

05.03.2024

Ct. no.654

Sl. No.4

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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 4753 of 2024

Nibir Sarkar
Vs.
Indian Oil Corporation Limited & ors.

Mr. Saptansu Basu, Sr. Adv.
Mr. Ramesh Dhara
Ms. Mousumi Chowdhury
... for the petitioner

Mr. Amit Kr. Nag
Mr. Partha Banerjee
Ms. Rangabati Roy
... for the respondent nos.1 to 3

By the present writ petition, the writ petitioner has sought for withdrawal/cancellation and/or rescission of the impugned decision of the respondent no.1/Indian Oil Corporation Limited (hereinafter referred to as "IOCL") communicated through e-mail dated 13th February, 2024 finding the petitioner as ineligible.

The brief fact of the case is that the petitioner applied for appointment as retail outlet dealership as per notification of the "IOCL" published in the newspaper on 18th July, 2023 in respect of Mouza Budhra, Block Murshidabad-Jiaganj, in the district of Murshidabad under Scheduled Caste category in prescribed format along with documents and requisite fees. On 4th December, 2023, the petitioner received an e-mail from the portal of "IOCL" informing the petitioner that he has

qualified for draw of lots for selection of retail outlet dealership. The petitioner was further intimated through e-mail on 16th December, 2023 that he has been provisionally selected against the location in question and requested the petitioner to deposit an amount of Rs.20,000/- as initial security deposit. The petitioner on 26th December, 2023 deposited the initial security amount of Rs.20,000/-. On 13th February, 2024, the petitioner received an e-mail from the portal of the “IOCL” informing the petitioner that it is observed that land documents submitted by the petitioner are not valid for consideration under the Group-I category for the reasons that the lease deed is registered after the date of application. However, his candidature may be considered for selection along with Group-3 applicant as per guidelines. Being aggrieved by the impugned decision of the respondent no.1-IOCL, the petitioner has filed the present writ petition.

Mr. Saptansu Basu, learned Senior Advocate appearing on behalf of the petitioner submits that the sole ground for holding the petitioner as ineligible is that the leasehold land offered for the retail outlet dealership was not registered on the date of application. Referring to Clause 4(vi)(f) at page 6 of the Brochure for Selection of Dealer for Regular and Rural Retail Outlet of June, 2023 he submits that the document of the land offered by the candidate provisionally selected under Group-1 is

acceptable if the same is executed on or before the date of application. The registration of documents on or before the date of application is not a mandatory criterion so far as consideration of the application of the applicant is concerned. The execution of the lease deed is sufficient compliance so far as eligibility is concerned. In view of the aforesaid submissions, he prays that the impugned decision of the respondent no.1-IOCL communicated vide e-mail dated 13th February, 2024 should be set aside and/or cancelled.

In reply to the contentions raised on behalf of the petitioner, Mr. Amit Kumar Nag, learned advocate for the respondent no.1-IOCL submits that the land applicable under the Group-1 is either by way of ownership or through long term lease for a period of minimum of 19 years 11 months. As per Section 107 of the Transfer of Property Act, a lease for a period of more than one year is compulsory registerable. Therefore, until and unless the lease deed is registered the same cannot be considered as valid documents for grant of retail outlet dealership. The words used in Clause 4(vi)(f) "*executed/registered/issued*" precisely relates to different category and nature of documents and such words is not to be applied generally in case of all type of documents in respect of land offered. So far as the sale deed or the gift deed or lease deed is concerned, it specifies that it should be a registered. Therefore, the argument that the lease deed upon

execution can be considered for grant of retail outlet dealership, is not sustainable. It is not in dispute that the registration of deed of lease is effected on 26th December, 2023 whereas the application has been submitted on 26th September, 2023. Thus, on the date of application, the lease deed was not registered. The respondent no.1-IOCL selected the petitioner provisionally subject to compliance of the terms and conditions of the Corporation. The respondent no.1-IOCL also reserves the right to reject the candidature if subsequently there is non-compliance of the terms and conditions. Therefore, since on the date of application it was found that the lease deed of the offered land was not registered, the respondent no.1-IOCL has rightly rejected the candidature of the petitioner on such ground. In support of his contentions, he relies on the decision of the Division Bench passed in F.M.A. 288 of 2022 (*Indian Oil Corporation Limited & Ors. versus Paromita Bag & Ors.*); ***Indian Oil Corporation and Others versus Soma Saha and Another*** reported in **2022 SCC OnLine Cal 3032**; W.P.A. 18525 of 2021 (*Samiul Kalam versus Indian Oil Corporation & Ors.*); ***Gobardhan Bar versus Guna Dhar Bar*** reported in **(1940) Indian Law Reports 270**. He further submits that Section 47 of the Registration Act does not provide when a sale or lease would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it

was registered. The lease which is admittedly not complete until the registration cannot be said to have been completed earlier by virtue of Section 47 after it has been registered. To buttress his contention, he relies on the decision of Hon'ble Supreme Court passed in ***Ram Saran Lall and Others versus Mst Domini Kuer and Others*** reported in ***AIR 1961 SC 1747***. In light of his aforesaid submission, he prays for dismissal of the writ petition.

Mr. Basu, learned Senior Advocate appearing on behalf of the petitioner, in reply, submits that the decision of the Hon'ble Division Bench passed in *Paromita Bag (supra)* and *Soma Saha (supra)* is of 2018 and they relate to LPG distributorship and not retail outlet dealership. Therefore, the decision arrived therein is not applicable to the facts of the present case. The present case relates to an application filed in the year 2023 for retail outlet dealership and thus is factually different. Referring to the decision of Hon'ble Supreme Court passed in ***Oriental Insurance Co. Ltd. versus Raj Kumari (Smt) and Others*** reported in ***(2007) 12 SCC 768***, he submits that one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The Court has to assess how factual situation fits in with the fact situation of the decision on which reliance is placed. He submits for

appropriate orders cancelling the impugned decision of the IOCL.

Having heard the learned Advocates for the respective parties, the only issue which has fallen for consideration of this Court is whether upon execution of the lease deed the petitioner fulfils the eligibility criteria as required by the notification published on 18th July, 2023. In order to appreciate the aforesaid issue, it would be profitable to reproduce clause 4(vi)(f) of the Brochure for Selection of Dealers for Regular & Rural Retail Outlets of June, 2023:

“f) In addition to above, as and when advised by the OMC, provisionally selected candidate(s) under Group-1 should also upload a copy of any one of the following documents to establish ownership of land offered for the Dealership. The documents must have been executed/ registered/issued on or before the date of application

- *Registered Sale deed/Registered Gift deed*
- *Registered Lease deed for a minimum period of 19 years and 11 months (as advertised by respective oil company).*
- *Any other type of ownership / transfer deed document*
- *Lease agreement or firm allotment letter issued by Government / Semi Government bodies”*

It is a fact that clause (f) provides that the documents which should be uploaded to establish ownership of land offered for the dealership must be executed/registered/issued on or before the date of application. It is precisely urged on behalf of the petitioner that the execution of the lease deed would be

sufficient for fulfillment of the criteria. Be that as it may, on further reading of clause (f) it provides that the registered lease deed for a minimum period of 19 years 11 months (as advertised by respective oil company) is required to be uploaded. Thus clause (f) in clear terms shows that a lease deed registered on or before the date of application is to be submitted. It is pertinent to note that clause (f) also specifies other documents such as *“Any other type of ownership/transfer deed document”* and *“Lease agreement or firm allotment letter issued by Government / Semi Government bodies”* which can be considered in respect of offer of land. It also specifies the documents which has to be a registered one namely sale deed, gift deed and lease deed. Therefore, the words *“executed”* or *“issued”* goes with the other documents which does not require registration. This Court finds force in the submission of Mr. Nag, learned Advocate for the respondent no.1-IOCL that other word such as *“executed”* or *“issued”* relates to some of the documents which are enumerated in clause (f) other than the sale deed, gift deed and lease deed. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Section 17 of the Registration Act provides for documents of which registration is compulsory. Section 17(1)(d) provides for leases of immovable property

from year to year, or for any term exceeding one year, or reserving a yearly rent, compulsorily registrable. Therefore, the lease deed to be considered for retail outlet dealership as per the eligibility should be a registered lease deed. The Division Bench in *Gobardhan Bar (supra)* has held that a transfer of an occupancy holding can be made only by a registered document and no title would pass to the transferee unless registration is effected.

The decision in *Soma Saha (supra)* has been passed in respect of an appointment of LPG distributorship. Be that as it may, it reiterates the proposition that offer can be accepted only if it is in conformity with invitation. Relevant paragraphs 27 and 49 are reproduced hereinbelow:

“27. It is no more res integra that the advertisement for appointment of LPG dealership is an invitation to offer and the particulars mentioned in an application filed is the offer in terms of the condition mentioned in the invitation to offer. So, when the application is filed (offer is made) in response to the invitation to offer, it must be filed or made with the eyes open and mind cognizant of the conditions. The offer can be accepted by the principal only if the offer is in conformity with the invitation to that effect and not otherwise. On acceptance of the offer only a letter of intent is to be issued culminating in agreement/contract between the parties.

x x x

49. The aforesaid decision of Hon’ble Supreme Court in the case of Ramana Dayaram Shetty by now has attained the status of locus classicus. Taking a cue from the aforesaid Judgment we feel it expedient to say here that any act done in contravention of the norms vitiates

the action irrespective of whether it involves “affectation of some right or denial of some privilege”. In the present case as we have discussed supra and as found from the statement of Respondent No. 1 in Annexure-P4 to the Writ Petition the land for godown offered by her by the last date of submission of application i.e. 18.10.2017 was not in accordance with the norms specified in the advertisement i.e. the invitation to offer. Any development that took afterward has no consequence whatsoever so far as rejection of her application on the ground stated in Annexure-P6 to the Writ Petition is concerned.”

Therefore, when an application for engagement is filed or an application is made in response to the invitation it must be in conformity with the terms and conditions provided therein.

Records clearly shows that the deed of lease was registered after the date of application. Thus the offer was not made in terms of the invitation which required for a registered lease deed on or before the date of application. Though the petitioner was provisionally selected but such selection was subjected to terms and conditions of the notification and the corporation reserved the right to reject the candidature if the documents, as per requirement, are not submitted. The petitioner has also given declaration by way of affidavit (page 30 of the writ petition) that if his claim is found to be not supported by required documents or found to be at variance at any stage, it would result in his application/candidature becoming invalid.

The decision in *Paromita Bag (supra)* is with regard to LPG distributorship in the year 2017 and being factually different the said proposition is not applicable in the present case.

In *Samiul Kalam (supra)*, it was urged on behalf of the petitioner that the day when the deed was presented for execution be treated as date of registration of the lease which was declined by the Court. The contention raised by the petitioner in the present case is factually different since the petitioner has contended that execution of the document is sufficient compliance of the condition of eligibility.

So far as the effect of Section 47 of Registration Act as advanced by respondent-IOCL is concerned, it is placed on record that no argument has been advanced on behalf of the petitioner in such regard and, therefore, this Court recuses from making any observation in that regard.

In light of the above discussion, the writ petition being **WPA 4753 of 2024** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)