

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

MAT 766 OF 2022
with
I.A. No. CAN 1 of 2022

Rashbehari Saha

Vs.

Indian Oil Corporation Limited & Ors.

For the Appellant	:	Mr. Debabrata Saha Roy, Adv. Mr. Pingal Bhattacharyya, Adv. Mr. Subhankar Das, Adv. Mr. Neil Basu, Adv.
For IOCL	:	Mr. Puspendu Chakraborty, Adv.
For the Respondent No. 9	:	Mr. Biswaroop Bhattacharya, Adv. Mr. Sanjib Seth, Adv.
Heard on	:	23.06.2022, 18.07.2022, 29.08.2022, 09.09.2022, 13.09.2022 & 23.11.2022
Judgment on	:	21.12.2022.

CHITTA RANJAN DASH, J.:-

1. This appeal arises out of the order dated 06.05.2022 passed by Hon'ble Single Judge in WPA No. 20821 of 2021.
2. The writ petitioner is the appellant. Besides the Oil Company, respondent no. 9 is the selected LPG distributor under Gramin LPG Distributorship at Jagatballavpur Gram Panchayat, Jagatballvapour – II in the District of Howrah.
3. Shorn of unnecessary details the fact relevant for disposal of this appeal is that both the writ petitioner and respondent no. 9 were applicants for aforesaid LPG distributorship. The draw of first lots having failed for inability of the successful candidate to comply with the criteria, a second draw was conducted in which the writ petitioner (appellant) and respondent no. 9 participated. In the draw of lot respondent no. 9 came out successful in the open category. The land offered by respondent no. 9 did not meet the criteria. She was advised to give alternate land. The alternate land offered by respondent no. 9 having met the criteria, letter of intent was issued in her favour. Subsequently, respondent no. 9 offered a better piece of land and said offer was accepted by the Oil Company (respondents).
4. The writ petition was filed on the grounds *inter alia* that the brochure condition and the 'unified guidelines' have been breached when the Oil Company accepted the land offered by respondent no. 9 on the third occasion when the first and alternate land offered by her were not found to be suitable.

5. It was contended by private respondent no. 9 before Hon'ble Single Judge that the alternate land offered by her having been accepted by the Oil Company, letter of intent was issued in her favour and she has spent huge amount for construction of LPG Godown as well as showroom.

6. The Oil Company took the stand before Hon'ble Single Judge that in course of field visit conducted on 18th January, 2019 it was found that the land offered by respondent no. 9 is not there in the advertised location and the dimension of the offered land was also not in accordance with the eligibility criteria mentioned in the 'unified guidelines'. At that point of time, therefore, respondent no. 1 was asked to offer alternate land. On field verification of the alternate land offered by the respondent no. 9 same was found to be suitable in all respect and letter of intent was issued in her favour.

It was further contended by the Oil Company that in accordance with Clause 2 of the 'unified guidelines' respondent no. 9 was given a chance to offer even a better piece of land if available though the alternate land offered by her was found to be suitable. Respondent no. 9 availed the benefit of the aforesaid provision i.e. Clause 2 of the 'unified guidelines' and offered a new land which was accepted by the Oil Company and letter of allotment was issued in her favour on 31st December, 2020. After that the commissioning of the distributorship was made on 15th March, 2021.

7. After hearing learned Counsel for the parties Hon'ble Single Judge relied on Clause 2 (b) and (e) of the 'unified guidelines' and returned the finding to the effect that there is no illegality in accepting the land offered by respondent

no. 9 on 3rd chance. With the aforesaid finding Hon'ble Single Judge dismissed the writ petition obliging the writ petitioner to prefer this appeal.

8. From the order sheet in the appeal it is found that vide order dated 09.09.2022 after exhaustive hearing this Court had zeroed down the point of determination to the question:

“Whether third chance can be given to a selected candidate to comply the discrepancy and offer alternative land if he/she could not do so in the second chance given to him or her?”

9. We, however, after hearing the parties at length modify the question slightly as in the present case the alternate land offered by respondent no. 9 was found to be suitable in all respect and on that basis a letter of intent was issued in her favour. In view of such position, the aforesaid question is modified as follows:

“Whether third chance can be given to a selected candidate to comply the discrepancy and offer alternative land if he/she had offered suitable land in the second chance given to him or her?”

10. From the records as well as submission of learned Counsel for respondent no. 9 and learned Counsel for the Oil Company, it is clear that the first land offered by respondent no. 9 was not there in the advertised location

and she was asked to offer alternate land. The land owned by her maternal grandmother was offered by respondent no. 9 as alternate land and the said land was found to be suitable in all respect by the Oil Company and on that basis letter of intent was issued in favour of respondent no. 9. After letter of intent was issued only the respondent no. 9 offered a better piece of land which has been accepted by the Oil Company.

11. To answer the question framed *supra* it is pertinent to refer to Clause 2 (b) and (e) of the unified guidelines/brochure :-

*“b. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, **then the LOI holder can offer an alternate/new land for construction of godown of specified dimensions, in the advertised location, which will be considered on the grounds of enhanced security/safety, better title (owned instead of leased), convenient location, lower operating cost etc.** The selected candidate has to ensure that an all weather motor able approach road (public or private road connecting to the public road) of minimum 2.5 metre width is made available to provide access of LPG Cylinder Truck to the offered land for LPG*

Godown. In case of private road connecting to the Public Road, the same should be either owned/registered lease or having a right of way from the owner(s) of the land. Wherever the State Government stipulates an approach road of wider dimensions the same should be made available by the applicant.”

*“e. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, **then subsequently, the LOI holder can offer an alternate/new land for construction of showroom of specified dimensions, in the advertised location, which will be considered on the grounds of enhanced security/safety, better title (owned instead of leased), convenient location, lower operating cost etc.**”*

(Emphasis supplied by us)

12. From conjoint reading of Clause 2 (b) and (e) as quoted *supra* and especially the word ‘subsequently’ after the word ‘then’ and before the words ‘LOI holder’ in sub-Clause (e) it is clear that third chance can be given to a letter of intent holder if the alternate land offered by him or her in course of

second chance has been accepted by the Oil Company as suitable. Similarly if the first land offered by LOI holder has been accepted by the Oil Company as suitable then second chance is available to him or her to offer a new land. The word 'subsequently' as in sub-Clause (e) also makes it clear that the date of registration etc. of the new land offered by a letter of intent holder in course of second chance or third chance, as the case may be, should not have been registered or leased in favour of the LOI holder before the last date of application, inasmuch as the new land is for the purpose specifically mentioned in sub-Clause (b) and (e) of Clause 2 of the brochure/unified guidelines. This is also the argument of learned Counsel appearing for the Oil Company and it is specifically submitted by him that the new land offered for the purpose mentioned in sub-Clause (b) and (e) of Clause 2 of the brochure/unified guidelines need not be one which should have been registered and leased in favour of LOI holder before the last date of application. In view of our discussion as above, we do not find any merit in the submission of Mr. Saha Roy learned Counsel for the appellant to the effect that the third offer even by a LOI holder should have been registered or leased in favour of LOI holder before the last date of application.

13. In view of our discussion *supra* we do not find any infirmity in the order passed by Hon'ble Single Judge and accordingly the appeal merits no consideration.

14. The appeal is accordingly dismissed.

15. In view of disposal of the Appeal the interim application being CAN 1 of 2022 is also disposed of.
16. There shall be no order, however, as to cost.
17. Pronounced in open Court on this day i.e. 21st day of December, 2022.
18. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)