

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

F.M.A. 425 of 2020

Smt. Tandra Das

vs.

Indian Oil Corporation Limited & Ors.

For the Appellant	: Mr. Ashoke Kr. Banerjee, Sr. Adv. Mr. Shubradip, Roy, Adv. Ms. Tulika Roy, Adv.
For the I.O.C.L.	: Mr. Manwendra Singh Yadav. Adv.
For the Private Respondent	: Mr. Sakti Nath Mukherjee, Sr. Adv. Mr. Ayan Banerjee, Adv. Ms. Debasree Dhamali, Adv.
Hearing Concluded On	: 20 th September, 2022
Judgement On	: 28 th September, 2022

Siddhartha Roy Chowdhury, J.: Aggrieved by and dissatisfied with the judgement and order dated 6th August, 2019 passed in WP 24437 (W) of 2018 (Smt. Tandra Das vs. Indian Oil Corporation Ltd. & Ors.) the appellant (hereinafter referred to as 'petitioner') has filed this Intra Court Appeal. By the impugned judgement and order, learned Single Judge was pleased to dismiss the writ application.

We consider it expedient to indicate facts of the case in brief for proper appreciation of this Intra Court Appeal. In the wake of a notice by advertisement published in the Anandabazar Patrika on 21st January,

2014, inviting applications under Rajib Gandhi Gramin LPG Vitrak (RGGLV) Scheme, the writ petitioner applied for the award of LPG distributorship and bagged the Letter of Intent (hereinafter referred to as 'LOI') dated 27th April, 2016. But it was quashed by learned Single Judge of this Court in WP 11363 (W) of 2016 filed by the respondent no. 4 herein (Rajib Lochan Das vs. Indian Oil Corporation Limited & Ors.) and Oil Company was directed to proceed for Re-draw in terms of the letter dated 20th January, 2015.

Challenging the said judgement of learned Single Judge, Intra Court Appeal was preferred by Smt. Tandra Das being MAT 424 of 2018 and the same was not accepted by the Co-ordinate Bench of this High Court. The Appellate Court directed the respondent no. 2 to proceed with Re-draw in terms of letter dated 20th January, 2015.

Challenging the said judgement Special Leave Petition was preferred but Hon'ble Supreme Court dismissed the same.

It is contended by the petitioner that in terms of the order of the Appellate Court, the respondent no. 1 conducted the Re-draw on 28th August, 2018 and respondent no. 4 was allotted an application being no. DGP/SIN/01/12-02-14 among other candidates. The writ petitioner in the meantime came across the certificate dated 5th February, 2014 issued by Sub-Divisional Officer, Bolpur, Birbhum stating, inter alia, that respondent no. 4 is a resident of Village - Nahina, Post Office – Nahina, District – Birbhum, West Bengal. It is contended by the writ petitioner that the candidates were required to file requisite document along with declaration regarding authenticity of the statement furnished by them in

the application and one of the essential requirements in the application form was that the petitioner would have to be resident of village for which the application for LPG license is submitted. In reply to her application under RTI Act the Sub-Divisional Officer, Bolpur informed the writ petitioner that no residential certificate was issued from that office in favour of Rajib Lochan Das. The writ petitioner annexed the said reply as Annexure-P8 to her writ petition. According to the writ petitioner, Rajib Lochan Das is not a resident of Nahina, Singhi and thereby is not qualified to apply for dealership under the RGGLV Scheme. The respondent no. 4 Rajib Lochan Das however, participated in Re-draw on 28th August, 2018. The writ petitioner annexed a copy of Voter List, copy of Aadhar Card and copy of the certificate of Other Backward Classes obtained by respondent no. 4 Rajib Lochan Das to her writ petition as Annexure-P10, P11. The respondent no. 1 asked the respondent no. 4 to remain present on 28th August, 2018 for Re-draw. On 28th November, 2018 I.O.C. conducted field survey in respect of application of Rajib Lochan Das and L.O.I. was given to him, in utter violation of the terms of the advertisement dated 21st January, 2014.

Aggrieved by issuance of Letter of Intent under the RGGLV Scheme in favour of respondent no. 4 the writ petitioner filed an application under Article 226 of the Constitution of India, inter alia, praying for an order to recall and rescind the Re-draw held on 28th August, 2018.

In the affidavit-in-opposition filed by the Oil Company through its Deputy General Manager (LPG-S), Durgapur area office it is contended that respondent no. 4 together with his application submitted a residential certificate on 5th February, 2014 issued by Sub-Divisional

Officer, Bolpur, Birbhum and during field verification also the respondent no. 4 submitted another residential certificate dated 27th November, 2018 issued by Sub-Divisional Officer, Bolpur, Birbhum, depicting the respondent no. 4 as resident of Village – Nahina Gram Panchayet, Singhi Sub-Division Bolpur, District – Birbhum. The respondent Oil Company by visiting the office of S.D.O., Bolpur and by sending e-mail dated 28th November, 2018 verified the authenticity of the residential certificate issued to Rajib Lochan Das confirming his residential status.

It is further contended that a detail Field Verification Credential (FVC) was undertaken for the respondent no. 4 by a Committee appointed by the Competent Authority of respondent no. 1 for verification of various claims made by said respondent no. 4 in his application for RGGLV. According to the said Committee all the claims made by respondent no. 4 were substantiated. Consequent upon Field Verification Credential (FVC) the application of respondent no. 4 is found to be successful against all parameters. These respondents prayed for dismissal of the writ petition.

The respondent no. 4 in his affidavit-in-opposition denied the allegations made by the petitioner. It is specifically contended that the writ petitioner has no locus-standi to file the writ application, in as much as the LOI issued in her favour got quashed after judicial scrutiny. The grounds taken in her petition by the writ petitioner were also taken in the affidavit-in-opposition to the previous writ application filed by Rajib Lochan Das and all such points including the issue of residential status of the respondent no. 4 were discussed and set at rest in the earlier proceeding being WP 11363 (W) of 2016. It is specifically contended that the respondent no. 4 used to reside with his father at Kalikapur, Bolpur

and subsequently he shifted to his ancestral house at Nahina, Bolpur. According to this answering respondent no register is maintained in the office of the S.D.O., Bolpur to record the issuance of residential Certificates which is why the Certificate dated 5th February, 2014 does not contain any memo no. The respondent no. 4 firmly denied that the Certificate issued from the office of S.D.O., Bolpur on 5th February, 2014 is a forged document. According to respondent no. 4 he was found eligible to be considered for the dealership under RGGLV Scheme by the Oil Company. He met the conditions disclosed in the advertisement to the satisfaction of the competent authority of the Oil Company. It is contended by the writ petitioner that his name was removed from Bolpur Electoral Roll and included in the Electoral Roll of the Nanoor Constituency after he shifted to Nahina village. Annexure P4 relied upon by the petitioner was a residential Certificate issued in the year 2012 before the advertisement for dealership was published. Reiterating his stand respondent no. 4 stated that he is duly qualified for the LPG distributorship and also qualified in all respect for grant of distributorship in his favour by the Oil Company. The respondent no. 4 prays for dismissal of the writ application.

Assailing the impugned judgement learned Senior Advocate, Mr. Ashoke Kr. Banerjee on behalf of the writ petitioner adverted that the respondent no. 4 and the Oil Company are moving hand in glove. Respondent no. 4 by submitting forged and fabricated document regarding his residential status depicted himself to be a resident of Village-Nahina within Gram Panchayet Singhi and the Oil Company is patronizing the wrong doer by relying upon a document that was not

made available along with the application, submitted pursuant to publication of the advertisement.

Our attention is drawn to Annexure-P8 to the writ petition a copy of application submitted by the writ petitioner under RTI Act seeking information regarding issuance of residential certificate and the reply thereto.

Drawing our attention to Annexure-P8 it is contended by Mr. Banerjee, learned Senior Advocate that the Sub-Divisional Officer, Bolpur on 28th July, 2016 unambiguously stated that no residential certificate was issued in favour of Rajib Lochan Das son of Bishnupada Das from the office of S.D.O. on 5th February, 2014. According to Mr. Banerjee, learned Senior Advocate, the Brochure on selection of RGGLV contains the procedure of receipt of application and procedure for selection. It is laid down in case any deficiency is found in the application a letter would be sent to the applicant to rectify the deficiencies within a specific period of time. Thereafter a Committee nominated by concerned Oil Company will undertake scrutiny of the application based on the information given in the application. Field Verification Credentials (FVC) will be carried out for the selected candidates as per procedure prescribed. If in the FVC the information given by the applicant in the application is found to be correct the Letter of Intent (LOI) will be issued with the approval of Competent Authority. If it is found that information given in the application is at variance with the original document and that information affects the eligibility of the candidate, then the letter would be sent by the Registered Post AD/Speed Post pointing out the discrepancy. Candidature of selected candidate in such case will be cancelled and 10% security deposit i.e.

Rs.20,000/- deposited by the selected candidate will be forfeited if false/incorrect/misrepresent information is found to have been given in the application.

According to Mr. Banerjee, learned Senior Advocate the respondent no. 4 submitted the residential certificate dated 5th February, 2014 purportedly issued by the S.D.O., Bolpur along with his application, Annexure-P7 and the said certificate, according to S.D.O., Bolpur was not issued from that office (Annexure-P8). Under such circumstances, the candidature of the applicant should have been cancelled, but instead of cancelling the candidature, the Oil Company tried to cover up the deficiency, which is why the Oil Company took into consideration the certificate dated 27th November, 2018 issued by S.D.O., Bolpur, Birbhum, causing infraction to the terms of the advertisement and procedure laid down in the brochure of Oil Company. The Competent Authority was under obligation to consider the information given in the application. The Oil Company had no authority to consider the certificate dated 27th November, 2018 which was not filed along with the application.

According to Mr. Banerjee it is but fraud practiced on the Oil Company by Rajib Lochan Das. To buttress his argument Mr. Banerjee relied upon decision pronounced in ***Ram Chandra Singh vs. Savitri Devi and Ors.*** reported in **(2003) 8 SCC 319** wherein it is held:-

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters.

Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. xxxxxx

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. xxxxxx

20. xxxxxx

21. xxxxxx

22. xxxxxx

23. xxxxxx

24. xxxxxx

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata.”

According to Mr. Banerjee, the Act of the Oil Company was arbitrary unlawful and exhibiting unreasonable bias towards the respondent no. 4.

Mr. Banerjee strenuously argued that the conduct of Oil Company in indulging unlawful and illegal activities has vitiated the entire proceeding of Re-draw and it should be quashed. Learned Single Judge while passing judgement having acknowledged the unlawful and bias conduct of the I.O.C. expressed his anguish and annoyance but without any cogent ground, refused to pass appropriate order cancelling the entire

proceedings of Re-draw. Learned Single Judge however, opined the procedure adopted by the Oil Company should be deprecated in future.

Relying upon the decision of Hon'ble Apex Court pronounced in the case of ***State of Orissa & Ors. vs. Mamata Mohanty*** reported in **(2011) 3 SCC 436**, Mr. Banerjee asserts that rule of law inhibits arbitrary action. I.O.C. since failed to demonstrate fair play which gave an impression of bias and favouritism and shocks the conscience, Court must strike down such action of I.O.C. by exercising jurisdiction conferred under Article 226 of the Constitution. It is further argued that when an organization like I.O.C. has failed to exercise or wrongly exercise discretion conferred upon them by way of Policy decision, Court should pass such order which the I.O.C. should have passed, had it properly exercised the discretion. Mr. Banerjee, learned Senior Counsel in support of his contention relied upon decision pronounced by the Hon'ble Supreme Court in ***Comptroller and Auditor-general of India, Gian Prakash, New Delhi & Ors. vs. K.S. Jagannathan & Ors.*** reported in **(1986) 2 SCC 679**.

According to Mr. Banerjee this Court may step in and pass appropriate order to undo the wrong committed by the Oil Company in collusion with the respondent no. 4. It will pave the avenue for the petitioner to take part in the proceeding that would have to be initiated by the I.O.C.

Relying upon the decision of Hon'ble Supreme Court pronounced in ***Godde Venkateswara Rao vs. Government of Andhra Pradesh & Ors.*** reported in **AIR 1966 SC 828** it is argued by Mr. Banerjee that Article 226 of the Constitution has conferred ample power upon the Court to

undo the wrong committed by the authority and to grant relief to the person prejudicially affected by such wrongful action.

Mr. Sakti Nath Mukherjee, learned Senior Advocate for the respondent no. 4 argued that the appellant herself was not eligible to take part in the draw. She got the letter of Intent from I.O.C. but in an incorrect manner; which was challenged by the respondent no. 4 and the L.O.I. was quashed after judicial scrutiny which order was upheld even by the Hon'ble Supreme Court. Therefore, she cannot be said to have any locus-standi to file any application under Article 226 of the Constitution to impeach the eligibility of the respondent no. 4 inasmuch as she is neither affected by the Order of I.O.C. in favour of the respondent no. 4 nor does her fundamental right is getting violated by such action of the Oil Company. In support of his contention Mr. Mukherjee placed reliance upon the decision of Hon'ble Supreme Court in ***Raunaq International Limited vs. I.V.R. Construction Ltd. & Ors.*** reported in **(1999) 1 SCC 492.**

“27. In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s. Raunaq International Ltd. is on valid principles looking to the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. What is more relevant, M/s. IVR Construction Ltd. who have challenged this award of tender themselves do not fulfill the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfill the requisite criteria, seems to be misplaced. Even if criteria can be relaxed both for M/s. Raunaq International Ltd. and M/s. IVR Construction Ltd., it is clear that the offer of M/s.

Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s. Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfill the requisite criteria itself and whose offer is higher than the offer which has been accepted.”

It is further argued by Mr. Mukherjee that the petitioner in her earlier writ petition no. WP 24437 (W) of 2018 raised the issue of the residential status of respondent no. 4; but did not spend a single word on fraudulent action or forged document, which is the cornerstone of this writ application. It is, therefore, barred by constructive res-judicata.

It is adverted by Mr. Mukherjee, the office of S.D.O., Bolpur issued certificates both in favour of the petitioner and in favour of the answering respondent as well, but none of the documents contain any memo number, which unerringly indicates, that no Register was maintained by the said office. It is quite natural and easier for the successor-in-office to disown the responsibility.

Mr. Sakti Nath Mukherjee urged the Court to compare the signatures appearing on the certificate issued in favour of the petitioner on 27th February, 2014 (at page 413 of paper book) and in favour of respondent no. 4 on 5th February, 2014 (at page 99 of the paper book) to draw up an appropriate inference.

Having invoked the power conferred under Section 73 of the Evidence Act we examined the Certificate issued by the Sub-Divisional Officer, Bolpur on 27th February, 2014 in favour of Smt. Tandra Das and on 5th February, 2014 in favour of respondent no. 4 with the help of magnifying

glasses and found to our satisfaction that both the signatures are identical in appearance.

Upon perusal of record we find that in WP 24437 (W) of 2018, the appellant petitioner was harping on residential status of the respondent no. 4 and learned Co-ordinate Bench of this Court having considered the issue observed in paragraph-50: "We also cannot accept the contention of the appellant that the learned Judge ought to have considered whether the writ petitioner satisfied the eligibility criteria regarding residential status, that is, whether he was a resident of Singhee Gram Panchayat or not. As per the usual procedure, verification of the truthfulness of the disclosures made by the applicants are done after the lottery/draw and if the writ petitioner succeeds in the re-draw, the oil company would be bound to verify his documents thereafter." The genuineness of the document was never challenged in the earlier proceeding, though she had in her possession the reply of S.D.O., Bolpur given on 20th July, 2016 (Annexure-P8) and WP 11363 (W) of 2016 was disposed of on 30th April, 2018 and the appeal being MAT 424 of 2018 was disposed of on 4th July, 2018. Therefore, by not challenging the genuineness of the Certificate, which she could have, the appellant is now fettered with the principle of constructive res-judicata.

That apart from the title deed submitted by respondent no. 4 before the Oil Company we find that on 13th February, 2013 respondent no. 4 together with one Uday Kumar Das purchased a piece of land within Mouza Nahina and in the said instrument name of Rajib Lochan Das, the respondent no. 4 is appearing as one of the purchasers who is a permanent resident of Nahina within P.S. Bolpur, whose present address

is Kalikapur, Bolpur. Therefore, we do not find anything to hold that the action of the Oil Company was otherwise tainted being biased or arbitrary. This deed came into existence prior to the advertisement published on 21st January, 2014.

Smt. Tandra Das participated in the proceeding pursuant to the advertisement of Oil Company but she remained unsuccessful. There is nothing to suggest that the writ petition has been filed in the interest of public at large. An otherwise disqualified candidate is not entitled to challenge the selection of a qualified candidate. More so disqualification of the respondent no. 4 will not keep the door ajar for her participation in view of Clause 12 of Brochure of selection of RGGLV applicable w.e.f. April, 2013. Mr. Ashoke Kr. Banerjee, learned Senior Counsel though argued that the writ petitioner is not challenging the procedure itself, rather she intends to make the Oil Company follow the same in the right earnest, but in our humble opinion there is no such room available to the petitioner to play the whistle-blower, after being thrown overboard.

We accept the argument of Mr. Mukherjee that Smt. Tandra Das the appellant herein does not have any locus-standi to maintain the writ petition simply because she has not been personally affected nor her fundamental right has been invaded upon in any manner by the action of the Oil Company.

Mr. Manwendra Singh Yadav, learned Counsel representing the Oil Company drawing our attention to the advertisement submits that in terms of the advertisement issued by I.O.C. applicant had the obligation to submit certificate indicating his residential status along with the

application. It was mandatory for the candidate to submit another certificate as per Appendix-C at the time of Field Verification.

We do not find anything to hold that the respondent no. 4 practiced fraud on Oil Company. He submitted a Certificate along with his application demonstrating him as resident of Nahina and the office of S.D.O. maintained the same stand while granting the subsequent Certificate on 27th November, 2018. Oil Company wanted to be doubly sure about the residential status of respondent no. 4, perhaps keeping in mind the adage-once bitten twice shy, as their earlier action in granting L.O.I. in favour of Smt. Tandra Das the writ petitioner/appellant herein failed to withstand the test of judicial scrutiny, which is why they got the certificate verified by visiting the office of S.D.O., Bolpur personally and by sending e-mail. Therefore, we do not find any reason to agree with Mr. Banerjee, learned Senior Counsel representing the petitioner that second certificate was submitted to veil the fraudulent act.

Undoubtedly fraud vitiates every solemn act. We have indicated earlier as to why the letter issued by S.D.O., Bolpur, stating inter-alia, that no Certificate was issued to respondent no. 4 on 5th February, 2014 merits no consideration.

In our considered opinion, there is nothing to hold that the present writ petition carries with it a substantial amount of public interest. The judicial relief at the instance of writ petitioner who fails to fulfill the requisite criteria, would be a misplaced action.

In our considered opinion, the impugned judgement passed by learned Single Judge does not warrant any interference.

The appeal is devoid of merit and is dismissed with cost of Rs. 25,000/- to be paid to Calcutta High Court Legal Services Committee for the purpose of meeting incidental expenses for holding Lok Adalats.

Urgent Photostat certified copy of this judgement and order may be made available if an approach therefor is made.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)