

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

W.P.A. No. – 271 of 2022

IN THE MATTER OF

Sri Subhankar Pati.

Vs.

Union of India & Ors.

For the Petitioners : **Mr. Debabrata Acharyya, Adv.,**
Mr. Soumen Bhattacharyya, Adv.,
Mr. Subhankar Das, Adv.,
Ms. Payel Dey Adv.

For the respondent
No. 2 to 4 : **Mr. Manwendra Singh Yadav, Adv.**
Ms. Saswati Chatterjee, Adv.,
Ms. Satabdi Naskar (Kundu) Adv.

For the Private respondent
No. 6 : **Mr. Mrinal Kanti Ghosh, Adv.**
Mr. Chandra Nath Sarkar, Adv.,

Reserved on : **20.06.2024**

Judgment on : **09.07.2024**

Subhendu Samanta, J.

1. The Indian Oil Corporation Limited (respondent No. 2) invited applications for LPG Distributorship under Indian Oil Corporation Limited in a local newspaper for the location of Mouja, Dundipur under Block Horkhali, PS Sutahata, District Purba Medinipur.

2. The present petitioner applied for the same. Initially a draw of lots was held wherein the present petitioner was selected as a successful candidate amongst the other

applicants. The petitioner was asked to make initial deposits as well as to furnish the documents relating to the land for prepared godown and show room within the subject location. Petitioner complied the same but it was intimated by the respondent authority that the land offered for construction of LPG show room is not within the subject location; so, he was requested to provide any alternate land within the subject location for construction of show room. Accordingly, petitioner submitted deeds and documents regarding alternative land proposed show room within the subject location. After Field Verification Committee (FVC) of the respondent No. 2 has rejected the alternative land on the ground that the lease deed in respect of land in question was registered after the final date of submission of application.

3. Challenging the said order the present petitioner approached this court. A co-ordinate bench of this Court in WP 20029(W) of 2018 as passed the order on 11.01.2019 directing the respondent authority to consider the representation of the petitioner and to pass a reasoned order after giving an opportunity of hearing to the petitioner. The respondent authority is further directed, till such decision is taken and communicated to the petitioner the grant of distributorship in respect of the location in question shall be remained stayed.

4. It is the case of the petitioner that in spite of the passing of a specific order of this court the respondent authority by violating the direction of this court did not

consider the representation of the present petitioner by giving a reasonable opportunity of being heard and more so they have issued the distributorship license in favour of the private respondent No. 6.

5. Hence this writ petition was filed seeking necessary direction upon the respondent authority.

Mr. Debabrata Saha Roy Learned Advocate appearing on behalf of the petitioner submits that the act and action of the respondent authority is liable to be quashed on following grounds.

***Firstly,** action of the authority regarding issuance of license by violating the order of this court is nullity in the eye of law.*

***Secondly,** the licence issued in favour of the private respondent No. 6 is violative to the mandate and provision of Brochure of Unified Guidelines of Oil Companies for the selection of LPG Distributors.*

6. The respondent No. 2 filed a report in the form of affidavit against the writ petition. Learned Advocate Manabendra Singha Yadav appearing on behalf of the respondent No. 2 to 4. submits that initially petitioner was selected in draw of lots; during field verification, petitioner found ineligible in as much as the land offered for show room was not found to be at the advertised location. The petitioner was asked to submit alternative land, in response to the same, petitioner submitted a registered lease deed dated 28th June,

2018 which was registered after the last date of submission of application i.e. 26th September, 2017. As the alternate land offered by the petitioner was found not meeting the eligibility criteria, thus his candidature was rejected. However, the present petitioner approached this court in a writ petition and wherein the said writ petition was disposed of on 11th of January, 2019.

7. The Learned Advocate for the respondent no. 2 submits that the order dated 11th January 2019 was not received by the office of the respondent No. 2 company, thus the personal hearing of the present petitioner was not conducted during the stipulated time as mentioned in the said order. Only after receiving the contempt petition in CPAN 1046 of 2019, the respondent company first time came to know about the direction of order dated 11th January 2019. After receiving such order several opportunity of hearing was offered to the writ petitioner, but he deliberately refused to participate in the personal hearing. It is further case of respondent that, in the mean time, after rejection of petitioner's candidature, a new draw of lots was conducted wherein the private respondent No. 6 became successful. Field Verification of respondent No 6 successfully fulfilled of the stipulated eligibility conditions and thus she was selected. It is the further case of the respondent No. 6 that the letter of appointment could not issued to the Respondent No. 6 since the direction contained in the order dated 11 January, 2019 could not be carried out due to the

non-presence of the petitioner in the hearing. The respondent No. 6 thereafter filed a writ petition being No. WPA 1345 of 2021 inter alia seeking direction upon the respondent authority to take immediate steps for commission work for her LPG Distributorship at the advertised location. A specific direction was passed by this court to dispose of the matter of “Subhankar Pati”. (The present writ petitioner) and come with a specific instruction. Thereafter present petitioner was again called upon for personal hearing; in spite of the receiving such notice, petitioner did not turn up, a further notice was served thereafter, he also did not turn up; accordingly, representation of the present petitioner was disposed on 22.09.2021 by a reason order.

8. **Point No.1**- Mr. Saha Roy submits that the Act of the authority Concerned regarding issuance of licence in favour of respondent No. 6 is violative to the order passed by this court on 11 January 2019. Mr. Saha Roy submits that an action which is violative to the order passed by this court, is itself nullity. Thus license issued in favour of the respondent No. 6 is liable to be quashed as it is nullity.

9. In support of his submission Mr. Saha Roy cited a decision of this court reported in **Manindra Nath Halder and And Anr. Vs. State of West Bengal and Ors.** reported in **1994 CWN 338**

“Accordingly, in my view, the charge sheet No. 16 dated 15th August, 1987 is illegal and void in as much as the same was submitted flouting and/or ignoring

the judgment of the Division Bench of this Court. it is a cardinal principle that if any action is taken violating the decision or order passed by the Court the same is a nullity and non..... in the eye of law”.

10. Mr. Saha Roy also cited decision of this court passed in **Gourishankar Pani and Ors. Vs. State of West Bengal** reported in **AIR 1996 Cal 13**. By citing **Gourishankar Pani**, Mr. Saha Roy argued that in that case ad-hoc Committee of a school; have taken charge of the school in violation of an interim order passed by this court wherein this court has directed maintenance of status quo as regarding the functioning of the Managing Committee of the school taking over charge of the ad-hoc committee during the subsistence of the interim order of this court ordered to be nullity.

11. Mr. Saha Roy also cited a decision of Hon'ble Apex Court in **Chairman-cum Managing Director Coal Field India Limited and Ors. Vs. Ananta Saha and Ors Reported in (2011) 5 SCC 142**.

It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such fact situation, the legal maxim sublatō fundamēto cadit opus is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

12. Refuting the submission of Mr. Saha Roy, Learned Counsel, for the IOCL submits that the order of this court dated 11th January 2019 was not at all violated. As the order was not communicated, the personal hearing of petitioner

could not take place within due time. It is the positive submission of the Learned Counsel for the IOCL that the representation of the petitioner was disposed of after giving several opportunity to the petitioner. On all occasions the petitioner intentionally did not appear on personal hearing. Thereafter, by virtue of the direction of this court in WPA 1345 of 2021 the representation of the petitioner was finally disposed on 22nd September 2021. After disposal of such representation the commissioning of license was concluded by issuance of license in favour of the respondent No. 6. It is further argument of IOCL that though respondent No. 6 was selected on subsequent draw of lot but the license was not issued before disposal of the representation. It is final argument of the IOCL that, the issuance of license is not at all nullity.

13. Learned Counsel appearing on behalf of private respondent No. 6 argued that the instant writ petition is not maintainable. Respondent Authority has selected respondent No. 6 to be successful candidate. The decision of respondent authority can not come under the scope of judicial review by this court.

14. He argued that while exercising power of judicial review the court is required to concern primarily as to whether there has been any infirmity in the decision making process. The court can certainly examined whether decision making process was reasonable, rational in arbitrary or violative to

Article 14 of Constitution but court cannot examine the merit of decision of the concerned authority.

15. In support of his contention he cited a decision of Hon'ble Supreme Court in **Jagdish Mandal Vs. State of Orissa and Ors. reported in (2007)14 SCC 517**

Scope of Judicial Review of award of contracts:

18. We may refer to some of the decisions judicial review of award of contracts. of this Court, which have dealt with the scope of

18.1) In Sterling Computers Ltd. vs. M & N Publications Ltd. [1993 (1) scc 445], this Court observed:

"While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the decision making process..... the courts can certainly examine whether 'decision making process' was reasonable, rational, not arbitrary and violate of Article 14 of the Constitution."

18.2) In Tata Cellular vs. Union of India [AIR 1996 SC 11], this Court referred to the limitations relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts, thus:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative action. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract More often than not, such decisions are ma qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facets pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

16. Learned Counsel for IOCL also cited some decisions on the same propositions they are

(1) JSW Infrastructure Limited and Anr. Vs. Kakinara Sea Ports Limited (2017) 4 SCC 170

(2) Sanjay Kumar Shukla Vs. Bharat Petroleum Limited and Ors. (2014) 3 SCC 493

17. Heard the Learned Advocates; perused the order of this court dated 11th January 2019 passed in WP 20029 (W) of 2018. The operative portion of the order is read as follows:

“In View of the above submission the instant writ petition is disposed of directing the Deputy General Manager Indian Oil Corporation being the respondent No. 2 herein to consider the application that has been forwarded by the petitioner on 18th December 2018 in response to their letter dated 10th December 2018 within a period of four weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner. The respondent authority shall pass a reasoned order and communicate the same to the petitioner within a fortnight thereafter. Till such

time a decision is taken by the said respondent and communicated to the petitioner the grant of distributorship in respect of the location in question shall be remain stayed”.

18. It appears from the direction of the order of this court that till a reasoned order is taken by the respondent and communicated to the petitioner the grant of distributorship in respect of location in question be remained stayed.

19. The fact reflected distributorship in favour of the respondent No. 6 is granted after a reasoned order dated 22.09.2021 was arrived at by the IOCL. The IOCL has successfully administered by submitting affidavit along with the documents that several opportunity of hearing was given to the petitioner but, he did not appear in any of the personal hearing in spite of receiving the notices.

20. Considering the aspect, I am of a view that the Act of the IOCL regarding issuance of the distributorship in favour of Respondent No. 6 has been done after the reasonable order was passed and properly communicated to the petitioner through registering consignment. It is true the Letter of Intent was issued in favour of the respondent No-6 prior the reasoned decision; the LOI is an intermediate procedure before issuance of license. The procedure in response to the notification was not at all stalled by this court. Accordingly, the act of the authority (IOCL) is not appeared to me nullity in the eye of law.

21. Thus the first point decided against the petitioner.

22. **Point No.-2** Mr. Saha Roy argued that the license issued in favour of private respondent No. 6 is violative to the mandate and provision of Brochure of Unified Guideline for the selection of LPG distributorship. Mr. Saha Roy specifically pointed out that initially the present petitioner was selected and offered a land for construction of show room and godown being Plot No. – 284, under Mouja- Dundipur, P.S- Sutahata, District- Purba Medinipur. The petitioner was denied license on the ground that registered lease deed in favour of the petitioner was executed after the final date of submission of application. The respondent No. 6 also offered same land for construction of godown and show room which was approved by the authority concern beyond the procedure of Brochure; he mentioned the specific portion of the Brochure wherein it has been mentioned as follows:-

The same piece of land for showroom cannot be offered by more than one applicant for a particular location against the advertisement. In case it is found at any stage that the same piece of land for showroom has been offered by more than one applicant for the same location of the advertisement, then all such applications would be rejected or if selection has been done, then the same would be cancelled.

23. Mr. Saha Roy argued that when respondent No. 6 offer the land the authority must have rejected the offer of respondent No.6 in terms of the Brochure as mentioned above.

24. Learned Advocate appearing on behalf of the IOCL submits that the authority has properly followed the guideline of the Brochure and had rejected the offer the respondent No. 6

the land offered by the petitioner is separate to the land offered by respondent No. 6.

25. Heard the Learned Advocate. Perused the lease deed in question standing in favour of petitioner as well as respondent No. 6 both offered Plot No- 284, under Mouja Dundipur, at PS Sutahata, District Purba Medinipur. The lesser of the lease deeds are different and they are co-sharers and joint owners of the same plot. Plot may be same, but title and possession of the co-sharers over the plot is different. The entire area of the plot is 4 Dec.; the co-sharers have 2 Dec. each.

26. The Brochure mentioned term “piece of land”, not the “land”. Thus it appears that the “piece of land” offered by the petitioner is different to “piece of land” offered by respondent No. 6. Thus in my view the land offered by respondent No. 6 and accepted by the concerned Authority is not violative to the provision of the Brochure.

27. Mr. Saha Roy argued that the respondent No. 6 offered the land which is lease hold under the name of her son. Respondent No. 6 is not the “owner” of the said land. The land possessed through leasehold right by the son of respondent No. 6, cannot offered by virtue of the provision of Brochure.

28. Mr. Saha roy has pointed out the definition clause of the Brochure in 1(u) and 1(w) and interpreted difference between definition of ‘owned’ or “ownership”. He submits that son, being a family member of respondent No. 6 cannot offer a

property under his lease hold right for use of godown under licence of respondent No. 6. On the other hand Learned Counsel for IOCL has submitted that the Brochure is very much clear about the use of land possessed by a family member can be offered for LPG show room or godown.

29. Heard the Learned Advocate. Perused the Brochure. The definition of the “family unit” and “ownership” or “own” has referred in clause 1(u) and 1(w) of the said Brochure as follows:-

1(u). Family Unit for multiple dealership/distributorship norm means the following:

i. In case of married person/ applicant, 'Family Unit' will consist of individual concerned, his/her Spouse and their unmarried son(s)/daughter(s).

ii. In case of unmarried person/ applicant, 'Family Unit will consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s).

iii. In case of divorcee, 'Family Unit' will consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her.

iv. In case of widow/widower, 'Family Unit will consist of individual concerned, unmarried son(s)/unmarried daughter(s).

v. Family member of an employee of Oil Marketing Companies means:

The wife or husband as the case may be of the employee, whether residing with him/her or not, but does not include a wife or husband as the case may be separated from the employee by a decree or order of a competent Court. Sons or daughters or step-sons or step-daughters of the employee and wholly dependent on him, but does not include a child or step-child who is no longer in any way dependent on the employee or of whose custody the employee has been deprived by or under any law.

Any other person related whether by blood or marriage to the employee or to such employee's wife or husband and wholly dependent on such employee.

1(w). 'Ownership' or "Own" for godown/showroom for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak Type of Distributorship means having:

a. Ownership title of the property

Or

b. Registered lease deed having minimum 15 yrs of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any).

Additionally, applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of 15 years from the date of advertisement. The applicant should have ownership as defined under the term 'Own' above in the name of applicant / member of "Family Unit" (as defined in multiple dealership / distributorship norm of eligibility criteria)/parents (includes Step Father/Step Mother). grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law of the applicant or the spouse (in case of married applicant) as on last date for submission of application as specified either in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given above, consent in the form of a declaration from the family member(s) will be required.

In case the share of land in the jointly owned property by the applicant/member of "Family Unit as defined in multiple dealership/distributorship norm)/parents & grandparents (both maternal and paternal) of the applicant or the spouse with any other person(s) meets the requirement of land including the dimensions required, then that land for

godown/showroom should qualify for eligibility as 'own' land subject to submission. of 'No Objection Certificate' in the form of declaration from other owner(s).

30. “Family Unit” means and includes unmarried son “Ownership” or “Owned” for godwon/show room means the ownership upon title of the property or registered lease deed having minimum 15 years old valid lease period commencement on the date of advertisement up to the last date of submission of application. The Clause 1(w) has specifically mentioned that the licensee may use the land of his/her family unit which was either owned by title of the property or by lease hold right by any of the family unit of such licensee. The declaration/no objection as mentioned in 1(w) (b) of the Brochure is required if the offered land is under ownership or co-ownership of more than one family members.

31. The Brochure is required to be interpreted in its plain meaning. The argument advanced by Learned Counsel of the petitioner appears to me not acceptable. The impugned lease deed in question standing in the name of unmarried son of Respondent No. 6, can be offered.

On plain reading of Clause 1((u), 1(w) of the Brochure, I am of a clear view that the licensee may offer the land possessed or owned by a person within of the family unit of the licensee. Under the above observation the objection raised by petitioner is turned down.

32. However, it appears that the present petitioner is a unsuccessful candidate but preferred the writ petition only to restrain the respondent No. 6, so that, she may not operate the license. The concerned Authority has correctly decided the matter according to the Brochure.

33. I find no justification to interfere with the decision of the concerned authority. I make it clear this writ court cannot interfere with the merit of the decision of competent authority but only the decision making process can be looked into by this writ court as to whether it is unbiased, arbitrary or illegal. The Hon'ble Apex Court in **Sanjay Kumar Shukla Vs. Bharat Petroleum and Ors.** Reported in **(2014) 3 SCC 493** has specifically made a caution to entertain this type of writ petitions; It is as held that:-

We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast-changing economic/ market scenario are some of the pitfalls that may occur.

34. On the above observation the point No- 2 is also decided against the petitioner.

35. Considering the entire materials and the observation made above. I am of a view that the instant writ petition being merit less cannot succeed.

36. The instant writ petition is disposed of with the above observations.

37. Connected applications if pending are also disposed of. Interim order, if any, passed during pendency of this matter is also vacated.

38. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)