

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8934 of 2001

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Ajit Kumar Singh, son of Sri Ranjit Bahadur Singh, resident of Mohalla Chougain Kothi, M.P.Bagh, C.K.Road, P.S. Arrah, Town, District Bhojpur

.... Petitioner

Versus

1. Bharat Petroleum Corporation Limited, Eastern Zone, 31-B, B.D.Bagh, Hong-Kong House, Kolkatta, through its General Manager
2. The Regional Marketing Manager, Bharat Petroleum Corporation Ltd., 4th Floor, Asiana Chambers, Exhibition Road, Town and District Patna
3. The Chairman, Dealer Selection Board I, Patna Industrious Association Building, Sinha Library Road, Patna
4. The Dealer Selection Board, Patna Industries Association Building, Sinha Library Road, Patna through its Co-ordinator
5. Sri Govind Upadhaya, son of Sri Awadheshwar Upadhaya resident of village Babhanauli, P.S. Arrah Mufasil, District Bhojpur, at present Chitra Gupta Mandir, Babu Bazar, P.S. Arrah Town, District Bhojpur
6. J.R.Saran, Rtd. Judge, Satya Guru Sadan, Road No. 138, Rajendra Nagar, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 12325 of 2001

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Makeshwar Prasad, son of Sri Fakira Lal, resident of Mohalla Mahajan Toli No.1, P.S. Arrah town, District Bhojpur at Arrah

.... Petitioner

Versus

1. Bharat Petroleum Corpn.Ltd., Eastern Zone, 31-B, B.D.Bagh, Hong-Kong House, Kolkatta, through its General Manager
2. The Regional Marketing Manager, Bharat Petroleum Corporation Ltd., 4th Floor, Asiana Chambers, Exhibition Road, Town and District Patna
3. The Chairman, Dealer Selection Board I, Patna Industrious Association Building, Sinha Library Road, Patna
4. The Dealer Selection Board, Patna Industries Association Building, Sinha Library Road, Patna through its Co-ordinator
5. Sri Govind Upadhaya, son of Sri Awadheshwar Upadhaya resident of village Babhanauli, P.S. Arrah Mufasil, District Bhojpur, at present Chitra Gupta Mandir, Babu Bazar, P.S. Arrah Town, District Bhojpur
6. Ajit Kumar Singh, son of Sri Ranjit Bahadur Singh, resident of Mohalla Chougain Kothi, M.P.Bagh, C.K.Road, P.S. Arrah Town, District Bhojpur
7. J.R.Saran, Rtd. Judge, Satya Guru Sadan, Road No. 138, Rajendra Nagar, Patna

.... Respondents

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Appearance :

(In CWJC No. 8934 of 2001)

For the Petitioner/s : Mr. Anil Kumar Tiwary, Adv.

Mr. Indu Bhushan Singh, Adv.

For the Respondent No.5 : Mr. Kamal Nayan Chaubey, Sr.Adv.

For BPCL : Mr. Madhuresh Prasad, Adv.

(In CWJC No. 12325 of 2001)

For the Petitioner/s : Mr. Lakshmi Kant Sharma, Adv.
Mr. R.K.Sharma, Adv.
For the Respondent No.5 : Mr. Kamal Nayan Chaubey, Sr.Adv.
For BPCL : Mr. Madhuresh Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 13-05-2015

Heard learned counsel for the parties.

2. In both these writ applications the two petitioners have assailed the decision of Selection of Kerosene Oil (S.K.O.) dealership to respondent no.5 at Arrah for which Letter of Intent was issued in favour of respondent no.5 on 7.6.2001. Both the petitioners also being applicant for the dealership at Arrah having found that such decision to grant dealership to respondent no.5 was vitiated both on fact and in law had moved this Court at the earliest point of time, inasmuch as the first writ application, C.W.J.C.No. 8934 of 2001 was filed by Ajit Kumar Singh on 16.7.2001, whereas the second writ petition by the petitioner Makeshwar Prasad was filed on 18.9.2001.

3. The facts giving rise to these writ applications as may now be culled out from the materials on record lie in a very narrow compass. On 11.9.2000 the Bharat Petroleum Corporation Limited (hereinafter referred to as 'the Corporation') had issued an advertisement for allotment of petrol/ diesel retail outlet at Bihar Sharif, Pipra Bazar, Barauli, Arrah and Dehri-on-sone and one which



this Court is concerned in these two writ applications relating to Arrah was in fact reserved exclusively for Physically Handicapped category. The advertisement had itself provided basic requirement to be fulfilled by the applicants, and one of which clearly laid down that the candidate had to submit the detail of the land alongwith the application which would be made available by him/her for retail outlet. Such application being in the prescribed proforma had also required the candidates to give details of their educational qualification, gross income and the sources of fund.

4. What would immediately receive attention of this Court is petitioner Ajit Kumar Singh had filed his application on 26.9.2000 bearing application No. 569, respondent no.5 had filed such application on 23.10.2000 bearing application No. 618 and petitioner Makeswar Prasad vide application No. 677 dated 13.10.2000. These applications as per prescribed procedure were put to scrutiny in the office of the Corporation wherein while the application of the petitioner Ajit kumar Singh was found to be in order and he was held eligible, the two other applications, one of respondent no.5 and the other that of the petitioner Makeswar Prasad were not found to be in order and they were declared ineligible.

5. In the case of respondent no.5 the check list of scrutiny dated 24.12.2000 it was clearly recorded that he had not filled up all



the columns of the application and infact columns no. 7, 9, 21 and 22 of his application were not found to have been filled up. Let it be noted that column no.22 of application containing the declaration of furnishing all the information by the applicant to be correct and also its consequence in the event of their being found false and/or incorrect was to signed by the applicant but the Respondent no. 5 had not even put his signature on the application and as such in the scrutiny report he was held to be ineligible with a clear recording of reason in column no.15 of the check list “signature on application form not done” by Sri S.S. Prasad, Senior Sales Officer on 24.12.2000..

6. This Court has also found from the application filed by respondent no.5 that he had not fulfilled the requirement of residential certificate as prescribed in Column no.7. Similarly the petitioner had also not filled up column no.9 relating to gross income as per requirement in the prescribed proforma. Respondent no.5 in fact while giving detail of source of fund in column no.18 had also given incomplete information either with regard to the amount in the Bank by not at all filling those columns and whatever information were given by him even in respect of fixed deposit receipts were incomplete because the date of original deposit of NSC of Rs.60,000/- and Vikas Patra of Rs.40,000/- had not been filled up. Even the date of maturity was not mentioned and only years of 2001, 02, 03 in



respect of NSC and 2001, 02, 03, 04 were filled up in Vikas Patra. Respondent no.5 had also not furnished the requirement in column no.21 with regard to furnishing his conviction or pendency of any case against him as per prescribed Appendix 'A'. Finally in column no.22 which was to be in form of a declaration with signature of respondent no.5 the same was also not furnished, inasmuch as the signature of respondent no.5 in column no.22 was not found by the Scrutiny Committee.

7. It has to be kept in mind that giving all the particulars and information was part of the mandatory requirement of the prescribed application, inasmuch as it was made clear both in the advertisement and in the prescribed proforma of the application that incomplete applications were to be rejected at the threshold.

8. It appears that these three applications were sent to the Dealer Selection Board consisting of Mr. J.R.Saran, a retired Judge, and he despite the Respondent no. 5 found to be ineligible, had issued interview call letter to Respondent no. 5 and declared him the first in had panel after holding an interview on 16.3.2001.

9. Mr. J.R.Saran the Chairman, Dealer Selection Board by his letter dated 16.3.2001 had thereafter also directed for a field verification report in respect of all the three candidates, i.e. two petitioners and respondent no.5 who had been ranked in order of

merit, in which respondent no.5 was placed at serial no.1, petitioner Ajit Kumar Singh at serial no.2 and the petitioner Makeshwar Prasad at serial no.3.

10. It is however still a mystery as to who and when had put the signature on behalf of respondent no.5 on his application in column no. 22 after screening made on 24.12.2000 by Mr. S.S. Prasad Senior Sales Officer of the Oil Company had found and declared respondent no.5 to be ineligible for having not filled up the application form and particularly placing his signature in column no. 22. This Court has carefully gone into the signature of respondent no.5 on his application form which has been placed by the respondent Corporation in the supplementary counter affidavit at page-58 and would find that the signature of respondent no.5 was in different ink, not matching with the handwriting in the other columns of the application and obtained subsequently in course of interview as also stands admitted on reading of paragraph no. 22 of the writ petition and para-26 of the counter affidavit which reads as follows:-

"26 That besides above, a perusal of Annexure-19 at the bottom will show that the petitioner has put his signature, but if the Respondents are made to present the scrutiny paper given over his application form then it shall be evident that after submission of the application form, the Respondent no. 3 has allowed the Respondent no. 5 to make manipulation and put his signature thereon. The

action of the Respondents is malafide both in facts as well as in law.

22. That the statement made in paragraph no. 26 are incorrect, mischievous and condonable. The deponent has signed the application in the style he generally puts his signature and during the interview the deponent was asked to sign in English and Hindi which he did in presence of all those who constituted the Interview Board neither the Respondent no. 3 allowed nor the deponent did any act which can be labelled as manipulation. As a matter of fact all through his life the writ petitioner is doing nothing but usurping the gains of clandestine games in tacit support of his family members and relation and therefore in the judgment of his guilty mind every body appears to be as what the writ petitioner Thinks. It is submitted that by making a false and perjurious statement writ petitioner has made himself liable for prosecution."

11. Thus there is no iota of doubt that the signature of Respondent no. 5 in column no. 22 of the application was obtained subsequently and since it was done after application was sent to the Dealer Selection Board and before his being ranked first in the merit panel prepared by Mr. Saran, the retired Judge, heading Dealer Selection Board, the finger of suspicion will go only against him (Mr. Sharan, the Dealer Selection Board).

12. That infact is not the end of the matter and in fact what would still weigh against respondent no.5 is that pursuant to the



direction of Mr. Saran in his letter dated 16.3.2001 when a field survey investigation report was prepared by the officials of the Corporation it was found that whatever details of NSC of Rs.60,000/- and Vikas Patra of Rs.40,000/- furnished by Respondent no. 5 did not pertain to him and actually were in the name of his maternal uncle and grant mother respectively. This report sent by the General Manager of the Corporation dated 16th April, 2001 was based on field investigation report in which it was clearly mentioned that even the amount of Rs.2,39,500/- had been deposited by respondent no.5 after 30.3.2001. The Field Investigation Report (F.I.R.) in respect of respondent no.5 had also gone to show that he had not given specific information with regard to capability of arranging facilities of the site though as noted earlier it was the part of the condition of the advertisement itself that the detail of site had to be provided alongwith the application.

13. What has really shocked this Court is that after the F.I.R. was prepared on 4.4.2001 an explanation was sought to be given by the Respondent no. 5 and also or accepted by the Chairman of Dealer Selection Board on the basis of an undated application filed by respondent no.5 that in his application amount of Rs.60,000/- of NSC was in the name of his Mama and the amount of Rs.40,000/- of Kishan Vikas Patra was that of his Nani and that the telephone



number given by him was also of his Nani (grand mother). Surprisingly this undated application was not only entertained at the level of Mr. J.R. Saran, the Chairman of the Dealer Selection Board but he had also written letter on 26.4.2001 to the General Manager based on that undated application that the telephone was in the name of maternal grand-mother of respondent no.5, namely, Duleshwari Devi and since respondent no.5 was residing with her such telephone number was given by respondent no.5 in his application. A similar explanation on that very undated application of Respondent no. 5 was also sought to be accepted and forwarded to the Corporation by Mr. J.R. Saran, Chairman of the Dealer Selection Board, that Kishan Vikas Patra and NSC were in the name of maternal uncle and maternal grand-mother respectively.

14. This Court infact is totally amazed the manner in which Mr. J.R.Saran the Chairman Dealer Selection Board had tried to even favour respondent no.5 by writing in his letter dated 26.4.2001 that the original application of respondent no.5 had contained Appendix “A2” supported by the affidavit of Notary Public. This Court has perused the application filed by respondent no.5 and at least that does not contain any Appendix ‘A2’ or the explanation with regard to the amount of KVP and NSC supported by an affidavit of Notary Public to be in the name of his Mama and Nani. What the original



application of respondent no.5 had contained was only five pages, first of one which was with regard to annual income of Rs.85,000/- of his father or affidavit with regard to personal details pertaining to his being citizen of India and his having not any dealership either in his own name or in the name of his husband and wife, father or mother, son or daughter-in-law or undertaking on affidavit that he would work as a full time dealer and if any information was found to be false his dealership could be cancelled. The fourth page of his application was the physically handicap certificate and the fifth page was being Respondent no. 5 registered with the Employment Exchange. Thus, there is no such Appendix 'A2' on the basis of which Mr. Saran could have made such a recommendation as was done by him by his letter dated 26.4.2001 and the very fact that he had taken note of some undated application filed by respondent no.5 before him for making such recommendation that the Letter of Intent (LOI) should be issued in favour of respondent no.5 will clearly go to show that he was sought to be favoured by the Chairman of the Dealer Selection Board.

15. It was at this stage that on 3.5.2001 that the petitioner Ajit Kumar Singh had filed his representation against the decision of the Dealer Selection Board recommending to grant LOI to respondent no.5. In such complaint of the petitioner Ajit Kumar Singh he had furnished documentary evidence that even the declaration of



respondent no.5 of his father having an income of Rs.85,000/- was false because his father was working as a Clerk in the office of the District Land Acquisition Officer and was drawing a salary of Rs. 4987/- only, thus Rs.60,000/- per annum at best. Similarly, he had explained the non-fulfilment of other terms and conditions including Clause 18 and 19 of the application form. On receipt of this application of the petitioner Ajit Kumar Singh when an enquiry was directed to be conducted on the orders of the Chairman, Dealer Selection Board, vide his letter dated 7.5.2001 a query was made from the General Manager of the Corporation by his letter dated 24.5.2001 from Mr. Sharan, the Chairman Dealer Selection Board as to whether LOI should be issued to respondent no.5 in presence of the complaint of the petitioner Ajit Kumar Singh even when some of the issues raised in the complaint by the petitioner Ajit Kumar Singh were found to be totally correct, Mr. Saran by his confidential letter dated 1.6.2001 had not only directed for issuance of LOI but had also directed to take action against the officials of the Corporation who had revealed information of the particulars of the application of respondent no.5 to petitioner Ajit Kumar Singh.

16. Let it be kept in mind that in the report of the officials of the Corporation submitted to the Chairman of Dealer Selection Board dated 24.5.2001 the declaration of the father's income by respondent



no.5 was found to be totally incorrect as also respondent no.5 to have not declared any income of his own nor to have given any Bank details and even NSC and Vikas Patra were in favour of his family members. What is still more significant to be noted here is that the complaint of the petitioner against respondent no.5 that he had filed his original application without signature and that the Scrutiny Committee had declared respondent no.5 to be ineligible was found to be also correct. The comments given by the General Manager to the Dealer Selection Board on 24.5.2001 will have a vital bearing on the result of this case and therefore, they are quoted hereinbelow:

“COMMENTS ON THE COMPLAIN AGAINST
SELECTED CANDIDATE FOR SKO- ARRAH

Complain-1: The candidate has not filled up sincerely the date required in point 9 of the application form. He has submitted a declaration showing his Father's income as Rs.85000/- p.a. inspite of instructions, the candidate has kept many of the columns blank which should be NIL, if there is no income in those heads.

Complain-2: The complainant claims that the father of candidate selected is working under District Land Acquisition Officer and he has collected a salary disbursement sheet of selected candidates, father from Treasury. The statement indicates that salary as Rs.4987/- p.m. which is Rs.60000/- p.a. whereas the candidate has declared the income from salary of his father as Rs.85000/- p.a. He has also not furnished any certificate from his employer which is

mandatory.

Comments: The candidate has submitted an affidavit where the income of his father from salary was shown as Rs.85000/- without any certificate from the employer of his father. Further the candidate has submitted an income certificate from circle officer which states that his own income from salary is Rs.50400/- p.a.

Complain-3: Complainant claims that the applicant is required to furnish bank details alongwith name of account holder in clause 18(a) which he has not mentioned. As regards clause 18(b) of application form, it has been alleged that the candidate has vaguely shown NSC of Rs.60000/- and Vikash patra of Rs.40000/- without mentioning the date of original deposit and date of maturity.

Comments: Candidate has not declared any income of his own and has shown the income of his father in the affidavit. There is no mentioned of any bank details in the application form. The candidate select has declared the year of maturity for all NSCs and Vikash Patras and also produced those during FIR. The NSCs/ Vikash Patras are in favour of his family members.

Complain-4: Under Col.19 the candidate is supposed to attach certificate from competent Medical Authority as detailed in application form certifying his physical Handicap as per Appendix "C". The complainant felt that his requirement was not fulfilled.

Comments: The candidate select has provided a certificate on the subject issued by Medical Board of office of Civil Surgeon cum Chief Medical Officer. It clearly indicates the

nature and extent of handicap. No special instruction was given at Col.19 that the certificate has to be in the format of Appendix "C".

Complain-5: The complainant says that the application form submitted to the Oil Coy was without the signature of the candidate select. After scrutiny of application form by Oil Coy, the Oil Coy had found the discrepancy and submitted the form to DSB with the recommendation that the candidate is not eligible.

Comments: While scrutiny, the signature was found to be missing on the application form and as such BPCL opined to DSB that the applicant is ineligible. However after scrutiny DSB considered the application and called the candidate for interview."

(underlining for emphasis)

17. It is really both shocking and surprising that in presence of the aforesaid letter of the General Manager of the Corporation Mr. J.R.Saran by his letter dated 1.6.2001 had not only reprimanded the officials of the Corporation for alleged leaking the information relating to the application of respondent no.5 but had gone to direct for issuance of LOI in his favour.

18. It was in this manner that the LOI was issued on 7.6.2001. Though further enquiries were sought to be held even after issuance of LOI but it was Mr. Saran who vide his letter dated 25.7.2001 had informed the General Manager of the Corporation that

no further enquiry was sought to be carried in the matter of grant of LOI as would be evident from the letter dated 25.7.2001 of Mr. J.R.Saran.

19. Could there be any better manner in which respondent no.5 had been favoured unfortunately by a Judicial Officer who was made member of the Dealer Selection Board? Let it be noted that such Dealer Selection Board under the Chairmanship of the Judicial Officers were constituted only to fair and dispassionate selection based on merits and eligibility conditions but here was the Judicial Officer who went out and out to favour respondent no.5 even by allowing interpolation in the original application of Respondent no. 5.

20. These facts are not at all in dispute and on the basis of that while Mr. Anil Kumar Tiwary, learned counsel for the petitioners, has submitted that there cannot be any escape from irresistible conclusion that respondent no.5 was granted LOI by way of favour bestowed on Respondent no. 5 Mr. Kamal Nayan Chaubey, learned Senior counsel appearing on behalf of respondent no.5, has sought to defend such allotment on the ground that it will be too harsh to now cancel the allotment of respondent no.5 as he has continued to work as a dealer for a period of 14 years. In this regard Mr. Chaubey has also relied on an order of the Division Bench dated 30.7.2008 in L.P.A.No. 1156/2005.



21. The plea of equity as being now raised by the learned counsel for respondent no.5 has to be rejected. It is well settled that one who seeks equity also must do equity. If respondent no.5 had surreptitiously managed to put his signature on the application after he was already declared ineligible in course of scrutiny of his application on this very ground in course of screening only with the help and support of the Chairman of the Dealer Selection Board, if he could again manage to explain his income of that of his Mama and Nani by filing an undated application to satisfy the requirement of financial capacity, if he could again get favour of being allotted with LOI despite not even filling up his application and giving vital details including that of land as prescribed in the advertisement itself, he cannot seek equity.

22. This Court in this context would rely on the judgment of Apex Court in the matter of allotment of petroleum outlet wherein a similar plea of equity was rejected in the case of Onkar Lal Bajaj & ors. v. Union of India & anor., reported in (2003)2 SCC 673, holding “no equity can be claimed on account of any step or action taken to fulfil the condition of LOI if the selection itself is illegal”. This aspect of the matter was again gone into by the Apex Court in the case of Mukund Swarup Mishra v. Union of India & ors., reported in (2007)2 SCC 536, another case relating to allotment of petroleum outlet

wherein it was held as follows:

“24. We are also not impressed by the argument of the petitioners that the doctrine of promissory or equitable estoppel would apply. May be that the petitioners have spent some amount. But once the allotment itself was found to be vitiated, obviously they cannot claim any benefit as allotment was contrary to law. Moreover, such allotment has been made in remote past and even though an order of cancellation had been passed by the Central Government as early as in August 2002, the allottees have been protected by interim order passed by this Court. Even after the decision in *Onkar Lal Bajaj v. Union of India*, (2003)2 SCC 673, interim order was continued. In the circumstances, for more than four years interim order is in favour of allottees even though the allotment was found to be illegal or contrary to law. In our opinion, therefore, it is not open to the allottees whose allotments have been found to be vitiated to plead equity.”

23. This Court would not like to multiply on the aspect of so called equity, inasmuch as it was in the case of petroleum outlet itself that the Apex Court in the case of *Common Cause, a registered Society v. Union of India & ors.*, reported in (1996)6 SCC 530, as well as in the case of *V. Purushotham Rao v. Union of India & ors.*, reported in (2001)10 SCC 305, had gone to lay down the law that even the allottees who had invested considerable amounts in the business and had operated for a long period would not be entitled to

any relief on equitable consideration if their allotment itself was illegal.

24. It must be kept in mind that no equity can lie in favour of a person on account of this court not deciding the matter earlier. Here in this case both the petitioners have moved immediately after the LOI was issued. The writ application was kept pending either before the Single Judge or before the Division Bench. In fact this case has a very chequered history. The first writ application of petitioner Ajit Kumar Singh was filed on 16.7.2001 at a point of time when respondent no.5 was only declared as an eligible applicant and was recommended by the Dealer Selection Board headed by respondent no.6 and L.O.I. in favour of Respondent no. 5 was issued on 7.6.2001. The records of these two cases would bear it out that the notices were issued on respondent no.5 on 16.8.2001 and thereafter the matter had remained pending despite its being heard on 27.8.2001, 13.10.2003, 8.7.2004 and 21.12.2006. As a matter of fact these two writ applications came to be listed before this Court on 2.2.2009.

25. This Court on 2.2.2009 had initially made an enquiry as to whether the case in hand was one covered by Justice S.C.Agrawal Committee and after being satisfied that the case in hand had not gone to Agrawal Committee it had proceeded to hear the matter only after enabling Bharat Petroleum Corporation to file its counter affidavit.



The matter was then heard on 2.3.2009 and on 3.3.2009 this Court had directed the learned counsel to produce the records of the Dealer Selection Board of all the three applicants. Thereafter on 6.4.2009 this Court on perusal the records produced by the Respondents Corporation in its supplementary counter affidavit had passed a detailed interim order staying the operation of functioning of the dealership allotted to respondent no.5. The relevant portion of the order of this Court dated 6.4.2009 reads as follows:

“ This Court, having examined the affidavit of the Oil Company and the application form filed by respondent no.5 as also the letter written by respondent no.5 to the PRABANDHAN PADADHIKARI without any date and without any reference, is prima facie satisfied that there has been some sort of bungling and favourable treatment in allotment of Kerosene outlet in the name of respondent no.5 by ignoring the case of the petitioners’ for which now Mr. J.R.Sharan, the Chairman of the Dealer Selection Board, Patna has to explain his action with regard to selection of respondent no.5 because it is his action of over-ruling the enquiry report submitted by the Oil Company which has ultimately weighed upon in the allotment of Patrol Pump.

In that view of the matter, this Court would direct for impleadment of Mr. J.R.Sharan as respondent no.6 to this writ application (C.W.J.C.No. 8934 of 2001) and respondent no.7 (C.W.J.C.No. 12325 of 2001).

Issue notice to Mr. J.R.Sharan, the newly added respondent in both the writ petitions for which requisites etc.

both under ordinary process and registered cover in both the cases must be filed within two weeks from today, failing which this application as against the concerned respondent shall stand rejected without further reference to a Bench.

Pending final disposal of these applications, the Oil Company is hereby directed to stop functioning of respondent no.5 till final disposal of these two writ applications. It shall however be open to the respondent no. 1 and 2 to make any interim internal arrangement for ensuring supply of kerosene oil for catering the need of the public at large who were receiving supply of kerosene oil from the kerosene outlet of respondent no.5.

List this case immediately after service of notice.”

26. Let it be noted that the aforesaid interim order at the instance of respondent no.5 was immediately made subject matter of L.P.A.No. 538/2009 and 539/2009 and the Division Bench by an order dated 4.5.2009 while admitting both the appeals had stayed operation of the interim order passed by this Court on 6.4.2009.

27. Ultimately the aforesaid two appeals were taken up for final hearing on 6.5.2015 and the Division Bench without interfering with the interim order passed by this Court on 6.4.2009 had passed the following order:

“ Two writ petitions were filed being C.W.J.C.Nos. 8934 and 12325 of 2001 challenging the issuance of letter of intents by the Bharat Petroleum Corporation Limited to one Govind Upadhyay, who was the contesting private

respondent in both the writ petitions.

2. The two writ petitioners of the two writ petitions were candidates who were numbers 2 and 3 in the panel. They had alleged serious irregularity in selection and appointment of Kerosene Oil Dealership. It appears that writ petitions were taken up and were being heard by the learned Single Judge of this Court and it was a part heard matters wherein the learned Single Judge while issuing notice to the newly added respondents and after going through the records passed an interim order that till final disposal of the two writ petitions, Bharat Petroleum Corporation Limited should stop functioning of the respondent no.5. In view of the seriousness of the allegation, it is against this interim order dated 6.4.2009 that these two Letters Patent Appeals have been filed. While issuing notice in the admission matter to the private respondents in the appeals, who were writ petitioners, vide order dated 4.5.2009, the interim direction issued by the learned Single Judge dated 6.4.2009 was stayed. It appears that consequent thereto the writ records were also tagged with the Letters Patent Appeals. The respondents several times made attempt to get the Letters Patent Appeals disposed of or at least interim order vacated but each times the liberty was granted to the parties to move the learned Single Judge for final disposal of the writ petitions. Regrettably, no one pointed out to this Court in appeals that the writ records were tagged with the appeals and, as such, writ petitions could not be taken up.

3. Learned counsel appearing for the writ petitioners, who are contesting respondents in the appeals, submits that by



virtue of the stay granted by the appellate court as against the interim order passed by the learned Single Judge, the private respondent in the writ petitions, is continuing to benefit by wrongful settlement as the learned Single Judge has not referred to the facts and the order passed by him was only tentative and interim. The matter was heard in part. We would not wish to make any comment on the merits of the case or the nature of the order passed by the learned Single Judge. The order being an interim, in our view, it is proper that the writ petitions themselves be disposed of expeditiously.

4. Let it be noted that the writ petitions are of the year 2001 and we are in 2015, which relates to the Selection of Kerosene Oil (SKO) Dealership. Commercial matters or matter having commercial implications should be settled at the earliest. We would, therefore, request the learned Single Judge to take up this matter, which is already a part heard matter and try to conclude the proceedings expeditiously.

5. With the aforesaid observations, we remand this matter to the learned Single Judge.

6. Place both the writ petitions before Hon'ble Mr. Justice Mihir Kumar Jha for orders on 11th of May, 2015 for His Lordship's consideration and passing necessary orders. We request to the learned Single Judge to reconsider the matter.

7. These Letters Patent Appeals are, accordingly, disposed of."

28. Pursuant thereto the aforesaid direction of Division bench in the order dated 6.5.2015 these cases were listed before this

Court on 11.5.2015, whereafter the cases were directed to be listed for final disposal for today.

29. At this place it has to be also noted that notice on Mr. J.R. Sharan, Chairman, Dealer Selection Board, Respondent no. 6 had been served way back 23.6.2009 but no counter affidavit has been filed by him. It is now stated at the bar Respondent no. 6 has already died a year earlier.

30. In that view of the matter, this Court will now have no go strictly by the records and therefore, what would really further shock this Court is even when respondent no. 5 as with regard to column no. 16 had given the following answer contrary to the terms and conditions of the advertisement Mr. Sharan, the Chairman of Dealer Selection Board had gone to take a decision to award dealership to respondent no. 5. Column no. 16 of the application of Respondent no. 5 reads as follows:-

"Do you have a suitable site readily available or can you arrange one in the area advertised within six months, if selected? If yes, please give details."

Respondent no. 5 had filled up by writing that:

"Site will be arranged immediately after award of dealership."

31. A question would arise that if in the advertisement there was a condition prescribed for giving details of the land on which

retail outlet had to be established by him could Mr. Sharan, Chairman Dealer Selection Board make a deviation from the same and still declare respondent no. 5 not only eligible but also fit to be awarded the dealership on preference to the petitioner of both the cases.

32. An answer of course would be in negative, inasmuch as such condition of the advertisement was mandatory and could not have been waved by the Dealer Selection Board.

33. That infact was not the end of the matter. This Court would also find that even when respondent no. 5 in the name of arranging of his financial resources had given the details of source of fund, the same were not as per the requirement prescribed in the application. Let it be noted that it was the terms of the advertisement that the applicant must fulfil the requirement of income as laid down in the application. The application had clearly defined that income in case of a married person could include or himself, his spouse and children and an unmarried person could also include the income of his parents. This would become very clear from column no. 9 of the application form which reads as follows:-

"Gross Income:

The income for the purpose of eligibility, will, include that of self, spouse and dependant children if, the candidate is dependent on parents, then their income will

also be taken into consideration for computing the total income.

Please furnish an affidavit sworn before a Magistrate or Notary Public containing statement of income (as per Appendix-A) in support of the claim.

If the income is 'NIL' in respect of any of the column, it should be specifically stated and under no circumstances, any of the columns should be left blank.

The income will include income from all sources such as salary, property, interest, dividend, business/profession/vocation, agriculture and others sources, if any.

If the applicant is an income Tax Assessee, the details of income as shown in the Annual income Declaration should conform to those indicated in the income tax return for the relevant financial year and the assessment order of the Income Tax Officer thereon.

If, however, the applicant is not an income Tax Assessee then the details should be supported with other relevant documents some of which are mentioned below by way of illustration;

- | | |
|--|--|
| a) Gross Salary | A certificate from the employer(s) indicating the total emoluments paid |
| b) Income from Rent Property | as declared and assessed for the purpose of tax |
| c) Interest on Bank Deposits | Letter from bank(s) showing the actual amount paid/credited as interest. |
| d) Income from business/Professions/Vocation/Shares & investments/other sources: | |

Certificate from Chartered Accountant in support of the income indicated under each of these heads will be

required. The applicant may also be required to produce any other documentary proof in support of the income indicated.

e) Income from agriculture:

A certificate from Mamalatdar/Tahsildar stating out clearly the location of the agricultural land and the income therefrom".

34. If in this background the declaration by respondent no. 5 in his application is taken into account in Column No. 18 respondent no. 5 did not give any details of the amount in the Bank nor did he give any details of the fixed deposit save and except making a declaration that he had Rs. 60,000/- in NSC which were to mature in the year 2001, 2002, 2003 and Vikas Patra worth Rs. 40,000/- which was again to be matured in 2001, 2002, 2003 and 2004. To that extent the declaration of the Respondent no. 5 in column no. 18 of his application becomes relevant and is quoted hereinbelow.

"18. Give details of source of funds:
(a) AMOUNT OF THE BANK
Type of Account

	Name of A/c holder	Name of Bank	Current A/c No.	S.B.A/c No.	Amount
1					
2					
3					
4					
5					

(b) FIXED DEPOSIT RECEIPTS

	Particulars	Amount	Date of Original	Date of maturity (if renewed)
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			Deposit	precise details to be given)
1	Name of Bank			
2	Name of Financial Institution			
3	UTI			
4	NSC	60,000		2001, 2, 3
5	NSS			
6	Vikas Patra	40,000		2001, 2, 3, 4
7	Rahat Patra			
8	Any other deposits			

In case of applicant having independent source of income the details of bank a/c standing in his/her name, in the name of spouse and dependent children should be indicated separately.

In the case of an applicant who does not have any source of his/her own and is dependent on his/her parents then the Bank accounts of father and mother should be specifically included, Details of each bank account, the amount standing in his/her credit in the month and year of submission of application, should be given.

c) Any other source (including loans):

3-4 Banks are ready to give easy loan as much as needed for this business. I have land at may name which I will use for sale and arranging money.

In case of loans to be secured from sources other Banks/Financial Institutions, please attach undertaking as per Appendix-'A2'."

35. From reading of the aforementioned declaration given by respondent no. 5 two things would become very clear. Firstly, that he did not give t he details of the income nor did he, declare them to be of his own parents. Added to it, respondent no. 5 had also enclosed an



affidavit which did not disclose the details of NSC or Kishan Vikas Patra. All these facts in fact came out of bag when the petitioner of the first case had filed his application as against the decision of award of contract and on such objection of the petitioner it could be discussed that amount of Rs. 60,000/- mentioned in the application was in the name of his Mama (maternal uncle) and the amount of Rs. 40,000/- was in the name of his grant mother.

36. As has been noted above the Respondent no. 5 did not even submit the undertaking in Appendix in Form A-2 but some how that was also collected by Mr. J.R. Sharan from Respondent no. 5 as would be evident from his letter dated 24.6.2001 already discussed in paragraph no. 13 of this judgment.

37. What has really made this court wholly uncomfortable that even when the report of the Enquiry Committee of Mr. S.S. Prasad and Mr. G.Kumar, the Deputy Manager (Sales), Patna as well as SEO, Patna was against respondent no. 5, the Dealer Selection Board headed by the Chairman had recommended for allotment of dealership in favour of respondent no. 5. The very fact that the terms and conditions of the advertisement and the requirement of the application were not furnished by respondent no. 5 should have been good enough for the Dealer Selection Board to reject the candidature

of respondent no. 5 in the light of report of screening committee dated 20.12.2000 but that was not done but Mr. J.R. Sharan had not only allowed Respondent no. 5 to appear in interview and also declared the first and the best candidate.

38. Mr. Choubey, learned counsel appearing on behalf of respondent no. 5, is not in a position to controvert these facts but according to him, the requirement in the advertisement was directory and an applicant could have also given the details of the land subsequent to his filing of the application even after being awarded the dealership.

39. This Court would find it difficult to accept such submission for a simple reason. If that was the reason that anyone in the world could have applied but that was not so and that is why the advertisement had clearly prescribed the conditions of the land as also eligibility conditions.

40. Thus there is no escape from irresistible conclusion that the decision to award S.K.O. dealership in favour of Respondent no. 5 was not only contrary to the terms of advertisement and brochure containing the conditions prescribed in the application form but also malafide exercise of power at the behest of Mr. J.R. Sharan, the Chairman of Dealer Selection Board.

41. Can the petitioners, therefore under such circumstances



be non suited on the ground lapse of a period of 14 years from the date of issuance of L.O.I. to Respondent no. 5 only because the Respondent no. 5 could litigate the matter and keep the issue pending before this Court. The answer will always be in negative. The petitioners cannot be denied relief only because the two writ petitions for the reasons indicated above had remained pending.

42. The Division Bench order relied by Mr. Chaubey, learned counsel for respondent no.5, in the case of Kumari Seema (supra) will have also no application to the facts of the present case. In the considered opinion of this Court whatever was said by the Division Bench in the case of Kumari Seema (supra) will infact have no application because this Court has not gone into the issue despite its being raised by the petitioner in paragraph no.20 of the writ petition as with regard to respective allotment of points. In fact this Court cannot also do so in absence of record regarding award of points, inasmuch as whatever has been produced by the respondent Oil Company in its supplementary counter affidavit does not contain the comparative analysis of points given on the parameters as asserted by the writ petitioners in paragraph no.20 of the writ application. This Court, however, will not draw any adverse inference on account of the same because it has found that respondent no.5 himself did not fulfil the eligibility criteria itself and in fact the

Scrutiny Committee had already declared respondent no.5 ineligible.

43. At this stage Mr. Choubey wants this Court to allow respondent no.5 to continue with the benefit of such illegalities in the allotment of dealership to respondent no.5 on the ground that he has continued for a number of years and therefore, the requirement of advertisement now has been made by him. This Court for this very purpose had noted the entire events in the manner in which the present writ application despite being filed in the year 2001 could now be disposed of only today. The delay was not on the part of the petitioners in approaching this Court and therefore, when this Court has found apparent illegalities in the allotment of dealership in the case of respondent no.5 writ at large on the face of record there will be no difficulty in holding that such illegality of allotment of the Respondent no. 5 cannot be allowed to be perpetuated.

44. Having thus regard to over all situation this Court has no option but to allow both the writ applications and the allotment of the Petroleum outlet made in favour of respondent no.5 at Arrah is hereby quashed.

45. As a result thereof, the oil Company shall resume dealership in question forthwith without any delay. It will be of course open for the oil company to make its alternative arrangement but in any event respondent no.5 cannot be allowed to continue for a minute

hereafter.

46. Before parting with, it must be made clear that as a result of quashing of the allotment in favour of respondent no.5 the petitioner Ajit Kumar Singh, who was found to be eligible or petitioner Makeswar Prasad, who was not found eligible by the Scrutiny Committee will have no right to claim allotment of cancelled dealership of Respondent no. 5 in their favour because they were never recommended by the Dealer Selection Board. Thus, the cancelled dealership of respondent no.5 at Arrah can be allotted only by undergoing the fresh process of selection as per procedure prescribed by Bharat Petroleum Company.

47. With the aforementioned observation and direction, these two writ applications are allowed only to the extent indicated above.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 13th May 2015
A.F.R./surendra/-

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