

Anit Kumar Vs. Union of India and Another

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Court : Delhi

Decided On : Feb-06-2014

Judge : Manmohan

Appellant : Anit Kumar

Respondent : Union of India and Another

Judgement :

#12 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 1022/2010 & CM APPL. 2106/2010 ANIT KUMAR Through Petitioner Mr. Mobin Akhtar, Advocate versus UNION OF INDIA & ANOTHER Respondents Through Ms. Maneesha Dhir with Ms. Mithu Jain, Advocates for R-1 and 2. Mr. Anil K. Batra with Mr. Prins Kumar, Advocates for R-3 and 4. Date of Decision :

6. h February, 2014 % CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral) 1. Present writ petition has been filed with the following prayers:

a) Direct the respondent to conduct the interview for Retail Outlet in Delhi for petitioner under SC category as soon as possible. b) Direct the respondents to produce all the records like file noting, cancellation order of the scheme if it has been done by the respondents. c) Direct the respondent No.4 to produce the file No.LIII/8/5(308) by which the land has been allotted to the respondents No.1 to 3.

2. d) Cost of this writ petition and the harassment caused by unnecessary delay in conducting the interview and misguiding to provide the correct information. e) Any other relief this Honble Court deem fit and proper in the interest of justice.

Mr. Mobin Akhtar, learned counsel for petitioner submits that the petitioner by way of present writ petition only prays for conduct of an interview for allotment of a retail petrol pump outlet under the Corpus Fund Scheme and he has no objection if the retail outlet is allotted to him as and when land is available with the respondent.

3. He submits that by not holding the interview, the respondents have acted in violation of their own guideline of conducting an interview within 145 days from the date of advertisement. He further submits that refund of the application fee by the respondents is in violation of the advertisement dated 02nd July, 2004 wherein it had been specifically stated that fees paid by the applicant would be non-refundable.

4. He also draws this Courts attention to the Circular dated 6th September, 2006 which deals with operation of retail outlets of oil marketing companies on Company-Owned-Company-Operated (COCO) basis. The relevant portion of the said Circular reads as under:

I am directed to state that in order to provide commercial freedom to the public sector oil marketing companies (OMCs), postAdministered Pricing Mechanism regime in the petroleum sector, it was decided by this Ministry vide its letter of even number dated 9.9.2003 that the OMCs would formulate their own policy and procedure for operating those retail outlets, where sites had been procured and facilities created, or which had been decommissioned because of termination of dealership, on Company-OwnedCompany-Operated (COCO)/ ad hoc basis till regular dealers were appointed. However, this could not be formulated by the OMCs uniformly on industry basis so far..... xxx xxx

xxx (vi) The phasing out of temporary COCO ROs preferably within a year may be completed as follows: The temporary COCO ROs, may first be offered and handed over, subject to suitability, to the pending Letter of Intent (LOI)holders under the following categories in the order these are indicated:(a (b) (c) 5. Special Scheme

(Operation Vijay--Kargil) the Kargil allottees. Discretionary quota scheme. Corpus Fund Scheme (SC/ST category of dealerships, widows and women above 40 years of age without earning parents)."

Mr. Akhtar further states that as of today eight retail outlets are being operated on COCO basis.

6. Mr. Akhtar also states that one Ms. Jaya Rashmi has been allotted a letter of intent under SC category in pursuance to the aforesaid advertisement.

7. On the other hand, Ms. Manisha Dhir, learned counsel appearing for respondents-Union of India and Ministry of Urban Development has drawn this Courts attention to the affidavit filed by respondent-Ministry on 6th March, 2013. In the said affidavit it is stated that Ms. Jaya Rashmis request for allotment of retail outlet was rejected by the Ministry under intimation to respondent-Bharat Petroleum Corporation Ltd. (for short BPCL) vide letter dated 31st May, 2005.

8. Along with the said affidavit, a letter dated 14th December, 2010 of Land and Development Office is enclosed wherein it is stated that no vacant land in Delhi is available for allotment of a retail outlet under the corpus fund scheme.

9. Mr. Anil K. Batra, learned counsel for BPCL has also drawn this Courts attention to the Government of Indias advisory dated 9 th August, 2005 as well as Government of India, Ministry of Petroleum and Natural Gas letter dated 18th August, 2008 wherein the oil companies have been advised not to issue advertisement unless there is firm commitment about procurement of land.

10. Having heard learned counsel for the parties, this Court is of the view that the plea of discrimination is not made out as no petrol pump has been allocated to Ms. Jaya Rashmi under the Scheduled Caste category.

11. The plea with regard to the Circular dated 06th September, 2006 has not been taken in the writ petition and consequently, the respondents have had no opportunity to dealt with the same. In any event, the petitioner has not been able to point out that any land has been made available with the respondents in pursuance to the aforesaid Circular for allocation under the Corpus Fund Scheme.

Accordingly, the said argument is devoid of any merit.

12. This Court is also of the opinion that petitioner has no legal vested right to seek a direction to respondents to conduct an interview of retail outlet in Delhi as admittedly the procedure initiated by the BPCL by way of publication of Advertisement dated 2nd July, 2004 for appointment of retail petrol pump outlet dealer in Delhi under Scheduled Caste category had been withdrawn/cancelled mid way. The BPCLs letter dated 25th April, 2008 directing refund of the application fee reads as under:

This is with reference to your application submitted in response to our advertisement dated 02.07.2004 published in Nav Bharat Times & Hindustan Times in respect of notice for appointment of Retail Outlet Dealers in Delhi. Due to non-availability of land in Delhi for development of Retail Outlet in spite of our best efforts, it has been decided to withdraw / cancel the notice for appointment of Retail Outlet Dealers in Delhi issued in Nav Bharat Times & Hindustan Times on 02.07.2004. We, therefore, enclose a cheque No.015855 dated 26.03.2008 for Rs. 500/- as refund towards application fee submitted by you along with application for location/s Delhi 23. We sincerely regret the inconvenience caused to you.

13. The legal position with regard to the advertisement is very well settled. In the present instance, the respondents by floating an advertisement had only invited offers for appointment of retail petrol pump outlet and in pursuance thereto the petitioner had only submitted his offer. No contract was concluded between the parties. It is pertinent to mention that no condition prohibiting the respondents from cancelling the advertisement was shown to this Court. Consequently, this Court is of the view that it was always open to the respondents to withdraw its own advertisement midway.

14. Further, the refund of the application fee is an action which enures to the benefits of the petitioner and he cannot raise a grievance with regard to the same.

15. This Court is also of the view that cancellation/withdrawal by BPCL of the aforesaid Advertisement mid way is founded on a germane ground inasmuch as no land in Delhi is stated to be available for allotment of petrol pump by the land

owning agencies under the corpus fund scheme. Consequently, present petition and application are dismissed. MANMOHAN, J FEBRUARY06 2014 rn

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