

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**Present:- Hon'ble Mr. Justice Chitta Ranjan Dash
And
Hon'ble Mr. Justice Aniruddha Roy**

**MAT 965 of 2021
With
I.A. No. CAN 1 of 2021**

**Indian Oil Corporation Ltd. & Ors.
Vs.
Atulanand Singh**

For the Appellants : **Mr. Jaydip Kar, Advocate,
Mr. Amit Kr. Nag, Advocate,
Ms. Ranjabati Ray, Advocate.**

For the Respondent : **Mr. Debabrata Saha Roy, Advocate,
Mr. Pingal Bhattacharya, Advocate,
Mr. Subhankar Das, Advocate,
Mr. Neil Basu, Advocate.**

Reserved on : **01.08.2022**

Judgment on : **28.09.2022**

ANIRUDDHA ROY, J.:

Facts:-

1. This is a mandamus appeal assailing the impugned judgment and order dated August 16, 2021 passed by the Hon'ble Single Judge in **WPA 4839 of 2021** whereunder the writ petition was allowed.
2. The three leading oil companies, vide, Indian Oil Corporation Limited (for short, **IOCL**), the first appellant herein; Bharat Petroleum Corporation Limited (for short, **BPCL**) and Hindustan Petroleum Corporation Limited (for short, **HPCL**)

jointly on August 31, 2017 published an advertisement (for short, the said advertisement) in the newspapers for appointment of **LPG Distributorship** at various locations in the State of West Bengal.

3. Under the said advertisement, invitation, inter alia, was also made for **SHEHERI VITARAK** (open category) for which the first appellant participated for the distributorship at **Howrah, Mandirtala** (for short, **the said distributorship**), District Howrah. Mode for selection was draw-on-lot.
4. Pursuant to and in terms of the said advertisement the respondent/writ petitioner as an intending candidate on October 18, 2017 applied online for said distributorship by way of **construction of godown and showroom within the stipulated period mentioned in the said advertisement.**
5. In his online application the writ petitioner respondent disclosed two separate lands, one for the proposed godown and the other for the proposed showroom. The land offered by the respondent for construction of **showroom** was appertaining holding no. 24/4, Ram Mohan Mukherjee Lane, ward no. 34, Mouza & P.S.: Shibpur, District- Howrah (for short, **the showroom land**) which was a lease hold land in the name of the petitioner as lessee. For construction of **godown** the land offered by the petitioner was appertaining to J.L. No. 52 Khatian No.: 1764, Dag No.: 1648, Village: Salak, P.S.: Domjur, District- Howrah (for short, **the godown land**) was owned by the father of the respondent. To offer the said godown land the petitioner obtained written consent from his father.

6. After receiving the said online application from the respondent, the first appellant scrutinized the same and by memo dated December 20, 2018 intimated the respondent that **he had qualified for the purpose of computerized draw of lots** for selection for the said distributorship. The respondent was informed to remain present on December 28, 2018 when the draw of lot was scheduled.
7. Pursuant to the said information/request made by the first appellant the respondent on December 20, 2018 **participated in the said online draw of lot**. After the said draw of lot had taken place, the first appellant by another memo dated December 29, 2018 informed the respondent that **he was declared as a successful candidate for the said distributorship** and was asked to deposit a sum of Rs.50,000/- as security money and to furnish necessary declaration in terms of **Appendix-I and Appendix-II**.
8. Pursuant to and in terms of the said memo dated December 29, 2018 the respondent deposited the said sum of Rs.50,000/- by way of demand draft and submitted all the relevant documents with the requisite information by a forwarding letter dated January 02, 2019.
9. **On receipt of the said documents and the security deposit**, the first appellant verified the information and documents submitted by the respondent. After such verification the first appellant by its Communication dated February 20, 2019 asked the respondent to submit a written clarification as to why the **same land** offered by the respondent for construction of **godown** and also for

the **showroom** in respect of the said distributorship was also offered by another applicant, namely, **Chhama Singh** being the wife of the respondent.

10. In reply to the said Communication dated February 20, 2019, the respondent by its letter dated February 27, 2019 intimated the sixth appellant that the respondent was the lessee in respect of the said **showroom land** and the said **godown land** was owned by his father, namely, Anand Narayan Singh and he had submitted the written undertaking/consent given by his father in his favour for utilizing the said **godown land** for construction and setting up the necessary LPG godown for the distributorship. In the said clarifactory letter dated February 27, 2019 the respondent also mentioned that his wife, namely, **Chhama Singh** was nor the owner neither a lessee of any of the said two lands tendered by him, while applying for the said distributorship. It was also mentioned that, the father of the petitioner did not give any consent in her favour in respect of the relevant land in any manner whatsoever.
11. Upon receipt of the said clarifactory letter dated February 27, 2019 from the respondent, the first appellant by its Communications both dated May 07, 2019 informed the respondent that the same **showroom land** was offered by his wife for obtaining the said distributorship and since such land was not sufficient for construction of two showrooms the same could not be considered and the respondent was instructed to offer an alternative land for showroom which was registered in favour of the respondent on/or before October 18, 2017. By the Communication, the first appellant informed the respondent **that the godown land offered by him was sufficient for construction of two**

godowns, however, godown could be constructed on the said land, if the petitioner provide demarcation plan demarcating his portion and his wife's portion as per the terms.

12. On receipt of the said Communications dated May 07, 2019 the respondent by his representation dated May 13, 2019 replied thereto and stated that his wife was neither the owner of any of the said two lands nor did she obtain any consent from the land owners/lease holders to construct the showroom or godown on those lands and she disclosed the said lands without any knowledge as to the land owners/lease holders and, as such, she was not considered within the zone of construction for obtaining the said distributorship. Along with his representation dated May 13, 2019 the respondent also enclosed a written communication dated May 10, 2019 written by his wife addressing the sixth appellant stating that she did not obtain any consent from the owner or lease holder of any of the said two lands, which she tendered in her application for the proposed godown and the showroom for the said distributorship and further stated that she was not in a position to provide any land for construction for godown or showroom for the said distributorship.
13. By a communication dated June 14, 2019 the first appellant rejected the candidature of the respondent for grant of the said distributorship and forfeited the security deposit of Rs. 50.000/- deposited by the respondent with the following observations:

“a. The land offered for showroom is also offered by the appellant's wife, Mrs. Chhama Singh in her application for LPG distributorship of the same location 'Howrah (Mandirtala)'. The applicant is unable to offer any alternative land for showroom.

b. The land offered for LPG godown is also offered by the applicant's wife, Mrs. Chhama Singh in her application for LPG distributorship of the same location 'Howrah (Mandirtala)'. The applicant is unable to provide the demarcation map showing separate place of land of his and his wife portion on the said land".

14. On receipt of the said rejection letter the respondent through its advocate served a legal notice dated June 24, 2019 upon the sixth appellant, inter alia, contending that the wife of the respondent disclosed the said two plots of land in her application for obtaining the said distributorship, of which she was not the owner nor the lessee neither obtained any consent from the respective owners of the plot. It was also contended that, even if, she would have been selected, was not in a position to offer the requisite lands to participate in the draw-on-lot. The respondent further informed that, the petitioner fulfilled the requisite criteria in respect of the said two lands. The respondent further contended that the said rejection was unjust, improper, unreasonable, motivated and wrongful.
15. The father of the petitioner by his letter dated July 02, 2019 informed the sixth appellant that insofar as the **godown land**, he being the lawful owner granted consent in favour of the respondent to tender the same for obtaining the said distributorship and no consent whatsoever was granted in favour of the wife of the respondent. By a further letter dated July 02, 2019 the respondent made another representation contending that his wife had applied and tendered the same two plots due to her ignorance and misunderstanding of the condition of the advertisement as well as the terms and conditions of the brochure.
16. In response to the said legal notice issued on behalf of the respondent dated June 24, 2019, the Ministry of Petroleum and Natural Gas (for short, the

Ministry) issued a letter dated July 19, 2019 to the third appellant that the rejection of the respondents candidature's on the ground mentioned in the said letter dated June 14, 2019 was not appropriate, as would appear from **Annexure P-14** to the writ petition.

17. In the aforesaid backdrop the petitioner filed the **previous writ petition** being WP No. 16436(W) of 2019. By an order dated November 07, 2019 a single bench of this court was pleased to direct the parties to file their respective affidavits in the said previous writ petition and also passed an order that any step taken shall abide by the result of the said previous writ petition.
18. The respondent being aggrieved, preferred an appeal being MAT No. 1648 of 2019 before the Division Bench from the said order dated November 07, 2019.
19. By an order dated November 27, 2019 the said appeal was disposed of with the following observations:

"This appeal is formally admitted.

By consent of the parties, it is treated as on the day's list. Dispensing with all formalities we dispose of this appeal by the following order:-

Mr. Saha Roy, learned counsel for the appellant submits that his client would be satisfied, if his representation dated 4th July, 2019 made by him to the Director (L.P.G.), Ministry of Petroleum & Natural Gases, Government of India, the respondent no.3 is considered and disposed of.

We find it is a fair submission.

Accordingly, the appeal (MAT 1648 of 2019) and the writ application (WP 16436 (W) of 2019) are disposed of by directing the said Director/respondent no.3 to consider and dispose of the said representation dated 4th July, 2019 by a reasoned order after giving the parties a short hearing within six weeks of communication of this order.

It will be open to the appellant to request the Director to make necessary interim administrative directions till the consideration is pending which request shall be considered by him in accordance with law.

Accordingly, the connected stay application (CAN 11022 of 2019) is also disposed of".

20. Pursuant to and in terms of the said direction of the Division Bench the Ministry passed its reasoned decision dated February 28, 2020 **(at page 97 of the paper-book, Volume-I)** with the following observations:

“7. In this context, relevant provisions of the United Guidelines for Selection of LPG Distributorships 2016 needs to be looked at:

- (i) *Clause 1.23 of United Guidelines defines “ownership’ or ‘Own’ as a. Ownership title of the property.*

Or

b. Registered lease deed having minimum 15 yrs of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any).

The appellant should have ownership as defined under the term ‘Own’ above in the name fo the applicant/member of “Family Unit” (as defined in multiple dealership/distributorship norm of eligibility criteria)/parents (includes Step Father/Step Mother), grandparents (both Maternal and paternal), Brother/Sister (including Step Son/Step Daughter), Son-in-law/Daughter-in-law of the applicant of the spouse (in case of the married applicant) as on last date of submission of application as specified either in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given above, consent in form of a declaration from the family member(s) will be required.

- (ii) *Further, clause 5.1.11 provides that applicant should ‘Own’ a plot of land of minimum dimensions as on the last date for submission of application.*
- (iii) *And family clause 5.2.4 provides that the same piece of land for godown or same piece of land for showroom cannot be offered by more than one applicant for a particular location against the advertisement. In case it is found at any stage that the same piece of land for godown or same piece of land for showroom has been offered by more than one applicant for the same location of the advertisement, then all such applications would be rejected or if selection has been done, then the same would be cancelled.*

8. The United Guidelines do not distinguish the applicants which are within the family unit definition or outside the family unit definition.

9. From a conjoint and harmonious reading of the clauses above, the rejection under clause 5.2.4 may happen only in case more than one applicant offers the same plot of land ‘owned’ by them in terms of clause 1.23.

10. In the instant case, the other applicant namely Mrs. Chamma Singh written to IOCL in which she has stated that she never obtained any consent in writing

or verbal consent from the owners of the plot. The said letter is also part of the petition filed before the High Court. Moreover, none of the parties have brought on record any such document which may prove that Mrs. Chamma Singh was in possession of a registered lease and/or, consent of landlord of the pieces of land in question.

11. In view of the above, it is clear that the other applicant, i.e. Mrs. Chamma Singh, has no right or title over the land which has been mentioned by her as she did not possess any registered documents or NOC/Consent in her favor.

12. The IOCL appears to have taken a very constricted view in application of the guidelines in the instant case, by applying the laid down clauses in isolation, rather than considering the document in its entirety, which requires a complaint and harmonious reading of the relevant definitions and clauses and which, for this very purpose, the document is titled "United Guidelines for Selection of LPG Distributorships."

13. Thus, if the action taken by IOCL in cancelling the candidature of the petitioner is validated, the same would result in an unfair situation where any person with the sole motive to jeopardize the chances of a genuine applicant, may simply mention the same land without acquiring any right over it. Further, the contention of IOCL to the effect that participation from public at large rather promoting more applications from the same family is the objective of the Guidelines is not in consonance with the fact that the guidelines nowhere prohibits members of same family or even husband and wife from applying individually.

14. In the light of the above facts and findings, IOCL is advised to re-consider the rejection of the application of the petitioner Shri Atulanand Singh for LPG distributorship and to convey their decision to the petitioner, within 15 days of the receipt of this communication, under intimation to the Ministry.

The representation of the Petitioner dated 04/07/2019 is accordingly hereby disposed of".

21. The respondent through its advocate then served a legal notice dated June 10, 2020 asking the third appellant to carry out the direction/instruction of the Ministry in terms of its said reasoned decision dated February 28, 2020.
22. The first appellant through its appropriate authority then issued an e-mail dated August 26, 2020 asking the respondent to submit certain information and documents, **Annexure P-23** to the writ petition. On receipt of the said letter, the respondent by its letter dated August 29, 2020 submitted all the relevant particulars as were sought for. Despite said direction from the

ministry dated February 28, 2020 the appellants did not reconsider the application submitted by the respondent for obtaining the said distributorship.

In such circumstance the respondent filed this **second writ petition** being WPA 4839 of 2021 praying for the following reliefs:

“(a) A WRIT of and/or in the nature of Mandamus, commanding the respondents, each one of them, their servants, agents, agents and/or assigns to reconsider the petitioner’s application for grant of LPG Distributorship at Howrah (Mandirtala) within Howrah Municipal Corporation, District: Howrah in the light of the observation made in the order dated 28.2.2020 issued by the Deputy Secretary, Government of India, Ministry of Petroleum and Natural Gas, forthwith;

(b) A WRIT of and/or in the nature of mandamus, commanding the respondents, each one of them, their servants, agents and/or assigns to issue Letter of Intent in favour of the petitioner and grant LPG Distributorship at location- Howrah (Mandirtala), within Howrah Municipal Corporation, District Howrah, forthwith;

(c) A WRIT of and/or in the nature of Certiorari do issue directing the respondents to transmit the entire records of the case forming the basis of non-granting the letter of intent and LPG Distributorship in favour of the petitioner for the location Howrah (Mandirtala) within Howrah Municipal Corporation, District: Howrah pursuant to the advertisement dated 31.08.2017, to this Hon’ble Court and to certify them and on being so certified, quash the same, so that conscionable justice may be administered to the parties;

(d) A WRIT of and/or in the nature of Prohibition do issue prohibiting the respondents from filing up the vacancy of LPG Distributorship at location-Howrah (Mandirtala), within Howrah Municipal Corporation, District: Howrah by way of issuing Offer Letter/LOP to any other candidate except the petitioner pursuant to the advertisement dated 31.8.2017, in any manner whatsoever;

(e) Rule Nisi in terms of prayers (a), (b), (c) and (d) as above;

(f) An order do issue directing the respondent IOCL to reconsider the petitioner’s application for grant of LPG Distributorship at Howrah (Mandirtala) within Howrah Municipal Corporation, District: Howrah in the light of the observation made in the order dated 28.2.2020 issued by the Deputy Secretary, Government of India, Ministry of Petroleum and Natural Gas and thereafter grant LPG Distributorship;

(g) An order do issue restraining the respondents from selecting any other candidate as LPG Distributor at location-Howrah (Mandirtala), District: Howrah pursuant to the advertisement dated 31.8.2017;

(h) Ad-interim order in terms of prayers (f) and (g) as above;

(i) And to pass each further or other order or orders as to Your Lordships may deem fit and proper”.

23. Pursuant to the direction made by the Writ Court the parties filed and exchanged their respective affidavits in the said second writ petition.
24. By the impugned judgment and order dated August 16, 2021 the writ petition was allowed by setting aside the decision for rejection taken by the appellants dated February 22, 2021 and the sixth appellant was directed to process the application of the petitioner for obtaining the said distributorship, strictly in accordance with law at the earliest.
25. The parties had filed their respective written notes.

Submissions:-

26. Mr. Kar learned senior counsel being ably assisted by Ms. Ranjabati Ray, learned advocate at the threshold submitted that, the allotment of present distributorship by the oil company is guided by the **unified guidelines for selection of LPG distributorship, framed in 2016** (for short, **the 2016 guidelines**). Referring to the various provisions from the said guidelines Mr. Kar submitted that, this was a general guideline followed throughout the country for the purpose of granting the type of LPG distributorship being the subject matter of the writ petition, which ultimately culminated into the instant appeal. An intending candidate who participates in the selection process for obtaining such distributorship and submitted offer and/or application, they did so only after being well versed with each of the provisions of the said 2016 guideline.

27. He then referred to the specific application form which was filled up and submitted by the respondent writ petitioner at page 279 of the paper book and the application submitted by his wife, namely, Chamma Singh at Page 282 thereof. Placing reliance upon the said two documents he submitted that, from the declarations mentioned by the said two persons it would be found that all the terms made in the said application form as well as the declarations furnished by the applicants were in sync with the provisions laid down under the said 2016 guidelines. From the said two applications it further revealed that the addresses of the two applicants were same. They were husband and wife. Necessary application fees were paid from the same source of fund. The lands for the said godown and showroom which were tendered by the said two applicants were also same. The applications were also submitted simultaneously one after another. He submitted that, all such facts would corroborate that both the applicants with the same plots of land applied for obtaining the same distributorship at a particular location. The declaration made by each of the said applicants specifically mentioned that they were aware, in case the same land offered by any of them for obtaining the same distributorship for godown and showroom was also offered by any other applicant for the same location, their respective candidature for the distributorship would be rejected.
28. The learned senior counsel for the appellant then drew attention of this Court to the various provisions from the **Brochure** on the unified guidelines for selection of LPG distributors published in June, 2017 (for short, the **Brochure**)

at page 232 of the paper book and submitted that, the same was also in sync with the said 2016 guidelines and founded thereupon. The moment the applicants submitted their respective applications with the various provisions mentioned along with the relevant declarations therein, the same culminated into a contract by and between the oil company and the applicants for grant of the said distributorship. Referring to the relevant advertisement/notification issued by the oil company, it was submitted that, the publication of notification was made to make the participants aware of the terms and conditions for obtaining the distributorship. He then referred to **Clause 5.2.4** from the said **2016 guidelines** and submitted that, a restrictive provision had specifically being laid down that the same piece of land for godown or same piece of land for showroom could not be offered by more than one applicant for a particular location against the advertisement and in case it was found at **any stage** that the same piece of land for godown and showroom had been offered by more than one applicant for the same location under the advertisement, then **all such applications** would be rejected or if selection had been done, then the same would be cancelled. The undertaking given by the applicants in their respective applications also in sync with such restrictive stipulation.

29. Mr. Kar then submitted that at the threshold when the applications were received in respect a particular distributorship at a particular place, all such applications were scrutinized in view of the said restrictive stipulation first and applicants who were found to be disqualified under such restrictive stipulations, their applications were to be rejected in limine. In such an event,

the question of assessing the right or title over the land offered by the applicants would not arise at all as the applicants did not qualify the first qualifying criteria. The oil company had also reserved its right under the said **Clause 5.2.4** of the 2016 guidelines to reject all such applications at the threshold **or even after the selection process had been done**. Therefore, even the candidates were selected and ultimately were found to be disqualified under the said **Clause 5.2.4**, all such applications were liable to be rejected. Referring to **Clause 5.2.5** under the said **2016 guidelines**, he submitted that, this clause would become operative only after a candidate had qualified and passed the rigor under the said **Clause 5.2.4**. The question of tendering any alternative land would not arise if the candidates were disqualified in terms of the said **Clause 5.2.4** under the **2016 guidelines**.

30. It was then submitted that, in the first round of litigation the previous writ petition travelled upto a Coordinate Bench of this Court and by an order dated November 27, 2019 the said previous writ petition was disposed of on the basis of the submissions made on behalf of the respondent that if his representation dated July 04, 2019 was considered by the Ministry, he would have no further grievance. Accordingly the appeal and writ petition were disposed of by directing the Director (LPG), of the concerned Ministry to consider and dispose of the said representation dated July 04, 2019 by a reasoned order after giving the parties a short hearing within a time framed by the Coordinate Bench. Pursuant to such direction the Ministry passed a reasoned order dated February 28, 2020 (at page 97 of the paper book). The Ministry in the said

order after having a detailed discussion on the issue advised the appellant oil company to reconsider the rejection of the application of the respondent for the said distributorship and to convey their decision to the respondent forthwith.

31. Referring to the said decision of the Ministry dated February 28, 2020 it was submitted that, this was at best could be considered as an executive advise to the appellant oil company and the same was not on proper and correct appreciation of the relevant provisions made in the 2016 guidelines read with the provisions in the **Brochure**, and also the terms and conditions specified under the advertisement for distributorship. In any event it does not have any binding effect upon the appellant oil company.
32. The learned senior counsel drew attention of this Court to the reasoned decision and communication dated February 22, 2021 at page 121 of the paper book, and submitted that, following the advice of the Ministry, the oil company reconsidered its view and ultimately with a detailed reason decision/order rejected the application of the respondent writ petitioner.
33. Mr. Kar then submitted that, the respondent writ petitioner after accepting all the terms and conditions mentioned in the advertisement/notification inviting offer for distributorship issued by the oil company and after accepting all the provisions under the 2016 guidelines and the said **Brochure**, the respondent executed and submitted its application with his specific declaration mentioned therein. All these events were ultimately culminated into a contractual relationship and obligations by and between the parties and the respondent

writ petitioner having committed a breach of the contractual terms, its application was rejected by the oil company.

34. It was submitted that, the appellant being the author of the unified guidelines are the best persons to interpret the provisions of the unified guidelines, since the same were framed by the appellants based on their requirements for the purpose of grant of the said distributorship and as such there could not be any scope of judicial review on the interpretation of the provisions of the unified guidelines. In support, he relied upon the following judgments of the Hon'ble Supreme Court:

- i. In the matter of: M/s Agmatel India Pvt. Ltd. -Vs- M/s Resoursys Telecom & Ors., reported at (2022) 5 SCC 362;*
- ii. In the matter of: Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers -Vs- New J.K. Roadways, Fleet Owners and Transport Contractors & Ors., reported at (2020) SCC Online SC 1035 and;*
- iii. In the matter of: Afcons Infrastructure Limited -Vs- Nagpur Metro Rail Corporation Limited & Anr., reported at (2016) 16 SCC 818.*

35. Assailing the impugned order and referring thereto the learned senior counsel in support of the appeal submitted that, the impugned order had proceeded without considering **Clause 5.2.4** of the 2016 guidelines and on a wrong premise. It was submitted that, the impugned order had proceeded on the basis of assessment of right or ownership on the land tendered by the

respondent, whereas the learned Judge had failed to appreciate that such question would come later only after the applicants or the applicant qualifies/qualify in terms of **Clause 5.2.4** under the 2016 guidelines. For this reasons only the undertaking of the respondent writ petitioner was also recorded while submitting his application form in terms of the said provision of the 2016 guidelines. Here, the learned Judge had erred in law and fact while passing the impugned order and by setting aside the decision for rejection of the application of the respondent by the oil company.

36. The learned senior counsel for the appellant submitted that, in view of the above the impugned order should be set aside and the writ petition should be dismissed upholding the order of rejection passed by the oil company rejecting the application filed by the respondent for obtaining the distributorship.
37. Mr. Debabrata Saha Roy, learned counsel appearing for the respondent writ petitioner submitted that, the wife of the respondent had submitted her application under a wrong impression and perception on the issue. It was really a bona fide mistake on her part and accordingly she withdrew her application in writing. Such written communication of the wife of the respondent was duly accepted and received by the oil company and was acted upon. Since, the wife withdrew her application there was no existence of any further application by any co-applicant with the respondent writ petitioner for obtaining the said distributorship at the same place for which the advertisement was published by the oil company. It was the obligation of the oil company to treat the respondent as the sole applicant in respect of the said

distributorship as his wife had withdrawn her application. Learned counsel submitted that, the moment the co-applicant had withdrawn her application, the provision laid down under **Clause 5.2.4** under the said 2016 guidelines would not attract and loose its applicability.

38. Mr. Saha Ray, learned counsel submitted that the moment **Clause 5.2.4** under the said 2006 guidelines loses its force or applicability the obligation would cast upon the oil company to assess the right and titles over and above the lands offered by the respondent writ petitioner. There was also no doubt on the part of the oil company that the respondent writ petitioner had legal right and/or title over and in respect of the lands tendered by him for godown and showroom for obtaining the said distributorship. Inasmuch as, the oil company should have truly and properly construed the relevant provisions under the 2016 guidelines and the brochure read with the terms laid down in the advertisement for granting the said distributorship by offering the public at large. It was the only relevant criteria to be seen by the oil company that the lands offered by the respondent for obtaining the said distributorship, whether was in sync with the terms and conditions and stipulations mentioned under the said 2016 guidelines and the **Brochure** read with the terms mentioned in the relevant advertisement. Since the respondent had a bona fide ownership and right over and above the said two plots offered by him for godown and showroom respectively as required for the same, **Clause 5.2.4** of the 2016 guidelines would have no application. The oil company should have acted in a more flexible and bona fide manner and on the basis of true, proper and liberal

construction of clauses under the said 2016 guidelines and the **Brochure** read with the terms and conditions stipulated in the relevant advertisement. By not doing so the oil company had acted in an arbitrary, wrongful and high handed manner in exercise of its power and discretion in rejecting the application for distributorship submitted by the respondent writ petitioner.

39. Learned counsel appearing for the respondent further submitted that, the first order of rejection which was the subject matter in the first round of writ litigation was set aside by the division bench in its order date November 27, 2019. The coordinate bench directed the concerned ministry to decide the issue and to pass a reasoned decision. The ministry passed its reasoned order/decision on February 28, 2020 directing the appellant oil company to reconsider its decision for rejection. The observations made in the said reasoned decision by the Ministry were binding on the appellant oil company, as the Ministry is the superior authority of the appellant oil company. He submitted that the observations made by the ministry were in line with the provisions laid down under the said 2016 guidelines and the **Brochure** read with the terms and conditions mentioned in the said advertisement. The observations made by the Ministry would appear to be in favour of the respondent and was binding upon the oil company. The oil company being bound by its superior's observations, vide, the Ministry, not to have rejected the application submitted by the respondent for obtaining the distributorship.
40. With reference to the judgments relied upon on behalf of oil company appellant, Mr. Saha Ray, learned counsel submitted that, none of those

judgments were of any assistance to the appellant, rather the ratio of those judgments specifically supported the case of the respondent writ petitioner. He submitted that, in the instant case, the ultimate approval had been granted by the concerned Ministry upon due consideration and scrutiny of all the clauses of the said 2016 guidelines, as such, the concerned Ministry could only interpret the clauses of 2016 guidelines by giving conjoint and harmonious reading of various clauses thereunder. He further submitted that, it is also settled that a subordinate authority cannot disobey the observations, findings, conclusions and the decision of a higher authority and such disobedience by a subordinate would give rise to administrative high handed and indisciplined conduct.

41. Learned counsel for the respondent writ petitioner submitted that, the appeal is misconceived and not tenable in law. The order passed by the learned Judge allowing the writ petition was just, lawful and proper. The same does not suffer from any perversity or infirmity either on law or facts and as such this Division Bench should not interfere with and uphold the same. Thus, the appeal is liable to be and should be dismissed.

Decision:-

42. After considering the submissions made on behalf of the parties and on perusal of the materials on record, it appears to this Court that, the grant of the said distributorship was governed under the said **2016 guidelines** and the provisions laid down in the **Brochure** read with the terms and conditions made in the advertisement.

43. From a close scrutiny of the provisions laid down under the said 2016 guidelines clearly shows that, the selection process at the threshold begins with a process of elimination. After the said process of elimination the selection process advances amongst the existing candidatures. The respondent petitioner was at all material time aware of this procedure as would be evident from the content of the public advertisement made in the newspaper issued by the oil company appellant inviting applications from the public at large for the said distributorship. The respondent writ petitioner participated in the selection process with its eyes opened. The moment the respondent petitioner submitted its applications, he had accepted all such terms and conditions mentioned in the public advertisement and the respondent further specifically undertook to accept his rejection in case it was found that for a particular distributorship at a specified locality more than one applicants had applied by tendering/offering the same land.
44. The provisions under the said 2016 guidelines relevant for adjudication are setout herein below:

*“5.2.4 The same piece of land for godown or same piece of land for showroom cannot be offered by more than one applicant for a particular location against the advertisement. In case it is found **at any stage** that the same piece of land for godown or same piece of land for showroom has been offered by more than one applicant for the same location of the advertisement, **then all such applications** would be rejected or **if selection has been done, then the same would be cancelled.**”*

5.2.5 In case if the offered land for godown and/or offered land for showroom by the selected candidate which is shown in the application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application, then the selected candidate can offer an alternate land which is owned by the applicant/member of the ‘Family Unit’/parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law

of the applicant or the spouse (in the case of married applicant) as on the last date for submission of application as specified either in the advertisement of corrigendum if any.

5.2.6 Selected candidate who have been issued LOI after meeting all specifications for the land as laid down in the advertisement, then the LOI holder can offer an alternate/new land for construction of godown/ Showroom, in the advertised location”.

45. The relevant provisions from the application submitted by the petitioner are set out herein below:-

“Note.....

*(3) The land shown above should not be offered by any other applicant for this location and in case it is found **at any stage** that the same land is offered by more than one applicant then all such applications shall be rejected or if any, **selection has been done, the same would be cancelled.***

DECLARATION BY THE APPLICANT

I also confirm that if selected I will present all the supporting documents in original in respect of the information given by him in this application and failure to present these documents in original will result in cancellations of selection.

I am fully aware that if I am unable that if I am unable to provide LPG Godown duly approved by the Office of Chief Controller of Explosives Petroleum & Explosives Safety Organisation and for Showroom as per the Oil Company’s layout then the allotment of distributorship made to me will be cancelled.

*I am aware that in case the same in my application for provision of LPG Godown and Showroom facility is also offered by any other applicant for the same location **my candidature for LPG Distributorship will be rejected”.***

46. From a close scrutiny of the provisions reproduced herein above, it would be evident that the terms and conditions mentioned and the declaration furnished by the respondent through his application while applying for obtaining the said distributorship were in sync with each other. There was no disparity between the two.
47. On a further scrutiny of Clause 5.2.4 makes it evident that, the same was the elimination clause to be and should be invoked at the threshold while assessing the applications submitted by the intending applicants for obtaining

the said distributorship. The process of selection for the LPG distributorship in terms of the said 2016 guidelines begins with the process of elimination under Clause 5.2.4 of the 2016 guidelines. The expressions used under Clause 5.2.4 were very crucial and material, they were ***“in case it is found at any stage”; “..... then all such applications would be rejected or if selection has been done, then the same would be cancelled.”*** On a harmonious reading of the said provision, to the mind of this court, is very clear and specific that the scrutiny of the applications could be made at any stage of the selection process and if, selection had been done, then the same would be cancelled. Where the same piece of land for godown or same piece of land for showroom were offered by more than one applicant for the same location of the advertisement. This court is also of the considered view that even if, one of such identical application with the same piece land was withdrawn that would not permit even the remaining sole candidate to qualify the rigor under clause 5.2.4. This court is also of the considered opinion that, even if, the application of one of such two candidates was accepted by the oil company and if on scrutiny the oil company found the disqualification in terms of the said clause 5.2.4 even if, the selection had been done, still the oil company at any stage would have a right to cancel the same at its discretion.

48. It was an admitted fact that within a close proximity of time both the respondent and his wife, namely, Chamma Singh submitted their applications individually by tendering the said self same plots of land for obtaining the self same distributorship. **This was a clear bar under Clause 5.2.4 under the**

2016 guidelines. Though the wife of the respondent subsequently in writing withdrew her application and submitted that, she did not even qualify to offer the said two lands one for godown and one for showroom, as she did not have the valid and lawful right and title over the same but this was not a relevant consideration at all. While evaluating of the applications submitted by the intending applicants the relevant assessment would depend at the threshold whether for the self same distributorship more than one applicants offered the same plots of land or not and the moment it was found to be so, all such applications were liable to be and should be rejected at any stage, even after the selection had been done.

49. The said first rejection was challenged by way of the first round of writ litigation. The writ petition travelled upto the Appeal Court, when on the prayer made on behalf of the respondent the concerned ministry was directed to consider the issue and to pass a reasoned order. From the reasoned order dated February 28, 2020 passed by the ministry it appeared that the ministry had proceeded only on the basis of the lawful right and title of the two plots tendered by the respondent. The ministry observed that the wife of the petitioner did not have the lawful and valid right and title over the said two plots of land and as such, she was disqualified from even making any application for obtaining the said distributorship. On the basis of the same it was further observed by the ministry that the wife being disqualified to apply, her application had no value and moreso subsequently she withdrew her application. The ministry was, therefore, of the observation that the application

of the wife would not preclude the respondent for being qualified for obtaining the said distributorship. On a close scrutiny of the reasoned decision of the ministry dated February 28, 2020, it appears that while passing the reasoned decision the ministry had misconstrued the relevant clauses under the said 2016 guidelines and the provisions made in the **Brochure** read with the terms and conditions of the advertisement inviting offers for the said distributorship.

50. The plea regarding the ownership or valid right and title on the said two plots of land even though belong to the respondent would have no relevance at the first stage of elimination process in terms of Clause 5.2.4 under the 2016 guidelines. The moment the oil company found that for the self same distributorship, the respondent and his wife had applied by tendering and/or offering the self same two plots of lands, **Clause 5.2.4 under the 2016 guidelines got attracted** and the oil company had rightly exercised its discretion and power in rejecting the application of the respondent.
51. The plea raised on behalf of the respondent writ petitioner that the reasoned order of the ministry is binding upon the oil company as the ministry is the superior authority controlling the oil company is totally devoid of any merit. There could be no doubt that the clauses under the 2016 guidelines read with the provisions under the **Brochure** and the terms and conditions of the advertisement, inviting applications for the said distributorship prescribed the conditions of eligibility which were required to be satisfied by every person submitting its application for obtaining the said distributorship. The provisions and the declarations made in the application submitted by the respondent are

also in sync with the said provisions. The condition of eligibility was that more than one applicants cannot offer the self same plot of land for the self same distributorship. This was the standard or norm of eligibility fixed by the oil company and since the respondent writ petitioner did not satisfy this standard or norm, it was not competent to the oil company to entertain the offer of the respondent. It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously follow those standards on pain of invalidation of an act in violation of them. It is a rule of law of the administrative law which had been judicially evolved as against exercise of arbitrary discretion and power by the executive authority.

52. It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the oil company was not entitled to act arbitrarily in accepting the application of the respondent but was bound to confirm the standard or norm laid down under the said **2016 guidelines** read with the provisions laid down in the **Brochure** and terms and conditions mentioned in the advertisement inviting offers for the distributorship. From a close scrutiny of the said reasoned order dated February 28, 2020 passed by the ministry, it was clear that, the same was not in conformity with those norms and standards laid down for granting the distributorship. The affairs of the oil company may be controlled by and under the supervision of the ministry, but while taking an executive decision in respect of a selection process initiated by the oil company itself, it is the master

of its own rule and judgment and is obliged and duty bound to use its discretion in conformity with the norms and standards fixed by it for granting the said distributorship by inviting offers from the public at large.

53. From a close scrutiny of the impugned order it appears to this Court, the same had proceeded on the basis of ownership of the lands offered by the petitioner without considering the existence and application of Clause 5.2.4 under the said 2016 guidelines. The impugned order, therefore, did not take into account the norms and standard fixed while the offers were invited for grant of distributorship by the appellant from the public at large. Thus, the same suffers from infirmity.
54. Inasmuch as, the learned Judge had also failed to take into consideration that the nature of the transaction to which the respondent entered into with the oil company, was commercial in nature. The respondent entered into the transaction by submitting its application with his specific declaration accepting the norms and standards fixed for the purpose. The respondent, therefore, was not entitled to turn a round from such norms and standard having been found to be disqualified. There were no allegation of mala fide in the writ petition and the oil company had reasonably interpreted the norms and standard fixed for the grant of the said distributorship. The satisfaction, whether an applicant intends to obtain the said distributorship, satisfies the terms and conditions and the norms and standards for the same, primarily rests upon the appellant oil company who invites the offers from the public at large. The appellant

company is aware of expectations from the intending applicants while evaluating the consequences of non performance.

55. The decision of the appellant oil company, in the light of the above discussion rejecting the application of the petitioner for obtaining the said distributorship was, therefore, just, lawful and in conformity with the standards and norms fixed for the same. Thus, the decision of the appellant in rejecting the application of the respondent stands affirmed.
56. In view of the fore going discussions and reasons the **impugned order dated August 16, 2021 stands set aside and reversed**. Consequently the writ petition being **WPA 4839 of 2021** stands dismissed.
57. The instant appeal **MAT 965 of 2021 stands allowed**. Accordingly, **IA No. CAN 1 of 2021** stands disposed of.
58. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)

I agree.

(Chitta Ranjan Dash, J.)