

HINDUSTAN PETROLEUM CORPN. AND ANR.

A

v.

CHANDER BHAN AND ANR.

SEPTEMBER 5, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

B

Public distribution—Petroleum products—Retail outlet dealership—Allotment of—Advertisement by Oil Corporation—Applicant applied in open category mentioning about availability of a particular site—Letter of intent given—Subsequently another site allotted to the Corporation for running Company Owned Company Operated outlet by Urban Development Authority—The said outlet reserved for SC/ST category as per changed Government policy—Claim of applicant for allotment of outlet on the basis of letter of intent—Held: not eligible since he had neither applied for the site allotted by the Development Authority nor letter of intent given in respect of that site—Also because subsequently the outlet was reserved for SC/ST category.

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Advertisement was issued by the appellant-Corporation inviting application for appointment as retail outlet dealer. The invitation was for the open category. Respondent No. 1 applied for the same in open category stating in his application that a suitable site at Gurgaon was readily available with him. A letter of intent was given to respondent No. 1 approving to run a retail outlet dealership at the said site. Thereafter Haryana Urban Development Authority issued an advertisement offering land to Nationalized Oil Companies. A plot at Sector 53, Gurgaon was allotted to the appellant-Corporation. The outlet at Sector 53 was a Company Owned Company Operated outlet. According to a subsequent policy decision of Government of India the said outlet was reserved for Scheduled Caste/Scheduled Tribe category. Respondent No. 1 staked a claim that he was entitled to be allotted the outlet in terms of letter of intent issued to him. He filed Writ Petition. High Court allowed the petition on the ground that the Corporation had acted on behalf of respondent No. 1 for getting the allotment of land from the Development Authority. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1. The factual position of the case goes to show that the

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- A** application of respondent No. 1 for retail outlet was in respect of a different site and not the one allotted by the Development Authority. So far as the plot at Sector 53 is concerned, respondent No. 1 was not in picture. The outlet was to be run on Company Owned Company Operated basis. As borne out from the document brought on record, respondent No. 1 was not eligible for allotment of the outlet at the site in question. Though initially it was for the open category, later on it was earmarked for the Scheduled Castes and Scheduled Tribes reserved category. Even though reference has been made to the letter of intent issued in favour of respondent No. 1, that cannot in any way assist respondent No. 1 because of the nature of allotment made by the Development Authority and the directives of Ministry of Petroleum and Gas.
- B**
- C** There was no agreement between the Corporation and respondent No. 1 for allotment of the site at Sector 53, to respondent No. 1. [741-D-F]

- D** 2. The letter of allotment of the Development Authority which refers to the letter of intent cannot mean the letter of intent issued in respect of another plot of land. No reference is made to respondent No. 1 even by implication in the Development Authority's letter of allotment. Obviously it refers to a letter of intent meant to be issued after due allotment. The High Court proceeded on erroneous premises to hold as if there was existing agreement between Corporation and respondent No. 1, in respect of the plot in question. The High Court's conclusion that Corporation was acting on behalf of respondent No. 1 and/or that the allotment was in favour of respondent No. 1 is clearly contrary to materials on record. [741-G-H; 742-A-B]
- E**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3936 of 2006.

- F** From Judgment and Order dated 17.1.2006 of the High Court of Punjab and Haryana at Chandigarh, in C.W.P. No. 12669/2005.

V.A. Bobde, Sanjay Kapur, Rajiv Kapur, Shubhra Kapur and Arti Singh for the Appellants.

- G** Mukul Rohtagi, Vijay Jhanji, Sanjeev Bhansal and Yash Pal Dhingra for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

- H** Appellants call in question legality of the judgment rendered by a

Division Bench of the Punjab and Haryana High Court allowing the writ petition of the respondent No.1 who had filed the writ application before the High Court seeking a declaration that the advertisement issued by the appellants on 13.7.2005 for allotment of retail outlet dealership of the appellant No.1 (hereinafter referred to as the 'Corporation') at Sector 53, Gurgaon was illegal. Further prayer was for a direction to the Corporation to allot the said retail outlet to the respondent No.1 purportedly on the basis of a letter of intent dated 24.6.2003. The High Court held that the writ application deserved to be allowed and quashed the advertisement so far as it related to appointment of dealer for retail outlet at the site in question i.e. Sector 53, Gurgaon. Further direction was given to allot the said outlet dealership to the respondent No.1.

Background facts as projected by the appellant in a nutshell are as follows:

On 19.8.2000 an advertisement was issued by the Corporation inviting application for appointment as dealer in respect of allocations at several places including a site at Gurgaon. The present dispute relates to the Sr. No.3 i.e. allocation for Delhi Jaipur Road Town Area, Gurgaon Revenue District, Gurgaon and it was for the open category. The nature of dealership was company owned. The first paragraph of the advertisement indicated that the appointment of dealers was of the various categories for company owned retail outlets on site owned by the Corporation/leased to the Corporation/dealer owned outlet on site/super structure to be leased to the Corporation by the dealers selected. In the advertisement it was indicated at paragraph 2 that for dealership advertised for locations other than those reserved for scheduled castes category the applicant was required to furnish, along with the application, details of land which he/she would make available for the retail outlet. In the process for assessment of the evaluation of suitability, 35 marks were allotted out of 100 for capability to provide infrastructure and facilities (land, godown, showroom etc.). Undisputedly the respondent No.1 applied in the open category. On 24.6.2003 a letter of intent was issued to the respondent No.1 whereby approval was given to run a retail outlet dealership at district, Gurgaon. In the application filed by the respondent No.1, he had stated that the land was readily available and attached rough sketch details. Because he answered in affirmative to the question as to whether he had suitable site readily available he was allotted 35 marks. In respondent No.1's letter dated 27.8.2003, he had given the details of the description of the land as follows:

A “Location-Gurgaon-Jhajjar Road-at Village Chandu, Distt. Gurgaon-on State Highway. Area 150 x 198 sq-ft.”

The position was reiterated even in a writ petition which was filed earlier before the High Court i.e. CWP No. 7960 of 2004 wherein specific reference was made to the situation of the land at villages Siwana Moja, Gurgaon-Jhajjar Road (site at Chandu Budeda). While the matter stood thus, Haryana Urban Development Authority (in short ‘HUDA’) issued an advertisement offering land to Nationalized Oil Companies, Government Departments and State Government Undertakings. One of the Sectors which was allotted to the Corporation was Sector 53, Gurgaon and the size of the site was 30.30 mtrs. There was no letter of intent issued by the Corporation in respect of said land to the respondent No.1, as the letter of intent related to another site and not one at Sector 53. Taking advantage of mention about issuance of letter of intent to respondent No.1, in one communication, he staked a claim that he was entitled to be allotted the outlet in terms of the letter of intent. The allotment letter was not in favour of respondent No.1, but was in favour of the Corporation. It is, therefore, submitted that the High Court clearly missed these relevant factors and came to an abrupt conclusion that respondent No.1 was entitled to allotment pursuant to the letter of intent dated 24.6.2003. It is pointed out that the outlet at Sector 53, Gurgaon was a Company Owned Company Operated (in short the ‘COCO’) outlet and it was reserved for the scheduled castes/scheduled tribe category. A policy decision was taken by the Government of India, Ministry of Petroleum and Natural Gas in this regard. Though initially the Corporation had advertised indicating the outlet to be of open category, subsequently in view of the changed policy decision a corrigendum was issued and the outlet is earmarked for the Scheduled Castes/Scheduled Tribes category. It is pointed out that the High Court proceeded on the basis as if the writ petitioner-respondent No.1 had applied for allotment of the land which was allotted to him. On the contrary HUDA’s advertisement clearly indicated that the same was meant for the Nationalized Oil Companies. The High Court erroneously proceeded on the basis as if it was conceded by the Corporation that the application was made by the respondent No.1 and allotment was made to it. In essence it is submitted that the High Court had lost sight of the relevant factors and, therefore, the impugned judgment deserves to be set aside.

In response, learned counsel for the respondent No.1 submitted that at all stages Corporation accepted that a letter of intent was issued for a retail outlet at Gurgaon. Though the respondent No.1 offered the land as is accepted

by the Corporation, No Objection Certificate (in short the 'NOC') was applied in the name of the Corporation as ultimately the land was to be leased out by the respondent No.1 to the Corporation. While Corporation's request for NOC was pending, HUDA came out with the advertisement. Corporation led the respondent No.1 to believe that the Corporation was making the application on behalf of the respondent No.1. It is clearly indicated in the letter of allotment by HUDA that if the letter of intent is not converted to regular dealership, the allotment will be cancelled. It is submitted that the reference to letter of intent was in respect of respondent No.1 as no other letter of intent had been issued. The intention was all along to allot the outlet to the respondent No.1. After allotment of land by HUDA, in between some powerful persons started manipulating and the retail outlet is now presently being run allegedly on contract basis by one Smt. Krishna Singh who is none other than wife of the principal Secretary of the State. She is not the holder of any letter of intent. If the contractual arrangement was to be entered into, obviously respondent no.1 should have been the first choice.

The factual position as detailed above goes to show that the application of the respondent No.1 for retail outlet was in respect of a different site and not the one allotted by HUDA. So far as the plot at Sector 53 in Gurgaon is concerned, respondent No.1 was not in picture. The outlet was to be run on COCO basis. As borne out from the document brought on record clearly, respondent No.1 was not eligible for allotment of the outlet at the site in question. Though initially it was for the open category, later on it was earmarked for the Scheduled Castes and Scheduled Tribes reserved category. Even though reference has been made to the letter of intent issued in favour of respondent No.1, that cannot in any way assist the respondent No.1 because of the nature of allotment made by HUDA and the directives of Ministry of Petroleum and Gas. There was no agreement between the Corporation and respondent No.1 for allotment of the site at Sector 53, Gurgaon to the respondent No.1.

Much emphasis has been laid by learned counsel for respondent No.1 on the letter of allotment of HUDA, which refers to the letter of intent. Obviously the letter of intent cannot mean the letter of intent issued in respect of another plot of land. No reference is made to respondent No.1 even by implication in HUDA's letter of allotment. Obviously it refers to a letter of intent meant to be issued after due allotment. The High Court proceeded on erroneous premises to hold as if there was existing agreement between Corporation and respondent No.1, in respect of the plot in question. The High

- A Court's conclusion that Corporation was acting on behalf of the respondent No.1 and/or that the allotment was in favour of respondent No.1 is clearly contrary to materials on record. The High Court's impugned judgment is clearly indefensible and is set aside. However, it would be appropriate for the Corporation to take immediate steps to give effect to the advertisement dated 13.7.2005 and complete the process as early as possible. If so felt necessary,
- B fresh advertisement can be issued at the earliest taking note of changed factors if any taking place, after issuance of the notification. It would be in public interest to complete the process of selection at the earliest to avoid unnecessary criticism as is leveled in the present case. We make it clear that we have not expressed any opinion about the acceptability of the criticism.
- C The appeal is allowed but in the circumstances without any orders as to costs.

K.K.T.

Appeal allowed.