

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

THE HON'BLE JUSTICE CHITTA RANJAN DASH

And

THE HON'BLE JUSTICE PARTHA SARATHI SEN

FMA 3 of 2020

With

CAN 1 of 2019 (Old No. CAN 4654 of 2019)

Subhodeb Chaudhuri..

-Vs-

Union of India & Ors.

For the Appellants	:	Mr. Sumit Ray, Adv., Ms. Sarda Sha, Adv., Ms. Eshita Aich, Adv.
For the IOCL	:	Mr. Subhankar Chakraborty, Adv Ms. Ruchira Manna, Adv.
For the private respondent	:	Mr. Alak Kr. Ghosh, Adv., Mr. Fazlul Haque, Adv.

Hearing concluded on: 05.04.2024.

Judgment on: 18.04.2024.

PARTHA SARATHI SEN, J. : -

1. In this appeal the Order dated March 14, 2019 as passed in WP No. 14441 (W) of 2018 as passed by the learned Single Judge has been assailed by the appellant who was the writ petitioner before the Writ Court. By the impugned order learned Single Judge considered the subsequent report of BL&LRO regarding location of the proposed showroom of the private respondent no.9 and found no infirmity in the

action of the respondent no.2/Oil Company and thus dismissed the said writ petition.

2. In support of the instant appeal learned advocate for the writ petitioner/appellant at the very outset submits before this Court that though the present appellant was initially selected for draw of selection of the LPG Distributorship but subsequently the writ petitioner/appellant was found to be disqualified. It has been contended further that from a reliable source the writ petitioner/appellant came to learn that the private respondent no.9 also failed to fulfill the criteria for obtaining LPG Distributorship and accordingly the candidature of the private respondent no.9 was cancelled. However in a clandestine manner the private respondent no.9 was again selected despite the protest raised by the writ petitioner/appellant pointing out the discrepancies regarding the location of the showroom of the private respondent no.7.

3. Drawing attention to page nos.54 and 54A of CAN 4654 of 2019 it has been submitted on behalf of the writ petitioner/appellant that the respondent no.2 made a communication dated 28.11.2016 with the respondent no.7 wherein the respondent no.7 categorically stated that the proposed land for showroom of the private respondent no.7 is not in the advertised location, Baisnabnagar. It is argued further that all on a sudden the respondent no.2/Oil Company relied on a certificate dated 10.04.2018 purportedly issued by the BL&LRO, Kaliachak, Malda and thus granted the said LPG Dealership to the writ petitioner in utter violation of the guidelines for selection of regular LPG Distributorships.

4. Drawing attention to Clause 10(ii) of Guidelines for Selection of Regular LPG Distributorships it is argued that a redraw is required to be done in the event a selected candidate's candidature is found to be rejected during the field verification. It is thus argued that for not doing the redraw and for allotting LPG Distributorship to the private respondent no.7 in contravention of the provisions of the aforementioned guidelines the learned Single Judge ought to have issued a writ directing the respondent no.2/Oil Company to revoke the license of the private respondent no.7. Learned advocate for the appellant thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned order.

5. Per contra, learned counsel appearing for the respondent no.2/ Oil Company submits before this Court that since in his writ petition the writ petitioner has prayed for negative prayers, learned Single Judge is very much justified in rejecting the petitioner's writ petition. Learned counsel for the respondent no.2/ Oil Company has placed his reliance upon the decision of the Hon'ble Supreme Court namely; ***Fuljit Kaur vs. State of Punjab and Ors*** reported in ***(2010) 11 SCC 455***.

6. Learned counsel for the respondent no.3 submits further that admittedly in course of field verification of the land offered by the respondent no.7 it was found that the offered land for showroom was not in the advertised locations and for the said reason the candidature of the private respondent no.7 was initially cancelled. However, while considering the representation made by the private respondent no.7 the

respondent no.2/ Oil Company took up the matter with the District Magistrate, Malda and on receipt of the certificate bearing memo no. BL&LRO/KCK-iii/144 dated 10.04.2018 it reveals that the offered land by the private respondent no.7 is situated within Baishabnagar location Malda i.e. in the location as mentioned in the relevant advertisement.

7. It is further argued on behalf of the respondent no.2/Oil Company that in view of Clause 13 (ii) of the Brochure and Guidelines for Selection of LPG Distributorships for the year 2016 there is scope for re-examination by the Head of State/Regional/Zonal Office on receipt of complaint/representation from the selected candidate regarding rejection of his candidature and the said rule would apply also for the pending locations which were advertised under the selection guidelines prior to July, 2016.

8. In order to decide as to whether the writ petitioner/appellant being an unsuccessful candidate has got any right to challenge the selection process of the respondent no.7 we propose to look to the view taken by us in the case of ***Md. Fakuruddin Biswas vs. State of West Bengal and Ors. in MAT 1354 of 2022*** disposed on 08.04.2024 wherein both of us observed the following:-

“9. Before proceeding to discuss the submission advanced by the learned Counsel for the parties, let us make it clear that an applicant who is otherwise ineligible has no right to challenge selection of another on the ground that the persons selected also had no eligibility criteria. Such a petitioner if he wants to succeed in a writ 4 petition has to establish by pleadings and

documents that he or she is also otherwise eligible but his or her case has not been considered favourably and provision of Article 14 has been grossly violated.”

9. Such being the position we have again no hesitation to hold that the present appellant being an unsuccessful applicant has got no right and /or *locus standi* to challenge the selection of the private respondent no.7 in absence of any pleading regarding violation of Article 14 of the Constitution.

10. On perusal of the entire materials as placed before us we find that while considering the candidature of the private respondent no.7 during field verification it has been noticed by the office of the respondent no.2/Oil Company that the offered land of the respondent no.7 is not within the location as mentioned in the advertisement and accordingly the candidature of the respondent no.7 was cancelled by respondent no.2/Oil Company.

11. It appears to this Court that on receipt of the representation from the private respondent no.7, the Siliguri Area/ Zonal Office of the respondent no.2/Oil Company took up the matter with the District Magistrate, Malda seeking confirmation of the exact location of the offered land by the respondent no.7 and in response to the said letter the BL&LRO, Kaliachak III, Malda, under memo no. BL&LRO/KCK-iii/144 dated 09.11.2017 confirmed that the said plot of land falls under Baisnabnagar locality.

12. In course of his submission learned counsel for the appellant has failed to satisfy us as to why the aforesaid letter dated 09.11.2017 as issued by the appropriate authority cannot be taken into consideration especially when BL&LRO, Kaliachak, Malda is the appropriate authority to say as to where the offered land is situated. We are thus satisfied that the respondent no.2/Oil Company acted within their guideline while considering the representation of the private respondent no.7.

13. We thus find no merit in the instant appeal and accordingly the instant appeal is dismissed. The impugned order dated March 14, 2019 as passed by the learned Single Judge in WP no. 14441 (W) of 2018 is thus affirmed.

14. All pending interim applications are disposed of.

15. There shall be no order as to costs.

16. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree,

(CHITTA RANJAN DASH, J)

(PARTHA SARATHI SEN, J.)