

Form No. J (2)

**HIGH COURT AT CALCUTTA
IN THE CITCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M. A. T. 5 of 2022
IA NO:CAN/1/2022

INDIAN OIL CORPORATION LIMITED AND ORS.

VS.

LAXMI BASFORE

M. A. T. 55 of 2021
IA NO:CAN/1/2023

LAXMI BASFORE

VS.

**SENIOR AREA MANAGER,
INDIAN OIL CORPORATION LIMITED AND ORS.**

For the applicants :Mr. Amit Kumar Nag

For the respondent :Ms. Juin Dutta chakraborty

Hearing concluded on : 17.11.2023.

Judgment on : 17.11.2023.

Debangsu Basak, J. :

1. Two appeals are taken up for analogous hearing as they emanate out of the same judgment and order dated August 19, 2021 passed by the first Court in WPA 705/2019, IA NO.CAN/1/2020.
2. By the impugned judgment and order, the learned trial Judge, set aside a selection process upto the first draw. The learned Judge

directed the oil Company [appellant] to proceed with the selection of the successful candidate in accordance with the brochure/guidelines governing the selection process from the stage of the first draw.

3. Both the oil Company and the writ petitioner are aggrieved by the impugned judgment and order.
4. Oil Company initiated a selection process for the purposes of grant of Liquefied Petroleum Gas [LPG] distributorship at rural areas. The writ petitioner participated in such selection process.
5. The selection process was governed by the brochure/guidelines namely, brochure on unified guidelines for selection of LPG distributor of June, 2017. For the sake of convenience, it is referred to as the brochure.
6. It is the contention of the oil Company that, the oil Company adhered to the brochure in letter and spirit. Candidature of the writ petitioner was found to be valid. The writ petitioner was allowed to participate in the selection process. A draw took place on May 29, 2018 where a candidate became successful. On the failure of the successful candidate to submit requisite documents and pay the requisite fees, he was disqualified. A first redraw took place on November 3, 2018 where the writ petitioner became successful. First redraw took place in accordance with the brochure, the writ petitioner was required to submit certain documents and pay the specified fees within the time

limit stated. Intimation with regard thereto was sent to the writ petitioner by a letter dated November 4, 2018 through electronic mail. A second letter of intimation was sent to the writ petitioner by electronic mail dated November 12, 2018. The writ petitioner did not comply with the requisition. The candidature of the writ petitioner was cancelled by a letter dated December 18, 2018 which was sent under registered post with Acknowledgement due card. Subsequent thereto, a second redraw was held where, another person was found to be successful. It is thereafter, that the writ petitioner wrote the letter dated January 3, 2019 requesting for reconsideration of the candidature of the writ petitioner and permitting the writ petitioner to comply with the requisition of depositing the relevant documents and payment of the requisite fees.

7. It is contended on behalf of the oil Company that, third party interest already intervened and that, since the writ petitioner was aware of the terms and conditions governing the selection process including the brochure, and since adequate opportunity to comply with the intimation were given to the writ petitioner, the oil Company proceeded in accordance with the brochure and allotted the distributorship to the successful candidate. It is contended that, the learned trial Judge erred in cancelling the selection process of the successful candidate and in directing the selection to commence from the first redraw.

8. Learned advocate appearing for the writ petitioner contends that, the writ petitioner belongs to a backward community and that she is a member of the Scheduled Caste/Scheduled Tribe. The writ petitioner participated in the selection process. The writ petitioner was found to be successful on the first redraw. The writ petitioner never received the intimation requiring the writ petitioner to deposit the documents and pay the requisite fees, dated November 4, 2018 and November 12, 2018. Therefore, she submits that, the oil Company cleverly managed the selection process by suppressing the intimation to the writ petitioner. The oil Company thereafter undertook the second redraw where, the so-called successful candidate was selected. She submits that, by such process, the writ petitioner was deprived of a legitimate right. Since, the writ petitioner did not receive the two intimations dated November 4, 2018 and November 12, 2018, the question of the writ petitioner failing to comply with such requisition does not arise. In any event, the writ petitioner applied for extension of time to comply with such requisition and that, given the nature of the selection process and given the fact that the writ petitioner belongs to a backward community, the writ petitioner was entitled to one opportunity to comply with the requisitions.
9. Learned advocate appearing for the writ petitioner points out that, the successful candidate was the only person present at the time of

second redraw. Moreover, at no stage of redraw, there was any public advertisement about the same.

10. As noted above, the writ petitioner participated in the selection process of appointment of a LPG distributor. The candidature of the writ petitioner was found to be valid. She participated in the draw of lots held on May 29, 2018 where she was not successful. The successful candidate found on May 29, 2018 did not comply with the subsequent requirement and, therefore, candidature of such successful candidate was cancelled. A first redraw was held on November 3, 2018 where, the writ petitioner became successful. At the time of the first redraw held on November 3, 2018, the writ petitioner was not present. Only three persons were present.
11. The records demonstrate that, two intimations were sent to the writ petitioner by electronic mail dated November 4, 2018 and November 12, 2018 requiring the writ petitioner to deposit the amounts specified and to submit the documents required. The first intimation dated November 4, 2018, noted that, the candidature of the writ petitioner would be cancelled in case, the writ petitioner failed to deposit the amounts and the documents listed therein within seven working days from the date of intimation. Such term was reiterated in the second intimation dated November 12, 2018.
12. The fact that, candidature of a successful candidate would stand cancelled on the failure to comply with the requisition subsequent to

the draw of lots appears from the brochure governing the selection process. It appears in clauses 9 and 17 thereof.

13. Therefore, the writ petitioner was well aware from the time of the selection process that compliance with the intimation within the time stipulated was a material consideration.
14. It is not the contention of the writ petitioner that, the intimations dated November 4, 2018 and November 12, 2018 sent by electronic mail to her, was not delivered at the e-mail id provided by her.
15. Significantly, the writ petitioner received the letter of cancellation which was sent under registered post with A/d card dated December 18, 2018. She responded thereto by a letter dated January 3, 2019.
16. In her letter dated January 3, 2019, the writ petitioner, did not state that, she did not receive the two electronic intimations. Rather, she stated that, she required time to comply with the requisitions.
17. The case of non-receipt of the electronic mail now contended was not made out contemporaneously. It is obviously an afterthought.
18. The writ petitioner was found successful on a redraw. It is the contention of the writ petitioner that, redraw can occur only on due publication of the same. Going by her contention, then she cannot be considered to be a successful candidate as, she was found to be successful on redraw and on her own standard such redraw did not occur after due advertisement.

19. It appears from the records that, the redraw were held upon intimations to all the candidates, who were qualified in the selection process. It is not the claim of the writ petitioner that, she was not intimated about the first redraw where she was found to be successful. Therefore, she cannot be heard to contend that the redraw took place at the behest of the oil Company stood vitiated.
20. The next contention of the writ petitioner is that, the present successful candidate was present only during the second redraw. Again, it is not the case of the writ petitioner that, the duly qualified candidates were not intimated about the second redraw.
21. In such circumstances, we set aside the impugned judgment and order of the learned first Court. We find no merit in the writ petition of the writ petitioner.
22. MAT/5/2022 is allowed. All connected applications are disposed of accordingly.
23. MAT/55/2021 is dismissed without any order as to costs.
24. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)