

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 18293 of 2019

Sk. Nazir Hossain

Vs.

Bharat Petroleum Corporation Limited & Ors.

For the petitioner : Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghoshadvocates

For the Respondent Nos. 1 to 3 : Mr. Pushpendu Chakraborty
..... advocate

For the Respondent no. 4 : Mr. Partha Pratim Dutt advocate

Reserved on : 11.11.2024

Judgment on : 07.02.2025

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for issuance of a mandamus directing the respondent authorities to cancel the candidature of the private respondent in respect of the RGGLV Scheme including the Letter of Intent (for short "LOI") and to award RGGLV distributorship for Sinnibar area to the petitioner.
2. An advertisement was published in the Bengali Daily Newspaper namely "Anandabazar Patrika" on 31.08.2017 for the purpose of appointment of LPG Distributor in the State of West Bengal. Pursuant to the said

advertisement Bharat Petroleum Corporation Limited (for short "BPCL") invited application for appointment of Distributor for Liquefied Petroleum Gas (for short "LPG") at various locations under different categories. The last date of submission of such application was 18.10.2017.

3. Petitioner claims to have applied for LPG Distributorship in respect of Sinnibar within Sarishakhola Gram Panchayet, Keshpur Block in the District of West Medinipur. He submitted an online application on 26.09.2017. Petitioner was intimated by the authorities of BPCL that he qualified for draw of lottery which shall be held at the office of the authority of 06.06.2018. Pursuant to the said lottery, the private respondent was selected for grant of LPG Distributorship for the Sinnibar location. On September 20, 2018, the authorities of BPCL uploaded a list of eligible candidates for redraw for selection of LPG Distributorship. The petitioner came to learn that the previous selection of the private respondent was cancelled by the authorities of the BPCL and that a redraw would be held among the rest of the eligible candidates for the said location at an early date. However, for certain unknown reasons the redraw was kept in abeyance and the respondent authorities issued a LOI in favour of the private respondent.
4. Challenging the action of the authorities in issuing the Letter of Intent in favour of the private respondent the instant writ petition has been filed.
5. Mr. Banerjee learned advocate appearing for the petitioner contended that at the Field Verification Stage it was found that the land offered by the private respondent did not meet the requisite specifications for which the candidature of the private respondent stood cancelled and, thereafter, a list of eligible candidates for redraw was uploaded in the website of BPCL. He further contended that after cancellation of the candidature of the private respondent, an opportunity was granted to the private respondent to offer land which could have been granted as per the guidelines. He next contended that the Letter of Intent was issued on the offer of such

alternate land but the private respondent subsequently offered another land which was purchased long after the last date of submission of the application as per the corrigendum. Mr. Banerjee contended that BPCL permitted the private respondent to construct the godown and store room on such land which was subsequently purchased which is contrary to the guidelines.

6. In support of the aforesaid contentions Mr. Banerjee placed reliance upon several clauses of the said brochure.
7. By referring to the definition of the expression "ownership" or "own" Mr. Banerjee submitted that the applicant must have title to the property offered for the purpose of godown or a registered lease deed having minimum five years of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application. Mr. Banerjee contended that the alternate land offered by the private respondent was purchased by him long after the last date of submission of application for grant of LPG Distributorship and, therefore, the authorities of BPCL could not have appointed the private respondent as distributors in respect of the said alternate land.
8. Mr. Chakraborty, learned advocate appearing for BPCL seriously disputed the contentions of Mr. Banerjee. He contended that as per the terms contained in the brochure, alternate land can be offered by the candidate at the time of field verification and also after issuance of LOI. He submitted that in case the land offered by a candidate does not have approach road at the time of field verification stage or at the time of issuance of LOI, the candidature of such candidate cannot be cancelled if such candidate undertakes to provide the approach road within the time frame to be mentioned in the LOI. He submitted that immediately after rejection of the application of the private respondent, a writ petition being WPA 21159 of 2018 was filed by the private respondent and BPCL gave an opportunity to the private respondent to offer an alternate land. He

submitted that on the basis of the result of the field verification of the alternate land the Letter of Intent dated 07.12.2018 was issued by BPCL to the private respondent. He further submitted that, thereafter, the petitioner requested for change of land by a letter dated 01.04.2019 and the authorities after carrying out of the verification of the credentials of the alternate land found the same to be suitable for construction of LPG godown and showroom and, therefore, issued a letter dated 02.05.2019 directing the private respondent to take steps accordingly.

9. Mr. Chakraborty submitted that a candidate offering an alternate land need not become the owner of the same prior, to the last date fixed for submission of application in terms of the advertisement. He submitted that a land purchased by a candidate even after the last date fixed for submission of application as per the advertisement can also be offered by such candidate for consideration and in support of such contention he placed reliance upon a decision of the Hon'ble Division Bench delivered on 21.12.2022 in **MAT 766 of 2022** in the case of **Rashbehari Saha vs. Indian Oil Corporation Limited & Ors.** and a decision of this Court delivered on 21.09.2023 in **WPA 17628 of 2019** in the case of **Rupsona Mondal vs. The Hindustan Petroleum Corporation Ltd. & ors.**
10. Mr. Chakraborty further placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **Jagdish Mandal vs. State of Orissa And Others** reported at **(2007) 14 SCC 517** and **Caretel Infotech Limited vs. Hindustan Petroleum Corporation Limited And Others** reported at **(2019) 14 SCC 81** in support of his contention that mere disagreement with the decision making process or some defect in the decision making process does not warrant interference under Article 226 of the Constitution of India in commercial transactions.
11. The learned advocate appearing for the private respondent submitted that after issuance of LOI he changed the godown land and showroom for better convenient location and better ownership and since the private

respondents could not complete the total work within the stipulated time he prayed for extension of time and the private respondents completed the total work within the extended time.

12. Heard the learned advocates for the parties and perused the materials placed.
13. The Guidelines for selection of LPG Distributors of Liquefied Petroleum Gas (LPG) have been indicated in the Brochure on Unified Guidelines for selection of LPG Distributors.
14. Para 1(W) of the said Brochure defines the expressions “ownership” or “own” for godown/showroom.
15. Para 1(W) is extracted hereinafter.

“w. 'Ownership' or "Own" for godown / showroom for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak Type of Distributorship means having:

a. Ownership title of the property

Or

b. Registered lease deed having minimum 15 yrs of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any).

Additionally, applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of 15 years from the date of advertisement. The applicant should have ownership as defined under the term 'Own' above in the name of applicant/ member of "Family Unit" (as defined in multiple dealership / distributorship norm of eligibility criteria)/parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law; of the applicant or the spouse (in case of married applicant) as on last date for submission of application as specified either in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given

above, consent in the form of a declaration from the family member(s) will be required.”

16. Thus, from the aforesaid definition it is evident that the applicant should have ownership title of the property for godown/showroom in the name of applicant/member of “Family Unit” as on the last date of submission of the application as specified either in the advertisement or corrigendum (if any).
17. Para 2 deals with basic facilities required for operation of LPG Distributorship.
18. Clause (b) and (e) of Para 2 would be relevant for deciding the writ petition for which the same are extracted hereinafter.

“b. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, then the LOI holder can offer an alternate/ new land for construction of godown of specified dimensions, in the advertised location, which will be considered on the grounds of enhanced security / safety, better title (owned instead of leased), convenient location, lower operating cost etc. The selected candidate has to ensure that an all weather motor able approach road (public or private road connecting to the public road) of minimum 2.5 metre width is made available to provide access of LPG Cylinder Truck to the offered land for LPG Godown. In case of private road connecting to the Public Road, the same should be either owned/registered lease or having a right of way from the owner(s) of the land. Wherever the State Government stipulates an approach road of wider dimensions the same should be made available by the applicant.”

“ e. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, then subsequently, the LOI holder can offer an alternate / new land for construction of showroom of specified dimensions, in the advertised location, which will be considered on the grounds of enhanced security / safety, better title (owned instead of leased), convenient location, lower operating cost etc.”

19. Para 8 deals with eligibility criteria for applicants. Under Para 8 Clause A states about the Common Eligibility Criteria.
20. Sub-clause (m) under Clause A of Para 8 deals with “Godown”. It states that the applicant should “own” a plot of land of capacity, minimum dimensions at specified location for construction of LPG Godown or own a ready LPG cylinder storage godown as on the last date of submission of application as specified either in the advertisement or corrigendum (if any).
21. Sub-clause (n) under Clause A of Para 8 deals with “showroom”. It states that the applicant should “own” a suitable shop for showroom of specified site or a plot of land for construction of showroom of specified size as on the last date for submission of application as specified either in the advertisement or corrigendum (if any) at the advertised location.
22. Clause A of Para 8 provides for an opportunity to offer land for Godown and/or showroom. The said Clause is extracted hereinafter.

“Opportunity to offer land for Godown and/or showroom

In case if the offered land for Godown and/or offered land for showroom by the selected candidate which is shown in the application is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/ application at the verification (FVC) stage, then the selected candidate can offer an alternate land which is owned by the applicant/member of the 'Family Unit'/ parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law of the applicant or the spouse (in the case of married applicant) as on the last date for submission of application as specified either in the advertisement or corrigendum if any.

Selected candidate, who has been issued an Letter Of Intent (LOI) can offer an alternate land which is owned by the applicant/member of the 'Family Unit'/ parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step

Daughter), Son-in-law/Daughter in-law of the applicant or the spouse (in the case of married applicant)for construction of Godown/ Showroom, in the advertised location provided the land originally offered in the application was meeting all the specifications as laid down in the advertisement and on the basis of which LOI is issued.”

23. Para 18 speaks of Field Verification of Credential (FVC). At that stage information given in the application by the selected candidate shall be verified with the original documents. The land offered for godown and showroom will also be verified for suitability with regard to eligibility conditions and suitability with respect to construction of godown and showroom will be done. During the FVC stage if the land mentioned by the applicant for godown/showroom is found not meeting with the eligibility conditions or requirements as per the advertisement and if the applicant is having an alternate land in his name or in the name of the member(s) of the family unit with the date of registration of sale/lease on or before the last date of submission of application as specified in the advertisement or corrigendum (if any), the same can be considered at the time of FVC.
24. Para 19 deals with letter of Intent (LOI). It states that if in the FVC, the information given in the application by the applicant is found to be correct and the land offered for godown and showroom are found to be suitable, final Letter of Intent (LOI) will be issued with the approval of competent authority.
25. Common Eligibility Criteria requires that the applicant should “own” a plot of land for construction of LPG Godown or own a ready LPG cylinder storage godown as on the last date of submission of application as specified in the advertisement or the corrigendum.
26. More or less identical requirement has been specified as Common Eligibility Criteria for show room.
27. As per the Guidelines, the land offered by the selected candidate will be verified at FVC stage. If the information furnished by the applicant is found

to be correct and the land offered for Godown and Show room are suitable, the final LOI will be issued as per Para 19.

28. In order to meet the eligibility criteria, the applicant should own plot of land for construction of Godown and showroom or own a ready LPG cylinder storage godown and a suitable shop for showroom as on the last date of submission of application as specified either in the advertisement or corrigendum. Land for such purpose has to be offered in the application.
29. If the land mentioned by the applicant of godown/showroom in the application does not meet the necessary requirements and the applicant offers any alternate land with the date of registration of sale/lease on or before the last date of submission of application as specified in the advertisement or the corrigendum, the same can be considered at the time of FVC.
30. Para 18(b) states that the alternate land has to be duly verified for its suitability during the FVC. As per Para 19, if such alternate land is found to be suitable, final LOI will be issued.
31. Clause (A) of Para 8 read with Clause (b) of Para 18 implies that an applicant shall have an opportunity to offer an alternate land at the time of FVC if the land offered in the application does not meet the necessary requirement provided such alternate land is owned as on the last date of submission of application as specified in the advertisement or corrigendum.
32. The said Guidelines more particularly Para 2(b), 2(e) and 8(A) also provides for offering alternate/new land after issuance of LOI. However, offer of such alternate/new land shall be considered on the grounds of enhanced security/safety, better title (owned instead of leased), convenient location, lower operating cost etc.

33. After reading the entire guidelines, this Court finds that the land for godown and showroom offered in the application as well as the alternate land offered at the FVC stage in terms of Para 18(b) should be owned as on the last date of submission of the application as specified either in the advertisement or corrigendum, if any.
34. However, after reading the said Guidelines as a whole, it does not appear to this Court that any restriction has been imposed therein in the case of offer of an alternate/new land after issuance of the LOI that such land should be owned by the applicant as on the last date of submission of the application as specified either in the advertisement or the corrigendum.
35. In view of the aforesaid discussion, this Court holds that the alternate/new land can be offered after issuance of LOI, even if such land was not owned by the applicant as on the last date of submission of the application as specified in the advertisement or corrigendum.
36. In ***Rashbehari Saha*** (supra), the Hon'ble Division Bench held that the date of registration of the new land offered by a letter of intent holders in course of second or third chance as the case may be, should not have been registered in favour of LOI holder before the last date of application.
37. The decision in ***Rashbehari Saha*** (supra) was followed by this Court in ***Rupsona Mondal*** (supra) and it was held that it was open to the private respondent therein to offer a new land for the purpose of construction of godown, the registration of which was made after issuance of LOI.
38. Turning back to the case on hand, this Court finds that the private respondent herein became the successful candidate in the draw of lots conducted for the Sinnibar area. In the application, the private respondent offered a land for godown and for establishing his right over the said land, a registered lease deed was produced. At FVC stage it was found that the said land did not fulfil the eligibility criteria. For such reason, the

candidature of the private respondent stood cancelled vide letter dated 18.09.2018 issued by the Territory Manager, LPG, BPCL, Kolkata.

39. Private respondent challenged such order of cancellation dated 18.09.2018 by filing WPA 21159 of 2018. However, BPCL issued a letter dated 29.10.2018 giving the private respondent a one-time option to offer alternate land for showroom and/or godown. Private respondent submitted his offer for alternate land vide letter dated 08.11.2018. The said writ petition came up for hearing on 12.11.2018, when the Co-ordinate Bench noted that the private respondent herein, who was the writ petitioner in the said writ petition was granted an opportunity to offer alternative land which he had. The co-ordinate bench by the order dated 12.11.2018 directed that the field verification of alternate land to take place. The writ petition was dismissed as “Not Pressed” on 12.12.2018 after the LOI was issued in favour of the private respondent.
40. Mr. Banerjee would contend that after the order of cancellation dated 18.09.2018 was issued, a list of candidates found eligible for redraw for selection of LPG Distributor in respect of Sinnibar location was published in the website of BPCL on September 20, 2018 and, therefore, a right to participate in the redraw accrued in favour of the petitioner along with other candidates whose names appeared in the said list which could not have been taken away by the BPCL by giving an option to the private respondent to offer alternate land after cancellation of his candidature.
41. Para 20 of the said Brochure lays down the conditions for Re-Draw. The cases where Re-Draw for selection would be held from the remaining eligible applicants have been specified therein. One of the circumstances is rejection of selected candidates due to findings in the FVC.
42. From the order of cancellation dated 18.09.2018, it appears that the candidature of the private respondent was rejected as the land size mentioned in the deed in respect of the land which was offered in the application was less than eligibility criteria.

43. The said order of cancellation dated 18.09.2018 did not attain finality as the same was put to challenge at the instance of the private respondent in a writ petition. During the pendency of the writ petition, BPCL gave an option to offer an alternate land which amounts to implied revocation of the order of cancellation.
44. As observed hereinbefore at the FVC stage, the selected candidate has a right to offer an alternate land owned by him as on the last date of submission of the application.
45. It is evident from the records that BPCL gave an option to offer an alternate land owned by him as on the last date of submission of application as per the advertisement.
46. Giving an option to the private respondent for offering an alternate land cannot be said to be de hors the said Guidelines. Such an action of BPCL cannot be termed as illegal or arbitrary as sought to be urged by Mr. Banerjee.
47. The authority has the power to give an opportunity to a selected candidate to offer an alternate land if the land offered in the application fails to meet the required specifications. Such right does not stand extinguished with the publication of the list of eligible candidates in the website for the redraw.
48. This Court accordingly holds that mere uploading of the names of the remaining candidates in the website can neither take away the right of the private respondent to offer alternate land nor can it confer any right on the petitioner to participate in the re-draw.
49. Private respondent produced the registered deed being No. 906 of 2009 registered on 18.05.2009 as an alternate land as per the offer of alternate land by letter dated 08.11.2018.

50. The alternate land offered by the private respondent was found to be suitable after Field Verification and the LOI was issued on 07.12.2018 subject to certain conditions. After issuance of LOI, private respondent intended to offer alternate land for godown and showroom.
51. The date of execution of the sale deed in respect of the alternate land offered by the private respondent after issuance of LOI is 4th January 2019 and the date of registration is 8th January 2019. It is not in dispute that the last date of submission of application was extended till 18.10.2017. Admittedly the private respondent did not own the said alternate land offered by him as on the last date of submission of application as per the advertisement or the corrigendum.
52. Mr. Banerjee, would strenuously contend that such alternate land could not have been considered by BPCL as the private respondent did not own such land as on the last date of submission of application.
53. This Court has already held that alternate land can be offered after issuance of LOI, even if such land was not owned by the applicant as on the last date of submission of application as per the advertisement or corrigendum.
54. This Court accordingly holds that the offer of the alternate land by private respondent after issuance of LOI is in tune with the guidelines contained in the Brochure.
55. Mr. Banerjee would contend that neither the alternate land offered vide letter dated 08.11.2018 nor the alternate land offered after issuance of LOI meets the required specifications.
56. Field verification of the alternate land offered after issuance of LOI was carried out and it was found to meet the eligibility criteria.
57. At this stage it would be beneficial to refer to the proposition of law laid down in **Caretel Infotech Limited** (supra), wherein it was reiterated that

the decision making process in accepting or rejecting the bid should not be interfered with unless the same is arbitrary or irrational. The Hon'ble Supreme Court held thus-

“38. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., this Court has expounded further on this aspect, while observing that the decision-making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been cautioned that constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice.”

58. In **Jagdish Mandal** (supra), it was held that if the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of the power of judicial review interfere even if a procedural aberration or error in assessment or prejudice to a tender is made out.
59. It is now well settled that the Writ Court cannot interfere even if error in assessment by the tender inviting authority is made out.
60. In view thereof, this Court is not inclined to enter into the merits of the assessment made by the respondent authorities with regard to the suitability of the plot of land offered by the private respondent.
61. To the mind of this Court, the decision of BPCL to award contract to the private respondent cannot be said to be mala fide or that the authority acting reasonably and in accordance with law could not have arrived at such decision. Petitioner could not demonstrate that public interest has been affected as a result of awarding LPG distributorship to the private respondent.

62. For all the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioner. Accordingly, the writ petition stands dismissed.
63. There shall, however, be no order as to costs.
64. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita, Rinki)