

20.03.2024

Ct. no.654

Sl. No.15

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

W.P.A. 6703 of 2024

Anup Kumar Bala
Vs.
Indian Oil Corporation Ltd. & ors.

Mr. Lalratan Mandal
Mr. Dilip Kumar Sadhu
... for the petitioner

Mr. Manwendra Singh Yadav
Mrs. Saswati Chatterjee
Mrs. Satabdi Naskar (Kundu)
... for the Indian Oil Corporation Ltd.

Mr. Chayan Gupta
Mr. Parush Bandyopadhyay
Mr. Amit Muhuri
... for the private-respondent

Affidavit of service filed on behalf of the petitioner is taken on record.

By the present writ petition, the petitioner has prayed for cancellation and/or withdrawal and/or recession of the order under reference No.HOD/OPEN/Khalseuli dated 25th August, 2022 passed by the respondent no.5, the Divisional Retail Head, Haldia Division Office, Indian Oil Corporation Limited.

This is second round of litigation. Previously, the petitioner filed a writ petition being W.P.A. 7540 of 2010 on the ground that the survey conducted on 26th July, 2009 was not made known to him by the oil company till

filing of the affidavit-in-opposition to the writ petition, pursuant to the order passed by the Court. Further, the survey report dated 3rd August, 2009 was not supplied to him prior to taking decision regarding cancellation of candidature of the writ petitioner as contained in order under memo dated 24th September, 2009. Considering the materials on record and the submissions advanced on behalf of the respective parties, this Court disposed of the aforesaid writ petition on 17th December, 2021 by passing the following order :

“ In above conspectus, the impugned order dated 24th September, 2009 issued by the Chief Divisional Retail Sales Manager, Haldia Divisional Office stands set aside and the writ petitioner is granted opportunity to respond to the report of the surveyor dated 3rd August, 2009 within four weeks from date if necessary by submitting supporting documents. On receipt of such response from the writ petitioner, the concerned authority of the Oil Company shall proceed to decide on the entitlement of the writ petitioner to get the dealership in accordance with law.

It is made clear that while considering the piece of land offered by the writ petitioner if the Oil Company finds it in consonance with the requirement as contained in the advertisement dated 18th March, 2008 then necessary order shall be passed for grant of dealership in favour of the writ petitioner within a period of four weeks thereafter from the date of receipt of response from the writ petitioner. In the event, it is found by the Oil Company that the writ petitioner is not entitled to get the benefit of grant of dealership cogent reasons shall be assigned in support of such decision to be taken pursuant to this order.

Letter of Intent issued in favour of the respondent no.4 dated 10th March, 2010 also stands set aside.

The writ petition is allowed to the above extent, applications, if pending, also stand disposed of.”

Pursuant to the aforesaid directions passed in the above writ petition, the petitioner filed his exception to the surveyor's report dated 3rd August, 2009. Thereafter, an independent surveyor was appointed to verify the land. Since the frontage was less than the requirement as stipulated in the advertisement dated 18th March, 2008, the candidature of the petitioner for Kisan Seva Kendra (in short, “KSK”) dealership was cancelled vide order dated 25th August, 2022 by respondent no.5. Being aggrieved by such order, the petitioner has preferred the present writ petition.

Mr. Lalratan Mandal, learned Advocate for the petitioner submits that the documents of the petitioner, namely, the deed of sale and the declaration given by the vendor show that the petitioner's frontage is more than the required 25 meters. The survey has not been conducted by any independent Surveyor. The Surveyor has not taken note of the actual measurement of land consisting the frontage and has wrongly noted that the frontage of the petitioner's land is of 19.52 meters approximately which in actuality is more than 25 meters. He proposes for a joint survey by two surveyors, one from the side of the petitioner and another from the side of the oil company which would resolve the issue. The petitioner was at first selected. However, upon complaint such enquiry has been held and on anomalous consideration

the candidature of the petitioner has been cancelled by the impugned letter. In light of his aforesaid submissions, he prays for setting aside of the impugned letter of the respondent no.5 dated 25th August, 2022.

Mr. Manwendra Singh Yadav, learned Advocate for the respondent-IOCL submits that after the direction passed in WPA 7540 of 2010 the respondent-IOCL considered the relevant documents including *parcha* of the offered land, deed of sale, deed of declaration, sketch map annexed to the deed of declaration and thereafter held survey by an independent surveyor. Upon proper consideration of the entire materials, such reasoned order of cancellation has been passed by oil company. The petitioner in the writ petition has made assertion that the requirement of 25 meters of frontage is not a mandatory requirement as per the advertisement, which is out and out incorrect statement. There is discrepancy in the measurement of land as is appearing in the deed of sale with that of deed of declaration dated 23.10.2009. The deed of declaration has been executed after the last date of application and hence cannot be taken into account. Referring to the decision of Hon'ble Supreme Court passed in ***Annapurna Jaiswal versus Indian Oil Corporation Ltd. & ors.*** reported in ***2021 SCC OnLine SC 852*** he submits that deed of declaration executed and furnished after last date of submission of application cannot be accepted since it is an attempt to correct the statement which was made in the original application by

the petitioner. In light of his aforesaid submissions, he prays for dismissal of the writ petition.

Mr. Chayan Gupta, learned Advocate for the respondent no.6 submits that his client has been found to be eligible for grant of licence. However, due to pendency of the present writ petition, the respondent no.6 could not carry on the trade. The petitioner time and again filed writ petitions to delay the commencement of trade by respondent no.6. The respondent no.6 has already obtained no-objection and other relevant licences, required for carrying on such business under the licence of Indian Oil Corporation Limited, from the respective authorities. Further, there is no bias or *malafide* on the part of the respondent authorities in cancelling the candidature of the petitioner. Judicial review under Article 226 of the Constitution of India is called for in case of arbitrariness or unreasonableness and not otherwise. In view of his aforesaid submissions, he also prays for dismissal of the writ petition.

Pursuant to the order passed in *W.P.A No.7504 of 2010 (Sri Anup Kr. Bala versus Union of India & ors.)* the petitioner was granted opportunity to respond to the report of the Surveyor dated 3rd August, 2009. On 10th February, 2022 following documents were received from the petitioner by the respondent-IOCL :

- a) Letter dated 10.02.2022 sent by your advocate addressed to Chief Divisional Retail Sales

Manager, Haldia requesting for appropriate action in view of judgment dated 17.12.2021

- b) Your letter dated 10.02.2022 addressed to Chief Divisional Retail Sales Manager, Haldia submitting exception to the Surveyor report dated 03.08.2009.
- c) Copy of Parcha of the offered Land along with Mouza Map and four hand drawing Map regarding your plot no.801, Khatian No.617, Mouza-Modipur, J.L. No.614 P.S.-Jhargram.
- d) Deed of Declaration no I-2088/2099 dated 23.10.2009.

It further appears from the impugned letter that discrepancies were noted while comparing the deed of declaration with that of deed of sale in respect of the measurement of the land. In order to come to a correct conclusion the authorities verified the plot of land offered by the petitioner. An independent Surveyor was appointed for this verification, who examined the land, documents and physically inspected the site. Upon such exercise it was found the offered land of the petitioner at frontage is 19.52 meters approximately. The petitioner in his writ petition has made categorical assertion that the requirement of 25 meters frontage is not a mandatory requirement. It is relevant to note that neither in exception to the surveyor's report dated 3rd August, 2009 nor in the previous writ petition the petitioner stated that the requirement of 25 meters frontage is not a mandatory

requirement. Rather the petitioner has claimed that frontage of his land to be 29.8704 meters. Mr. Yadav, learned Advocate for the respondent-IOCL has placed the copy of the advertisement. Upon perusal of the same, it is found that 25 meters frontage is a stipulated requirement in advertisement dated 18th March, 2008.

The argument on behalf of respondent-IOCL that the submission of deed of declaration is an attempt to make correction relying on *Anapurna Jaiswal (supra)* is not acceptable since liberty was granted to the petitioner in the previous writ petition to furnish document if required. Be that as it may, though a deed of declaration dated 23.10.2009 has been furnished by the petitioner, yet no deed of rectification of deed of sale was produced. Therefore, the schedule of deed of sale prevails over the deed of declaration.

Since upon physical inspection, verification of the documents and the report of the Surveyor it is found by the authority that the requirement of 25 meters frontage as stipulated in the advertisement has not been fulfilled, such order dated 25th August, 2022 passed by the respondent-IOCL cancelling the candidature of the petitioner for KSK dealership does not call for any interference.

Accordingly, in light of above discussion, the writ petition being **WPA 6703 of 2024** stands dismissed along with all connected applications, if any.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

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

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)