

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 816 of 2022

Mini Oraon

Versus

Hindustan Petroleum Corporation Limited & Ors.

Mr. Amlesh Ray

Mr. Deborshi Dhar

Ms. Oshmita Mukherjee

Mr. Nigam Mittal

.....For the Petitioner.

Mr. Sudip Kr. Paul

.....For the respondent nos. 1 to 4.

Ms. Supriya Singh

.....For N.H.A.I.

Mr. Bikramaditya Ghosh

.....For the respondent no. 8.

Hearing Concluded On : 15.05.2024

Judgment on : 22.05.2024

Krishna Rao, J.:

1. Being aggrieved with the communication dated 19th January, 2022, issued by the respondent no.3 to the petitioner informing the petitioner that the candidature of the petitioner has not been found suitable for allotment of the Retail Outlet Dealership as the petitioner has not submitted NHAI clarification certificate as to the suitability of the land not submitted by due date, the petitioner has filed the present writ application.
2. The respondent no.1 company had published a notice for appointment of regular/rural retail outlet dealerships (Petrol Pump) on 25th November, 2018 in different locations in the State of West Bengal. As per the notice, the petitioner had submitted an application for allotment of Retail Outlet Dealership of Petrol Pump under category of Scheduled Tribes.
3. By a communication dated 15th January, 2019, the respondent no.3 informed the petitioner that the petitioner had not submitted offer for a suitable land for allotment of retail outlet and directed the petitioner to submit within three months failing which the application of the petitioner will be rejected. The petitioner had submitted the details of the land between Changpara and Salsalabari bazar on NH-27 (New).

4. On receipt of the details of the location of the suitable land, the respondent no.3 by a communication dated 19th July, 2019, informed the petitioner that on the basis of Draw of Lots for selection of Retail Outlet dealership held on 17th July, 2019, the petitioner has been declared as selected. On the same day, the respondent no.3 directed the petitioner to deposit Rs. 30,000/- towards the initial security deposit and also to submit the required documents as mentioned in the said letter within 10 days.
5. In between 25th July, 2019 to 15th January, 2020, the petitioner has submitted all the documents as required by the respondent no.3 from time to time and on 14th December, 2020, the Land Evaluation Committee visited the proposed site and by a letter dated 22nd December, 2020, informed the petitioner that during the land evaluation, it was observed that the proposed NHAI bypass construction is yet to be commenced and suitability of the proposed plot as per NHAI norms could not be determined as per existing site condition and the petitioner was advised to submit layout drawing of the proposed plot with respect to the proposed NH sketch map/DPR approved by any empanelled NHAI consultant. In the said letter, it was also informed to the petitioner that both sides of the proposed site up to a distance of 1 Km to be clearly demarcated by showing all road intersections, culverts, bridges, median cuts, service lane, railway crossing, over bridge etc. with respect to the proposed NH. The

petitioner was directed to submit the same within 30 days from the date of receipt of the communication.

- 6.** By a communication dated 11th February, 2021, the respondent no.3 again informed the petitioner that if the petitioner failed to obtain clarification from NHAI and submit the same to the respondent no.3 by 21st May, 2021, the offer of the petitioner is liable to be rejected. On 19th May, 2021, the petitioner by an e-mail requested the respondent no.3 that the NHAI Consultant, the respondent No.8 is at Lucknow and due to Covid-19 situation, the petitioner requested to allow the petitioner for some more time to submit the details with the help of Consultant. As the petitioner has not submitted NHAI clarification as to the suitability of the land, the respondent no.3 had rejected the candidature of the petitioner for allotment of Retail Outlet (Petrol).
- 7.** Mr. Amlesh Ray, Learned Advocate representing the petitioner submits that the HPCL ought not to have declared the petitioner not found fit for non-submission of clarification from NHAI as to the suitability of the land. He submits that the HPCL only published a notice for allotment of retail outlet between Changpara and Salsalabari Bazar on NH-27 (New) as the HPCL had the knowledge that the said National Highway is new one.
- 8.** Mr. Ray submitted that by a mail dated 19th May, 2021, the petitioner had informed the respondent no.1 due to situation of Covid-19, the petitioner is facing difficulties to submit "Suitability report" from NHAI

within 21st May, 2021 as the NHAI Consultant, respondent no.8 is also bearing with the lockdown. He submits that even after receipt of the request of the petitioner, the respondent no.3 has not given any reply to the petitioner.

- 9.** Mr. Ray submitted that the Government of India, Ministry of Petroleum and Natural Gas with the approval of the Competent Authority extended the time by additional six months to offer land or alternative land by the SC/ST applicant. In the letter, it is also clarified that the outcome of the exercise may be reviewed at the end of 6 months and decision regarding rejection of candidature is to be taken only after the review of the exercise but the respondent authorities have not provided the extended period of six months to the petitioner.
- 10.** Mr. Ray submitted that the respondents have also not considered the letter dated 6th December, 2021 wherein it was clarified that no clarifications shall be issued to the fuel station applicants from the date of issuance of this letter without formal submission of the proposal on online access permission portal of Ministry of Road, Transport and Highway.
- 11.** Mr. Ray submitted that by a letter dated 11th February, 2021, the respondents out to have granted six months time to the petitioner in terms of the approval dated 13th February, 2017, as the petitioner is a Scheduled Tribe Candidate but the respondents have granted only three months time.

- 12.** Mr. Ray submitted that the HPCL has invited the application for retail outlet between Changpara and Salsalabari Bazzar on NH-27 (New) in the year 2018 having the knowledge that the acquisition proceeding was going on. He submits that at present NHAI has already taken possession of the land for construction of NH-27.
- 13.** Mr. Sudip Kumar Paul, Learned Counsel for the respondent nos. 1 to 4 submitted that the petitioner has not submitted clarification from NHAI with regard to the suitability of the land even the extended time and accordingly, the respondents have informed the petitioner that the candidature of the petitioner not been found to be eligible for allotment of retail outlet.
- 14.** Mr. Paul submits that in the communication dated 19th January, 2022, the respondent no.3 had informed the petitioner that if the petitioner has any grievances against the rejection of the candidature of the petitioner, the petitioner may make her representation within 10 days from the date of the rejection but the petitioner has not made any representation and had filed the present writ application.
- 15.** Ms. Supriya Singh, Learned Counsel for the NHAI submitted that the NHAI does not provides any advisory on suitability of land of fuel station. She submits that the NHAI does not have any empanelled Consultant, namely, Mr. S. Ojha to whom the petitioner alleged to have consulted for providing layout for suitability of the land.

- 16.** Ms. Singh further submitted that no proper application was submitted by the petitioner on online access permission portal of the Ministry of Road, Transport and Highway in terms of the letter dated 6th December, 2021.
- 17.** Heard the learned Counsel for the respective parties, perused the application and the materials on record. The only question in the writ application whether the respondent no.3 has rightly rejected the candidature of the petitioner for allotment of Retail Outlet for non-submission of clarification from NHAI to the suitability of the land.
- 18.** By a letter dated 22nd December, 2020, the DGM, Retail Region, HPCL, informed the petitioner that during the land evaluation, it was found that the proposed NHAI bypass construction is yet to be commenced and suitability of the proposed plot as per NHAI norms could not be determined as per the existing site condition and the petitioner was advised to submit layout drawing of the proposed plot with respect to the proposed NH stretch map/DPR approved by any empanelled NHAI consultant. On 11th February, 2021, the respondent no.3 has again requested the petitioner to submit clarification from the NHAI by 21st May, 2021. In the said letter, it was also clarified that if the petitioner failed to obtain clarification by 21st May, 2021, the offered land will be rejected.
- 19.** The petitioner by an email dated 19th May, 2021, the petitioner had requested for some more reasonable time to submit clarification with

help of the Consultant. Though the request of the petitioner was received by the respondent but no reply communication was made with the petitioner for extension of time. In the meantime, by a communication dated 6th December, 2021, the National Highways Authority of India informed that no clarifications shall be issued to the fuel station applicants from the date of issuance of the letter without formal submission of the proposal on online access permission portal of Ministry of Road, Transport and Highways.

- 20.** The letter dated 13th February, 2017, issued by the Under Secretary to the Government of India, Ministry of Petroleum and Natural Gas reads as follows:

“To

The Director (Marketing),
BPCL/IOCL/HPCL
Mumbai

**Sub : Extension of time to offer land by
applicants belonging to SC/ST category.**

Sir,

I am directed to refer to BPCL's letter No RSHQ.C2.201 dated 6th October, 2016 on the subject cited above and to convey the approval of the Competent Authority for extension of time by additional 06 months to offer land or alternative land (as the case may be) by SC/ST applicants. The SC/ST applicant has to offer land/alternate land within an additional period of 6 months from the date of issuance of this letter. In case the applicants fail to offer land/ alternate land within the specified period of 6 months, the offer would be withdrawn and application would be rejected under limitation to the applicant. This opportunity would be available only to the applicants of those locations where selection process has not been completed i.e. results have not been declared or result declared but no candidate selected.

2. It is further requested that the outcome of the exercise may be reviewed at the end of 6 months. A decision regarding rejection of candidature is to be taken only after the review of the exercise.

3. This issues with the approval of competent authority.

Yours faithfully

(Vinay Kumar)

Under Secretary to the Government of India

Tele : 23386119.”

The respondent no.3, by a letter dated 11th February, 2021, granted time to the petitioner till 21st May, 2021 and not for six months. The respondent no.3 ought to have extended the time for six months i.e. up to 10th August, 2021. On 19th May, 2021, the petitioner has again prayed for extension of time but no communication was made to the said request and on 19th January, 2022, the candidature of the petitioner is rejected on the ground of not furnishing the clarification from the NHAI as to the suitability of the land.

21. The National Highways Authority of India in their affidavit-in-opposition stated as follows:

“6(a) *That the Respondent No. 5/PIU-Jalpaiguri, NHAI does not provides any advisory on suitability of a land parcel to the applicants of fuel stations, as otherwise alleged to have been sought by the Writ Petitioner.*

b) *That the Respondent No. 5/PIU-Jalpaiguri, NHAI does not has any empanelled consultant namely Mr. S. Ojha/Private Respondent No. 8 to which the Writ Petitioner alleges to have*

met/approached for seeking alleged layout drawings/map/consultancy etc.

- c)** *That through NHAI-HQ Circular/Letter dated 06.12.2021 (which has been annexed as Annexure P/18 with the Writ Petition) on the subject of Clarifications regarding suitability of Land Parcels as per norms of access permission of MoRT&H; it has been clearly informed that no clarifications shall be issued to fuel station applicants from the date of issuance of this letter without formal submission of the proposal on the online access permission portal of MoRT&H. It is pertinent to mention that no proper application/proposal has been submitted.”*

- 22.** The petitioner has approached the respondent no.8 as consultant of the respondent no.5 but at the time of hearing, the learned Counsel for the respondent no.8 submits that the respondent no.8 is not the consultant but he is giving advice to the persons who approached to him. In the communication dated 22nd December, 2020, the DGM, Retail region, Hindustan Petroleum Corporation Limited advised to the petitioner to submit lay out drawing of the proposed plot with respect to the proposed NH stretch map/DPR approved by any empanelled NHAI Consultant. In the communication dated 11th February, 2021, the respondent no.3 advised the petitioner to seek clarification from NHAI on the suitability of the land for putting up retail outlet. In the affidavit-in-opposition, the respondent no. 5, NHAI, stated that the respondent no.5 does not provide any advisory on suitability of a land parcel to the applicants of fuel stations. The respondent no.5 has also taken a stand that the petitioner has not submitted any proper application through

online access permission portal of the MoRT&H in terms of Circular dated 6th December, 2021.

- 23.** The respondent no.3 advised the petitioner to seek clarification from the NHAI for suitability of the land and other hand, the NHAI has taken the stand that NHAI does not provide any advisory on suitability of the land to the applicants of fuel station. As the petitioner has not obtained clarification from the NHAI, as to the suitability of the land, the respondent no.3 had rejected the candidature of the petitioner for allotment of Retail Outlet. Considering of the above, the impugned communication dated 19th January, 2022, is set aside and quashed.
- 24.** The NHAI has also relied upon the circular dated 6th December, 2021, issued by the National Highways Authority of India and the NHAI has also taken the stand that the petitioner has not submitted an application/proposal on the online access permission portal of the MoRT&H and thus, the petitioner is given liberty to submit an application on online portal of the MoRT&H within a week from date for clarification regarding suitability of the land and if the petitioner applied the same, the respondent no.5 shall provide necessary clarification to the petitioner within four weeks from the date of receipt of the application. After receipt of the clarifications, the respondent nos. 1, 2 and 3 shall take appropriate decision within a period of two weeks thereafter.

25. The respondent nos. 1, 2 and 3 are directed not to issue any order of allotment of Retail Outlet (Petrol) with respect to between Changpara and Salsalabari Bazar NH-27 (New) to any third party for a period of eight (8) weeks from date.

26. WPA No. 816 of 2022 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)