

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

IN THE MATTER OF

WPA 6803 of 2022

Kanchan Kumar Sarkar
Vs.
Union of India & Ors

For the Petitioners	: Mr. Jagadis Chandra Das, Adv., Mr. Binoy Kumar Das, Adv., Mr. Birendra Nath Manna, Adv.,
For the Indian Oil Corporation Ltd.	: Mr. Manwendra Sing Yadav, Adv., Ms. Saswati Chatterjee, Adv., Ms. Satabdi Naskar (Kundu) Adv.
For respondent No. 3	: Mr. Debapriya Gupta, Adv. Ms. Esha Das Adv.

Reserved on : 12.11.2024

Judgment on : 03.01.2025

Subhendu Samanta, J.

1. Indian Oil Corporation Limited issued an advertisement in Public Daily on 16th of September 2007 for LPG Distributorship reserved for Scheduled Caste Candidate at Barrackpur/Kalyani High Way More.

2. Petitioner made an application, other candidates also filed application under prescribed performa. An interview was conducted, petitioner was placed first position in the panel. It is the case of the petitioner that field enquiry Committee of the respondent has

conducted enquiry regarding the genuineness of experienced certificate.

3. During field investigation by the Concerned Authority the experience certificate of the petitioner as a dealer of M/s Indo Blue Flames Private Limited could not be verified, on approaching the office of M/s Indo Blue Flames Private Limited at the registered address, it appears that no such office exists there. However experience certificates in favour of the petitioner issued by M/s Base Corporation Limited was verified. The petitioner has approached different local authority and forwarded their correspondence regarding his earlier business as a dealer of M/s Indo Blue Flames Private Limited (LPG), 5 KG cooking gas from the year 1999-2001. IOCL vide letter dated 10th April 2010 informed the petitioner that he cannot be considered by the competent authority for issuance of letter of intent for the said dealership on the following grounds:-

a) While authenticity of the experience certificate issued by M/S Base Corporation Ltd. could be established the same of M/S Indo Blue Flame LPG Cooking Gas (Pvt.) could not verified from the issuing authority, as the company does not exist presently.

b) The experience certificate issued by M/S. Indo Blue flame LPG Cooking Gas (Pvt.) and submitted by you has been found to be fake.

c) You could not produce any document on which it can be concluded that you had experience of LPG business for two years as claimed by you in your application.

4. Petitioner approached different higher authorities of IOCL wherefrom he managed to receive some directions for consideration of his matter for issuance of letter of intent was issued. Suddenly the petitioner came to know that the IOCL had issued letter of intent in favour of second empanelled candidate viz, Prasun Kanti Mandal. Vide order of Co-ordinate Bench of this Court in 24144 (W) 2010. Petitioner approached Division Bench in MAT 325 of 2013 the Hon'ble Division Bench has remanded the matter for re-hearing after impleading the petitioner as a party in the proceeding.

5. Petitioner also approached this court in another writ petition for issuance of letter of intent in his favour being WP No. 20764(W) of 2012. One Co-ordinate Bench has heard both the writ petitions and disposed of both writ petitions in 28th June 2019 directing the Deputy Manager of IOCL to consider the case of both the parties and to take final decision in accordance with law by passing a reasoned order. The concerned Authority has given opportunity of being heard to the parties and issued impugned correspondence dated 11th November 2019 with the observation as follows:-

Ref: KAO/RO/KKS/KB

Date: 11.11.2019

SUB: REASONED ORDER:Compliance of Order dated 28.06.2019 passed in W.P. No. 24144(W) of 2010 [Prasun Kanti Mondal VS UOI] and W.P. No. 20764(W) of 2012 [Sri Kanchan Kumar Sarkar VS UOI & Ors]

17. One Rajesh Kukreti, Under Secretary, Govt. of India sent a letter to the Director (Marketing), IOC, Mumbai - Page 74 to the Writ Petition.

18. Enquiry Report has been submitted by Deputy Magistrate and Deputy Collector, Berhampore, Murshidabad to the D.M., Murshidabad who issued Memo No. 85(2)/EC Food/En-Page 25 to 27 to the Affidavit-In-Opposition,

19. IOM ref Barrackpore dated 17.11.2009 of IOCL

20. FVC report dated 18.08.2009 with Annexures

21. IOM ref Barrackpore dated 05.01.2010 of IOCL

22. Investigation Report Ref WBSO/RS/Comp./Barrackpore dated 12.08.2010

23. Brochure

24. Letter Ref WB/LPG/Barrackpur/Kalyani H/Way More dated 28.04.2010

25. Letter Ref No D/DO/590/99 dated 29.05.1999 in connection with appointment for LPG(Dealership) at Berhampore, Murshidabad

26. Letter dated 04.05.2010 of Shri Kanchan Kumar Sarkar

27. Letter Ref: WB/LPG/Barrackpur/Kalyani H/Way More dated 28/4/2010 issued to Shri Kanchan Kumar Sarkar by IOCL cancelling the candidature of Shri Kanchan Kumar Sarkar

As per terms & conditions of selection brochure, policy of IOCL vis a vis as per Sr No- 12 of the application form, it has been stipulated that marks will be awarded based on information given in the application form. In the instant case, marks were allotted to Shri Kanchan Kumar Sarkar based on the information furnished in his application form and on the basis of answers to the leading questions in connection with experience claimed during interview

OBSERVATION

1. An appointment letter reference D/DO 590/99 dated 29.05.1999 has been submitted by Shri Kanchan Kumar Sarkar on the letterhead of Indo-Blue Flames. The phone number mentioned on the letterhead is an eight digit telephone number. However, eight digit telephone numbers were not in existence in the year 1999 as per information received from BSNL based on paper publication regarding implementation/conversion of eight digit telephone number in Kolkata. Therefore, it appears, that the letterhead was printed subsequently and the appointment letter is fake.

2. No reliable document could be furnished by Shri Kanchan Kumar Sarkar to confirm the date in 2001 till which he remained a dealer with "M/s Indo Blue Flames" which is required to establish two years experience as claimed by Shri Kanchan Kumar Sarkar under Sr. No- 12 of his application dated 31.10.2007

3. A price list dated 01.09.99 of Indo- Blue Flames submitted by Shri Kanchan Kumar Sarkar during personal hearing on 20.08.2019 appears to be tampered for the following reasons:

i. There is overwriting in the year portion of the date in the price list.

ii. The telephone number is six digit i.e. 26-7713-in the price list dated 01.09.1999 while in the appointment letter dated 29.05.1999 earlier to 01.09.99 the telephone number is eight digit i.e.2226-7713. (submitted as Annexure to WP)

4. Date tampering is also evident in the following documents submitted under the signature of Shri Kanchan Kumar Sarkar during FIR-

1. Receipt No 171 dated 08.09.1999 where there is no similarity between the original 9 and the tampered 9. A close observation of receipt nos. 136 dated 03.08.1999,120 dated 07.06.1999,119 dated 05.06.1999 and 105 dated 29.05.1999 reveals tampering of the digit.

9. It is difficult to read the date of receipt no. 106 where the date has been tampered in two places.

iii. A bill of Indo Blue Flames dated 06.06.1999 also reveals tampering of the digit 9. Similar date tampering is noticed in the three application forms of Sabitri Cooking Stores dated 11.07. 1999, 02.08.1999 and 23.07.1999 submitted during FIR.

iii. A license for carrying on a trade or business dated 05.06.99 submitted with letter dated 04.05.2010 has four tampering in the dates

5. The experience certificate submitted by the party could not be authenticated by the issuing officials since none of the signatories of M/s Indo Blu Flames could be contacted.

Further, the facts suggested that documents were prepared/ tampered to support the details of experience mentioned in the application form. Also, during the personal hearing no materials/documents could be furnished by Kanchan Kumar Sarkar which could change the decision conveyed in the letter Ref WB/LPG/ Barrackpur/ Kalyani H/Way More dated 28.04.2010.

On the basis of the above noted documents/ observations, it may reasonably be ascertained that the appointment letter submitted by Shri Kanchan Kumar Sarkar is not a genuine one and in view of the facts stated above the experience certificate also could not be verified or linked with available documents. Also no other relevant and reliable documents could be produced during the Personal Hearing on 20.08.2019 to substantiate the claim of Sri Kanchan Kumar towards his two year experience which was stated in the application form.

Accordingly, the decision communicated to Shri kanchan Kumar Sarkar vide letter Ref WB/LPG/Barrackpore/ Kalyani H/Way More dated 28.04.2010 remains unaltered.

6. Learned Counsel for the petitioner has challenged the impugned communication/reasoned order of the authority on the ground that the authority concern has acted in mala fide in passing the impugned order. It is the further argument of the petitioner that the principle of natural justice has been violated in conducting the hearing of the

matter as per direction of the Court. Learned Counsel for the petitioner however, argued that the respondent authority has observed that the appointment letter/ Experience certificate issued by M/s Indo Blue Flames Private Limited in favour of the petitioner is a fake one only on the basis of deviation of telephone Nos.

7. Petitioner's case is that the owner of the M/s Indo Blue Flames Private Limited has expired for which the certificate could not be verified but the petitioner has produced several documents, such as, payment vouchers, receipts of M/s Indo Blue Flames Private Limited which was not properly considered by the concerned authority.

8. It is the further argument on behalf of the petitioner that at the time of hearing the petitioner as well as private respondent, they were given different slot for hearing. The hearing could not be performed in presence of both the parties, reasons, thereof, petitioner could not able to controvert argument advanced by private respondent before the authority; on that score, it is the argument of the petitioner that the way of conduction of hearing by respondents/ IOCL is in violation of principal of natural justice and is required to be set aside.

9. Learned Counsel appearing on behalf of the IOCL submits that according to the direction of the Hon'ble CO-ordinate Bench of this Court dated 28.06.2019, the hearing was conducted and the authority has taken a reasoned decision.

10. Learned Advocate for IOC submits that there are several discrepancies in the experience certificate issued by M/s Indo Blue

Flames Private Limited in favour of the petitioner moreover the concern authority has observed tampering over the documents.

11. He further submits that the telephone No. appearing in the experience certificate was duly verified by the BSNL authority, and they have categorically submitted a report that 08 digit telephone Nos. which appearing over experience certificate issued by M/s Blue Flames Private Limited were not in existence in the year 1999.

12. Learned Counsel for the IOCL further submits that the petitioner was given highest mark on the basis of his experience certificate in dealing with LPG cooking gas selling business issued by M/s Indo Blue Flames Private Limited in favour of the petitioner, which could not be verified. The documents filed by petitioner in support of his business appears to be fake, thus the private respondent being the second empanelled candidate given the letter of intent.

13. Learned Counsel appearing on behalf of the private respondent submits that the certificate in favour of the petitioner is fake one, thus the authority concern has correctly issued LOI in his favour.

14. Having heard the Learned Counsel for the parties also considering the entire matters it appears to me the concerned Authority has passed the reasoned order in compliance to the direction of Co-ordinate bench of this court dated 28.06.2019. The impugned order has mentioned the reasons for not accepting the experience certificate of petitioner.

15. Learned Counsel for the petitioner has specifically demonstrated before this court that the reasons arrived at by the concern respondent is not correct. In the impugned reasoned order of the respondent authority may be interpreted otherwise but it is not justifiable for this writ court to straightway set aside the finding. The annexures of the writ petition has successfully demonstrated that the certificate issued in favour of the petitioner by M/s Indo Blue Flames Private Limited has never been verified. The document which was placed by the petitioner was not accepted by the concerned authority. Other correspondences in favour of the petitioner, regarding his earlier business of cooking gas either by the SDO, or by the DM concern cannot be accepted as per provision of the rule and the brochure framed by the Oil Corporation.

16. Thus I find no justification to interpret the observation of the concerned authority in either way.

It has been argued by the petitioner that principle of natural justice has been violated in conduction of hearing of this matter. It is true that the authority has fixed different slots of time for hearing of this matter for the petitioner and for the private respondent. It is the fact that the parties are given sufficient opportunity to demonstrate their matter in this case. It has not been directed by the Co-ordinate Bench vide order dated 28.06.2019 that both the parties has to be heard conjointly. Depriving of given opportunity to the petitioner to counter argument of private respondent cannot be termed as violation of principle of natural justice. Impugned reasoned order did not

depicted any argument of Private Respondent. Moreover, the petitioner's case was only against the finding of the authority. The petitioner was not prejudiced by the conduction of hearing of respondent authority in this case. Thus I find no justification to incline upon the argument advanced by the Learned Advocate for petitioner.

17. Under the above observation, I find no justification to interfere with the order impugned/correspondence issued by the respondent authority.

18. Under the above observation the instant writ petition, being merit less, is dismissed and disposed of.

19. 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.)