
(2019) 09 CAL CK 0364
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 19041 (W) Of 2019

Rekha Palui

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. & Anr

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0364

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Biswaroop Bhattacharya, Amal Kr. Saha, Puspendu Chakraborty, Debabrata Sen

Judgement

Shekhar B. Saraf, J

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the rejection of his proposal for L.P.G. distributorship at Nayachak by a letter dated June 18, 2019 issued by the Bharat Petroleum Corporation Limited (hereinafter referred to as the 'B.P.C.L.').

2. Mr. Biswaroop Bhattacharya, Counsel on behalf of the petitioner submits that on the date of advertisement the petitioner had a notarised deed of lease in her favour. He submits that during field verification B.P.C.L. informed the petitioner that the notarised lease deed is not as per the requirement under the guidelines and therefore, allowed him an additional 15 days' time to provide an alternate land for the shop room. He further submits that the petitioner in her wisdom got the same land registered in accordance with law on December 24, 2018 and submitted the same to the B.P.C.L.

3. Mr. Puspendu Chakraborty, Counsel appearing on behalf of the B.P.C.L. submitted that the Division Benches of this High Court in a catena of judgements have categorically held that the requirement under the Rules and Regulations cannot be altered or relaxed in any manner. He submits that the petitioner was

given a chance to provide an alternate land within 15 days and the alternate land that the petitioner was required to provide had to satisfy the requirement that the said land was leased to him on the date of advertisement. He further submits that in the present case, the lease has been registered subsequent to the date of advertisement and therefore, the petitioner's plea cannot be accepted. He relied on two unreported decisions of the Division Bench of this Court in the case of Indian Oil Corporation Ltd. & ors. Vs. Samir Barmar & anr. (F.M.A.2686 of 2015 with CAN 7758 of 2015); and in the case of Prasanta Kumar Biswas Vs. Union of India & ors. (M.A.t.1164 of 2018 with CAN 8050 of 2018). He also relied on an unreported decision of this Court in the case of Soumitra Hazra Vs. Indian Oil Corporation Ltd. & ors. (W.P. 14338(W) of 2019) to buttress his above submission.

4. I have considered the arguments placed on behalf of the both the parties and perused the materials on record. On a bare perusal of the judgements cited by Mr. Chakraborty, I am of the view that no relaxation can be provided to the petitioner. In Prasanta Kumar Biswas (supra) the law has been clearly laid down and the extract of the same is provided below :-

"It is trite law that an agreement for sale does not create any interest in any immovable property. In fact, the judgements cited by the learned Senior Counsel on behalf of the appellant also reiterate the said principle. If any further reference is required, one may conveniently refer to the decision of the Hon'ble Supreme Court in Balwant Vithal Kadam v. Sunil Baburaoi reported at (2018) 2 SCC 82. It is an admitted position that as one the last date for submission of the application, the applicant was not the owner of the land. No interest was created in favour of the writ petitioner. If such a relaxation is now shown in favour of the appellant then persons similarly situated would be deprived of the benefit of such relaxation."

5. One may also look into the case of Soumitra Hazra (supra) in relation to the principle that unless mechanism and process that has been followed by the authorities/ corporation is not found to be perverse and/or arbitrary, there is no requirement for the High Court in its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in the said process. Extract of the said judgement wherein the judgement of the Supreme Court has been relied upon is provided below :

"11. At the very outset, I have to state with regard to jurisdiction of this Court that the writ court under Article 226 of the Constitution of India does not examine every decision/order as if the Court is sitting in appeal. It is the mechanism and process that has been followed by the authorities/ corporation that is looked into and if the same is not found to be perverse and/or arbitrary, there is normally no requirement to interfere in the said process. It is to be further kept in mind that in a writ proceeding challenging contracts given by a public corporation, the window for interference is minimal and the Writ Court could only interfere when it finds a palpable illegality having been committed by

the corporation with reference to the statutes/rules/guidelines that are to be followed by the corporation. The recent decision of the Apex Court in *Caretel Infotech (Supra)* highlights the self imposed restrictions under Article 226 of the Constitution of India and the relevant paragraphs are delineated hereinbelow :-

"36. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and Public Sector Enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficiency of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the Public Sector.

37. In *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr.*, this Court has expounded further on this aspect, while observing that the decision making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision making process would not suffice."

6. In the present facts, it is clear that the alternate land that was provided by the petitioner was registered on a date subsequent to the date of advertisement.

7. Accordingly, I find that no prima facie case has been made out by the petitioner and therefore, no interim order can be passed at this stage. Furthermore, the balance of convenience and inconvenience is also against the petitioner and therefore, I am of the view that no interim order should be passed in the present matter.

8. In light of the same, let affidavit-in-opposition be filed by one week after Puja vacation, reply thereto if any, two weeks thereafter. Let the matter appear three

weeks after Puja vacation.

9. It is made clear that the respondent authorities and the person who may be given the dealership shall abide by the result of the writ petition.