

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Saugata Bhattacharyya

W.P.A. 7540 of 2010

(IA NO: CAN 4/2017 (Old No: CAN 7060/2017),
CAN 5/2018 (Old No: CAN 1701/2018))

Anup Kumar Bala

-vs-

Union of India & Ors.

For the Petitioner

: Mr. Sankar Prasad Dalopati,
Mr. Safik Dewan

For the Respondent Nos.2 to 3

: Mr. Manavendra Singh Yadav

For the Respondent No.4

: Mr. S. N. Biswas,
Mr. Amit Muhuri

Heard on: 17.12.2021

Judgment on: 17.12.2021

Saugata Bhattacharyya, J.:

This is a writ petition at the instance of a candidate who was desirous to have a dealership, namely, Kishan Seva Kendra (for short "KSK") pursuant to an advertisement published on a Bengali Vernacular on 18th March, 2008. The writ petitioner having noticed such advertisement issued by

the Indian Oil Corporation Limited (for short "Oil Company") submitted application in the prescribed *pro forma* indicating the details of the land as per the said advertisement. The application which was furnished in terms of the said advertisement dated 18th March, 2008 was appraised by the Oil Company and it has been submitted on behalf of the writ petitioner that a panel of prospective candidates for offering such KSK dealership was prepared where petitioner topped the panel.

After preparation of the said panel the second empanelled candidate being respondent no.4 lodged a complaint before the concerned authority of the Oil Company dated 3rd March, 2009 and 6th March, 2009 alleging that the land offered by the writ petitioner for obtaining the subject dealership was not in consonance with the requirement as contained in the advertisement therefore questioned the eligibility of the writ petitioner to get the said dealership pursuant thereto a survey was conducted by a surveyor at the instance of the concerned authority of the Oil Company on 26th July, 2009. Writ petitioner and the respondent no.4

participated in the said survey proceedings conducted by the surveyor appointed by the Oil Company.

It is the specific case of the writ petitioner that outcome of the survey conducted on 26th July, 2009 was not made known to him by the Oil Company till filing of the affidavit-in-opposition to this writ petition pursuant to the order passed by this Court.

From the affidavit-in-opposition affirmed on behalf of the Oil Company, it appears that the survey report was prepared and signed by the surveyor on 3rd August, 2009 wherefrom certain observations were made by the surveyor against the piece of land offered by the writ petitioner for getting the subject dealership. Pursuant thereto order dated 24th September, 2009 was issued by the Chief Divisional Retail Sales Manager, Haldia Divisional Office of the said Oil Company whereby based on such survey report dated 3rd August, 2009 candidature of the writ petitioner was cancelled.

Writ petitioner has taken specific point that after participating in the survey proceedings which was held on 26th July, 2009 the survey report dated 3rd August, 2009 was

not supplied to him prior to taking the decision relating to cancellation of the candidature of the writ petitioner as contained in impugned Memo dated 24th September, 2009. It is also submitted that the concerned authority of the said Oil Company has issued the impugned order dated 24th September, 2009 cancelling his candidature unilaterally without granting of any opportunity of hearing to him as a result whereof *ex facie* writ petitioner is prejudiced. In addition thereto it has also been submitted that the conduct of the Oil Company goes to show that there is clear violation of natural justice prejudicing the right of the writ petitioner to offer his case before the concerned authority of the Oil Company prior to taking decision as contained in the impugned letter dated 24th September, 2009.

In support of such contention Mr. Dalopati, learned advocate representing the writ petitioner has relied upon the judgment, report in **2020 SCC Online SC, page-847, paragraphs-12, 13, 14, 23, 27, 39 & 40, in the case of State of U.P. -vs- Sudhir Kumar Singh** in order to demonstrate before this Court that before taking any decision by the authority against a person whereby the right of the

said person is prejudiced, observance of principle of natural justice is *sine qua non*.

Per contra, Mr. Yadav, learned advocate appears on behalf of the said Oil Company and opposes the prayer made on behalf of the writ petitioner and has also strenuously argued to defend the decision of the Oil Company as contained in the impugned Memo dated 24th September, 2009 to the extent of cancellation of the candidature of the writ petitioner. In support of such contention it has been argued on behalf of the Oil Company that as per the advertisement dated 18th March, 2008 the dealership was earmarked for open category candidate and by placing reliance on the relevant part of the said advertisement it has been submitted before this Court that the piece of land which is required to be offered by the candidate must have a measurement of 25 metre x 25 metre notwithstanding the composite measurement of the land i.e. 6724 Sq. ft. The bone of contention of the Oil Company is this apart from compliance of the composite measurement and/or total measurement of the land the frontage as well as depth of the land got to be 25 metre x 25 metre. It has been submitted

that after appraisal of the application submitted by the writ petitioner though *prima facie* he was placed at the first position in the panel for offering the subject dealership but subsequently on conducting survey it appears that the land offered by the writ petitioner does not conform to the requirement as indicated in the relevant part of the said advertisement.

It is also submitted that the respondent no.4 made comprehensive complaints by two letters dated 3rd March, 2009 and 6th March, 2009 and on receipt of such complaints in terms of Clause 21 of the Brochure the concerned authority of the said Oil Company is empowered to conduct enquiry including the survey which was conducted in the present case on 26th July, 2009. Survey report went against the writ petitioner which resulted in issuance of the impugned letter dated 24th September, 2009 cancelling the candidature of the writ petitioner.

It is also submitted on behalf of the Oil Company that though the survey report subsequently prepared on 3rd August, 2009 was not supplied to the writ petitioner but writ petitioner participated at the time of survey conducted on

26th July, 2009 therefore there is no need to give further opportunity to the writ petitioner to present his case before passing the impugned order dated 24th September, 2009.

However, during course of hearing, it has been fairly admitted by Mr. Yadav, learned advocate representing the said Oil Company that the survey report dated 3rd August, 2009 was not supplied to the writ petitioner and in the same breath it has also been submitted on behalf of the said Oil Company that such failure on the part of the said Oil Company to supply the said survey report does not vitiate the steps taken against the writ petitioner and it remained open to the writ petitioner to apply before the said Oil Company for getting the copy of the survey report before making representation. In the present case the writ petitioner did not follow these steps therefore there is no flaw in the decision making process as emanates from the letter dated 24th September, 2009.

In addition thereto Mr. Yadav has relied upon a decision in the case of **Suresh Koshy George -vs- University of Kerala & Ors., reported in AIR 1969 SC 198**, paragraph 9 in order to demonstrate before this Court that if there is no

prejudice caused to a party supply of materials is not required.

Mr. Biswas, learned advocate appears on behalf of the respondent no.4, who is the second empanelled candidate for grant of the subject dealership. It has been submitted by Mr. Biswas that after being informed about the inadequacy of the piece of land offered by the writ petitioner pursuant to the advertisement dated 18th March, 2008 he lodged two complaints dated 3rd March, 2009 and 6th March, 2009 upon enclosing the relevant documents which satisfied the respondent Oil Company that the application of the writ petitioner so far the offering of land is concerned was not in consonance with the requirement which led to conducting survey by appointment of an independent surveyor and based on the report of the surveyor dated 3rd August, 2009 ultimately the decision was taken against the writ petitioner thereby cancelling his candidature and there is no flaw in taking such decision by the said Oil Company. It is also submitted on behalf of the respondent no.4 that the Letter of Intent has already been issued in his favour pursuant to the

impugned decision of cancelling candidature of the writ petitioner dated 24th September, 2009.

Another limb of submission advanced on behalf of the respondent no.4 is that the last date for submitting the application in terms of the advertisement dated 18th March, 2008 was 18th April, 2008 and the rectified deed was submitted by the writ petitioner on 22nd October, 2009 which is beyond the cut off date therefore the rectified deed ought not to have been considered by the said Oil Company while apprising the candidature of the writ petitioner.

This Court has considered the submissions of the learned advocates representing the writ petitioner, Oil Company and the respondent no. 4 and also examined the relevant documents which are made part of the record. It appears that pursuant to the advertisement dated 18th March, 2008 an application was submitted by the writ petitioner within the cut off date which was fixed on 18th April, 2008 and thereafter the writ petitioner was found to be eligible candidate for grant of subject dealership and he is accordingly placed at first position as it emanates from the impugned letter dated 24th September, 2009. The respondent

no. 4 being the second empanelled candidate in a quick succession preferred two complaints before the said oil company, one dated 3rd March, 2009 and another dated 6th March, 2009. In receipt of such complaints straightway the concerned authority of the oil company decided to have further measurement of the piece of land offered by the writ petitioner by appointment of surveyor but on perusal of Clause 21 of the Brochure it appears that before taking steps on the basis of the complaints received by the oil company certain steps need to be taken as contemplated under subparagraphs of Clause-21. For better understanding of the entire issue this Court finds it apposite to quote Clause 21 of the Brochure :-

“21. Grievance / Complaint redressal system:

- a) An aggrieved person may send his/her complaint to the oil company at the address of the divisional Officer displayed at the nearest retail outlet of the concerned oil company. Complaints can also be lodged on the website of the oil company. Complaints against dealer selection received after 30 days from the date of declaration of the result of the interview will not be entertained under any circumstances.*
- (i) Anonymous/pseudonymous complaints will not be investigated and will be filed without taking any action on the same.*

(ii) On receipt of a complaint, a letter will be sent by the oil company to the complainant through Registered Post advising the complainant to submit details of allegation with a view to prima facie substantiate the allegations along with supporting documents, if any, within 30 days. The complainant will be clearly advised that the oil company will examine the complaint and if it is established that the complaint does not have any substance, he/she may be liable for legal action. The oil company will examine response of the complainant and if it is found that the complaint does not have specific and verifiable allegations, the same will be filed.

(b) when a decision is taken to investigate the complaint, the investigation will be done by the Senior Official of Oil Company and will pass a speaking order after giving due opportunity to the complainant etc. Copy of the speaking order will be given to all concerned. Thereafter, decision on the complaint will be taken as under”.

(emphasis supplied)

On reading of the said Clause 21, it appears that on receipt of the complaint from the respondent no. 4, Oil Company was required to send the letter to the complainant advising the complainant to submit details of allegations with a view to *prima facie* substantiate the allegations along with the supporting documents, if any, within thirty days.

Thereafter, the Oil Company was required to examine the complaint and if it is established that the complaint does have any substance then the Oil Company may proceed on the basis of the complaint received from the complainant which includes grant of opportunity of hearing to the affected party. On consideration of the chronological events in the present case it does not appear the procedure as contemplated under Clause-21 of the Brochure has been complied with by the Oil Company before taking decision against the writ petitioner by issuing the letter dated 24th September, 2009.

In addition thereto though it is fact that the writ petitioner participated in the survey conducted by the surveyor appointed by the Oil Company on 26th July, 2009 but the survey report was required to be supplied to the writ petitioner with an opportunity to respond to such survey report before taking decision relating to cancellation of candidature of the writ petitioner. On query, this Court does not get any satisfactory answer from the respondent Oil Company that the survey report dated 3rd August, 2009 was at all supplied to the writ petitioner which clearly goes to

show that unilaterally the concerned authority of the Oil Company took the impugned decision on 24th September, 2009 based on the survey report dated 3rd August, 2009 behind the back of the writ petitioner which amounts to violation natural justice according to appreciation of this Court.

This Court has also placed reliance upon **State of U.P. (Supra)** specially paragraphs 39 & 40 whereby it has been unequivocally decided by the Apex Court that if prejudice has been caused to a citizen in that event observance of natural justice is necessary. In the present case by issuing impugned letter dated 24th September, 2009 the candidature of the writ petitioner was cancelled without giving opportunity to place his case before the respondent authority which amounts to causing prejudice to the writ petitioner therefore the principle as contained in the judgement of State of U.P. (Supra) squarely applies in the present case.

On behalf of the Oil Company **Suresh Koshy (Supra)** has been relied upon which does not appear to have any relevance in the present case since the issue which was examined by the Apex Court in the said matter relates to

malpractice of a student of an engineering course which led to issuance of an order by the Vice Chancellor of the University which debarred the said student from appearing in the examination till April, 1966.

In above conspectus, the impugned order dated 24th September, 2009 issued by the Chief Divisional Retail Sales Manager, Haldia Divisional Office stands set aside and the writ petitioner is granted opportunity to respond to the report of the surveyor dated 3rd August, 2009 within four weeks from date if necessary by submitting supporting documents. On receipt of such response from the writ petitioner, the concerned authority of the Oil Company shall proceed to decide on the entitlement of the writ petitioner to get the dealership in accordance with law.

It is made clear that while considering the piece of land offered by the writ petitioner if the Oil Company finds it in consonance with the requirement as contained in the advertisement dated 18th March, 2008 then necessary order shall be passed for grant of dealership in favour of the writ petitioner within a period of four weeks thereafter from the date of receipt of response from the writ petitioner. In the

event, it is found by the Oil Company that the writ petitioner is not entitled to get the benefit of grant of dealership cogent reasons shall be assigned in support of such decision to be taken pursuant to this order.

Letter of Intent issued in favour of the respondent no.4 dated 10th March, 2010 also stands set aside.

The writ petition is allowed to the above extent, applications, if pending, also stand disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)