
(2012) 04 CAL CK 0069
In the Calcutta High Court
Case No : M.A.T. No. 879 of 2011

Saheli Patra (Maity)

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : (2012) 4 CHN 100

Hon'ble Judges : J.N. Patel, C.J.; Sambuddha Chakrabarti, J

Bench : Division Bench

Advocate : Hirak Mitra and K.K. Maity, for the Appellant; Amitabha Shukla for Respondent No. 1, Naba Kumar Das for Respondent No. 2 and K.K. Moitra, Nibedita Pal and R. Dhara, for the Respondent

Judgement

Sambuddha Chakrabarti, J.—This appeal is directed against an order dated 6th May, 2011 passed by a learned Single Judge of this Court in W.P. No. 65(W) of 2011 whereby the learned Single Judge declined to pass any interim order in the matter on the ground that as the respondent No. 3 had already been appointed by the respondents authorities in respect of the distributorship on January 6, 2011 the balance of convenience and/ or inconvenience was in favour of rejecting the prayer for interim order. The learned single Judge, however, directed that the appointment of the respondent No. 3 shall abide by the result of the case. The case of the appellant in short is that Indian Oil Corporation, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation had issued a notice for appointment of distributors at various locations including Digha (Urban/Rural). The writ petitioner/appellant had applied for that along with others which include the respondent No. 3 as well. She was awarded 89.5 per cent, and the respondent No. 3 was awarded 92.67 per cent. marks.

2. The appellant contends that from the relevant brochure it appears that the marks for infrastructure and facilities were fixed at 35, out of which 25 was for godown and 10 was for the showroom. According to the brochure the godown/land for construction of the godown would be suitable if it was located within 15

kilometres or within the area of operation of the advertised location. According to the appellant this necessarily means that the showroom was to be within Digha (Urban/ Rural) itself.

3. The contention of the appellant is that the showroom offered by the respondent No. 3 is at a place known as Thikra which is a few kilometres away from Digha (Urban/Rural). In support of her contention the appellant has relied on the information which have been obtained by her from different authorities on various dates which, according to the appellant, have not been controverted by the Bharat Petroleum Corporation Limited, the respondent No. 1 herein as the appropriate authority involved in this case. The appellant further stressed on the inability of the respondent No. 3 to show that Thikra was within the Digha (Urban/ Rural). According to the appellant if Thikra was outside Digha (Urban/Rural) area the respondent No. 3 stands disqualified as her plot of land was not within the stipulated area. The appellant submits that a godown might be within a radius of 15 kilometres from the trading area but the showroom must be within the trading area itself.

4. The appellant further submits that if the showroom offered by the respondent No. 3 is not in terms of the advertisement the commencement of the business is based" upon a wrongful act of the respondent No. 1 and such the view of the learned Single Judge that a running business should not be stopped is no ground for not granting an interim order.

5. As against this the chief contention of the respondent No. 3 was that location of Digha (Urban/Rural) includes the area of operation and the same should be within the 15 kilometres" radius of Digha sea beach as understood by the oil companies. The respondent No. 3 submitted her application for appointment of distributorship disclosing her godown at Thikra under Ramnagar-I block which is within the radius of 6 kilometres of Digha sea beach. The selection committee after evaluating the candidates prepared a panel and the respondent No. 3 secured the first position and the appellant the second. After the publication of the panel the respondent No. 1 started the process for field verification and sent a letter dated November 16, 2010 to the BL & LRO to confirm whether the godown of the respondent No. 3 was within the Digha location which was confirmed by him by a Memo dated December 2, 2010. After expiry of about 10 months from the publication of the panel the appellant for the first time made a complaint on December 31, 2010 which cannot be entertained according to Clause 12.1 of the advertisement. The appellant was aware that her complaint was not liable to be entertained and hence affirmed the writ petition on the very next working day, i.e., January 3, 2011.

6. The respondent No. 3 has very strongly contended that the allegations and prayers made by the appellant are beyond the purview of the writ petition. Both the parties have relied on various judgements in support of their respective cases.

7. The respondent No. 1, i.e., the oil company involved in this matter, has also

made submissions supporting the respondent No. 3.

8. The fact remains that the respondent No. 3 had already started the business. It will not be proper at this stage to enter into the question whether the business actually was started before November 21, 2011 or not, more so as the letter of intent was issued on January 6, 2011 and the fact remains that she was already appointed in respect of the above distributorship. The learned Judge under the circumstances had held that the balance of convenience and/or inconvenience lay in favour of rejecting the prayer for an interim order with the clarification that the appointment of the respondent No. 3 shall abide by the result of the case.

9. A large number of documents have been placed before us which were admittedly obtained by the appellant after the order impugned was passed. We have to consider the propriety of the order passed by the learned Single Judge at the interim stage on the basis of the documents placed before the Court. The documents relied upon by the petitioner before the learned Single Judge did not conclusively establish that Mouza Thikra was outside the trading area of Digha (Urban/Rural). Merely the reply of the State Public Information Officer of Digha Sankarpur Development Authority said that the concerned Mouza was outside the Digha Sankarpur Development Authority and was not within the jurisdiction of Digha and New-Digha Post Office. On the contrary the letter dated December 2, 2010 written to the Territory Manager of the respondent No. 1 by the BL & LRO, Ramnagar-I, Purba Midnapore categorically mentioned that the Mouza Thikra was within the location of Digha. A copy of this letter was annexed to the supplementary affidavit affirmed by the petitioner on April 5, 2011. This, coupled with the fact that the respondent No. 1 had already been issued the letter of intent was sufficient for the learned Single Judge to reject the prayer for an interim order. The appellant has strongly relied on a letter dated December 8, 2011 by the BL & LRO, Ramnagar, Purba Midnapur which was inter alia, to the effect that Mouza Thikra was not within the purview of Digha Sankarpur Development Authority. But then this is a post-interim order document and we should not judge the propriety of the interim order passed by the learned Single Judge on the basis of any document obtained subsequently.

10. We hold that in the facts of the case the interim order was rightly declined by the learned Single Judge and in view of what have been discussed above we do not find anything to interfere with the impugned order. The appeal is, thus, dismissed.

11. Needless to mention, the petitioner shall be at liberty to bring it on record before the learned Single Judge all such documents which have not been brought on record so far including those which have been obtained after interim order was passed and the learned Judge shall consider the same at the hearing of the writ petition in order to do complete justice between the parties. In that case the respondents shall also be given an opportunity to deal with those documents.

12. Considering fact that we are dismissing appeal without going into the

materials obtained subsequent to the order impugned in this appeal we only request the learned Single Judge to dispose of the writ petition at an early date.

13. There will be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

J.N. Patel, C.J.

I agree.