

GAHC010130172018



2024:GAU-AS:11069

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

Case No. : WA/208/2018

1:MAMANI PATAR
W/O SRI JANTU MONI SAIKIA, VILL. BHAKATGAON, P.O. BHAKATGAON,
P.S. JAGIROAD, DIST. MORIGAON, ASSAM, PIN 782411.

VERSUS

1:SMT ARUNA PATOR AND 4 ORS
APPLICATION SERIAL NO. RGJ/JGR/003, W/O SRI LAKHI RAM BORDOLOI,
VILL. CHARANGKUCHI, P.O. AND P.S. JAGIROAD, PIN 872410, DIST.
MORIGAON, ASSAM.

2:BHARAT PETROLEUM CORPORATION LTD.(BPCL)
REPRESENTED BY THE MANAGING DIRECTOR
REGISTERED OFFICE
BHARAT BHAWAN
4 AND 6 CURRIMBHOI ROAD
BALLARD ESTATE
MUMBARI 400001

3:THE TERRITORY MANAGER (LPG)
BHARAT PETROLEUM CORPORATION LTD. LPG TERRITORY OFFICE
PANISALAHAT
RAIGANJ
DIST. UTTAR DINAJPUR
WEST BENGAL
PIN 733134

4:THE DEPUTY MANAGER SALES
BHARAT PETROLEUM CORPORATION LTD. 1 ST FLOOR
NEXIA PARK
GMC HOSTEL ROAD
CHRISTIANBASTI
GUWAHATI 781005

5:THE BPCL LPG
DISTRIBUTOR SELECTION CELL
BHARAT BHAWAN
PLOT NO. 31
KIT SCHEME-118
PRINCE GULAM MD. SHAH ROAD
GOLF GREEN
KOLKATA 700095
WEST BENGAL

Advocate for the Petitioner : MR. B C DAS, MR. J H SAIKIA

Advocate for the Respondent : MR R CHAKRAVORTY (R1), MR D DAS (R1),MR. M CHALIHA (R1),MR. S BORTHAKUR (R2-R5),MR. S S ROY (R2-R5),MS. S KAKATI (R2-R5)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER

Date : 07-11-2024

(K.R. Surana, J.)

Heard Mr. J.H. Saikia, learned counsel for the appellant. Also heard Mr. T.J. Mahanta, learned Senior Advocate assisted by Mr. R. Chakravorty, learned counsel appearing for respondent No.1 as well as Mr. S. Borthakur, learned counsel appearing for the respondent Nos.2 to 5.

2. By filing this Intra-Court Appeal, the appellant, who was the respondent No.5 in WP(C) No.3473/2016, has assailed the order dated 14.05.2018, passed by the learned Single Judge in the said writ petition. By the said impugned judgment and order, the learned Single Judge had allowed the challenge to the allotment of LPG Distributorship to the appellant by holding that the tender of the appellant, who was the respondent no.5 in the writ petition was defective and it was held that her selection in the draw of lot as a successful candidate, cannot entitle her to award of the LPG Distributorship. Consequently, the respondent Nos.2 to 5 were directed to conduct re-draw of lot, amongst the eligible tenderers, including the

respondent No.1 herein.

3. In brief, the case of the appellant is that the appellant, the respondent no.1 and some other applicants had participated in a tender process of Bharat Petroleum Corporation Limited (BPCL for short), pursuant to the advertisement dated 30.09.2013, for appointment of LPG Distributor, amongst others, in a location at Jagiroad in the District of Morigaon, which was reserved for the Scheduled Tribe (ST) category applicants. The last date of submission of tender was 31.10.2013 and the selection was envisaged by way of draw of lots and the appellant was declared to be successful.

4. The selection of the appellant was assailed, amongst others, on the ground that her tender was in violation of Clause 6.5.(viii) of the Guidelines, which requires that only owner of the land which includes registered lease deed holder to apply for LPG Distributorship.

5. The learned Single Judge had accepted the contention of the respondent no.1, who had successfully demonstrated that the appellant was not the absolute owner of the land, which is based on entries made in the *jamabandi* for the said land, which indicates that pursuant to the order dated 24.02.2009, passed by the Circle Officer in Mutation Case No.66/08-09, showing that on inheritance, the land measuring 1 Katha 15 Lecha was mutated in the name of four (4) persons including the lessor of the registered lease agreement dated 29.10.2013, namely, Bagiram Dewri (also written as Bogiram Dewri).

6. It was further held by the learned Single Judge that the appellant has not brought on record any document to demonstrate that on the date of submission of tender, Bagiram Dewri was the owner of the plot of land measuring 4x6 metre, which was leased out by the appellant by agreement dated 29.10.2013. Accordingly, it was held that the claim of Bagiram Dewri in the lease deed that he is the absolute owner of the land, which was leased out was not true, as on the date of execution of the lease agreement and it was held that he was not the only absolute owner of the said plot of land but was a co-owner along with some others.

7. Notwithstanding that the name of Bagiram Dewri was mutated on 06.12.2016, it was

held in the writ petition that the subsequent mutation in the name of Bagiram Dewri over the plot of land was of no consequence, as the validity of the tender is required to be judged on the date of submission of the tender and in this case, the last date of submission of tender was 31.10.2013, when the lessor was not the absolute owner of the land in question. Resultantly, it was held that the tender of the appellant was defective and accordingly, direction was issued to re-draw of lots from amongst the eligible tenderers.

8. The learned counsel for the appellant has stressfully submitted that as a co-owner, Bagiram Dewri had right to transfer his share of land, being in exclusive possession of the said land to the appellant and in support of the said contention, reliance has been placed on the cases of:

(1) *S Chanam Singh vs. Santa Singh*, reported in *AIR 1950 PEPSU 5*, (2) *Mst. Rathi vs. Wali Ganai & Ors.* reported in *AIR 1966 J&K 39*, and (3) *Rahim Sheikh vs. Samad Sheikh* reported in *AIR 1972 J&K 7*.

9. In support of the said decisions, there is no dispute or quarrel with the proposition laid down in the said cases. However, the said cases do not help the appellant in any manner because the appellant has not able to demonstrate that on the date when the tender was submitted and opened, the lessor was the absolute owner of the land in question, nor it could be demonstrated that he was in exclusive possession of the said land.

10. On examination of the documents, which are appended to the memo of appeal and affidavits filed thereto, we note that the initial entry in the *jamabandi* relates to mutation of name of four persons in respect of 1 Katha 15 Lechas of land. The subsequent mutation in the name of the appellant discloses that upon partition, an entry was made and 1 Katha 6 Lecha land was mutated exclusively in the name of the lessor of the agreement. However, in the affidavit-in-opposition, filed by the respondent Nos.2 to 5, it appears that land measuring 2 Katha 4 Lecha was held to fall in the share of the lessor of the petitioner, which means there is excess land mutated in favour of the lessor, whereas the previous mutation was in respect of 1 Katha 6 Lecha of land. Therefore, even from the documents appended to this writ appeal as well as affidavit filed therein, the exclusive possession of the lessor cannot be

prima facie determined. Moreover, these documents contain the actual dimension of the land in metres and its actual location cannot be ascertained. Therefore, as stated above, the three cases cited by the learned counsel for the appellant do not help the appellant in any manner.

11. The learned counsel for the appellant has cited the case of *Poddar Steel Corporation vs. Ganesh Engineering Works & Others.*, reported in (1991) 3 SCC 273, to project that while essential conditions of the tender cannot be ignored from but ancillary or subsidiary conditions may not be insisted upon. We are unable to accept the said contention, because if the respondent Nos.2 to 5 are offering distributorship of LPG, it cannot be accepted that the situs of such dealership/distributorship would be ancillary or subsidiary issue.

12. The case of *Cochin International Airport Ltd. vs. Cambatta Aviation Ltd. & Others*, reported in (2000) 2 SCC 617, cited by the learned counsel for the appellant lays down that the body which is awarding contract to choose its own method and arrive at a decision and it is further held therein that the State, its Corporations and instrumentalities are bound to adhere to the norms, standards and procedures, laid down by them and cannot depart from them arbitrarily. The said principles are reiterated and followed in the case *Jagdish Mandal vs. State of Orissa*, reported in (2007) 14 SCC 517 and *Central Coalfield Ltd. vs. SLL-SML Ltd.*, reported in (2016) 8 SCC 622, both cited by the learned counsel for the appellant.

13. Therefore, it is not open to the Court to make an interpretation that the land on which the LPG Distributorship is to be functioning is not an essential criteria. It has been demonstrated by the learned counsel for the respondent Nos.2 to 5 as well as by the learned senior counsel for the respondent no.1 that as per the terms and conditions of the tender, "own" is defined to mean having ownership and title over the property or registered lease agreement for minimum fifteen (15) years in the name of the applicant/family member, as defined in multiple distributorship norm or eligibility criteria and it is further provided that in case of ownership/co-ownership by family members, as given above, consent in the form of a notarized affidavit from the family members will be required. The said criteria is also reflected in the row no.9 of the General Instructions to the candidates applying for LPG Distributorship, which forms the part of the tender document.

14. There is nothing on record to show that the said conditions at row no.9 of the General Instructions was followed and "no objection" from the family members in form of notarized affidavit was attached with the application of the appellant. *Ex-facie*, the land was mutated in the name of four persons when tender was submitted and evaluated. Therefore, the non-availability of the affidavit of the other co-owners, appears to be a good ground for the learned Single Judge to interfere with the selection of the appellant as a successful bidder.

15. The learned Senior Counsel for the respondent No.1 has placed reliance on the case of *Gajara Vishnu Gosavi vs. Prakash Nanasahed Kamble and Ors.*, reported in (2009) 10 SCC 654 as well as *Ramdas vs. Sitabai and Ors.*, reported in (2009) 7 SCC 444, wherein the Supreme Court of India has held to the effect that while the undivided share of coparcener's can be subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned in metes and bounds. Therefore, on facts and appreciation of law, we unable to find any fault or perversity in the judgment, impugned in this Intra Court appeal.

16. We take note of the decision of this Court in the case of *State of Tripura vs. Ramendra Nath Dey*, reported in 2000 (3) GLT 214, wherein it was held that in Intra Court Appeal, judgment of learned Single Judge should be set aside or quashed only when there is a patent error on the face of the record or when the judgment is against the established and well settled principle of law. It is also well settled law that even when two reasonable and logical views are possible, the view adopted by the learned Single Judge should be allowed to prevail. If one requires any authority on point, the decision of this Court in the case of *M/s. Starline Agency vs. Nabajit Das*, reported in 2011 (1) GLT 710 may be referred to. Again in the case of *Assam State Electricity Board vs. Sri Surya Kanta Ray*, reported in (1994) 1 GLR 383, this Court has held that the Appellate Court would not interfere with the discretion of the Court of first instance and substitute its own discretion, except when the decision has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored the settled principles of law.

17. In the present case in hand, the appellant has not been able to demonstrate that the

impugned judgment suffers from any of the conditions referred in the foregoing paragraph.

18. Accordingly, this Intra Court appeal fails and the same is dismissed.

19. The interim order passed on 23.07.2018, staying the operation of the impugned order dated 14.05.2018, stands vacated. Resultantly, there would be no impediment for the concerned authorities to comply with the directions, contained in the order of the learned Single Judge.

JUDGE

JUDGE

Comparing Assistant