

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

W.P.A. No. 705 of 2019

IA No. CAN 1 of 2020

(Old No. CAN 2380 of 2020)

Laxmi Basfore

Vs.

Senior Area Manager, Indian Oil Corpn. Ltd., Siliguri Area Office & Ors.

For the writ petitioner	:-	Mr. Raja Basu Chowdhury, Adv. Mrs. Juin Dutta Chakraborty, Adv.
For the respondents	:-	Mr. Jayanta Sengupta, Adv. Mr. Amit Kumar Nag, Adv. Mr. M. Roy, Adv.
Hearing concluded on	:-	13.08.2021
Judgment on	:-	19.08.2021

Amrita Sinha, J.

In response to an advertisement published by the Indian Oil Corporation Limited in the daily newspaper on 31st August, 2017 inviting applications for awarding LPG Distributorship at Malangi Tea Garden, Alipurduar, the petitioner applied along with the requisite application fee and she was intimated that her application was registered. The said vacancy is reserved for Scheduled Caste candidate. A draw of lots was conducted on 29th May, 2018 wherein the petitioner became unsuccessful.

The next communication received by the petitioner is a letter dated 18th December, 2018 whereby the Senior Area Manager of the Company intimated the

petitioner about her candidature being rejected as she failed to deposit the field verification certificate deposit fee of Rs. 20,000/- only after getting selected for the subject location. In the said communication it was further mentioned that letter in this regard was sent to her on 4th November, 2018 and a system generated reminder letter had been issued to her on 12th November, 2018 but as she did not take any action in response to the same her candidature stood rejected.

The letter dated 18th December, 2018 was sent to the petitioner through registered post posted on 20th December, 2018.

Immediately upon receipt of the said letter, the petitioner has averred in the writ petition that, she visited the office of the respondent authority and expressed her intention and willingness to deposit the aforesaid amount. The respondents refused to accept the same as the time period for making the deposit had expired.

The petitioner thereafter sent a written communication to the Deputy General Manager of the Company by a letter dated 3rd January, 2019 and expressed her willingness to avail the opportunity offered to her. In the absence of a response from the Company, the petitioner filed the instant writ petition on 11th January, 2019.

The matter was taken up for consideration by the Court on 5th February, 2019. The Court after hearing the parties directed the respondent Company to file their affidavit in opposition within 8th February, 2019 and the matter was directed to appear in the list on 13th February, 2019, at the top. The respondent Company was supposed to show before the Court that the petitioner was duly informed by electronic mail of being successful in the draw of lots and was required to deposit the requisite amount and other documents.

In compliance of the order passed by the Court an affidavit in opposition was affirmed by the Company on 8th February, 2019. In the said affidavit the Company annexed an electronic mail communication sent on 4th November, 2018 intimating

‘please find attachment for security deposit letter’. The letter dated 4th November, 2018 allegedly written to the petitioner has been annexed with the opposition. A further email communication dated 12th November, 2018 allegedly being the reminder for putting in deposit fee for conducting field verification, claimed to have been sent to the petitioner, was also annexed. According to the respondents, the petitioner was intimated as regards payment of the deposit fee by way of attachment sent via email on 4th November, 2018 and 12th November, 2018.

The Court took up the matter for consideration on 14th February, 2019 and was of the opinion that the petitioner was entitled to an order of interim protection. As an interim measure the Court restrained the Company from allotting dealership of LPG in respect of the location Malangi Tea Garden in favour of any third party till disposal of the writ petition. The matter was directed to appear in the monthly list of March, 2019.

On 24th July, 2019 a supplementary affidavit on behalf of the Company was served upon the learned advocate for the petitioner wherefrom the petitioner learnt that the Company being aggrieved by the order passed on 14th February, 2019 preferred an appeal before the Hon’ble Division Bench before the Circuit Bench at Jalpaiguri. The Hon’ble Division Bench heard the matter on 5th April, 2019 and was not inclined to lift the interim order of stay granted by the learned Single Judge and requested the learned Single Judge to expedite hearing of the writ petition.

Notice of appeal was never served upon the petitioner.

In the said supplementary affidavit some additional disclosures were made by the Company. It was mentioned that on cancellation of the petitioner’s candidature on account of failure to deposit the requisite fees and the necessary documents, redraw of lots was conducted on 29th December, 2018 and a third person was declared as a successful candidate. A communication was sent to the successful

candidate vide letter dated 1st January, 2019 for payment of credential verification deposit fee along with submission of the requisite documents. A further communication dated 9th January, 2019 made by the Company to the said successful candidate mentions that the security deposit and the required documents had not been submitted and accordingly seven working days' time was granted for submission of the requisite money and the documents. Receipt has been annexed to the supplementary affidavit showing that the successful candidate deposited the sum of Rs. 20,000/- on 18th January, 2019.

The primary contention of the petitioner is that as she was not made aware of the fact that the candidature of the first successful candidate was cancelled and there was a redraw of lots held on 3rd. November, 2018 where she was successful and further that she was directed and required to pay Rs. 20,000/- along with the necessary documents accordingly, she was unable to comply the same. Immediately after getting notice of cancellation of her candidature she rushed to the office of the Company and prayed for extension of time to deposit the money.

The learned advocate of the petitioner has referred to the brochure containing the Unified Guidelines for selection of LPG Distributorship according to which the selection has been made. Paragraph 9 of the said brochure has been relied upon which mentions that all applicants desirous to apply for the locations shall submit their application online along with requisite application fee and the selection of the LPG Distributorship will be done by conducting draw of lots from amongst all the eligible applicants for the location. The status of the application would be communicated through email/SMS to the registered email ID/mobile number provided by the applicants.

The provision mentioning about intimation to the selected candidate for submitting required documents has also been placed. A list of eligible applicants and the applicants eligible for draw of lots was to be made available on the notice

board and the website of the Company. The procedure for holding the draw of lots has also been relied upon. It mentions that information has to be sent to the eligible candidates through email/SMS to report for draw of lots for selection of LPG Distributorship at a specified venue, date and time. The successful candidate in the draw of lots upon intimation of selection would be required to make payment of the security deposit and subsequently a Letter of Intent would be issued to the candidate. The candidature of the selected candidate would be cancelled in the event of failure to deposit the amount within seven working days' time from the date of intimation to the candidate.

The condition for holding redraw has also been placed. It has been mentioned that redraw for selection would be held from the remaining eligible applicants and the procedures laid down for holding draw will be applicable in case of redraw.

According to the petitioner the redraw of 3rd November, 2018 has not been held in accordance with the guidelines. It has been submitted that the petitioner was never intimated of the redraw. No intimation was sent to her that she was successful in the redraw. She was also not communicated regarding payment of the security deposit and the extension of time for payment of the deposit. It is only after getting the letter of rejection that the petitioner got to know about her selection and thereafter her rejection.

It has been argued that the Company is liable to act in accordance with the guidelines. Prayer has been made for allowing the petitioner to deposit the money upon setting aside the cancellation of her candidature.

The learned advocate representing the Company submits that the petitioner was duly intimated about her selection and communication was made through electronic mail requesting her to pay the security deposit and to submit the necessary documents by communicating letters dated 4th November, 2018 and 12th

November, 2018. The petitioner failed to comply with the direction given in the aforesaid communications.

It has further been pointed out that the petitioner approached the Company for the first time by writing the letter dated 3rd January, 2019. It has been argued that in the said letter the petitioner never denied regarding receipt of the communication to pay. There is no statement that she was not aware of the direction for making payment within the stipulated time.

According to the Company, intimation may be sent either through email or through SMS. In the instant case, intimation was sent to the petitioner through electronic mail. It has been pointed out that the attachment referred to in the electronic mail dated 4th November, 2018 and 12th November, 2018 was actually sent to the petitioner. It has further been contended that as the petitioner is disputing receipt of the aforesaid letters, then the matter has to be decided upon taking evidence and the writ petition is liable to be dismissed. It has been submitted that the writ petition filed by the petitioner ought not to be entertained in view of the disputed questions of facts involved herein.

It has been submitted that the petitioner does not have a right to be awarded the Distributorship. As the petitioner failed to comply with the terms and conditions mentioned in the guidelines, accordingly, her candidature has been rightly cancelled by the Company. In support of the aforesaid stand, the respondents have relied upon the judgments delivered by the Hon'ble Supreme Court in the matter of ***Glodyne Techno Serve Limited -vs- State of Madhya Pradesh & Ors.*** reported in ***(2011) 5 SCC 103*** (paragraph 47) and ***Nobel Resources Limited -vs- State of Orissa & Ors.*** reported in ***AIR 2007 SC 119***.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

What is to be decided in the instant writ petition is whether the Company acted in accordance with the guidelines for selection of LPG Distributorship. It appears that the advertisement was published in August, 2017 inviting application from eligible applicants and the first draw of lots was held in May, 2019. The petitioner was unsuccessful. As the successful candidate failed to comply with the guidelines, her candidature stood rejected. The petitioner was never intimated about the rejection of the candidature of the successful candidate. The Company conducted a redraw on 3rd November, 2018. For conducting the redraw, as per paragraph 16 of the guidelines, the Company is required to send information to the eligible candidates to report for draw of lots at a specified venue, date and time. In the instant case, the Company has not produced a single scrap of paper to show that the petitioner was intimated about the redraw to be held on 3rd November, 2018. As there was no intimation about the redraw, the petitioner was completely unaware of the same.

According to the respondents, the petitioner was successful in the redraw. A successful candidate, according to paragraph 17 of the guidelines, is required to deposit Rs. 20,000/- only and also submit the required documents within seven working days' of intimation of selection. Apart from an email communication dated 4th November, 2018 addressed to the petitioner mentioning about the attachment of the security deposit letter, there is nothing to show that the attachment i.e.; the letter of intimation of being declared successful in the draw of lots conducted on 3rd November, 2018 was at all served upon the petitioner. There is no conclusive evidence to show that the aforesaid letter dated 4th November, 2018 was actually sent to the petitioner through electronic mail. The symbol which usually appears when attachment is sent through email is missing in the cover page of the email.

Similarly, the communication dated 12th November, 2018 also does not conclusively prove that the letter, along with the attachment, was actually sent to the email ID of the petitioner.

Assuming that the aforesaid letters were sent to the petitioner, there is no evidence whatsoever to show that the petitioner was intimated about holding the redraw of lots and about the date, time and venue where the redraw of lots was to be held. Admittedly, the requirement of Paragraph 16(i) of the aforesaid guidelines has not been complied with by the Company at the time of or prior to conducting the redraw.

The letter dated 18th December, 2018 rejecting the candidature of the petitioner was surprisingly sent to the petitioner by registered post with acknowledgment due card. The envelope containing the aforesaid letter was posted on 20th December, 2018. The reason for change in the mode of communication has not been addressed by the Company. The petitioner by a letter dated 3rd January, 2019 simply prayed for extension of time for making the payment. She never raised the allegation of non-receipt of the intimation to pay the security deposit. She neither raised the allegation of not being informed prior to the holding of redraw. The Company ignored the request of the petitioner as a fresh redraw was conducted and a third party was selected.

From the documents annexed to the supplementary affidavit filed by the Company it appears that a further redraw was held on 29th December, 2018 in presence of a single applicant who was declared successful. The said successful candidate also failed to pay the security deposit within seven working days' time as mentioned in the letter dated 1st January, 2019. The Company by a letter dated 9th January, 2019 extended the time for a further period of seven days for making the payment. The payment was, however, accepted by the Company on 18th January, 2019 that too, after expiry of the extended period for making the payment. It

appears that the Company surreptitiously held the redraw and granted extension of time to the presently selected candidate but ignored the prayer of the petitioner for grant of extension of time for making the payment.

The ratio of the judgment delivered by the Hon'ble Supreme Court in the matter of Nobel Resources (supra) is a well settled proposition of law that disputed questions of fact ordinarily could not have been entertained by the High Court in exercise of its power of judicial review. In the instant case, there is absolutely no dispute that prior to holding the redraw on 3rd November, 2018 no intimation was served upon the petitioner who was an eligible candidate to participate in the redraw.

The contention of the respondent relying upon the judgment of the Hon'ble Supreme Court in the matter of Glodyne Techno (supra) is that it was the discretionary power of the authority to reject the candidature of the petitioner on account of non-submission of the deposit and the necessary documents. The Company miserably failed to convince the Court that the petitioner was ever made aware of the redraw and the subsequent steps taken to intimate her of being successful. Moreover, the facts of the case under reference are completely different from the facts of the case at hand.

As the guidelines have not been adhered to by the Company at the time of holding the redraw accordingly, it is concluded that the redraw held by the Company on 3rd November, 2018 is illegal and arbitrary. All subsequent steps taken by the Company are also illegal and liable to be set aside and is accordingly set aside.

It is made clear that as the redraw held on 3rd November, 2018 was not held in accordance with law, accordingly the subsequent redraw held on 29th December, 2018 cannot be said to be validly held. No legally enforceable right accrues in favour

of a successful candidate in a selection not held in accordance with law. Submitting the security deposit by the subsequently selected candidate will not be able to save the redraw from the vice of arbitrariness. Similarly the petitioner cannot reap the benefit of a selection process which was not held in accordance with the guidelines.

In view of the above, the Company is directed to proceed with the redraw from the stage when the selection of the first successful candidate stood cancelled due to non-compliance of the guidelines i.e. from the first redraw stage. The redraw shall be held strictly in accordance with the provisions laid down in the Unified Guidelines.

WPA No. 705 of 2019 along with all connected applications stand disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Amrita Sinha, J.)