

10th March,
2021
(AK)
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W.P.A. 1834 of 2020

**M/s. Ajay Khanna & Anr.
Vs.**

Bharat Petroleum Corporation Ltd. & Ors.

With

W.P.A 1214 of 2020

With

W.P.A 1831 of 2020

With

W.P.A 1832 of 2020

With

W.P.A 1835 of 2020

With

W.P.A 1837 of 2020

With

W.P.A 1840 of 2020

With

W.P.A 1844 of 2020

With

W.P.A 1847 of 2020

With

W.P.A 23090 of 2019

With

IA No: CAN 1 of 2020

With

W.P.A 23089 of 2019

With

IA No: CAN 1 of 2020

With

W.P.A 23088 of 2019

With

IA No: CAN 1 of 2020

With

W.P.A 23374 of 2019

With

IA No: CAN 1 of 2020

With

W.P.A 23380 of 2019

With

W.P.A 23383 of 2019

With

W.P.A 23400 of 2019

With

W.P.A 23402 of 2019

With

W.P.A 23403 of 2019

With

W.P.A 23390 of 2019

With

IA No: CAN 1 of 2020
With
W.P.A 23492 of 2019
With
IA No: CAN 1 of 2020
With
W.P.A 23376 of 2019
With
W.P.A 732 of 2020
With
W.P.A 734 of 2020
With
W.P.A 736 of 2020
With
W.P.A 739 of 2020
With
W.P.A 741 of 2020
With
W.P.A 742 of 2020
With
W.P.A 743 of 2020
With
W.P.A 540 of 2020
With
W.P.A 541 of 2020

Mr. Sirsanya Bandopadhyay
 Mr. Arka Kumar Nag
 Mr. Soham Kumar Roy
 Ms. Deboleena Ghosh

...For the petitioners.

Mr. Sanjib Kumar Mal
 Mr. Bimalendu Das
 Mr. Shomrik Das

...For Bharat Petroleum
 Corporation Limited.

Mr. M.S. Yadav

...For I.O.C. Limited in
 W.P.A 23088 of 2019
 W.P.A 23089 of 2019
 W.P.A 23090 of 2019
 W.P.A 23374 of 2019
 W.P.A 23390 of 2019
 W.P.A 23403 of 2019
 &
 W.P.A 23492 of 2019

Mr. Prasun Mukherjee
 Mr. Deepak Agarwal

...For the HPCL in

W.P.A 23380 of 2019
 W.P.A 23380 of 2019
 W.P.A 23383 of 2019
 W.P.A 23400 of 2019
 &
 W.P.A 23402 of 2019

Mr. Talay Masood Siddiqui
 Mr. Nilotpall Chatterjee
 Md. S.S. Siddiqui
 Mrs. Susmita Saha
 Mrs. Tuli Sinha
 Mrs. Susmita Chatterjee

..For the State.

At the outset, it is submitted by learned counsel for all the parties that, in a similar matter, a Division Bench order dated August 24, 2020 passed in MAT 491 of 2020 is subsisting.

It appears that the factual context of the case from which the said Division Bench order arose is similar to the present writ petitions.

As such, since the Division Bench order is binding upon this Bench, sitting singly, the present writ petitions are also disposed of in terms of the relevant portions of the said order, as quoted hereinbelow:-

“There is no doubt that an inquiry as to the veracity of the details and particulars furnished by an enterprise regarding its status as a micro enterprise or small enterprise has to be conducted by the relevant DIC. There is no escape from such obligation of the relevant DIC. Equally, it may be possible that DICs are not equipped with the manpower or infrastructure to

conduct a physical inquiry in every case. Thus, a standard operating procedure (SOP) has to be evolved by the State where an inquiry will be conducted as to the particulars furnished by a particular enterprise based on the details uploaded by the relevant enterprise on the websites of other authorities; but in the odd case of, say, one in twenty or one in fifty, there would be a physical verification. If an SOP of this kind were to be put into place, it may suffice for the purpose of checking the odd applicant who might furnish erroneous data to obtain the benefit of the classification without being so entitled.

It is imperative that the credentials furnished by the enterprises be accurate and also be inquired into. Government contracts are being awarded on a preferential basis to a class of enterprises and persons who do not qualify to fall within such class must not be permitted to avail of such benefit. Towards such end, the exercise undertaken by the appellant cannot be questioned. At the same time, merely because there is some suspicion in the air, it cannot be presumed that this writ petitioner had furnished erroneous details to obtain its certificate as a micro or small enterprise. Thus, the verification or inquiry by the relevant DIC becomes significant.

The appellant will be entitled to take physical verification to verify the quantum of investment if the appellant finds any glaring error in the inquiry conducted by the DIC, it will be entitled to bring such perceived error to the notice of DIC for appropriate action in accordance with law. Thus, the relevant DIC in this case will physically verify the quantum of investment and other particulars which had been furnished by the writ petitioner at the time that it applied for its certification as a micro or small enterprise. The verification will be conducted on the

basis of the rules that obtained at the time the application was made and not by the present rules. Upon conduct of such verification, the relevant DIC will call upon the writ petitioner to either amend its memorandum or cancel its memorandum or require it to take no action at all. However, a written communication in such regard must be issued by the relevant DIC to the writ petitioner within six weeks from date.

For a period of eight weeks from date, no coercive action will be taken by the appellant to terminate the contract subsisting in favour of the writ petitioner. The writ petitioner will be obliged to forward the communication received from the relevant DIC, consequent upon the inquiry being conducted, within a week of the receipt thereof to the appellant. The appellant will be entitled to take appropriate action thereupon in accordance with law.

.....we permit the appellants to conduct physical verification to verify the quantum of investment. If the appellants find any glaring error initially conducted by the DIC, it would be entitled to bring such perceived errors to the notice of the DIC to take appropriate action in accordance with law and upon notice to the respondent no.1.

We make it clear that by this order, we have not conferred any jurisdiction upon the appellants with the duties of the DIC but it is only to facilitate the DIC if the occasion arises to arrive at a proper finding.”

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)