

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

FMA 199 of 2010
Lakshman Tudu –vs- Indian Oil Corporation Limited & Ors.
with
COT 53 of 2009
[IA No.: CAN 1 of 2016 (Old No.CAN 3660 of 2016)]
Lakshman Tudu –vs- Union of India & Ors.

For the Appellant : *Mr. Mohit Gupta,*
Mr. A. Chakraborty.

For the Respondent
Nos. 1 & 2 : *Ms. Vineeta Meharia,*
Mr. Arjun Mookherjee,
Mr. Amit Meharia,
Ms. Paramita Banerjee,
Ms. Subika Paul,
Ms. Amrita Das.

For the Respondent
No. 6 : *Mr. Krishna Deo Das,*
Ms. Pampa Dey (Dhabal),
Ms. Rupa Dhar.

For the State : *Mr. Amal Kumar Sen, Ld. Addl. Govt. Pldr.,*
Mr. Bipin Ghosh.

Hearing is concluded on : *15th September, 2022.*

Judgment On : **29th September, 2022.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging an order dated 22nd February, 2006 passed in a writ petition being WP No.20393 (W) of 2000 filed by the appellant, namely, Lakshman Tudu (hereinafter referred to as Lakshman). The subject matter of challenge in the said writ petition was an order dated 28th April, 2000 passed by the respondent no.2 by which the appellant's representation dated 30th March, 2020 was rejected observing *inter alia* that the appellant had failed to prove the allegations against the private respondent no.6, namely, Minu Borua (hereinafter referred to as Minu) with regard to her residence.

2. Shorn of unnecessary details, the facts are that Indian Oil Corporation Limited (in short, IOCL) published an advertisement on 26th December, 1997 for LPG distributorship at Jagatballavpur, Howrah. Subsequent thereto, a corrigendum to the said advertisement was published on 6th May, 1998. In the original advertisement it was specified that the dealership at Jagatballavpur was restricted to persons residing in the districts of Howrah, Hooghly, Burdwan, Medinipur and North 24 Parganas but by the corrigendum, the district of Burdwan was deleted and the districts of South 24 Parganas and Kolkata were included. Minu emerged to be successful in the selection process and she was issued the letter of intent (in short, LOI) on 1st February, 1999. Challenging the LOI, Lakshman filed a writ petition being W.P. No.553 of 1999 which was disposed of by an order dated 27th January, 2000 directing IOCL to conduct an enquiry and to pass a reasoned

order upon granting an opportunity of hearing to the parties. Pursuant thereto, the respondent no.2 passed the order dated 28th April, 2004. Challenging the said order, the Lakshman preferred a writ petition being WP No. 20393 (W) of 2000 which was dismissed by an order dated 22nd February, 2006. The said order has been impugned in the present appeal. In the midst thereof, Lakshman preferred another writ petition being WP No.13142 of 1999 challenging the residential certificates issued to Minu. The said writ petition was dismissed on 23rd October, 2009. A further writ petition being WP No.2655 (W) 1999 was preferred by one Durjan Saren (in short, Durjan). In the said writ petition, Lakshman and Minu were added as parties and upon contested hearing the said writ petition was dismissed by a judgment dated 15th October, 2004. Challenging the said judgment Durjan preferred an appeal being FMA 598 of 2006 and Lakshman preferred an appeal being MAT 372 of 2009. However, both the appeals were dismissed on 31st January, 2014 and 27th August, 2012. Prior to such dismissal, Lakshman, in connection with the said appeal, preferred a cross-objection being COT 53 of 2009 along with an application being CAN 3660 of 2016 for hearing of the same along with the appeals.

3. Mr. Gupta, learned advocate appearing for the appellant submits that the respondent no.2 fixed the hearing on 30th March, 2000 at 11 am for Lakshman and at 3 pm for Minu. Lakshman duly attended the hearing at 11 am and submitted his representation. At 3 pm Minu appeared and submitted that she had not received the copy of Lakshman's representation and hence she was given a copy of the same to enable her to submit a reply

and for granting her an opportunity of hearing the matter was again fixed on 14th April, 2000 at 3 pm. The said hearing was subsequently deferred to 18th April, 2000 at 3 pm. Neither a copy of the reply used by Minu was supplied to Lakshman nor was he granted an opportunity to be present at the time of hearing on 18th April, 2000. Such facts would be evident from the first paragraph of the order dated 30th March, 2000. Lakshman thus did not get any opportunity to deal with the submissions as advanced by Minu on 18th April, 2000. There had thus been blatant violation of the principles of natural justice which entails far reaching civil consequence against the appellant. The impugned judgment has been delivered without considering such argument as advanced.

4. Mr. Gupta argues that as per the corrigendum, the last date for submission of application was 22nd June, 1998 and Minu applied subsequent thereto, claiming herself to be a resident of the district of Howrah on the basis of certificates issued by the Sub-Divisional Officer (Sadar), Howrah on 12th June, 1998 and a certificate issued by the Sankarhati Gram Panchayat on 15th June, 1998. In terms of the advertisement prior to the corrigendum, Minu, a resident of Kolkata, was not eligible to participate and she did not apply in response to the said advertisement though a resident of Howrah was eligible.

5. According to Mr. Gupta, it is very surprising as to how the Sub-Divisional Officer could have issued a certificate of residence prior to the issuance of a certificate by the local authority being the concerned Gram Panchayat. Minu's name did not even feature in the electoral roll for

Jagatballavpur assembly constituency (167). The respondent no.2 passed the order in a mechanical manner without appreciating the scope and ambit of the word resident. Such residence cannot be construed to be a casual stay. In support of such contention reliance has been placed upon a judgment delivered in the case of *Bhagwan Dass and Another –vs- Kamal Abrol and Others*, reported in 2005(11) SCC 66.

6. Drawing our attention to the advertisement initially published on 26th December, 1997 and the corrigendum published on 6th May, 1998, Mr. Gupta contends that the respondent no.6 sought to establish that she was a resident of Howrah, to take advantage of the rider that a resident of the district of Howrah would be granted preference in the event the applicants are equal pertaining to the other riders.

7. Ms. Meharia, learned advocate appearing for IOCL denies and disputes the contention of the appellant and submits that Lakshman and Minu were parties to the writ petition preferred by Durjan challenging the self-same selection process. The said writ petition was dismissed by the Hon'ble Court upon arriving at a categorical finding that the factual dispute pertaining to the residence of Minu cannot be decided in a writ petition. By the order impugned in the present appeal the learned Court rightly rejected the appellant's writ petition observing that the issue of residence cannot be reopened.

8. She argues that in terms of the advertisement, the preferential clause would have applied only if the candidates stood on the same footing in all aspects. It is not a case that Minu was granted any preference. Upon

competing in the selection process, Minu stood first securing more marks than Durjan and Lakshman. In support of such contention reliance has been placed upon a judgment delivered in the case of *Om Prakash Agarwal – vs- Bharat Petroleum Corporation and Others*, reported in AIR 2005 Ori 64.

9. The argument of Mr. Gupta that the respondents have acted in violation of the principles of natural justice is not acceptable to this Court since all the grounds of challenge against the candidature of Minu, as incorporated in Lakshman's representation, were duly noted and considered by the respondent no.2 while issuing the order dated 30th April, 2000. The principles of natural justice depend upon the facts and circumstances of the case and the same cannot be exploited as a purely technical weapon.

10. We have heard the learned advocates appearing for the respective parties and considered the materials on record. Pursuant to our direction, the file pertaining to the cross-objection preferred by Lakshman being COT 53 of 2009 was placed before us and we considered the grounds taken in the same. The application being CAN 3660 of 2016 is disposed of and the cross objection is also taken up for hearing alongwith the present appeal.

11. The controversy as regards the residence of Minu, indisputably, involves disputed questions of fact. There is also no pleading to the effect that the certificates issued by the Sub-Divisional Officer and the Panchayat are fake documents. Mere suspicion, howsoever high, cannot be a substitute for proof.

12. There is no denial of the fact that Minu stood first in the panel having secured the highest marks. A writ of mandamus can be issued only when

there is a clear violation of an enforceable right. In the instant case the Lakshman did not secure any indefeasible right towards appointment as a dealer. It is also well settled that the writ Court cannot transpose itself as an appellate authority. The respondent no.2 performed his obligation to abide by the earlier directions given by Court and rendered a decision in the matter supported with cogent reasons and as such the learned Single Judge rightly refused to interfere with such order.

13. We do not find any material on record to infer that the IOCL authorities had acted in a perfunctory manner. No *mala fide* can be attributed to their actions and it cannot be said that the said authorities have acted in a manner which would benefit a private party at the cost of the authorities. Lakshman, in our opinion, had failed to establish any arbitrariness or unreasonableness against the respondents.

14. The learned Single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error in the same, least to say, any patent error law in the judgment impugned. The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscious of the Court dictates. The impugned judgment does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

15. For the reasons discussed above, we do not find any reason to interfere with the judgment.

16. The appeal and the connected applications are accordingly dismissed. The cross-objection being COT 53 of 2009 is also treated as on day's list and dismissed.

17. There shall, however, be no order as to costs.

18. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)