

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11231 of 2015

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Ajit Kumar Singh, son of Late Deoki Nandan Singh, resident of village, P.O. and P.S.- Goriyakothi, District- Siwan (Bihar)

.... Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Petroleum and Natural Gases, 204, 'B' Wing Shastri Bhawan, New Delhi.
2. The Secretary, Ministry of Petroleum and Natural Gases, 204, 'B' Wing Shastri Bhawan, New Delhi.
3. The Indian Oil Corporation Ltd. Corporate Office, Plot No. 3079/3, Sadiq Nagar, J.B. Tito Marg, New Delhi- 110049 through the Chairman.
4. The Chairman, the Indian Oil Corporation Ltd. Corporate Office, Plot No. 3079/3, Sadiq Nagar, J.B. Tito Marg, New Delhi- 110049 .
5. The Senior Area Manager, Indian Oil Corporation Ltd, 1st Floor, Shahi Bhawan, Exhibition Road, Patna.
6. Sri Pushkar Anand, son of not known to the petitioner, Member, Field Investigation Report Committee, India Oil Corporation Ltd., 1st Floor, Shahi Bhawan, Exhibition Road, Patna.
7. The State of Bihar through the District Magistrate, Siwan.
8. The Sub-Divisional Officer, Maharajganj Sub- Division, District- Siwan.
9. The Circle Officer, Goriyakothi, P.O. and P.S.- Goriyakothi, District- Siwan.
10. Ashutosh Kumar, son of Sri Anand Mohan Singh, resident of village, P.O. and P.S.- Goriyakothi, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate.
For the Oil Company	:	Mr. Anil Kumar Jha, Sr. Advocate. Mr. Sanat Kumar Mishra, Advocate.
For the Respondent No.5	:	Mr. S.B.K. Manglam, Advocate. M/s. Anita Kumari, Advocate. Mr. Ravi Ranjan, Advocate.
For the State	:	Mr. S.S. Prasad- SC-10 Mr. Sanjay Kumar, AC to SC-10.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

C.A.V. JUDGMENT

Date: 24 -08-2015

Heard learned counsel for the petitioner and the Respondents.

2. The present writ petition has been filed for



quashing the order dated 05.06.2015 passed by the Collector, Siwan in Misc. Case No. 8/2015-16 by which he has held that since 06.11.2009, the petitioner is not the resident of Goriyakothi rather he is resident of village- Sarsar situated in Siwan District.

3. The short facts of the case are that pursuant to an advertisement dated 17.10.2009 of the Indian Oil Corporation Limited inviting applications for selection of distributor under RGGLV Scheme for several locations including Goriyakothi in the District of Siwan, the petitioner applied and was selected as distributor of LPG for location Goriyakothi on the basis of draw of lottery. With regard to the condition in the advertisement that the applicant should be resident of the concerned location the petitioner claimed to be a resident of Goriyakothi since 2006 where he had constructed a small house on a piece of land taken on rent from one Vijay Kumar Singh in terms of an agreement. It appears that prior to taking up residence at Goriyakothi as claimed, the petitioner had applied for deletion of his name from the voter list of village Sarsar for which a receipt dated 01.04.2009 was issued by the BLO, Sarsar District- Siwan. It is further stated that the petitioner also purchased a piece of land on 05.11.2009 at Goriyakothi. In this background, a residential certificate dated 06.11.2009 was issued by the Circle Officer in favour of the petitioner certifying him to be a resident of Goriyakothi. On the complaint of private Respondent No. 10, the



residential certificate was cancelled by the Circle Officer, Goriyakothi, Siwan on 27.01.2011 against which the petitioner applied for proper enquiry and for issuance of fresh residential certificate. Accordingly, an enquiry was conducted by a Two-Man Enquiry Committee constituted by the District Magistrate which in its report dated 01.03.2011 found the petitioner to be the resident of Goriyakothi. An enquiry was also conducted by the Circle Officer, Goriyakothi who submitted his report dated 03.11.2011 showing the petitioner as resident of Goriyakothi. Accordingly, a fresh residential certificate dated 18.02.2012 was then issued in favour of the petitioner certifying him to be a resident of Goriyakothi. The residential status of the petitioner was challenged by the Respondent No. 10 in C.W.J.C. No. 22586 of 2011 also seeking therein for quashing of the letter of intent issued in favour of the petitioner. Further C.W.J.C. No. 5919 of 2012 was also filed by the Respondent No. 10 for quashing the residential certificate dated 18.02.2012 of the petitioner. After hearing the parties and consideration of the matter at considerable length, both writ petitions were disposed of together by a detailed judgment dated 06.04.2015 in the following terms.

“ **17.** This Court is of the same view the manner the Circle Officer and others have acted it requires criticism from this Court and action cannot be approved. This Court directs the District Magistrate to



hold an enquiry in the manner the then Circle Officer has acted in issuance of residential certificate so much so also to find out about the existence of the original document as the original documents have not been produced before this Court rather photo copies of the same have been produced. When the counter affidavit has been filed by the State includes the supporting documents they must explain where the original file has gone. The District Magistrate should go to the bottom of the matter. In view of the aforesaid discussions the second residential certificate dated 18.02.2012 is hereby quashed. The District Magistrate will either hold an enquiry himself or through any higher Administrative Officer of Additional Collector rank giving an opportunity of hearing to both the parties and decide the issue for residential certificate to Sri Ajit Kumar Singh for the purposes of participation in the draw for selection of appointment of dealer of retail outlet, the decision of the District Magistrate on the residential certificate, will be basis for IOC to decide the issue of retail outlet at Goriyakothi in favour of Sri Ajit Kumar Singh (respondent no. 7).

18. If the issue is decided against Sri Ajit Kumar Singh, IOC will act in accordance with law. This Court does not find any disputed question of fact for arriving to the aforesaid conclusion. The aforesaid issue raised by the private respondent has no worth for

consideration by this Court.

19. With the aforesaid observation and direction these writ petitions are allowed.”

4. Pursuant to the aforesaid direction of this Court, the District Magistrate passed the impugned order dated 05.06.2015, concluding that the petitioner was not a resident of Goriyakothi but of village Sarsar.

5. Learned Senior counsel Mr. Y.V. Giri appearing for the petitioner has made a short submission questioning the legality of the impugned order dated 05.06.2015. It is pointed out from paragraph-2 of the discussion (vicharan) in the impugned order that the Collector has found that the joint report dated 01.03.2011 of the Two-Man Enquiry Committee was managed and suspicious and that the residential certificate dated 18.02.2012 was not acceptable as bonafide. It is submitted that such a conclusion is wholly invalid and unsustainable in the absence of even a whisper of a reason being assigned, and any inference which is not informed by reason has to be held to be arbitrary.

6. Mr. Giri further submits with reference to para-3 of the discussion in the impugned order that the Collector has relied upon a report of the Circle Officer, Goriyakothi in letter no. 03.06.2015 to conclude that the land purchased by the petitioner was only being used as a godown and road and the remaining part of the land was vacant. It was further held that



even at that stage, the petitioner did not have a constructed residential house at Goriyakothi nor he was residing there. It has also been held that the petitioner's application for removal of his name from the voter list of village Sarsar was found completely blank and had not even been signed by the petitioner. It is submitted that these adverse findings against the petitioner have been recorded by the Collector without however granting any opportunity of being heard in the matter. The said report dated 03.06.2015 of the Circle Officer, Goriyakothi was in the nature of material collected and used behind the back of the petitioner without granting an opportunity of being heard in the matter. It is well settled that such action vitiates the impugned order as violative of the fundamental principles of natural justice. It is therefore submitted that the Collector should be directed to grant opportunity of hearing to the petitioner.

7. Mr. S.B. K Manglam, learned counsel for the Respondent No. 10 on the other hand has vehemently opposed the writ petition. It is submitted that the order dated 05.06.2015 passed by the Collector does not suffer from any illegality inasmuch as the finding that the joint report was managed and suspicious did not require any additional reasons to be stated, over and above what was implicit from the facts already available on records and which are self speaking. In this context, the joint enquiry report dated 01.03.2011 in favour of



the petitioner was sought to be shown as wholly unreliable on the face of it and suffering from self contradictions as evident from para-2 thereof with regard to the two plots of land said to have been obtained by the petitioner by way of sale and lease respectively. Mr. Manglam further contended that the conduct of the petitioner all through has been rather dubious as also the manner in which the petitioner has obtained the residential certificates in his favour which were ultimately cancelled.

8. As regards non-supply of the Circle Officer's report dated 03.06.2015 to the petitioner, it is submitted that the same has not occasioned failure of natural justice as the petitioner has not suffered any prejudice on this score. As a matter of fact the report dated 03.06.2015 merely speaks of the land purchased by the petitioner being used as a godown, which is a fact admitted by the petitioner himself in para-4 of his supplementary affidavit.

9. It is also submitted that the petitioner is not eligible for being selected for the distributorship under the advertisement inasmuch as both his residential certificates dated 02.03.2012 and 18.02.2012 have been cancelled and thus there is no valid document in support of his claim in this behalf.

10. Having heard the parties and upon a consideration of the material on records, this Court finds considerable merit in the submissions made on behalf of the



petitioner. At the outset it must be noted that despite time being granted to the Respondent No. 10 as sought, no counter affidavit has been filed on his behalf to controvert the averments contained in the writ petition. A perusal of the impugned order dated 05.06.2015 clearly shows that no reasons have been stated for finding the joint enquiry report dated 01.03.2011 to be a managed and suspicious one and so also that the residential certificate dated 18.02.2012 not to be a bonafide one. It is well settled that the validity of an order has to be tested on the basis of the reasons contained in the order itself and one must not have to look elsewhere to supplement reasons in an attempt to validate the order passed.

11. This Court also takes note that the Collector has failed to have due regard for the direction of this Court in para-17 of its aforesaid order dated 06.04.2015 specifically requiring grant of opportunity of hearing to both the parties for deciding the issue for residential certificate to the petitioner. The question whether or not such failure has resulted in prejudice to the petitioner therefore loses significance in the face of the clear direction of this Court. The material in the form of the Circle Officer's report dated 03.06.2015 so collected and used without confronting the petitioner cannot therefore be sustained and consequently the order of the Collector is vitiated on that score alone.

12. It may also be observed that the detailed



submissions made on behalf of the Respondent No. 10 with regard to the conduct of the petitioner and the doubtful nature of the residential certificates is equally irrelevant for two reasons - first, that all these aspects have already duly been considered by this Court in its order dated 06.04.2015 and only upon a consideration of the same the matter was decided and as such it is not open to this Court to revisit these aspects of the matter; and second, that both residential certificates of the petitioner have already been cancelled.

13. In the above circumstances therefore, the Collector is directed to grant an opportunity of hearing to the petitioner and in case he concludes that no departure from his order dated 05.06.2015 is required, the matter shall so rest. In case however he proposes to take a different view of the matter, he shall pass orders afresh in accordance with law.

14. The writ petition stands disposed of with the aforesaid directions.

(Vikash Jain, J)

Md. Ibrarul/-

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