

(2023) 03 CAL CK 0061

In the Calcutta High Court

Case No : W.P.A. No.756 Of 2007, CAN 2 Of 2010, 3 Of 2014 (Old CAN 4570 Of 2010, 4048 Of 2014)

Indian Oil Corporation Limited & Ors.

APPELLANT

Vs

Rita Khatun

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 03 CAL CK 0061

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

Bench : Division Bench

Advocate : M.S. Yadav, Gautam Brahma, Pampa Saha, Arijit Dey

Final Decision : Allowed

Judgement

Partha Sarathi Sen, J

1. In this intra-court appeal, the order dated April 19, 2022 as passed in WPA No. 5356 of 2022 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/respondent herein and thereby set aside and quashed the letter of withdrawal of the letter of intent(LOI) dated December 8, 2021 as issued by the present appellant/ Indian Oil Corporation Limited hereinafter referred to as the 'Oil company'. The appellant/Oil company felt aggrieved and thus preferred the instant appeal.

2. For effective disposal of instant appeal, the facts leading to filing of the aforementioned writ petition by the present respondent before the Hon'ble Single Bench is required to be discussed in a nutshell.

3. Pursuant to an advertisement as published in newspapers, the writ petitioner/ the respondent herein has applied for obtaining the distributorship in the reserved category claiming inter alia; that she is a member of the other

backward class(OBC) and in support of her contention, she relied upon a certificate dated March 14, 2019 as issued by SDO, Basirhat, North 24 Parganas. It is pertinent to mention herein that in the said certificate dated March 14, 2019 it has been mentioned that the petitioner belongs to 'MUSLIM MONDAL' category which is recognized as backward class(OBC-Category-A) by the Government of West Bengal.

4. Before the Writ Court it is the further case of the writ petitioner that after compliance of the requisite formalities by her though LOI was issued in favour of her by the Oil Company but on January 30, 2021, the writ petitioner was served with a show cause notice by the Oil Company wherein it has been mentioned that the writ petitioner has failed to justify her OBC caste declaration by providing any substantial document and thus the oil company expressed the view that the writ petitioner made a false declaration on affidavit.

5. In reply to such show cause, the writ petitioner/respondent herein had duly sent her reply to the Oil Company/ the appellant herein annexing therewith a copy of another caste certificate dated February 22, 2021 as issued in her favour by the SDO, Basirhat, North 24 Parganas. In her reply, the writ petitioner contended that since in her Aadhar Card the name of her father was incorrectly recorded, the OBC certificate as issued earlier was wrongly issued mentioning her community as 'MUSLIM MANDAL'. In her reply, the writ petitioner also urged that subsequently the said error was rectified and a fresh certificate was issued in her name mentioning that she belongs to the 'MUSLIM MOLLA' community which is a backward class community as per the notification issued by government of India.

6. Before the writ court, the writ petitioner/ the respondent herein contended that the appellant/Oil Company however was not satisfied with the reply of the writ petitioner and thus by the impugned letter dated December 8, 2021 withdrew the LOI as issued in favour of the writ petitioner.

7. As discussed above, the Hon'ble Single Judge by the impugned order came to the conclusion that there has been no suppression/false/misrepresentation/incorrect submission on the part of the writ petitioner and since the subsequent caste certificate was issued upon rectification of the earlier certificate, the Oil Company/the appellant herein was not justified in withdrawing the LOI as issued in favour of the writ petitioner and hence this appeal.

8. Mr. Yadav, learned advocate for the appellant/ oil company in course of his argument draws attention of this Court to the impugned order as passed by the Hon'ble Single Bench. Attention of this Court is also drawn to the Clause 8B(c) of the 'Brochure on Unified Guidelines for Selection of LPG Distributorships' relating to Specific Eligibility Criteria for Other Backward Classes (OBC) of the appellant/ oil company . It is contended by Mr.Yadav that as per the said Clause the candidate would be required to submit a copy of the certificate issued by the competent authority, notified by the Government of India certifying that the

candidate belongs to 'Other Backward Classes' recognized as OBC by a resolution/ gazette notification issued by the Government of India and along with such OBC certificate, the candidate has also to submit a certificate in the prescribed format that he/she belongs to the OBC category fulfils non-creamy layer status and that both the above mentioned certificates shall have to be submitted within 7 days from the date of intimation of his/her selection. It is further submitted that in the said Clause it has also been mentioned that the last date for submission of the application mentioned in the notice of advertisement or corrigendum (if any), will be treated as the date of reckoning for OBC status of the candidate and also for determining that the candidate does not fall in the creamy layer. It is further submitted by Mr. Yadav, learned advocate for the appellant that the writ petitioner in support of her claim as an OBC submitted a certificate dated March 14, 2019 wherefrom it would reveal that the writ petitioner/ respondent belongs to 'MUSLIM MANDAL' community which is recognized as a Backward Class 'OBC category-A' by the Government of West Bengal. Drawing attention to the resolution dated February 17, 2014 bearing no. F.NO.12015/05/2011-BC-II as issued by Ministry of Social Justice and Empowerment, Union of India it is contended by Mr. Yadav that in the said resolution of the Union of India the community 'MUSLIM MANDAL' does not find any place in the Central list of OBCs and therefore as per Clause 8B(c) of the said brochure of the appellant/oil company, the writ petitioner/respondent cannot be considered as a fit candidate for obtaining LPG Distributorship under the reserved category. It is contended on behalf of the appellant/oil company that on account of such discrepancy a show cause notice dated January 30, 2021 was issued by the appellant oil company in favour of the writ petitioner/respondent herein asking her to offer explanation as to why the letter of intent (LOI) as issued in favour of her should not be withdrawn on account of the discrepancy as mentioned above. Drawing attention to page 113 of the stay application, it is argued by Mr. Yadav that after receiving the show cause notice the writ petitioner respondent had forwarded another OBC Certificate dated February 22, 2021 wherefrom it would reveal that she belongs to 'MUSLIM MOLLA' Community. It is, thus, argued by Mr. Yadav, learned advocate for the appellant/oil company that since the rectified certificate has been submitted by the writ petitioner with the oil company beyond the last date of submission of application violating clause 8B(c) of the aforementioned brochure, the appellant oil company is within their right not to consider the second rectified certificate of the writ petitioner for the purpose of selecting her as an eligible candidate for the distributorship of LPG Gas. It is further contended by Mr. Yadav, that the alleged second rectified certificate dated February 22, 2021 as submitted by the writ petitioner is a hoax since from the other documents namely; the certificate as issued by West Bengal Board of Secondary Education in the name of the writ petitioner, the Epic Card standing in the name of the writ petitioner and the PAN Card standing in the name of the writ petitioner, it reveals that she belongs to 'MUSLIM MANDAL' Community and with the issuance of the certificate dated February 22, 2021, she cannot come under the category of 'MUSLIM MOLLA' Community which is a OBC Category as per

Resolution dated February 17, 2014 as issued by Union of India. It is thus, submitted by Mr. Yadav, that since the writ petitioner had miserably failed to comply with the requisition of Clause 8B(c) of the Brochure as framed by the appellant/oil company, the present appellant possesses every right to withdraw the LOI as issued in favour of the writ petitioner. Mr. Yadav, further submits before this Court that the Hon'ble single bench while passing the impugned order has failed to consider the abovementioned aspects and, thus, misdirected herself in passing the impugned order which has no leg to stand upon in the eye of law. It is thus, submitted that it is a fit case for allowing the instant appeal by setting aside the impugned order.

9. Per contra, learned advocate for the writ petitioner/respondent in course of her argument draws attention of this court to the photocopy of the application for appointment of LPG distributor as submitted by the writ petitioner as well as to the letter dated January 30, 2021 as issued by the appellant/oil company asking the writ petitioner to show cause as well as to explain as to why LOI as issued in favour of her should not be withdrawn. Attention of this court is also drawn to the letter impugned dated December 08, 2021 under cover of which the present appellant has withdrawn the LOI of the writ petitioner. It is argued on behalf of the respondent/writ petitioner that in response to the show cause notice, the writ petitioner/respondent had given due reply annexing therewith a rectified certificate dated February 22, 2021 wherefrom it would reveal that she belongs to OBC Category as per the resolution of Union of India. It is further submitted that in reply to the show cause it has been categorically mentioned that since in her Adhaar Card, the name of her father was written by mistake as 'Abdul Mannan Mondal' instead of 'Abdul Mannan Mollah', a mistake cropped up in her caste certificate dated March 14, 2019 as issued by the competent authority which was however, rectified by the self same competent authority by issuing a fresh certificate dated February 22, 2021 indicating that the writ petitioner belongs to 'MUSLIM MOLLA' Community which is an OBC Category as per Resolution of Union of India. It is submitted further on behalf of the writ petitioner/respondent that since the mistake cropped up not on account of own laches of the writ petitioner, the appellant/oil company ought to have come to a finding that the writ petitioner has not suppressed/misrepresented/furnished incorrect or false information affecting her eligibility prior to withdrawal of LOI as issued in her favour. It is further submitted that the appellant /oil company ought to have visualise that the rectified caste certificate as well as the previous caste certificate both have been issued by the competent authority over which the present writ petitioner has got no control and, therefore, she cannot be made victimised for the fault of the others. It is thus, submitted that it is fit case for dismissal of the instant appeal.

10. This court has meticulously gone through the entire materials as placed before this court including the impugned order. This court has given its due consideration over the submissions of the learned advocates for both the sides.

11. On careful consideration of the entire materials as placed before us we have no doubt that the Brochure of Unified Guidelines for Selection of LPG Distributors and its various clauses as published are binding on the appellant/Oil company as well as the candidates seeking selection for LPG Distributorship. It further appears to us that a Court of Law sitting in its writ jurisdiction cannot interpret the clauses of the said Brochure in a manner contrary to its proposition and perspective unless it is shown that either the whole or any of its clauses are unconstitutional. It further appears to us that while publishing an advertisement seeking application for distributorship of LPG when the appellant/oil company has fixed a cut off date for submission of application with all relevant documents, the candidates intending to get distributorship shall have mandatorily to follow such criteria i.e. to say their application along with all documents must reach in the hands of the appellant/oil company positively by the cut off date and time. Admittedly in the case in hand the writ petitioner has failed to produce the requisite caste certificate within the cut off date as fixed by the appellant/oil company for any reason whatsoever and, therefore, in our considered view a writ court is not entitled to extend the said cut off date for any reason whatsoever. We, thus, hold that since the writ petitioner has failed to submit her requisite document(s) along with an application for distributorship within this last date, the appellant/oil company is within their right to withdraw the LOI as issued in favour of her since the same have been found defective during scrutiny afterwards.

12. This appeal has another facet. The Hon'ble Single Bench of this Court while passing the impugned order has placed her reliance upon a decision of the Hon'ble Supreme Court in Civil Appeal No. 1691 of 2016 (Arising out of SLP(c) No. 27550 of 2012) in the matter of: Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr. In our considered view the relevant paragraph of the impugned order is thus:

"The Hon'ble Supreme Court in Civil Appeal No. 1691 of 2016 (Arising out of SLP (C) No. 27550 of 2012) in the matter of Ram Kumar Gijroya -vs- Delhi Subordinate Services Selection Board & Anr. referred to an earlier order passed by the Hon'ble Supreme Court wherein it has been mentioned that "Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category".

13. On perusal of the aforementioned judgement of the Hon'ble Supreme Court in the case of Ram Kumar Gijroya (supra) we, respectfully accept the view of the Hon'ble Apex Court of our country that a person's community and/or caste is

determined by his/her birth and the same cannot be acquired on account of happening of a subsequent event. The judgement of the Hon'ble Supreme Court supra is in respect of Scheduled Caste and Scheduled Caste category is quite different from OBC category in as much as there are number of castes and sub castes within the same caste and not all of them have been recognized as "OBC" in the notification issued by the Union of India. On perusal of the caste certificate dated March 14, 2019 as issued by the competent authority it would reveal that the writ petitioner by birth belongs to 'MUSLIM MANDAL' Community and in the said certificate her father's name had been written as Abdul Mannan Mondal. In the certificate issued by Board of Secondary Education, in the EPIC Card as well as in the PAN Card of the writ petitioner, we find the name of the father of the writ petitioner is 'Abdul Mannan Mondal'. If that be the so, we have no hesitation to hold that since the father of the writ petitioner belongs to 'MUSLIM MOLLA' Community, the writ petitioner by her birth becomes a part of 'MUSLIM MANDAL' Community. Admittedly before the appellant/oil company, the writ petitioner/respondent has forwarded a caste certificate dated February 22, 2021 wherein it has been mentioned that she belongs to 'MUSLIM MONDAL' Community since according to the respondent/ writ petitioner such rectified certificate was issued after detecting that in her Adhaar Card, the name of her father was written by mistake as 'Abdul Mannan Mondal' instead of 'Abdul Mannan Molla'. In our considered view the explanation as advanced by the writ petitioner/respondent before the appellant/oil company is not at all tenable in the eye of law since apart from her Adhaar Card in her Secondary Board certificate, PAN Card and EPIC Card her father's name has been written as 'Abdul Mannan Mondal' and not as 'Abdul Mannan Molla'. Such being the position we are constrained to hold that merely by producing a caste certificate dated February 22, 2021 as issued by the competent authority the writ petitioner cannot acquire OBC status as per the resolution dated February 17,2014 as published by the Union of India.

14. In view of the discussion made hereinabove we thus find sufficient merit in the instant appeal and accordingly the instant appeal is allowed on contest.

15. Consequently the impugned order dated 19.04.2022 as passed by the Hon'ble Single Bench in WPA 5356/22 is hereby set aside.

Consequently the letter of withdrawal of LOI no.2018/IN001528/WB./000190/2111/00037 dated 22.03.2019 vide reference no. IOCL/KOLIDO/BERABERIA dated 08.12.2021 as issued by the appellant/oil company in favour of the writ petitioner/respondent herein is hereby held justified in the eye of law and the same is revived.

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

I agree.