

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22163 of 2014

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Sushila Raut, W/o Baidhyanath Raut, Resident of Village + P.O. Chanauraganj, Via
Manjharpur, District Madhubani.

.... Petitioner

Versus

1. M/s Indian Oil Corporation Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Indian Oil Corporation Bhawan, G-9 Ali Yawar Jung Marg, Bandra (E) Mumbai-400051 through its Chairman.
2. The General Manager, Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Road, Patna-800001.
3. The Deputy General Manager, Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Road, Patna-800001.
4. The Senior Retail Sales Manager, Indian Oil Corporation Ltd., Muzaffarpur Division Office, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Alok Kumar Agrawal, Mrs. Sushila Agrawal Mr. Hemant Kumar, Advocates
For the Respondents	:	Mr. Anil Kumar Sinha, Mr. Abhimanayu Deo, Mr. Ankit Katriar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 18-04-2016

The present writ petition has been filed for quashing the letter BSO/RS/117 dated 24.12.2013 whereby the representation filed by the petitioner for redressal of her grievance in connection with selection of retail outlet in respect of the advertised location at NH-57, 4 K.M. inside of Paith Ghat, Bihar has been rejected, and for connected reliefs.

2. The brief facts of the case are that an advertisement was published on 24.09.2011 by the respondent-Indian Oil Corporation Limited (for short, "the Corporation") offering a retail outlet



dealership at 389 locations enumerated therein. The petitioner applied for a retail outlet for the location specified at serial No. 213 of the advertisement, namely, within 4 Kms of Paith Ghat on NH-57 in the district of Madhubani. One of the requirements to be satisfied by the applicants was the availability of a plot of land measuring 45m x 45m. The petitioner offered her own land measuring 17 decimals. However, since the same was not sufficient for the retail outlet, she offered another land vide Khata No. 445, Khesra No. 3818(Old), New Plot No. 6929, 6930 measuring 12 Kathas, said to have been taken on lease. Having not heard from the respondents, she made enquiries and filed representations dated 05.11.2012, 18.02.2013, 13.07.2013 and 13.08.2013, which, however, remained unanswered. Finally, the Corporation responded to the first representation dated 05.11.2012 by its letter No. BSO/RS/117 dated 24.12.2013, rejecting the petitioner's candidature for the retail outlet.

3. Learned counsel for the petitioner argues that the respondents have acted in arbitrary manner contrary to its own guidelines in the matter of selection of dealers for the retail outlet. Allocation of marks for the land and on various other parameters was required to be done in terms of Clause 13.1.1 of the Brochure and the table provided therein. The relevant entry in the table concerning the requirement for land is extracted and reproduced for ready reference

as under:-

Parameter	Sub-heads	Description	Max Marks	Evaluation
Capability to provide Land and infrastructure / facilities (Max. 35 marks applicable to individual and non-individual)	Suitable land for retail outlet	‘A’ site Having clear title to land “own land”/ Registered. Sale deed as on date of application.	35	Based on verifying the documents submitted and evaluation of committee as explained in Pt. 14 and 15 below.
		‘B’ site Having clear title to land “own land” /Regd. Sale deed/ having land on long lease (regd.) for a minimum period of 19 years 11 months as on date of <u>application.</u>	35	
		‘A’ Site Having “firm offer” of land for purchase.	25	
		‘B’ Site Having “firm offer” of land for purchase/long lease	25	

Clause 14 of the Brochure provides for preference to applicants offering suitable land. Learned counsel for the petitioner invites attention to Clause 14(b) along with serial No. 8 of the Table appearing thereunder which is as follows:-

14 (b) “Firm Offer” of Land

In addition to land covered under para (a) above, applicants also have the option to offer land with firm offer of land from land owner/s. Such offer from land owner/s should be in the form of notarized affidavit giving details of land, Khasra/Khatauni No.,

name of villager/location, ownership details etc.”

8.	Where the land falling in Owned land category as described in above category at Sr. No. from 1 to 4 is not sufficient for development of retail outlet and land in category 5 to 7 is also offered to meet IOC's requirement.	Nil or Part	Document as applicable for category at Sr. No. 1 to 4 and Document as applicable for category at Senior. No. 5 to 7.	Firm Offer
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Learned counsel for the petitioner further invites attention to a lease agreement dated 20.10.2011 (Annexure-3) by which lessors, namely, Sri Rajiv Kumar Jha and Sanjiv Kumar Jha had given the land described therein, comprising an area of 12 kathas on lease for a period of 30 years to the petitioner. As required, notarized affidavits from the lessors, both dated 22.10.2011 (Annexure-12/A) were also furnished by the petitioner. It is stated that later on, the petitioner purchased the lease land in terms of the registered sale deed dated 05.2010.2012 (Annexure-5). It is submitted that the leased land so offered thus fulfilled the conditions necessary for the retail outlet and suitably qualified for the same, but despite this the Interview Committee awarded the petitioner zero marks under the head of capability to provide infrastructure & facility even though the Technical Committee for selection of land in its report dated 25.09.2012 had awarded 89 marks under this head and found the land suitable for a retail outlet.



4. Learned counsel for the respondent-Corporation, on the other hand, vehemently opposes the writ petition and justifies the award of zero marks for land by the Interview Committee to the petitioner. He invites attention to serial No. 12 (ga) of the petitioner's application form wherein she has stated that the land offered was her own land. He relies on the statement made in paragraph 7 of the counter affidavit containing a specific and categorical denial to the effect that the notarized affidavits from the lessors relating to the land claimed to have been acquired by the petitioner on lease (Annexure-12/A), had not been submitted with the petitioner's application. Such denial finds support from the fact that even in the petitioner's subsequent representation dated 05.11.2012, no reference has been made to the notarized affidavits in the context of the petitioner's claim that the lease deed complied with the requirements of "firm offer". The spirit and intention behind the "firm offer" clause was to enable the Corporation to purchase the land from the applicant, if needed, without hindrance or obstruction from the lessors. It is submitted that in the instant case, the lease deed merely constituted a conditional offer by the lessors, in view of which the Corporation could at best have acquired the land on sub-lease and not by way of purchase. It is further submitted that the sale deed dated 05.10.2012 (Annexure-5) by which the petitioner purchased the leased land from the lessors



beyond the cut-off date of application for dealership was in any case of no consequence and could not be entertained in terms of Clause 10(h) of the Brochure according to which “no additional documents whatsoever will be accepted or considered after the cut off date of the application”. The respondents finally pointed out that even though the said registered sale deed dated 05.10.2012 (Annexure-5) could not be taken into consideration, the same had been executed only by Rajiv Kumar Jha as seller, whereas the lease deed dated 22.10.2011 (Annexure-3) relating to the land in question and so also the affidavits (Annexure-12/A) had been executed by two persons, namely, Rajiv Kumar Jha and Sanjiv Kumar Jha as lessors.

5. Having heard the parties and on careful consideration of the materials available on record, this Court finds the writ petition to be devoid of any merit and requires no interference. The objection of the petitioner against award of zero marks for land is dependent on whether or not she put forth a “firm offer” as required by Clause 14 of the Brochure. A perusal of the lease deed dated 22.10.2011 as well as the affidavits claimed to have been furnished by the petitioner with her application do introduce an element of uncertainty with regard to transfer of ownership of land. The lessors did not undeservedly undertake to transfer the land, rather it was expressed that “in case the lessors decide to sell the demised premises, the lessee shall have the

first option to purchase after expiry of lease Deed”, and also made the sale conditional upon allotment of the dealership to the petitioner. The appropriate price for which such transfer of land would be made remained undisclosed. A future disagreement between the lessors and the petitioner with regard to the appropriate price could not be ruled out as a result of which the transfer of the land to the petitioner may come under a cloud. In such a situation, the offered land cannot be said to have satisfied the “firm offer” clause. The respondent-Corporation has unequivocally disputed the claim of the petitioner that the notarized affidavits (Annexure-12/A) were filed along with her application and as such, the very pre-conditions for consideration of the leased land offered by the petitioner were not satisfied. It is, therefore, evident that serious disputed questions of fact exist on this crucial aspect of the matter which cannot be resolved by this Court in its extraordinary writ jurisdiction. This Court therefore does not find it a fit case for interference.

6. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
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