

07.02.2023
Court No.12
S/L. No. 9
Suvayan/
Sourav

MAT 1424 of 2019
With
IA No: CAN 2 of 2019 (Old No: CAN 12452 of 2019)

Soumitra Hazra
Vs.
Indian Oil Corporation Ltd. & Ors.

Mr. Soumyadip Panda

...for the appellant.

Mr. Puspendu Chakraborty

...for the respondent nos. 1, 2 and 3.

Mr. Suman Dey

...for the respondent no. 4.

Heard Mr. Soumyadip Panda, learned Counsel for the appellant, Mr. Puspendu Chakraborty, learned Counsel for the respondent Nos. 1, 2 and 3 (oil company) and Mr. Suman Dey, learned Counsel for the respondent No. 4.

The writ petition was filed by the present appellant challenging the selection of respondent No. 4 as a candidate for award of contract to him by the oil company for setting up of a petrol pump. The challenge in the writ petition was two folds: i) firstly, that the extent of the land that has been offered by the respondent No. 4 was less than the area of land that was required to be offered as per the advertisement and the brochure, ii) that the land offered was partly “jal” (water) land and, therefore, the same was not

suitable for the purpose of setting up of the petrol pump.

After hearing the learned Counsel for the parties, learned Court below relied on the decision of Caretel Infotech Ltd. Vs. Hindustan petroleum corporation Ltd. & Ors. (Civil Appeal No. 3588 of 2019) arising out of SLP (C) No. 46 of 2019 and eschewed the contentions raised by learned Counsel for the petitioners on facts on the ground that the land offered by the respondent No. 4 pursuant to the invitation to offer is more than required area and “jal” kisan of land being a species of agricultural land can be converted to commercial use as and when required.

Mr. Panda, learned Counsel for the appellant, with all the vehemence at his command submits that the respondent No. 4 has offered land vide R.S. Dag No. 2731 aggregating to 9 decimal of land. But so far as R.S. Dag No. 2731 is concerned three deeds have been submitted by the respondent No. 4; the first deed is a sale deed for 2 decimal of land, the second deed is a sale deed for 3 decimal of land and the third deed is an exchange deed for 4 decimal of land. It is submitted by Mr. Panda that the third deed being a deed of exchange cannot be added to the area of lands offered in the first two deeds as the third deed appertains to exchange of land provided in the first two deeds. Further it is submitted by Mr. Panda, learned Counsel for the appellant that species of “jal”

kishan of land cannot be used for setting up of a petrol pump in as much as such land contains standing water.

Mr. Chakraborty, learned Counsel for the oil company and Mr. Dey, learned Counsel for the respondent No. 4 oppugns such contention of Mr. Panda on the ground that the third deed which is a deed of exchange is not relatable to the first and second deeds and the third deed is in respect of some other lands. It is submitted by them that if total land pertaining to R.S. Dag No. 2731 and R.S. Dag No. 2734 are taken into consideration the total land offered by respondent No. 4 comes to 24 decimals which is more than sufficient as per the norms of the advertisement and the brochure. It is further submitted by them that “jal” land is quite distinct from “pukur” land and there is legal embargo for converting “pukur” land for commercial use but “jal” land, which is a species of agricultural land can be converted to commercial use as and when required.

Mr. Chakraborty, learned Counsel for the oil company produce a letter dated 30.08.2019 subscribed by Block land and Land Reforms Officer, Chandrakona-II, Paschim Medinipur to the effect that the land in question has already been converted from “jal” to “jaljami” and the same was never classified by water bodies as per the official records.

All the aforesaid submissions were taken into consideration painstakingly by Hon'ble Single Judge and keeping in mind the self-imposed restrictions under Article 226 of the Constitution of India which should be adhered to a Judge of the constitutional Court as ruled in the case of Caretel Infotech (Supra), Hon'ble Single Judge eschewed the submissions advanced by learned Counsel for the petitioner/appellant and finding no merit to interfere in the matter, dismissed the writ petition.

After going through the impugned order, we also do not find any infirmity in the said order. Suffice it to say that in a matter of contract, though there is vertical application of the principles of fundamental rights, as enshrined in part III of the Constitution of India, the authority floating the "invitation to tender" is the best Judge so far as their requirement is concerned. When the authority concerned are emphatic on the point that respondent No. 4 has offered sufficient land and the said land is suitable for setting up of a petrol pump, we do not find any scope to interfere in their judgment over the issue. We also do not find any fundamental rights of the petitioner being infringed in the present appeal. Therefore, there is no point in applying the principles of fundamental right vertically in a case of agreement/contract between an instrumentality of the State and a private individual.

Regard being had to the facts and submissions (Supra), we do not find any merit in the appeal and the same is accordingly dismissed.

Before parting with the order we, however, appreciate the pain undertaken by Mr. Panda, learned Counsel for the appellant and the fairness with which he conducted himself in presenting the appeal.

Accordingly, the appeal being MAT 1424 of 2019 along with interim application CAN 2 of 2019 (old No. CAN 12452 of 2019) are dismissed.

There shall be no order as to costs.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)