

(2023) 05 CAL CK 0026
In the Calcutta High Court
Case No : F.M.A. No. 288 Of 2022

Indian Oil Corporation Limited & Ors.

APPELLANT

Vs

Paromita Bag & Ors.

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 226
Code Of Civil Procedure, 1908 — Section 151, Order 41 Rule 19
Registration Act, 1908 — Section 47

Citation : (2023) 05 CAL CK 0026

Hon'ble Judges : Chitta Ranjan Dash, J; Partha Sarathi Sen, J

Bench : Division Bench

Advocate : Jishnu Saha, Puspendu Chakraborty, Debabrata Saha Roy, Pingal Bhattacharyya, Subhankar Das, Neil Basu, Sankha Biswas

Final Decision : Allowed

Judgement

Partha Sarathi Sen, J

1. In this intra-court appeal, the order dated November 14, 2019 as passed in WP. 17998(W) of 2019 by the Hon'ble Single Bench of this Hon'ble High Court in a proceeding under the provisions of Article 226 of the Constitution of India has been assailed. By the impugned order, Hon'ble Single Bench allowed the writ petition of the writ petitioner who is the respondent No.1 herein and thereby set aside and quashed the letter dated August 26, 2019 as issued by the present appellant/ Indian Oil Corporation Limited hereinafter referred to as the 'Oil company' with a direction to the Oil Company to accept the land offered by the respondent no.1/writ petitioner and proceed with the application of the Writ Petitioner/Appellant in accordance with Law. The appellant/Oil company felt aggrieved and thus preferred the instant appeal.

2. For effective disposal of the instant appeal, the facts leading to filing of the aforementioned writ petition by the present respondent no.1 before the Hon'ble Single Bench is required to be discussed in a nutshell.

3. Pursuant to an advertisement as published in a newspaper, the writ petitioner/ the respondent no.1 herein has applied for obtaining the LPG distributorship under the reserved category 'SC (GP)' for the location Balipore, District-Hooghly.

4. Before the Hon'ble Single Bench, it was the case of the writ petitioner/ respondent No.1 herein that the properties which had been offered for godown construction and showroom were lease hold lands and those were executed and presented for registration on October 17, 2017 with the territorial office of Sub-Registrar but the registration of the said two lease hold lands were completed on November 14, 2017 which would be evident from the certificates of registration as issued by the concerned Sub-Registrar.

5. Before the Hon'ble Single Bench, it has been averred by the writ petitioner/ respondent No.1 herein that since the last date of submission of the application for LPG Distributorship with the 'Oil Company' was October 18, 2017 and since as per the said Advertisement and as per standard norms of the 'Brochure on Unified Guidelines for Selection of LPG Distributorship' hereinafter after referred to as the 'said Brochure', the applicant should 'own' a plot of capacity of requisite dimensions and location for construction of LPG godown or own a ready LPG cylinder storage godown, the Appellant/Oil Company after field verification found that the date of registration of the proposed lands is November 14, 2017 which is after the last date of submission of application and thus by its letter dated August 26, 2019 rejected the candidature of the writ petitioner.

6. Mr. Jishnu Saha Learned Senior Advocate for the appellant/oil company in course of his argument at the very outset draws our attention to the photocopy of the Advertisement being Annexure-P/1 and the application of the writ petitioner being Annexure – P/2 of the paper book. Attention of this Court is also drawn to the copy of the said brochure being Annexure-p/1 of the stay application. It is argued by Mr. Saha, Learned senior Advocate for the oil company that it is undisputed that the cut off date of the filling of the application for LPG Distributorship was October 18, 2017 and from the advertisement as well as from the said brochure it would reveal that for becoming a qualified applicant for the said Distributorship one of the paramount condition is that as on October 18, 2017 the applicant must own a plot of land of requisite dimension and location. It is submitted on behalf of the appellant/oil company that from the copies of the registered deeds of lease, it would reveal that though the said deeds of lease were executed and presented on October 17, 2017 but the registration thereof was completed on November 14, 2017 and thus under no stretch of imagination it can be said that as on the day of cut off date, the writ petitioner/respondent no.1 was the lessee of the said plots of land.

7. It is further argued that Hon'ble Single Bench while passing the impugned order has not correctly interpreted the provisions of Section 47 of the Registration Act, 1908 hereinafter after referred to as the 'said Act' in the perspective of facts and circumstances as involved in the said Writ petition.

8. Mr Saha, Learned Senior Advocate for the appellant/oil company places his reliance upon a reported decision ` Har Narain (Dead) by LRS - vs- Mam Chand(Dead) by LRS & others' reported in (2010) 13 SCC 128.

It is thus submitted on behalf of the appellant that it is a fit case for interference in the instant appeal by setting aside the impugned order.

9. Per contra, Mr. Debabrata Saha Roy, Learned Advocate for the writ petitioner/ respondent no.1 also draws attention to annexure P/2 of the paper book and annexure-P/1 of the stay application being the copy of the brochure. It is argued that on conjoint reading of the requirements of the oil company as envisaged in their format of application and in the said brochure and Section 47 of the said Act, a logical conclusion can easily be drawn that by implication of Law the writ petitioner became the lessee of the said two plots of land with effect from October 17, 2017 that is from the day of execution and presentation of the said two deeds of lease though the registration of the said two deeds was completed on a later date that is on November 14, 2017 at the instance of the office of the concerned Sub-Registrar over which the writ petitioner/respondent no.1 herein had no control.

10. It is further argued on behalf of the writ petitioner/ respondent no.1 that the Hon'ble Single Bench rightly interpreted the provision of Section- 47 of the said Act the in the perspective of the present lis and therefore there cannot be any justification to interfere with the impugned judgement.

11. In course of his argument, Mr. Saha Ray, Learned Advocate for the respondent No.1 places his reliance upon the following reported decisions viz;

(a) Gurbax Singh -vs- Kartar Singh & others reported in (2002) 2 SCC 611.

(b) Thakur Kishan Singh (dead) -vs- Arvind Kumar reported in (1994) 6 SCC 591.

I Hamda Ammal -vs- Avadiappa Pathar & 3 others reported in (1991) 1 SCC 715.

12. We have meticulously gone through the entire materials as placed before us. We also perused the judgement as passed by the Hon'ble Single Bench which is subject matter of challenge before us. We have also given our due consideration over the submissions of the Learned Advocates for the contending parties. We have also perused the reported decisions as cited from the Bar.

13. For effective disposal of the instant appeal, we at the very out set propose to look to the provisions of Section 47 of the said Act which is reproduced hereunder in verbatim :

"47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration".

14. Keeping in mind the aforementioned legislative provision, we propose to examine as to how far the said provision can be made applicable in the facts and circumstances as involved in the instant appeal.

15. It is undisputed that the cut-off date of submission of the application for the distributorship was October 18, 2017. This is evident from the brochure as mentioned above and the format of application for the distributorship that the intending party must get his deed of title registered in respect of the offered land(s) on or before the last cut off date.

16. Admittedly in respect of the plots in question, the lease deeds were executed and presented for registration on October 17, 2017 but for some reason or other the registration certificates were issued on November 14, 2017.

17. In the impugned judgement, Hon'ble Single Bench while interpreting Section 47 of the said Act expressed the view that it is trite law that once a registration is completed, the date relates back to the date of execution.

18. In the reported decision of Har Narain(supra), the fiction of relation back of registered document to the date of its execution created by Section-47 of the said Act has been dealt with by the Hon'ble Supreme Court of India and the relevant paragraphs of the said reported decisions are as under :

"

.3. Being aggrieved, the appellant filed Suit No.172 of 1971, for specific performance against the respondent no.1 for executing the sale deed of the land in question on 10.8.1971 and the trial Court restrained him from alienating the suit property by any means. Respondent no.1 moved an application dated 16.8.1971 for vacating/modifying the interim order dated 10.8.1971 wherein he disclosed that the entire land in dispute had already been alienated in favour of respondent nos.2 to 6. However, the sale deed executed in favour of the said respondents was registered on 3.9.1971.

4. The suit was contested by the respondents on various grounds, however, the trial Court dismissed the suit vide judgment and decree dated 4.9.1973 on various grounds, inter alia, that sale deed deemed to have come into force on 2.8.1971, as the registration thereof dated 3.9.1971 would relate back to the date of execution which had been prior to institution of the suit and thus, the doctrine of lis pendens would not apply. The said respondents 2 to 6 were bona fide purchasers for consideration without notice. Therefore, the sale deed in their favour was to be protected.

5. Being aggrieved, the appellant filed First Appeal No.508 of 1973, however, the same was dismissed by the First Appellate Court vide judgment and decree dated 22.3.1979. The appellant further approached the High Court by filing the Regular Second Appeal No.1545 of 1979 which was dismissed by the High Court vide judgment and order dated 9.10.2001. However, as none had appeared on behalf of the appellant on the said date before the High Court, the appellant filed the

application to recall the said judgment and order dated 9.10.2001 under Order 41 Rule 19 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter called `CPC').....

23. In view of the above, we reach the inescapable conclusion that the sale executed by respondent No.1 in favour of respondent Nos. 2 to 6 on 2.8.1971 could not be termed as a complete sale until the document got registered on 3.9.1971. In view of the provisions of Section 47 of the Act, 1908 the effect of registration would be that registration would relate back to the date of execution but it does not mean that sale would be complete in favour of respondent Nos. 2 to 6 prior to 3.9.1971 i.e. the date of registration of the sale deed. In view of the above, as sale stood completed during the pendency of the suit, doctrine of lis pendens is applicable in the facts and circumstances of the case.....”

(Emphasis supplied by us)

Cursory reading of the dictum of the aforesaid decision makes it clear that in case of sale, such sale would relate back to the date of execution on registration of the instrument on a subsequent date, in view of the provisions contained in Section 47 of the Registration Act 1908, but such sale cannot be held to be complete till the actual date of registration. If in the interregnum between the date of execution of the sale deed and the registration thereof, any suit is brought in respect of the property under the sale deed, which has been executed but not yet registered, the purchasers of the property shall be held to be lis pendence purchaser as sale would be complete only on the date of the actual registration.

19. In our considered view, the ratio of the decision in the aforesaid case of Har Narain (supra) is not squarely acceptable to the fact of the present case inasmuch as the last date of submission of application was 18th October, 2017 and the lease deed was registered on 14th November, 2017. By the time the field verification took place the fiction created under Section 47 of the Registration Act 1908, had already taken shape and Mr. Saha Roy is emphatic on such fact relying on the case of Gurbax Singh, Thakur Kishan Singh (dead) and Hamda Ammal (supra).

20. In our considered view, a Court of Law sitting in writ jurisdiction neither determines title of a person within the meaning of Specific Relief Act, 1963 nor it determines as to when such passing of title occurs. The paramount consideration before a Writ Court when the lis relates to invitation of offer by the principal is to see whether the principal is fair in his disposition.

21. Coming to the factual aspects of the instant lis, it thus appears to us when inviting application the appellant/oil company has set up condition(s) of eligibility that condition(s) is/are are mandatorily to be followed by the prospective applicants including the Oil Company.

22. In this regard we may safely refer to a decision of the Hon'ble Supreme Court 'Ramana Dayaram Shetty -vs- International Airport Authority' reported in (1979) 3 SCC 489 while dealing with Article-14 of the Constitution of India where the Hon'ble Apex Court held thus :

" 10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by Respondent 1 and since the Respondents 4 did not satisfy this standard or norm, it was not competent to Respondent 1 to entertain the tender of Respondents 4. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in *Viteralli v. Saton* [359 US 535 : Law Ed (Second series) 1012] where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This Court accepted the rule as valid and applicable in India in *A.S. Ahluwalia v. Punjab* [(1975) 3 SCC 503, 504 : 1975 SCC (L&S) 27 : (1975) 3 SCR 82] and in subsequent decision given in *Sukhdev v. Bhagatram* [(1975) 1 SCC 421, 462 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] , Mathew, J., quoted the above-referred observations of Mr Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pp. 540-41 in Prof Wade's "Administrative Law", 4th Edn. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by

the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the Rule of Law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of Liberty" or the exposition set forth by Harry Jones in his "The Rule of Law and the Welfare State", there is as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in "Democracy, Equality and Freedom" [Upendra Baxi, Ed. : Eastern Book Co., Lucknow (1978) p. 28] "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege."

23. The similar view was taken by a co-ordinate Bench of our Hon'ble Court wherein one of us (Chiita Ranjan Dash, J) was a member in a judgement passed in MAT 304 of 2019(Indian Oil Corporation & others -vs- Soma Saha & another) dated 28.09.2022 wherein their Lordships expressed the following view :

"36. The aforesaid decision of Hon'ble Supreme Court in the case of Ramana Dayaram Shetty by now has attained the status of locus classicus. Taking a cue from the aforesaid Judgement we feel it expedient to say here that any act done in contravention of the norms vitiates the action irrespective of whether it involves "affectation of some right or denial of some privilege". In the present case as we have discussed supra and as found from the statement of Respondent No. 1 in Annexure-P4 to the Writ Petition the land for godown offered by her by the last date of submission of application i.e. 18.10.2017 was not in accordance with the norms specified in the advertisement i.e. the invitation to offer. Any development that took afterward has no consequence whatsoever so far as rejection of her application on the ground stated in Annexure-P6 to the Writ Petition is concerned."

24. In view of the discussion made herein above, we have no hesitation to hold that in the event if we direct the appellant/oil company to accept the application of the writ petitioner and proceed with the same in accordance with Law on the basis of fiction created in Section 47 of the Registration Act 1908, that would not only be contrary to the evolved rule of Administrative Law but also tantamount to

clear violation of Article-14 of the Constitution of India since there may be persons having similar footings who have not applied for the distributorship because of the rigor of norms as set up by the appellant/oil company.

25. In our considered view, the reported decisions as cited from the side of the writ petitioner/respondent no.1 have been passed in different perspectives and thus those are quite distinguishable from the facts as involved in the present appeal.

25. In view of such, we thus hold that Hon'ble Single Bench is not justified to hold that the writ petitioner had fulfilled the criteria of offering her registered lease hold lands to the oil company on or before the cut off date.

26. Accordingly, the instant appeal is hereby allowed.

27. Consequently the order dated November 14, 2019 as passed in WP. 17998(W) of 2019 by the Hon'ble Single Bench is hereby set aside.

28. There shall be no order as to cost.

29. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.