

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 127 of 2019
Indian Oil Corporation Ltd.
Vs.
C.L.S. Ltd. & Ors.
With
FMA 128 of 2019
Sri Indrajit Mondal & Anr.
Vs.
M/s C.L.S. Ltd. & Ors.
With
FMA 1742 of 2019
Sri Kumar Saheb Singh
Vs.
C.L.S. Ltd. & Ors.

For the IOCL

: Mr. Tilak Kr. Bose, Sr. Adv.
 Mr. Biswaroop Bhattacharya, Adv.
 Mrs. Sharmistha Ghosh, Adv.
 Mr. Victor Chatterjee, Adv.
 Mr. Amit Ghosh, Adv.

For the Appellants
 In FMA 128 of 2019

: Mr. Debajyoti Datta, Sr. Adv.
 Mr. Subhasis Bandopadhyay, Adv.

For the Appellant in
 FMA 1742 of 2019

: Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
 Mr. Debyundu Chatterjee, Adv.
 Mr. Pritam Majumdar, Adv.
 Ms. Reshmi Ghosh, Adv.
 Ms. Parna Mukherjee, Adv.
 Mr. Rahul Deb Goenka, Adv.
 Ms. Satabdi Das, Adv.
 Mr. Mainak Singha Barma, Adv.

For the Writ Petitioner/
 Respondent in

: Mr. Jaydeep Kar, Sr. Adv.
 Mr. Debabrata Saha Roy, Adv.

FMA 127 of 2019	Mr. Pingal Bhattacharyya, Adv.
FMA 128 of 2019 and	Mr. Neil Basu, Adv.
FMA 1742 of 2019	Mr. Sankha Biswas, Adv.

Hearing Concluded on	: December 03, 2024
Judgement on	: December 18, 2024

DEBANGSU BASAK, J.:-

1. Three appeals have been heard analogously as they emanate out of the same impugned order dated December 19, 2018 passed in WP 30608 (W) of 2008.
2. By the impugned order learned Single Judge has granted relief to the writ petitioner regarding rejection of his candidature in the selection process initiated by the Indian Oil Corporation Ltd. by the advertisement dated November 18, 2006.
3. FMA 127 of 2019 has been filed by the Indian Oil Corporation Ltd. while FMA 128 of 2019 is at the instance of successful bidders in respect of Shaktigarh and FMA 1742 of 2019 is at the instance of successful bidders of Khidderpore.
4. Learned Senior Advocate appearing for the Indian Oil Corporation (for the sake of convenience hereinafter referred to as the first appellant) has contended that, his client published advertisement for appointment of retail outlet dealer in respect of various locations, on November 18, 2006. The respondents in the first appeal had participated in such selection process.

- 5.** Learned Senior Advocate appearing for the first appellant has drawn the attention of the Court to the brochure of the oil company regarding selection of retail outlet dealership in the State of West Bengal as published on October 1, 2006. He has submitted that, in accordance with the procedure laid down in such brochure, an interview call letter dated May 18, 2007 had been issued to the writ petitioner in respect of Shaktigarh retail outlet, requesting the writ petitioner to appear before the Selection Committee on June 5, 2007.
- 6.** Learned Senior Advocate appearing for the first appellant has submitted that on June 5, 2007 interview was held. Merit panel had been prepared which was however kept in abeyance since there was difference of marks between the first and second candidate which was less than 5 per cent. A second interview letter had been issued on June 20, 2007. A second interview was conducted on July 13, 2007 amongst three candidates.
- 7.** Learned Senior Advocate appearing for the first appellant has referred to the order dated August 2, 2007 passed by the Division Bench in FMA 541 of 2007. He has contended that, the issue of three years profit was interpreted in such decision of the High Court.
- 8.** In respect of Shaktigarh selection process, learned Senior Advocate appearing for the first appellant has contended that, final list was declared on August 7, 2007. The writ petitioner was second

in such merit list. Writ petitioner had made a representation dated August 10, 2007 complaining that interview regarding the selection of the Shaktigarh and Budge Budge were unfair. This representation had been replied to on December 13, 2007.

9. Selection process in respect of Shaktigarh had been challenged in WP 23300 of 2007 which was disposed of by an order dated December 20, 2007. The writ petitioners therein had been permitted to make a representation which they did on December 24, 2007.

10. Learned Senior Advocate appearing for the first appellant has pointed out that, interview letter in respect of Khidderpore retail outlet was issued on December 27, 2007 with the result thereof being published on January 16, 2008. Result had been kept in abeyance for 30 days because of difference in marks between the first and the second candidate being less than 5 per cent. Thereafter, several steps had been taken for finalisation of the merit list in respect of Shaktigarh, Khidderpore, Budge Budge and Dunlop retail outlets.

11. Learned Senior Advocate appearing for the first appellant has contended that, first appellant received complaint regarding financial position of the writ petitioner on March 3, 2008. The complaint had related to municipal dues of the writ petitioner to Howrah

Municipality. First appellant had entered into correspondence with Howrah Municipal Corporation. First appellant had learnt from a letter dated May 29, 2008 of Howrah Municipal Corporation that property tax of Rs. 86,09,420 was due by the writ petitioner to Howrah Municipal Corporation. First appellant had sought clarification from the writ petitioner on such issue by a letter dated July 2, 2008. According to him, the writ petitioner had refused to divulge details of the municipal tax liabilities in the writing dated July 22, 2008. First appellant had by a letter dated August 1, 2008 sought clarification from the writ petitioner with regard to the property tax dues. Howrah Municipal Corporation had demanded arrears of property tax from the writ petitioner on August 16, 2008. Writ petitioner had filed a representation dated August 18, 2008 however, without clarifying anything on the property tax dues.

12. Learned Senior Advocate appearing for the first appellant has contended that, the first appellant issued letter of intent in favour of respondent Nos. 11 and 12 the first appeal on September 17, 2008. Formal agreement had been entered into on September 26, 2008. Merit panel in respect of Khidderpore had been prepared on October 3, 2008. Writ petitioner did not find place in the merit panel. Writ petitioner however made representations regarding the merit panel in respect of retail outlet for Shaktigarh and Khidderpore on October

29, 2008. Such representation had been replied to on October 31, 2008.

13. Learned Senior Advocate appearing for the first appellant has contended that, various litigations ensued between the parties, ultimately resulting in the impugned judgment and order in the three appeals. He has pointed out that, the letter dated January 28, 2009 of the first appellant was challenged which cancelled the candidature of the writ petitioner on the ground of Howrah Municipal Corporation dues.

14. Learned Senior Advocate appearing for the first appellant has relied upon **2010 Volume 6 Supreme Court Cases 777 (State of Orissa and Another vs. Rajkishore Nanda and Others), 1999 Supreme Court Cases (L and S) 792 (Union of India and Another vs. Haralal Das), 1998 Volume 7 Supreme Court Cases 469 (Rani Laxmibai Kshetriya, Gramin Bank vs. Chand Behari Kapoor and Others), 1996 Volume 2 Supreme Court Cases 7 (State of Bihar and Others vs. Md. Kalimuddin and Others), 2013 Volume 11 Supreme Court Cases 611 (Vijoy Kumar Pandey vs. Arbind Kumar Rai and Others)** in support of his contentions.

15. Learned Senior Advocate appearing for the appellants in FMA 128 of 2019 (for the sake of convenience hereinafter referred to as the second appellants) has submitted that, the letter of appointment

issued as against his clients is dated September 26, 2008 with the writ petition resulting in the impugned order being filed in December, 2008. He has referred to various clauses of the brochure and submitted that, the decision taken by the first appellant was correct. According to him, such decision of the first appellant on the conduct of the writ petitioner is a plausible view of the matter. A writ court therefore, should not intervene with regard thereto. According to him, learned Single Judge has erred in interfering with the decision taken by the first appellant.

16. Learned Senior Advocate appearing for the appellants in FMA 1742 of 2019 (for the sake of convenience hereinafter referred to as the third appellant) has submitted that, no notice of hearing of the writ petition was given to his client. The writ petition had been mentioned and appeared under the heading “To be mentioned” when the impugned order was passed. He has contended that, since, his client was not heard prior to passing of the impugned order, an opportunity should be given to his clients to contest the writ petition.

17. Learned Senior Advocate appearing for the third appellant has contended that, the writ petitioner did not come with clean hands. He has contended that, writ petitioner was aware of the demands made by the Howrah Municipal Corporation. Writ petitioner had failed to reflect such demands in the balance sheet of

the writ petitioner. Writ petitioner had failed to inform the first appellant as to the demands raised by the Howrah Municipal Corporation upon it. According to him, such demands are relevant for the purpose of calculating and understanding the financial capability of the writ petitioner.

18. First appellant had published advertisement on November 18, 2006 inviting applications from eligible candidates for awarding retail outlet dealership at the location specified in such advertisement. First appellant had also issued a brochure dated October 1, 2006 stating that the procedure and eligibility criterion for selection of petrol/diesel retail outlet dealership.

19. Writ petitioner had submitted applications in respect of various locations pursuant to such advertisement. However, writ petitioner had received interview letters in respect of further selection process of awarding retail outlet dealership in respect of Shaktigarh, Khidderpore and Budge Budge.

20. From time to time interviews had been held by the first appellant. In respect of Shaktigarh location first appellant had issued letter of intent to the 3rd position holder being the 3rd appellant herein although the writ petitioner was the 2nd position holder in the merit list. The 1st position holder in the merit list for

Shaktigarh location had been disqualified since he had been awarded a dealership at a different place.

21. In respect of the Dunlop location, writ petitioner had claimed that the interview letter was not received by it. So far as the Khidderpore location is concerned, interview was taken on January 16, 2008 which was subsequently cancelled. Re-interview had been taken on February 7, 2008 which was again cancelled. 3rd interview had been taken on March 7, 2008 but the result thereof was not declared. Ultimately, candidature of the writ petitioner had been cancelled on the ground that the writ petitioner had suppressed material facts with regard to his financial condition.

22. Writ petitioner had filed the writ petition resulting in the impugned judgment and order seeking relief with regard to the selection process initiated by the advertisement dated November 18/19, 2006 with regard to Shaktigarh and Khidderpore locations.

23. The writ petition had been mentioned before the learned Single Judge and was placed in the list under the heading "To be mentioned". The writ petition had been taken up for final disposal by the learned Single Judge on consent of the parties.

24. On December 19, 2018 on which date the impugned order had been passed the writ petitioners and the first appellants were

present. None of the other two appellants were present at the hearing although the writ petition had appeared in the list.

25. Since, the writ petition had appeared in the list and since, the parties appearing had given consent of the writ petition being taken up and decided finally, we are not minded to accept the contention of the other appellants that such writ petition was heard and disposed of without notice to such appellants. Matter appearing in the list per se is noticed to the parties as to its pendency particularly when, such writ petition had already been served upon such parties. None of the other appellants before us have claimed that were not served with the copy of the writ petition or were not aware of its pendency before the High Court.

26. Nomenclature of the heading under which, the writ petition had appeared before the learned Single Judge, does not prevent the learned Single Judge from disposing of the writ petition finally. That apart, parties appearing before the Court had given consent to its final disposal as recorded in the impugned order dated December 19, 2018. None of the appellants before us had approached the learned Single Judge to correct the alleged error of such recording to the effect that the matter was taken up for hearing and disposed of after it appeared as “To be mentioned”, on consent of the parties.

27. Parties before us have accepted that the candidature of an aspirant in the selection process retail outlet dealership is governed by the terms and conditions of the brochure of the first appellant dated October 1, 2006. Candidature of the writ petitioner for the Shaktigarh and Khidderpore locations had been cancelled by the first appellant on the ground of suppression of material fact. It has been alleged by the first appellant as against the writ petitioner that the writ petitioner had defaulted on municipal tax payments to Howrah Municipal Corporation and suppressed such information regarding its liability in the annual report of the writ petition for the year 2005-2006.

28. ***Md. Kalimuddin and Others (supra)***, has dealt with a selection process of grant of appointment to the post of Assistant Teachers. It has held that, where the life of the select list had already expired, any direction to continue with such select list is illegal.

29. The view that, a select list/panel cannot be kept alive indefinitely has been expressed in ***Rani Laxmibai Kshetriya, Gramin Bank (supra)***.

30. ***Haralal Das (supra)*** has taken the view that select list has a limited life. In ***Rajkishore Nanda and Others (supra)*** Supreme Court has held that select list cannot be treated as perpetual reservoir for the purpose of appointments. If the selection process is

over whereby select list has expired and appointments have been made, no relief can be granted by the Court subsequently on the basis of the expired select list.

31. *Vijoy Kumar Pandey (supra)* has held that, preparation of selection list of panel does not by itself entitle the candidate whose name figures in such list/panel to seek appointment or claim mandamus for grant of appointment. It has also noticed that a selection process can be cancelled for valid reason.

32. With deepest of respect, none of the ratio of the authorities noted above have any manner of application in the facts and circumstances of the present case. The writ petitioner had approached the writ court immediately upon coming to know of the fate of his candidature in the selection process.

33. The candidature of the writ petitioner had been cancelled on the ground of suppression. We are unable to subscribe to the view of the first appellant that, the writ petitioner had suppressed any material fact while applying for the dealership.

34. The last date of the application for the dealership had been fixed on December 19, 2006. Writ petitioner had admittedly submitted the application within the last date fixed therefor. As noted above, the cornerstone of rejection of the candidature of the writ petitioner has been Howrah Municipal tax dues. Howrah

Municipality had demanded tax from the writ petitioner on February 16, 2008 which is beyond the last date of the submission of the application form. No demand by Howrah Municipality had been raised on the writ petitioner within the last date of submission of application form.

35. Howrah Municipal Corporation had reduced the annual valuation of the property tax on May 29, 2008. Howrah Municipal Corporation had apportioned the property tax on August 14, 2008. Howrah Municipal Corporation had demanded payment of arrear taxes on August 16, 2008. Howrah Municipal Corporation had issued a tax clearance certificate stating that no amount is due and payable by the writ petitioner on August 17, 2010.

36. Demand for Municipal Taxes had been raised on and from February 16, 2008 which is after the date of application being December 19, 2006. Howrah Municipal Corporation has ultimately accepted that there is no tax due and payable by the writ petitioner on August 17, 2010. In the meantime, candidature of the writ petitioner in respect of two locations had been rejected by the first appellant after the first appellant making detailed enquiries.

37. In our view, the first appellant had rejected the candidature of the writ petitioner in respect of two locations without any basis and beyond the terms and conditions of the brochure governing the

selection process. Learned Single Judge has rightly directed the writ petitioner to be considered as a valid candidate in the selection process.

38. The defence that, a candidate has been selected in the selection process and given the location, as also the defence that, such candidate has worked over a period of time and no untoward incident was found as against such candidate, in our view, is of no consequence, when, the initial selection is bad. In the facts and circumstances of the present case, the initial selection is bad since, the candidature of the writ petitioner had been wrongly rejected.

39. In view of the discussions above, we find no merit in the appeals.

40. FMA 127 of 2019, FMA 128 of 2019 and FMA 1742 of 2019 along with other connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

41. I agree.

[MD. SHABBAR RASHIDI, J.]