IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/18557/2022

Sayed Afridi Sarkar
Vs.
Indian Oil Corporation Limited & Ors.

For the Petitioner:	Mr. Partha Pratim Roy, Adv., Mr. Anirban Das, Adv.
For the IOCL:	Mr. Puspendu Chakraborty, Adv.
For Respondent No.8:	Mr. Ayan Basu, Adv., Mr. Samrat Das, Adv., Mr. Sumit Routh, Adv.

Hearing concluded on: 14 September, 2023.
Judgment on: 12 October, 2023.

BIBEK CHAUDHURI, J. : –

1. One Mokbul Hossain Sarkar was the original owner in respect of the subject land situated at Mouza Nashipur by virtue of a registered deed of settlement executed in the year 1972. The said Mokbul Hossain Sarkar died leaving behind the petitioner and other legal heirs and they jointly started to enjoy the property as co-sharers. The private respondent is one of such co-sharers in respect of the subject land. Subsequently, there was a dispute between the petitioner, other co-sharers and the private respondent and they jointly filed a suit for partition against the private respondent in respect of the subject land. The said suit was registered as

T.S No.482 of 2019, presently pending before the learned Civil Judge (Senior Division) at Lalbag, Murshidabad. The petitioner has filed the instant writ petition alleging, inter alia, that he came to know that the private respondent applied for distributorship of Liquefied Petroleum Gas from the Indian Oil Corporation Limited under the Rajib Gandhi Gramin LPG Vitrak (R.G.G.L.V) and accordingly, she became second selected candidate for LPG distributorship under the said scheme for the area Nashipur, Bhagawangola-II, in the draw. Subsequently, she was selected for the aforesaid distributorship and managed to obtain distributorship from the respondent No.1, Indian Oil Corporation Limited, showing her godown and shop room in a portion of the joint property of the petitioner and other co-sharers, including the private respondent. After obtaining letter of intent, the private respondent started to construct a godown and an office for LPG distributorship over the aforesaid undivided plot which is the subject matter of the suit for partition being T.S 482 of 2019. It is also the case of the petitioner that, according to the policy of the respondent No.1, no person can use the landed property for construction of the office and godown for distributorship, which is the subject matter of any dispute before the Court of Law, but upon inquiry, the petitioner came to know that the private respondents without disclosing the pendency of the suit for partition obtain the licence from the Oil Company and further she without obtaining any no-objection from other co-sharers obtained the licence by misrepresentation of fact before the respondent company. It is also alleged by the petitioner that the private respondent is working as a Sahayak of Anganwadi Karmi in Mededumuria Primary School and she gets some honorarium from the Government. Therefore, she is not entitled to get distributorship of Liquefied Petroleum Gas granted by respondent No.1. After getting the information that the respondent received distributorship by LPG from respondent No.1, the petitioner made a representation. But his representation was not considered by respondent No.1. So is the instant writ petition.

2. The respondents No.1-7 have filed an affidavit-in-opposition controverting the allegations made out by the petitioner in the instant writ petition. It is specifically stated on behalf of the IOCL that in its usual course of business, IOCL selected private respondent No.8 as its Rajib Gandhi Gramin LPG Vitrak (R.G.G.L.V) at village Nasirpur within Bhagabangola-II Development Block in the district of Murshidabad. Such selection was made following the guideline and selection procedure as stipulated by the corporation scrupulously. The letter of intent for the distributorship in favour of private respondent No.8 was issued on 30th December, 2013 after observing all formalities envisaged in the selection procedure. Subsequently, letter of allotment was issued and distributorship was commissioned on 11th March, 2015. An agreement was executed between IOCL and Shima Khatun respondent No.8 and her husband Samsul Alam on the above mentioned date. For the purpose of LPG distributorship the respondent No.8 constructed a godown on a piece of land situated in Dag No.3519, khatian No.19156, JL No.66 of Mouza-Nashirpur in the district of Murshidabad. The said plot of land contains

46 decimals out of which 37.50 decimals have been recorded in the name of the petitioner. The classification of the land was specified as “Bagan”. The private respondent constructed a godown upon 15 decimals out of 37.50 decimals of land and the land was duly converted by the appropriate authority under Section 4C of the West Bengal Land Reforms Act. The respondent has also obtained requisite licences for storage of LPG cylinders from the competent authority. In the year 2019 the writ petitioner and five others instituted Title Suit No.482 of 2019 before the learned Civil Judge (Senior Division), Lalbag, Murshidabad for partition of the said plot of land situated in Dag No.3519. The writ petitioner and others filed an application praying for temporary injunction with interim prayer but the prayer for interim injunction was refused by the trial court. The writ petitioner preferred an appeal against the said order which was registered as Misc Appeal No.18 of 2020 and the said appeal was pending. The writ petitioner and other plaintiffs of Title Suit No.482 of 2019 made a representation against the private respondent challenging grant of distributorship in favour of respondent No.8. The corporation inquired into the matter and found that the said representation does not have any merit. Therefore, there is no reason to interfere with the distributorship of private respondent No.8 in the instant case.

3. The respondent No.8 has also filed an affidavit-in-opposition against the writ petition made by the petitioner. In her written objection she denied all the allegations made out by the writ petitioner in the instant writ. The respondent has specifically stated that she got the

distributorship in the year 2015 after fulfilling of requirement of IOCL. The writ petitioner and others filed a partition suit after four years of grant of distributorship in the year 2019. Therefore, at the time of grant of distributorship no suit was pending against the private respondent. The private respondent also contends that Dag No.3519 is measuring about 46 decimals. Out of 46 decimals of land 37.50 decimals of land has been recorded in the name of the respondent No.8. Thus, major portion of the said joint property is recorded in the name of the respondent No.8. She constructed a godown in 15 decimals of land. Thus, even if the subject land is partitioned, the respondent No.8 will not have any problem with regard to the distributorship of LPG. The respondent No.8 also states that she does not draw any salary/perks/emoluments from the State/Central Government and she is not attached to any Government Service as alleged.

4. The writ petitioner has filed an affidavit-in-reply against the affidavit-in-opposition filed by the respondents No.1-7. In the affidavit-in-reply it is contended by the writ petitioner that the property in question is a joint property and until and unless the property is partitioned and demarcated, the respondent No.8 cannot claim the portion of the property where she has constructed as godown as her own.

5. The petitioner has also filed an affidavit-in-reply denying the statement made by the respondent No.8 in her affidavit-in-opposition.

6. It is submitted by the learned Advocate for the petitioner that admittedly the plot upon which the respondent No.8 had constructed a

godown, is jointly owned by the petitioner, respondent No.8 and other co-sharers. The writ petitioner and other co-sharers have filed a suit for partition which is pending before the learned Civil Judge (Senior Division) at Lalbag. Thus, the respondent No.8 is not the sole owner of the said plot of land. Therefore, she alone cannot get the distributorship of LPG under the scheme from the IOCL.

7. The learned Advocate for the respondents have opposed to the submission made by the learned Advocate for the petitioner.

8. It is not in dispute that the respondent No.8 is one of the co-owners of the subject land. The Indian Oil Corporation issued distributorship in favour of respondent No.8 observing the due selection process. For having distributorship of LPG cylinders, the respondent No.8 filed application. She was selected by draw of lots. Thereafter, she deposited all documents and requisite fees. The authority found the documents in order and subsequently, issued LOI in favour of the respondent No.8. The respondent No.8 converted the land under her possession from “bagan” to commercial purpose and has been carrying on the distributorship since 2015.

9. The grand of distributorship is a result of an agreement between respondent No.8 and the IOCL. Though, IOCL is a Government Corporation, the contract between IOCL and respondent No.8 is absolutely private in nature. In **Sanjay Kumar Shukla vs. Bharat Petroleum Corporation Limited & Ors.** reported in **(2014) 3 SCC 493**, the Hon’ble Supreme Court held that the award of contract, whether it is

by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:

(i) the price at which the other side is willing to do the work;

(ii) whether the goods or services offered are of the requisite specifications;

(iii) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(iv) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(v) past experience of the tenderer and whether he has successfully completed similar work earlier;

(vi) time which will be taken to deliver the goods or services; and often;

(vii) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. The Hon'ble Supreme Court was pleased to classify the elements of public interest in the following words:-

> "10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in [pic]commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation."

11. When in a contract of distributorship, no such public element is involved and when a writ petition is filed as a result of dispute between the petitioner and the private respondents, no element of public law or public interest is involved. A mere difference between two parties over possession of land or ownership of a godown etc. is not decisive in deciding which public interest is involved in such a commercial transaction. A decision of public authority or a corporation who is treated to be the State within the scope of Article 12 of the Constitution of India, should not be interfered with under Article 226 of the Constitution unless, the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably

and in accordance with law could have reached. In other words, only when the decision making process is treated to be perverse, can the Court adopt adjudicatory process under prerogative writ under Article 226 of the Constitution. The decision of the Hon'ble Supreme Court in **Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. & Anr.** reported in **(2016) 16 SCC 818** may be relied on in this regard.

12. For the reasons recorded above, I do not find any merit in the instant writ petition and the same is liable to be dismissed.

13. Accordingly, the writ petition is dismissed on contest, however, there shall be no order as to cost.

(Bibek Chaudhuri, J.)