

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1429 of 2014

IN

Civil Writ Jurisdiction Case No. 20289 of 2011

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1. Muktendra Pratap Son of Shri Ravindra Pratap Resident of
Village - Babhandih, P.S. - Wazirganj, District - Gaya.

.... **Appellant**

Versus

1. Bharat Petroleum Corporation Ltd., A Government of India
Enterprises, Bharat Bhawan 4 & 5 Currimbhey Road, Ballard
Estate, Post Box No. 688, Mumbai - 400001 through its
Chairman.
2. Bharat Petroleum Corporation Limited, Patna LPG Territory &
Bottling Plant, Fatuha Industrial Estate, Fatuha, Patna 803201
(Bihar) through Territory Manager.
3. Ranjeet Kumar @ Bablu Kumar Son of Sri Parmeshwar Prasad
Resident of Village - Bharaity, Ward No. 2, House No. 12, P.O.
AND P.S. - Wazirganj, District - Gaya.

.... **Respondents**

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Appearance :

For the Appellant : Mr. Anil Kumar Sinha, Advocate
Mr. Nawal Kishore Singh, Advocate

For the Respondent Nos.1 & 2 : Mr. Madhuresh Prasad, Advocate

For the Respondent No. 3 : Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 11-02-2015

Aggrieved by an order, dated 30.04.2014,
passed in CWJC No. 20289 of 2011, by learned single
Judge, the present appeal, under clause 10 of Letters
Patents of Patna High Court, has been preferred by the
appellant, who was the writ petitioner.



2. The writ petitioner, by filing an application under Article 226 of the Constitution of India, giving rise to CWJC No. 20289 of 2011, had sought for an order from this court restraining the respondents- Bharat Petroleum Corporation Limited (hereinafter referred to as BPCL) from appointing respondent No.3 as distributor for Rajiv Gandhi Gramin Liquefied Petroleum Gas (LPG) Vitrak (in short RGGLV), who was selected for such appointment on the basis of a lottery held on 03.08.2011, for the location, "*Punawan, Babhandih, Wazirganj*" in Wazirganj block, district Gaya.

3. The appellant's challenge to appointment of respondent No.3 as LPG distributor was precisely on the ground that respondent No.3 was not a resident of the said place, '*Punawan*', and as per clause 3 of the advertisement inviting applications, an applicant was required to be a resident of the advertised location (village/town).

4. We have heard, at length, Mr. Anil Kumar Sinha, learned counsel for the appellant, Mr. Madhuresh Prasad, learned counsel for the respondent Nos. 1 and 2. We have also heard Mr. Sanjay Kumar, learned counsel for the respondent No.3.

5. There is no dispute over the facts, as noted in the order under appeal, dated 30.04.2014. It would transpire from the records that Bharat Petroleum



Corporation Limited (BPCL), Indian Oil Corporation Limited (IOCL) and Hindustan Petroleum Corporation Limited (HPCL) came out with an advertisement, on 17.10.2009, inviting applications from eligible candidates for the appointments as RGGLV, at various places, in various districts of the State of Bihar, including one, at Wazirganj, in the district of Gaya. The companies, thereafter, came out with another advertisement, on 28.02.2011, re-advertising the location "*Punawan, Babhandih, Wazirganj*" for open category. Clause 3 of the advertisement, dated 28.02.2011, brought on record by way of Annexure-1 to the writ petition, prescribed that applicant for RGGLV should be a resident of the advertised location (town/ village). The appellant as well as respondent No.3, among various others, applied for allotment of distributorship for the site in question. From the advertisement, it will appear that for the site in question, BPCL was authorized to appoint the RGGLV. Upon preliminary scrutiny, the applicants were shortlisted, whereafter the appellant and respondent No.3 participated in the lottery held on 03.08.2011. Respondent No.3, however, became successful and, accordingly, he was selected for appointment as RGGLV.

6. The appellant, thereafter, questioned the selection of respondent No.3, by way of an objection to Territory Manager of the BPCL, on the ground that he was



not a resident of the re-advertised location, that is, 'Punawan'. He reiterated his objection, subsequently, through another complaint made by him, on 15.11.2011, before Regional Manager of the BPCL. He filed the writ application, in this High Court, on 11.11.2011, which came to be subsequently registered, on 18.11.2011, giving rise to the said CWJC No. 20289 of 2011. The petitioner's objections were rejected by the BPCL, which was communicated to him through letter, dated 18.11.2011. The petitioner, accordingly, sought to amend the prayer, in the writ application, by filing an interlocutory application before the writ court, which was allowed by learned single Judge.

7. The main thrust of the appellant's challenge to the very eligibility of respondent No.3 for his selection as RGGLV was that respondent No.3 was not a resident of the re-advertised location, namely, 'Punawan' and he was, instead, a resident of village Bharaitiy. According to him, the advertisement required that applicant must be resident of the same location (village/town) so as to become eligible to be considered for appointment as RGGLV. He brought on record a letter, dated 12.05.2012, of Sub divisional Officer, Sadar, Gaya, addressed to the Circle Officer, Wazirganj in order to make out a case that claim of respondent No.3 that he was resident of village Punawan was incorrect and



he was appointed as RGGLV on the basis of wrong information, as regards his place of residence. According to him, the Sub divisional Officer caused a detailed enquiry and had come to a conclusion that information given by respondent No.3 of his being resident of re-advertised location was incorrect. He made fresh complaint before the Territory Manager of the BPCL, enclosing the said letter of the Sub divisional Officer. However, the Territory Manager of BPCL, vide his letter, dated 14.06.2012, responding to the appellant's grievance, mentioned that respondent No.3 had been awarded distributorship on the basis of documents and evidence made available to the BPCL by respondent No.3 and the BPCL refused to accede to the objection raised by the appellant on the basis of subsequent report of the Sub divisional Officer and clarified that BPCL will consider initiating action against the selected candidate only as and when the residence certificate issued by the Circle Officer, Wazirganj, in favour of respondent No.3, was cancelled.

8. It appears that respondent No.3, by filing a counter affidavit in the writ proceeding, brought on record several documents in support of his claim that he had landed properties in village Punawan and he was rightly issued *residence certificate*, dated 17.10.2004, issued by the Circle Officer,. He also brought on record, a second



residence certificate, dated 07.03.2011, issued by Circle Officer in support of his contention that he was a resident of the said village Punawan. Apart from this, he also relied upon certain other documents including School Leaving Certificate, Kisan Vikas Patra, etc., in support of his stand that he was resident of the said village. It also transpires from the records that respondent No.3 further brought on record, in the writ court, the communication, dated 12.05.2012, of the Circle Officer, in response to the letter of Sub divisional Officer, explaining him as to how the certificate of residence issued by him in favour of respondent No.3, on 07.03.2011, was correct.

9. Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the appellant, has submitted, referring to the report, dated 12.05.2012, of the Sub divisional Officer, Gaya, that respondent No.3, evidently did not reside at village 'Punawan'. He has straightway drawn our attention to Annexure-19 to reply affidavit filed on behalf of the appellant, in the writ court, to the counter affidavit filed on behalf of respondent-BPCL, which is the communication, dated 12.05.2012, issued by the Sub Divisional Officer, Sadar, Gaya, addressed to Circle Officer, Wazirganj, whereby the Sub divisional Officer asked the Circle Officer to cancel the *residence certificate* issued by the Circle Officer in favour of respondent No.3. He submits,

referring to the said communication, that the respondent No.3 obtained the residence certificate by way of misrepresentation and fraud by concealing his actual residential address and, therefore, his appointment, as RGGLV, deserved to be cancelled.

10. Mr. Sinha has placed heavy reliance upon a decision of the Supreme Court, in the case ***Bhagwan Dass and Another v. Kamal Abrol and Others***, reported in ***2005 (3) PLJR (SC) 123***, to submit that, in order to satisfy the criteria of being resident of a location, an applicant ought to be the actual resident of the locality (town/village). Mr. Sinha has submitted that for the purpose of grant of distributorship, like the present one, test of *de facto* residence should be applied and *de jure* residence of a candidate, in the advertised locality, was not sufficient to make one eligible for grant of distributorship/ appointment as RGGLV. He tried to convince us that Punawan may be *de jure* residence of respondent No.3, which was certainly not his *de facto* residence, in view of the report, dated 12.05.2012, of the Sub divisional Officer.

11. Mr. Sanjay Kumar, learned counsel for the respondent No.3, has, on the other hand, submitted that respondent No.3 was appointed as RGGLV on the basis of documents/ materials available on record before the BPCL, which included the *residence certificate* issued by the Circle



Officer. He has submitted that Circle Officer was competent to grant *residence certificate*, which was operative not only on the date of appointment of respondent No.3 as RGGLV, but has not till date been cancelled. He contends that the subsequent report, dated 12.05.2012, of Sub divisional Officer could not have been the basis for granting any relief to the appellant, particularly, when the *certificate of residence* issued by the Circle Officer was, in fact, not cancelled.

12. Mr. Madhuresh Prasad, learned counsel appearing on behalf of respondent-BPCL, while supporting the impugned action of the respondent-company, has submitted that the respondent-company appointed respondent No.3 after considering the report of the Circle Officer, Wazirganj, in favour of respondent No.3, on the basis of report of Revenue Karamchari and Circle Inspector. He has further submitted that details of selected candidates were verified by the company during the field verification of credentials. He has further argued that in the facts and circumstances of the present case, BPCL has rightly refused to accede to the request made by the appellant for canceling selection of respondent No.3 as RGGLV,.

13. On the basis of the facts available on record and submissions advanced by learned counsel for the parties, it is evident and not at all in dispute that there is a



certificate, issued by the Circle Officer, Wazirganj, declaring respondent No.3 to be permanent resident of village Punawan. Learned counsel for the appellant does not dispute nor there any contrary pleading, on his behalf, that the Circle Officer is not the competent authority to issue a residence certificate. The said certificate has so far not been cancelled. It is true that there is a subsequent report of the Sub divisional Officer, Sadar, Gaya, to the effect that respondent No.3 is not regularly residing at village Punawan. This fact has not been admitted and has been disputed by respondent No.3. In such a situation, no writ could have been issued restraining the respondents from appointing respondent No.3 as RGGLV for the location in question or cancelling his appointment as RGGLV.

14. The submission, made on behalf of the appellant, on the basis of Supreme Court decision in the case of **Bhawgan Dass** (supra), cannot, in the facts and circumstances of the present case, be accepted for the simple reason that in the present case, it is not admitted that respondent No.3 is not actual resident of village Punawan and he actually does not reside at the said village Punawan This disputed question of fact could not have been adjudicated upon in a writ proceeding under Article 226 of the Constitution of India. The decision of the Supreme Court, in the case of **Bhawgan Dass** (supra), arose from a



civil suit, which was instituted after the High Court had refused to entertain a writ petition under Article 226 of the Constitution of India. The decision, in **Bhawgan Dass** (supra), cannot be applied to the case at hand, which involves disputed questions of fact as to whether Punawan is only *de jure* residence of respondent No.3 or it is *de facto* residence of respondent No.3.

15. Reliance has also been placed upon another decision of the Supreme Court, in case of **Shiv Kumar v. Indian Oil Corporation**, reported in **(2007) 4 SCC 410**. The decision was rightly not applied by the learned single Judge as the decision of the Supreme Court was based on established facts that there was misrepresentation and suppression of material information by the appellant. No such misrepresentation or suppression of material fact has been shown to have been practiced in the present case.

16. There being disputed question of fact, as noted above, learned single judge rightly refused to interfere in exercise of power of judicial review under Article 226 of the Constitution of India. we, therefore, do not find any infirmity, legal or factual, in the order, dated 30.04.2014, passed by learned single Judge in CWJC No. No. 20289 of 2011.

17. This appeal is, accordingly, dismissed. However, in the facts and circumstances of the case, there

shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, J.: I agree.

(I. A. Ansari, J.)

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