

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1654 of 2011

With
Interlocutory Application No.7803 of 2012

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Sri Nikil Kumar Singh son of Shri JainathSingh, resident of villageSidhwalia,
P.S.Mahammadpur, District Gopalganj

.... Petitioner/s

Versus

1. The Indian Oil Corporation Ltd through Sr.Area Manager, Ist Floor, Shahi Bhawan, Exhibition Road, Patna
2. The Sr.Area Manager, Indian Oil Corporation Ltd. Ist Floor, Shahi Bhawan, Exhibition Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manan Kumar Mishra, Sr. Advocate
Mr.Prabhakar Dwivedi, Advocate
Mr.Ashutosh Tripathi, Advocate
For the Respondent/s : Mr. Anil Kumar Jha, Sr. Advocate
Mr.Sanat Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 01-07-2015

Heard the parties.

2. The petitioner has approached this Court in a proceeding under Article 226 of the Constitution of India assailing the validity and correctness of the order/communication dated 06.01.2011 (Annexure-1) issued by the respondent no.2, whereby the candidature of the petitioner for award of Rajiv Gandhi Gramin LPG distributorship (RGGLV) at location Sidhwalia in the district of Gopalganj under open category on the basis of advertisement dated 17.10.2009 (Annexure-6) has been cancelled on the ground that he was not owning a suitable land in the advertised location on the date of application.

3. It is a common case of the parties that Bharat Petroleum Corporation Limited (BPCL), Hindustan Petroleum Corporation Limited (HPCL), and Indian Oil Corporation Limited



(IOCL) issued a joint advertisement published in the news papers in their editions dated 17.10.2009 (Annexure-6) inviting applications from the eligible candidates of different categories for award of LPG distributorship at different locations in the State of Bihar. At serial No. 169, the advertised location was Sidhwalia in the district of Gopalganj under open category by the respondent Indian Oil Corporation Limited. Eligibility criteria have been indicated in Clause 3 of the aforesaid advertisement.

4. It is not in dispute that in response to the aforesaid advertisement, the petitioner, besides others, submitted his application within the time prescribed. Final list of eligible candidates was prepared by the respondent no.2 on 30.04.2010, wherein the petitioner was shown at serial no.1 whereas one Jitendra Prasad Yadav was shown at serial no.2. Indisputably, by draw of lot held on 22.05.2010 the petitioner was declared successful. Thereafter, field verification was conducted by the Field Verification Committee of the respondent Indian Oil Corporation Limited, whereafter by the impugned order/communication dated 06.01.2011 (Annexure-1) candidature of the petitioner was cancelled on the ground that he was not owning a suitable land in the advertised location as on the date of application. Hence the present writ petition.

5. Mr. Manan Kumar Mishra, learned senior counsel appearing on behalf of the petitioner, while arguing the matter at some length, submitted that in response to the advertisement dated 17.10.2009 (Annexure-6), the petitioner submitted his application on 25.11.2009 and on that date by virtue of a decree passed on 28.02.2009 by local Gram Kutchery, which has been brought on record as Annexure-2 to the writ petition, the petitioner was having his title over the land offered by him for the show room and godown.



He contended that though the land offered by the petitioner was originally belonging to his father namely, Sri Jainath Singh, which was purchased by him by a registered sale deed dated 07.04.1973, but in view of decree passed by the Gram Kutchery of the local Gram Panchayat, the petitioner became the rightful owner of the land offered by him for the show room and godown. Therefore, according him, the impugned order cancelling the candidature of the petitioner on the ground that he was not having suitable land in the advertised location on the date of filing his application is patently wrong and contrary to the materials available on the records. He further contended that under Section 110 of the Bihar Panchayat Raj Act, 2006 (in short, "the Act, 2006"), a Bench of Gram Kutchery is empowered to pass a decree of partition with respect to the lands, where complicated question of law or title is not involved. He next contended that the aforesaid decree by the Gram Kutchery was passed with the consent of the family members. Therefore, the respondents ought to have accepted the decree and ought not to have cancelled the candidature of the petitioner on the ground of non-availability of land to the petitioner in the advertised location on the date of application. It was pointed out that by way of abundant precaution, father of the petitioner executed a registered sale deed in his favour on 16.11.2010 with respect to the land in question. Therefore, according to him, the plea of the respondents that the petitioner was not having suitable land in advertised location is completely misconceived and unfounded. Hence, it is pleaded that the impugned order/communication (Annexure-1) is liable to be set aside and quashed by this Court.

6. Per Contra, Sri Anil Kumar Jha, learned senior counsel appearing on behalf of the respondents, submitted that the impugned order cancelling the candidature of the petitioner is completely in



accordance with the terms and conditions of the advertisement and it cannot be legally faulted. He contends that indisputably the petitioner was a married person on the date of advertisement and the land offered by him was not belonging to him or his spouse or his unmarried son and daughter. By referring to Clause 3 of the aforesaid advertisement (Annexure-6), it is pointed out that the land belonging to father of the petitioner could not have been considered to be the land of the petitioner as per conditions imposed in the aforesaid advertisement. With respect to the decree passed by the Gram Kutchery of the local Gram Panchayat (Annexure-2), it was contended that indisputably the land in question offered by the petitioner for LPG distributorship was belonging to his father by virtue of a sale deed dated 07.04.1973 in his favour. The father of the petitioner is still surviving, yet in the proceeding before the Gram Kutchery, father of the petitioner was not a party. Therefore, any decree/order passed by the Gram Kutchery with respect to lands belonging to his father will not confer any right and title to the petitioner. According to him, the so called order/decreed dated 28.02.2009 passed by the Gram Kutchery with respect to the land in question is patently illegal and cannot have force of law, since original owner of the land was not a party in that proceeding. He next contended that since the petitioner did not fulfill the eligibility criteria of land as indicated in the advertisement, the petitioner's candidature has rightly been cancelled by the impugned order/communication dated 06.01.2011 (Annexure-1). In support of his above contention, he has placed reliance on a Division Bench judgment of this Court in the case of **M/s Indian Oil Corporation Limited. Vs. Raj Kumar Jha** [2012 (2) PLJR 783 (paras 9 and 10)].

7. Learned senior counsel appearing on behalf of the



respondents pointed out that the location in question was subsequently re-advertised by the respondent IOCL on 26.02.2012 along with many other locations and applications were received. However, in view of the order of stay passed by a Bench of this Court on 08.03.2011, fresh selection process could not proceed further, though the location in question needs establishment of a RGGLV distributorship. Hence, I.A.No. 7803 of 2012 has been filed on behalf of the respondents for vacating the order of stay.

8. After having heard the parties and on consideration of the materials available on the record, this Court finds that on the date of application filed by the petitioner in response to the advertisement dated 17th October, 2009 (Annexure-6) he was not fulfilling the requisite criteria of possessing land in the advertised location for the purposes of show room and godown particularly in terms of Clause 3 of the aforesaid advertisement. Therefore, the candidature of the petitioner has rightly been cancelled by the impugned order/communication dated 06.01.2011 (Annexure-1) issued by the respondent no.2. From the plain reading of clause 3 of the aforesaid advertisement it is apparent that all the applicants for allotment of LPG distributorship were required to fulfill the eligibility criteria indicated in that clause. In clause 3 of the advertisement it was indicated that besides fulfilling other criteria, every candidate must offer a suitable land of specified area in the advertised location for the purposes of show room and godown. The land so offered was required to be belonging to the candidate or the members of the family unit. In case of a married person, the family unit included only the spouse or unmarried son and daughter of the applicant.

9. So far as the case of the petitioner is concerned, this Court finds that, indisputably, on the date of submission of his



application, he was married and the land offered by him for the purposes of show room and godown was belonging to his father, and not to the petitioner or his family unit. The claim of the petitioner that a decree was passed on 28.02.2009 in his favour with respect to the land offered by him by the Gram Kutchery of the local Gram Panchayat in terms of Section 110 of the Act, 2006 vide Annexure-2 cannot be accepted for two reasons: firstly, that in the aforesaid proceeding, father of the petitioner Jai Nath Singh was not a party though admittedly the land in question was purchased by him through a registered sale deed dated 07.04.1973 and secondly, on plain perusal of the order dated 28.02.2009 (Annexure-2) it is apparent that the requirement of Section 110 of the Act, 2006 was not fulfilled while passing the aforesaid order dated 28.02.2009. That being the factual position, the petitioner was ineligible for submission of application form on the date of filing application in response to the advertisement dated 17th October, 2009 (Annexure-6).

10. This Court is of the considered opinion that respondent IOCL is the State within the meaning of Article 12 of the Constitution of India. Therefore, it is expected to act fairly, reasonably, uniformly and has to be objective in its approach. Since the respondent IOCL had set out certain standards in the advertisement (Annexure-6), it was obliged to adhere to those standards without any variation. Any deviation from the standards set out in the advertisement could have led to arbitrariness on the part of the functionaries of the respondent IOCL and that is not permissible in view of different judicial pronouncements made by this Court as also the Hon'ble Apex Court. In identical circumstances, a Division Bench of our own High Court in the case of **M/s Indian Oil Corporation Limited Vs. Raj Kumar Jha (supra)** (of which, I was also a party)

the order passed by a learned single judge permitting deviation by the Corporation with respect to certain criteria was not approved and the order passed by the writ court was set aside.

11. In the case of **Air India LTD. Vs.Cochin International Airport LTD.[(2000) 2 SCC 617]** while considering the scope of judicial review in a contractual matter the Hon'ble Apex Court has observed in paragraph 7 as follows:

“In arriving at a commercial decision considerations which are paramount are commercial considerations.But, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary power under Article 226 of the Constitution with great caution and should exercise it only in furtherance of public interest and not merely on the making out of legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, the court should intervene”.

12. Testing the factual matrixes of the present case on the touchstone of the principles enunciated by the Hon'ble Apex Court in the case of **Air India Limited Vs. Cochin International Airport LTD. (supra)** as also by a Division Bench of this Court in the case of **M/s Indian Oil Corporation Vs. Raj Kumar Jha (supra)**, this Court is of the considered opinion that the impugned order/communication dated 06.01.2011 (Annexure-1) issued by the

respondent no.2 cancelling the candidature of the petitioner for award of Rajiv Gandhi Gramin LPG Distributorship (RGGLV) at location in question on the basis of advertisement dated 17.10.2009 (Annexure-6) cannot be legally faulted. This Court further finds that a fresh advertisement was issued by the respondent IOCL on 26.02.2012 and the applications were received from the eligible candidates, but admittedly the selection process could not proceed further in view of the stay order passed by a Bench of this Court on 08.03.2011.

13. For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned order/communication dated 06.01.2011 (Annexure-1) issued by the respondent no.2. However, the respondent Indian Oil Corporation Limited and its functionaries are hereby directed to issue a fresh advertisement for the location in question, besides other locations, for award of Rajiv Gandhi Gramin LPG distributorship. On issuance of such advertisement, if the petitioner applies and fulfills the conditions, then he shall also be allowed to participate in the aforesaid selection process and his claim for award of LPG distributorship shall also be considered in accordance with law without being prejudiced by the dismissal/rejection of the present writ petition.

14. Consequently, the writ petition stands dismissed with the observations and directions made above. Interim order of stay passed on 08.03.2011 by a Bench of this Court stands vacated. I.A.No. 7803 of 2012 stands accordingly disposed of.

(Birendra Prasad Verma, J)

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