

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3968 of 2010

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Mrs. Annu Singh W/O Sri Satyajeet Kumar Singh R/O Vill.- 'Singh Niwas' (Near Jain Mandir), New Area, P.S.- Town Aurangabad, Distt.- Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Petroleum & Natural Gas Ministry, New Delhi
2. The Hindustan Petroleum Corporation Ltd. through its Managing Director 17, Jamshed Ji Tata Road, Mumbai-20
3. The G.M., Zonal Office H.P.C.L., Kolkatta
4. The D.G.M., L.P.G. Division, H.P.C.L., East Zone, Kolkata
5. The Sr. Regional Manager L.P.G. Division, H.P.C.L., Patna Region, Patna
6. Smt. Bhawana Singh W/O Amrendra Pratap Singh R/O Vill.- Dhanhara, P.O.- Chandra Nagar, P.S.- Jamhore, Distt.- Aurangabad (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent No.1 : Mrs.Kanak Verma CGC
For the Respondent Nos. 2 to 5 : Mr. Rabindra Nath Kanth, Advocate
For the Respondent No.6 : Mr.Jitendra Singh, Sr.Advocate
Mr.Mrigank Mauli, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 23-02-2015

Heard the parties.

2. The matter at issue is allotment of retail outlet HP Gas Distributorship at Aurangabad, District Aurangabad pursuant to the advertisement dated 19.01.2009 (Annexure-1 to the writ petition).

3. This is, in fact, second round of litigation at the behest of the writ petitioner in almost same subject matter. The petitioner, being aggrieved by the empanelment of the candidates and preparation of the merit list, as contained in annexure-4 to the present writ petition, showing respondent no.6 at first place and the present petitioner at second place in the aforesaid merit list along with other candidates, had filed CWJC No. 12693 of 2009, which was finally heard and disposed of by order dated 09.10.2009 (Annexure-11) by a



Bench of this Court, directing the petitioner to file her representation before the respondent no.4 with respect to her grievances raised on her behalf, which, in turn, was directed to be considered according to law and was further directed to be disposed of at an early date, in any case, within a period of one month from the date of receipt of the representation of the petitioner. The representation filed on behalf of the petitioner pursuant to the aforesaid order dated 09.10.2009 (Annexure-11) has been rejected by the respondent no.4 by the impugned order/communication dated 06.11.2009 as contained in Annexure-13 to the writ petition, which has been addressed to the present petitioner.

4. The petitioner has filed the present writ petition under Article 226 of the Constitution of India in almost the same subject matter once again assailing the validity and correctness of the empanelment of the candidates and preparation of the merit list dated 20.06.2009 (Annexure-4 to the writ petition). The petitioner has also prayed for setting aside the order/communication dated 06.11.2009 (Annexure-13) whereby the representation filed on her behalf in the light of the earlier order passed by this Court has been rejected.

5. It is not in dispute that on 19.01.2009 an advertisement for selection of LPG distributorship was jointly issued on behalf of the three Public Sector Undertakings/Oil Marketing Companies, namely, Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited with respect to 41 locations in the State of Bihar. Serial No. 28 relates to location at Aurangabad earmarked for Open category (Female) and this location was allotted to respondent Hindustan Petroleum Corporation Limited. It is also not in dispute that in response to the aforesaid advertisement, the writ petitioner as also the respondent no.6 besides



others eligible candidates submitted their applications for their appointment as LPG Distributor at the location in question at Aurangabad. Subsequently, all the eligible candidates including the petitioner and respondent no.6 were interviewed from 18th to 20th June, 2009 and accordingly, the impugned merit list as contained in annexure-4 was prepared showing the respondent no.6 at serial no.1 and the writ petitioner at serial no.2 in the aforesaid merit list. Respondent no.6 was allotted altogether 96.3 marks whereas the petitioner was allotted 95.7 marks.

6. Though the present writ petition was filed way back on 05.03.2010, but the petitioner was not granted any interim protection by this Court even when the matter was heard on 08.03.2010 by a Bench of this Court; rather on 08.03.2010 when the notices were issued to the respondent nos. 2 to 6, a Bench of this Court clarified that “pendency of the writ petition will not come in the way of the selected candidate” It is the case of the respondents, which is not disputed by the petitioner, that pursuant to the preparation of the impugned merit list, LOI was issued in favour of the respondent no. 6 and subsequently by letter/communication dated 16.01.2010 she was appointed as retail outlet LPG distributor for the location in question at Aurangabad. In the counter affidavit filed on behalf of the respondent no.6, she has asserted that in the above background she has entered into an agreement with the respondent Corporation and she has invested huge amount of money for starting the business in question and LPG retail outlet distributorship is being run by her since the year 2010.

7. Learned counsel appearing on behalf of the petitioner has assailed the validity and correctness of the impugned empanelment/merit list of the candidates primarily on two grounds.



According to him, the lands offered by the respondent no. 6 for starting LPG distributorship at Aurangabad has no approach road and it is land locked which is not suitable for construction of godown and therefore, the respondent no.6 could not have been allotted 25 marks for the land. It is also pointed out by him that the petitioner is having qualification of Diploma in Computer Application and therefore, she ought to have been allotted the additional marks on account of having additional educational qualification. Therefore, it is pleaded that the merit list prepared by the respondent- Corporation is contrary to the guidelines and is liable to be set aside by this Court. So far as the impugned order/communication dated 06.11.2009 (Annexure-13) is concerned, it is submitted that the petitioner had raised all her grievances in her representation filed before the respondent no.4 pursuant to the order dated 09.10.2009 (Annexure-11) passed by a Bench of this Court, but the representation filed on behalf of the petitioner has been mechanically rejected by a cryptic and non-speaking order. Hence, he submits that the impugned order/communication is not sustainable in law.

8. Learned counsel appearing on behalf of the respondent nos. 2 to 5 as also learned senior counsel appearing on behalf of the respondent no.6 have strongly opposed the prayer made on behalf of the petitioner and they have jointly submitted that in view of the assertions made on behalf of the aforesaid respondents in their respective counter affidavits, the petitioner is not entitled to get any relief from this Court and the writ petition filed on her behalf is liable to be dismissed with heavy costs.

9. It is the case of the respondents that the lands offered by the respondent no.6 is having approach road and that fulfills all the conditions of the guidelines as also the Brochure issued by the

respondent Corporation for allotment of LPG retail outlet distributorship.

10. Learned senior counsel, appearing on behalf of the respondent no.6, by referring to the judicial pronouncements of the Hon'ble Apex Court particularly in the cases of **AIR India LTD. Vs. Cochin International Airport LTD. and others [(2000) 2 SCC 617 (paragraph 7)]**, **Jagdish Mandal Vs. The State of Orissa and others [(2007) 14 SCC 517 (paragraph 22)]** and **Meerut Development Authority Vs. Association of Management Studies and Another [(2009) 6 SCC 171 (paragraphs 26 and 27)]**, has submitted that in view of the law laid down by the Hon'ble Apex Court, the present matter is fit to be dismissed outrightly. According to him, the petitioner has not alleged mala fide against the official respondents and has further not been able to show any arbitrariness on their part or breach of any mandatory provisions of the Brochure. Therefore, according to him, the writ petition is liable to be dismissed with heavy costs.

11. It would be relevant to note here that the counter affidavit on behalf of the respondent nos. 2 to 5 was filed way back on 6th May, 2010, after service of its copy upon the learned counsel appearing on behalf of the petitioner and the counter affidavit on behalf of the respondent no.6 was also filed way back on 6th May, 2010, after service of its copy upon the learned counsel appearing on behalf of the petitioner, but till date the facts asserted in the aforesaid two counter affidavits have not been disputed by the writ petitioner by filing any rejoinder affidavit though almost five years have already elapsed since the filing of the aforesaid two counter affidavits.

12. After having heard the parties and on consideration of the materials available on the record, this Court finds that the plea



raised on behalf of the petitioner that about alleged wrong allotment of 25 marks to the respondent no.6 for the lands provided by her is based on disputed question of facts, as according to the petitioner, the lands offered by the respondent no.6 was not suitable since it has no approach road and therefore, respondent no.6 could not have been allotted 25 marks on that account. However, according to the respondent nos. 2 to 5 as also respondent no.6, the lands offered by the respondent no.6 now have approach road and it fulfills all the criteria for opening a retail outlet LPG distributorship. This Court further finds that this issue was raised by the petitioner twice; firstly in her representation immediately after publication of the merit list but that was rejected. The petitioner being aggrieved by the aforesaid action filed CWJC No. 12693 of 2009 before this Court which was disposed of by order dated 09.10.2009 (Annexure-11) directing the petitioner to file her fresh representation. Admittedly, the representation filed on behalf of the petitioner was considered afresh and by impugned order/communication dated 06.11.2009 (Annexure-13) the representation filed on behalf of the petitioner was rejected once again holding therein that there is approach road for coming over the lands offered by the respondent no.6 and as per finding, the respondent no.6 fulfils the conditions for allotment of 25 marks on account of lands provided by her. The facts stated in the aforesaid two counter affidavits have admittedly not been controverted by the writ petitioner by filing any rejoinder affidavit. Learned counsel appearing on behalf of the petitioner has not been able to demonstrate before this Court by referring to any specific clause of the brochure that allotment of 25 marks to the respondent no.6 was illegal and contrary to the mandate of the brochures. So far as the claim for allotment of additional mark to the petitioner for having qualification

of Diploma in Computer Application is concerned, it is the case of the respondents that as per parameters for educational qualifications no additional marks was required to be given for such an educational qualification. Learned counsel appearing on behalf of the petitioner has not been able to demonstrate by referring to any provision of the brochure that the stand taken by respondent nos. 2 to 5 is fallacious or contrary to the mandate of law. Now, it is not in dispute that respondent no.6 has already been appointed as retail outlet LPG distributor since January, 2010 and she is operating the business for more than five years. She claims to have invested huge amount of money for running the business in question. This Court further finds that by the impugned order/communication dated 06.11.2009 all the claims raised on behalf of the petitioner were considered and were rejected by a reasons and speaking order.

13. In above view of the matter, this Court is not inclined to accede to the prayer made on behalf of the petitioner in the present writ petition. In the result, the writ petition has to fail and is accordingly dismissed, but the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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