

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 2035 of 2006

**M/s. CLS Ltd.
-Vs.-
Union of India & Ors.**

For the petitioner	:	Mr. Debabrata Saha Roy, Mr. Pingal Bhattacharyya, Mr. Subhankar Das, Mr. Neil Basu, Mr. Sankha Biswas
For the Oil Company	:	Mr. Sanjib Kumar Mal, Mr. Bimalendu Das, Ms. Shomrita Das
Heard on	:	19.07.2023, 24.07.2023
Judgement on	:	24.07.2023

Bibek Chaudhuri, J.

A vacancy notification in respect of retail outlet dealership under Bharat Petroleum Corporation Limited (hereinafter described as BPCL) published in a Bengali Daily on 14th September, 2005, the petitioner/company made an application for dealership at Arshiganj in the district of Nadia under open category. It will not be out of place to mention that the petitioner is a private limited company represented by one Saranan Majilya. The petitioner/company filed an

application as per the requirement of BPCL through its representative and the application was duly affirmed by the said representative. It is also not out of place to mention that authorization of the said Saranan Majilya was ratified by the Directors in the Board meeting of the company dated 14th October, 2005.

It is the grievance of the petitioner that the authorized representative of the petitioner was requested to appear before the selection committee for interview on 23rd December, 2005 in the office of Territory Manager (Retail), Kolkata, BPCL, Budge Budge, Management Staff Club Auditorium at Budge Budge. In the said notice it is specifically stated as hereunder:-

"Please bring the original documents of all the enclosures as stipulated in the application form sent by you to the concerned oil company. In addition please also bring the documents mentioned below:-

The subsequent space in the aforesaid interview letter remained blank. Thereafter, it is stated in the said letter: -

"Please note that non-production of any of these documents may lead to **disqualification**".

The authorized representative of the petitioner duly appeared before the interview Board but he was not interviewed on the ground, inter alia,

Since authorized representative of CLS Limited (Mr. Saranan Majilya) could not show his credential or authorization of the Board resolution in original he was not interviewed the interview Board.

It is contended by Mr. Debabrata Saha Roy that when the interview letter is absolutely blank and no direction was issued to the company or its authorized representative to bring the documents that

were sought for at the time of interview, non-production of such document cannot be a ground of rejection of candidature of the petitioner/company. The Oil Company could not put the blame of lackadaisical and negligent act of the authorized officer of BPCL upon the petitioner. There was no obligation for the petitioner to produce any document during interview.

It also submitted by Mr. Saha Roy taking me to Annexure – P/3 that in respect of dealership at Gangarampur within the district of Dakshin Dinajpur, the interview letter contained specification of the documents which the authorized representative was required to produce before the interview Board at the time of interview. The same authorized representative produced the said documents before the interview Board and in the interview the Petitioner Company stood first and got the dealership. In the instant case, if the interview letter spoke of the required documents which the interview Board wanted to verify the authorized representative must produce the same before the Board. Therefore, the candidature of the petitioner was wrongly rejected by BPCL. Mr. Saha Ray next draws my attention to the order dated 5th June, 2006 wherein a Coordinate Bench admitted the instant writ petition for hearing. At the time of admission, the Coordinate Bench passed an order to the effect that all steps taken by the respondents shall abide by the result of the writ petition.

With regard to the effect of the above-mentioned interim order Mr. Saha Ray submits that in ***WP 8117 (W) of 2007 : M/s. CLS Ltd. & Anr. –Vs.- Bharat Petroleum Corporation Limited & Ors.*** decided on 15th January, 2019, a Coordinate Bench observed as follows:-

"Nothing has been disclosed by the Oil Company to show that change of management in a company subsequent to its being incorporated is or would be a ground for rejection under tender terms and conditions. Petitioner No. 1/Company appears to have had a change of management since after its incorporation. Law permits it. Present management duly authorized a person who represented petitioner no. 1, as was called for interview. Conditions under sub-clause (h) of clause 13 in the brochure stood satisfied.

Writ petition succeeds. Impugned letter dated 5th February, 2007 is set aside and quashed. The Oil Company is directed to proceed with evaluating candidature of petitioner as first ranked candidate in the panel, upon interview. The Oil Company, if required for the purpose of proceeding in the matter, might call for further verification of said authorized representative or any other of petitioner no. 1. The exercise must be resumed and completed either by appointment of petitioner no. 1 as retailer or rejection or any ground upon reasons to be given within eight weeks from date of communication of this order."

The above-mentioned judgement and order was challenged by the BPCL in Mandamus Appeal being MAT 215/2019. In the said appeal it was observed by the Division Bench of this Court:-

"More than the merits of the order under challenge the apprehension of the appellants appears to be that a right accrued in favour of a third party by reason of the action taken by the Oil Company in appointing a dealer in the meantime would affect his right in the event the order impugned is given effect to. However, as rightly observed by Justice Arindam Sinha in the order that the Oil Company went ahead and appointed someone with caution of

pendency and, accordingly, such dealer had taken the dealership with the said rider and cannot complain violation of natural justice.”

The Division Bench presided over by the Hon’ble Soumen Sen, J. while disposing of MAT/215/2019 relied on a judgment passed by another Coordinate Bench presided over by the former Chief Justice Bhaskar Bhattacharya, as His Lordship then was in AST/1066/2009.

Relying on the said judgements Mr. Saha Roy submits that the Oil Company cannot take into account the failure on the part of the authorized representative of M/s. CLS Limited to produce certain documents as the only deficiency in order to disqualify the Company from getting the dealership.

Mr. Sanjib Kumar Mal, learned Counsel on behalf of the Oil Company, on the other hand, submits that the location in question was advertised on 14th September, 2005. From the result of the interview it appears that nobody was found eligible and qualified for the dealership in pursuance to the said notice dated 14th September, 2005. In that view of the matter a permanent dealer was appointed on 7th March, 2012 at the said location. Before selection of permanent dealer vide order dated 7th March, 2012 the petitioner Company was allowed to participate. However, the petitioner did not participate in the subsequent interview on the ground of pendency of the instant writ petition. It is also submitted by the learned Counsel for the petitioner that vide order dated 5th February, 2015 the writ petition was dismissed for default and interim order stood vacated. Subsequently on 22nd November, 2019 the writ petition was restored to its original file and number subject to payment of cost and filing an affidavit of compliance. Thus, from 5th February, 2015 to 22nd November, 2019 and even thereafter there was no interim order

which was initially granted on 5th June, 2006. In this regard, it is submitted by the learned Counsel for the Oil Company that if an interim order stands vacated as a result of a writ petition being dismissed for default, subsequent restoration of the writ petition does not automatically revive the interim orders. For revival of the interim orders there must be specific prayer to be made by the petitioner and a Court's order of restoration of interim order. In the instant case, no such order was passed in the record of the instant writ petition.

It is further submitted by the learned Counsel for the Oil Company that the Company is doing business of selling petroleum oil and related products. The Oil Company always reserves its right whether to have a fresh dealer in respect of a particular location or not. It was found by the Oil Company sometimes in September, 2005 that the Company requires a dealership to sell petroleum products at Arshiganj in the district of Nadia. The Company cannot sit idle for about 17 years at the peril of its business. Therefore, the said guideline of the company to induct fresh dealership in respect of a particular location stands against the claim of the petitioner.

Last but not the least, it is submitted by Mr. Mal, learned Counsel for the Oil Company on production of amended guidelines on selection of the dealers/distributors of petroleum products issued on 15th September, 2008 that the applicant will not be eligible for RO dealership/LPG distributorship if any of the RO dealership/LPG distributorship is holding multiple dealership. The petitioner Company is running business of selling petroleum products under BPCL holding at least four dealerships. Therefore, the petitioner cannot claim any relief in the instant writ petition.

In reply, it is submitted by Mr. Saha Ray that interim order to the effect that the issue of dealership in the location in question shall abide by the final result of the writ petition was in force on 7th March, 2012 when BPCL appointed permanent dealer at the location Arshiganj. It is also submitted by Mr. Saha Ray that the writ petition was dismissed on 5th February, 2015 but it was restored on 22nd November, 2019. According to Mr. Saha Ray, as soon as original case is restored all interim orders is restored automatically. No separate application needs to be filed for restoration of interim order.

It is also submitted by him that the amended guideline dated 15th September, 2008 is not applicable in the instant case as the vacancy was declared in the year 2005 and the selection procedure of dealers will abide by the guideline prevalent in the year 2005-2006.

Having heard the learned Advocate for the parties and on perusal of the materials-on-record this Court finds that the petitioner has been able to establish that in the interview letter for selection of dealership of Arshiganj in the district of Nadia, the petitioner was not directed to produce any document before the interview Board. Therefore, the decision of the interview Board that the petitioner's application is liable to be rejected has no leg to stand. The decision of the interview Board dated 23rd December, 2005 is illegal, invalid and *mala fide* while the same is compared with the interview letter dated 2nd December, 2005. I am also in agreement with the learned Advocate for the petitioner that the present dealer was permanently appointed with rider that the appointment of distributorship at location Arshiganj subject to the final decision of the writ petition.

In the instant writ petition it is established that the petitioner was not directed to produce any document which is required to be

looked into by the interview Board. Therefore, the candidature of the petitioner cannot be rejected on the ground that the authorized representative of the petitioner would not produce any credential or authorization of Board resolution.

In view of the above discussion, the impugned result dated 23rd December, 2005 is set aside and quashed.

The Oil Company, BPCL, particularly the respondent no. 5 is directed to issue a letter of interview to the petitioner/Company subletting the papers and documents which the Oil Company wants to inspect at the time of interview and take decision with regard to its dealership at the location in question. Entire exercise shall be concluded within eight weeks from the date of communication of this order.

I am not unmindful to note that though the person who was permanently appointed in the year 2012 as a dealer is not made a party to the instant writ petition, while interviewing the petitioner, the BPCL authority shall consider if a fresh distributorship can be allotted in favour of the petitioner subject to satisfaction of all necessary guidelines in the adjacent or near area in the district of Nadia.

The above observation is, of course, not a direction issued by this Court but a reasonable expectation for doing substantial justice to both the petitioner and the person who might be really affected by interview process which has been directed to be conducted by BPCL.

With the above order, the instant writ petition is disposed of.

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

[Bibek Chaudhuri, J.]