

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5418 of 2014

Pradeep Kumar Trishul S/O Sri Anukul Prasad Resident Of Sri Kunj Flat No. 15
Phase I, Ashiyana Nagar, P.S. Rajeev Nagar, Dist. Patna

.... Petitioner

Versus

1. Hindustan Petroleum Corporation Limited, Through Its Senior Regional Manager, Patna 6th Floor, Loknayaak Jai Prakash Bhawan, Dak Bangala Chowk, Patna
2. The Senior Regional Manager, Hindustan Petroleum Corporation Limited Patna The Floor, Loknayaak Jai Prakash Bhawan, Dak Bangala Chowk, Patna
3. The Chief Manager, Hindustan Petroleum Corporation Limited Patna 6th Floor, Loknayaak Jai Prakash Bhawan, Dak Bangala Chowk, Patna
4. The Senior Manager Legal, Hindustan Petroleum Corporation Limited Patna 6th Floor, Loknayaak Jai Prakash Bhawan, Dak Bangala Chowk, Patna
5. The Deputy General Manager, Hindustan Petroleum Corporation Limited Patna 6th Floor, Loknayaak Jai Prakash Bhawan, Dak Bangala Chowk, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 16973 of 2014

Madhuri Devi, wife of Shri Mohan Kumar, Resident of Village + PO- Arai, PS- Daudnagar, District- Aurangabad

.... Petitioner

Versus

1. The Hindustan Petroleum Corporation Ltd. 17, Jamshed Ji Tata Road, Mumbai- 400020 through the Chairman-cum-Managing Director
2. The Chairman-cum-Managing Director, Hindustan Petroleum Corporation Limited, 17 , Jamshed Ji Tata Road, Mumbai-400020
3. The Chief Manager (Network & Planning) Hindustan Petroleum Corporation Limited, North Central Zone, Lucknow
4. The Senior Manager (Legal), Hindustan Petroleum Corporation Limited, North Central Zone, Lucknow
5. The Deputy General Manager, Hindustan Petroleum Corporation Limited, North Central Zone, Lucknow
6. The Senior Regional Manager, Hindustan Petroleum Corporation Limited, 6th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Road, Patna
7. Pradeep Kumar Trishul, S/o- Shri Anukul Prasad, Resident of Flat No.15, Shri Kunj, Phase I, Ashiana Nagar, Patna-800025

.... Respondents

Appearance :

(In CWJC No. 5418 of 2014)

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Sanjeev Kumar Mishra, Advocate

For the Respondent

Nos.2 to 5 : Mr. Rabindra Nath Kanth, Advocate

(In CWJC No. 16973 of 2014)

For the Petitioner : M/s. S.B.K. Manglam,
Anita Kumari, Advocates

For the Respondent

Nos.1 to 6 : Mr. Rabindra Nath Kanth, Advocate

For the respondent

No.7 : Mr. Sanjeev Kr. Mishra, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 06-07-2015

Heard the parties.

C.W.J.C. No.5418 of 2015 and C.W.J.C. No.16973 of 2014 have been heard analogous in view of the order dated 13.10.2014 passed in C.W.J.C. No. 16973 of 2014.

Both the writ petitions arise out of same process of selection for retail outlet for the location at serial no.18 on LHS (Left Hand Side) within Paharpur More to Thakur Bigha on NH 98, District Arwal, State of Bihar.

Short facts of the case which would be necessary for its consideration stand enumerated as under:-

In response to the advertisement dated 22.09.2011 (Annexure 1 to the C.W.J.C. No.16973 of 2014) made for selection of



retail outlet as stated above, both the petitioners applied for the grant of dealership. After scrutiny of their application, both the petitioners as well as eligible candidates were interviewed and merit list was prepared by the interview board which was published on 07.11.2012 declaring that Pradeep Kumar Trishul, petitioner of C.W.J.C. No. 5418 of 2014 got 84.6 marks and was first in the panel, whereas Madhuri Devi, petitioner of C.W.J.C. No.16973 of 2014, was placed at second position. On complaint made by Madhuri Devi, petitioner of C.W.J.C. No.16973 of 2014, questioning the legality of lease deed executed in favour of the aforesaid Pradeep Kumar Trishul, an enquiry was held as Madhuri Devi had claimed by filing complaint and, thereafter, writing several letters that Pradeep Kumar Trishul is not eligible to be offered such appointment. It was claimed by the aforesaid Madhuri Devi that the evaluation was not properly done by the authority concerned, therefore, the candidature of Pradeep Kumar Trishul, i.e., the petitioner of C.W.J.C. No.5418 of 2014, should be cancelled. A copy of the decision dated 20.02.2014 taken on the complaint made by Madhuri Devi has been appended as Annexure 12 to the C.W.J.C. No. 5418 of 2014 and Annexure 8 to the C.W.J.C. No. 16973 of 2014. Complaint made by the Madhuri Devi was found partly established, however, apparent error has been found in carrying out technical evaluation (TEC) of the concerned location as Right of



Way (ROW) was taken by the IECT team to be of 30 meters from the centre which actually should have been 22.5 meters only as confirmed by the Executive Engineer, National Highway. It is stated in the order dated 22.02.2014 that report concerned shows in clear terms that all the documents of the candidates were scrutinized considering ROW of 30 meters which was not in line with the National Highway norms, therefore, a decision was taken that the aforesaid flaw has faulted the entire selection process, thus, entire merit panel was fit to be cancelled and the candidates who had appeared for the original interview would have to be called again for re-interview.

The writ petitioner of C.W.J.C. No.5418 of 2014 has challenged the aforesaid order as his selection as the first empanelled candidate has been cancelled whereas writ petitioner of C.W.J.C. No. 16973 of 2014 has challenged the same order on the ground that the entire merit list should not have been cancelled and the petitioner Madhuri Devi being the second candidate in the panel should have been awarded the retail outlet.

Counter affidavit, supplementary counter affidavit and second supplementary counter affidavit have been filed by the respondent nos.1 to 5. A stand has been taken in the counter affidavit defending the action of the respondents. However, it has subsequently been informed by the aforesaid respondents that, in view of the



decision of the Ministry of Petroleum & Natural Gas, Government of India circulated vide letter dated 23.06.2014 appended as Annexure B to the supplementary counter affidavit regarding guidelines for selection of retail outlet dealership/LPG distributorship, the oil companies were directed to cancel all cases of ROS/LPG distributorship allotments where interviews are pending either being the original or re-scheduled or arising out of established complaints as on date of issue of that letter and locations may be taken afresh as per policy under new system of “draw of lots” by undertaking fresh process of selection. The stand of the respondents is that in terms of the aforesaid decision the interview was not held and fresh advertisement has been issued for selection under the system of “draw of lots”. The petitioners have challenged the aforesaid decision also. The petitioner of C.W.J.C. No. 5418 of 2014 has filed I.A. No. 2733 of 2015 seeking further relief that he may be allowed to participate in the “draw of lots” as date of the filing of the application has lapsed and he could not apply in view of the pendency of the present writ application. Madhuri Devi, i.e., the petitioner of C.W.J.C. No.16973 of 2014 has filed I.A. No.8733 of 2014 for challenging the re-advertisement on the basis of “draw of lots” as now the respondent no.7, i.e., the petitioner of other case will be benefited by that in view of the fact that location has been reserved for Other Backward Class



(O.B.C.) and, as such, since she belongs to the General Category, would not be competent even to participate in the selection process now. Thereafter, second supplementary counter affidavit came to be filed by the Oil Company stating in paragraph no.6 that not a single application could be received against the location concerned in terms of the fresh advertisement for selection under procedure of “draw of lots”, therefore, fresh advertisement would be required to be made. The Oil Company has decided to make fresh advertisement as and when it would be required to be done depending upon the feasibility of the same. On such affidavit having been filed, learned counsel for the petitioner, Pradeep Kumar Trishul, did not press I.A. No.2377 of 2014 as he would be automatically be getting a chance to apply as and when fresh advertisement would be published by the Oil Company.

Mr. S.B. K. Manglam, learned counsel appearing for the petitioner Madhuri Devi has submitted that in view of the provision contained in the Guidelines for Selection of Retail Outlet Dealers, the moment the first empanelled candidate was disqualified, the petitioner should have been given retail outlet being second in the merit list. It is contended that the cancellation of the entire merit list was not proper and subsequent action taken by the Oil Company in view of the directive of the Central Government would stand itself nullified if the

earlier action is held to be illegal holding that the petitioner was entitled to be awarded the retail outlet.

Upon the consideration of the rival contention, in my considered opinion, following issues fall out for consideration by this Court.

(i) Whether the impugned order as contained in Annexure 13 to the C.W.J.C. No.5418 of 2014 and Annexure 9 to the C.W.J.C. No.16973 of 2014 is bad and the selection of Pradeep Kumar Trishul should not have been cancelled?

(ii) Whether the said order is bad on account of the fact that though the complaint made by the Madhuri Devi, petitioner of C.W.J.C. No.16973 of 2014 has been established in part, the entire panel should not have been cancelled and the Madhuri Devi, being the second candidate in the merit list, should have been granted retail outlet?

(iii) Whether the fresh advertisement in view of the aforesaid cannot be made in the present case for selection of retail outlet under the “draw of lots”?

Issue no.(i) and (ii)

Issue no.(i) and (ii), being intertwined, have been considered together.

It is urged on behalf of the petitioner (C.W.J.C. No.5418



of 2014) that the complaint made by Madhuri Devi has not been found to be correct regarding the illegality of lease of deed by the authority concerned rather the merit list has been quashed on technical ground which does not exist. It is contended that if the authorities themselves have committed error during the technical evaluation, the petitioner cannot be penalized for the same. On the other hand, it is contended on behalf of the Madhuri Devi that the entire list ought not have been cancelled and, since the petitioner's complaint has been found to be established in part, the second person in the merit list i.e., the petitioner Madhuri Devi, should have been granted the dealership. He has placed reliance upon Clause 19(b)(ii)(b) of the Guidelines for Selection of Retail Outlet Dealers. According to him, the complaint against the first empanelled candidate having been established, his selection was to be cancelled and letter of intent should have been issued to the next candidate in the merit list i.e., the Madhuri Devi, petitioner of C.W.J.C. No.16973 of 2014. He submits that the order impugned has been passed in violation of the aforesaid guidelines, therefore, it is liable to be quashed and set aside. He further submits that the order is also bad on account of the fact that one of the objections filed by the petitioner on 27.12.2012 was not considered by the competent authority, however, a copy of that objection does not stand appended in the writ petition of



C.W.J.C. No.16973 of 2014, however, a copy of objection dated 28.11.2012 has been appended as Annexure 4. Though there is reference in Annexure 6 i.e., letter dated 30.09.2013 of the petitioner addressed to the Senior Regional Manager (Retail), Hindustan Petroleum Corporation Ltd., regarding objection dated 27.12.2012 but the same would not come to the benefit of the petitioner as it is not known as to what grounds were raised in the aforesaid. The aforesaid stand taken by the petitioner appears to be redundant in view of the fact that the selection of Pradeep Kumar Trishul has already been cancelled, thus, non-consideration of the subsequent objection would be immaterial.

Now coming to the order impugned, it stands clearly stated therein that the technical evaluation during the selection process has wrongly been made considering “ROW” (Right of way) to be of 30 meters, whereas the requirement was to be 22.5 meters only as confirmed by the Executive Engineer, National Highway Division. It would be applied to all the applicants of the location. There would always remain possibility that persons who might have succeeded if 22.5 meters Right of Way was taken into consideration but have been put out of the consideration zone in view of the ROW (Right of Way) having been considered as 30 meters. None of the petitioners have been able to demonstrate that such stand taken in the report concerned

is wrong and the requirement actually is of 30 meters from the Centre of the road. In such a situation, the stand taken by the respondent authorities cannot be faulted with. Once having been held as above, since the authorities have found that the entire selection process was affected in the aforesaid manner, their decision to scrap the merit list and re-interview the candidates, who were shortlisted, cannot be held to be bad. Mr. S.B. K. Manglam, learned counsel, places reliance upon the guidelines of Clause 19(b)(ii)(b). At the same time the respondent Oil Company has relied upon Clause 19(b)(ii)(a). For better appreciation both the relevant provisions from the Guidelines are extracted as under:-

“19. Grievance/Complaint redressal system:

(a) x	x	x	x	x	x	x	x	x
(b) x	x	x	x	x	x	x	x	x
(i) Complaints not substantiated.	x	x	x	x				x
(ii) Established complaint:	x	x	x	x	x			x

- (a) In case the selection process for a location was found to be not in accordance with the laid down guidelines resulting in wrong selection of first empanelled candidate, the merit panel will be cancelled and all the candidates who have appeared for the original interview only will be called for the re-interview.
- (b) In case the dealer selection was done as per laid down guidelines and complaint against the first empanelled candidate is established, action will be taken to cancel the selection of the first empanelled candidate and issuance of LOI to the next candidate in merit panel. Similar action will be taken in case of established complaint against second empanelled candidate also.
- (c) If complaint is established against all the empanelled candidates, the location will be re-advertised if it is viable.”

Clause 19(b)(ii)(b) of the Guidelines lays down that in

case selection was done as per laid down guidelines and complaint against the first empanelled candidate is established, action will be taken to cancel the selection of the first empanelled candidate and issuance of LOI to the next candidate in merit panel.

I have already held that no fault could be found with the decision of the competent authority in holding that the selection was not made in terms of the established norms as there was fault during the technical evaluation by wrongly considering Road of Way (Row) as 30 meters from the centre of the road whereas it should be actually 22.5 meters which must have affected several candidates if not all of them. Therefore, in my opinion, the present case cannot be held to be covered under the aforesaid guidelines rather the same would be covered under Clause 19(b)(ii)(a) which provides that if selection for location was found to be not in accordance with the guidelines resulting in wrong selection of first empanelled candidate then entire merit panel has to be cancelled and all the candidates who have appeared for the original interview would again have to be called for re-interview. The impugned order is in conformity with the aforesaid guidelines.

Thus the issue no.(i) and (ii) stand decided against both the petitioners and in favour of the respondent Oil Company.

Issue no.(iii)

Mr. S.B. K. Manglam, learned counsel, vehemently argued that re-advertisement by adopting the procedure of “draw of lots” was not required to be done in view of the fact that the LOI should have been given to the Madhuri Devi in terms of the aforesaid Guidelines. He also questions the applicability of the Annexure B which is a letter of the Central Government concerned intimating the Oil Companies that pending interviews should not be held and fresh advertisement for selection process should be made by adopting the procedure of “draw of lots” . It is urged that everything having been done during the pendency of the case should not be made applicable to it and, as such, even if the entire panel has been cancelled, at least the candidates should have been called for the interview in terms of the direction contained in the impugned order.

Per contra, learned counsel appearing for the respondents Oil Company submits that it would be apparent from Annexure B appended with the supplementary counter affidavit filed in C.W.J.C. No.5418 of 2014 that the present case is also covered under such directive. For better appreciation, letter concerned is itself reproduced as under:-

NO.R.30024/33/2012-MC
Government of India
Ministry of Petroleum & Natural Gas

.....

Shastri Bhawan, New Delhi

Dated 23rd June, 2014

To

Director (Marketing)
IOCL/HPCL/BPCL
Mumbai.

Subject: Guidelines for selection of Retail Outlet (RO)
dealership/LPG distributorship.

Sir/Madam.

I am directed to say that the matter regarding the process of allotment of Retail Outlet (RO) dealership/LPG distributorship has been examined in the Ministry. OMCs are directed to cancel all cases of ROs/LPG distributorship allotments in the cases where interviews (including original or re-scheduled or arising out of established complaints) are pending as on date of issue of this letter. OMCs are advised that all such locations may be taken up afresh as per extant policy under new system of “draw of lots” by undertaking fresh process of selection.

2. This issue with the approval of MOS (I/C)
P&NG.”

Yours faithfully

S/d

(Rajesh Kukreti)

Under Secretary to the Government of India

It would be apparent from the perusal of the aforesaid directive that the same is also applicable in the case of re-interview on account of cancellation of selection arising out of established complaints. Thus, in my opinion, the same is equally applicable in the present case also. So far the limb of argument on behalf of the



petitioner of C.W.J.C. No.16973 of 2014 raising the issue that in pending cases it should not have been applied, would also be not tenable inasmuch as the merit list has already been cancelled and such cancellation has been upheld by this Court as above. Notification for re-interview in itself does not create any vested right for grant of LOI to a particular candidate. In fact, no such right would accrue to anybody till a final selection list is made after re-interview but, before that could have happened, Annexure B dated 23.06.2014 came into existence and the system of grant of retail outlet dealership was changed by adopting new system of “draw of lots”. In view of that, all the candidates can now participate pursuant to the fresh advertisement and, thus, the fresh advertisement cannot be questioned. The second limb of argument on behalf of the Mr. S.B. K. Manglam that the petitioner Madhuri Devi would not be able to participate in the fresh advertisement as the same has been reserved for Other Backward Classes (OBC) would also not be tenable in the present scenario when the Oil Company itself has stated that again a fresh advertisement will be published in view of the fact that no application could be received for the concerned location. That apart, when the new process of reservation has been adopted under “draw of lots” in accordance with the roster then the said location may also fall under the reserved category. In my view, that cannot be

questioned. It has been contended on behalf of the Oil Company that fresh advertisement would be made in accordance with the roster and whether the concerned location would fall in the General Category or reserved Category cannot be presumed or assessed before such exercise.

Accordingly, this issue is also decided against the petitioners and in favour of the respondent Oil Company.

As a result, Both the writ applications fail and are dismissed. However, there would be no order as to cost.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

U			
---	--	--	--