

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.4850 of 2013**

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Md. Mustaque Alam, Son of Late Sk. Saidur Rahman, Resident of Village- Karar Pokhar, P.O. Nimaoul Hatt, P.S. Azam Nagar, District- Katihar.

.... .... Petitioner/s

Versus

1. The Indian Oil Corporation Ltd., G-9, Aliyavar Jung Marg, Bandra, East Mumbai through the Managing Director.
2. The Managing Director, the Indian Oil Corporation Ltd., G-9, Aliyavar Jung Marg, Bandra, East Mumbai.
3. The Deputy General Manager (R.S.), Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bunglow Chowk, Patna.
4. The Senior Divisional Retail Sales Manager, Indian Oil Corporation Ltd., Begusarai Divisional Office, Begusarai.
5. Sri Kanchan Das, Son of Sri Kali Kant Das, Resident of Village- Minapur, P.O. Salmari, P.S. Kadwa, District- Katihar.
6. Aftab Alam, Son of Sri Hasan Haidar, Resident of Village- Minapur, P.O. Salmari, P.S. Kadwa, District- Katihar.

.... .... Respondent/s

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**Appearance :**

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|------------------------------|---|----------------------------------|
| For the Petitioner/s         | : | Mr. S.B.K. Manglam, Advocate     |
| For the Private Respondent/s | : | Mr. N.K. Agrawal, Sr. Advocate   |
|                              |   | Mr. Diwakar Upadhyaya, Advocate  |
| For the I.O.C.               | : | Mr. Anil Kumar Jha, Sr. Advocate |
|                              |   | Mr. Sanat Kumar Mishra           |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 25-04-2016**

Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner, Mr. Anil Kumar Jha, learned Senior Counsel for the Oil Company and Mr. N.K. Agrawal, learned Senior Counsel for the private respondent nos.5 and 6.

The petitioner has questioned the decision of the oil company as reflected vide letter dated 5.2.2013, a copy of which is



placed at Annexure-6 to the writ petition, whereby the objection raised by the petitioner as regarding the candidature of the respondent nos.5 and 6 has been rejected in reference to the guidelines issued by the Ministry of Petroleum and Natural Gas contained in letter no.P-19011/2/2005-IOC dated 25.5.2011 placed at Annexure-7.

Mr. Manglam, learned counsel for the petitioner has referred to the advertisement dated 20.8.2011, a copy of which is placed at Annexure-1 to the writ petition to submit that condition no. 'क' of the advertisement clearly stipulates that the Kisan Seva Kendra, Retail Outlet should not be located on a National Highway/State Highway. It is his submission that the advertisement was issued on 20.8.2011 and on 29.8.2011 the Katihar-Balrampur Road was declared as State Highway No.98 vide notification bearing memo no.9767, a copy of which is placed at Annexure-2. He submits that the private respondent no.5 and 6 purchased a piece of land which was located on this State Highway No.98 as aforementioned and filed their application for the allotment of the Retail Outlet. He submits that an objection was filed by the petitioner to the candidature and which has been disposed of as communicated by the impugned letter dated 5.2.2013 *inter alia* on grounds that since the said Katihar-Balrampur Road has been



declared a State Highway No.98 after the date of advertisement hence there was no infirmity in the candidature of the respondent no.5 and 6. The argument advanced by Mr. Manglam with reference to the advertisement in question is that once there is a conscious decision of the oil company not to accept a location which is situated on National Highway/State Highway then the moment the road in question was declared as a State Highway, either the respondents should have modified their advertisement accordingly or should have rejected any such offer made subsequent to the declaration. He submits that since the candidature of the respondent nos.5 and 6 is on the basis of purchase made vide sale deed executed on 8.9.2011 which is subsequent to the declaration of the road in question as a State Highway then it should not have been entertained because the private respondents were though conscious about the declaration and disqualification present in the advertisement, yet they have gone ahead to make the purchase.

The argument of Mr. Manglam has been contested by Mr. Jha, learned Senior Counsel for the oil company and Mr. Agrawal, learned Senior Counsel for the private respondents to submit that since the guidelines of the Ministry of Petroleum and Natural Gases itself exonerates the private respondents to any such disqualification and rests on the eligibility as existing on the date of advertisement

and since it is not in dispute that on the date of advertisement i.e. 20.8.2011, the said road was not declared as a State Highway rather was so declared only on 29.8.2011 hence a mere transfer of the land subsequently would not withdraw the eligibility to the candidature from the private respondents.

I have heard learned counsel for the parties and I have perused the records.

Law is well settled and a condition of eligibility mentioned in the advertisement is to be tested as existing as on the date on which it is issued and cannot be altered subsequently. In the present case, thus, the eligibility is to be decided as per the situation existing on the date of advertisement i.e. 20.8.2011 and admittedly the Katihar-Balrampur Road on the said date was not a State Highway. The argument of Mr. Manglam that notwithstanding the fact that the road was not a State Highway on the date of advertisement but the very fact that the private respondents have consciously purchased the land after its declaration would render them ineligible, would not hold good for the reason that if the land owner's application against the advertisement would not have been disqualified on this ground then the private respondents have merely stepped into the shoes of the original owner. It is further the stand of the private respondents as reflected in paragraph-7 of the

counter affidavit that since the notification of declaration of the road in question as a State Highway was not published in the Official Gazette hence the declaration was not within the knowledge of the respondents. This statement of the respondents is not contested and is an additional factor in their favour.

That the disposal of the objection of the writ petitioner rests on the guidelines of the Ministry of Petroleum and Natural Gases which clearly stipulates that even if a road is subsequently declared as a State Highway but the eligibility of the land offered would be considered on the basis of the circumstances existing on the date of advertisement, the guidelines itself comes to the aid of the private respondents.

For the reasons aforementioned, I am not persuaded to interfere with the decision so taken by the oil company and the writ petition is disposed of accordingly.

**(Jyoti Saran, J)**

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