

**IN THE HIGH COURT OF MADHYA PRADESH AT
INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 24037 of 2021

BETWEEN:-

**HIMANSHU MISHRA S/O COLONEL VIRENDRA MISHRA, AGED ABOUT
26 YEARS, OCCUPATION: BUSINESS 21, BERCHA ROAD, MHOW, INDORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RISHI TIWARI, ADVOCATE)

AND

**HINDUSTAN PETROLEUM CORPORATION LIMITED THRU.
1. MANAGING DIRECTOR 17, JAMSHEDJI, TATA ROAD, MUMBAI
(MAHARASHTRA)**

**2. CHIEF REGIONAL MANAGER RETAIL. INDORE REGIONAL FROUND
FLOOR, RACE COURSR ROAD. INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS BY SHRI ANIKET NAIK, ADVOCATE)

(INTERVENOR BY SHRI ARJUN PATHAK, ADVOCATE)

Reserved on : 19th June, 2023

Delivered on : 6th July, 2023

*This petition having been heard and reserved for order coming on
for pronouncement this day, the court pronounced the following:*

O R D E R

The petitioner has filed the present petition under Article 226 of the Constitution of India seeking direction from the respondents to issue a Letter of Intent for the outlets situated at Rahukhedi, Indore in

pursuance to his selection vide order letter dated 27.08.2021. By way of amendment, the petitioner is also seeking quashment of a fresh advertisement dated 08.07.2022 issued for the aforesaid location.

02. Facts of the case in short are as under:-

2.1. The respondents published an advertisement inviting applications for engagement of Service Providers for Corporation Owned & Corporation Operated Retail Outlets (COCO) in the Times of India & Dainik Bhaskar newspapers dated 01.09.2020. The petitioner submitted the form along with the necessary documents of selection for the outlet. He was called to appear in the interview on 27.08.2021 and vide letter dated 27.08.2021, respondents informed the petitioner about his selection for the outlets. As per Clause 12, ***“the Brochure for Selection of Service Provider for COCO dated 31.03.2020,”*** the Letter of Intent shall be issued within 30 days from the declaration of selection / result. The petitioner submitted various representations to the respondents for issuance of the Letter of Intent, but vide letter dated 23.09.2021, the respondents withdrew the letter dated 19.07.2021. When no Letter of Intent was issued in favour of the petitioner, he filed the present petition before this Court.

2.2. Initially, the respondents filed a preliminary reply by submitting that the policy for the selection of Service Providers for COCO retail outlets for all three public sectors oil marketing companies is under revision before the Ministry of Petroleum & Natural Gas. Awaiting revision of policy, the process for engagement of Service Provider has been put on hold, wherever the Letter of Intent has not been issued. It is further stated that the selection of the petitioner will be intimated to him

after the revision of the policy. The petitioner has no vested legal rights for appointment / engagement, hence, the petition is liable to be dismissed.

2.3. The petitioner filed certain additional documents obtained under the provisions of Right to Information Act, 2005 from the respondents according to which, out of six retail outlets for which, the advertisement was issued, four of them have been allotted by issuing Letter of Intent by the respondents and only in the case of petitioner Letter of Intent has not been issued.

2.4. Thereafter, the respondents have filed a detailed reply by submitting that due to pending revision in Service Provider Appointment Policy, the Head Office, Mumbai communicated to the Regional Officer, Indore through concerned zonal offices in the month of September to put the selection process on hold, wherever the agreement has not been signed. In compliance with the above letter, the selection process in case of the petitioner has been kept on hold and the cancellation letter has also been withdrawn. It has further been stated that out of six advertised locations, only for two locations, the selection process has been put on hold i.e. Indore & Ratlam because no agreement was executed.

2.5. Thereafter, the petitioner filed a rejoinder and the respondents filed an additional reply. Vide letter dated 03.01.2022, M/s Akash Filling Station has been given the COCO retail outlet for Village – Rahukhedhi for operation by way of a temporary arrangement.

2.6. During pendency of this writ petition, the respondents have issued a Brochure for the selection of Service Provider for COCO retail outlets dated 09.05.2022 and issued a fresh advertisement dated

08.07.2022, which has been brought on record by way of amendment. The respondents have, consequently amended the reply.

03. Shri Rishi Tiwari, learned counsel for the petitioner submitted that the selection process was initiated under the policy prevailing at that relevant point of time, therefore, the entire selection ought to have been completed under the said policy. Once the petitioner has been selected, then LOI ought to have been issued as has been issued in the case of the other four locations in order to avoid allegations of hostile discrimination. The changed policy will apply prospectively for new selections. In support of his contentions, learned counsel has placed reliance upon a judgment delivered by the Apex Court in the case of *E.P. Royappa v/s The State of Tamil Nadu & Others reported in (1974) 4 SCC 3* and the judgment delivered by Division Bench of High Court of Himachal Pradesh at Shimla in the case of *Tejinder Goyal v/s Union of India & Others (CWP No.7816 of 2021)* in which, the facts of the case are identical to this case.

04. Shri Aniket Naik, learned counsel for the respondents has argued in support of the impugned action by submitting that the case of the petitioner is not identical to the case of other four locations i.e. Bhopal, Harda, Guna & Khargone, where the Letter of Intent had already been issued, and thereafter, the agreements were executed. In the present case, the petitioner was informed about his selection, but no Letter of Intent was issued and before the Letter of Intent could be issued, a letter from the Head Office was received, hence, in compliance of the said letter, selection has been put on hold. There is no discrimination with the petitioner as in his case no LOI was issued. It

has further been submitted that now the new policy has been issued in which, the criteria for giving marks for financial capacity has been increased from 15 to 30. Now the candidates are required to submit a liquid asset from Rs.15,00,000/- to Rs.30,00,000/-, whereas in earlier guidelines, liquid assets up to Rs.15,00,000/- were considered. In support of his contention, Shri Naik learned counsel placed reliance upon judgment delivered in the case of ***Zonal Manager, Bank of India, Zonal Officer, Kochi & Others v/s Aarya K. Babu & Another reported in (2019) 8 SCC 587*** in which it has been held that *if there is any change in qualification/criteria after the notification is issued but before the completion of the selection process, it will be incumbent on the employer to issue a corrigendum and invite applications from those qualified as per the changed criteria and consider the same along with the applications.* Shri Naik learned counsel has also placed reliance upon a judgment delivered in the case of ***Rakhi Ray & Others v/s High Court of Delhi & Others reported in (2010) 2 SCC 637***, wherein it has been held that *a person whose name appears in the selection list does not acquire any indefeasible right of appointment.* Reliance is also placed upon judgment delivered in the case of ***State of A.P. & Others v/s Nallamilli Rami Reddi & Others reported in (2001) 7 SCC 708*** in which, it has been held that *as long as classification is not patently arbitrary, it would be justified.* The case of the petitioner is not similar to those four locations where the selection process had already been completed before issuance of Annexure-R/1. Shri Naik, learned counsel has further placed reliance upon the judgment delivered in the case of ***Nivedita Sharma v/s Cellular Operators Association of India & Others***

reported in (2011) 14 SCC 337, wherein it has been held that *scope of interference by the High Court under Article 226 of the Constitution of India has been explained for the availability of alternative efficacious remedy*. Lastly, learned counsel has placed reliance upon a judgment delivered in the case of ***Employees State Insurance Corporation & Another v/s Dr. Vinay Kumar & Others*** reported in **2022 SCC OnLine SC 699**, wherein it has been held that *where the advertisement has been put on hold, no direction can be given to conclude the proceeding by way of peremptory directions*.

05. Heard learned counsel for the parties at length and perused the record.

06. The facts of the case, as stated above are not in much dispute, hence, repetition is avoided. The advertisement was issued for six COCO retail outlets but only for this outlet in question the interview, which was scheduled on 29.12.2020 was postponed to 27.08.2021 i.e. after eight months for which there is an explanation offered by the respondents. In other cases, the interview was completed on the scheduled date and immediately Letter of Intent was issued and the agreement was executed under the old policy. The respondents have not justified as to why the interview was delayed in the case of the petitioner. Because of this delay, though the interview was held and selection was declared before the Letter of Intent could be issued, but the respondents received Annexure-R/1 by which the selection process was put on hold awaiting the revision in the policy. The petitioner cannot be made to suffer for the default on the part of the respondents. Had the interview of the petitioner been held on the scheduled date, the

Letter of Intent would have been issued in his favour along with the other four selected candidates.

07. Precisely similar issue came up for consideration before the Division Bench of the High Court of Himachal Pradesh in which also the advertisement for appointment of a Service Provider for COCO Retail Outlets was issued on 12.08.2022 under the prevailing guidelines i.e. issued on 31.03.2020. The MOP & NG in its letter dated 05.01.2021 did not direct the OMCs either to frame new guidelines or to apply any newly framed guidelines to the selection process initiated under the old guidelines in force at that relevant point of time. The Ministry had only directed the OMCs to ensure the implementation of fair, uniform and transparent selection guidelines. The Division Bench has also held that new guidelines framed by the OMCs on 06.05.2022 do not even stipulate that the same are to be applied retrospectively i.e. to the selection process undertaken in terms of the guidelines framed on 31.03.2020. The writ petition was allowed with the direction to the OMC to issue a Letter of Appointment to the writ petitioner. The relevant portion of the judgment passed in *Tejinder Goyal (supra)* is reproduced below:-

“5(b)(iv) Fresh guidelines for selection of Service Providers of COCO Retail Outlets were framed on 07.04.2022 by the OMCs [Annexure A-1(Colly)]. These guidelines were approved by MoP&NG on 20.04.2022. Hence, the respondents decided to call for fresh advertisements for all their COCO locations where LOA had not been issued.

In the given facts, the reasons offered by the respondent Nos. 2 and 3 for not issuing the LOA in favour of the petitioner, cannot be sustained. The advertisement for appointment of Service Provider for COCO Retail Outlet at Nalagarh, District Solan, was issued on 12.08.2020 under the

applicable guidelines then in force, i.e. issued on 31.03.2020. The MoP&NG in its letter dated 05.08.2021 did not direct the OMCs either to frame new guidelines or to apply any newly framed guidelines to the selection process initiated under the old guidelines in force at the relevant time. The Ministry had only directed the OMCs to ensure implementation of fair, uniform and transparent selection criteria while deciding on selection of service providers for COCO ROs and that weightage of interview during the selection process, should be kept not more than 20% as provided in the extant policy guidelines. The Ministry had merely directed the OMCs that their existing policy guidelines providing for giving weightage of the interview only up to the extent of 20% should be strictly adhered to in the process for selection of Service Provider for COCO Retail Outlets. Out of total 100 marks allocated in the 2020 guidelines, 80 marks were for scrutiny of the applications and 20 marks were kept for the interview. The OMCs were directed by the Ministry to insure the implementation of fair, uniform and transparent selection criteria. There was no direction to frame new guidelines. The OMCs on their own had decided to frame new guidelines for selection of Service Provider for COCOs. The new guidelines framed by the OMCs on 06.05.2022 do not even stipulate that the same are to be applied retrospectively i.e. to the selection process undertaken in terms of guidelines framed on 31.03.2020. In this context, it would be worthwhile to quote the following para from the judgment passed by the Hon'ble Apex Court on 22.09.2022 in ***Civil Appeal No(s) 1699-1723 of 2015, (Bharat Sanchar Nigam Ltd. And others Etc. Versus M/s Tata Communications Ltd. etc.)*** wherein it was held that administrative/executive orders or circulars in absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively that too if it was expressly provided in the statute: -

“30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by

the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.”

Learned Deputy Solicitor General of India appearing on behalf of respondent No.1 has neither disputed the factual position of the case nor it is his submission that in the given facts of the case, new guidelines framed by the OMCs on 06.05.2022 could have been applied retrospectively to the selection process undertaken by respondent Nos. 2 and 3 under the then applicable policy guidelines framed on 31.03.2020. Learned Deputy Solicitor General of India has also stated the obvious that the MoP&NG had not even directed the OMCs to frame fresh guidelines rather the OMCs were directed to ensure fair selection and transparency in the process of appointment of Service Providers for COCO Retail Outlets. Further that the Ministry had directed the OMCs that while deciding on selection of Service Providership for COCO ROs, weightage of interview should not be more than 20% as provided in the extant policy guidelines.”

[Emphasis Supplied]

08. In view of the above, I have no reason to take a different view in this matter. The selection of the petitioner was started under the policy dated 31.03.2020 and the same is liable to be completed under the said policy. The change of policy during the pendency of the selection process cannot be put into operation especially when out of six, for four locations the selection process had already been completed. The petitioner and the other four are on the same footing. The delay was caused because of the postponement of the interview without any reason, otherwise for the petitioner the Letter of Intent would have been issued along with four others.

09. The Writ Petition is allowed the respondents are directed to

issue Letter of Intent and enter into an agreement with the petitioner. The fresh advertisement dated 08.07.2022 is hereby quashed so far it relates to the outlet. The petitioner is entitled to get a cost of Rs.20,000/- from the respondents.

(VIVEK RUSIA)
J U D G E

Ravi