

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1114 of 2013
IN
Civil Writ Jurisdiction Case No. 15153 of 2012**

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1. Bharat Petroleum Corporation Limited, Government of Bihar Enterprise, Patna Territory (LPG) through its Territory Manager (LPG), Patna
 2. The Territory Manager (LPG), Patna Bharat Petroleum Corporation Ltd.

.... Appellant

Versus

1. M/S Yashoda Bharat Gas, Ekma Saran (Bihar) through its sole Proprietor, Shri Hridaya Narayan Singh, S/o Late Ramadhar Singh, R/o- Manjhi Road, P.O. & P.S.- Ekma, District- Patna
2. Shri Hridaya Narayan Singh, Son of Late Ramadhar Singh, Proprietor, M/s Yashoda Bharat Gas, Ekma, Saran, Bihar, R/o- Manjhi Road, P.O. & P.S.- Ekma, District- Saran
3. Dr. Sheo Kumar Singh, Son of Shri Jaganrath Singh, R/o- Village- Ekma, P.O. + P.S.- Ekma, District- Saran (Chapra), Bihar

.... Respondents

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Appearance :

For the Appellants : Mr. Madhuresh Prasad, Advocate
For the Respondents : Mr. Ashish Giri, Advocate
For the Respondent No.3 : Mr. Anil Kumar Sinha, Advocate
Mr. Abhimanyu Vatsa, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 02-07-2015

Heard learned counsel for the appellants and the respondents.

2. By filing this Letters Patent Appeal, appellants have assailed order dated 16.07.2013 passed in CWJC No. 15153 of 2012, whereunder the learned Single Judge set aside the order of the Territory Manager, L.P.G. Bharat Petroleum Corporation Ltd. dated 31.07.2012 (Annexure-8 to the writ petition) terminating the L.P.G. Distributorship of

the writ petitioner on the ground that he obtained dealership, violating Clause 14.2 of the application form and had withdrawn part of the amount deposited within 90 days from the date of the application.

3. Learned Single Judge having considered the submission has noticed the fact that on the date of submission of application form on 20.11.2007 the writ petitioner had Rs. 18, 45,000/- in deposit in his bank account which amount was required to be maintained in the Bank account for minimum period of three months from the date of application.

4. According to the Bharat Petroleum Corporation Ltd., writ petitioner withdrew a sum of Rs. 1 lac, 6 lac from the account on 22.11.2007, 24.11.2007 i.e. within 90 days from the date of application and on the said ground the dealership was rightly terminated by the Territory Manager under order dated 31.07.2012.

5. It is submitted by the learned counsel for the successful candidate respondent that termination order dated 31.07.2012 was passed with reference to Bank statement of the writ petitioner received from the State Bank of India, Ekma Branch (Annexures-2, 3) but perusal of the said statement dated 11.11.2009, Annexure-2 does not indicate that any such withdrawal was made by the writ petitioner.

6. In this connection we also refer to the findings recorded by the learned Single Judge that the writ petitioner withdrew the amount of Rs. 1 lac, 6 lacs on 22.11.2007 and 24.11.2007 to meet the exigency of his daughter's treatment but deposited the said amount in three transactions of Rs. 3 lacs, 1 lac, 3.5 lacs on 26.11.2007, 04.12.2007 and 17.12.2007. In this connection, learned Single Judge has been impressed by the truthfulness of the allottee as he candidly accepted in the show-cause reply that the said amount was withdrawn within 90 days to meet the exigency of his daughter's illness but again deposited on 26.11.2007, 04.12.2007 and 17.12.2007.

7. It appears learned Single Judge proceeded to exercise his writ jurisdiction considering the fact that writ petitioner had continued with the outlet for more than two years after making huge investment and equities were in his favour as complaint about the withdrawal was made by none else but Respondent No. 3 who was an unsuccessful claimant. His earlier similar complaint was also rejected by the Oil Company whereafter bank statement, Annexure-3 was obtained on 13.10.2010 and on that basis fresh show-cause notice was given and after considering his reply the impugned order was passed.

8. Writ petitioner while presenting his case has not made any false statement and candidly admitted that he

had to withdraw the amount to meet the exigency of his daughter’s treatment.

9. Learned Single Judge having exercised his writ jurisdiction appreciating the truthfulness of the petitioner on equity considerations, it would not be prudent for us to set aside his order on technical ground as thereunder termination order dated 31.07.2012 issued after more than two years of issue of L.O.I. dated 24.07.2010 at the instance of unsuccessful candidate has been set aside. The appeal is dismissed.

(V.N. Sinha, J)

(Nilu Agrawal, J)

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