

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

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 573 of 2021

**Madhumita Roy
VS.
Tanushree Mondal & Ors.**

For the Appellant : Mr. Subir Sanyal
Mr. Sumit Roy
Mr. Sailen Naskar

For the Respondent No. 1: Mr. Abhratosh Mukherjee, Sr. Adv.,
Mr. Ramesh Dhara
Ms. Tapati Sengupta

For the Respondent
Nos. 2 to 5 : Mr. Amit Kumar Nag
Mr. Partha Banerjee

Heard on : December 11, 2023

Judgment on : December 11, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against a judgment and order dated April 21, 2021 passed by the learned Single Judge in W.P.A. 18400 of 2019.
2. By the impugned judgment and order, the learned Single Judge allowed the writ petition and set aside the allotment of Liquefied Petroleum Gas (LPG) Distributorship of the respondent no. 6.

3. The appellant before us is the respondent no. 6 in the writ petition. The appellant did not appear at the hearing of the writ petition.
4. Learned advocate appearing for the appellant submits that, the appellant participated in a selection process for distributorship. He refers to the advertisement and the guidelines governing the selection process. He submits that, a lease deed was presented by the appellant for registration on September 21, 2017, with the registration of such lease deed being completed on October 11, 2017. He points out that in the advertisement, initially the last date for submission of the application was October 3, 2017, which was subsequently extended till October 18, 2017.
5. Learned advocate appearing for the appellant refers to various Clauses of the guidelines governing selection process, particularly to Clause 26, definition at Clause 1(w) and Clause 18. He submits that, essentially, the guidelines require a suppression/misrepresentation/incorrect/false statement affecting the eligibility of the candidate to be made in the application of the candidate. He contends that in the facts of the present case, there was no suppression, misrepresentation, incorrect or false statement made at the behest of the appellant which affects the eligibility of the appellant in the selection process. Consequently, he contends that, the learned Single Judge erred in cancelling the selection of the appellant.

6. Learned advocate appearing for the Oil Company submits that, subsequent to the impugned judgment and order, Oil Company held two rounds in the selection process. In the first attempt, it identified a distributorship. The identified candidate could not meet the eligibility criteria, and was therefore, discarded. A second attempt was made when another candidate was identified. A Letter of Intent was issued in favour of the candidate so identified in the second attempt with the rider that the Letter of Intent would be subject to the result of the pending appeal.
7. Learned Senior Advocate appearing for the respondent no. 1/writ petitioner submits that as on date of filing of the application by the appellant, lease deed was not registered. He contends that, the lease deed was presented for registration on September 25, 2017 and that, the application of the appellant before the Oil Company was made on September 24, 2017. Therefore, according to him, as on September 24, 2017, there was no lease deed in favour of the appellant.
8. Learned Senior Advocate appearing for the respondent no. 1 refers to Clauses 18 and 19 of the guidelines. He submits that, the appellant was in violation of such guidelines.
9. Learned advocate appearing for the respondent no. 1 relies upon **2019 SCC Online Cal 3797 (Biswajit Kumar Sarkar vs. Union of India & Ors.)** and on **(2020) 1 CalLT 155 (HC) (Biswajit Kumar Sarkar vs. Union of**

India & Ors.) in support of his contentions that, the appellant breached the terms and conditions of the selection process and was guilty of misrepresentation affecting his eligibility criteria.

10. On August 31, 2017, the oil company invited applications for appointment of LPG distributorship in various locations through the State of West Bengal. The last date of submission of the application was initially fixed on October 3, 2017 and subsequently extended till October 18, 2017. The Advertisement stated that all applications would be guided by the terms of the selection process.
11. The appellant submitted an application on September 24, 2017. In such application, she mentioned the date of the registered lease deed as September 21, 2017.
12. In terms of the selection process, a lucky draw is required to be held amongst eligible candidates to identify the person to whom the distributorship would be allotted. A lucky draw was conducted on May 30, 2018 amongst the eligible candidates where the appellant succeeded. Appellant was asked to submit all necessary documents for scrutiny which she did. On scrutiny and field verification, oil company issued a Letter of Intent in favour of the appellant.
13. Thereafter, the respondent no.1 challenged the selection of the appellant on the ground that the appellant misrepresented and/or gave false

information with regard to the date of registration of the lease deed. The respondent no.1 thereafter made a representation dated August 26, 2019 to the oil company for consideration. The representation was not considered by the oil company according to the respondent no.1. Thereafter, the respondent no.1 filed the writ petition in which the impugned judgment and order was passed.

14. The learned Single Judge found that the date of registration of the lease deed was October 11, 2017 and that in the application, the appellant stated that the lease deed was executed on September 21, 2017. Consequently, the learned Single Judge found that the appellant made a false and incorrect statement. Therefore, the learned Single Judge proceeded to cancel the selection of the appellant.
15. Furnishing of false information visits a candidate in the selection process with consequences. Furnishing of false information is provided in Clause 26 of the guidelines on selection of LPG distributorships which is as follows:

"26. Furnishing of False Information

- a. If any statement made by the applicant in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application at any stage is found to have been suppressed/misrepresented/incorrect or false affecting eligibility, then*

the application/candidature is liable to be rejected without assigning any reason.

- b. In case the selection of the candidate is rejected after the FVC or after issuance of LOI but before issue of Letter of Appointment, then the amount deposited by the selected candidate before the FVC is conducted i.e., 10% of the applicable security deposit will be forfeited.*
- c. In case the selected candidate has been appointed as a distributor and the allotment is liable to be cancelled, then the distributorship will be terminated along with forfeiture of security deposit remitted by the candidate.*
- d. In all the above cases, the selected candidate/distributor will have no claim whatsoever against the respective PSU Oil Marketing Company."*

16. Learned Advocates for the parties also referred to various other clauses of such guidelines, namely, Clause 1w, 2b, 18b and 19 which are as follows:

"1w. 'Ownership' or "Own" for godown/showroom for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak Type of Distributorship means having:

- 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).

Additionally, applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of 15 years from the date of advertisement. The applicant should have ownership as defined under the term 'Own' above in the name of 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 Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law of the applicant or the spouse (in case of married applicant) as on last date for 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 the form of a declaration from the family member(s) will be required.

In case the share of land in the jointly owned property by the applicant/member of 'Family Unit' as defined in multiple dealership/distributorship norm)/parents & grandparents (both maternal and paternal) of the applicant or the spouse with any other person(s) meets the requirement of land including the dimensions required, then that land for godown/showroom should qualify for eligibility as 'own' land subject to submission of 'No Objection Certificate' in the form of declaration from other owner(s).

2. Basic Facilities Required For Operation of LPG Distributorship

b. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, then the LOI holder can offer an alternate/new land for construction of godown of specified dimensions, in the advertised location, which will be considered on the grounds of enhanced security/safety, better title (owned instead of leased), convenient location, lower operating cost etc. The selected candidate has to ensure that an all weather motor able approach road (public or private road connecting to the

public road) of minimum 2.5 metre width is made available to provide access of LPG Cylinder Truck to the offered land for LPG Godown. In case of private road connecting to the Public Road, the same should be either owned/registered lease or having a right of way from the owner(s) of the land. Wherever the State Government stipulates an approach road of wider dimensions the same should be made available by the applicant.

18. Field Verification of Credentials (FVC)

b. During the FVC process, in case land mentioned by the applicant for godown/showroom in his application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application form and if the applicant is having any alternate land in his name/member (s) of the family unit as per the definition of family unit for land of the applicant with date of registration of sale/lease on or before the last date for submission of application as specified either in the advertisement or corrigendum (if any), the same can be considered at the time of FVC. However, the same if considered has to be duly verified for its suitability during the FVC. In case at the time of FVC, it is found that the all weather motorable road providing access to the Godown land is not available and if the candidate expresses his/her

inability to ever provide the same, the candidate can offer an alternate land meeting the eligibility criteria. Such alternate land if considered has to be duly verified during the FVC for its suitability for providing LPG godown and showroom facility as mentioned herein above.

19. Letter of Intent (LOI)

If in the FVC, the information given in the application by the applicant is found to be correct and the land offered for Godown and Showroom are found to be suitable, final Letter of Intent (LOI) will be issued with the approval of competent authority.

The selected candidate after receipt of LOI should fulfil the conditions specified in the LOI within a period of four months from the date of LOI or the time limit given by the OMC, failing which the LOI is liable to be withdrawn along with forfeiture of the amount remitted by the selected candidate before FVC.

If in the FVC it is found that information given in the application is at variance with the original documents and that information affects the eligibility of the candidate, then the LOI holder would be intimated through email, pointing out the discrepancy/discrepancies through Email. If it is established that false/incorrect/misrepresented information has been given in the application, candidature of selected candidate will be

cancelled, the status of the LOI would become null and void and the amount remitted by the selected candidate before FVC will be forfeited."

17. Clause 1(w) of the guidelines came up for consideration before the Division Bench in ***Biswajit Kumar Sarkar (supra)*** where it was held as follows:

"6. Since sub-clause (b) is relevant for the present purpose, such provision may be seen. On a reading of such sub-clause (b), particularly in the context of the expression "commencing on any day", it implies that the lease has to commence as specified in the sub-clause. The date of commencement, apparently, has no nexus with the registration of the deed of lease. On the basis of the unified guidelines, if there was any doubt and such doubt could not be resolved by referring to any other document, the issue would have been decided in favour of the writ petitioner-appellant since the unified guidelines do not make the registration of the deed mandatory prior to the application being made. Indeed, if such is the intention of sub-clause (b), the wording of such sub-clause should be appropriately altered.

7. However, as is evident from the application form, the date of registration of the lease has to be indicated at the time of the application. It necessarily follows that if the document is unregistered at the time of the application being made, the relevant column has to be left blank and the date of execution cannot be substituted in place and stead of the date of registration for which information is sought in the relevant column."

18. In *Biswajit Kumar Sarkar (supra)*, the Single Bench noted that, the writ petitioner therein participated in the selection process for appointment of LPG Distributorship and offered a land in respect of which a lease deed was executed and registration completed after the last date for submission of the requisite document was over.
19. In the facts of the present case, the last date of submission of relevant documents was on October 18, 2017 and the registration was completed on October 11, 2017.
20. Clause 26 pertains the disqualification in the event of the applicant being guilty of suppression, misrepresentation or giving incorrect or false information. This suppression, misrepresentation, incorrect or false information must affect the eligibility of the applicant. Once these twin

criteria are fulfilled then the application is liable to be rejected without assigning any reason.

21. In the facts of the present case, the appellant before us, submitted an application for her candidature on September 24, 2017 which said that, the lease deed was registered on September 21, 2017.
22. The documents placed on record suggest that, the appellant placed the lease deed concerned before the registering authority raising a query with regard to the stamp duty payable on September 18, 2017. The Certificate of market value was issued on September 21, 2017 by the registration authorities. The document was presented for registration on September 25, 2017 and that the registration was completed on October 11, 2017. All of these dates were well within the time-period of the extended date for submission of the application.
23. Moreover, as Clause 1(w)(b) was interpreted by the Division Bench in *Biswajit Kumar Sarkar (supra)*, the lease deed could commence on any day upto the last date of submission of the application and, the date of commencement was found not to be having any nexus with the registration of the deed lease.
24. In the facts of the present case, the lease deed registered on October 11, 2017 speaks of commencement of the lease on September 15, 2017. The

lease deed, therefore, with stands the test of *Biswajit Kumar Sarkar (supra)* as laid down by the Division Bench therein.

25. We find from the records made available to Court that, the appellant was not guilty of suppression of any fact, did not misrepresent or make a false or incorrect statement with regard to any document to invite Clause 26 of the guidelines. The appellant cannot be said to be ineligible on the basis of the document disclosed before the oil company or at least on the basis of the contention raised by the respondent no.1.
26. In such circumstances, we set aside the impugned judgment and order and dismiss the writ petition.
27. The Letter of Intent issued in favour of the appellant is restored. Oil company will process the application for LPG distributorship of the appellant in accordance with law from the stage of the issuance of the Letter of Intent.
28. **MAT 573 of 2021** is disposed of accordingly without any order as to costs.

(Debangsu Basak,J.)

29. I Agree.

(Md. Shabbar Rashidi, J.)

