

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

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

WPA 23874 of 2018

**Arundhuti Saha
Vs.
IOCL & Ors.**

**For the petitioner : Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Neil Basu,
Mr. Sankha Biswas**

**For IOCL : Mr. Manwendra Singh Yadav,
Mrs. Saswati Chatterjee,
Mrs. Satabdi Naskar (Kundu)**

Heard on : 23.08.2023, 24.08.2023.

Judgement on : 24.08.2023.

Bibek Chaudhuri, J.

Indisputably LPG Distributorship was granted on the basis of a letter of Intent (LOI) dated 29th February, 1996 in favour of private respondent No.9. The vacancy notification for the said distributorship was published in a Bengali Daily on 10th October, 1995. Sub-clause 'Gha' of Clause 2 of the said vacancy notification is relevant for the purpose of disposal of the instant writ petition and the same is reproduced below:-

“It is mandatory for the applicant to be the resident of Birbhum, Burdwan and Murshidabad for a period of five years prior to the date of application. However, the resident of the same district where distributorship would be granted would get preference if other eligibility criteria is satisfied.”

It is the case of the petitioner that the petitioner is a permanent resident of Bolpur. However, from the voters identity card of the respondent No.9 in favour of whom LPG Distributorship was granted, it appears that he is a resident of village Bandarkonda, Dumka Sadar, Bihar, presently Jharkhand on the date of issuance of voters identity card dated 5th March, 1995. The petitioner submitted a representation on 28th March, 2011 challenging the residenceship of the respondent No.9.

The learned Advocate for the petitioner further draws my attention to an information received under the Right to Information Act on 19th February, 2016 wherefrom it is ascertained that the father of respondent No.9 used to work at Massanjore Dam Sub Division, Dumka, Jharkhand before his retirement during the period 1993-94 to 1995-96. He also draws my attention that the photostat copy of the admission register issued by the Teacher-in-Charge, Khujutipara RGJ High School, Birbhum where the residential address of the petitioner is recorded as District Santhal Pargana (SP), Bihar.

The learned Advocate for the petitioner next takes me to an order dated 3rd October, 2016 passed in WP No. 17220 (W) of 2016. In the said writ petition it was directed that the Senior Regional Manager, West Bengal State office, Indian Oil Corporation is to consider and dispose of the representation dated 17th May, 2016 made by the petitioner by passing a reasoned order after giving an opportunity of hearing to the petitioner or her authorized representative within a period of six weeks from the date of communication of this order to the respondent no. 6. The Indian Oil Corporation filed an application being CAN/1702/2017 praying for recalling of an order dated 3rd October, 2016 passed in the aforesaid writ petition. The said application was also rejected by a Coordinate Bench of this Court. It is submitted by the learned Advocate for the petitioner that thereafter the petitioner through her learned Advocate made series of letters demanding justice to the respondent authority. Ultimately, on 3rd September, 2018 the Chief Manager (LPG-Operations), Telangana and Andhra Pradesh State Office, Hyderabad disposed of the representation submitted by the petitioner as per the direction passed in WP No. 17220 (W) of 2016. The Chief Manager (LPG-Operations) while passing the reasoned order relied upon the residential certificate of the private respondent issued on 26th October, 1995 by the Block Development Officer, Nanoor

Development Block. Authenticity of the said certificate was enquired by the Oil Corporation and an enquiry was conducted by one Md. Musa, P.A. and A.O. to the Block Development Officer and he seconded the residential certificate of the private respondent stating that the certificate issued by the Block Development Officer, Nanoor on 26th October, 1995 is valid and legal. It is also recorded in the said order that vide letter dated 9th March, 2018 the Chief Manager (LPG-Operations) enquired from Block Development Officer, Nanoor and District Magistrate, Birbhum to confirm the authenticity of the residential certificate issued by the Block Development Officer on 26th October, 1995 clarifying as to whether the private respondent is a permanent resident of village – Sankbaha P.O. - Bandar within Police Station – Nanoor in the district of Birbhum. In response to the same the District Magistrate informed the said Officer that the authenticity of the residential certificate is not verifiable due to lack of official record in this regard.

The learned Advocate for the petitioner has strongly urged that when the District Magistrate was not in a position to verify the authenticity of the residential certificate due to lack of official record how did the Oil Corporation accepted the said residential certificate as valid one. It is surprising to note that the concerned officer who passed the reasoned order asked the private respondent by a letter

dated 9th March, 2018 to confirm as to whether the residential certificate dated 26th October, 1995 was still valid and whether the said certificate has been quashed or set aside by any Court of law. The private respondent obviously would say that the said residential certificate is valid and it was not set aside by any Court of law. Therefore, only on the basis of such residential certificate dated 26th October, 1995 the authenticity of which could not be examined by the District Magistrate, Birbhum due to lack of record was accepted by the Oil Corporation and the respondent no. 9 was granted distributorship of LPG.

Learned Advocate for the Oil Corporation, on the other hand, submits that page 50 is the application for distributorship submitted by the petitioner. In column no. 7 at page 52 the petitioner was directed to attach an attested copy of the residential certificate signed by Revenue Officer not below the rank of Tahashildar or a Deputy Tahashildar in charge of an independent Sub-Taluka stating that you have been a resident of the District for a period not less than 5 years immediately preceding the date of the application. It is submitted by the learned Advocate for the petitioner that the application was submitted by respondent no. 9 sometimes in 1995 on the basis of an advertisement dated 10th October, 1995.

It is further submitted by the learned Advocate on behalf of the Oil Corporation that the Private Assistant and the Administrative Officer to the Block Development Officer, Nanoor conducted an enquiry in order to ascertain the veracity of the residential certificate dated 26th October, 1995. In the said report he stated that the respondent No.9 submitted the schedule of his homestead land which is in the name of his father. He also submitted two deeds of parcha, a certificate from the local Ration Dealer, a certificate of Pradhan, Charkagram Gram Panchayat, Panchayat tax receipt Caste Certificate, Sports Certificate etc. where it is clearly mentioned that the respondent No.9 is a permanent resident of Village Sankbaha, P.O. Bandar, District Birbhum. The concerned Officer passed the reasoned order on 3rd September, 2018 on the basis of the said enquiry report. Therefore, the petitioner cannot challenge the said reasoned order.

It is also submitted by the learned Advocate for the respondent that a panel of distributorship remains valid for a period of 3 years. After the expiry of the said period, the panel expires and even it is held by this Court that the reasoned order suffers from irregularity, the appointment of the respondent No.9 cannot be set aside because at this stage the petitioner cannot claim distributorship in place of the respondent No.9.

Having heard the learned Counsels for the petitioner as well as the Indian Oil Corporation Limited and on careful perusal of the materials on record, it appears that the date of birth of the respondent No.9 is on 26th December, 1970. He made an application for distributorship in the year 1995 on the basis of the advertisement published on 9th October, 1995. The Block Development Officer, Nanoor gave residential certificate stating, *inter alia*, that the respondent No.9 is a permanent resident of Village Sankbaha within Police Station Nanoor and he was known to the Block Development Officer for preceding three years. Thus, the Block Development Officer admittedly did not know as to whether respondent No.9 used to reside at Village Sankbaha prior to 26th October, 1992. On the contrary, the EPIC Card of the respondent No.9 shows that it was issued on 5th March, 1995 and his residential address was recorded as House No.69, Village: Bandarkonda, Post: Massanjore, District: Dumka. He is a voter as per the EPIC card of 160, Dumka Legislative Assembly.

The Enquiry Officer who submitted the reasoned order took pain to send the certificate issued by the Block Development Officer, Nanoor to the District Magistrate, Birbhum for verification. But the District Magistrate, Birbhum could not verify authenticity of the said

document due to lack of records. The said fact is recorded in the reasoned order by the concerned Officer.

Therefore, I have no other alternative but to hold that the respondent authority failed to verify the authenticity of residential certificate of the respondent No.9. At least from the address recorded in the EPIC card of the petitioner, non-availability of any record as to the residential proof of respondent No.9 in the office of the District Magistrate are sufficient proof that the BDO issued the residential certificate on mere asking by the respondent No.9.

It is vehemently urged by the learned Advocate on behalf of the Oil Corporation that the panel of distributorship remains valid for three years. Therefore, the panel on the strength of which the respondent No.9 was granted distributorship and the prayer of the petitioner was rejected, lapsed on the expiry of 1998. Therefore, even if the distributorship of the petitioner is cancelled, the Oil Company will not be able to give licence of distributorship to the petitioner.

The learned Advocate for the respondents has also submitted that the petitioner cannot get any relief in the instant writ petition because the writ petition was filed in 2018. Therefore, the writ petition is vitiated by delay. As the petitioner failed to approach the

Court within reasonable period of time, her prayer cannot be taken in to consideration.

The learned Advocate for the petitioner has vehemently opposed the said submission made by the learned Advocate for the respondent. It is submitted by him that the ground of delay and laches in filing the writ petition should be considered under particular facts and circumstances of a case. The petitioner initially challenged the order of distributorship issued in favour of the respondent No.9 in the year 2016 by filing WP No.17220(W) of 2016. This Court was pleased to direct the Oil Company to dispose of the petitioner's prayer by passing a reasoned order. The said reasoned order was passed on 3rd September, 2018. Immediately on 28th November, 2018, the petitioner has filed the instant writ petition. Therefore, there was no delay in approaching the Court by the petitioner.

In support of his contention, the learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***Urban Improvement Trust Vs. Bheru Lal and Ors.*** reported in ***(2002)7 SCC 712.***

The learned Advocate for the respondent submits that the respondent No.9 submitted deeds of convenience in respect of the land and permanent residence of the respondent No.9. This Court is of the view that existence of some landed property in a particular

district in the State of West Bengal does not mean that he is a permanent resident of the said area. A person having residence in Bihar or Jharkhand is not debarred from purchasing land including residential property at any place in the State of West Bengal. Therefore, the said documents are not material documents to take a final decision on the question as to whether the respondent No.9 used to stay in Birbhum, Burdwan or Murshidabad for continuous five years preceding the date of issue of licence of distributorship.

It is the exclusive authority of the Oil Company to grant distributorship of a licence. The power of the writ Court is in the nature of judicial review of administrative order. I am constrained to hold that the administrative order dated 3rd September, 2018 passed by the Chief Manager, (LPG-Operation) did not consider certain important aspects which has been recorded hereinabove. Therefore, the said reasoned order cannot be upheld.

At the same time I am not unmindful to note that the panel in question remained in force for three years. The time of the panel was not extended by this Court in previous writ petition No.WP 17220(W) of 2016.

In view of such circumstances, while setting aside the impugned reasoned order dated 3rd September, 2018, this Court directs the Oil Corporation to decide the issue of residential certificate of respondent No.9 afresh giving opportunity to the petitioner within 60 days from the date of this order. While deciding the issue, if it is found that the petitioner is otherwise eligible to have the distributorship of LPG, the respondent

authority shall consider as to whether another distributorship can be created and licence can be granted in favour of the petitioner.

(Bibek Chaudhuri, J.)

***Srimanta /
Mithun
A.R. (Ct).
Sl No.10.***