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15&16. 22-05-2024

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Ct. 8

MAT 1972 of 2023
CAN 1 of 2023

Prosenjit Thandar
Versus
Indian Oil Corporation Limited & Ors.

And

FMA 146 of 2024
CAN 1 of 2023
CAN 2 of 2023
CAN 3 of 2024

Indian Oil Corporation Limited & Ors.
Versus
Arundhuti Saha & Anr.

Mr. M.S. Yadav, Adv.
Ms. Saswati Chatterjee, Adv.
Ms. Satabdi Naskar (Kundu), Adv.
...for the respondent in MAT 1972/2023
for the appellant in FMA 146/2024
Mr. Sudipto Panda, Adv.
Mr. Subrata Ghosh, Adv.
Ms. Upama Nandy, Adv.
Ms. Jayshree Kumari Jha
...for the appellant in MAT 1972/2023
for the respondent in FMA 146/2024
Mr. Debabrata Saha Ray, Adv.
Ms. Pingal Bhattacharya, Adv.
...for writ petitioner/respondent no.1

1. Both the appeals are taken up together and disposed of by this common order.
2. The appeals are arising out of a common judgment and order dated 24th August, 2023 passed in a single writ petition.
3. The issue is with regard to LPG Distributorship granted in favour of one Prosenjit Thandar based on his residential certificate. The LPG Distributorship was granted in terms of a Letter of Intent (LOI) dated 29th February, 1996 in favour of one Prosenjit Thandar, the appellant in MAT

1972 of 2023. The vacancy notification for the said distributorship was published in a Bengali Daily on 10th October, 1995. Sub-Clause ‘Gha’ of Clause 2 of the said vacancy notification is relevant for the purpose of disposal of the instant writ petition and the same is reproduced below:

“It is mandatory for the applicant to be the resident of Birbhum, Burdwan and Murshidabad for a period of five years period to the date of application. However, the resident of the same district where distributorship would be granted would get preference if other eligibility criteria is satisfied.”

4. Mrs. Arundhuti Saha is the writ petitioner. She challenged the grant of licence to Prosenjit Thandar disregarding the aforesaid mandatory provision as Prosenjit Thandar was not a permanent resident of Bolpur whereas the writ petitioner is a permanent resident of Bolpur. The writ petitioner submitted a representation on 28th March, 2011 challenging the dealership in favour of Prosenjit Thandar. It was contended on behalf of the writ petitioner that from the voter identity card of the respondent no.9, in whose father LPG Distributorship was granted, it would appear that he was a resident of village Bandarkonda, Dumka Sadar, Bihar, presently Jharkhand on the date of issuance of voter identity card dated 5th March, 1995.
5. Due to non-consideration of the said representation, a writ petition was filed in 2016, namely, ***WP 17220(W) of 2016 (Arundhuti Saha vs. Indian Oil Corporation Limited & Ors.)*** in which an order was passed on 3rd October, 2016

by the Hon'ble Justice Arijit Banerjee whereby his Lordship directed the Senior Regional Manager, West Bengal State Office, Indian Oil Corporation to consider the representation and dispose of the representation by a reasoned order.

6. The authority of the Indian Oil Corporation passed a reasoned order on 3rd September, 2018, which is the subject matter of challenge in WP 23874(w) of 2918, in which the impugned order was passed. This order is under challenge.
7. In disposing of the representation by the appropriate authority of IOCL, the authority concerned had relied upon a communication received from the Block Development Officer certifying that Sri Prosenjit Thandar, son of Balak Thandar is a permanent resident of village Sankbaha, P.O. Bandar, P.S. Nanoor, District Birbhum. The authority has also relied upon a communication dated 12th April, 2018 under Memo no. 691/General/IX-30 from the office of the District Magistrate, informing him that residential certificate cannot be verified due to lack of officer records in that regard.
8. Sri Prosenjit Thandar produced a residential certificate showing that he is residing of village Sankbaha, P.O. Bandar, P.S. Nanoor, District Birbhum from the very inception. However, due to serious inconvenience of the family members, he shifted to Bolpur in the year 2006 and at present his residential address is Kalikapur (Vidyasagar

Pally, P.O. & P.S. Bolpur, District Birbhum. The selection of Prosenjit Thandar was made on the basis of the residential certified issued on 26th October, 1995 by the Block Development Officer, Nanoor, District Birbhum. It was also confirmed by the inquiry report dated 22nd June, 2012 which again has been endorsed by the Block Development Officer, Nanoor. The said residential certificate has still not been quashed and accordingly, the authority of IOCL relying upon the said contemporaneous documents observed that the selection of Prosenjit Thandar on the basis of the residential status was justified. This order was challenged in the aforesaid writ petition.

9. The learned Single Judge observed that from the voter identity card, it would appear that the date of birth of the respondent no.9, Prosenjit Thandar, is on 26th December, 1970. He made an application for distributorship in the year 1995 on the basis of advertisement dated 9th October, 1995. The Block Development Officer gave residential certificate stating, inter alia, that the respondent no.9 is a permanent resident of village Sankbaha within the Police Station of Nanoor and he was known to the Block Development Officer for preceding three years. Thus, the Block Development Officer admittedly did not know as to whether respondent no.9 used to reside at Village Sankbaha prior to 26th October, 1992. On the contrary, the EPIC Card of the respondent no.9 shows that it was issued on 5th March, 1995 and his residential address was recorded as House No.69, Village: Bandarkonda, Post:

Massanjore, District: Dumka. He is a voter as per the EPIC Card of 160, Dumka Legislative Assembly.

10. The Inquiry Officer sent the certificate issued by the Block Development Officer, Nannor to the District Magistrate, Birbhum for verification. But the District Magistrate, Birbhum could not verify the authenticity of the said document due to lack of records. It was on such basis, the learned Single Judge was of the view that the Indian Oil Corporation shall decide the issue of residential certificate of the respondent no.9 upon giving opportunity to the writ petitioner within 60 days from the date of this order. This order was challenged both by the respondent no.9 and Indian Oil Corporation for different reasons. But both are completely *at idem* that because of inexplicable delay, the writ petition ought to have been dismissed.
11. The learned counsel for the writ petitioner supports the judgment under appeal on the ground that the learned Single Judge having arrived at a finding that the respondent no.9 had failed to remove the doubt with regard to his residence at the address on the basis of which the Indian Oil Corporation acted was justified in directing the Indian Oil Corporation to re-verify the residential status of the writ petitioner on the basis whereof, the LPG licence was granted.
12. The learned Counsel for the Indian Oil Corporation and the private respondent no.9 have submitted that the reasoned order has taken care of the contemporaneous documents issued by the Block Development Officer for

the purpose of deciding the residential status and unless that certificate is held to be invalid and/or quashed, the learned Single Judge could not have been ignored the said certificate and directed the Indian Oil Corporation to decide the matter afresh overlooking the fact that the writ petitioner, for the first time, lodged a complaint in the year 2011 and filed the writ in the year 2016 in which an order for consideration was passed by the learned Single Judge. It is submitted that on the basis of the record, the view taken by the authority concerned could not be considered to be perverted.

13. We do not find any plausible explanation offered in the writ petition or from the submission made on behalf of the writ petitioner for lodging a complaint in the year 2011 almost after 16 years from the date the LPG Distributorship was granted in favour of the respondent no.9 and then again approached the Court in the year 2016 and by that time, the initial period of 15 years had expired and the licence was renewed in favour of the respondent no.9 by the IOCL.
14. The learned Single Judge did not set aside the LPG Distributorship granted in favour of respondent no.9 but directed the authority to consider the matter after taking into consideration the objection raised by the writ petitioner.
15. We have perused the order passed by the authority concerned. It cannot be said that on the basis of the documents issued by the Block Development Officer, the

authority acted malafide in granting distributorship to the respondent no.9. Moreover, unless and until the certificate issued by the Block Development Officer is set aside, Reliance on the said document by the IOCL cannot be frowned upon and LOCL cannot be faulted for relying upon the said document.

16. The delay and laches is another factor which is working against the writ petitioner. At this distant point of time when the respondent no.9 has proceeded on the basis that he has been issued the licence validly and has acted on the basis of the said licence, expanded his business and altered his situation, challenge on the ground of residence cannot be allowed to be entertained at this stage and in this regard, we are supported by the decision passed by the Hon'ble Supreme Court in *Mrinmoy Maity vs. Chhanda Koley and Others* reported in *2024 SCC OnLine SC 551* where the Hon'ble Supreme Court has taken note of the fact that a writ court is required to weigh the explanation offered for delay and laches and the acceptability of the same in view of the fact that the Court is exercising an extraordinary and inequitable jurisdiction.
17. In the said decision, the writ petitioner was a rival applicant along with the appellant for grant of LPG Distributorship and she along with the appellant were found to be eligible and the appeal was held to be successful by virtue of draw of lots. This factual aspect would reflect that the writ petitioner was aware of all the developments including that of the allotment of

distributorship having been made in favour of the appellant herein way back in 2014, yet did not challenge and only on acceptance of the alternate land offered by the appellant in March 2017 and permitting him to construct the godown and the showroom. The same was challenged in the year 2017. It was observed that the writ petitioner had allowed his right if at all if any to be drifted away or in other words acquiesced in the acts of the Corporation and as such on this short ground itself the appellant has to succeed.

18. In the instant case, the writ petitioner participated in the said process but was unsuccessful. She was aware that licence was granted in favour of Prosenjit in 1996 itself. It was known to the writ petitioner that the appellant was granted the licence after taking into consideration, inter alia, the certificate of the Block Development Officer. In any event, such information was available and with due diligence could have been ascertained and for that purpose the writ petitioner was not required to wait till 2011 or 2016.
19. Moreover, we do not find any pleading that the Indian Oil Corporation has proceeded malafide with a view to favour the respondent no.9. The certificate on which the Indian Oil Corporation has relied upon does not appear to be fake. As rightly pointed out by the coordinate Bench in **FMA 199 of 2018 (*Lakshman Tudu vs. Indian Oil Corporation Limited* & Ors.)** deiced on 29th September, 2022 that undisputedly, the controversy as regards the

residence is a disputed question of fact. The Corporation has stated that the relevant brochure does not mention as to whether residency should be casual/temporary or permanent in nature. It only mentions the duration of residency. The scope of judicial review is restricted to the decision making process and not with regard to final decision unless it appears to the constitutional Court that it is completely perverse or irrational or suffers from illegality. The Chief Manager, IOC considered all relevant documents in deciding the matter.

20. On such consideration, we dispose of the order passed by the learned Single Judge. Both appeals along with respective applications are, accordingly, disposed of.
21. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)