

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***F.M.A. 693 of 2024
(CAN 1 of 2024)***

***Anup Kumar Bala
-Vs-
The Indian Oil Corporation & Ors.***

For the Appellant : Mr. Lalratan Mandal, Adv.
Mr. Dilip Kumar Sadhu, Adv.

For the Respondent : Mr. Manwendra Singh Yadav, Adv.
Nos.1 to 5

For the Respondent : Mr. Chayan Gupta, Adv.
No. 6 Mr. Pourush Bandyopadhyay, Adv.
Mr. Amit Muhuri, Adv.
Mr. Dibyendu Ghosh, Adv.

Heard on : 27.06.2024

Judgment on : 27.06.2024

Joymalya Bagchi, J. :-

1. This is a second round of litigation at the behest of the appellant whose selection as successful candidate for KSK Dealership at Khalseuli,

Dist. Paschim Medinipur had been cancelled on the ground the land offered by him did not have requisite frontage.

2. Brief facts leading to the present proceeding are as follows :-

Appellant had applied for KSK Dealership at Khalseuli, Dist. Paschim Medinipur and had been provisionally selected. One of the eligibility criteria for appointment was that the land offered by him must have a frontage of 25 mtrs. The provisional selection was on the basis of the documents submitted by the appellant. On physical verification respondent-Indian Oil Corporation Limited (*hereinafter referred to as 'IOCL'*) found that the land offered did not have requisite frontage and by letter dated 24.09.2009 they cancelled the provisional selection.

3. This prompted the appellant to approach this court. Hon'ble Single Judge noted that the survey report dated 03.08.2009 relied upon by the respondent-IOCL to cancel the provisional selection had not been supplied to the appellant. In view of the aforesaid, Hon'ble Single Judge set aside the order of cancellation dated 24.09.2009 and directed the respondent authorities to give an opportunity to the appellant to respond to the surveyor's report and submit documents, if any, in support of his plea that he had requisite frontage.

4. Pursuant thereto appellant filed an exception to the surveyor's report. In his exception appellant relied on a deed of declaration dated

23.10.2009 wherein the site plan to the plot showed a frontage of over 29 mtrs. He also relied on another survey report which endorsed his stance.

5. Respondent-IOCL considered the submissions of the appellant as well as the documents submitted by him. The authorities noted that there was discrepancy in the measurement of land as stated in the recital of the deed i.e. 117 sq. mtrs. and the site plan i.e. 1310 sq. mtrs.

6. In view of the aforesaid discrepancy and to dispel any doubt with regard to the frontage of the land offered, an independent survey was conducted and the surveyor found that the requisite frontage is 19.52 mtrs. It is relevant to note that the survey was conducted in presence of the appellant and he did not raise any objection with regard to the survey report.

7. Relying on the aforesaid materials, by impugned order dated 25.08.2022 the respondent-IOCL reiterated the cancel order. This became the subject matter of the second round of litigation. Neither in the writ petition nor in the arguments before the Hon'ble Single Judge did the appellant question the correctness of the surveyor's report relied by the respondent-IOCL. In the second round his primary contention was that the eligibility criteria requiring 25 mtrs. frontage was not mandatory. He also claimed that a portion of his land had been illegally acquired by PWD and a road had been built.

8. Hon'ble Single Judge dismissed the appellant's contention and upheld the order of cancellation.

9. In this backdrop, Mr. Lalratan Mandal for the appellant submits another survey be undertaken to determine the requisite frontage.

10. Learned Advocates for the respondent-IOCL as well as respondent no.6 strongly opposes such submission. They contend the surveyor's report had not been challenged before the Hon'ble Single Judge. Only contention raised was that the requirement of 25 mtrs. frontage is not mandatory.

11. We have considered the rival submissions of the respective parties.

12. In the first round of litigation the appellant did not raise the issue that the eligibility criteria i.e. 25 mtrs. of frontage is not mandatory. In fact, he could not have done so. The advertisement unequivocally stated the said criteria is a pre-requisite for appointment and upon physical verification the appellant's selection was cancelled due to non-fulfilment of such criteria. To rake up this issue in the second round clearly discloses a desperate effort on the part of the appellant to stall appointment to the retail outlet concerned on a wholly unfounded issue.

13. Realising the futility of the aforesaid issue, Mr. Mandal seeks to make out a new case before us. He contends another survey be conducted to determine the frontage of the land offered.

14. We are unable to accept this submission too. After the case was remanded before the respondent authority by the Hon'ble Single Judge, an independent survey had been conducted and the frontage was found

as 19.52 mtrs. Appellant's representative was present during the survey and was handed over the survey report. No objection was raised by the appellant to the survey report either before the respondent authority or in the pleadings of the writ petition. Even in the appeal papers, no case for another survey was made out.

15. For these reasons, we are of the opinion the independent survey conducted by the respondent-IOCL in 2022 is an unblemished one and another survey would serve no purpose. It is clearly another subterfuge to protract the litigation and prevent respondent-IOCL from proceeding to make fresh appointment.

16. In the light of the aforesaid discussion, we find no merit in the appeal and the same is accordingly, dismissed.

17. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

18. There shall be no order as to costs.

19. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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