

GAHC010024412023



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

Case No. : **Writ Appeal No.58/2023**

JONALI PATOWARY @ JONALI BARUAH
W/O ASHIM PATOWARY,
R/O HOUSE NO. 15, SURVEY, BELTOLA,
GUWAHATI- 781028,
IN THE DISTRICT OF KAMRUP (METRO), ASSAM.

.....***Appellant***

VERSUS

1. THE INDIAN OIL CORPORATOIN LTD.
A GOVERNMENT OF INDIA UNDERTAKING HAVING ITS OFFICE AT G9, ALI
YAVAR JUNG MARG, BABDRA (EAST), MUMBAI, HAVING ITS REGISTERED
OFFICE AT INDIAN OIL BHAWAN, SECTOR- III, NEAR FLYOVER,
NOONMATI, GUWAHATI- 781020, ISDN THE DISTRICT OF KAMRUP
(METRO), ASSAM, REPRESENTED BY ITS EXECUTIVE DIRECTOR, IO, AOD.

2:THE EXECUTIVE DIRECTOR, AO, AOD,
INDIAN OIL BHAWAN, SECTOR -III
NEAR FLYOVER, NOONMATI
GUWAHATI- 781020,
IN THE DISTRICT OF KAMRUP (METRO), ASSAM.

3:THE DEPUTY GENERAL MANGER (LPG-S)
IAO, GHY, INDIAN OIL BHAWAN
SECTOR-III, NEAR FLYOVER NOONMATI,
GUWAHATI- 781020
IN THE DISTRICT OF KAMRUP (METRO), ASSAM.

4:THE CHIEF AREA MANAGER, IOCL
INDIAN OIL BHAWAN, SECTOR-III
NEAR FLYOVER NOONMATI,
GUWAHATI- 781020
IN THE DISTRICT OF KAMRUP (METRO), ASSAM.

..... ***Respondents.***

For the Appellant : Ms. M. Hazarika, Senior Advocate assisted
by Mr. M.K. Bora, Advocate.
For the Respondents : Mr. M.K. Choudhury, Sr. Advocate, SC, IOCL
assisted by Mr. P. Bharadwaj, Advocate.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

16.03.2023

[Sandeep Mehta, CJ]

The instant intra-court appeal is directed against the order dated 25.08.2022 passed by the learned Single Judge of this Court whereby the writ petition, WP(C) No.8188/2018 preferred by the writ petitioner for assailing the letter dated 05.03.2018 issued by the respondent-Corporation, cancelling the LOI dated 24.10.2014 issued in favour of the appellant-petitioner for award of LPG Distributorship at Beltola (LPG Urban Market) under OBC category/MKTG Plan 2013-14 was cancelled.

2. We have heard and considered the submissions advanced by the learned counsel representing the parties and have also gone through the impugned order and the documents placed on record.

3. It transpires from perusal of the materials placed on record that pursuant to the advertisement dated 13.09.2013, the appellant-petitioner applied for grant of LPG Distributorship for the location Beltola, Guwahati, Kamrup (Metro), category OBC. Her candidature was found to be in order and having qualified in the selection process, LOI dated 24.10.2014 was issued in favour of the

appellant-petitioner. However, pursuant to issuance of LOI, the appellant-petitioner approached the GMDA for seeking permission to raise construction of the LPG godown at the projected location but she was denied the permission on the ground that the plot of land owned by her was located in a residential zone. Litigation ensued and finally the respondent-Corporation gave opportunity to the appellant-petitioner vide communication dated 13.01.2017 to arrange a suitable alternative piece of land within a period of 2(two) months. However, despite repeated opportunities, the petitioner could not arrange the alternative piece of land whereupon she was given a show-cause notice dated 11.08.2017 requiring her to explain as to why LOI issued in her favour may not be cancelled as she had failed to provide the appropriate land for setting up of the LPG godown.

4. The appellant-petitioner replied vide letter dated 12.01.2018 that she had arranged the suitable piece of plot of land on lease basis in terms of the permission/extension granted to her. However, the IOCL authorities proceeded to issue the letter dated 05.03.2018 whereby the LOI was cancelled on the ground that the alternative suitable plot of land was not arranged by the appellant-petitioner within the stipulated period of 2(two) months from the date of issuance of the communication dated 13.01.2017.

5. The appellant-petitioner preferred a writ petition, WP(C) No.3507/2017 for assailing the said cancellation letter. The writ petition (supra) came to be allowed by order dated 11.07.2018 whereby the impugned letter dated 05.03.2018 was quashed and the respondents were directed to consider the representation dated 12.01.2018 of the appellant-petitioner.

6. Pursuant thereto, the order dated 21.08.2018 came to be passed, whereby after consideration of the representation of the appellant-petitioner and keeping in view the order dated 11.07.2018 passed by the Gauhati High Court in WP(C)

No.3507/2018, the LOI which was issued to the petitioner was once again cancelled.

7. Being aggrieved thereto, the appellant-petitioner again approached this Court by filing the writ petition, WP(C) No.8188/2018.

8. It would be apposite to reproduce the prayer clauses of the said writ petition, WP(C) No.8188/2018 which read as below.

“a. Certiorari should not be issued setting aside and quashing the impugned cancellation of Letter of Intend under No.G/LPG/LOI/ CANCELLATION/ BELTOLA dated 05.03.2018 issued by Deputy General Manager (LPG-S), IAO GHY, for proposed LPG Distributorship at location- Beltola, Guwahati, Kamrup(M), Category-OBC, MKTG PLANT 2013-14, Advertised on 13.09.2013, whereby the LPG distributorship of the petitioner has been cancelled on the ground that the petitioner fails to arrange land for construction of LPG godown, and

b. Mandamus shall not be issued directing the respondents to forthwith recall/rescind/cancel and/or forbear from giving effect to the impugned order of cancellation dated 05.03.2018 so far the petitioner is concerned, whereby, the LPG distributorship of the petitioner has been cancelled on the ground that the petitioner fails to arrange land for construction of LPG godown, and/or upon cause/s shown and upon perusing the records and after hearing the parties, Your Lordships’ may be pleased to make the Rule absolute and/or to pass such further or other order/s as Your Lordships’ may deem fit and proper.

-AND-

Pending disposal of the Rule, Your Lordships’ in the interim may be pleased to direct the respondents not to give effect of the Letter dated 21.08.2018 under No.IAO/GHY/BELTOLA LOI issued by the Deputy General Manager (LPG-S) and/or to pass such order/s as Your Lordship may deem fit and proper.”

9. From perusal of the relief clauses of the writ petition, it transpires that specific challenge therein is given to the cancellation letter dated 05.03.2018 whereas only interim relief was sought against the letter dated 21.08.2018.

10. Be that as it may. During the course of arguments, two contentions were advanced by Ms. M. Hazarika, learned Senior counsel representing the appellant- petitioner for assailing the impugned order (i) that no opportunity of hearing was given to the petitioner before cancellation of LOI and (ii) that the respondents were not justified in discarding the alternative plot of land provided by the appellant-petitioner because the said plot of land is suitable in all aspects and is compliant to the terms and conditions of the advertisement and the dealership guidelines.

11. Per contra, Mr. M.K. Choudhury, learned Senior counsel representing the respondent/Corporation urged that the representation of the appellant-petitioner was objectively considered and it was found that she failed to arrange a suitable alternative plot of land within the stipulated period of 2(two) months from the issuance of letter dated 13.01.2017. In addition thereto, the alternative parcel of land arranged for by the appellant-petitioner, in January, 2018, was not found feasible for expeditious setting up of the LPG godown because the exercise of acquiring permission from the DMDA for construction of the godown had not undertaken. Thus, it was felt that further extension of time in favour of the appellant-petitioner for setting up of the godown would be detrimental to the interests of the public who had already suffered for a period of 5(five) years.

12. Relevant assertions made at para No.9 of the affidavit-in-opposition filed by the respondents in the writ petition are reproduced hereinbelow for the sake of ready reference.

“9. That with regard to the statements made in paragraph 9 of the writ petition, the deponent begs to state that the petitioner’s reply dated 4.9.2017 (Annexure-IX of the writ petition) to the show-cause notice was carefully examined with respect to the progress on arranging alternative suitable plot of land within a period of two months from the date of issuance of the letter dated 13.01.2017, as per policy. Based on the above, the petitioner was informed that her reply is not found satisfactory and LOI issued to her is cancelled vide the impugned letter dated 5.3.2018.

However, although the petitioner did manage to arrange an alternative piece of land on lease on 12.1.2018, which is yet to be inspected by the IOCL, the entire exercise of acquiring permission from the GMDA for construction of the LPG godown is yet to be undertaken. Further, even assuming that the petitioner somehow becomes successful in acquiring the GMDA permission, she will still be left with the tax of acquiring the explosive licence for storage of the LPG cylinders. It is pertinent to mention here that relevant permission of the GMDA or the licence from the Chief Controller of Explosives of Petroleum and Explosives Safety Organization are also uncertain and may take a long time. As such the public of the advertised location who are suffering for a period of 5 years for the scarcity of a LPG distributorship in their area (advertised on 13.09.2013) and that too for the delay caused by the petitioner in her own volition, will continue to suffer. The Corporation’s action of cancelling the LOI is hence completely justified.”

13. Upon consideration of the submissions advanced at the Bar and having carefully perused the PSU OIL Marketing Company’s Manual for Selection of Regular LPG Distributors, more particularly, the relevant Clauses 18.2 and 18.3 thereof, which read as below:

“18.2 Extension of LOI:

Field Officer should maintain a constant follow up with the selected

applicant for timely commissioning of the LPG Distributorship and provide guidance to complete the formalities as stipulated in the LOI. If no progress is made by the distributor select within the period of 4 months, action should be taken to withdraw the LOI as per procedure given in below Para 18.3.

In cases where the Distributor select has made sufficient progress but due to certain genuine difficulties it has not been possible for him/her to fulfill the conditions laid down in the LOI within 4 months, in such cases Area/Territory/Regional Manager can give initial extension of 2 months.

For further extension, Area/ Territory/Regional office should send proposal for taking approval of the Head of State/Regional/Zonal Office for extending the validity of the time limit of the LOI. Head of State/Regional/Zonal Office may extend the time limit as deemed fit.

While forwarding the proposal to the Head of State/ Regional/ Zonal Office, the proposal should contain the following:

- a. A letter from the LOI holder indicating the progress made and assurance that the facilities would be arranged within a specified time.*
- b. A report from the Area/ Territory/ Regional Office indicating the progress made by the party and their assessment whether the party would be able to arrange the facilities as mentioned in the LOI within the recommended extended time.*

18.3 Withdrawal of LOI

In cases selected candidate is unable to develop facilities within the specified time or due to non-fulfillment of terms & conditions of LOI by the LOI holder, Head of Area/Territory/Regional Office should send a letter (in the form of show cause notice) by Regd.

AD/Speed Post to the selected candidate calling for explanation within 7 days from receipt of letter. Based on the reply from the selected candidates, Head of Area/Territory/ Regional Office should put a note for withdrawal of LOI along with forfeiture of the amount remitted by the candidate before FVC or extension of LOI to Head of State/Regional/Zonal Office for approval.”

14. We find that the appellant-petitioner failed to provide the appropriate plot of land within the specified time limit in terms of the original LOI. Even after the new lease of life given to the petitioner-appellant by virtue of extension letter dated 13.01.2017, she failed to arrange for the suitable plot of land within the stipulated period of 2(two) months and thus, there was no scope for further extension of time to the appellant-petitioner for arranging the alternative plot of land.

It is to be noted that on account of the significant delay in commissioning the LPG godown, the public at large has been made to suffer for more than 9 years.

In addition thereto, the learned Single Judge took note of the fact that the alternative site provided by the appellant-petitioner was beyond the permissible distance of 15 kilometres. Thus, the site was not compliant with the requirement of advertisement.

15. As a consequence, we are of the firm view that the learned Single Judge was perfectly justified in refusing to grant equitable relief to the appellant-petitioner in this matter.

16. The impugned order dated 25.08.2022 passed by the learned Single Judge in WP(C) No.8188/2018 does not suffer from any infirmity warranting interference therein.

Hence, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant