

Jammu & Kashmir High Court

Sonika Gupta vs Bharat Petroleum Corporation ... on 17 January, 2023

63

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 65/2023
CM No. 162/2023

Sonika Gupta

.....Petitioner(s)

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Jattan Singh Gill, Advocate

Vs

Bharat Petroleum Corporation Ltd. and
others

.....Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER

17.01.2023 Heard learned Sr. Advocate for the petitioner. The operative facts of the case are that the respondent no. 1 came to grant installation of a petrol pump in the name of M/s Shree Mukhtanand Auto Aids, the running of which was to be a joint venture of the proforma respondent nos. 1 & 2. The agreement to this effect between the respondent no. 1 and the proforma respondent nos. 1 & 2 is dated 12.04.2002. The allocation of petrol pump outlet was on licence basis for a period of 15 years as provided in the said agreement.

Acting upon the said agreement, the proforma respondent no. 1 & 2 came to set up the petrol pump at the site of a plot situated in khasra no. 209 situated at village Nawabad, Canal Road, Near Guest House at Talab Tillo Road, Jammu. The plot area upon which the said petrol pump came to be set up is 13612.50 sq.ft. The use and occupation of this plot of land for housing the petrol pump was on the basis of a registered lease-deed dated 01.05.2002 made by the proprietors of the plot as being the lessors in favour of the respondent no. 1. Of the three lessors, the two lessors were the proforma respondent nos. 1 & 2 and the third one being Smt. Santosh Gupta. The lease to the effect was for a period of 40 years and by that count the lease is still in currency.

A course of litigation came to take place between the proforma respondent nos. 1 & 2 on the one hand and the respondent no. 1 on the other hand during the currency of the licence period for running of the petrol pump outlet.

Against the orders passed by the civil courts, the matter came to reach this Court in the form of OW104 no. 131/2016 and OW104 no. 132/2016 titled "M/s Shree Mukhtanand Auto Aid and others Vs Bharat Petroleum Corporation Ltd. and others" which resulted in passing of a judgement dated 08.03.2022 whereby the appellate order passed by the civil appellate court came to be set aside and the order dated 19.09.2014 passed by the trial Court of learned Munsiff Jammu came to be upheld. In terms of an order dated 19.09.2014 passed by the trial Court of learned Munsiff Jammu, the respondent no. 1 was restrained from terminating the licence of M/s Shree Mukhtanand Auto Aids so run in the name and on behalf of the proforma respondent nos. 1 & 2.

Against the said judgement dated 08.03.2022 of this Court in the aforesaid OW104 no. 131/2016 and OW104 no. 132/2016, a Special Leave Petition (SLP) came to be preferred before the Hon'ble Supreme Court of India which resulted in its disposal in terms of judgment dated 09.12.2022.

It is by reference to this judgment of the Hon'ble Supreme Court of India that the petitioner has a purported basis for coming forward with the present writ petition before this Court. The actual licence period of 15 years for running the petrol pump in favour of M/s Shree Mukhtanand Auto Aid and the proforma respondent nos. 1 & 2 expired in the year 2017 but the petrol pump continued to be run at the very same site.

During the currency of the licence period, the proforma respondent nos. 1 & 2 had taken a back seat in carrying out the running of the petrol pump and it was the lessor no. 3 i.e. Smt. Santosh Gupta, who on the basis of financial investment from her end came to run and manage the petrol pump on the basis of a deed made to the effect on 27.06.2003. Thus, in a manner Smt. Santosh Gupta was taken in as a financial partner by the proforma respondent nos. 1 & 2. The fact of Smt. Santosh Gupta having come into scene in running and operating the petrol pump was to the notice of the respondent no. 1 and that is the reason that the respondent no. 1 had even objected to the said course of development of induction of Smt. Santosh Gupta by virtue of a communication dated 15.12.2003 followed by a purported threat to terminate in terms of a communication dated 18.05.2004 but the fact remains that despite this purported threat to terminate, the respondent no. 1 put up with the status of things without bringing an end to the running of the petrol pump at the site in the name of M/s Shree Mukhtanand Auto Aid.

Before the Hon'ble Supreme Court of India a question cropped up as to whether the injunction granted by the civil courts which was restored by this Court in terms of its judgment 08.03.2022, could continue post the expiry period of dealership in the year 2017 and on that basis the judgement dated 08.03.2022, came to be set aside by the Hon'ble Supreme Court of India with a time frame of six weeks given to M/s Shree Mukhtanand Auto Aid to vacate the premises. However, the Hon'ble Supreme Court of India spared an observation in its order dated 09.12.2022 that in case an application is moved for regularization in view of the changed policy in place of the respondent no. 1, the same to be considered on its merits.

It is with reference to the petitioner's claim in the context of 2018 Policy of the respondent no. 1 that the said observation of the Hon'ble Supreme Court of India in its order is aimed at, notwithstanding the fact that on behalf of the respondent no. 1 the Hon'ble Supreme Court of India was apprised that the application under 2018 Policy had already been rejected by it but which position was however contested. The Hon'ble Supreme Court of India nevertheless kept the exercise alive for the respondent no. 1 to consider and take decision afresh.

Following the decision of the Hon'ble Supreme Court of India, the petitioner came to submit a formal application to the respondent no. 1's Territory Manager at Jammu, duly received in his office on 17.12.2022 whereby in terms of Policy Guidelines of 2018, the petitioner laid a claim to get the said petrol pump regularized in her name and for this the petitioner related her claim already pending with the respondent no. 1 in terms of the timeline given as per the Policy Guidelines of 2018.

The Policy Guidelines of 2018 came into being on the basis of Ministry of Petrol and Natural Gas, Govt. of India letter dated 04.06.2018 in terms whereof Guidelines for re-constitution of RO/SKO-LDO dealership have been framed and as per the petitioner her claim is fully covered to be accorded a favour at the end of the respondent no. 1. It is by reference to this Policy Guidelines of 2018 read with the parting observations of the Hon'ble Supreme Court of India mandating the respondent no. 1 to consider the claim for renewal of the dealership in view of the said Policy Guidelines of 2018 on its merit that the petitioner has come forward with the present writ petition asking for a writ of mandamus commanding the respondent no. 1 for considering and taking decision with respect to an application dated 17.12.2022 read with the application dated 24.08.2018 of the petitioner for regularization of the dealership of retail outlet (petrol pump) being operated by the petitioner at the site by regularization and execution of a fresh RO/SKO-LDO dealership in terms of Policy Guidelines of 2018 and not to allow the same very petrol pump being operated by the petitioner to any other person/agency.

Prima facie there cannot be a denial to the fact from the end of the respondent no. 1 that the petitioner has emerged on the scene to the very notice of the respondent no. 1 in terms of her claim lodged way back in April, 2018 and upto date the running of the petrol pump in reference is by the petitioner.

In the aforesaid facts and circumstances of the case, prima facie case is made out.

Issue notice to the contesting respondent nos. 1 & 2. The petitioner shall furnish registered postal covers within a period of ten days, whereupon the Registrar Judicial Jammu to issue notice to the respondents.

In the meantime, in the facts and circumstances of the case, this Court is of the prima facie opinion that so far as the respondent no. 1 is concerned, its financial interest in the matter of running of the petrol pump which in the present case is being run by the petitioner suffers no risk and as such this Court sees no situation of any prejudice being caused to the respondent no. 1's interests in case the running of the petrol pump by the petitioner is allowed to remain in operation following the

mandate of the direction of the Hon'ble Supreme Court of India which is awaiting to be carried out at the end of the respondents. Hence the respondent no. 1 is directed not to disturb the running of the petrol pump by the petitioner till the next date of hearing before the Bench. This order is however subject to objections from the other side.

List this case on 06.03.2023.

(Rahul Bharti) Judge Jammu 17.01.2023 Muneesh