



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**THE GENERAL MANAGER
BUSINESS NETWORK PLANNING (RETAIL)
BHARAT PETROLEUM
CORPORATION LIMITED & ANR. ... APPELLANT(S)**

P. SOUNDARYA **...RESPONDENT(S)**

SANJAY KAROL, J.

Leave granted.

2. This appeal is filed at the instance of Bharat Petroleum Corporation Limited¹ assailing the judgment and order dated 14th

¹ Hereinafter “BPCL”

December, 2023 passed by the High Court of Judicature at Madras in W.A.No.866 of 2023, which confirmed the judgment and order of the learned Single Judge dated 8th February 2023 in W.P.No.3641 of 2023.

3. The issue before the Courts below pertains to the grant of a retail outlet dealership of BPCL to the respondent, wherein the respondent had apparently, mistakenly shown herself to belong to Group 2 - those who have a “firm offer” for a suitable piece of land, as opposed to Group 1 – those who already possess suitable land. When she attempted to have the same rectified, BPCL took no action and hence, recourse to the law had to be taken.

4. The brief facts required to be noticed in the adjudication of an appeal are that BPCL issued an advertisement for the selection of a retail outlet in November 2018. Annexure P-2 reveals that the group type reflected against the name of the respondent, which was at serial No.4, was Group 2. On realizing the error, the respondent sent clarificatory letters on 12th February 2019, 18th February 2019 and 28th July 2020, requesting that her candidature be considered under Group 1. Given that there was no response to these representations, the respondent preferred Writ Petition No.2965 of 2021, which was disposed of *vide* order dated 18th March 2021, wherein it was observed that her representations be considered in accordance with law, within four weeks from the date of receipt of the order. Said representations

were rejected by BPCL through a communication dated 5th April, 2021, giving the following reasons:

- “It may be noted that the Selection Guidelines clearly prescribes that applicant should fill up the details in Application form diligently/carefully as these details will be picked up automatically in the relevant field on the application form and that there will be no further scope for editing after the registration process is completed.
- The selection of candidate is based on the Group indicated by the applicant in On-line application and the process is online. In your on-line application, you have mentioned the group of applicant as Group 2. The list of candidates for the location as per priority Group-I, Group-II and Group-III is available in the portal www.petrolpumpdealerchayan.in is available in the portal www.petrolpumpdealerchayan.in and your status is showing as Group 2 applicant.
- Your request for reclassify your applicant as Group I may not be considered in view of extant selection guidelines. Draw of lots was already held for subject location on 06.02.2019 among the Group I applicants and selection process is underway.”

5. The respondent then filed Writ Petition No.13355 of 2021, which was disposed of *vide* order dated 10th January 2022, recording as follows :

“4. The learned counsel appearing for the respondents further submitted that thereafter S. Rasan was selected and he was directed to submit his documents on 10.01.2020 and land verification and field verification of credentials are also completed and letter of intent will be issued.

5. The learned counsel appearing for the petitioner submitted that the said S. Rasan is also ineligible and further submitted that till date, letter of intent was not issued in favour of S. Rasan. Hence, the Court may issue direction to the respondents to consider the petitioner's application in Group I.

6. In response, the learned counsel appearing for the respondents submitted that if the said S. Rasan is found to be ineligible, all applications under Group II will be considered and if no other eligible person is available in Group II, the petitioner's application will be considered in the manner known to law.

7. If the said S. Rasan is found to be ineligible, the respondents are directed to consider the applications under Group II (eligible candidate under Group I) and pass appropriate orders."

6. BPCL then issued a letter dated 14th November 2022 inviting the respondent to participate in the draw of lot for retail outlet dealership scheduled to take place on 24th November 2022 at the given location and time. Since there was no response in accordance with the order passed in W.P.(C)No.13355 of 2021, the respondent once again approached the High Court by filing Writ Petition No.3461 of 2023 praying for setting aside the communication dated 31st January 2023 and awarding the dealership to her, treating her to be a candidate under Group 1.

7. The learned Single Judge observed that since the advertisement for Retail Outlet Dealership was specifically meant for persons belonging to the Scheduled Caste Category, BPCL was obligated to "*extend a helping hand, even if there are*

some defects in the application. They must guide all those who submit their applications.” Referring to the order passed in an earlier writ petition (reproduced above), it was observed that the direction to consider her application under Group 1 and pass appropriate orders arose out of the ineligibility of two persons. It was observed that BPCL should first consider her application and thereafter move to Group 2 if she is found ineligible.

In the writ appeal filed by BPCL, the learned Division Bench observed that the direction of the learned Single Judge’s observations/directions were reasonable since, as on the relevant date, the respondent herein was in possession of the land as required, and for the requisite time as well.

BPCL, being aggrieved, has carried such an order in appeal before us.

8. We have heard Mr. Dhruv Mehta and Mr. Shailesh Madiyal, learned Senior Counsel for BPCL and the respondent, respectively.

9. The short question that arises for determination is whether the High Court’s direction to consider the application of the respondent as Group 1 was justified in law.

10. Before proceeding with the merits of the matter, it is important to take note of the provisions concerning ‘land’ given in the advertisement, as also other relevant parts of the same.

“(v) Land (Applicable to all categories) :

The applicants would be classified into three groups as mentioned below based on the land offered or land not offered by them in the application form :-

Group 1 : Applicants having suitable piece of land in the advertised location/area either by way of ownership/long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 2 : Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

X

X

X

d) The applicant(s) under Group-1 should have documents to establish ownership of land offered for the Dealership as on date of application, such as :-

- Khasra/Khatauni or any equivalent revenue document or certificate from revenue official confirming status of the ownership of the land.
- Registered Sale deed/Registered Gift deed.
- Registered Lease deed for a minimum period of 19 years and 11 months (as advertised by respective oil company).
- Any other type of ownership/transfer deed document.
- Lease agreement or firm allotment letter issued by Government/Semi Government bodies.

e) The land owned by the family member(s) will also be considered as belonging to the applicant (Group-1) subject to producing the consent letter in the form of affidavit (Appendix III A) from the concerned family member(s).

For this purpose family members would comprise of :-

- (i) Self
- (ii) Spouse

- (iii) Father/Mother including Step Father/Step Mother
- (iv) Brother/Sister/Step Brother/Step Sister
- (v) Son/Daughter/Step Son/Step Daughter
- (vi) Son-in-law/Daughter-in-law
- (vii) Parents-in-law
- (viii) Grand Parents (both maternal & paternal)

f) For Group 2 applicants, the “firm offer” of land will include land offer from third party based on Agreement to purchase/long term lease (as per terms and conditions of the OMCs). Offer letter should be in the form of an Affidavit (Appendix III A) along with documents, mentioned in Clause (d) above, to establish the ownership of land offered for the Dealership.

X X X

k) Each applicant will have to declare, in the application form, the category under which offered land falls. Supporting the above, confirmatory letter from an advocate (Appendix III B) giving details of the current ownership, documents relied upon and the category under which the land falls (Group 1 to Group 2), as on date of application, is also to be furnished as and when advised. The Group under which the applicant’s land falls, would be determined based on the declaration given in the application and confirmatory letter from the advocate regarding the same.”

(Emphasis supplied)

11. The impugned judgment and order was passed by the High Court under Article 226 of the Constitution of India.

12. Interference by Writ Courts in contractual matters is an issue that has engaged this Court on numerous occasions.

12.1 This Court in *Subodh Kumar Singh Rathour v. The Chief Executive Engineer & Ors.*², speaking through Pardiwala, J. for a three-Judge Bench, took note of a number of earlier decisions and held thus :

“39. Thus, for a period of time the courts recognized that there was a clear brightline distinction between when a State or its instrumentalities could be said to be acting in its executive capacity and when it could be said to be acting in its private capacity, with the existence of a ‘contractual relation’ *inter-se* the parties being the determinative factor. Wherever, there was a contract, the State's relations and all its actions were said to be within the field of a contract i.e., within the realm of private law, and the courts would resile from interfering with the same under their writ jurisdiction or embarking upon a judicial review of such actions.

40. Such reluctance on the part of the courts stemmed from its understanding that State or any of its instrumentalities must have the flexibility or the discretion to take decisions that are in the best interest of the public and efficient governance. Government being the decision-maker of the State is said to be the best judge of when a contract or an agreement is in its interest and by its extension in the interest of the public, and as such the courts should not interfere in the State's discretion to award or terminate contracts. One another reason why contractual disputes were precluded from being espoused under the writ jurisdiction of the courts was due to the summary nature of such proceedings, which do not allow for an exhaustive review unlike civil suits. [See : *Radhakrishna Agarwal* (supra) at para 11]

41. This simplistic approach of the courts in deeming every act and action of the State which was complained of as nothing more than a ‘contractual dispute’ or a case of ‘breach of contract’ often led to the State abusing its position and acting unfairly under the misconceived

² 2024 SCC OnLine SC 1682

notion, that all its actions such as award of contracts or tenders were nothing but a ‘largess’ - a generosity bestowed upon its citizens, which it can at its own whims choose to deny, alter, modify, or take away without any consequences. This often led to a conflation of power with duty, and resulted in every arbitrary exercise of power by the State under the guise of a ‘contractual dispute’ to remain unchecked and undisputable before the courts and out of the reach of judicial review, undermining the rights of the citizen to have their interests safeguarded and protected. We may in this regard refer to *Indian Medicines Pharmaceuticals Corp Ltd. v. Kerala Ayurvedic Co-operative Society Ltd.* reported in 2023 SCC OnLine SC 5 wherein this Court speaking eruditely through one of us, Dr. D.Y. Chandrachud, CJI made the following pertinent observations:—

“11 The welfare State plays a crucial role in aiding the realisation of the socioeconomic rights which are recognised by the Constitution. Social welfare benefits provided by the State under the rubric of its constitutional obligations are commonly understood in the language of ‘largesse’, a term used to describe a generous donation. Terming all actions of government, ranging from social security benefits, jobs, occupational licenses, contracts and use of public resources - as government largesse results in doctrinal misconceptions. The reason is that this conflates the State's power with duty. The Constitution recognises the pursuit of the well-being of citizens as a desirable goal. In doing this the Constitution entrusts the State with a duty to ensure the well-being of citizens. Government actions aimed at ensuring the well-being of citizens cannot be perceived through the lens of a ‘largess’. The use of such terminology belittles the sanctity of the social contract that the ‘people of

India' entered into with the State to protect and safeguard their interests."

(Emphasis in original)

12.2 In *Silppi Constructions Contractors v. Union of India*³, this Court observed as under :

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. ... As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

³ (2020) 16 SCC 489 : 2019 SCC OnLine SC 1133

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal...”

(Emphasis supplied)

12.3 We may also refer to the observations made in *Uflex Ltd. v. State of T.N.*⁴ with reference to its earlier decision in *Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.*⁵ as follows :

“6. The burgeoning litigation in this field and the same being carried to this Court in most matters was the cause we set forth an epilogue in *Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.* [*Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.*, (2019) 14 SCC 81] Even if it amounts to repetition, we believe that it needs to be emphasised in view of the controversy arising in the present case to appreciate the contours within which the factual matrix of the present case has to be analysed and tested :

“37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article

⁴ (2022) 1 SCC 165

⁵ (2019) 14 SCC 81

226 of the Constitution of India. In view of Government and public sector enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long-drawn out litigation at the threshold.”

(Emphasis supplied)

13. It is clear from the above pronouncements that in writ jurisdiction, when parties to the dispute involve an organization deemed to be an instrumentality under Article 12 of the Constitution, there exists a responsibility of the State to act in a fair, reasonable manner and free from arbitrariness. The Court is bound to interfere when these qualities are either in doubt or are absent and in other situations, is to exercise restraint.

14. In the impugned judgment, the only reason(s) that appears is that the respondent made representations to BPCL which were not acted upon and that since the advertisement was specifically

directed towards persons belonging to Scheduled Caste category, the State should have adopted an understanding approach and helped all the applicants who have furnished applications. Nowhere has it been shown that any of the facets of Article 14 stand violated.

15. As reproduced above, Clause (k) of the advertisement provides that each applicant has to declare the category under which the land they have offered for the purpose of retail outlet dealership, falls. In doing so, a letter issued by an advocate giving details of current ownership and the documents relied upon to prove the same, also has to be furnished. Further, we find that Clause (d) also lists various documents that the applicant should be in possession of, on the date of the application, serving as proof of ownership of the land. It is clear from the above two requirements that mentioning the incorrect group in the application form is not an exercise in simpliciter and requires the presence/furnishing of various documents. The respondents' application under Group 2 cannot be a mere error of filling up the form incorrectly, for along with the form documents establishing ownership of land, in case the application is by a person falling under Group 1. The respondent was fully aware of her limitation and, as such, took a chance by filling up the wrong category.

16. The observations/direction of the High Court to consider the respondent as part of Group 1, therefore, has to be faulted

with. Public Sector Undertakings in the nature of BPCL or the like, deal with matters of petroleum and gasoline, which are precious natural resources held by the State in Public Trust. The doctrine of Public Trust, for which reliance is often placed on a judgment of the Supreme Court of the United States of America in *Illinois Cent R Co v. State of Illinois*⁶, which in turn referred to a judgment of the New York Court of Appeals in *People v. Ferry Co.*⁷, - the relevant paragraphs of which are worth reproduction below :

“The title to lands under tide waters, within the realm of England, were by the common law deemed to be vested in the king as a public trust, to subserve and protect the public right to use them as common highways for commerce, trade, and intercourse. The king, by virtue of his proprietary interest, could grant the soil so that it should become private property, but his grant was subject to the paramount right of public use of navigable waters, which he could neither destroy nor abridge. In every such grant there was an implied reservation of the public right, and so far as it assumed to interfere with it, or to confer a right to impede or obstruct navigation, or to make an exclusive appropriation of the use of navigable waters, the grant was void. In his treatise De Jure Maris (page 22) Lord Hale says : 'The jus privatum that is acquired by the subject, either by patent or prescription, must not prejudice the jus publicum, wherewith public rivers and the arms of the sea are affected to public use.' And Mr. Justice Best, in *Blundell v. Catterall*, 5 Barn. & Ald. 268, in speaking of the subject, says : 'The soil can only be transferred subject to the public trust, and general usage shows that the public

⁶ 1892 SCC OnLine US SC 237

⁷ 68 N. Y. 71, 76

right has been excepted out of the grant of the soil.' * *

"The principle of the common law to which we have adverted is founded upon the most obvious principles of public policy. The sea and navigable rivers are natural highways, and any obstruction to the common right, or exclusive appropriation of their use, is injurious to commerce, and, if permitted at the will of the sovereign, would be very likely to end in materially crippling, if not destroying, it. The laws of most nations have sedulously guarded the public use of navigable waters within their limits against infringement, subjecting it only to such regulation by the state, in the interest of the public, as is deemed consistent with the preservation of the public right."

This doctrine found its firm place in Indian Jurisprudence with its recognition by this Court in *M.C. Mehta v. Kamal Nath*⁸. Although, its application was originally confined only to cases dealing with the environment, however, in *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*⁹. Sathasivam, J. (as His Lordship then was) held that this doctrine was of wider import and application.

In the context of the controversy at hand, reference may be made to the Constitution Bench decision in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*¹⁰, wherein the principle that even when the allotment of petrol pumps is

⁸ (1997) 1 SCC

⁹ (2010) 7 SCC 1

¹⁰ (2012) 10 SCC 1

made on the basis of a particular criterion, no fault can be found with a decision of the authority as a matter of policy, however, even so a proper method has to be evolved so that the choice can be made out of a pool of eligible candidates, without arbitrariness.

17. BPCL has formed a detailed advertisement and also an application for such purposes. It has been stated therein that the application shall solely be decided on the basis of the information given thereunder. The relevant extract of the application form reads as under :

“15 UNDERTAKING BY THE APPLICANT

- a. I am aware that eligibility for Retail Outlet Dealership will be decided based on information given in the application above. On verification by the Oil Company if it is found that the information given by me is incorrect/false/misrepresented then my candidature will stand cancelled and I will be declared ineligible for the Retail Outlet Dealership.
- b. I also confirm that I am in possession of the supporting documents in original in respect of the information given by me in this application and if selected, failure to present these documents in original will result in cancellation of selection due to submission of false/unsupported information in this application.”

(Emphasis supplied)

Since a clear procedure stands laid down by the competent authority, there exists no room for any discretion to be exercised

in favour of the respondent. The representations made by the respondent terming her application under Group 2 to be an error, cannot be considered. Even if she had the requisite land, the Rules provide no leeway for a category change to be made.

18. In view of the aforesaid discussion, we conclude that the High Court fell in error directing, as it did, for the respondent's application to be considered not in the Group in which it was filed but in another one. The appeal is, therefore, allowed and the judgment and order of the High Court with particulars as described in paragraph one is set aside. The appellant shall proceed with the allotment process/formalities in accordance with the Rules and Regulations.

19. Before we part with this matter, we are constrained to observe that the manner in which the respondent took recourse to the law was unjustified. The filing of multiple writ petitions at almost every stage, despite being fully aware of the fact that both the advertisement and the application form made it abundantly clear that consideration of the application could only be as per the documents submitted, led to prolonged litigation, which in actuality ought not to have originated at all. In effect, the High Court in its writ jurisdiction passed the order out of sympathy, which may have been misplaced as a ground of exercise of such power. The respondent hoped, by the effect of the law to get an advantage to which she was in no way entitled, leading to loss of

judicial time and public money. The fact of the matter is that the petrol pump could not be established in the last 7 years, thereby seriously prejudicing public interest.

No Costs.

Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(MANMOHAN)

New Delhi;
2nd April, 2025.