

Dinesh Kumar and anr Vs. Union of India and anr

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Court : Delhi

Decided On : Sep-10-2013

Judge : V. K. Jain

Appellant : Dinesh Kumar and anr

Respondent : Union of India and anr

Advocate for Def. : Mr. Jaswinder Singh

Advocate for Pet/Ap. : Mr. Brijender Chahar, Mr. Adesh Kumar Gill

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

10. 09.2013 W.P.(C) 5527/2013 & CM 12314-15/2013 DINESH KUMAR & ANR Through: Petitioner Mr. Brijender Chahar, Sr. Adv. with Mr. Adesh Kumar Gill, Adv. versus UNION OF INDIA & ANR Through: Respondent Mr. Jaswinder Singh, Adv. for R-1 CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

(ORAL) Vide letter dated 27.6.2013, GM(Retail), Meerut, Office of the respondent Bharat Petroleum Corporation Limited (BPCL) informed the District Supply Officer, Saharanpur, Uttar Pradesh that they had awarded ad hoc

dealership to Mr. Ashok Kumar (petitioner no.2 before this Court) in the name and style of M/s Ashok Filling Station at Village Ghunna, Teshil Maheshwari, District Saharanpur, Uttar Pradesh and requested him to issue diesel selling license in favour of the said firm. Vide subsequent communication dated 14.12.2004, the Meerut office of BPCL informed the GM (Retail), North of the said company that the aforesaid firm was not got the sale volume as projected in the feasibility report, because of the reasons specified in the communication and the land owner had been regularly seeking conversion of the aforesaid retail outlet to a regular outlet under the Landlord Linked Category so that the actual potential of the site could be adduced by giving credit in the market. The said office recommended the dealership under the Landlord Linked Category. The case of the petitioners is that the aforesaid outlet is being run through petitioner no.2 Mr. Ashok Kumar who is the nominee of petitioner no.1.

2. Apprehending cancellation of the said outlet, the petitioners filed W.P(C) No.2006/2007. The said petition, however, was dismissed as withdrawn on 6.8.2012. The petitioners filed an application for restoration of the said petition which, however, was dismissed with liberty to file a petition qua any fresh cause of action. The petitioners then filed W.P(C) No.5701/2012 impugning the advertisement dated 15.9.2011, by BPCL seeking to allot the site on which the petitioners are operating from the outlet. The said petition was also dismissed as withdrawn with liberty to approach the Court in case of fresh cause of action. Now another writ petition has been filed on the averment that BPCL had issued a letter to one Ms. Meenakshi to appear for interview on 3.9.2013 and it is holding interview for allotment of the site which the petitioners are running their outlet.

3. When this writ petition came up for hearing on 3.9.2013, it was pointed out to the learned counsel for the petitioners that (i) their outlet is situated in Saharanpur District of Uttar Pradesh, (ii) the Headquarter of BPCL is situated in Mumbai and even the second office of BPCL disclosed in the writ petition is of Noida, Uttar Pradesh and, therefore, this Court may not have territorial jurisdiction in the matter. The learned counsel took time to seek instructions. He, however, submits that the petitioners would like to press the writ petition before this Court alone. I accordingly heard the learned counsel on the issue of territorial jurisdiction of this

Court.

4. As noted earlier, the headquarters of the respondent - BPCL is situated in Mumbai though the said company does have office almost throughout the country including Delhi. The site where the petitioners are running their outlet is situated in Saharanpur District of Uttar Pradesh. The communication dated 27.8.2003 and 14.12.2004 both were issued from Meerut (Uttar Pradesh) office of BPCL. Therefore, neither any cause of action has arisen in the territorial jurisdiction of this Court nor is the headquarter or office dealing with the petitioners situated in Delhi. Even the communication dated 7.8.2013 issued to Ms. Meenakashi requiring her to appear before the Dealer Selection Committee for interview for the purpose of awarding retail outlet of BPCL at Village Ghunna, Teshil Maheshwari, District Saharanpur, Uttar Pradesh has been issued from Noida (Uttar Pradesh) Regional Office of BPCL. In these circumstances, it would be extremely difficult to accept the contention that Delhi High Court would have territorial jurisdiction in the matter merely because one of the offices of BPCL happens to be situated in Delhi. If the said contention is accepted, it would be possible to file such writ petition anywhere in the country since BPCL would have its office almost throughout the country.

5. Article 226 of the Constitution, to the extent it is relevant reads as under:

226. Power of High Courts to issue certain writs (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. It would thus be seen that this Court would have jurisdiction over any person who lives or the authority

which has its seat, in the territory of this Court. This Court would also have jurisdiction if the cause of action, wholly or partly arises within the jurisdiction of this Court, even if the seat of the authority or residence of the person concerned is not situated within the jurisdiction of this Court. BPCL being a company, the seat of the said company would either be placed where its headquarter is situated or in case the transaction subject matter of the writ petition has been entered into by some other office of the company, the place where such an office is situated. Admittedly, the head office of the petitioner company is not situated in Delhi. The transaction subject matter of this writ petition was also not entered into by the office of BPCL situated in Delhi. As noted earlier, the communication dated 27.6.2003 and 14.12.2004 were issued by the Meerut Office whereas the letter dated 7.8.2013 was issued by Noida Office of BPCL and both these places are situated in Uttar Pradesh. It would, therefore, be difficult to say that the respondent- BPCL has its seat in Delhi or that the cause of action for filing this writ petition arose, wholly or partly, within the jurisdiction of this Court.

6. The learned counsel for the petitioners contends that the earlier writ petitions having been entertained by this Court, the present writ petition would also be maintainable in this Court. I, however, find no merit in the contention. Both the earlier writ petitions were dismissed without going into the merit of the case and no view on the issue of territorial jurisdiction was taken by this Court. The learned counsel relies upon the IBP Co. Limited versus Nand Kishore Bajpai & Ors. [147(2008) DLT 764(DB). I, however, find no such proposition of this judgment which persuade me to hold that this Court has territorial jurisdiction to entertain the present writ petition.

7. The learned counsel appearing for the petitioners submits that the respondent BPCL has issued advertisement for allotment of the site of the petitioners pursuant to a policy of the government and, therefore, this Court would have territorial jurisdiction in this matter. I, however, do not find any challenge to any policy of the Union of India in this writ petition. The following are the only reliefs sought in the present writ petition: (a) issue a writ of certiorari thereby quashing /set aside the advertisement dated 15.9.2011, so far it relates to the petitioners issued by the respondent no.2. (b) issue another writ of prohibition thereby restraining the

respondents, their officials, agents, assignees etc from terminating/ cancelling the allotment of the retail outlet/ petrol pump under the name and style of M/s Ashok Filling Station, Village & PO Ghunna, Tehsil Maheshwari, District Saharanpur, Uttar Pradesh. (c) Issue another writ of prohibition thereby restraining the respondents, their officials, agents, assignees, etc. from allotting the same to anyone else. (d) Issue writ of mandamus thereby directing the respondent no.2 to execute the dealership agreement in favour of the petitioners in respect of the retail outlet in question (e) Issue a writ of mandamus, restraining the respondent no.2 from conducting the interviews for award of retail outlet dealership of BPC at Gunna Maheshwari, Saharanpur, pursuant to advertisement dated 18.9.2011. (f) Issue further writ thereby directing the respondents to restore the leased land to the petitioners in an eventuality of non grant of the aforesaid reliefs. No relief regarding any policy of the Government of India has been sought in the writ petition and the grievance of the petitioners is only against the advertisement issued by BPCL. It appears to me that the respondent no.1-Union of India has been impleaded as a party to the writ petition only with a view to create jurisdiction of this Court without there being any real grievance against it. It would be pertinent to note here that no particular guidelines/ directives of Union of India have even been referred in the writ petition.

8. For the reasons stated hereinabove, I find no merit in the writ petition and the same accordingly dismissed. There shall be no orders as to costs. V.K. JAIN, J
SEPTEMBER 10 2013/rd

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