

Item No.296

19.04.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 5356 of 2022
Rita Khatun

v.

Indian Oil Corporation Limited & Ors.

Mr. Gautam Brahma
Mr. Pampa Saha
Mr. Arijit Dey
... for the petitioner.

Mr. Subhankar Chakraborty
Mr. Saptarshi Bhattacharya
Ms. Ruchira Manna
... for the respondents.

The Letter of Intent (LOI), which was issued in favour of the petitioner by the Indian Oil Corporation Limited (IOCL) was withdrawn by the impugned communication dated December 8, 2021.

The impugned letter reads as follows:-

“ Subject: Withdrawal of LOI No. 2018/IN001528/WB./000190/2111/00037 dated 22.03.2019.

This is with reference to Clause No. 26(a) of applicable Unified Guidelines i.e. Brochure on Unified Guidelines for Selection of LPG Distributors-Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak, June 2017 and Clause 9.3 of Letter of Intent(LOI) wherein, inter alia, it is mentioned that “ if any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application at any stage is found to have been suppressed/misrepresented /incorrect or false affecting eligibility, then the LOI is liable to be withdrawn without assigning any reason along with forfeiture of

amount deposited by you with the Corporation before FVC..... In such cases you shall have no claim whatsoever against the respective Oil Company” (i.e. Indian Oil Corporation Ltd).

Also, reference is made to Clause No. 8. B(c) of the applicable Unified Guidelines referred above {captioned 8.B. Specific Eligibility Criteria for Different Reservation Categories & (c) Other Backward Classes (OBC)}, wherein, inter alia, it is mentioned that “the last date for submission of application mentioned in the notice of advertisement or corrigendum (if any), will be treated as the date of reckoning for OBC status of the candidate and also for determining that the candidate does not fall in the creamy layer”.

In view of the above, we regret to inform you that LOI No. 2018/IN001528/WB./000190/2111/00037 dated 22.03.2019 issued to you is withdrawn with immediate effect and the amount of Rs. 30,000.00 deposited with the Corporation stands forfeited in line with terms and conditions of the Brochure under Clause Nos. 26(a) and 8.B(c) and Letter of Intent(LOI) under Clause No. 9.3 respectively as well as withdrawn of name & style of M/s Beraberia Indane Gramin Vitrak.

This letter is issued without any prejudice to the rights and interests of the Indian Oil Corporation Ltd.”

Learned advocate for the petitioner submits that the impugned letter does not disclose the reasons for withdrawal of the LOI.

It has been submitted that principle of natural justice has not been followed at the time of withdrawal of LOI. There has been violation of the Unified Guidelines.

The facts of the case, in brief, is that pursuant to an advertisement published in the newspaper the petitioner applied for obtaining the distributorship in the reserved category.

According to the petitioner she is a member of the Other Backward Classes (OBC) and she relied upon the certificate dated November 4, 2015 issued by the Sub-

Divisional Officer, Basirhat North 24-Parganas wherein it has been mentioned that the petitioner belongs to the “Muslim Mandal” community which is recognized as Backward Class (Other Backward Class-Category-A) by the Government of West Bengal.

Being successful in the first round field verification of the land offered by the petitioner was conducted by IOCL and being satisfied with the land offered and the documents relied, LOI was issued in her favour.

The petitioner submitted all the documents including her caste certificate in support of her candidature in the year 2019.

On March 22, 2019 the petitioner was intimated that IOCL intended to offer LPG distributorship to her on conditions set out therein. Paragraph 9.3 of the said communication mentions that if any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application, at any stage, is found to have been suppressed/misrepresented/incorrect or false affecting eligibility, then the LOI is liable to be withdrawn without assigning any reason along with forfeiture of amount deposited with the Corporation before FVC and in case appointment as distributor is made, the distributorship

is liable to be terminated along with the forfeiture of security deposit remitted.

Upon obtaining the necessary permission from the concerned authorities the petitioner started construction of the LPG godown and the shop-room.

By a communication dated June 13, 2019 the petitioner was advised to stop work for godown and shop-room until further advice.

Thereafter a show cause notice for withdrawal of LOI was issued in favour of the petitioner on January 30, 2021. The said show cause notice mentions that the petitioner was unable to provide any substantial document to justify the OBC caste declaration submitted by her. The Company concluded that the petitioner gave false declaration on affidavit.

The petitioner was asked to give explanation as to why the LOI issued in her favour should not be withdrawn. The petitioner duly replied to the said show cause notice. At the time of submission of the reply to the show cause notice, the petitioner annexed a copy of the caste certificate issued in her favour by the Sub-Divisional Officer, Basirhat, North 24-Parganas on February 5, 2021.

In the reply to the show cause submitted by the petitioner on February 24, 2021 she mentioned that as the name of her father was incorrectly recorded in her

Aadhar Card, accordingly, the OBC certificate was issued mentioning the community “Muslim Mandal”.

It was further mentioned that the error was rectified and a fresh certificate was issued in her favour wherein it has been mentioned that the petitioner belongs to the “Muslim Molla” community. The petitioner forwarded the subsequent certificate issued in her favour by the competent authority.

According to the respondents, as the caste certificate relied upon by the petitioner at the time of making the application was in respect of a community which was not recognized as Backward Class in the Government of India notification, accordingly, the petitioner cannot get the benefit of the said caste certificate.

It has, however, candidly been submitted that the certificate, which was later on relied upon by the petitioner at the time of giving reply to the show cause notice, was in accordance with the Central Government notification.

According to the respondents there hasn't been any violation in the principle of natural justice. It has been contended that as the show cause notice clearly mention that the petitioner did not produce the substantial documents to justify her caste, accordingly,

the same was not mentioned all over again in the letter of withdrawal of LOI.

It has been submitted that the clauses of the Unified Guidelines relied upon by IOCL were mentioned in the letter of withdrawal of LOI, which clearly depicts the reason for withdrawal of the LOI.

Learned advocate for the respondents relies upon the Brochure of Unified Guidelines for selection of LPG Distributors.

Paragraph 8 of the said guidelines mentions the eligibility criteria for the applicants.

Paragraph 8.B(c) of the said Guidelines has been relied upon. The same mentions that the applicants belonging to “Other Backward Classes” recognized as OBC by the Government of India (Central Government) under the Constitution of India will be eligible to apply under this category. If selected, the candidate will be required to submit a copy of the certificate issued by the competent authority, notified by the Government of India certifying that the candidate belongs to “Other Backward Classes” recognized by the Gazette Notification issued by the Government of India.

Learned advocate has relied upon the Central list of OBCs for the State of West Bengal. Entry No. 94 of the said list mentions the community “Muslim Molla”.

According to the respondent authorities as the petitioner did not have any document in support of her caste in accordance with the Central Government notification till the last date of the advertisement, accordingly, her candidature has been rightly rejected and the LOI was rightly withdrawn.

In support of the stand for withdrawal of LOI the respondents have relied upon paragraph 19 of the Unified Guidelines which mentions that if in the field verification it is found that information given by the applicant is at variance with the original documents and that information affects the eligibility of the candidate, then the LOI holder would be intimated. If it is established that false/ incorrect/ misrepresented information has been given in the application, candidature of the selected candidate will be cancelled, the status of the LOI will become null and void and the amount remitted by the selected candidate before FVC will be forfeited.

Reliance has also been placed upon paragraph 26 of the Unified Guidelines relating to furnishing of false information. It mentions that if any statement is made by the applicant in the application or in the document enclosed therewith or subsequently submitted in pursuance of the application at any stage is found to have been suppressed/ misrepresented/ incorrect or

false affecting eligibility, then the application/candidature is liable to be rejected without assigning any reason.

Paragraph 26(b) of the Unified Guidelines mentions that in case the selection of the candidate is rejected after FVC or after issuance of LOI but before issuance of letter of appointment then the amount deposited by the selected candidate before the FVC is conducted i.e. 10% of the applicable security deposit will be forfeited.

According to the respondents, as the petitioner supplied false/incorrect information at the time of making the application, her application was liable to be rejected and has rightly been rejected and as a consequence, LOI has rightly been withdrawn.

I have heard the elaborate submissions made on behalf of the parties and have perused the documents including the Unified Guidelines relied upon by them. There is hardly any factual dispute in the matter.

Admittedly, on the date of filing the application the caste certificate relied upon by the petitioner mentioned that she belonged to the 'Muslim Mandal' community which is not recognized as OBC as per the Government of India notification. The certificate disclosing her community as 'Muslim Molla' which is recognized as

OBC according to the Government of India notification was issued after the field verification was conducted.

The issue is whether there is any suppression/ misrepresentation/ incorrect or false statement by the petitioner affecting her eligibility to obtain distributorship and whether the delayed submission of the proper caste certificate affects the eligibility of the petitioner.

The petitioner applied in response to the advertisement published by IOCL in the reserved category. For obtaining the benefit of reservation the petitioner relied upon the caste certificate for Other Backward Classes issued in her favour on November 4, 2015 by the Sub-Divisional Officer, Basirhat, North 24-Parganas, being the competent authority. The said certificate mentions that the petitioner belongs to the “Muslim Mandal” community which is recognized as OBC, Category-A by the Government of West Bengal.

Thereafter, the petitioner obtained a further certificate from the same competent authority which mentions that the petitioner belongs to the “Muslim Molla” community recognized as Other Backward Classes, Category-A by the Government of West Bengal and as Backward Class by the Government of India for the State of West Bengal.

According to the respondents the community “Muslim Molla” is enlisted in the central list of OBCs for the State of West Bengal and the petitioner will be entitled to the benefit relying on the certificate issued in her favour in the year 2021.

At the same time, it is the submission of the respondents that as the caste certificate presently relied upon by the petitioner was issued long after the date of making the application and even after the field verification was conducted by the respondent authority, accordingly, the benefit of the subsequent certificate cannot be granted in favour of the petitioner.

The respondents, for the purpose of withdrawal of the LOI issued in favour of the petitioner, relied upon various provisions of the Unified Guidelines.

The impugned order, though does not mention the reasons for withdrawal the LOI, but if the LOI is read along with the show cause notices, which were issued in favour of the petitioner prior to the issuance of the letter of withdrawal, then it becomes evidently clear that the LOI was withdrawn only because the petitioner failed to produce the caste certificate in accordance with the Central Government notification on the date of making of her application.

What the respondent authorities missed to appreciate and ought to have appreciated is that the

caste of a candidate is determined at the time of his/her birth. The same is not because of any other event happening at a later date.

The Hon'ble Supreme Court in Civil Appeal No. 1691 of 2016 (Arising out of SLP (C) No. 27550 of 2012) in the matter of Ram Kumar Gijroya –vs- Delhi Subordinate Services Selection Board & Anr. referred to an earlier order passed by the Hon'ble Supreme Court wherein it has been mentioned that “Thus in order to be considered for the post reserved for ‘SC’ category, the requirement is that a person should belong to ‘SC’ category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to ‘SC’ category and act thereon by giving the benefit to such candidate for his belonging to ‘SC’ category”.

In the case at hand the petitioner did rely upon a caste certificate which was issued in her favour by the competent authority in the year 2015, but according to the respondent authorities, the community as mentioned in the said certificate, was not enlisted in the list of Central Government as OBC.

The petitioner has thereafter rectified the error in the initial caste certificate which was issued in her favour in the year 2015 and has obtained a fresh certificate in the year 2021 wherein the proper community of the petitioner is mentioned.

It does not appear that there has been any suppression/ false/ misrepresentation or incorrect submission on the part of the petitioner at the time of submitting the earlier caste certificate. It was due to an error on the part of the competent authority that the actual community in which the petitioner belongs was incorrectly mentioned. The petitioner ought not to suffer due to the fault on the part of the competent authority. It was the bounden duty of the respondents to ascertain whether the petitioner actually was a member of the OBC community for which she sought reservation.

Though the subsequent certificate was issued at a later date, but since the same was issued upon rectification of the earlier certificate, accordingly, the community of the petitioner as appearing in the subsequent certificate issued in the year 2021 ought to be treated as correct certificate issued in her favour and the date of the certificate will relate back to the date when the certificate was initially issued in her favour.

It is not that the petitioner was not a member of the OBC community recognized by the Government of

India prior to the issuance of the rectified certificate in February, 2021. The petitioner is a member of the OBC category recognized by the Government of India since her birth and the certificate is only an affirmation of the fact already in existence.

The respondents have neither disputed the competence of the authority which issued the certificates nor challenged the genuineness or veracity of the certificates relied upon by the petitioner. Accordingly, the respondents are bound to give the benefit of caste reservation in favour of the petitioner relying upon the certificate which was correctly issued in her favour in February 2021.

It appears that apart from the dispute with regard to the delayed submission of the caste certificate there is no other issue to be decided in the present writ application.

In view of the above, the writ petition stands allowed.

The letter of withdrawal of the LOI impugned in the present writ petition dated December 8, 2021 is set aside and quashed.

The respondents are directed to take up necessary consequential steps in the matter, at the earliest.

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

Sh

(Amrita Sinha, J.)s