

GAHC010134172021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4404/2021

DILUWARA KHATUN
W/O SARIFUL ISLAM
RESIDENT OF VILLAGE AND PO KHOLABANDHA
PS KACHUMARA, DIST BARPETA, ASSAM 781127

VERSUS

THE BHARAT PETROLEUM CORPORATION LIMITED AND 3 ORS
REPRESENTED BY THE CHAIRMAN AND MANAGING DIRECTOR, BHARAT
BHAWAN, 4 AND 6 CURRIMBHOY ROAD, BALLARD ESTATE, MUMBAI
400001

2:EXECUTIVE DIRECTOR (LPG)
PRIYADARSHINI BUILDING
SION TROMBAY ROAD
EASTERN EXPRESS HIGHWAY
SION MUMBAI 400022

3:TERRITORY MANAGER (LPG)
NORTH EAST LPG TERRITORY 1ST FLOOR NEXIA PARK
GMCH ROAD
ANANDA NAGAR
CHRISTIAN BASTI
GUWAHATI 781005

4:CIRCLE OFFICER

CHENGA REVENUE CIRCLE
CHENGA
BARPETA
ASSAM 78130

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : GA, ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri BD Das, Sr. Advocate.
Shri HK Sarma

Advocates for the respondents : Shri S. Borthakur,
Shri SS Roy,
Ms. M. Barman

Date of hearing : **06.12.2022**

Date of Judgment : **10.01.2023**

JUDGMENT & ORDER

A communication dated 07.10.2020 issued by the Bharat Petroleum Corporation Limited (hereinafter BPCL) is the subject matter of challenge in this writ petition. By the said communication, the candidature of the petitioner has been rejected which was made for appointment of the LPG dealership for the location of Khalabandha NC, Barpeta under the Open (W) Category.

2. To address the issues, it is necessary to put on record the facts of the case in brief.

3. The respondent BPCL had published an advertisement dated 25.05.2018 for appointment of LPG dealership in the aforesaid locality. It is the case of the petitioner that vide letter dated 10.07.2018 she was informed about her qualification for online computerized draw of lots for selection and accordingly the petitioner was asked to be present on the said date fixed i.e. 27.07.2018. The petitioner claims that vide

communication dated 28.07.2018 she was declared as a successful candidate subsequent to which, the petitioner had deposited Rs.40,000/- (Rupees Forty Thousand) only along with other documents. As regards the land document, the petitioner has admitted that those were of her father-in-law which were submitted. The area was inspected and was found to be Char Area and not suitable for construction of a Godown / Showroom and therefore the petitioner was directed to submit an undertaking showing the approach road to the said plot of land. The petitioner claims to have done so and had invested a sufficient amount for development of the land. Thereafter, the BPCL was still not satisfied with the arrangement and therefore informed the petitioner to provide other suitable land for construction of the Godown wherein LPG Cylinders would be transported by road. The petitioner claims to have submitted a plot of Miyadi Patta land which belongs to her father-in-law. However, the impugned letter dated 07.10.2020 was issued declaring the petitioner as an unsuccessful candidate.

4. On the other hand, it is the case of the BPCL that the petitioner could not produce the Registered Sale Deed / Gift Deed / Lease Deed / Mutation Certificate which were of a date on or before the last date of the submission of application i.e. 25.06.2018. The Corporation further claims that though an opportunity was given to the petitioner to provide suitable land documents, the same could not be given.

5. I have heard Shri BD Das, learned Senior Counsel assisted by Shri HK Sarma, learned counsel for the petitioner. I have also heard Shri S. Borthakur, learned counsel along with Shri SS Roy, learned counsel for the BPCL whereas the State is represented by Ms. M. Barman, learned Government Advocate, Assam. Shri Borthakur, learned counsel has also produced the records in original, which have been carefully examined.

6. Shri Das, the learned Senior Counsel for the petitioner has submitted that the impugned letter is not sustainable in law as the same has been issued in gross

violation of principles of natural justice. By drawing the attention of this Court to the impugned communication dated 07.10.2020, the learned Senior Counsel has submitted that though the petitioner was declared to be a successful candidate in the online draw conducted on 27.07.2018, the Field Verification Committee (FVC) came to an erroneous finding regarding the ownership of a land offered. He further submits that though the impugned communication reflects that a further opportunity was given for production of proper documents on or before 25.06.2018 by issuing letter, the said letter was actually not delivered to the petitioner for which, grave prejudice was caused to the petitioner. The learned Senior Counsel clarifies that he would confine his challenge only to the ground of violation of the principles of natural justice inasmuch as, the opportunity said to be granted was not an effective one at all.

7. The learned Senior Counsel for the petitioner accordingly prays for a direction for remanding the matter to the BPCL for a re-consideration by taking into account the offer of the new plot of land.

8. *Per contra*, Shri S. Borthakur, learned counsel for the BPCL has strenuously opposed the writ petition. He submits that the entire process was done in a fair and transparent manner and it is only because of the petitioner not being able to fulfill the condition of the requirement of appropriate land, her candidature has been rejected. He further submits that if there would have been any pre-conceived notion to exclude the petitioner from the fray, she would not have been declared successful in the draw of lots.

9. Coming to the facts of the case, the learned counsel for the BPCL has submitted that the land offered was agriculture land and could not have been reclassified for use of commercial purpose. Under those conditions, the petitioner was directed to submit the details of another plot of land for construction of the Showroom and Godown which was not given within the last date of submission of the application i.e. 25.06.2018.

10. With regard to the averment that the letter directing for submission of documents for a new plot of land was never received, the learned counsel for the Corporation has produced the track consignment note from the postal authorities, as per which, it appears that the letter was in fact delivered. He accordingly submits that in view of such admitted position, no relief can be granted as no fault can be attributed in the decision making process.

11. In support of submissions, Shri Borthakur, learned counsel for the Corporation has placed reliance upon the following case laws:

- i. Order dated 08.09.2015 of the Hon'ble Supreme Court in Civil Appeal No. 6928-6929/2015 [Bharat Petroleum Corporation Ltd. & ors. Vs. Swapnil Singh]***
- ii. (2016) 8 SCC 622 [Central Coal Field Limited and Anr. Vs. SLL-SML (Joint Venture Consortium) and Ors.]***
- iii. (2019) 14 SCC 81 [Caretel Infotech Limited Vs. Hindustan Petroleum Corporation Limited and Ors.]***
- iv. (2020) 16 SCC 489 [Silppi Constructions Contractors Vs. Union of India and Anr.]***
- v. (2020) 16 SCC 759 [Bharat Cooking Coal Limited and Ors. Vs. AMR Dev Prabha and Ors.]***
- vi. (2022) 5 SCC 362 [Agmatel India Private Limited Vs. Resoursys Telecom and Ors.]***

12. In the case of ***Bharat Petroleum Corporation Ltd. (supra)***, the Hon'ble Supreme Court was dealing with a similar circumstances involving allotment of the dealership of LPG Cylinders. The Hon'ble Supreme Court had explained the meaning of a registered lease deed in the name of the applicant which was a requirement of the Notice Inviting Tender, it has been laid down that the date of the registration would be

relevant and not the date when the lease agreement was notarized. In the said case, the registration was done on 21.12.2012 whereas the notarized agreement was of 13.09.2011 and as per the agreement, the date of submission of the application was 13.09.2011.

13. In the case of **Central Coal Fields Limited (supra)**, the Hon'ble Supreme Court after discussing all the relevant case laws had laid down that normally, the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide any contractual dispute. It has further been held that such functions are essentially commercial in nature where the principles of equity and natural justice stay at a distance.

14. In the case of **Caretel Infotech Ltd. (supra)**, the Hon'ble Supreme Court has laid down that even in case of Government contracts, an unnecessary and close scrutiny of minute details contrary to the view of the tendering authority is unwarranted. In the said case, the emphasis to be given to the author of the tender document in interpreting any terms of the contract has been reiterated. For ready reference, paragraphs 37 and 39 are extracted hereinbelow-

“37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and Public Sector Enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which

may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the Public Sector.

38. ...

39. *Another aspect emphasised is that the author of the document is the best person to understand and appreciate its requirements. In the facts of the present case, the view, on interpreting the tender documents, of respondent No. 1 must prevail. Respondent No. 1 itself, appreciative of the wording of clause 20 and the format, has taken a considered view. Respondent No. 3 cannot compel its own interpretation of the contract to be thrust on respondent No. 1, or ask the Court to compel respondent No. 1 to accept that interpretation. In fact, the Court went on to observe in the aforesaid judgment that it is possible that the author of the tender may give an interpretation that is not acceptable to the Constitutional Court, but that itself would not be a reason for interfering with the interpretation given. We reproduce the observations in this behalf as under:*

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the

tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

15. In the case of ***Silppi Constructions (supra)***, the Hon'ble Supreme Court has laid down a caveat with regard to the interference in a routine manner by the Courts in contractual matters which are essentially commercial in nature. It has been reiterated that one of the relevant factors to be taken into consideration before such interference is the overwhelming public interest. For ready reference, the relevant paragraphs are extracted hereinbelow-

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders

and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

16. In the case of ***Bharat Cooking (supra)***, the Hon'ble Supreme Court has added that in asserting a contractual right or duty, the Court should be satisfied that the right sought is in public law.

17. In the case of ***Agmatel India Private Ltd. (supra)***, the Hon'ble Supreme Court after discussing the relevant case laws holding the field has summarized in the following manner:

"17. The above-mentioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or sub-serving the

purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the Constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given”.

18. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been carefully examined.

19. The categorical case of the respondent is that though the petitioner had come out successful in the draw of lots, at the time of verification, it was found that she does not possess Registered Sale Deed / Lease Deed / Gift Deed / Mutation Certificate before the last date of submission of the application i.e. 25.06.2018. A specific statement to that effect has been made in paragraph 3 of the affidavit-in-opposition dated 01.06.2022 of the BPCL. The said statement however has not been specifically denied and rather it has been admitted that the registration of the alternate plot was also of 16.09.2022 and the same has been annexed in the affidavit-in-reply dated 07.11.2022 as Annexure-3.

20. As regards the statement that the petitioner was not aware of the letter dated 10.08.2020, the same has been categorically denied by the BPCL and the Postal Track Consignment Note has been placed before this Court. However, even assuming that the contention of the petitioner is correct, the contents of the impugned letter dated 07.10.2020 needs to be minutely examined. Juxtaposed, the facts projected by the petitioner leading to the issuance of the impugned communication dated 07.10.2020, on a minute observation, it is seen that after draw of the lots, in the field verification, the ownership of the land offered in the prescribed manner could not be established by the petitioner as no Registered Deed prior to 25.06.2018 could be produced. Further, no other suitable land documents could be produced and the plot of land

offered was agriculture land which was not to be used for commercial purpose. Necessary statements in this regard have been made in paragraph 11 of the affidavit-in-opposition.

21. The impugned order dated 07.10.2020 is a reasoned one which are also substantiated from the materials on record. The allegation of violation of principles of natural justice is also not an admitted position inasmuch as, the Track Consignment Report of the postal department demonstrate the contrary. In any case, the principles of natural justice, though one of the most important aspects in the dispensation of justice cannot play the role of unruly horse and in specific cases it may also amount to useless formality.

22. In the case of ***Aligarh Muslim University Vs. Mansoor Ali Khan***, reported in ***(2000) 7 SCC 529***, the Hon'ble Supreme Court has clearly explained the useless formality theory in the context of adherence to principles of natural justice.

23. In the instant case, there is no doubt that the registration of the lease deed was done much after the date of submission of the application i.e. 25.06.2018. It is the settled position that the crucial date for possessing the requisite qualification for consideration in a public allotment process is the last date of submission of the application and not thereafter. The Hon'ble Supreme Court in the case of ***Rekha Chaturvedi Vs. University of Rajasthan, 1993 Supp (3) SCC 168*** has laid down that in so far as eligibility is concerned the same should be acquired / possessed as on the date of the advertisement and possessing the same on a later date will not make a candidate eligible. The said view has also been reiterated in the case of ***Ashok Kumar Sharma Vs. Chander Shekhar***, reported in ***(1997) 4 SCC 18J***.

24. That being the position, this Court is of the considered opinion that that there is no merit in this writ petition requiring any interference and accordingly the same is dismissed. The interim order passed earlier accordingly stands vacated.

25. No order as to cost.

26. The records of the case in original are returned back to Shri Borthakur, learned counsel for the BPCL.

JUDGE

Comparing Assistant