

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 1451 of 2022

Pratima Paul

Versus

Bharat Petroleum Corporation Limited & Ors.

For the petitioner	:	Mr. Debabrata Saha Roy Mr. Pingal BhattacharyyaAdvocates
For the respondent no. 10	:	Mr. Meghnad Dutta Ms. Nasreen Islam Mr. Abhishek Shaw Mr. P. DasAdvocates
For the BPCL	:	Mr. Bikramaditya Ghosh Ms. Srijoni Chongdar Mr. Abhishek Baran Das
For the State	:	Mr. Susovan Sengupta Mr. Subir PalAdvocates
Heard lastly on	:	31.03.2023
Judgment on	:	30.06.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities to cancel and/or withdraw the purported selection of the private respondent as retail outlet dealer. For plot nos. 134, 135, J.L. No. 5, Khatian No. 399, Mouza Rambhadrapur, Block Nandakumar, Village Rambhadrapur @ Ranibhadrapur, P.O. Sulochana, P.S. Nandakumar, District Purba Medinipur in respect of advertisement dated 25.11.2018.

2. Mr. D. Saha Roy, learned counsel appearing on behalf of the petitioner, submitted as follows. The writ petitioner was a retail outlet dealer of the Indian Oil Corporation Limited (IOCL for short), appointed on compassionate ground in place of a deceased husband. On 25.11.2018, an advertisement was published for appointment of a retail outlet dealer by the Bharat Petroleum Corporation Limited (BPCL for short), for the location Babolpur to Sulochana on Tamluk-Srirampore Road. On or about March 2019, the petitioner's husband, during his lifetime, noticed the private respondent developing a land for setting up retail outlet at plot nos. 134, 135, J.L. No. 5, Khatian No. 399, Mouza Rambhadrapur, Block Nandakumar, Village Rambhadrapur @ Ranibhadrapur, P.O. Sulochana, P.S. Nandakumar, District Purba Medinipur. He lodged a complaint that the land offered by the private respondent was not within the advertised location. On 10.05.2019 the BPCL intimated that the private respondent was declared ineligible. After the private respondent was declared ineligible under Group I and as no candidate was found in that Group, he was

subsequently selected under Group III. Information was sought by the petitioner and his son in respect of the land offered by the private respondent. The BPCL denied the same on the ground of confidentiality. The Pradhan of Bargodagodar Gram Panchayat issued a certificate stating that Rambhadrapur/Ranibhadrapur was not coming within Sulochana and Babolpur on the said road. Writ petition was moved on 18.02.2002. This Court directed the Executive Engineer, Public Works Department to file a report in respect of the land in question and passed an interim order restraining the BPCL from executing the agreement with the private respondent. The private respondent carried this to appeal in MAT No. 381 of 2022. The Division Bench disposed of the appeal with the observation that the Single Bench was entitled to satisfy its conscience on the limited question as to whether the construction of the petrol pump outlet in issue was at the advertised location or not. Pursuant to this, the Executive Engineer Tamluk Highway Division filed a report before the Single Bench. This Court thereafter extended the interim order until further order. An appeal was preferred in MAT 1453 of 2022. The Division Bench was pleased to dispose of the appeal requesting the Single Bench to dispose of the writ petition without interfering with the order passed by the Single Judge on 19.06.2022. The private respondent did not file any exception to the report. The Oil Company also did not say that the construction was being made at the advertised location. The advertisement and the report were very specific about the advertised location which clearly prescribed that the new retail outlet shall be located at a place between Babolpur and Sulochana on the

Tamluk Srirampore Road. As the proposed retail outlet of the private respondent was beyond the advertised location the private respondent could not claim any judicial review.

3. Mr. Meghnad Dutta, learned counsel appearing on behalf of the respondent no. 10, submitted as follows. The private respondent was an appointee of a retail outlet petrol pump by the BPCL. Pursuant to the notification published by the BPCL in 2018, the respondent no. 10 submitted an application which was selected in the draw of lots. The Land Evaluation Committee of the BPCL inspected the land and was satisfied. On 24.09.2021 the BPCL issued a letter of intent on the basis of the same. The respondent no. 10 made huge investments on the land to make it to fit for setting up the infrastructure for the petrol pump. Thereafter, the writ petitioner being a nearby retail pump outlet owner of the IOCL challenged this on several grounds. First, before allotment of the retail outlet petrol pump in favour of the respondent no. 10, the Land Evaluation Committee had made an inspection and was satisfied as regards the advertised location. The land of the respondent no. 10 was located close to Sulochana bus stand at a distance of about 770 meters from the same on the Tamluk-Srirampore highway road. This would be evident from the sketch map appended to the inspection report. Moreover, the Sulochana bus stand and the petrol pump of the respondent no. 10 fall under the same post office i.e. Sulochana Rambhadrapur post office. The post office and the land of the respondent no. 10 also belong to the same village Rambhadrapur. It was pertinent to mention that there was no particular village in the name of

Sulochana. The respondent no. 10 was suffering huge financial losses due to the interim order of stay passed by this Court. The contention of the petitioner that the new petrol pump of the respondent no. 10 would lower the sale of the petitioner was absolutely false and baseless. No evidence or material was produced to support such contention. In *NG Projects Ltd. versus Vinod Kumar Jain & Ors.*, 2022 (6) SCC 127, the Hon'ble Supreme Court laid down the law with regard to scope and ambit of judicial review in relation to contractual and commercial matters of the Government and PSU's. This Court would not sit an appeal and substitute of its own decision for the decision taken by the Government or the agencies.

4. Mr. Bikramaditya Ghosh, learned counsel for the BPCL, submitted that there is no major irregularity in the allotment of retail outlet petrol pump to the respondent no. 10. There is substantial compliance of the requirement as regards the advertised location. No prejudice will be caused to the petitioner for such allotment.

5. Mr. Susovan Sengupta, learned counsel for the State, submitted that the proposed petrol pump is not between the two points as mentioned in the advertisement.

6. I heard the submissions of the learned counsels for the parties and perused the writ petition, the affidavits, the reports and the written notes of submissions.

7. In the present case, the scope of interference with the impugned order has been made clear by the Division Bench in its order dated 29.03.2022 passed in Mat 381 of 2022, which is quoted as under –

“Although exhaustive arguments have been placed by the parties today, this Court is of the clear view that the Hon’ble Single Bench is entitled to satisfy its conscience on the limited question as to whether the construction of the petrol pump outlet in issue is at the location advertised or, not.

In the event, the finding of the Report of the PWD is in favour of the Private Respondent in the writ petition/the present appellate, needless to add, the contracting parties, that is the appellant and BPCL, shall be entitled to proceed in terms of their agreement. ”

8. Therefore, this Court can fairly try to find out whether the offered plot fell within the area of advertisement.

9. The advertisement of the BPCL is quite clear that the location of the retail outlet petrol pump should be between Babolpur and Sulochana on the Tamluk Srirampore Road in Purba Medinipur.

10. First, there appears to be no particular village or place known by the name of Sulochana. There is only a bus stand which is called Sulochana Bus Stand and there is a post office namely, Sulochana Rambhadrapur Post office. But, the post office is not situated on the particular road as mentioned in the advertisement. The sketch map appended to the report also bears out the above.

11. Far less a village, there is not even an area that can described as Sulochana. Therefore, one has to take the Sulochana Bus Stand, which is situated on the road in question, to be the term ‘Sulochana’ as contemplated in the advertisement.

12. Consequently, it is amply clear that the offered plot of land was lying beyond the area of advertisement published by the BPCL.

13. Now, one needs to delve into the rather innovative argument of the respondent no. 10 that a place (the offered plot) which was hardly 771 metres away from the reference point (Sulochana Bus Stand) ought to be treated as a part of or, at least, within the larger ambit of such reference point.

14. Here, the distance between the two outer reference points (Babalpur and Sulochana) is about 572 metres. If compared with the whole distance between such outer points, the offered land is even more than such distance away from one outer limit. Therefore, the offered land cannot by any stretch of imagination be treated to be within the overall area of the Sulochana Bus Stand.

15. The Scheme approved by the Government to allow oil companies to bring up retail outlets at certain distance from each other is quite well-tested and would itself confer a locus on any stakeholder to seek appropriate remedy for any breach. On this count also, the petitioner need not go overboard to show that such a violation would necessarily result in loss of her business.

16. There is no reason as to why the Guidelines for Access to Location and Layout of Roadside Fuel Stations and Service Stations (Third Edition) of the Indian Road Congress should not be adhered to.

17. The decision referred to by the respondent no. 10 is based on completely different facts and, unlike here, did not have a stakeholder with a right.

18. In view of the above discussions, this Court is inclined to dispose of the writ petition on the following terms –

- (i) The impugned selection of the respondent no. 10 as a retail outlet dealer of the BPCL for the offered plot of land is set aside.
- (ii) In view of the peculiar circumstance that the BPCL had given a go ahead to the private respondent even after inspection, the said oil company shall allow two months' time to the respondent no. 10 to offer a land within the stipulated area as advertised that was with him on ownership or lease as on the date of advertisement and if the latter is able to offer such a land, the BPCL shall go ahead with any agreement for retail outlet dealership with him if the other conditions are satisfied.

19. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)