

Item No.187

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

29.09.2021
Ct-24

WPA 2542 of 2021
Tathagata Polley & Anr.
v.
Union of India & Ors.
with
IA No. CAN 1 of 2021

Mr. Ram Anand Agarwal
Mr. Nikhil Kumar Roy
Ms. Subhra Nag
... for the petitioners.

Mr. Dilip Kumar Kundu
Mr. Arjun Basu
... for the respondent nos. 5 to 8.

Affidavit-of-service filed in Court today is taken on record.

The petitioner is aggrieved by the communication dated March 10, 2020 withdrawing the Letter of Intent (LOI) for award of LPG Distributorship of the petitioner.

According to the petitioner he was successful in an open selection which was conducted by the oil Company by an advertisement made in the newspaper on January 21, 2018.

The petitioner applied in response to the public advertisement and by a communication dated August 16, 2018 the petitioner was intimated that the Company

intended to offer LPG Distributorship to him subject to the fulfillment of certain conditions.

The conditions mention that the petitioner should provide a godown for storage of 5000 kg of LPG filled in cylinders at a suitable plot of land. The construction of godown and showroom should be completed within a period of four months from the date of the letter.

A further condition was that all out efforts have to be taken to commission the LPG Distributorship within four months from the date of the letter and if it is found that the progress made towards the commissioning is not up to the satisfaction of the Company, then the offer is liable to be withdrawn.

The clause relating to the withdrawal of LOI as mentioned in the aforesaid communication lays down that the letter is merely a Letter of Intent and is not to be construed as a 'Firm Offer' of LPG Distributorship. If the Company found that the progress being made towards the commissioning is not up to satisfaction, the letter is liable to be withdrawn along with forfeiture of the amount deposited before FVC.

The Company by the impugned communication dated March 10, 2020 withdrew the Letter of Intent.

It has been specifically mentioned that no progress has been made on any front for getting approval for construction of godown/showroom even after lapse of

eighteen months. Time and again opportunity was given to the petitioner vide letters dated December 6, 2018, December 19, 2019, April 18, 2019 and May 4, 2019 to fulfill the terms and conditions of the Letter of Intent for commissioning of the distributorship, but the petitioner failed to do so. As the Company found that there was no progress towards the commissioning accordingly after discussion proceeded to withdraw the Letter of Intent.

It appears from the impugned communication that a discussion was made with the petitioner when he submitted before the Company that his prayer for conversion of the land for construction of the godown was under progress and he requested some time from the Company. Even after lapse of two months' time there was no positive update from the petitioner.

A further letter dated November 22, 2019 was made for updating the status of the commissioning of the distributorship.

The petitioner time and again sought for more time for making the necessary construction after receipt of the Land Conversion Certificate.

The Company invoked the provisions of Clauses 5.1, 5.2 and 9.1 of the Letter of Intent and withdrew the Letter of Intent in the absence of any progress from the side of the petitioner and the amount of Rs. 40,000/-

which was deposited for FVC stood forfeited in terms of Clause 9.1 of Letter of Intent.

The petitioner submits that he was not in any manner responsible for the delay in conversion of the land in question which was ultimately received after the Letter of Intent was withdrawn by the Company.

From the documents annexed to the writ petition it does not appear that there is any apparent error on the part of the Company in withdrawing the Letter of Intent. Enough time was granted to the petitioner to commission the distributorship, which the petitioner failed. The petitioner is bound by the terms and conditions mentioned in the Letter of Intent.

In view of the above, the Court is not inclined to interfere in this matter.

The writ petition stands dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)