IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

IN THE MATTER OF

CPAN 643 of 2021
Arup De
Vs
Gurpreet Singh & Ors.

WPA 25024 of 2018
With
IA No.CAN/3/2020 (Old No. CAN/1655/2020)
With
CAN 4 of 2020
Arup De
Vs.
Indian Oil Corporation & Ors.

For the IOCL : **Mr. Manwendra Singh Yadav, Adv.**
Mrs. Saswati Chatterjee, Adv.,

Reserved on : **09.04.2025**

Judgment on : **11.07.2025**

Subhendu Samanta J.:-

1. Indian Oil Corporation Limited published an advertisement for appointment of LPG Distributor in the State of West Bengal. The petitioner applied for the location at Dhupguri, Block- Dhupguri Municipality, District- Jalpaiguri under Category- Open. Draw of lots was held amongst the applicants for the said location wherein the petitioner declared successful IOCL informed petitioner vide a letter dated 31.5.2018 to deposit of Rs.50,000/- and to submit documents mentioned therein within 7 working days for conducting Field Verification Credentials (FVC). Accordingly, the petitioner has deposited the said amount along with all required document. It is the contention of the petitioner that petitioner has complied with the formalities as required by IOCL authorities but the IOCL authorities had not proceeded further due to some pending litigation.

2. Hence, the instant writ seeking mandamus upon the concerned authority to conclude the necessary formalities and allow the petitioner to run the LPG business.

3. Through the affidavits, it appears that in the same location there were existence of an agent, namely, M/s. Bimala Gas Service whose license was terminated by the IOCL authorities; against which he (Bimala) approached this Court in a writ petitioner for setting aside the order of termination. Hon'ble Single Bench of this Court has set aside the order of termination, thereafter, IOCL authority preferred an appeal before a Division Bench of this Court. The Division Bench in the appeal, has affirmed the order of learned Single Judge, against which the IOCL preferred a special leave petition (being SLP(C) diary no. 31111 of 2019) before the Hon'ble Supreme Court whereby the Hon'ble Supreme Court dismissed the SLP; thereby the order of Division Bench was affirmed. The IOCL showing the reasons thereof regarding the orders passed by Hon'ble Division Bench which was upheld by the Hon'ble Apex Court could not proceeded to conduct Field Verification Credential are issuance of LOI in favour of petitioner.

4. Initially, this writ petition was dismissed by a Coordinate Bench vide its order dated 06.12.2016 with observation that the writ petition as becoming infructuous in view of the Hon'ble Supreme Court's order in Special Leave

Petition (Civil) diary No. 31111 of 2019. Petitioner herein filed a mandamus appeal against the order by the Single Bench/wherein the Division Bench in MAT 1912 of 2019 observed, inter alia, "whether present writ petition had become infructuous could only be determined by impleading Bimala as a party and considering the facts and evidence of the previous writ. The rights, equities of the parties ought to have been determined fully and conclusively by this exercise." By that order of remand the instant matter appears for final adjudication.

5. During the continuation of the instant writ petition a Coordinate Bench of this Court has passed an order of 23rd March, 2021 directing IOCL authority to submit a report if there is any possibility to run two LPG Distributors in the same area so that petitioner as well as the private respondent (Bimala Gas) may be accommodated. By submitting affidavit after enquiry, the IOCL authority replied that it is not possible to run to LPG Distributors in the same location.

6. Facts suggest that the existing Distributor of LPG (Bimala Gag) though succeeded legal battle to have got back his distributorship up to Supreme Court, having not been able to start their business due to an order of *status quo* by an interim order passed by this Court during the pendency of this writ petition.

7. Now, considering the direction of Hon'ble Division Bench in remand as well as the claim in the writ petition placed by the learned Counsel for the petitioner, I think it necessary to formulate three issues to decide the bone of contentions including the right and equities of the parties involved herein:-

ISSUES

(i) Whether IOCL authority is bind by the principle of promissory estoppel to provide distributorship license to the petitioner.

(ii) Whether petitioner's right has been finally decided by this Court vide its order dated 23rd March, 2021.

(iii) What rights and equities are available to the parties in this list?

Discussion on Issue no. (i):-

8. Learned Counsel for the petitioner submits that petitioner was declared as a successful candidate and LOI was recommended to be issued.The Distributorship was not allowed to the petitioner. When the petitioner was declared as a successful candidate the petitioner has altered his position and has arranged for a particular godown for setting up of the distributorship business for dealing with the LPG a cylinder. It is further contention of the learned Counsel for the petitioner as the petitioner has already altered his position on the promise of IOCL authority thus they are barred by principle of promissory estoppel under Section 115 of the Evidence Act. It is further argued by the petitioner that by the act and action, words and conduct made by the IOCL authority a clear and unequivocal promise which is intended to create legal relationship or effect legal relationship to arise in future, knowing or intending that it would be acted upon by other party to whom the promise is made and it is a fact that other party/the petitioner acted upon the promise made by the IOCL, such promise would be binding on the party making it and IOCL would not entitle to go back on such promise. He further submits, even if there is no writing contract between the respondents and the petitioner but the promise which is visible through the act and action and conduct of the IOCL authority can be enforced. In support of his contention, he cited a decision reported in ***Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others*** reported in ***(2010) 13 SCC 336.***

9. On the contrary it is the submission of IOCL authority that the petitioner was well aware about the legal dispute and litigations between M/s. Bimala Gas Service and IOCL. The newspaper advertisement dated 31st August, 2017 clearly mentioned that the same was against the terminated distributorship. He further submits that argument by the petitioner regarding no information about the pending litigation is false. He pointed out Paragraph 8 of the writ petition wherein the petitioner himself stated about the pending litigation between IOCL and M/s. Bimala Gas Service. Prior to that, in the demand of Justice dated 14.11.2018, the petitioner claims to be awarded of order dated 05.10.2018 passed in WP No. 12206(W) of 2014. It is further submitted by the IOCL that the petitioner all along aware of the pending litigation at least pending of appeal being MAT No. 1493 of 2018 but chose not to join the said proceeding. It has further argued by the IOCL that serial no. 5 of the advertisement laid down general conditions governing the selection. Under serial no. 5 (Ka) it is mentioned that the Well Marketing Companies shall be at liberty to cancel/withdraw/ modify the advertisement in their sole discretion. Further, under serial no. 5 (Gha) it is mentioned that the advertisement his only an invitation and not offer for awarding LPG Distributorship.

10. It has been specifically contended by the learned Counsel for the IOCL that there are no promise on behalf of the IOCL authority to the petitioner. Thus, they are not bind by the promissory estoppel to provide license in favour of the petitioner.

11. Having regard to the learned Counsel for the parties let me consider the law relating to the promissory estoppel. The law of promissory estoppel is a branch of law which has its basis and origin in terms of Section 115 of Indian Evidence Act.

> "*When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person his representative, to deny the truth of that thing.* "

12. Promissory estoppel is a principle evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. It based on vested rights which applied to do justice to a promissee where promissor betrays promise. To more clarify the principle it can be extended or defined as a right of a promissee to enforce the promise of promissory who after the promise has been made as over-turned intentionally. In this Court the law has evolved in such a way that if it appears, in the attending facts and circumstances of a case that a promissee has acted upon the promise made by the promissor. Such right is enforceable. It can be stretched to that of the limit that the promise is not required to be written or contractual, it may be an oral promise. In ***M/s. Motilal Padampat Sugar Mills Company Ltd.*** (supra), the Hon'ble Apex Court had defined the principle of promissory estoppel as follows:-

> *"Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. Of course the basic requirement invoking this principle must be present namely, that the fact-situation should be such that "injustice can be avoided only by enforcement of the promise."*

Sree Rayalaseema Alkalies and Allied Chemicals Ltd. vs. Government of A.P reported in ***AIR 1993 AP 278 (FB)*** it has been held that:-

> *"Principles of promissory estoppel can be invoked against the Government or public authority subject to the following, (i) the principle cannot be invoked preventing the Government from acting in the discharge of its duty or obligation imposed by law, (ii) it being an equitable doctrine if it is established on facts and circumstances that it would be inequitable, in the larger public interest, to hold the Government or public authority to the promise or representation made by it, it will not be enforced, (iii)the doctrine cannot be invoked when the representation made by the officer or authority is beyond their powers, viz. If it is ultra vires the powers of the officer or authority, if cannot be bind the Government, (iv)it being an equitable doctrine cannot be invoked if it shown that the*

> *representation was obtained by playing fraud, having regard to the fact that fraud vitiates everything. "*

13. From the above observations it is crystal clear that principles of promissory estoppel itself have some limitations. They are i) doctrine cannot be invoked so as to give an authority powers which it does not, in law, possess; ii) promissor cannot be compelled to perform his promise if it is equitable to do so; iii) doctrine cannot be used to compel the Government or public authority to carry out the promise prohibited by law or which is devoid of the authority or power in the officer of the Government or public authority.

14. Thus, in this particular case, to enforce the right the petitioner has to prove that the IOCL has actually, by its act, action and conduct made a promise to the petitioner to the effect that he would be given the LPG Distributorship license. To prove that fact the petitioner demonstrated that a letter dated 31.5.2018 was issued by IOCL in favour of petitioner declaring him to be a successful candidate in a draw of lots and thereby, he was directed to deposit an amount of Rs.50,000/- and also directed to submit some documents within 7 working days for conduction of Field Verification Credential (FVC). It is the case of the petitioner that by such letter, petitioner has considered himself to be a person who likely to be given a license of the distributorship of LPG. It is further the case of the petitioner that by such conduct/letter of IOCL, the petitioner has constructed a sufficient/specious godown by expending a huge sum of money. It is the plea of the petitioner that by such the petitioner has altered his position on the promise of IOCL, the authority is duty bound by the doctrine of promissory estoppel to revert back from their earlier stand. On the other hand, the IOCL authority has demonstrated the litigations pending between themselves and M/s. Bimala Gas Service whereby the direction of Hon'ble Single Judge was affirmed up to Hon'ble Apex Court and they are duty bound to allow Bimala Gas Service to perform business in the said sight.

15. To clarify the entire situation it appears that letter of intimation by the IOCL dated 31.5.2018 to the petitioner is merely information to the petitioner that he was declared to be successful in a draw of lots. Field Verification Credentials were required to be made after issuance of such letter which required some documents to the furnished by the petitioner. Unless and until Field Verification Credentials be concluded or at least letter of intent (LOI) was issued by the concerned authority, the petitioner cannot consider himself to be a person fit to issue license of distributorship by the authority concerned . I made it clear that though petitioner was pleaded that he has spent huge sum of money in constructing proposed shop-cum-godown for the purpose of LPG Distributorship but no evidence was placed on record to justify the same, moreover, if at all the petitioner proceeded to construct a godown over a plot of land which was offered at the time of making an application, that cannot tantamount that the said plot of land was actually selected by the Oil Marketing Company to construct a godown. Thus, the issuance of letter dated 31.05.2018 by the respondent authority itself cannot reckoned to be a promise to the petitioner which he can be construe as active enforceable promise. Thus, after dealing with the doctrine of promissory estoppel, in my view, so called act, action, and performance of respondent authority (IOCL) through a letter dated 31.05.2018 is not a promise. Thus, the respondent authority is not binding by the doctrine of promissory estoppel to allow the petitioner distributorship license.

16. Under the above observation the issue no. 1 decided against the petitioner.

Issue No. 2:-

17. Learned Counsel for the petitioner submits that vide an order dated 23rd March, 2021, this Court has made some specific finding that there is a valid right accrued in favour of the petitioner in view of the fact that the petitioner was declared as a successful candidate and LOI was issued. He further argued that this Court also made finding that accrued legal right of the petitioner cannot be terminated on false and flimsy grounds. It is the contention of the learned Counsel for the petitioner no appeal has been preferred from such order by such respondent and as such they were admitted the finding of this Court of its order dated 23rd March, 2021. Thus, the finding of this Court has its binding nature which is applicable in the later stage. He further argued that as the said finding was not challenged it shall be construed as *res judicata* in the subsequent stage of the proceeding. In support of his contention he cited decision of Hon'ble Apex Court as follows:-

Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others reported in ***(2010) 13 SCC 336*** and ***Bhanu Kumar Jain vs. Archana Kumar. Another*** reported in ***(2005) 1 SCC 787***

18. Learned advocate for the IOCL submits that vide order dated 23rd March, 2021 this Court has directed to respondent authority to make an enquiry whether there are any possibility of establishing two distributorships in the same location so that petitioner and Bimala Gas (Respondent No. – 5) may be accommodated. Learned Counsel for the IOCL submits that in terms of the said directed the IOCL authority has made a detailed enquiry and submit the report. It appears from the report that even as on the day of report, respondent no. 5 (Bimala Gas) did not reach the feasibility mark of refill of 6000 cylinders per month fixed as per guidelines far less 12000 cylinders per month being the upper limit, which once attained, another distributor became feasible. Thus, in conclusion a second distributor can be feasible only when the respondent no. 5 (Bimala Gas) reaches 12000 cylinders per month limit as mentioned in the guidelines of the Ministry of Petroleum and Natural Gas being the controller authority. He submits the report has been placed before this Court, after perusing such report this Court intends to proceed to the final conclusion of the hearing of this matter. He submits the order passed by this Court on 23rd of March, 2021 has no binding effect in its final conclusion.

19. To justify the issue involved herein, let me set out the direction of this Court the direction of this Court passed in 23rd March, 2021:-

> "*This matter is a fight between the existing distributor of LPG and another selected bidder of LPG in an area in North Bengal but in favour of the selected bidder no agreement has been executed between the respondent no. 1 and the petitioner. The added respondent, i.e., the existing distributor say that after a legal battle they have got back their distributorship but because of a status quo order passed by a division bench in connection with the present writ application they have not been able to start their business despite they got success up to Supreme Court,*
>
> *The division Bench by its order date 23rd December, 2019 in MAT 1912 of 2019 made it clear that any change in status regarding*

appointment of distributors should be made only with the leave of the learned Single Judge. It was also mentioned in the said order that the writ petition, together with the supplementary affidavit is to be heard as expeditiously as possible.

As the added respondent no. 5 despite getting success up to Supreme Court has not been able to start its business for the order of status quo, I intend to pass an order changing the status quo situation and the added respondent no. 5 is allowed to start its business. There is no reason from continuing its business despite the order passed by the Supreme Court in dismissing the special leave petition filed by the Indian Oil Corporation against the order passed in favour of the added respondents by one Division Bench of this Court.

However, the interest of the present writ petitioner is required to be protected also.

As because field verification has not been completed up till not as submitted on behalf of the Indian Oil Corporation (IOCL) despite the writ petitioner being selected, the selection cannot be set aside or abandoned until and unless it is show to the satisfaction of this Court that in the area there cannot be two LPG distributors, i.e. the added respondents and the present writ petitioner.

Because of this reason, I direct the respondent Indian Oil Corporation Limited to file one affidavit making it clear therein whether there is any such bar that for a particular area two LPG distributors cannot be engaged. ”

20. It appears that this Court while in seisen over this matter directed Indian Oil Corporation to submit an affidavit whether there are any bar that for a particular area two LPG Distributors can be engaged. In passing such direction, this Court has also opined that the petitioner has acquired some right as he has been selected in draw of lots. The right of the petitioner as defined/clarified this Court in order dated 23.03.2021 is purely tentative and *prima facie* in nature. There is no conclusiveness of such finding. In deciding the principle of *res judicata* enumerated under Section 11 of the Code of Civil Procedure, it is those rights and observations of a Court of law which are final in nature. Tentative *prima facie* finding shall not act as a *res judicata*. The reasons thereof any *prima facie* finding which resulted to an interim order of a Court has its no value in the later stage at the time of final determination of the lis. Observation of Hon'ble Apex Court in ***Sant Lal Gupta*** (supra) as well as ***Bhanu Kumar Jain*** (supra) are distinguishable by facts of this case.

21. In my view, the findings of this Court vide its order dated 23.03.2021 has no binding effect and cannot operate as its *res judicata* during the stage of final hearing of this Court. Thus, this issue also decided against the petitioner.

Discussion on Issue no. 3:-

22. The Hon'ble Division Bench by its order of remand has directed this Court to conclusively determine the rights, equities of the parties.

23. In deciding the rights of the petitioner, it appears that the petitioner was given a letter by the respondent authority who declared the petitioner as successful candidate. On the basis of such letter the petitioner has deposited a sum of Rs.50,000/- with the respondent authority. Thereafter, respondent authority (IOCL) was thereafter guided by the pronouncement of order of this Court which was upheld by the Supreme Court to allow Bimala Gas Service (respondent no. 5) to perform the business. The rights and obligations between Bimala Gas Service (Respondent No – 5) and IOCL and contractual relations thereof have been revived by dictum of this Court. Thus, petitioner's right to proceed up to issuance of a license by dint of the notification cannot be reached. Moreover, the contractual relationship between Bimala Gas and IOCL is for the benefit of public. Thereby, the petitioner's right in this instant writ petition would only lies to refund of money as the petitioner has already deposited some amount of money with the IOCL. The petitioner's right or equity can only be successfully determined if the IOCL authority be directed to refund the same amount with an interest which can be reckoned to be 6% per annum from the date of deposit to the date of its actual realization.

24. Thus, the petitioner is entitled to the same relief as mentioned hereinabove regarding refund of his deposit along with the interest from the IOCL authority. IOCL is directed to refund the money with interest, as mentioned hereinabove within six weeks from the date of passing of this order.

25. In considering the rights and equity of the respondent no. 5 it appears that the respondent no. 5 is the existing distributor of LPG, he successfully win the legal battle against the IOCL authority, his distributorship license has resumed but business was stalled by an interim order of this Court. Thus, he is entitled to start their business instantly. The respondent authority is directed to pass necessary order/directions so that distributorship business of Respondent No–5 be started as early as possible.

26. On that score, interim order, if any, passed by this Court during the pendency of the writ petition debarring respondent no. 5 to start the business is hereby vacated.

27. Hence, according to the direction of Hon'ble Division Bench the rights and equities of the parties is hereby finally, conclusively determined.

28. Thus, this issue no. 3 is decided accordingly.

29. All the issues have already been decided. The instant writ petition, appears to be not meritorious. Thus, same is thereby dismissed and disposed of on the grounds mentioned hereinabove.

30. Connected applications including contempt application being CPAN 643/2021 if pending, are also disposed of.

31. Interim order, if any, passed by this Court during the pendency of the instant writ petition is also vacated.

32. 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.)