



(1) The present petition is being filed against the illegal action on the part of the respondents in not completing the formalities for grant/establishment of Retail Outlet Dealership at Barahed Road in between Pendra and Rayatpura, District Bhind though after holding the interview and completing all the formalities a Letter of Intent has been issued on 17.1.2014 in favour of the petitioner. The petitioner has fulfilled all the required formalities as directed by the respondent-Corporation. But despite of the same for the reasons best known to the respondents they have not completed the formalities and not permitting the petitioner to open the retail outlet dealership, therefore, the petition has been filed.

(2) It has been argued that the petitioner is a citizen of India and permanent resident of District Bhind and the respondent no.1 is a Corporation for regulating the selection of the Retail Outlet Dealerships and wherein certain guidelines have been issued in the name of Guidelines for selection of Retail Outlet Dealers. An advertisement was issued in Dainik Bhaskar newspaper on 15.9.2011 inviting applications for grant of Retail Outlet Dealership on various locations including the location at Barahed between Pendra and Rayatpura, District Bhind which is at S.No.85 of the advertisement. The same was for an open category. The petitioner fulfilling the eligibility has applied for the same and has submitted affidavits in the prescribed format and the project report along with all the relevant

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documents to the respondents. As the petitioner was fulfilling all the required criteria and was found eligible, therefore, a letter dated 19.12.2011 was issued by the respondent no.2 directing the petitioner calling for a interview on 13.1.2012 at 3:00 PM before the Hindustan Petroleum Dealer Selection Committee. The petitioner duly appeared before the selection committee, and the petitioner was granted 100 marks considering the candidature and the documents and she has been placed at S.No.1 of the table of marks awarded by the Selection Committee which is reflected from Annexure P/4. Thereafter the matter was kept pending for almost one year and on 17.1.2014 a Letter of Intent was issued for proposed retail outlet dealership in favour of the petitioner. Acceptance to the proposal was submitted by the petitioner to the respondent-Corporation. The petitioner has submitted all the relevant documents including the documents pertaining to ownership of the land in question that it belongs to the petitioner and no objection certificate from the Revenue Department was submitted, but despite of the same the respondents authorities themselves have issued a letter to the Collector and District Magistrate/District Bhind for issuance of no objection certificate for development of the new Retail Outlet on the land in question. No objection certificate was granted by the District Magistrate, District Bhind for establishment of the retail outlet dealership of Indian Oil Corporation Limited in favour of the petitioner on 13.5.2014. The

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petitioner has purchased the land from Aakash Shrivastava, who has got the aforesaid land diverted by the competent authority i.e. S.D.O. Gohad, District Bhind and deposited the requisite diversion fees. The S.D.O. has issued no objection certificate. The Additional District Magistrate, District Bhind again sought a clear opinion from the S.D.O. Gohad, District Bhind vide letter dated 16.9.2014 with respect to the land in question. The S.D.O. Gohad after making an inquiry into the matter has submitted a report regarding issuance of NOC by the District Magistrate, District Bhind on 31.5.2014. It was informed that the land in question was recorded as Charnoi land in Samvat 2039 and was thereafter converted as Kabil Kast in Samvat 2051 and vide order dated 6.2.1995 passed in the Case No.10/Aa-19/94-95, the said land was settled in favour of one Sohan S/o Sobaran Singh, who later-on sold the said land to one Balvir Kaur from which the predecessor-in-title of the petitioner purchased the said land through registered sale deed. The aforesaid letter was forwarded to the respondent-Corporation, but despite of the same they are sitting tight over the matter for the reasons best known to them and are not completing the formalities as required for establishment of the petroleum retail outlet. The petitioner personally approached the respondent no.2 and requested for completing the formalities, but the same was not done. A legal notice was thereupon served through counsel through registered post on 23.2.2016, but of no consequence.

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In reply to the legal notice it is submitted that the land was earlier recorded as charnoi land, therefore, even after grant of NOC by the competent authority as per the legal advise of the legal cell the matter cannot be proceeded further for establishment of new retail outlet (Annexure P/14 is the reply). It is submitted that once the competent authority of the revenue department i.e. Collector has issued no objection certificate in favour of the petitioner then no question of disputed land arises. After the issuance of Letter of Intent the proposal sent by the respondent-Corporation as well as the acceptance letter submitted by the petitioner and after completing all the formalities by the respondents it cannot be said that the land is a disputed land especially in the circumstances when the Collector, District Bhind has himself issued a NOC in favour of the petitioner after the inquiry report being submitted by the S.D.O. The matter has already been investigated by the Revenue Authorities that too on the basis of the letter issued by the Corporation itself. Therefore, the reason assigned by the Corporation declining to complete the formalities and permit the petitioner to open the retail outlet dealership of Hindustan Petroleum Corporation the same is perse illegal and is contrary to Article 14, 19 and 21 of the Constitution of India as after issuance of LOI and the no objection certificate from the competent authority right is accrued in favour of the petitioner. In such circumstances, the present petition is being filed. In view of the

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aforesaid, the petition may be allowed and the respondents authorities be directed to complete the formalities within the stipulated time frame and permit the petitioner to open the retail outlet. It is stated at bar that till date no other petrol pump is being opened near vicinity of the aforesaid land. In such circumstances, petitioner still is entitled to open the retail outlet dealership.

(3) Per contra counsel appearing for the respondents Corporation has vehemently opposed the contentions of the petitioner and has submitted that mere issuance of Letter of Intent does not create any right in favour of the petitioner. He has not even impleaded the Hindustan Petroleum Corporation Limited as a party to the proceedings. It is submitted that the petitioner was required to demonstrate by filing of documents with respect to his title over the property in question for title clearance and for completing the formalities the respondents sought 30 years title documents, but the same was not supplied by the petitioner. During the title search and on perusal of the khasra records for the year 1981 to 1993 it was noticed by the respondents that the land of Khasra No.62 old new Khasra No.101 min total comprised area of 0.560 hectare situated at Village Chak Tumera, Tahsil Gohad, District Bhind (M.P.) originally belongs to the Government of M.P. in the form of Nistar Charnoi Bhumi (Reserved Bhumi under the provisions of M.P. Land Revenue Code, 1959). Thereafter on 6.2.1995 the same was settled in the

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name of one Sohan Singh S/o Sobren Singh. How the aforesaid land was settled in the name of Sohan Singh is not clear from the documents. Therefore, the petitioner was required to demonstrate his clear title over the property by filing all the relevant documents including the predecessor's documents. It is settled preposition of law that at the time of settlement of the government land in favour of private person the permission from the competent authority is required to be taken i.e. Collector, but whether the permission from Collector is taken or not prior to settlement of the land in question could only be cleared from the revenue records. The petitioner could not file the complete revenue records before the respondents authorities, therefore, in absence of clear title in favour of the petitioner the retail outlet of petroleum cannot be extended in favour of of the petitioner. Time was granted to the petitioner by the respondent-Corporation to complete the formalities with respect to the title over the land in question, but till date it has not been done by the petitioner. As far as contention of the petitioner with respect to issuance of NOC by the District Magistrate/Collector is concerned, it is a settled preposition of law as has been held by the Hon'ble Supreme Court in the case of **C. Albert Morris Versus K. Chandrashekhra, (2006) 1 SCC 228**, wherein it is held by the Hon'ble Supreme Court that while granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land

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and its suitability as a place for storage of petroleum. Rule 144, which deal with the grant of NOC, do not contemplate an enquiry into the ownership of the land nor does it require the Collector to inquire into the nature of the right claimed by the person who has applied for NOC. In such circumstances, merely submission of NOC by the competent authority i.e. Collector will not suffice the terms and conditions and will not clear the title of the petitioner. Therefore, once the petitioner himself could not demonstrate the clear title over the property in question, therefore, the authority has rightly decided not to complete the formalities and permit the petitioner to open the retail outlet of Hindustan Petroleum Corporation.

(4) The law with respect to the rights will created by issuance of Letter of Intent is clear as has been held by the Hon'ble Supreme Court recently in the case of **South Eastern Coal Fields Limited and others Vs. M/s. S Kumars Associates Akm (Jv) in Civil Appeal No.4358/2016 decided on 23<sup>rd</sup> July, 2021**, wherein the Hon'ble Supreme Court has held that the contents of the Letter of Intent are having utmost importance and merely issuance of letter of intent is not create any right in favour of the person who has applied for the retail outlet. There is a big difference between the condition precedent and the condition subsequent. Relying upon the several judgments of the Hon'ble Supreme Court, the Hon'ble Supreme Court has categorically held that the issuance of Letter of Intent does not create any right in



favour of the persons like petitioner. In view of the aforesaid facts and circumstances of the case, he has prayed for dismissal of the writ petition.

(5) Per contra by filing a rejoinder to the return the petitioner has denied the contents of the return and submitted that the law which has been relied upon by the respondents is not applicable in the facts and circumstances of the case. As far as the direction to the petitioner to submit all the relevant documents is concerned the petitioner has made all possible efforts by filing an application to the respondents authorities asking for the order of settlement in favour of Sohan Singh in the year 1995, but the same was not supplied by the authorities to the petitioner which is clearly reflected from the NOC issued and the enquiry done by the S.D.O. Gohad District Bhind. In absence of the documents supplied by the State Authorities, petitioner was not in a position to file the same before the authorities, but once the competent authority i.e. the Collector, District Bhind has issued the no objection certificate in favour of the petitioner with respect to the land in question then by stretch of imagination it can be stated that the petitioner was not having any clear title over the property in question. In such circumstances, the stand taken by the respondents in the return having no value and the petitioner is having clear title over the property in question as is reflected from the documents issued by the revenue authorities itself. In such circumstances, the petition should

be allowed.

(6) Heard the learned counsel for the parties and perused the record.

(7) The principle question for consideration before this Court is that whether the letter of intent issued by the authorities in favour of the petitioner will create any right in favour of the petitioner seeking a direction to the respondents to complete all the formalities and permit the petitioner for establish a retail outlet dealership of the respondents-Corporation. The aforesaid question has been answered by the Hon'ble Supreme Court recently in the case of **South Eastern Coalfield Limited (supra)**, wherein it has been held as under:

“18. A consideration of the matter in the conspectus of the aforesaid pleas leads to a conclusion that it cannot be said that a concluded contract had been arrived at inter se the parties.

19. We have already reproduced aforesaid the terms of the letter of award and what it mandated the respondent to do. None of the mandates were fulfilled except that the respondent mobilized the equipment at site, handing over of the site and the date of commencement of work was fixed vide letter dated 28.10.2009. Interestingly this letter has been addressed to the Sub Area Manager of the appellant by the office of the appellant. The respondent, thus, neither submitted the Performance Security Deposit nor signed the Integrity Pact. Consequently, the work order was

also not issued nor was the contract executed. Thus, the moot point would be whether mobilization at site by the respondent would amount to a concluding contract inter se the parties. The answer to the same would be in the negative.

20. We would like to state the issue whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the LoI and the conduct of the parties. The judicial views before us leave little doubt over the proposition that an LoI merely indicates a party's intention to enter into a contract with the other party in future.<sup>12</sup> No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood. This Court did consider in *Dresser Rand S.A. (supra)* case that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on a holistic analysis – it was held that the LoI could not be

interpreted as a work order.

21. Similarly if we construe the documents as discussed in the judgment of this Court in Jawahar Lal Burman (supra) case it is unequivocally mentioned that “contract is concluded by this acceptance and formal acceptance of tender will follow immediately on receipt of treasury receipt.” Thus, once again, it has been stipulated as to at what time a contract would stand concluded even though it was later subject to deposit of the security amount. It was in these circumstances that the requirement of security deposit was treated not as a condition precedent but as a condition subsequent. We have to also appreciate the nature of contract which was for immediate requirement of the full quantity of coconut oil to be supplied within 21 days. It was also explicitly mentioned in the LoI itself that any failure to deposit the stipulated amount would be treated as a breach of contract. This is not the case here, where the consequence was simply forfeiture of the bid security amount, and cancellation of the ‘award’ and not the ‘contract’.

22. If we compare the aforesaid scenario in the present case, the period for execution of the contract was one year. The respondent worked at the site for a little over the month, facing certain difficulties – it is immaterial whether the same was of the own making of the respondent or

attributable to the appellants. No amount was paid for the work done. The respondent failed to comply with their obligations under the LoI. It is not merely a case of the non-furnishing of Performance Security Deposit but even the Integrity Pact was never signed, nor work order issued on account of failure to execute the contract. We are, thus, of the view that none of the judgments cited by learned counsel for the appellants would come to their aid in the contractual situation of the present case. The judgments referred by learned counsel for the appellants Jawahar Lal Burman (supra) case and Dresser Rand S.A. (supra) case, if one may say so are not directly supporting either of the parties but suffice to say that to determine the issue what has to be seen are the relevant clauses of the NIT and the LoI. On having discussed the non-compliance by the respondent of the terms of the LoI we turn to the NIT. Clause 29.2 clearly stipulates that the notification of award will constitute the formation of the contract “subject only” to furnishing of the Performance Security/Security Deposit. Thus, it was clearly put as a pre-condition and that too to be done within 28 days following notification of the award. The failure of the successful bidder to comply with the requirement “shall constitute sufficient ground for cancellation of the award work and forfeiture of the bid security” as per

clause 30.2. If we analyse clause 34 dealing with the Integrity Pact the failure to submit the same would make the tender bid “as not substantially responsive and may be rejected.”

23. We may also add that the definition of what constitutes a contract as per clause (ix) itself includes the NIT, the acceptance of the tender, the formal agreement to be executed between the parties post contractor furnishing all the documents and the bid security amount. 24. The result of the aforesaid is that as rightly held in terms of the impugned order all that the appellants can do is to forfeit the bid security amount and, thus, it was so directed. Since as a pre-condition of any coercive action against the respondent, the High Court called upon the appellants to deposit a sum of Rs.10 lakh in terms of the interim order dated 04.08.2010, a direction is made to deduct the bid security amount out of the sum of Rs.10 lakh and to refund the balance amount to the respondent. The needful would now have to be done within two months as in terms of the interim order of this Court dated 08.02.2013 such refund has been stayed.

25. We accordingly dismiss the appeal leaving the parties to bear their own costs.”

(8) The Hon'ble Supreme Court further in the case of **State of Madhya Pradesh and another Vs. Firm Gobardhan Dass Kailash Nath, AIR 1973 SC 1164** has held where in respect of a tender for

Government sale initial deposit of 25% of purchase price was an essential precondition for acceptance or sanction of tender was not complied with. It was held that taking into consideration what was required to enter into a contract, i.e., in writing and in prescribed form and 25% amount not being deposited, it could not be said that any concluded contract was arrived at between the parties.”

(9) The Hon'ble Supreme Court further in the case of **Bhushan Pawar and Steel Limited Vs. State of Orissa, (2017) 2 SCC 125** has considered the question that what an LOI was the nomenclature of the letter would not be the determinative factor, but the substantive nature of the letter would determine whether it can be treated as an LOI which was per the legal dictionary means preliminary understanding between the parties who intend to make a contract or join together in another action.”

(10) The Hon'ble Supreme Court further in the case of **Rajasthan Cooperative Dairy Federation Ltd. Vs. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and others, (1996) 10 SCC 405** has held as under:

“.....The letter of intent merely expressed an intention to enter into a contract. There was no binding legal relationship between the appellant and respondent no.1 at this stage and the appellant was entitled to look at the totality of

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circumstances in deciding whether to enter into a binding contract with the respondent no.1 or not.”

(11) From the perusal of the aforesaid legal proposition of law it is seen that the letter of intent issued in favour of the petitioner does not create any right seeking a direction to the respondents to complete all the formalities. The letter of intent is only a proposal being sent by the respondents Corporation to the petitioner that they are intending to enter into an agreement but the entire contract was not completed by the authorities. The Corporation was still having its right to decline to enter into a contract and once the contract is not completed the respondents authorities cannot be directed to complete all the formalities. In the present case the Letter of Intent is issued by the authorities on 17.1.2014 (Annexure P/5) which is filed along with the petition, wherein condition No.a is relevant :

“a. That you will lease the suitable plot of land to HPCL for a period of 30 years with renewal option as per mutually agreed terms and conditions. In case the offered land is taken on lease by you, the head lease should contain a Clause that you should have a right to sub-lease the said plot of land to HPCL without further reference to or consent of the Head Lessor for the lease period as stipulated above, under such terms and conditions as may be agreed upon between



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you and HPCL. In case you fail to make available the offered land within two months, this offer is liable to be withdrawn. However, there is no commitment from HPCL for taking the said land from you.”

It was further seen from the Letter of Intent that “this letter is merely a Letter of Intent and not to be construed as a firm offer of Dealership to you”.

(12) Thus, from the Letter of Intent issued in favour of the petitioner clearly says that aforesaid is not a complete document pointing out the fact that the contract formalities are completed.

(13) As far as the issuance of NOC by the competent authority i.e. Collector, District Bhind is concerned it is a settled proposition of law that merely NOC being issued by the competent authority does not amounts to its clearance of title which has been held by the Hon'ble Supreme Court in the case of **C. Albert Morris (supra)**, wherein it is held that:

“While granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land and its suitability as a place for storage of petroleum. Rule 144, which deal with the grant of NOC, do not contemplate an enquiry into the ownership of the land nor does it require the Collector to enquire into the nature of the right claimed by the person who has applied for NOC.”

(14) It is seen from the records that the land in question was initially recorded in the name of Government land as Nistar Charno Bhumi and thereafter far back from year 1981 to 1993 and thereafter the same land was stated to be settled in the name of Sohan Singh S/o Sobren Singh in Revenue Case No.10/Aa-19/94-95 vide order dated 6.2.1995. The aforesaid order was directed to be placed before this Court by the petitioner vide order dated 18.5.2017, but despite of the same the petitioner could not produce the aforesaid order before this Court. However, an argument is advanced by the petitioner that he has tried to obtain the copy of the order, but the same was not supplied to him by the revenue authorities, but the fact remains that the authorities have asked for the documents pertaining to the ownership for the last 30 years. The petitioner could not deposit the same to the authorities. Thus, in the circumstances when the petitioner himself could not demonstrate the clear title over the property in question, therefore, on the basis of legal advise given on the basis of the search in 30 years documents it was found that earlier the land was recorded as Nistar Charnoi Bhumi of State of Madhya Pradesh in the records. Therefore, the decision is taken not to extend the retail outlet dealership to the petitioner and was denied by filing a reply to the show cause notice issued by the petitioner to the authorities. Thus, from the aforesaid facts and circumstances of the case, no right has accrued in favour of the petitioner. The petitioner cannot compel the

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authorities to enter into a contract and complete all the formalities and permit the petitioner to open a retail outlet dealership of Hindustan Petroleum Corporation. In such circumstances, the petition sans merits and is accordingly dismissed.

E-copy/Certified copy as per rules/directions.

(Vishal Mishra)  
Judge  
31/07/2021

Pawar\*