

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13958 of 2012

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1. Anuja Choudhary D/O Shri Basant Kumar Choudhary
 2. Rituraj Choudhary S/O Shri Basant Kumar Choudhary
 Both resident of village Bara Bungalow, Vill.-Keonta, P.S.- Dalsingsarai,
 Distt.- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Samastipur
 2. The Sub Divisional Officer, Dalsingsarai, Distt.- Samastipur
 3. Block Development Officer, Dalsingsarai, Samastipur
 4. The Circle Officer, Dalsingsarai, Samastipur
 5. The General Manager Bihar Jharkhand State Level Co-Coordinator,
 Indian Oil Corporation, Lok Nayak Jai Prakash Bhawan, Vth Floor,
 Dak Bungalow Road, Patna
 6. The Sdrsm (Senior Divisional Retail Sales Manager), Indian Oil
 Corporation Limited, Begusarai Division, Barauni Refinery, Town
 & District-Begusarai
 7. Jayant Kumar Chaudhary S/O Sri Vijaywant Kumar Chaudhary R/O
 Ward No. 10, Ramashray Nagar, Dalsingsarai, Distt.- Samastipur
 8. Udaywant Kumar S/O Sri Vijaywant Kumar Chaudhary R/O
 Ward No. 10, Ramashray Nagar, Dalsingsarai, Distt.- Samastipur

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Siyaram Sahi, Advocate
 For Indian Oil Corporation Mr. Anik Kumar Jha, Sr. Advocate
 For the State : Mr. Sanjay Kr. Singh, AC to GA 4
 For respondents no. 7, 8 Mr. Tej Bahadur Singh, Sr. Advocate
 Mr. B.S. Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 06-05-2015

1. Petitioners have prayed for quashing the order dated 21.06.2012 contained at annexure 16 passed by Circle officer, Dalsingsarai by which and whereunder he affirmed his own orders dated 05.09.2011 and 26.11.2011 and furthermore, for quashing the order dated 05.09.2011 passed by the above stated Circle officer, Dalsingsarai by which he cancelled residence certificates issued in favour of the petitioners on 12.08.2010 and also for quashing the order dated 26.11.2011 passed by the same Circle officer by which he refused to interfere into

his previous order contained in memo no. 769 dated 05.09.2011 and affirmed the order of cancellation of residence certificates.

2. The brief fact, which lies to file this writ petition under Article 226 of the Constitution of India, is that Indian Oil Corporation got published an advertisement for Kishan sewa kendra for village Nawada District Samastipur. Petitioners were applicants for the above stated Kishan sewa kendra and they were in need of residence certificates for making application for the above stated Kishan sewa kendra and accordingly, they applied for residence certificates which were issued to them on 12.08.2010, annexed at annexure 1 series, by the concerned respondent in accordance with law. Having obtained residence certificates, they jointly applied for Kishan sewa kendra and accordingly, their interview for selection was conducted on 01.06.2011 and a merit list was published wherein petitioners were at the top of the list but in the meantime, private respondents made baseless complain to the Indian Oil Corporation challenging residence certificates of the petitioners and also made complain before Circle officer, Dalsingsarai praying for cancellation of residence certificates of the petitioners. The Circle officer, Dalsingsarai, without giving any opportunity of being heard to the petitioners, cancelled the residence certificates on 05.09.2011. The information regarding cancellation of residence certificates was received by petitioners on 09.09.2011. Petitioners challenged the order dated 05.09.2011 passed by the Circle officer, Dalsingsarai, District Samastipur by filing a writ petition bearing CWJC no. 16594/2011 before this court but in the meantime, Sub divisional officer, Dalsingsarai stayed the order dated 05.09.2011 and thereafter, Circle officer, Dalsingsarai issued notice dated 16.09.2011 informing about stay of cancellation order dated 05.09.2011 and also directed the parties concerned to produce evidence on 30.09.2011. In pursuant to the aforesaid notice, petitioners appeared before Circle officer, Dalsingsarai through their learned counsel and submitted detailed



representation along with all relevant documents in support of their claim and presented their case on 30.09.2011 though copies of the objection filed by the private respondents were never served to them. The Circle officer, Dalsingsarai heard the parties at length, sought opinion of the Government Pleader, Samastipur in respect of issue arose before him and thereafter, the Government Pleader, Samastipur gave his opinion that there was no provision for restoration of order by which the residence certificates had been cancelled. In the light of opinion of the Government Pleader, Samastipur, Circle officer, Dalsingsarai, again, rejected the claim of the petitioners vide memo no. 1062 dated 26.11.2011 and affirmed his previous order of cancellation of residence certificates. Petitioner challenged the above stated memo no. 1062 dated 26.11.2011 passed by Circle officer, Dalsingsarai contained in annexure 10 by filing I.A. no. 8370/2011 in CWJC no. 16594/2011. A coordinate bench of this court having heard the parties, disposed of CWJC no. 16594/2011 on 17.02.2012 directing the Circle officer, Dalsingsarai to conduct an enquiry and decide the issue within a period of three months from the date of receipt/production of a copy of the aforesaid order in terms of the findings of the court.

3. Petitioners made representation before Circle officer, Dalsingsarai on 28.03.2012 along with copy of order dated 17.02.2012 passed in CWJC no. 16594/2011 but no information regarding conduct of enquiry was received by them and thereafter, again they jointly filed an application on 20.06.2012 before Circle officer, Dalsingsarai annexing some additional documents in the form of affidavits of several persons including certificate of Mukhiya of Keonta village Panchayat to the effect that petitioners are permanent resident of Keonta village but the Circle officer, Dalsingsarai without giving any information and notice regarding enquiry passed an order rejecting the claim of the petitioners as contained in memo no. 765 dated 21.06.2012 and again, no opportunity of hearing was given to the petitioners

before passing order of rejection of their claim and thereafter, petitioners came before this court by filing instant writ petition challenging the impugned order passed by the Circle officer, Dalsingsarai.

4. Petitioners claim that they are permanent resident of village Keonta police station Dalsingsarai, District Samastipur and they have considerable immovable property including lands in the names of their father and grand father in Dalsingsarai town, villages Nawada and Keonta and holding receipts have also been issued in the name of father of petitioners and furthermore, their grand father had electricity and telephone connection in his name and they never acquired any temporary or permanent resident anywhere in India except at Dalsingsarai which has been residence of their ancestors since the time immemorial and furthermore, they have been residing at Dalsingsarai and have intention to do so in future also.

5. Two separate counter affidavits have been filed. One counter affidavit has been filed on behalf of the respondent nos. 1 to 4 in which almost all factual aspects were admitted by respondent nos. 1 to 4 but it has, specifically, been pleaded that CWJC no. 16594/2011 was disposed of by a coordinate bench of this court directing the Circle officer, Dalsingsarai to conduct an enquiry and decide the issue of de facto residence of petitioners and thereafter, petitioners made representation along with photocopy of order passed by this court in CWJC no. 16594/2011 before respondent no.4 on 28.03.2012 and thereafter, respondent no.4 fixed 12.06.2012 for local inspection of the address claimed by the petitioners. The respondent no.4 made local inspection on 12.06.2012 and again, fixed 19.06.2012 for second local inspection. On 19.06.2012, second local inspection was made and the statements of several local persons were recorded and the matter was fixed for order on 21.06.2012. Subsequently, on 21.06.2012 final order was passed affirming order dated 05.09.2011 by which residence certificates issued in favour of the petitioners had been cancelled. Furthermore, it has been pleaded that residence



certificates issued in favour of the petitioners were result of error of fact and misrepresentation on their part. Furthermore, it has been pleaded that when the Sub divisional officer, Dalsingsarai directed the respondent no.4, Circle officer, Dalsingsarai to hear the parties, petitioners as well as private respondents were noticed and they were heard at length on 30.09.2011 and after that order was passed. Furthermore, it has been pleaded that after perusal of documents adduced by the petitioners as well as enquiry made, it was found that the petitioners were not permanent resident of Dalsingsarai and, as a matter of fact, petitioners participated in enquiry through their employees and in course of enquiry, it was detected that petitioners only occasionally visit the place and they are not permanent resident of Dalsingsarai.

6. Respondent nos.5 to 6 filed separate counter affidavit in which it has been pleaded that Indian Oil Corporation limited cancelled selection of the petitioners on the basis of order passed by Circle officer, Dalsingsarai and has already issued letter of indent dated 19.02.2012 but up till now, letter of appointment has not been issued in view of order dated 19.02.2013 passed by this court.

7. Learned counsel appearing for the petitioners submits that the petitioners are permanent resident of village Keonta police station Dalsingsarai District Samastipur and their grand father had electricity and telephone connection in his name and furthermore, they have considerable ancestral property in the aforesaid village as well as in village Nawada District Samastipur but the Circle officer, Dalsingsarai without looking into the above stated fact cancelled residence certificates earlier issued by him in favour of the petitioners. He further submits that General Administration department, Government of Bihar, vide circular no. 673 dated 08.03.2011 issued certain guidelines for issuance of residence certificates as well as other certificates and according to the aforesaid circular,

General Administration department, Government of Bihar, directed the concerned authority to consider following documents for grant of residence certificates which have been mentioned at para 10 of the aforesaid circular. Para 10 of the aforesaid circular reads as follows:-

(10) आवास प्रमाणपत्र के साक्ष्य हेतु निम्नांकित अभिलेख समुचित माने जायेंगे:-

आवेदक / आवेदिका के माता-पिता/पूर्वज का-

(10.1) राजस्व अभिलेख (यथा खतियान, दानपत्र, भूमि संबंधी दस्तावेज, भूमिहीनों को आवंटित जमीन से संबंधित अभिलेख आदि)।

(10.2) राशन कार्ड।

(10.3) निर्वाचन पहचान पत्र।

(10.4) विद्युत विपत्र।

(10.5) दूरभाष विपत्र।”

8. Learned counsel for the petitioners submits that from bare perusal of the aforesaid guidelines, it is obvious that revenue record of the applicant, his ration card, election identity card, electricity bills and telephone bills are relevant documents for issuance of residence certificates but the Circle officer, Dalsingsarai completely ignored the aforesaid guidelines/directions of the State Government in the present case because admittedly, rent receipts, electricity bills and telephone bills of the father as well as grand father of the petitioners were produced before the Circle officer, Dalsingsarai in course of enquiry. He further submits that the petitioners are admittedly, resident of village Keonta and their father started his legal practice at Patna whereas grand father of the petitioners was residing at village Keonta and electricity as well as telephone connection were issued in the name of grand father of the petitioners. He further submits that apart from this, name of father of the petitioners has been entered in the revenue record and rent receipts as well as holding receipts and land possession certificate has also been issued in favour of father of the petitioners. He further submits that, as a matter of



fact, petitioner no.1, Anuja Choudhary started residing at village Keouta to look after her grand father and after coming into force of Hindu Succession Amendment Act, 2005, she became coparcener along with her father and brother in respect of ancestral property and, therefore, only on the ground that she was married with a person who resides at different places, it can not be said that petitioner no.1 is not permanent resident of village Keonta. He further submits that so far as petitioner no.2 is concerned, he was out of village Keonta in connection with his study and he was residing with his father but oftenly, he used to visit village Keonta to look after his property and grand father and therefore, it can not be said that petitioner no.2 is not permanent resident of village Keonta. Learned counsel for the petitioners further submits that a proceeding 107 of the Cr.P.C was initiated against the petitioners and private respondents and in the notice of the aforesaid proceeding, resident of the petitioners was shown as village Keonta which is evident from perusal of annexure 15 of the petition and whenever any notice was issued to the petitioners, the same was issued to the petitioners at the address of village Keonta but learned Circle officer, Dalsingsarai completely ignored the above stated materials in course of so-called enquiry.

9. He further submits that earlier Block Development officer, Dalsingsarai had issued residence certificates in favour of the petitioners which were later on, cancelled by the Circle officer, Dalsingsarai without any basis and after cancellation order, petitioners came before this court by filing CWJC no. 16594/2011 which was disposed of by a bench of this court vide order dated 17.02.2012 directing the Circle officer, Dalsingsarai to conduct an enquiry and decide the issue within a period of three months in terms of the findings given in order dated 17.02.2012. He further submits that a coordinate bench of this court while disposing of CWJC no. 16594/2011 directed the Circle officer, Dalsingsarai to determine as to whether the petitioners are de facto residence of village Keonta



or not and furthermore, it was observed that rent receipts paid by father of the petitioners can not be rejected on the ground that same had been issued in the name of father of the petitioners. He further submits that after production of copy of the aforesaid order dated 17.02.2012 passed in CWJC no. 16594/2011, the Circle officer, Dalsingsarai without giving any opportunity to the petitioners conducted an enquiry and passed the impugned order. He further submits that the concerned Circle officer violated the principle of natural justice and in connivance with the private respondents passed the impugned order.

10. Learned counsel for the petitioners refers the decision of **Bhagwan Dass and another vs Kamal Abrol and others reported in AIR 2005 SC 2583** in which para 12 of the judgment Hon'ble Apex Court of this country has held as follows:

“From the aforesaid analysis it is apparent that the word ‘residence’ is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of ‘residence’. There are two classifications of meaning of the word ‘residence’. First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word ‘residence’ as given in the Black Law Dictionary, 8th Edition. It is given that the word ‘residence’ means bodily presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connection or political connections or connection by marriage”.



11. On the strength of the aforesaid decision, learned counsel for the petitioners submits that rent receipts and holding receipts relating to Keouta village were issued in favour of father of the petitioners and grand father of the petitioners was residing at village Keouta because there was electricity connection as well as telephone connection in the name of grand father of the petitioners. He further submits that it is the specific case of the petitioners that petitioner no.1 was residing at Keouta village even after her marriage to look after her grand father and similarly, petitioner no.2 also used oftenly to visit his native village Keonta whenever he got time from his study and other matters and lastly, he started residing permanently in the said village. He further submits that merely on the ground that petitioner no.1 is a married woman and petitioner no.2 has given his address of Patna in his passport and other relevant documents, it can not be said that petitioners are not the permanent resident of village Keonta. He further submits that learned Circle officer, Dalsingsarai failed to appreciate the materials before him in the light of principle decided by the Apex Court of this country in the above stated case of Bhagwan Dass (supra).

12. Learned counsel for the petitioners next submits that residence certificates earlier granted to the petitioners by the Block Development officer, Dalsingsarai were cancelled on the basis of complaint made by the private respondents and, as a matter of fact, private respondents, namely, Jayant Kumar Chaudhary and Udaywant Kumar were also applicants for outlet of petrol pump but they came at second position after scrutiny whereas petitioners were on top of the list of select candidates. He further submits that officials of Indian Oil Corporation illegally cancelled allotment order of the petitioners and proceeded to allot outlet of petrol pump to the private respondents and issued intent letter to the private respondents. He further submits that officials of Indian Oil Corporation have no right to issue intent letter to the private respondents and if they wanted to do so,



they ought to have published fresh advertisement because the above stated select list had already been exhausted. In support of his contention, he refers the decision of **Raj Rishi Mehra and others vs State of Punjab and another reported in AIR 2013 SC 3580** wherein the Apex Court of this country held that no fresh appointment can be made from exhausted list of select candidates. He further submits that moreover, petitioners without having got any notice for enquiry submitted their documents before the Circle officer, Dalsingsarai and the said Circle officer made local inspection in absence of the petitioners without giving any notice to them for the said local inspection and furthermore, on the basis of statements made by henchmen of the private respondents, the Circle officer, Dalsingsarai passed the impugned order against which this writ petition has been filed.

13. He further submits that the petitioners have also filed I.A. no. 6173/2014 for amendment of the relief seeking cancellation of intent letter dated 19.09.2012 as contained at annexure 19 of the above stated I.A.

14. On the other hand, learned counsel appearing for the private respondents refutes the above stated submissions arguing that father of the petitioners had already left village Keouta and settled down at Patna where he started his legal practice and the petitioners were also residing along with their parents at Patna and they never come to village Keouta. He further submits that the Circle officer, Dalsingsarai having made proper enquiry and local inspection passed the impugned order and, therefore, there is no need for this court to interfere into the findings of the Circle officer, Dalsingsarai. He further submits that learned Circle officer, Dalsingsarai had issued notices to the petitioners in connection with enquiry but even having receipt of the aforesaid notices, they did not choose to appear before Circle officer, Dalsingsarai in person and they sent their employees to make **pairvi** in the aforesaid enquiry proceeding and, therefore, it can not be said

that the petitioners had no knowledge about the above stated enquiry. He further submits that moreover, even if it is assumed that no notice was served upon the petitioners in connection with the above stated enquiry, then also, there is nothing on record to show that any prejudice was caused to the petitioners.

15. Learned counsel for the private respondents refers the decision of **Union of India and others vs Alok Kumar and other analogous cases reported in (2010) 5 SCC 349** wherein it has been held by the Apex Court of this country that before seeking aid of natural justice the concerned party has to show that due to non-compliance of natural justice, any prejudice has been caused to him. He further submits that in the present case, it is an admitted position that the petitioners had already submitted their relevant documents before Circle officer, Dalsingsarai and further their employees attended enquiry. Therefore, it can not be said that any prejudice was caused to the petitioners due to passing of the impugned order.

16. He further submits that a coordinate bench of this court directed the Circle officer, Dalsingsarai to confine his enquiry around the fact of de facto residence and after taking note of all relevant facts and documents, Enquiry officer i.e. Circle officer, Dalsingsarai came to the conclusion that the petitioners are de facto residence of Patna and, therefore, they are not entitled to get residence certificates of village Keouta. He refers the decision of **the Union of India and others vs Dudh Nath Prasad reported in AIR 2000 SC 525** wherein the Apex court having considered the fact of the aforesaid case held that since the parents of respondent of the aforesaid case were, admittedly, residing in District Howrah in West Bengal for more that 30 years before examination in question, the District Officer or for that matter, Sub divisional officer could legally issue caste certificate and also certify that his parents were ordinarily residing in District Howrah. He further submits that in view of the aforesaid facts as well as the law laid down in this regard, this court should not interfere into the impugned order because this

court is not considering the order of Circle officer in appellate capacity and it is well settled principle of law that writ court gets jurisdiction after violation of valid right and other purposes and in the aforesaid matter, Circle officer as well as other concerned authority have acted in accordance with rule and regulation and, therefore, writ petition of the petitioners is not maintainable.

17. Learned counsel appearing for respondents no. 5 and 6 supported the above stated contentions and further added that Indian Oil Corporation intended to allot the dealership of outlet of petrol pump in favour of local resident and when complaint was made in respect of residence certificates issued in favour of the petitioners, officials of Indian Oil Corporation got enquired the matter and found that the petitioners are not local resident and, thereafter, allotment of the petitioners was cancelled and intent letter was issued to the private respondents no. 7 and 8.

18. Learned counsel appearing for respondents no. 1 to 4 reiterates almost all the above stated submissions.

19. Certain facts are admitted in this matter. It is an admitted position that Indian Oil Corporation got published advertisement inviting applications from local resident for retail outlet of petrol pump (kisan sewa Kendra) in village Nawada and in pursuance of the aforesaid advertisement, petitioners were in need of residence certificates and accordingly, they applied and thereafter, Block Development officer, Dalsingsarai, on the recommendation of BSS and Panchayat Sewak, issued residence certificates to the petitioners on 12.08.2010 and having got the aforesaid residence certificates, petitioners applied for dealership of retail outlet of petrol pump (kisan sewa Kendra) in village Nawada. The private respondents also made applications for the above stated retail outlet of petrol pump. The interview for selection was conducted and thereafter, merit list was published and petitioners were at the top of the aforesaid list. In the meantime, private respondents made a complaint to the Indian Oil Corporation challenging residence



certificates of the petitioners and they also made complaint before Circle officer, Dalsingsarai for cancellation of residence certificates issued in favour of the petitioners. The aforesaid certificates were cancelled by the Circle officer, Dalsingsarai vide order dated 05.09.2011 which was challenged by the petitioners before this court by filing CWJC no. 16594/2011. However, during the pendency of the aforesaid CWJC no. 16594/2011, learned Sub divisional officer, Dalsingsarai directed Circle officer, Dalsingsarai to hear the matter afresh giving notices to the parties and after that Circle officer, Dalsingsarai having heard the concerned parties, refused to interfere with the order dated 05.09.2011 issued vide memo no.769 order dated 26.11.2011 on the basis of opinion given by the Government pleader. Petitioners challenged the order dated 26.11.2011 before this court in CWJC no. 16594/2011 by filing I.A. no. 8370/2011. A coordinate bench of this court disposed off CWJC no. 16594/2011 as well as I.A. no. 8370/2011 vide order dated 17.02.2012 giving direction to Circle officer, Dalsingsarai District Samastipur to conduct an enquiry and decide the issue in the light of observations given in the above stated order, particularly, keeping in mind the principle of de facto residence and de jure residence.

20. Petitioners filed a petition before Circle officer, Dalsingsarai on 28.03.2012 bringing order dated 17.02.2012 passed in CWJC no. 16594/2011 into the notice of the Circle officer, Dalsingsarai and again, they filed certain documents before the Circle officer, Dalsingsarai. The Circle officer, Dalsingsarai made local inspection on two different dates that is on 12.06.2012 and 19.06.2012 without giving any notice to the petitioners and decided the matter on the basis of materials which had been filed prior to passing of order dated 17.02.2012 in CWJC no. 16594/2011 as well as materials subsequently filed by the petitioners.

21. It is not in dispute that the petitioners were never noticed by Circle officer, Dalsingsarai after passing the order dated 17.02.2012 in CWJC no.

16594/2011 and, therefore, question arises as to whether Circle officer, Dalsingsarai was duty bound to give notice to the petitioners and other side before conducting fresh enquiry in the light of order of this court or not and as to whether order dated 21.06.2012 passed by Circle officer is against the principle of natural justice or not.

22. In the case of Union of India and others vs Alok Kumar and other analogous cases reported in (2010) 5 SCC 349, it has been held by the Apex Court of this country at para 83 of the aforesaid case as follows:-

“83. Earlier, in some of the cases, this Court had taken the view that breach of principles of natural justice was in itself a prejudice and no other “de facto” prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the rule is merely directory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these rules is somewhat relaxed. The instance of de facto prejudice has been accepted as an essential feature where there is violation of the non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental enquiry where the department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof”.

23. From perusal of the aforesaid judgment, it is obvious that earlier the courts were of the view that breach of principle of natural justice was in itself a prejudice and no other de facto prejudice needs to be proved but in course of

development of law, rigidity in these rules is somewhat relaxed and it was observed that if there is violation of non-mandatory rules or violation of principle of natural justice as it is understood in its common parlance, effected party is bound to prove that prejudice has been caused to him.

24. In the present case, it has been argued on behalf of the respondents that even if notice was not given to the petitioners after passing order dated 17.02.2012 in CWJC no. 16594/2011, no prejudice has been caused to the petitioners because petitioners had already adduced their evidence before Circle officer, Dalsingsarai in course of enquiry and, therefore, there was no occasion for the Circle officer, Dalsingsarai to issue notice again to the petitioners but I am unable to accept the aforesaid contention because, admittedly, at the time of passing order dated 17.02.2012 in CWJC no. 16594/2011, both the impugned orders dated 05.09.2011 as well as 26.11.2011 of the Circle officer, Dalsingsarai were before coordinate bench of this court and coordinate bench of this court having perused both the above stated impugned orders disposed of CWJC no. 16594/2011 giving specific direction to Circle officer, Dalsingsarai to conduct a fresh enquiry and decide the issue involved in the said matter.

25. No doubt, prior to passing order dated 17.02.2012 in CWJC no. 16594/2011 as well as at subsequent stage, petitioners filed their documents before Circle officer, Dalsingsarai but admittedly, Circle officer, Dalsingsarai did not give any opportunity of being heard to the petitioners nor any notice was given to the petitioners for making local inspection and in their absence, he made local inspection twice and, therefore, petitioners were prevented to raise their points before Circle officer, Dalsingsarai. In the aforesaid backdrop, I am of the opinion that the Circle officer, Dalsingsarai violated the principle of natural justice and a serious prejudice has been caused to the petitioners as entire enquiry was made by the Circle officer, Dalsingsarai behind the back of the petitioners.

26. From perusal of the Bhagwan Das case (Supra), it is obvious that there are two classifications of meaning of the word residence. First is in the form of permanent and temporary residence and second classification is based on de facto and de jure and the aforesaid classifications go to show that question of residence is mixed question of law and fact and, therefore, the aforesaid question has to be decided keeping in mind the fact and circumstance of each case.

27. In the present case, Indian Oil Corporation got published an advertisement inviting applications for local resident of village Nawada to run outlet of petrol pump (Kishan Sewa Kendra). The intention of Indian Oil Corporation was to facilitate local resident who was actually residing in that town and, therefore, it is obvious that Indian Oil Corporation was intended to allot dealership of the aforesaid outlet who was actually residing in the concerned area.

28. In the present case, admittedly, petitioner no.1 is married woman and after marriage, she started residing along with her husband at Bombay but later on, according to her claim, she returned to her parental home and started residing at Keouta village to look after her property and grand father. Furthermore, it is an admitted position that father of the petitioners is a legal practitioner at Patna and father of the petitioners resides at Patna, though he used to visit Keouta village twice or thrice in a year to look after his property. It is also an admitted position that petitioner no.2 was residing along with his father at Patna in connection with his study and while he was studying, he applied for passport and driving licence and disclosed address of Patna as his permanent address.

29. Admittedly, father of the petitioners has ancestral house and agricultural property in the concerned village and there was electricity and telephone connection in the house of father of the petitioners and furthermore, holding as well as rent receipts have also been issued in the name of father of the petitioners but as per claim of respondents, petitioners have not been residing in

village Keonta since long and, therefore, Circle officer, Dalsingsarai has to decide this fact as to whether petitioners are de facto residence of village Keonta or not and in my view, all the above stated questions can only be decided after giving proper opportunity of being heard to the petitioners.

30. On the basis of the aforesaid discussions, impugned order dated 21.06.2012 passed by the Circle officer, Dalsingsarai contained at annexure 16 to this petition stands quashed and matter is remitted back to Circle officer, Dalsingsarai to make a fresh enquiry in respect of the issues involved in this matter after giving notices and proper opportunity of hearing to all concerned parties and pass a fresh order within three months from the date of receipt/production of a copy of this order in the light of observations given in this order as well as order dated 17.02.2012 passed in CWJC no. 16594/2011.

Shahid/-

(Hemant Kumar Srivastava, J)

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