



2024 INSC 1041

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO.14689/2024
(@Petition for Special Leave to Appeal (C) No.17441/2023)

PAWAN KUMAR

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

1. Application seeking deletion of proforma Respondent No.1 from the array of parties is allowed at the risk of the appellant.
2. Cause title be amended accordingly.
3. Leave granted.
4. This appeal arises from the judgment and order passed by the High Court of Himachal Pradesh at Shimla dated 6-7-2023 in CWP No.835/2020, by which the Writ Petition filed by the Respondent No.5 - herein (original petitioner before the High Court) came to be allowed and thereby the allotment of dealership by Bharat Petroleum Corporation Limited to run a petrol pump in favour of the appellant - herein came to be cancelled.
5. The facts in brief necessary for the disposal of this appeal may be set out thus:-
6. The Bharat Petroleum Corporation Limited (for short, the "BPCL") issued an advertisement dated 25-11-2018 for appointment/allotment of retail outlet dealerships for petrol pumps in the State of Maharashtra.

7. It is not in dispute that the appellant - herein made an online application showing his willingness for being appointed/allotted retail outlet dealership.

8. The appellant - herein claims to be falling within the OBC category and accordingly he applied against the OBC category on 24-12-2018.

9. The appellant was included in Group II as mentioned in clause 4(v) of the brochure for selection of dealers for regular and rural retail outlet, i.e., the appellant had affirmed offer for suitable piece of land for purchase/lease belonging to a third party.

10. It appears from the materials on record that the appellant offered a piece of land owned by Shri Lila Dhar and Shri Dinesh Kumar bearing KK No. 4/5, Khasra No. 167/70 measuring 7-6 Bighas situated at Mauza Patta.

11. It also appears that there was some dispute between Mr. Lila Dhar and Mr. Dinesh Kumar as regards the land which was offered by the appellant herein. However, the same ultimately came to be settled to the satisfaction of the Corporation.

12. The Respondent No.5 - herein preferred a Civil Writ Petition No.835/2020 in the High Court and prayed for the following reliefs:-

"i) Issue a writ of certiorari to quash the letter of intent issued to the respondent No. 5 on the basis of draw lots held on 17.06.2019 for running of RO Dealership at village Patta, Tehsil Arki, District Solan, H.P.

ii) Issue a writ of mandamus directing the Respondent Nos. 1 to 4 to process the case of the petitioner for allotment of RO Dealership being most eligible applicant forthwith.

iii) Issue writ of mandamus directing the Respondent Nos. 1 to 4 to action who initiate appropriate has connived with respondent No. 5 in violating of RO Dealership Guidelines.
 iv) Call for the records pertaining to the case at hand.
 v) Direct the Respondent authorities to pay the cost of the petitions."

13. The Writ Petition came to be allowed vide the impugned order passed by the High Court.

14. The High Court while allowing the Writ Petition filed by the Respondent No.5 observed in paras 32 to 44 as under:-

"32) None of these facts had been disclosed by respondent no.5 in his application.

33) Admittedly, Annexure P-3 Brochure issued by the Corporation for selection of dealer for retail outlets, contains Clause 22 which states as under:-

"22 FALSE INFORMATION

If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to have been suppressed/misrepresented/incorrect or false, then the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases the candidate/dealer shall have no claim whatsoever against the respective Company."

34) Thus, if any statement made in the application submitted by an applicant like respondent no.5 was at any stage found to have been false, incorrect or certain facts are found to have been suppressed or misrepresented, then

the application was liable to be rejected by the Corporation without assigning any reason and in case, an applicant had been appointed as a dealer, the dealership was liable to be terminated.

35) Strangely, notwithstanding such a Clause having been incorporated in the Brochure issued by the Corporation, and notwithstanding the fact that the petitioner had informed about the false information furnished by respondent no.5 to respondents no.2 to 4 on 25.06.2019 (including the factum of pendency of a Civil Suit between Leeladhar and his brother Dinesh Kumar), respondents no.2 to 4 went ahead and issued the Letter of Intent on 21.09.2019 to respondent No.5 in gross violation of Clause-22, referred to above.

36) In our considered opinion, it was not open to respondents no.2 to 4/Corporation to grant the retail outlet dealership to respondent no.5 in the face of Clause-22 of the Brochure, merely on the ground that there was a subsequent Out of Court Settlement between Leeladhar and his brother Dinesh Kumar and Dinesh Kumar later gave an affidavit stating that he has no objection for grant of retail outlet dealership to respondent no.5.

37) This is because in the application filed by respondent no.5 at Sr. no.13 where land details are to be furnished, respondent no.5 could have mentioned that Leeladhar and others were co-owners of the land, but instead, he mentioned only Leeladhar and did not mention either about the other co-owners or about the pendency of the civil suit between Leeladhar and his brother Dinesh Kumar.

38) In view of the undertaking given in the said application as well as declaration signed by respondent no.5 that wrong information/misrepresentation/ suppression of facts would make him ineligible the retail outlet dealership, which would bind the 5th respondent, not only respondents no.2 to 4 cannot grant him the retail outlet dealership but cannot also they cannot defending their

action in giving him the Letter of Intent by calling the petitioner as a medlesome interloper.

39) We fail to see how the petitioner can be considered as a medlesome interloper in the facts and circumstances of the case, when he was also a contender for the allotment of the retail outlet alongwith the respondent no.5.

40) As held in the decision of *Ramana Dayaram Shetty versus The International Airport Authority of India & Others*, (1979) 3 SCC 489 if an executive agency lays down certain standards which it professes its actions to be judged, it must scrupulously observe those standards. In the said case, the Supreme Court held that today the Government in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licenses, quotas etc.; the valuables dispensed by Government take many forms; many individuals and many more businesses enjoy largess in the form of Government contract, and the discretion of the Government or its agency is not unlimited, in that, it cannot give or withhold largess in its arbitrary discretion or its sweet will.

41) This was reiterated in *B.S. Minhas versus Indian Statistical Institute & Others* (1983) 4 SCC 582, where the Supreme Court held that it is obligatory on the part of the respondent to follow its bye-laws since they have been framed for the conduct of its affairs to avoid arbitrariness and the respondent cannot escape liability for not following the procedure prescribed in the bye-laws.

42) Recently, this was reiterated in *M.P. Power Management Company Limited versus Sky Power Southeast Solar India Private Limited & Others* (2023) 2 SCC 703 and it was held that if an agency of the State had laid down a standard or a norm of eligibility and if a person submitting a tender did not satisfy this condition of eligibility, his tender would not be eligible for consideration. It held that this

Principle had an independent existence apart from Article 14 of the Constitution of India.

43) Having regard to the settled legal position, we are of the opinion that the award of the retail outlet dealership by respondents No.2 to 4-BPCL to respondent no.5, cannot be sustained since respondent no.5 had misrepresented in his application that Leeladhar was the sole owner of the land offered for setting up the said outlet, but the truth was otherwise, and the land was co-owned by Dinesh Kumar and there was also a civil litigation pending before the Civil Court, which was not disclosed by respondent no.5.

44) Accordingly, the Writ petition is allowed; the letter of intent issued on 21.09.2019 by respondent nos.2 to 4 to respondent no.5 is set aside; and the respondents are directed to consider the case of the petitioner for grant of the retail outlet dealership in the said village within six weeks. The respondent no. 2-4 together and the respondent no.5 shall pay costs of Rs.10,000/- each to the petitioner."

15. It appears from the line of reasoning assigned by the High Court that the appellant - herein was found to be guilty of not disclosing few relevant facts before the Corporation for the purpose of allotment of the dealership.

16. Since the allotment in favour of the appellant - herein came to be cancelled by the impugned judgment of the High Court, the appellant is here before this Court with the present appeal.

17. We have heard Mr. Jayant Bhushan, the learned Senior counsel appearing for the appellant, Mr. V. Giri, the learned Senior counsel appearing for the BHPL and Mr. Vikrant Narayan Vasudeva, the learned counsel appearing for the Respondent No.5 - herein who was the original petitioner before the High Court.

18. We take notice of the stance of the Corporation before the High Court as reflected from the reply.

19. The Corporation made itself abundantly clear that it had received all the relevant documents with necessary information from the appellant - herein for the purpose of processing the online application for allotment of dealership.

20. We quote Paras 17 and 18 respectively of the affidavit in reply filed by the Corporation before the High Court.

"17. That the contents of this para are factually in correct, hence denied. The petitioner has deliberately indulged in mis-statement of facts regarding the out of court amicable settlement between the co owners of the land leading upto issuance of LOI in favor of respondent no.5. As mentioned earlier the selected candidate provided the replying respondents all the relevant land documents including consent from co-owners which were checked and verified by the concerned application scrutiny committee and after having found them to be in order his case was processed further. Only after following all the guidelines and policies for allotment of retail outlet a Letter of Intent was finally issued in favor of respondent no.5.

18. Contents of this para are factually incorrect, hence denied. It is not understood as to on what basis the petitioner has come up with the claim as the selection process was to be completed within 41 days. It is submitted that the selected candidate Sh. Pawan Kumar had applied online under Group 2 for the retail outlet dealership. The intimation of selection post draw of lots and the list of documents to be submitted by the selected candidates was sent to Respondent no.5 over e-mail on 21.06.2019. He submitted all the relevant documents as required by the replying respondent including consent from the co-owners.

The application and documents submitted by selected candidate were scrutinized by the application scrutiny committee strictly in line with Selection Brochure 2018. After following all the laid down norms mentioned in Selection Brochure 2018, Letter of Intent was finally issued in favor of respondent no.5. Besides, in consonance with the conditions of letter of Intent, respondent no 5 entered into a lease agreement with the other co-owners on 20.12.2019. Finally the replying respondent received NOC from DC Solan for the subject location dated 1.02.2020. It is further pertinent to mention that the petitioner was never selected for the subject location and therefore there is absolutely no occasion for him to submit any documents to the replying respondent. It is further reiterated that as the petitioner was never selected, the answering respondent could not comment upon his eligibility."

21. Before this Court also, the Corporation has filed its reply stating as under :-

"XII. The said Special Leave Petition deserves to be allowed also because the respondent No. 5 has unnecessarily and wrongly impleaded respondent No. 1 - Union of India as a party respondent in the present proceedings as it is not in any manner whatsoever connected with the issue in question. As such, the Hon'ble High Court ought to have dismissed the writ-petition itself for misjoinder of parties and in the alternative, the respondent No. 1 ought to have been deleted from the parties.

XIII. The said Special Leave Petition deserves to be allowed also because as per the Policy Guidelines, online applications were invited from amongst the eligible candidates and the categories of their applications were segregated according to the guidelines. The answering respondent/BPCL did not receive any application under Group 1 category. Hence, the answering respondent/BPCL proceeded

with the draw of Lots for candidates under Group 2 category on 17.06.2019, in which the petitioner was selected. Accordingly, he was sent intimation of selection and was also asked to submit all the necessary documents for further verification. Only after meticulously going through all the documents including land papers provided by the petitioner, his case was processed and he was issued the Letter of Intent (LOT) by the answering respondent/BPCL strictly in conformity with the said Brochure of 2018.

XIV. The said Special Leave Petition deserves to be allowed also because all the relevant documents received from the petitioner/ selected candidate were thoroughly scrutinized and only after that the Letter of Intent (LOI) was issued in his favour. It is also pertinent to mention that before issuance of the LOI, a compromise had been reached between Sh. Leela Dhar and Sh. Dinesh Kumar and the other co-owners of the offered land. Accordingly, Sh. Dinesh Kumar, prepared and submitted an affidavit mentioning the amicable out of court settlement of the dispute between the co-owners of the land offered for establishment of Retail Outlet/Petrol Pump by the petitioner. He also filed an application on 08.08.2019 before the Id. Civil Judge Arki, District Solan, Himachal Pradesh, for withdrawal of the pending Civil Suit. Subsequently, vide registered lease deed dated 20.12.2019, the subject land has been taken on lease by the petitioner from the co-owners, including Sh. Dinesh Kumar and Sh. Leela Dhar.

XV. The said Special Leave Petition deserves to be allowed also because the Court case on the subject land has been amicably resolved between the co-owners by way of amicable out of court settlement and only after that the LOI has been issued in favour of the petitioner. As a matter of fact, pendency of civil dispute in respect of offered land does not ipso facto debar the candidate from applying for retail outlet dealership. The affidavits from all the

co-owners were obtained as per Appendix III A of the said Brochure of 2018. Since the dispute was resolved and the court case was withdrawn, the land in question became free from any encumbrance and only after meticulous scrutiny of all the documents provided by the petitioner / selected candidate, his case was processed and has been issued the LOI by the answering respondent/BPCL absolutely in consonance with the said Brochure of 2018.

XVI. The said Special Leave Petition deserves to be allowed also because immediately on the receipt of the complaint from the respondent No. 5, the selection process of the petitioner was stopped and explanation and supporting documents, were sought for from the petitioner. Only after being satisfied that the offered land was suitable for establishment of a retail outlet and the court case had been resolved amicably, the answering respondent/BPCL proceeded to issue the LOI to the petitioner on 21.09.2019. In fact the petitioner /selected candidate provided to the answering respondent/BPCL all the relevant land documents, including consent from the co-owners which were checked by the concerned application scrutiny committee even prior to the complaint of the respondent No. 5. Moreover, any complaint against a candidate can be entertained only if it is made as per procedure prescribed under Clause 18 - Grievance Redressal System provided in the said Brochure of 2018.

XVII. The said Special Leave Petition deserves to be allowed also because the respondent No. 5 subsequently made a representation through the PG Portal, which was duly replied vide the answering respondent/BPCL's letter dated 10.08.2019. It is respectfully submitted that from the averments made in para 14 of his writ petition, it appears that the respondent No. 5 has misconceived and misunderstood the selection process described in the said Brochure of 2018. It is pertinent to mention that the Field

Verification of Credentials (FVC) is to be carried out for the selected with respect to the details provided by him in the application form. The FVC was duly carried out by the FVC with the guidelines laid down in the said Brochure of 2018 and only thereafter the petitioner was recommended for issuance of the LOI.

XVIII. The said Special Leave Petition deserves to be allowed also because before establishment of the retail outlet, it is required of the co-owners of the offered land to give their consent letter for establishment of the retail outlet prior to issuance of the LOI. The petitioner /selected candidate was called upon to provide all the relevant land documents, including consent affidavits from the co-owners of the land which were duly submitted by him before the Application Scrutiny Committee and only after the thorough verification of their authenticity, approval was sanctioned for issuance of the LOI in favor of the petitioner.

XIX. The said Special Leave Petition deserves to be allowed also because the averment of respondent No. 5 in para 18 of his writ petition that the whole process was to be completed within a period of 41 days from the date of draw of lots and that respondent No. 5 was very much eligible and has given all the requisite documents as required by the answering respondent /BPCL at the time of making application, was clarified by the answering respondent/BPCL in its reply dated 03.11.2020. It is submitted that the averment of the respondent No. 5 to the effect that the selection process was to be completed within 41 days is without any basis and is misconceived. It is further stated that the respondent No. 5 was not selected in the draw of lots for the subject location and therefore there was absolutely no occasion for him to submit any documents to the answering respondent/BPCL."

22. It would have been altogether a different situation had the Corporation shown outright favour to the appellant in the allotment of dealership. That does not seem to be in the present litigation.

23. What weighed with the High Court was some non-disclosure of information relevant for the purpose of allotment of dealership. Once the Corporation, a Public Sector Undertaking was convinced with the entire procedure undertaken by the appellant - herein, then there was no good reason for the High Court to disturb the allotment of dealership which was granted way back in the year 2020 at the instance of the respondent no. 5.

24. The BPCL having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

25. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is

floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relating to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.

26. In such circumstances, referred to above, we have reached the conclusion that the impugned judgment is not sustainable in law and deserves to be set aside and is, accordingly, set aside.

27. The appeal is allowed in the aforesaid terms.

28. Pending applications, if any, also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
18TH DECEMBER, 2024.