

GAHC010160582022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5308/2022

SANJEET KUMAR DAS
S/O- LATE NABIN CHANDRA DAS,
R/O VILLAGE SOUTH KACHAKHANA,
P.O.- KACHAKHANA,
P.S.- TAMARHAT,
DIST.- DHUBRI, ASSAM- 783334.

VERSUS

THE HINDUSTAN PETROLEUM CORPORATION LIMITED AND 7 ORS
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,
PETROLEUM HOUSE, 17, JAMSHEDJI TATA ROAD, MUMBAI,
MAHARASHTRA, PIN- 400020.

2:THE CHIEF REGIONAL MANAGER
HINDUSTAN PETROLEUM CORPORATION LIMITED
GUWAHATI RETAIL REGIONAL OFFICE
2ND FLOOR
H.D. COMPLEX
JANAPAT L.N. BORA SERVICE
ULUBARI
GUWAHATI
ASSAM. PIN- 781007.

3:JHANTU SUTRADHAR
S/O- LATE NIMAI CHANDRA SUTRADHAR

RESIDENT OF DABATTAR BARUNDANGA

P.O.- MOTERJHAR

P.S.- GOLAKGANJ

DIST.- DHUBRI

ASSAM
PIN- 783334.

4:ABDUL KHALEQE BEPARI
S/O- LATE ABDUL RAFIQUE BEPARI

RESIDENT OF WARD NO. 8
G.T.B. ROAD

P.O. AND P.S.- DHUBRI

DISTRICT- DHUBRI
ASSAM

PIN- 783301.

5:UTTAM KUMAR PRADHANI
S/O- LATE RABINDRA NATH PRADHANI

R/O- VILLAGE MORAKURA

P.O.- DHUBRI

DIST.- DHUBRI
ASSAM
PIN- 783301.

6:LUTFUR RAHMAN PRADHANI
S/O- ABDUR RAHMAN PRADHANI

R/O- VILLAGE NORTH RAIPUR
PT.-1

P.O.- DHUBRI

DISTRICT- DHUBRI
ASSAM

PIN- 783301.

7:YUSUF ALI BEPARI
S/O- ABDUL RAFIQUE BEPARI

R/O- VILLAGE NORTH RAIPUR
PT.-1

P.O.- DHUBRI

DISTRICT- DHUBRI
ASSAM

PIN- 783301.

8:NUR MOHAMMAD
NOTARY DHUBRI DISTRICT

DHUBRI
ASSAM

PIN- 783301

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : MR. S S ROY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 30-05-2023

Heard Mr. B.D. Das, learned senior counsel, assisted by Ms. B.B. Hussain, learned counsel for the petitioner. Also heard Mr. S.S. Roy, learned counsel for the respondent nos. 1 and 2, Mr. M.J. Baruah, learned counsel for respondent no. 2 and Mr. GN Sahewalla, learned senior counsel, assisted by Mr. K. Kalita, learned counsel for respondent nos. 4 to 7.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside the Letter of Intent (LoI for short) dated 21.03.2022, issued by the respondent no. 2 in favour of respondent no.3 for violation of clause 8 of the said LoI and for directing the respondent nos. 1 and 2 to award MS/HSD retail outlet dealership to the

petitioner under SC category at a location between Biratnagar Chariali and railway bridge towards Gauripur, on NH-37.

3. In brief, the case of the petitioner is that pursuant to an advertisement published on 25.11.2018, he had applied for MS/HSD retail outlet dealership under SC category at a location between Biratnagar Chariali and railway bridge towards Gauripur, on NH-37 and was adjudged in second position and the LoI dated 21.03.2022 for the said retail outlet dealership was issued in favour of the respondent no. 3. It is projected that despite clause 8 of the LoI that the allottee cannot induct any partner or make any change in the constitution of the firm, as was at the time of submitting application, except spouse, the respondent no. 3 had entered into a partnership agreement dated 16.05.2022, with the respondent no. 4 for carrying out construction on condition to provide share in the business, which was executed in the presence of the respondent nos. 5, 6 and 7. The petitioner had submitted a complaint/representation dated 27.06.2022 before the respondent nos. 1 and 2 for cancellation of the LoI and for issuing LoI in favour of the petitioner. The respondent no. 2, by a letter dated 11.07.2022 informed the petitioner that action would be initiated. However, by a letter dated 25.07.2022, the petitioner was informed that the respondent no. 3 had denied that he had signed any agreement with respondent no. 4. Therefore, alleging that proper enquiry/verification was not conducted by the respondent nos. 1 and 2 and no opportunity was given to the petitioner of being heard, an ex facie arbitrary decision was taken by the said respondents, the present writ petition has been filed.

4. The learned senior counsel for the petitioner had submitted that

by swearing their respective affidavits, the respondent no. 4 and respondent nos. 5 to 7 have all admitted that the respondent no. 3 and 4 had entered into a partnership agreement, which was witnessed by the respondent nos. 5 to 7, yet, the only enquiry conducted by the respondent no. 2 was to send a letter to the respondent no. 3 as to whether any such agreement was executed, which was obviously denied. It was submitted that when the respondent no. 3 had denied execution, the respondent no. 2 ought to have got the signatures examined by forensic experts to arrive at a truth. It was submitted that shoddy enquiry by the respondent no. 2 had adversely affected the right of the petitioner to assert his right to allotment of MS/HSD retail outlet dealership. It has also been submitted that as the respondent nos. 1 and 2 had not filed any affidavit-in-opposition, they are deemed to have admitted the claim of the petitioner.

5. Per contra, while the respective learned counsel for the respondent nos. 1 to 4 have made their submissions to oppose the prayers made in the writ petition, the learned senior counsel, appearing for respondent nos. 5 to 7 has supported the contention of the learned senior counsel for the petitioner.

6. Considered the materials available in the writ petition, affidavit filed by the petitioner on 30.08.2022, affidavit-in-opposition filed by the respondent nos. 3 and 4 and respondent nos. 5 to 7 and reply affidavit filed by the petitioner.

7. It is observed that the purported partnership agreement on 16.05.2022, which was authenticated by Notary public, namely, Nur Mahammad. There is no dispute at the Bar that the said Notary has since

expired and therefore, he cannot be examined.

8. Along with their affidavit-in-opposition, the respondent no. 3, has produced a copy of reply dated 11.07.2022, whereby the respondent no. 3 had claimed that the fake agreement was made by his false signature and that he had never entered into an agreement with the respondent no. 4 or signed before the Notary. The advocate who was also one of the witnesses to the execution of the said agreement had stated in his letter dated 24.10.2022 to the respondent no. 3 that signature provided by him did not tally with his signature appearing in the agreement dated 16.05.2022 vide sl. no. 1246, and he also opined that another Jhantu Sutradhar or another man may appear as Jhantu Sutradhar and put his signature.

9. Thus, on a conjoint reading of the writ petition and affidavits filed by the respective parties, the Court is of the considered opinion that the dispute raised in this writ petition is a highly disputed question of fact concerning purported/ alleged execution of agreement under notary sl. no.1246 dated 16.05.2022 between the respondent nos. 3 and 4, which cannot be determined in a writ proceeding without examining evidence or parties. Therefore, the resolution of this dispute can be best made before the jurisdictional civil Court.

10. As the learned advocate, who was one of the witnesses to the said agreement has not claimed in his notarial certificate dated 16.05.2022 to the respondent no. 2 and his letter dated 24.10.2022 that he had witnessed the execution of the said agreement dated 16.05.2022, after satisfying himself as to the identity of the persons executing it, it cannot be said that the purported

signature of the respondent no. 3 and 4, appearing on the agreement dated 16.05.2022, is a conclusive proof of execution of such an agreement.

11. Moreover, assuming for the time being that there was indeed a partnership agreement between the respondent nos. 3 and 4, it would have given benefit to the respondent no. 4, but he has not only provided a copy of the same to the petitioner, but has admitted its execution before this Court, with knowledge that it may result in revocation of the LoI for MS/HSD retail outlet dealership, which would adversely affect his interest. Yet he has done so, which cannot be without some oblique reason. Therefore, before accepting the existence of such an agreement, it is imperative that its execution be proved in accordance with law.

12. Therefore, the Court is of the considered opinion that no case is made out for interference by this Court in exercise of power and jurisdiction under Article 226 of the Constitution of India, as highly disputed question of fact has been raised in this writ petition, which cannot be effectually be determined without examining the disputed document and the parties in dispute. Therefore, this writ petition is dismissed. However, by providing that this order shall not be a bar for the petitioner to approach the jurisdictional civil Court for adjudication of his grievance in accordance with law.

13. The parties are left to bear their own cost.

JUDGE

Comparing Assistant