
(2022) 05 CAL CK 0017
In the Calcutta High Court
Case No : WPA No. 20821 Of 2021

Rashbehari Saha

APPELLANT

Vs

Indian Oil Corporation Limited & Ors.

RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 05 CAL CK 0017

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, Subhankar Das, Neil Basu, Biswaroop Bhattacharyya, Sanjib Seth, Puspendu Chakraborty

Final Decision : Dismissed

Judgement

Amrita Sinha, J

In response to an advertisement published in the daily newspaper jointly by three oil companies, viz, Indian Oil Corporation Limited (IOCL), Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL), the petitioner applied for obtaining Gramin LPG distributorship at Jagatballapur, Gram Panchayat Jagatballapur-2 under Jagatballapur Block, District Howrah in the Open Category.

The petitioner qualified and participated in the online computerised draw of lots but in the said draw of lots none of the participants was successful. A fresh redraw was conducted wherein the petitioner and the private respondent Smt. Moumita Ghosh both participated. The private respondent was declared successful in the open category.

According to the petitioner, IOCL violated the conditions as laid down in the Brochure on Unified Guidelines for Selection of LPG Distributors, hereinafter referred to as the 'Unified Guidelines', and permitted the private respondent to offer alternate land. The land offered by the private respondent ought not to

have been accepted by IOCL as the said land was registered in her favour long after the last date of making the application.

It is the further case of the petitioner that there is no scope for offering alternate land, twice. The private respondent initially offered land which was not accepted by IOCL. The private respondent was directed to offer alternate land. The said land was also not suitable as there was no motorable road. The private respondent gave an undertaking to offer land which was in accordance with the criteria as laid down in the Unified Guidelines. Thereafter, IOCL permitted the private respondent to offer a separate land which was not permissible in accordance with the Unified Guidelines.

It has been submitted that the private respondent has actually played fraud upon IOCL in obtaining the letter of appointment in her favour.

The petitioner has relied upon the provisions of the Unified Guidelines in support of his contention that IOCL acted in deviation of the conditions as laid down in the Unified Guidelines.

The petitioner prays for a direction upon the respondent IOCL to cancel the selection of the private respondent and to conduct a redraw for appointment of Gramin LPG distributorship under open category.

The private respondent opposes the prayer of the petitioner. It has been submitted that no case has been made out by the petitioner in the writ petition and the petitioner is trying to make out a case out of the averments made by IOCL in its affidavit-in-opposition.

It has been submitted that as per the Unified Guidelines there is a provision for appeal. Had the petitioner been aggrieved by the act of IOCL to issue appointment letter in favour of the private respondent, then the petitioner ought to have taken steps for preferring the appeal before the appellate authority in terms of the Unified Guidelines.

It has been submitted that the private respondent has already invested huge sum of money in making construction for setting up of the LPG godown and showroom and the Court ought not to interfere in this matter, at this stage.

It has further been submitted that the land offered by the private respondent was in accordance with the guidelines and the criteria as laid down in the Unified Guidelines and accordingly, IOCL accepted the same and issued letter of allotment in her favour.

Prayer has been made for rejection of the writ petition.

IOCL has filed a report before this Court wherein it has been mentioned that in the first draw of lots held on 8th June, 2018 amongst the eligible candidates, the candidate who became successful failed to satisfy the eligibility conditions during the Field Verification of Credentials (FVC). As such, the candidature of the successful candidate was rejected and redraw was conducted amongst the

remaining candidates on 28th December, 2018.

The petitioner and the private respondent both participated in the redraw. The private respondent emerged successful. FVC of the private respondent was conducted on 18th January, 2019. During FVC it was revealed that the land offered by the private respondent was not in the advertised location and the dimension of the land offered was also not in accordance with the eligibility criteria mentioned in the Unified Guidelines. It is at that point of time that the private respondent offered an alternate piece of land for godown and the said alternate piece of land was again verified and was found suitable in all respects.

According to Clause 2 of the Unified Guidelines, as the land offered by the private respondent was found to be suitable at the time of FVC, accordingly, the Letter of Intent holder, i.e, the private respondent herein, was offered a further chance to offer a better land. The private respondent availed the benefit of the said provision and offered a new land which was accepted by IOCL and accordingly Letter of Allotment was issued in her favour on 31st December, 2020 and the commissioning of the distributorship was done on 15th March, 2021. It has been submitted that the writ petition was filed in December, 2021, that is, long after the distributorship was commissioned.

Learned advocate representing IOCL relies upon the various provisions of the Unified Guidelines for selection of LPG distributors and submits that the provisions of the Unified Guidelines have been strictly adhered to by IOCL. Prayer has been made for dismissing the writ petition.

I have heard the submissions and have perused the documents relied upon by the parties.

It appears from the submissions made on behalf of the parties that pursuant to an advertisement published in 2017 the petitioner and the private respondent applied in response to the same. The private respondent emerged successful in the redraw of lots stage. Letter of Intent was issued in her favour. IOCL conducted FVC but at that point of time it was revealed that the land offered by the private respondent was not in accordance with the requirement of IOCL. The private respondent was afforded one opportunity to offer an alternate land, which she did. The alternate land offered by the private respondent was accepted by IOCL. As the alternate land offered by the private respondent stood accepted by IOCL, accordingly, as per the Unified Guidelines she got a further opportunity to place a better land.

According to Clause 2 (b) of the Unified Guidelines, if the land offered by the candidate in the application or alternate land offered by the candidate at the time of FVC meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, then the LOI holder can offer an alternate/ new land for construction of godown of specified dimensions, in the advertised location. It will be considered on the grounds of enhanced security/safety, better title, convenient location, lower operating cost etc.

Clause 2 (e) mentions that if the land offered by the candidate in the application or alternate land offered by the candidate at the time of FVC meets all specifications, then subsequently, the LOI holder can offer an alternate/new land.

The private respondent herein offered alternate land at the time of FVC which was in accordance with the required specifications, as such, as per the aforesaid clause, the same was accepted by IOCL. The private respondent subsequently offered a better piece of land and IOCL being satisfied with the land offered by the private respondent issued letter of allotment in her favour.

Apparently, it does not appear that there has been any deviation from the Unified Guidelines.

Had the petitioner been genuinely aggrieved by the selection of the private respondent, then appropriate steps ought to have been taken by him for preferring appeal before the appropriate authority according to the provision as mentioned in the Unified Guidelines. The petitioner without approaching the appellate forum directly approached this Court under the high prerogative writ jurisdiction praying for cancellation of the letter of appointment issued in favour of the private respondent, that too, long after the distributorship was commissioned.

The Hon'ble Supreme Court in *Sanjay Kumar Sekh vs. Bharat Petroleum Corporation Limited and Others* reported in (2014) 3 SCC 493 relied upon the order passed by the Hon'ble Supreme Court in the matter of *Air India Limited vs. Cochin International Airport Limited* reported in (2000) 2 SCC 617, wherein it relied upon the principle that when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

The Court reiterated the need of caution while entertaining a writ petition in contractual matters and held that unless justified by public interest, the same ought not to be entertained.

From the discussions made herein above, it does not appear that there has been any apparent error or illegality committed by IOCL at the time of issuance of the letter of allotment in favour of the private respondent. Distributorship has already commenced and it will not be proper to undo the action of IOCL at this stage. The same will not serve the interest of either of the parties. There is no overwhelming reason to interfere in the present set of facts. Accordingly, the Court is not inclined to exercise discretion and entertain the writ petition.

The writ petition fails and is hereby dismissed.

Urgent certified photo copy of this judgment, if applied for, be supplied to the

parties expeditiously on compliance of usual legal formalities.