

21.09.2023
Item No.14
Ct. No. 7
PG

W.P.A. 17628 of 2019
Rupsona Mondal
Vs.
The Hindustan Petroleum Corporation Ltd. & Ors.

Mr. Raghunath Chakraborty
Mr. M. Ahmed

.....for the petitioner

Mr. Prasun Mukherjee
Mr. Deepak Aggarwal.....for the HPCL

Mr. Kallol Bose
Mr. Alokesh Dalaifor the respondent no.5

1. The petitioner has prayed for a writ in the nature of mandamus commanding the respondents to cancel and/or set aside the appointment of the private respondent for Gramin LPG Gas Distributorship and for conducting a fresh draw of lots for the remaining two applicants excluding the private respondent.
2. Pursuant to an advertisement dated 31st August, 2017 published in the daily issue of Bengali newspaper Anandabazar Patrika for grant of Gramin LPG Distributorship at Bikrampur under Nakashipara Block, District – Nadia, the petitioner applied for participating in the selection process for LPG distributorship under Other Backward Classes (Women) before the Hindustan Petroleum Corporation Limited (for short, 'HPCL').
3. The petitioner along with other eligible candidates participated in the draw of lots for selection of LPG distributorship. One Bilkis Mondal was initially selected. Since the candidature of the said Bilkis

Mondal was cancelled, the authorities thereafter shortlisted the remaining three candidates including the petitioner and the private respondent herein and a fresh draw of lots was conducted. Thereafter the private respondent was selected for grant of the proposed LPG distributorship. The petitioner has alleged that the private respondent has deliberately misrepresented vital particulars of the registered lease deed of the land which was offered for construction of the godown.

4. The further case of the petitioner is that the private respondent offered a plot of land, which she got by virtue of a registered lease deed dated 4th January, 2019. It is the contention of the petitioner that the lease deed in respect of such property was registered subsequent to the last date of filing of the application and, therefore, the same could not have been considered for grant of LPG distributorship.
5. Mr. Chakraborty, learned advocate appearing for the petitioner submitted that the alternate/new land offered by the private respondent for construction of the godown for LPG distributorship was offered by the petitioner after issuance of the letter of intent (for short, 'LoI'). He submits that such offer after issuance of the LoI is not permissible. By referring to the schedule of the plot of alternate/new land offered by the private respondent Mr. Chakraborty submits that the classification of the said land,

which was offered for construction of the godown was 'Aush'. He submits that as on the date of field verification, such alternate/new land offered by the private respondent was not suitable for the purpose of construction of the godown and therefore, the respondent authorities ought not to have granted LPG distributorship in favour of the private respondent when the land offered by her was not suitable for the purpose of construction of the godown.

6. Mr. Mukherjee, learned advocate representing the HPCL submits that the unified guidelines for selection of LPG Distributors (for short, "the said guidelines"), which was published on June, 2017 permits a candidate to offer an alternate/new land and for construction of the godown even after issuance of LoI. He submits that the competent authority of HPCL, after undertaking a field verification of the alternate/new land offered by the private respondent and upon being satisfied with the criteria for setting up a godown thereupon for carrying on the business of LPG distributorship, granted the distributorship in favour of the private respondent.
7. Mr. Bose, learned advocate representing the private respondent submits that after the LoI dated 27th December, 2018 was issued, the private respondent on or about 7th January, 2019 offered an

alternate/new plot of land for construction of a godown at Mouza – Bikrampur in J.L. No.6, Plot No.2713 under Khatian Nos.806/1, 1848/1, 2747/1 and the authorities of the HPCL after making field verification and after being satisfied that the eligibility criteria is duly met, granted the distributorship in favour of the private respondent. In reply to the objections as to the classification of the land offered for construction of godown, Mr. Bose submits that the prescribed authority under the West Bengal Land Reforms Act, 1955 after following due procedure, allowed the conversion of the classification/nature of use of the land from 'Aush' to 'Commercial' vide Memo dated 21st June, 2019. He, therefore, submits that the private respondent duly complied with all formalities with regard to the change of classification of the land in question to make it suitable for the purpose of construction of the godown for running the LPG distributorship business.

8. Heard the learned advocates for the parties and perused the materials placed.
9. It is not in dispute that the private respondent initially offered a leasehold land being J.L. No.45 at Mouza – Chenga under L.R. Khatian No.1340, R.S. and L.R. Dag No.1552, 1457/2417 for the purpose of construction of the godown. The LoI was issued on 27th December, 2018. However, after issuance of the

LoI, the private respondent offered a new land for construction of the godown at Mouza – Bikrampur in J.L. No.6, Plot No.2713 under Khatian Nos.806/1, 1848/1, 2747/1.

10. The question now arises as to whether after issuance of the LoI, a candidate can offer an alternate/new land for construction of godown. In order to answer the said issue, it would be relevant to take note of Clause 2b of the said guidelines, which states that if the land offered by the candidate in the application or alternate land offered by the candidate at the time of field verification 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. After going through the said clause, it appears to this Court that an alternate land can be offered by the candidate at the time of field verification and if such alternate land 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. Therefore, an alternate/new land for construction of godown can be offered even after the LoI has been issued.
11. In the case on hand, the date of registration of the lease deed in respect of leasehold land is 4th January, 2019 i.e. after the issuance of the LoI dated 27th December, 2018.

12. An Hon'ble Division Bench of this Court in the case of ***Rashbehari Saha Vs. Indian Oil Corporation Limited & Ors.*** reported at **2022 SCC Online Cal. 4104** after referring to Clause 2 (b) and (e) of the unified guidelines/brochure held that the word 'subsequently' as in sub-clause (e) also makes it clear that the date of registration etc. of the new land offered by a letter of intent holder in course of second chance or third chance, as the case may be, should not have been registered or leased in favour of the LoI holder before the last date of application inasmuch as the new land is for the purpose of specifically mentioned in sub clause (b) and (e) of clause 2 of the unified guidelines. The Hon'ble Division Bench in paragraphs 12 and 13 of the said decision held thus:-

"12. To answer the question framed supra it is pertinent to refer to Clause 2(b) and (e) of the unified guidelines/brochure:-

*"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.”

“e. 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 subsequently, the LOI holder can offer an alternate/new land for construction of showroom 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.**”

(Emphasis supplied by us)

13. From conjoint reading of Clause 2 (b) and (e) as quoted supra and especially the word ‘subsequently’ after the word ‘then’ and before the words ‘LOI holder’ in sub-Clause (e) it is clear that third chance can be given to a letter of intent holder if the alternate land offered by him or her in course of second chance has been accepted by the Oil Company as suitable. Similarly if the first land offered by LOI holder has been accepted by the Oil Company as suitable then second chance is available to him or her to offer a new land. The word ‘subsequently’ as in Sub-Clause (e) also makes it clear that the date of registration etc. of the new land offered by a letter of intent holder in course of second chance of third chance, as the case may be, should not have been registered or leased in favour of the LOI holder before the last date of application, inasmuch as the new land is for the purpose specifically mentioned in sub-Clause (b) and (e) of Clause 2 of the brochure/unified guidelines. This is also the argument of learned Counsel appearing for the Oil Company and it is specifically submitted by him that the new land offered for the purpose mentioned in sub-Clause (b) and (e) of Clause 2 of the brochure/unified guidelines need not be one which should have been registered and leased in favour of LOI holder before the last date of application. In view of our discussion as above, we do not find any merit in the submission of Mr. Saha Roy learned Counsel for the appellant to the effect that the third offer even by a LOI holder should have been registered or leased in favour of LOI holder before the last date of application.”

13. Therefore, by applying the proposition of law settled by the Hon’ble Division Bench, this Court is of the

considered view that it was open to the private respondent to offer a new land for the purpose of construction of a godown, the registration of which was made even after the issuance of the LoI.

14. Insofar as the objection as to the classification of the land in question is concerned, this Court finds that the concerned authority of HPCL by a letter dated 2nd May, 2019 informed the private respondent that the land offered by her at Mouza – Bikrampur in J.L. No.6, Plot No.2713 under Khatian Nos.806/1, 1848/1, 2747/1 has met the eligibility criteria and therefore, the said offered land is acceptable to the authority. However, the said authority requested the private respondent to make all efforts to complete the formalities as early as possible to enable HPCL to commission the LPG distributorship at the earliest.
15. It appears from the record that immediately thereafter the classification/nature of use of the land in question was converted from 'Aush' to 'Commercial' by an order under memo dated 21st June, 2019 issued by the District Collector under section 4C of the West Bengal Land Reforms Act, 1955 in connection with conversion case ACN/2019/1312/97.
16. The letter of appointment was issued to the private respondent on 27th September, 2019, i.e. after the classification of the land in question was converted from 'Aush' to 'Commercial'. Therefore, it cannot be

said that on the date when the appointment of LPG distributorship was granted in favour of the private respondent, the private respondent was not entitled under the laws of the land to raise construction thereupon for the purpose of construction of a godown for running a distributorship business.

17. Mr. Chakraborty, learned advocate appearing for the petitioner, in course of his argument placed reliance upon a decision of the Hon'ble Division Bench in the case of ***Chhanda Koley Vs. Bharat Petroleum Corporation Limited & Ors.*** reported at **2018 SCC Online Cal. 16849**. The said case is distinguishable on facts as in the said reported case, the character of the land offered was classified as 'Barga' land and also that classification of the land from 'Sali' to 'non-agricultural' was not changed. In view thereof, the said decision is not of any assistance to the petitioner in the case on hand.
18. Mr. Mukherjee, learned counsel further submits that there is no pleading in the writ petition with regard to the fact that the alternate/new land offered by the private respondent was not suitable for the purpose of construction of a godown thereupon. This Court has already made observations in the preceding paragraphs with regard to the suitability of the alternate/new land offered by the private respondent for construction of godown.

19. For all the reasons, as aforesaid, this Court is of the considered view that the writ petition is devoid of any merit and the same is liable to be dismissed. Accordingly, the writ petition stands dismissed without however any order for costs.
20. Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all usual formalities.

(Hiranmay Bhattacharyya, J.)