

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

WPA 16367 of 2022

IN THE MATTER OF

Dayamoy Ghosh.

Vs.

Union of India & Ors.

For the Petitioners : **Mr. Ram Anand Agarwal, Adv.,**
Ms. Nibedita Pal, Adv.,
Mr. AnandaGopa Mukherjee, Adv.,
Ms. Sonam Ray, Adv.

For the respondent
Nos. 2& 3/HPCL : **Mr. Biswanath Chatterjee, Adv.,**
Mr. Sobhan Kumar Pathak, Adv.,
Mr. Soham Krishna Chatterjee Adv.

Reserved on : **02.09.2024**

Judgment on : **09.12.2024**

Subhendu Samanta, J.

1. Hindustan Petroleum Corporation Limited published an advertisement to appoint retail outlet dealers on various location of State of West Bengal. Petitioner submitted application for a location namely "within 10 Kms from Heavyr More towards Raniganj on NH 60 in the District of Bankura". Petitioner was declared as successful candidate.

2. The land Evaluation Committee inspected the proposed land of the petitioner and thereafter intimated the petitioner that the offer land did not meet the required norms. HPCL informed the petitioner to

offer alternative land in the advertised location. Petitioner requested again to consider the same land but his prayer was not considered. Petitioner made further representation which was also turned down.

3. Petitioner's approach this court in WPA No. 4103 of 2022 wherein a Co-ordinate Bench of this court has disposed of the said writ petition directing the HPCL to dispose of the petitioner's representation dated 3rd December, 2021 and 17th January 2022 within 60 days.

4. Vide impugned memo dated 20nd April 2022, the respondent HPCL disposed of both the representation of the petitioner with a finding that the offer land cannot be accepted and further selection process could not be proceeded.

5. Hence this writ.

6. Learned Counsel Mr. Agarwal, on behalf of the petitioner submits that the act and action of the respondent authority is highly suspicious and not tenable in the eye of law. He further submits that the respondent authority has acted arbitrarily in disposing of the representation of the petitioner. It is the case of the petitioner that retail outlet dealership of the present petitioner will be required to be considered as "urban stretch".

7. Mr. Agarwal specifically demonstrated the issue involved in the instant writ petition by submitted that the respondent has turned down the prayer of the petitioner by virtue of a notification dated 20th

June 2020 by Ministry of Road Transport and Highways (S & R (P & B) Section).

8. Mr. Agarwal submits that the team of the HPCL after visiting the proposed offer land of the petitioner, they have noted that **“it is found that there is a road at within 300 meters of the said plot. This road was found to be more than 300 meters in length and 3 meters wide bituminous top”**. Hence, offer land is not meeting of the current NHAI guideline.

9. Mr. Agarwal further argued that the location of the offer land cannot be categorised as rural stretch of National Highways. It should be categorised as urban stretches of National Highways. Mr. Agarwal has also pointed out the relevant notification of NHAI dated 26th June 2020, wherein the categorisation of locations of stretches of Fuel Stations along with National High Ways were depicted.

Norms for Location, Layout and Access to Fuel Stations along National Highways

1.1 The term "Fuel Station" shall include Petroleum Retail Outlets, CNG/ Gas Retail Outlets, Electrical Vehicle (EV) Charging Stations, bio fuel pumps, wayside amenities etc.

1.2 When the cross slope of the country is more than 25%, the terrain shall be classified as hilly or mountainous terrain. Where National Highway passes through a town of population of 20,000 and more (census 2011 will apply), the stretch shall be categorized as urban stretches.

10. Mr. Agarwal argued that if the offer land comes under the urban stretch then the insertion with any category of road and median gap required -100 meters. He submits that in the sited location i.e. Purandarpur the population is more than 20,000 but the authority

concerned has considered the population of Purandarpur according to census, 2011. Mr. Agarwal further agued that the advertisement was published in the year 2018, the Local Panchayet Prodhan has issued a certificate containing inter alia that the population of Purandarpur, District Bankura is more than 20,000.

11. Mr. Agarwal further argued that the action of the HPCL cannot be accepted in this case as they have only taken into account the population of Purandapur according to Census 2011. He submits that the impugned letter is devoid of merit and the same is liable to be quashed.

12. Learned Counsel appearing on behalf of the HPCL submits that the petitioner after becoming of successful candidate has offered land. The Land Evaluation Committee of HPCL inspected the offered land, it appears to them that the said land did not clearly meet the eligible criteria as laid down as per Clause 1 read with Clause H of the brochure of selections of dealers in regular retail outlets. Learned Counsel further argued that the area under which petitioner land in question is situated under Rural Stretch as per the NHGL guidelines; and accordingly, the petitioner bound to comply of conditions as laid down in such notice of appointment of regular/rural retail outlet dealership. He further submits that as per NHGL guidelines dated 26th June 2020 issued by the Ministry of Road Transport and Highway, Government of India, in **Clause no. 1.2** it states that **“Where National Highway possess through down of population of 20,000 or more (census of 2011 will apply, the stretch shall be**

categorised as urban stretch. It is the submission of respondent that as per census of 2011 population of Mouja Purandarpur is less than 20,000. He submits that in case of Rural Stretch Appendix-1 of Clause 2.2 (2) of the State NHAI guidelines states that “Distance of any intersection with any category of road and median gap shall be minimum 300 meters”. The said guideline also disclosed the definition of road.

13. Learned Counsel submits that there a road at within 300 meters of the offer plot of the petitioner that road was found to be more that 300 meters wide with bituminous top. Hence the offer land is not meeting the current NHAI guideline. Learned Counsel for the respondent further argued that certificate issued by the Gram Panchayet dated 3rd February 2022 is a manufactured document. A Gram Panchayet has no authority to say about the population of the locality. He further argued that the brochure has specifically mentioned only census in the 2011 would be considered in calculating of the particular area the HPCL as well the other Oil Company are following the same guideline to assess the population of a particular area. Now this guideline cannot be put under a question before this writ court. He further argued that the petitioner has given a sufficient opportunity to offer alternative land but he failed to do so. Thus the selection process which was initiated and by 2018 cannot be further prolonged.

14. Heard the Learned Counsel, perused the pleadings, it appears that the guideline of NHAI for establishing Petrol Pumps beside

National High way has to be followed by the Oil Companies. The relevant guidelines of NHAI has specifically demarcated portion would be considered Rural Stretch. It is the case of the NHAI, the offer land of the petitioner is within the Rural Stretch as the population of the locality (according to census 2011) less than 20,000; on the other hand petitioner argued the present population of sited location i.e. Purandarpur is more than 20,000. The petitioner has placed his reliance upon a certificate of local Gram Panchayet. Let me consider whether the said certificate could be reckoned to be the deciding factor in this matter.

15. The HPCL as well as the petitioner is duty bound to follow the norms and conditions of the brochures. The brochures has specifically pointed out that in case of establishment of Petrol Pump beside National High ways, the guidelines of NHAI has to be followed. In following the guidelines of NHAI (memo dated 26th June 2020) the offer land of the petitioner come under the category of Rural Stretches.

16. It is true that the HPCL has considered the population of particular locality according to the census 2011. The Gram Panchayet never authorised to calculate the population of any particular area but there is a specific authority of the Central Government to meet the census under following a particular rules and guidelines.

17. In this particular case, I hold it to be prudent that respondent HPCL has correctly followed the guideline of NHAI. The Oil Company respondent, as well as the petitioner, cannot go beyond the norms of the brochure as well as the NHAI guideline. Under the above

observation I find no justification to interfere with the impugned memo dated 22nd April 2022, issued by the HPCL.

18. Under the above observation the instant writ petition is disposed of.

19. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)