

# **SUPREME COURT OF INDIA**

Sunita Gupta

Vs.

Union of India

C.A.No.4681 of 2014

(Gyan Sudha Mishra and V.Gopala Gowda JJ.)

22.04.2014

## **JUDGMENT**

### **V.GOPALA GOWDA J.**

1. Leave granted.
2. The present appeal arises out of the impugned judgment and order dated 21.07.2009 passed by the High Court of Judicature at Allahabad in W.P. No. 5199 of 2007 whereby the High Court dismissed the writ petition filed by the appellant on the ground that the orders dated 27.7.2006 and 26.12.2006 passed by the respondents do not suffer from any infirmity, illegality or error in law and they are perfectly justified and in accordance with the guidelines prescribed in this regard and therefore the same do not require interference by the High Court.
3. The facts in brief are stated hereunder:

The Hindustan Petroleum Corporation Limited issued an advertisement in the newspaper Amar Ujala dated 20.7.2005 inviting applications for opening its retail outlet in the said location in the category of open- W(women) by 22.8.2005, and in pursuance of the above advertisement, the appellant submitted an application on 18.8.2005 along with all the relevant documents and demand draft of Rs.1,000/- for grant of retail outlet. Thereafter, the team of

the Corporation visited the appellants site and submitted its report to the office. The Corporation after being satisfied with the location of the land, called the appellant for an interview vide letter dated 10.2.2006 and she appeared for the interview on 3.3.2006 before the selection committee constituted by the respondent. On the same day, a list was displayed on the notice board in which the appellants name was first on the list and she was shown as selected. The appellant was waiting for a letter of intent but then on 7.8.2006 she received a registered letter dated 27.7.2006 issued by the Deputy General Manager in-charge North Zone, wherein it was mentioned that the respondents decided to set aside the entire interview and selection and called for a fresh interview to be conducted. The appellant got 35 marks awarded for Land and infrastructure as indicated in the letter dated 27.7.2006 but it was mentioned that the selection committee wrongly awarded 35 marks as zero marks should have been awarded for land because no consent was obtained from the owners of the land.

4. Aggrieved by the same, the appellant filed Writ Petition No.5199 of 2007 praying for a writ of certiorari to quash the orders dated 27.7.2006 and 26.12.2006. The relief of writ of mandamus has also been sought to direct the respondents for issuing a letter of intent to the appellant in pursuance of her selection dated 3.3.2006 for retail outlet dealership at Islam Nagar-Bisauli Marg, and further to direct the respondents to issue necessary HSD and MSD for her retail outlet dealership. Prior to this, the appellant filed W.P No. 56740 of 2006 praying for quashing of order dated 27.7.2006. The High Court, vide order dated 12.10.2006, directed the appellant to file a fresh comprehensive representation along with the certified copy of the order as well as a complete copy of the writ petition with all Annexures before the concerned competent authority within two weeks from the date of the order and on such a representation being filed as stipulated, the concerned competent authority shall decide the same within eight weeks of the receipt of the representation by means of a reasoned order. Subsequent to this, vide order dated 26.12.2006, the respondent-Corporation constituted a review committee and stated that the land held by the appellant is jointly held in her husbands name along with four others and consent letter from her husband and his father have been obtained, but not from the other owners. Accordingly, the appellants representation was held to be disposed off in compliance of the order of the High Court dated 12.10.2006. The appellant being aggrieved by the aforesaid orders has filed the present appeal, urging certain legal and factual grounds.

5. The learned counsel for the appellant has contended that the decision to cancel the selection of the appellant is void for breach of principles of natural justice as the appellant was not afforded an opportunity of hearing by the so-called Review Committee and the same is ultra vires of Article 14 of the Constitution of India. It was further contended that there is no whisper of the Review Committee in the guidelines and therefore it did not have the jurisdiction to sit in appeal over the selection. It was argued that the land map issued by the Consolidation Officer which was annexed by the appellant along with her application form, showing the plot in question, has been divided into three parts, out of which the middle part belongs to the appellant and that the husbands and father-in-laws consent was there for the same and also, the land required was only 900 sq.m. but the appellant had proposed land of an area of 2980 sq.m. and as such there was no occasion or requirement to submit the consent letters of other co-owners when proposed land of appellants husband was in excess of the required land. It was further argued that the order passed by the respondent no.3 is bad in law as the High Court vide its order dated 12.10.2006 directed the competent authority of the Corporation to decide the representation of the appellant and not respondent no.3. The appellant also obtained the consent letters from all the co-owners on 11.04.2006.

6. The learned counsel for the respondent on the other hand, contended that the appellant did not submit complete documents as required and failed to submit the consent letters of the co-owners of the proposed land, as a result of which the selection of the appellant was cancelled by order dated 27.7.2006 and finally decided on 26.12.2006 as the appellant overlooked the document dated 10.2.2006 which demonstrated that all the documents were to be placed before the interview board. The condition of submission of consent letters of all co-owners of the land was part and parcel of the conditions mentioned in the advertisement dated 20.7.2005, a mandatory requirement under Clause 14 of the dealership guidelines and it was apparent from paragraph 13 of the advertisement as well as in the application form itself. It was submitted that since the consent letters of the co-owners of the land were not submitted along with the application form, the selection was rightly cancelled and 35 marks awarded to the appellant under the parameter of land and infrastructure facility was wrong and the same was rectified by awarding zero marks. It was further submitted that the order dated 27.7.2006 was passed after affording full opportunity of hearing to the appellant. It was urged that the appellant has wrongly challenged the impugned orders as a violation of her fundamental rights.

7. We have heard the rival legal contentions for the parties. The appellant was initially found eligible and was called for the interview. After the interview, she was shown as selected and the visit to the land mentioned along with the application for the dealership was accepted as sufficient and 35 marks were awarded in that regard. Subsequently, it was changed to zero, as per clause 12 of the guidelines, on the ground that consent letters of the co-owners were not submitted before the due date along with the application but much later and as per the said clause, no addition/deletion or alteration will be permitted in the application once it is submitted.

In our considered viewpoint, this approach of the respondents was erroneous as the application form of the appellant was initially accepted along with the consent letters of her husband and father-in-law to whom the land belonged and the site visit was completed satisfactorily and she was called in for the interview. After the interview, her name was on top of the results list and she was shown as selected. She was awarded 35 marks under the head Land and Infrastructure. Later, the respondents made an about turn and declared that she was ineligible as she had given the consent letters of the co-owners after the due date and hence, the marks awarded under Land and Infrastructure were reduced to zero. Hence, the review order passed by the respondents is bad in law as the appellant was originally found to have fulfilled all the criteria for the land offered which was greater in area than the land required as per the rules and guidelines of the respondent Corporation. The review committee, on a mere technicality, denied the appellant her right to the dealership, after it was previously declared that she was selected for the same. It is evident that the documents the appellant provided at first were seen to be sufficient, and the fact that she chose to give some additional documents to buttress her application cannot be a ground to nullify her appointment, given that clause 14, Preference for applicants offering suitable land of the HPCL Guidelines for Selection of Retail Outlet Holders details that the land owned by the family members namely spouse/unmarried children will also be considered subject to the consent of the concerned family member. Since, in this case, the land was owned by her husband and father-in-law, she gave their consent letters along with the application form within the due date. We feel that the appellant has sufficiently met the conditions of the application and the respondent Corporation has erred in subsequently cancelling the appointment on a flimsy technicality and has

acted in an arbitrary and unfair manner. It is relevant to quote the case of Mahabir Auto Stores & Ors. v. Indian Oil Corporation and Ors.[1], wherein it was held that -

Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work.

For the reasons stated supra, we hold that the respondent- Corporation, being an instrumentality of the State has acted unfairly in the present case in cancelling the selection of the appellant for the retail outlet dealership in question and not issuing the letter of intent to her. The appellant has competed for the appointment and was selected fairly after satisfying the requirements. Therefore, we direct the respondents to restore the appointment to the appellant within six weeks from the date of receipt of the copy of this order. The appeal is accordingly allowed on the above terms with no order as to costs.

[1] (1990) 3 SCC 752