

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE ANIRUDDHA ROY

FMA 985 OF 2019

Sipra Khan

vs.

Hindustan Petroleum Corporation
Limited & Ors.

For the Appellant : **Mr. Debabrata Saha Roy, Sr. Adv.**
Mr. Pingal Bhattacharyya, Adv.
Mr. Subhankar Das, Adv.

For the Respondent Nos. 1 to 4 : **Mr. Dilip Kumar Kundu, Adv.**
Mr. A. Basu, Adv.

For the Added Respondent : **Mr. Sudipto Moitra, Adv.**
Mr. Subhasish Pachhal, Adv.

Heard on : **20.06.2022, 27.06.2022, 08.07.2022,**
18.07.2022 and 28.07.2022.

Judgment on : **28.09.2022.**

CHITTA RANJAN DASH, J.:-

1. This appeal arises out of order dated 10.06.2019 passed by the Hon'ble Single Judge in W.P. No. 12060 (W) of 2007 in dismissing the writ petition filed by the present appellant.

2. Advertisement was published in Anandabazar Patrika inviting application for distributorship of LPG at Andul, District-Howrah. The present appellant applied for such distributorship. On the basis of applications received, interview was held by the respondent Oil Corporation on 22.11.2003. On the basis of result of the interview 3 (three) persons were selected:-

(i) Sipra Khan (present appellant);

(ii) Tuli Rekha Pal (since deceased);

(iii) Rahat Hossain Molla (added respondent).

3. Challenging the select list so prepared by the Oil Corporation, Tuli Rekha Pal filed Writ Petition No. 68 (W) of 2004. However, the aforesaid writ petition was dismissed as not pressed. Tuli Rekha Pal again filed W.P. No. 607 (W) of 2004 and it was allowed *inter alia* holding that the present appellant [who was respondent no. 5 in W.P. 607 (W) of 2004] falsely declared her income and tried to lower down the same in order to get the dealership.

The order passed by Hon'ble Single Judge in W.P. No. 607 (W) of 2004 was challenged in appeal in M.A.T. No. 746 of 2005. Said appeal was disposed of on technical ground that the writ petitioner i.e. Tuli Rekha Pal having not granted leave by the Court at the time of dismissal of the earlier writ petition i.e. WPC No.

68 (W) of 2004 on being not pressed, the second writ petition on the self-same ground and for self-same relief(s) is not maintainable. Accordingly, order was passed to the effect that all actions taken pursuant to the order passed by the Hon'ble Single Judge are quashed and the HPCL authority is directed to proceed in accordance with law.

4. After the disposal of the aforesaid appeal filed at the instance of the present appellant, the matter was taken up by the authorities of HPCL and vide order dated March 20, 2007, Annexure P-7 to the writ petition, the present appellant was informed that the Oil Corporation is not able to proceed further with her candidature. Challenging the said notification the present appellant filed the present writ petition i.e. W.P. 12060 (W) of 2007. The said writ petition was dismissed for default on 22.02.2014. On the basis of application moved by the present appellant, the writ petition was restored to file on 20.03.2014. The said writ petition was again dismissed for default for the second time on 11.04.2016. Petition for condonation of delay and restoration of the writ petition to file were filed before this Court on 20.08.2017. Though such petitions were filed, the petitions were not moved and the writ petition was not restored to file.

5. While matter stood thus, the respondent Oil Corporation in terms of the order passed by the Hon'ble Division Bench in M.A.T. No. 746 of 2005 processed the application of 3rd candidate as the second candidate, Tuli Rekha Pal had expired in the meantime and letter of intent was issued on 17.04.2018 in favour of Rahat Hossain Molla, the added respondent.

6. Challenging such action of the Oil Corporation dated 17.04.2018, fresh writ petition being W.P. No. 21118 (W) of 2018 was filed by the present appellant but the said writ petition was dismissed in view of pendency of restoration application in WPC No. 12060 (W) of 2007. On 10.06.2019, however, the petition for condonation of delay and the restoration application were moved by the present appellant before the Bench with determination. Hon'ble Single Judge on the same day condoned the delay, restored the writ petition to file, heard the parties and dismissed the writ petition filed by the present appellant. The present appeal has been filed against the said order.

7. The short question that is involved in the present appeal is whether the present appellant had annual income of less than Rs. 2 lakh in the year 2000-2001 i.e. relevant year when the application for LPG distributorship was filed by the present appellant.

It is an admitted fact at the bar that the income criteria of less than 2 lakh rupees of annual income by an applicant in the relevant year i.e. 2000-2001 is a requisite condition for engagement as LPG distributor.

8. Hon'ble Single Judge after hearing learned Counsel for the parties and thorough scrutiny of the materials-on-record held that though the Oil Corporation has conducted the field verification and took into consideration the financial status of the petitioner for the year of 2003 inference could be drawn to the effect that the fixed deposit were renewed from time to time and that those fixed deposits existed during the financial year 2000-2001. There is also no material filed by the present writ petitioner to rebut or negate the field verification report of the

respondent Oil Corporation to show that her income was within Rs. 2 lakh annually in the financial year 2000-2001. The other point raised before Hon'ble Single Judge was that the order dated March 20, 2007, Annexure P-7 to the writ petition, does not contain any reasons for not considering the candidature of the present appellant. This contention has been eschewed by Hon'ble Single Judge specifically with finding that the impugned writing dated March 20, 2007 contain reasons to the effect that the application of the petitioner stand rejected as the statement made by her in the application and the documents enclosed therewith and subsequent field verification regarding the information provided by the appellant were found to be incorrect and false. It is further held by Hon'ble Single Judge that the statement of the Oil Corporation as contained in the impugned writing dated March 20, 2007 (Annexure P-7 to the writ petition) is sought to be substantiated by the report annexed to the affidavit-in-opposition.

9. Mr. Debabrata Saha Roy, learned Senior Counsel appearing for the appellant submits thus –

(i) Order of rejection of the candidature of the appellant dated 20th March, 2007, Annexure P-7 to the writ petition, being non-speaking and without reason is not sustainable in the eye of law and the reasons cannot be subsequently substantiated by filing affidavit-in-opposition. To substantiate such contention Mr. Debabrata Saha Roy, learned Senior Counsel relies on a constitution Bench decision of

Hon'ble Supreme Court in the case of **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.** AIR 1978 SC 851 wherein it is held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by *fresh reasons* in the shape of affidavit or otherwise.

(ii) Relying on report of the Joint Commissioner of Income Tax submitted in Court in compliance with the order of Hon'ble Single Judge dated 11.08.2004 passed in W.P. No. 607 (W) of 2004, candidature of the appellant has been rejected although such report had been quashed and set aside by the Hon'ble Division Bench by its order dated 24.08.2006 passed in MAT No. 746 of 2005. The report of the Joint Commissioner, Income Tax therefore being a void report rejection of the candidature of the appellant on the basis of such report is a nullity.

10. Mr. Dilip Kumar Kundu, learned Counsel appearing for the respondent Oil Corporation, submitted that the field verification was carried out sometime in 2004 and report was submitted on 5th January, 2005. During the field verification, it was observed that cash at bank as on 07.11.2003 was Rs. 90, 538/-, fixed

deposit amounting to Rs. 1,75,000/-, date of deposit being 14.02.2002 and date of maturity being 14.02.2007, a fixed deposit amounting to Rs. 2 lakh date of deposit being 22.02.2002 and date of maturity being 22.02.2005, an STDR of State Bank of India amounting to Rs. 2,25,000/- period of which was up to 22.02.2005. With all the aforesaid deposit being in existence, the respondent no. 1 had shown fixed deposit of Rs. 1,75,000/- only to the Investigating Officer. At the time of field verification, it was stated before the Investigating Officer that a few documents were stolen from the residence of the appellant, general diary was lodged to that effect in Domjur Police Station. A telephone call was received by an Investigating Officer alleging that there is some problem in the bank records with the State Bank of India, Ramraj Tala Branch. It also came to light that Indira Bikash Patra of Rs. 1,49,500/- with effect from 14.07.1997 to 19.06.1999 was found and it was verbally told by the appellant that the amount has been withdrawn.

So far as the lack of reason in the impugned writing dated 20th March, 2007, Annexure P-7 to the writ petition, is concerned, it is submitted by Mr. Kundu, learned Counsel appearing for the Oil Corporation that sufficient reason has been assigned in the said letter and such reason has only been substantiated in the affidavit-in-opposition and no new grounds besides what has been stated in letter dated 20th March, 2007, has been taken in the affidavit-in-opposition.

11. Mr. Sudipto Moitra, learned Counsel appearing for the added respondent supports the impugned order passed by Hon'ble Single Judge and his selection as LPG distributor.

12. Taking into consideration the first point urged by Mr. Saha Roy, learned Senior Counsel appearing for the appellant, we feel it prudent to reproduce the contents of letter dated March 20, 2007 issued by the HPCL authority to the present appellant which reads thus :-

“Dear Madam,

This has reference to your application for the LPG Dealership at Andul, District Howrah and subsequent interview held at Kolkata on 22.11.2003.

We have noted the Order dated 24.08.2006 of the High Court of Calcutta in MAT No. 746 of 2005 filed by you, directing us to proceed further in accordance with law for selection of LPG Distributorship at Andul.

We wish to advise you that while proceeding further in accordance with the Court's orders, major discrepancies had been observed during field verification of information provided by you in your application form for the LPG distributorship at Andul which is a gross violation of terms & conditions of selection and undertaking given by you in your application form. As a result you lost your merit position in the merit panel which was displayed subsequent to the interview held on 22.11.2003 and

we are unable to proceed further with your candidature.

Your application is rejected as statements made in your Application and documents enclosed therewith and subsequent field verification of information provided by you as found to be incorrect or false.”

13. In paragraph 3 of the letter reproduced *supra* it is clearly mentioned that the respondent Oil Corporation is unable to proceed further with the appellant's candidature because of major discrepancies in the application form filed by the appellant and the field verification report. Same thing is reiterated also in paragraph 4 of the communication *supra*.

The advertisement for engagement of LPG dealer being an invitation to offer and application filed by an applicant being an offer discrepancy in the application form and the field verification report would go to show that the **“offer”** made is not in consonance with the **“invitation”**.

14. This is the third round of litigation concerning the dealership in question and all the litigations we have mentioned in preceding paragraph *supra*. The discrepancy spoken of in the letter under reference i.e. letter dated 20th March, 2007 (Annexure P-7 to the writ petition) was within the knowledge of the appellant from the very beginning and the single discrepancy that has been gone through by this Court in its exercise during earlier litigations was ineligibility of the present

appellant so far as income criteria for the year 2000-2001 is concerned. To make it more clear the appellant was with the knowledge about her ineligibility as she had been litigating with Tuli Rekha Pal (since deceased), petitioner in W.P. No. 64 (W) of 2004 and W.P. No. 607 (W) of 2004 and in the writ petition filed by herself (appellant) in W.P. 12060 (W) of 2007 including appeal filed by herself (appellant) in MAT No. 746 of 2005. In all these cases the question of income criteria of the appellant was the single issue *inter alia* some issues at the fringe. In W.P. 12060 (W) of 2007, order passed in which was set aside in M.A.T. No. 746 of 2005 on a technical ground as discussed *supra* the Hon'ble Single Judge had occasion to also make some adverse observation against the appellant so far as her conduct is concerned and had held affirmatively that she does not fulfil the income criteria so far as eligibility is concerned. However, that order by Hon'ble Single Judge having been quashed in the concerned writ appeal, we are not concerned with that now but we are free to say here that the appellant had every knowledge about the discrepancy pointed out in letter dated March 20, 2007 (Annexure P-7 to the writ petition) and she cannot at this stage feign ignorance about what discrepancy the respondent Oil Corporation had spoken about in the aforesaid letter (Annexure P-7 to the writ petition).

15. The Judgement of Hon'ble Supreme Court in the case of **Mohinder Singh Gill & Anr.** pressed by Mr. Saha Roy, learned Senior Counsel for the appellant cannot salvage his case so far as letter dated 20th March, 2007 (Annexure P-7 to the writ petition) is concerned inasmuch as sufficient indication regarding the

discrepancy discussed *supra* has been given in the letter (Annexure P-7 to the writ petition) and it cannot be said to be a letter without reason. From the affidavit-in-opposition filed by respondent Oil Corporation we find that they have not taken any new ground in their affidavit-in-opposition except the details of field verification report and denying the averment made in the writ petition. Accordingly, we are constrained to hold that the first contention raised by Mr. Saha Roy, learned Senior Counsel for the appellant must fail.

16. So far as the second contention of Mr. Saha Roy, learned Senior Counsel for the appellant is concerned, on perusal of the impugned judgement we find that there is no reference to any report of the Joint Commissioner, Income Tax stated to have been submitted in Court pursuant to order dated 11.08.2004 pressed in W.P. No. 607 (W) of 2004. Hence this contention has no legs to stand. Assuming *arguenda* that Hon'ble Single Judge has relied on the report of Joint Commissioner, Income Tax in the impugned judgement or the respondent Oil Corporation has relied on the report of the said Joint Commissioner, Income Tax submitted in Court, no fault can be found in relying on the said report because –

(i) The said report after being filed in Court became a public document and anybody for his benefit can rely on the report after it came to public domain.

(ii) True it is that Hon'ble Appellate Court in MAT No. 746 of 2005 quashed the order passed by Hon'ble Single Judge in W.P No. 607 (W) of 2004 initiated at

the instance of Tuli Rekha Pal (since deceased) and also quashed all actions taken pursuant to order passed in that writ petition. But such order of the Appellate Court however did not quash the report obtained on record from the Joint Commissioner, Income Tax. It remained in public domain, inasmuch as the report being a factual finding by a competent authority, that could not have been quashed. Hon'ble Division Bench has quashed all action pursuant to order passed by Hon'ble Single Judge in the aforementioned writ petition. All actions taken pursuant to order passed in the writ petition means all actions taken pursuant to final order passed in the writ petition and that does not include any facts that has come to record of the Court in course of the proceeding.

In view of the aforesaid understanding of the position by us, we are constrained to say that the second contention raised by Mr. Saha Roy, learned Senior Counsel for the appellant must also fail.

17. The advertisement for the captioned dealership was issued in 2002, now 2022 is coming to an end. For the distributorship of the captioned location litigation is going on since 20 years. We cannot also overlook the conduct of the

present appellant. She sat silent when the writ petition filed by her i.e. W.P. 12060 (W) of 2007 was dismissed for default for the second time on 11.04.2016. After more than one year petition for condonation of delay and restoration of writ petition to file were filed but those petitions were not moved for the slackness on the part of the present appellant. Finally, after about two years thereafter on 10.06.2019 both the aforesaid petitions for condonation of delay and restoration of writ petition to file were moved and the writ petition came to be disposed of. In the meantime in compliance of order passed by Hon'ble Division Bench in M.A.T. No. 746 of 2005 the respondent Oil Corporation had already moved and had already engaged the added respondent as LPG distributor for the captioned area. The added respondent has no fault on his part. The respondent Oil Corporation cannot also wait for the ideal time for the present appellant to wake up from her slumber and move the Court for reaffirmation of her claim. Respondent Oil Corporation is after all doing business for profit and for public good. The entire process of appointment of dealer etc. is a part of such commercial transaction. The settled principle is that the respondent Oil Corporation is the best judge as to whether terms and conditions of the invitation to offer has been fulfilled by any applicant in his or her offer. There is very little scope for judicial review in such a case. We are also constrained to say that equity favours a person who is vigilant and not indolent. If for slackness or laches on the part of any party any third party has got a privilege, that too in accordance with law and the norms of the commercial transaction, the Court ordinarily should not interfere to disturb the position of such third party because that would amount to rewarding indolence of a party.

18. In view of our discussion *supra* we feel persuaded to confirm the order passed by Hon'ble Single Judge on 10.06.2019 in W.P. No. 12060 (W) of 2007. We do not find any infirmity in the said order as urged by learned Counsel for the appellant. Accordingly the appeal fails.

19. There shall be no order as to cost.

20. Pronounced in open Court on this day i.e. 28th day of September, 2022.

21. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Aniruddha Roy, J.)

(Chitta Ranjan Dash, J.)