respondent Corporation further alleged that the petitioner has a right to make a representation before the concerned authorities if he has any grievance.

5. In this case on 14.1.2004 the Court directed the petitioner to serve respondent No. 3 personally within two weeks. However, no affidavit of service on the respondent No. 3 has been filed by the petitioner. Since the petitioner has not complied with the order dated 14.1.2004 and has not served respondent No. 3 personally this petition deserves to be dismissed on this very ground namely that the respondent No. 3 who is a necessary party, has not been served by the petitioner.

6. Apart from the above, it may also be noted that while the allegation of collusion has been made against the respondent Corporation in para 13 of the writ petition no official of the Corporation has been impleaded by name. It is well-settled that when allegation of mala fide is made, the authority against whom the allegation is made must be impleaded by name vide J. M, BanawaliKar v. Municipal Corporation, Delhi and Ors. AIR 1996 SC 326 : State of Bihar and Ors. v. P. P. Sharma 1992 (Suppl) 1 SCC 222 ; I.K. Mishra Vs. Union of India and Others, and All India State Bank Officers" Federation and Others Vs. Union of India (UOI) and Others, .

7. In Federation of Officers Association v. Union of India and Ors. 2003 (4) AWC 2378 : 2003 AIR SCW 1 764, the Apex Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and in his absence such allegations cannot be taken into consideration.

8. A similar view has been taken by a Division Bench of this Court in Civil Misc. Writ Petition No. 55040 of 2003, Smt. Simmy Khanna v. Union of India and Ors., decided on 15.12.200L "

9. In view of the above this petition dismissed.