

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.16 OF 2021 (GM-RES)

BETWEEN:

MS. H. GAYATHRI,

... PETITIONER

(BY SRI.ASHOK B PATIL,ADVCCATE)

AND:

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY
DEPARTMENT PETROLEUM AND
NATURAL GAS, STEEL, GOVERNMENT OF INDIA,
201-A, SHASTRI BHAWAN,
NEW DELHI 110 001.
2. THE CHAIRMAN AND MANAGING DIRECTOR
BHARAT PETROLEUM CORPORATION LIMITED,
BHARAT BHAVAN, 4 AND 6 CURRIMBHOY ROAD,
BALLARD ESTATE, MUMBAI 400 001.
3. THE DIRECTOR MARKETING,
BHARAT PETROLEUM CORPORATION LIMITED,

BHARAT BHAVAN, 4 AND 6 CURRIMBHOY ROAD,
BALLARD ESTATE, MUMBAI 400 001.

4. THE TERRITORY MANAGER,
BHARAT PETROLEUM CORPORATION LIMITED,
DU PARC TRINITY, 7TH FLOOR, 17 M G ROAD,
BENGALURU 560 001.
5. THE TERRITORY CO-ORDINATOR
BHARAT PETROLEUM CORPORATION LIMITED,
DU PARC TRINITY, 7TH FLOOR, 17 M G ROAD,
BENGALURU 560 001.
6. THE SALES OFFICER
BHARAT PETROLEUM CORPORATION LIMITED,
DU PARC TRINITY, 7TH FLOOR, 17 M G ROAD,
BENGALURU 560 001.

... RESPONDENTS

(BY SRI.M.N. KUMAR. CGC FOR R1;
SRI.N.J.KUMAR, ADVOCATE FOR R2 TO R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT R-2 TO 6 TO CONSIDER THE APPLICATION OF THE PETITIONER FOR AWARD OF RETAIL OUTLET DEALERSHIP AT DODDABALLAPUR ON BESANT PARK ROAD, BENGALURU DISTRICT UNDER ST CATEGORY BY ISSUING AN ADDENDUM TO THE LETTER OF INTENT DATED 30.06.2016 IN RESPECT OF LAND BEARING SY.NO.60/2 OF AREGUDDADAHALLI VILLAGE, KASABA HOBLI, DODDABALLAPUR TALUK, BENGALURU RURAL DISTRICT AS SOUGHT IN THE LEGAL NOTICE DATED 04.07.2020 AT ANNEXURE-O.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner an aspiring retail outlet dealer under ST Women category is knocking at the doors of Writ Court for a direction to consider her application for awarding the retail outlet dealership on Besant Park Road at Doddaballapur by issuing an addendum to the Letter of Intent dated 30.06.2016 for incorporating alternate land, the one proposed earlier now not being available.

2. After service of notice, the first respondent-UOI is represented by its Sr. Panel Counsel; the answering respondents 2 to 6 are represented by their Panel Counsel who opposes the petition mainly contending that the petitioner could have approached the Grievance Redressal Cell availing in the official hierarchy and that the policy then in obtainment did not provide for consideration of applications of the kind in respect of lands other than the ones offered in the very application itself, although the new policy of 2018 would provide for that.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) Petitioner is a woman belonging to ST category and she had staked her claim for allotment of dealership vide application dated 18.10.2014, is not in dispute; petitioner happens to be the sole applicant for the unit in question, is also not in dispute; the land offered by the petitioner belonged to another person who did not agree to certain terms and therefore petitioner after having an arrangement with another lady had proposed the land to the said lady. The counsel for the petitioner submits and this court has no reason to doubt that the arrangement for having the alternate land at some stage had involved the officials of the answering respondents herein.

(b) There is force in the submission of learned counsel for the petitioner that the application of the kind cannot be treated as land specific disregarding the difficulties that crop up

in the arrangements of the kind and that what is to be seen by the authorities in the changed circumstances is the feasibility of considering the application in respect of alternate land offered; the counter contention of Panel Counsel appearing for the answering respondents that under the new policy of 2018 although there is scope for having the alternate land subject to feasibility, the policy then obtaining earlier did not admit of the proposal for alternate land, is bit difficult to agree with; the policy in question cannot be treated as a statutory instrument having no elements of elasticity; the fact that the new policy allows offering of alternate land, itself would come to the aid of petitioner, no contra intention emanating from 2018 new policy that the pending cases would not be covered by its terms. This court is not very sure whether an argument of non-prospectivity avails to the respondent-authorities to deny relief to the aggrieved citizens in matters like this. After all the bar against retrospectivity enacted under Article 20 of the Constitution is confined to criminal law, and therefore cannot be invoked in matters of this kind. It is pertinent to recall what Lord Denning

said: *“The rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure or the admissibility of evidence, or the effect which the courts give to evidence”* (**BLYTH vs. BLYTH (1966) 1 ALL ER 524**).

(c) What heavens would have fallen down had the proposal for alternate land was considered by the statutory authority in compliance with the 2018 new policy, is not forthcoming despite lengthy arguments submitted on behalf of answering respondents; in construing policies of the kind common sense cannot be kept in cold storage. Ours being a Welfare State, the respondents who happen to be instrumentalities of the State under Article 12, cannot act arbitrarily or unreasonably whilst considering the claim of citizens for the grant of State largesse.

In the above circumstances, this petition succeeds; a Writ of Mandamus issues to respondents 2 to 6 to consider

petitioner's subject application for awarding retail outlet dealership by examining the feasibility of alternate land proposed by her within a period of eight weeks and in accordance with law; delay if brooked shall be viewed seriously at the next level of litigation and heavy costs may be imposed on the erring official.

It is open to the answering respondents to solicit any information or documents from the side of the petitioner as are required for due consideration of the application. However, in the guise of such solicitation delay shall not be brooked.

Now, no costs.

**Sd/-
JUDGE**

Snb/