



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 4420 OF 2024
[ARISING OUT OF SLP (C) NO. 19618 OF 2019]**

TAPAS KUMAR DAS

...APPELLANT

VS.

**HINDUSTAN PETROLEUM
CORPORATION LIMITED & ORS.**

...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

- 1.** An intra-court appellate judgment and order¹ (“impugned judgment”, hereafter) of an Hon’ble Division Bench of the High Court at Calcutta (“High Court”, hereafter), reversing the judgment and order² (“order”, hereafter) of a learned Single Judge, is called in question in the instant civil appeal. *Vide* the

¹ dated 28th March, 2019

² dated 25th January, 2019

impugned judgment, the Division Bench of the High Court allowed the writ appeal³ carried by Hindustan Petroleum Corporation Limited ("HPCL", hereafter) from the order and set aside the same. The Single Judge had, while allowing a writ petition⁴ of Mr. Tapas Kumar Das ("appellant", hereafter), directed HPCL to proceed with his candidature for LPG⁵ distributorship.

BRIEF RESUME OF FACTS

- 2.** The facts, giving rise to this appeal, lie in a narrow compass.
- 3.** HPCL, Indian Oil Corporation Limited ("IOCL", hereafter) and Bharat Petroleum Corporation Limited issued a joint advertisement for LPG distributorships at several locations in the 31st August, 2017 editions of the Bangla dailies *Bartaman* and *Anandabazar Patrika* ("the Advertisement", hereafter). Entries bearing SI. Nos. 1 to 607 in the Advertisement had 10 (ten) columns ("Part 1", hereafter) and those from SI. No. 608 onwards had 9 (nine) columns ("Part 2", hereafter)⁶. The header "Gram Panchayat" did not feature in Part 2 and, hence, had 1 (one) column less than Part 1.
- 4.** Parts 1 and 2 of the Advertisement with the headers and to the extent relevant for a decision on this appeal, as per the English translation placed before us, are set out hereunder:

³ M.A.T. No. 255 of 2019 with C.A.N. No. 1818 of 2019.

⁴ W.P. 1595 (W) of 2019.

⁵ Liquefied Petroleum Gas.

⁶ The Advertisement, by itself, has not been split into Parts 1 and 2; the same has been done here for ease of reference.

Part 1

SI. No.	Oil company	Location (detail particulars of the place where applicable)	Gram Panchayat	Block	District	Class	Nature of market / LPG distributorship / City / Urban / Rural / Inaccessible area distributorship	Amount of security deposit (in lakh)	Marketing plan
1 - 607	[***]	[***]	[***]	[***]	[***]	[***]	[***]	[***]	[***]

Part 2

SI. No.	Oil company	Location (detail particulars of the place where applicable)	Block	District	Class	Nature of market / LPG distributorship / City / Urban / Rural / Inaccessible area distributorship	Amount of security deposit (in lakh)	Marketing plan
608 - 623	[***]	[***]	[***]	[***]	[***]	[***]	[***]	[***]
624	HPC	Haripal	Haripal	Hooghly	SC	Rurban	3	2017-18
625 - 631	[***]	[***]	[***]	[***]	[***]	[***]	[***]	[***]

5. Interested in obtaining an LPG distributorship *qua* SI. No.624 reserved for a member of the Scheduled Caste community, i.e., 'Location' and 'Block' Haripal in the district of Hooghly, the appellant submitted an online application for the same under the 'SC' category on 16th October, 2017. The appellant's application was found to be in order, whereupon he was called upon to participate in the ensuing computerised draw of lots for selection for the distributorship for Haripal. Fortune smiled on the appellant and he emerged as winner in the draw of lots. HPCL informed the appellant *vide* a letter dated 4th November, 2018 that he had been declared successful and also that he was required to comply with

the instructions contained therein. Diligently, the appellant deposited a demand draft of Rs. 30,000/- with HPCL and submitted relevant land documents in compliance with the letter dated 4th November, 2018.

- 6.** One Sujoy Kumar Das (“added respondent”, hereafter) lodged a complaint dated 9th November, 2018 with HPCL questioning the appellant’s candidature on the basis that the land offered by him for the showroom was in *mouza*⁷ Gopinagar and not in *mouza* Haripal. Incidentally, the added respondent had participated in a previous round of selection conducted by HPCL for the same location, i.e., Haripal, and his candidature was rejected by HPCL on the ground that the land for the showroom offered by him was not located in village Haripal. Upon cancellation of the appellant’s candidature, the Chief Regional Manager of HPCL (“fourth respondent”, hereafter) intimated the same to the added respondent vide letter dated 2nd January, 2019 and assured to him refund of Rs. 5,000/- which he had deposited as complaint fee, shortly.
- 7.** Close on the heels thereof, the fourth respondent addressed a letter dated 2nd January, 2019 cancelling the appellant’s candidature for the LPG distributorship (“Cancellation Letter”,

⁷ As per Wilson’s Glossary of Judicial and Revenue Terms of British India, ‘Mauza’ or Mauja in Hindi and Mauji in Bengali is a village, understanding by that term one or more clusters of habitations, and all the lands belonging to their proprietary inhabitants : a Mauza is defined by authority to be ‘a parcel or parcels of lands having a separate name in the revenue records, and of known limits’.

hereafter). Therein, it was stated that the land offered by the appellant for the showroom at "Plot No. LR-1220, Khatian No. LR-311, Mouza-Gopinagar, Gram Panchayat-Haripal Ashuthsh (*sic*, Ashutosh), Block Haripal, District Hooghly" pursuant to a registered lease dated 16th October, 2018⁸ for a period of 16 (sixteen) years was beyond the advertised location; hence, the appellant's proposed showroom had failed to meet the eligibility criteria as per clause 8 A(n) of the Brochure for Unified Guidelines for Selection of LPG Distributorships ("Unified Guidelines", hereafter), and the deposit of Rs. 30,000/- would stand forfeited.

- 8.** It was then that the appellant invoked the writ jurisdiction of the High Court under Article 226 of the Constitution challenging the Cancellation Letter. The Single Judge, noticing that the Advertisement showed the location of the distributorship as Block Haripal, observed that "*there was no specific requirement of Gram Panchayat or mouza to disqualify*" the appellant's candidature. Upon being satisfied that the land offered by the appellant for the showroom was within the limits of the advertised location, the learned Single Judge allowed the writ petition, set aside the Cancellation Letter, and directed HPCL to proceed with the evaluation of the appellant's candidature and decide the same

⁸ the date was subsequently corrected vide letter dated 10th January, 2019 to read 16th October, 2017.

within four weeks upon the appellant completing all required formalities.

9. Aggrieved by the order, HPCL invoked the appellate jurisdiction of the High Court and laid a challenge thereto. The Division Bench referred to the definitions of '*Gram Panchayat*' and '*mouza*' in the *West Bengal Panchayat Act, 1973* ("Panchayat Act", hereafter) and while allowing the appeal by the impugned judgment, held that "*mouza Haripal has a separate and distinct existence*", the "*offered land at mouza Gopinagar is not what is contemplated in the advertisement for appointment of LPG distributors at Haripal*" and in such view of the matter HPCL "*was justified in coming to the conclusion that the writ petitioner failed to fulfil the eligibility criteria*".

RIVAL CONTENTIONS

10. Mr. Sudipta Kumar Bose, learned counsel appearing on behalf of the appellant, seeking our interference with the impugned judgment submitted *inter alia* that:
 - a. The Division Bench fell into error by reading into the Advertisement, conditions which had not been categorically laid down by HPCL. The Advertisement did not state that the showroom was to be located in any particular *mouza*, and that the Advertisement did not refer to any *Gram Panchayat* as the specific location either.

- b. The appellant had been declared as the successful candidate after due verification of his eligibility and there could have been no occasion for HPCL to disqualify him on the complaint of the added respondent, and that too without putting the appellant on notice.
- c. HPCL, having issued the Advertisement, could not have altered the rules and guidelines after the appellant was declared eligible and successful.
- d. The entries from serial no. 608 onwards in the Advertisement did not bear any column for *Gram* Panchayat as the locations therein were urban or semi-urban; implying that there was no error in the Advertisement and such an omission was conscious.
- e. The Single Judge had rightly observed that the advertised location for the concerned showroom was Haripal with reference to specification of Block Haripal; and since the appellant had offered land for the showroom at a location within the jurisdictional limits of Haripal Police Station and within geographical limits of Haripal Block, consequently, the same should have been considered to be covered by the advertised location.

11. Mr. Parijat Sinha, learned counsel appearing for HPCL, in support of upholding the impugned judgment submitted *inter alia* that:

- a. The Unified Guidelines are comprehensive in nature and left no room for ambiguity as to the location requirements to obtain an LPG distributorship from *inter alia* HPCL.
- b. In the State of West Bengal, villages were not identified as units of revenue, but they were in fact identified as *mouzas*. Therefore, the boundary of any village could only be defined in terms of *mouzas*. Hence, the Advertisement had not been issued for Block Haripal, but only for the *mouza/village* Haripal as per the third column of Part 2 of the Advertisement. Hence, the intention of mentioning Haripal in the third column was to indicate Haripal *mouza/village*, and not the cluster of villages/towns/cities.
- c. Clause 8 A(n) of the Unified Guidelines provided for the requirements of the showroom to be owned/leased by the concerned applicant desirous of obtaining an LPG distributorship. A reading of the Unified Guidelines, along with the fact that the fifth column of Part 2 of the Advertisement was for the District, the fourth column was for the Block, and the third column was for the Location, meant that the third column specified the uniqueness of the location intending it to be for the concerned village; it would be incorrect to read the third and fourth columns as being synonymous. Hence, a mention of Haripal in the third column meant *mouza/village* Haripal and not Block Haripal.

d. In this vein, since the appellant's showroom fell within *mouza* Gopinagar, the same made his candidature ineligible; though located in Block Haripal, it was not within *mouza* Haripal.

12. Appearing for the added respondent and seeking dismissal of the appeal, Mr. Zoheb Hossain, learned counsel submitted *inter alia* that:

a. The added respondent was a proper and necessary party in W.P. 1595 (W) of 2019 before the High Court since the Cancellation Letter had been issued as a consequence of acceptance of the complaint dated 9th November 2018. Further, the added respondent's appeal challenging the order was also decided *vide* the impugned common judgment.

b. The added respondent was also an applicant for the LPG distributorship as per the Advertisement, and that it would be prejudicial for him if the impugned judgment were set aside or modified.

c. HPCL had, on an earlier occasion, rejected the added respondent's candidature for LPG distributorship on grounds similar to the reasons for cancellation of the appellant's distributorship and, therefore, was justified in taking a consistent and uniform stand.

d. Extending any relief to the appellant, on facts and in the circumstances, could be inappropriate.

Analysis

- 13.** We have heard learned counsel for the parties and perused the impugned judgment of the Division Bench, the order of the Single Judge as well as the other materials on record.
- 14.** The limited issues that we are tasked to decide in this appeal are:
 - (i) Whether the land offered by the appellant for the showroom is covered by the extent of "Location" stipulated in the Advertisement and is compliant with the Unified Guidelines?
 - (ii) Whether the Division Bench was justified in its interference with the order under challenge before it?
- 15.** A cursory look at the Advertisement informs us that it contemplated the location of the relevant distributorships in the manner such that the fifth column of Part 2 of the Advertisement indicated the 'District', the fourth column the 'Block', and the third column the "Location" with the words "particulars of the place wherever applicable" following it in brackets. Also, in Part 1 of the Advertisement, as noted above, there was an additional column for "Gram Panchayat". This is conspicuously missing from Part 2.
- 16.** Viewed thus, what we find is that HPCL intended to appoint an LPG distributor at a location named Haripal, situate within Haripal block in the district of Hooghly, reserved for SC, with 'Rurban' shown as the Type of Market/Distributorship. Much would, in our opinion,

turn on 'Rurban' which was not noticed either by the Single Judge or the Division Bench, as the discussion follows.

- 17.** In course of arguments, we heard Mr. Sinha submitting that there was an error in not mentioning the "Gram Panchayat" in the Advertisement for the subject location. In other words, there was a mistake in the Advertisement insofar as Sl. No.624 is concerned. However, a course correction measure was sought to be adopted in the written notes of arguments filed on behalf of HPCL which, as would unfold hereafter, does more harm than good to its cause. It is stated in the written notes that *"from Sl. No.608 onwards, all of the locations advertised ... were either urban or semi-urban with regard to the nature of the market/LPG distributorship; hence, the relevant Gram Panchayat was not mentioned in the said Advertisement"*. It is also stated therein that in terms of the Advertisement, the appellant *"ought to have offered land located within (sic) in village/mouza location - **Haripal (column 3)**, which is the advertised location"* (bold in original).
- 18.** HPCL having advertised Haripal as the location within Haripal block for the LPG distributorship and without there being anything more in the Advertisement with specifics as to the 'locality', the candidature of the appellant and the land offered by him for the showroom had to be considered bearing in mind the relevant clauses of the Unified Guidelines, viz. clauses 1 c. i. and 1 y.

defining 'Rurban Vitrak'⁹ and 'Location'¹⁰, respectively, and 8 A (n) regarding 'Showroom'¹¹.

- 19.** It would be convenient at this stage to look at Sl. Nos. 608 to 631 of the Advertisement, comprised in Part 2 (supra). In all but one of the locations, LPG distributorships were on offer at the instance of IOCL. Majorly, the locations have 'Type of Market/Distributorship' as 'Urban' while the rest are 'Rurban'. In several of the locations advertised ranging between Sl. Nos. 608 and 631, except Sl. No.624 being the subject location, the locations within brackets indicate the locality¹² where the concerned OMC¹³ intended to appoint an LPG distributor. As and by way of example, one may profitably refer to Sl. Nos. 613 and 619. While both indicate Kolkata as locations, the former within

⁹ Rurban Vitrak: In this document, the word Rural Urban means LPG distributor located in 'Urban Area' and also providing service to the LPG Customers in specified 'Rural Area', generally covering all villages falling within 15 Kms. From the municipal limits of the LPG distributorship location and or the area specified by the respective OMCs. LPG distributors servicing this area will be called Rurban Vitrak.

¹⁰ Location – In this document, word location means the area identified for setting up of new LPG Distributor. It can be a locality/village/cluster of villages/town or city which is mentioned in the Notice for Appointment of LPG Distributors.

¹¹ Showroom: (Applicable only for ... Rurban Vitrak ... locations and not for ...)

The applicant should 'Own' a suitable shop for Showroom of minimum size ... as on the last date for submission of application as specified either in the advertisement or corrigendum (if any) at the advertised location i.e. within the municipal/town/village limits of the place which is mentioned under the column of 'location' in the advertisement.

In case locality is also specified under the column of 'location' in the advertisement, the candidate should own ... in the said locality.

In case an applicant has more than one shop ... at the advertised location or locality as specified under the column of 'location' in the advertisement, the details of the same can also be provided in the application.

The applicant should have ownership as defined under the term 'Own' ...

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.

...

¹² In terms of the definition of 'Location', a locality could also be a location.

¹³ Oil Marketing Company.

brackets has Salt Lake within Bidhannagar Municipality and the latter China Town within Kolkata Municipal Corporation areas. We read Salt Lake and China Town as the 'locality' in the location Kolkata to sync locality with 'Location'. It is also significant to note another advertised location in the district of Hooghly. Sl. No. 610 indicates that in Nabagram (Konnagar), being the 'Location' within Shrirampur block, IOCL intended to appoint an LPG distributor. We take judicial notice of the fact that Konnagar is a town and also a municipality in the district of Hooghly with Nabagram as the locality¹⁴. However, significantly, Sl. No. 624 does not go beyond indicating Haripal as the location.

20. Judicial notice is also taken of the fact that Haripal is a community development block being part of Chandannagore sub-division, in the district of Hooghly, West Bengal. It is true that as per the Census 2011 Report downloaded from www.census2011.co.in, [being Annexure R-1/1 of the counter affidavit of HPCL filed in this proceeding], Haripal and Gopinagar are villages within Haripal block but, for reasons more than one, we are not persuaded to accept the claim of HPCL that it intended to appoint an LPG distributor at Haripal village.

21. First, the stand taken in the written notes entirely demolishes the plinth on which the impugned judgment rests. Reference to any village or *mouza*, be it Haripal or Gopinagar, is rendered irrelevant

¹⁴ 'gram' in Nabagram is not to be mistaken for a village.

in the circumstances in the light of the 'Type of Market/Distributorship' being shown as 'Rurban' in the Advertisement under Column 7, which has to be given the meaning attributed to 'Rurban Vitrak' in the Unified Guidelines. If appointment of a distributor were intended for a village/mouza, i.e., Haripal, it defies logic why instead of 'Gramin Vitrak'¹⁵, 'Rurban Vitrak' was shown as the 'Type of Market/Distributorship'. It is also significant to note that if HPCL meant Haripal village as the intended location for appointment of an LPG distributor, it has not explained why there is no reference to any Gram/Village Panchayat in Part 2 (supra) although such reference is available under Part 1 (supra). This, we feel, is obvious because HPCL did not intend the distributor to cater to any rural area but a 'Rurban' area which comprises of both rural and urban.

- 22.** Secondly, the contention of HPCL that Haripal as shown both under the columns 'Block' and 'Location' are not synonymous and that Haripal should be read and understood as Haripal village appears to be one advanced in desperation. The appellant, or for that matter any other individual interested in the distributorship, could not have possibly projected his own imagination and discover all the facts and circumstances that were in the contemplation of the

¹⁵ Gramin Vitrak: In this document, the word 'Rural Area' will have the definition of 'Rural' as per census 2011. LPG distributorship located in 'Rural Area' will be called as Gramin Vitrak and will service the LPG Customers of the specified rural area. Generally it will cover all villages falling within 15 KMs from the boundary limits of the LPG distributorship location and or the area specified by the respective OMCs.

officers of HPCL to be fulfilled by him. At the cost of repetition, Haripal under the column 'Location' appears to be unqualified. In the present case, Haripal being the advertised location and without mention of locality but with the 'Type of Market/Distributorship' being shown as 'Rurban', it is quite but natural for an individual to perceive that land offered for the showroom, if not located anywhere in the entire Haripal block, must at least be located within certain identifiable limits having relation with Haripal, such as the jurisdictional limits of Haripal Police Station. If indeed an LPG distributor were intended to be appointed in village Haripal, the 'Type of Market/Distributorship' would undoubtedly have been shown as 'Rural' and included in Part 1 (supra) and not Part 2 (supra) of the Advertisement. Unless the relevant Part and the columns thereunder of the Advertisement are interpreted in the manner as above, the same would lead to utter absurdity.

23. The problem can be viewed from another perspective. While completing our task, it is not for us to adjudge the nature of the Advertisement or the intention of those who were responsible for drawing it up, but whether the appellant's candidature fell within the scope of the 'Location' as indicated in the Advertisement.

24. Law is well settled that when an advertisement is made inviting applications from the general public for appointment to a post or for admission to any course or appointment of the present nature, the advertisement constitutes a representation to the public and

the authority issuing it is bound by such representation. It cannot act contrary to it. What bears heavy upon us is that, any person of reasonable prudence could assume that since there was no specific column for "*Gram Panchayat*" in Part 2 (supra) of the Advertisement, which was present in Part 1, and the 'Type of Market/Distributorship' was not 'Rural', complemented by the lack of any detail – apart from Haripal in the "Location" without any detailed particulars of the place, would imply that the location of the concerned showroom was required to be in Haripal block and any showroom on land located in Haripal block would fall within the requirements of the Advertisement.

- 25.** We have also kept in mind that the specific words '*mouza*' and '*village*' do not find any mention in the Advertisement and reference to the definitions of the same in the Panchayat Act by the Division Bench as well as by Mr. Sinha in course of his submissions is misconceived. An order of cancellation of the candidature of an applicant, which is the subject matter of challenge in a court of law, has to be defended with reference to the Advertisement and the pleadings and not with reference to what was in contemplation of the authority issuing the Advertisement. It is the norm that a court cannot be swayed by the version of a party, which is not its pleaded case, and that it should confine its decision to the points of assail/defence raised in the pleadings. Any such argument ought to have been traceable

in the pleadings, and could not simply have been put before this Court as an afterthought.

- 26.** In a situation akin to this, had the appellant, or any intending candidate, known in advance of such a narrower requirement, then they would likely have been more vigilant in fulfilling such criteria for the location of the distributorship. *In arguendo*, unfortunately, it is HPCL's cross to bear that the Advertisement, if not incorrectly, is inadequately worded. It is not open to a writ court, much less an appeal court, to direct the modification of any clause/qualification in the Advertisement to suit the interest of any particular candidate or the issuing authority even. Any such direction would amount to re-writing the clause/qualification mentioned in the Advertisement, which would be plainly impermissible.
- 27.** Turning to the added respondent, we can only sympathize with him. If at all the added respondent had earlier been the victim of an arbitrary rejection of his candidature by HPCL, he ought to have challenged such action by instituting an appropriate proceeding. Not having so instituted, the present appeal is not an appropriate proceeding where this Court can look into his grievance and address it.

Conclusion

- 28.** For the reasons aforementioned, the first issue is answered in the affirmative while the second in the negative.

- 29.** The impugned judgment of the Division Bench is set aside and the order of the Single Judge restored. The present appeal is, accordingly, allowed leaving the parties to bear their own costs.
- 30.** It is, however, made clear that apart from the questions that we have decided, no part of our observations shall be treated as expression of opinion on the further requirements/compliances, if any, with regard to HPCL proceeding with the appellant's candidature for the LPG distributorship. The same may be decided as per the applicable laws and guidelines by the competent authority of HPCL.
- 31.** Since the Advertisement is more than half a decade old, we hope and trust that HPCL would henceforth proceed with expedition to cater to the needs of its future customers.
- 32.** Pending applications, if any, also stand disposed of accordingly.

.....J.
[DIPANKAR DATTA]

.....J.
[SANJAY KUMAR]

**NEW DELHI;
19TH MARCH, 2024.**