

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7896 of 2014

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Geeta Devi wife of Sri Tunna Prasad resident of Pakridayal, P.S. Pakridayal,
District - East Champaran.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Petroleum, New Delhi.
2. Indian Oil Corporation Ltd. through Deputy General Manager, Indian Oil Corporation Ltd., Loknaya Jay Prakash Bhawan, 5th Floor, Patna.
3. General Manager, Indian Oil Corporation Ltd., Bihar State Office, Loknaya Jay Prakash Bhawan, 5th Floor, Patna.
4. Senior Divisional Retail Sales Manager, Indian Oil Corporation Ltd., Krishna Complex, Akhara Ghat Road, Muzaffarpur.
5. Rakesh Kumar son of Prabhu Singh resident of village - Bishunpur, P.S. Madhuban, District - West Champaran.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashish Giri, Advocate

For the IOCL : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08.04.2016

Heard learned counsel for the petitioner and learned
counsel for the Respondent Indian Oil Corporation Limited.

2. Interlocutory Application No. 564 of 2016 has been
filed for amendment of the relief portion of the writ petition in
view of subsequent developments whereby the dealership has
been awarded to the Respondent No. 5 with whom the Indian Oil
Corporation Limited (for short "the IOCL") has entered into an
agreement dated 12.05.2015, by incorporating the following
prayers:



1(vii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the agreement entered into by the respondent Indian Oil Corporation with the private respondent No. 5 Sri Rakesh Kumar bearing Agreement dated 12.05.2015 by which the respondent No. 5 has been appointed as Dealer for retail sale/supply of petrol/diesel Kisan Seva Kendra (Rural Retail Outlet) Dealership in Jogaulia, District East Champaran.

1(viii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the letter of intent issued in favour of respondent No. 5 vide letter dated 08.04.2014 in relation to the award of the dealership after directing the authorities to produce the same.

1(ix) To treat the pleadings and annexures in the present interlocutory application as part of the main writ application.

3. Having regard to the nature of prayers, the Interlocutory Application is allowed and the petitioner is permitted to make necessary amendment in the writ petition.

4. The present writ petition has been filed for quashing the order dated 19.02.2014 (Annexure-7) issued by the Respondent General Manager, IOCL., by which it has been held that the allegation made by the petitioner vide representation



dated 04.02.2013 and 05.02.2013 is misconceived; to declare that allotment of full marks (35) granted by the Interview Committee to the Respondent No. 5 Rakesh Kumar under the heading of capability to provide infrastructure and facility is contrary to the norms of evaluating the marks provided in the brochure, inasmuch as the Respondent No. 5 Rakesh Kumar does not have clear title to the land; to direct the authorities to proceed under Clause 18(ii)(a) of the brochure and after declaring the selection process of Rakesh Kumar to be not in accordance with the guidelines, re-evaluate the merit panel and award the dealership to the petitioner; and for connected reliefs.

5. Pursuant to the advertisement dated 19.08.2011 issued by the Respondent IOCL for award of dealership of Petrol/Diesel Kisan Seva Kendra (Rural Retail Outlet) for various Districts of Bihar including Jogaulia, District East Champaran, Bihar, the petitioner was one of the applicants and so also the Respondent No. 5 Rakesh Kumar as well as one Anil Kumar Singh. The criteria for marking and selection were to be done according to the brochure dated 28.07.2011 for the award of dealership. The final mark sheet prepared for Jogaulia dated 23.01.2013 placed Respondent No. 5 Rakesh Kumar at the first position with 91.62 marks, the petitioner at second position with 90.73 marks



and Anil Kumar Singh at third position with 90.20 marks. Aggrieved by the award of full 35 marks to the Respondent No. 5 Rakesh Kumar under the heading “capability to provide infrastructure and facility” by the Interview Committee, the petitioner made a complaint dated 04.02.2013 (Annexure-4) before the Senior Divisional Retail Sales Manager, IOCL, Muzaffarpur on the ground that the same plot of land offered by the Respondent No. 5 on the basis of lease deed bearing No. 4085 dated 05.09.2011 executed by one Malti Devi, had also been leased out by the said Malti Devi to her son Anil Kumar Singh under lease deed No. 4086 dated 05.09.2011. Since the petitioner’s complaint was not being proceeded with, she approached this Court in CWJC No. 2718 of 2013 and this Court directed the IOCL to take appropriate action in terms of guidelines on the petitioner’s complaint. In due course the petitioner came to be informed by the impugned order dated 19.02.2014 that measurement had been conducted vide Measurement Memo No. 10 of 2013-14 and Land Tracing Map, both dated 28.08.2013 issued by the Circle Officer, Madhuban showing that the aforesaid lease deeds No. 4085 and 4086, both dated 05.09.2011, related to two distinct plots though with the same boundary and hence the allegation by the petitioner was not substantiated.



6. Learned counsel for the petitioner submits that the action of the Respondent IOCL in passing the impugned order is unsustainable in law and the allotment of dealership in favour of the Respondent No. 5 Rakesh Kumar is contrary to the guidelines provided in the brochure itself. It is submitted that in the case of land taken on lease by an applicant, marking is required to be done in terms of Clause Nos. 14 and 15 of the brochure which have however, not been followed. It is submitted that in the case of leased land, consent letter/notarized affidavit signed by all co-owners would be required as in the case of owned land under Clause No. 14(a)(ii), (iii) and (iv). In the present case notarized affidavit of the lessor Malti Devi claiming to be the owner of the land was required, which had not been furnished by the Respondent No. 5 and in absence thereof, his application had to be rejected. Moreover, the petitioner has specifically taken a stand in para 5 of her 2nd supplementary affidavit that no opportunity of hearing was granted to the petitioner prior to passing of the impugned order dated 19.02.2014. The petitioner has also stated in para 24 of the writ petition that the measurement said to have been made in terms of the aforesaid Memo dated 20.08.2013 by the Circle Officer and relied upon in the impugned order was not made available to the petitioner.



7. Learned counsel for the Respondent IOCL on the other hand, seeks to justify the impugned order on the ground that detailed investigation had been carried out with respect to the leased land of the Respondent No. 5 and the IOCL had adequately satisfied itself before entering into agreement with the Respondent No. 5. On the basis of the measurement in terms of Circle Officer's Memo dated 20.08.2013, the land leased to the Respondent No. 5 was found to be distinct from the land leased by Malti Devi to her son Anil Kumar Singh and hence nothing had been found amiss.

8. The Respondent No. 5 has also appeared and relied on his counter affidavit to oppose the writ petition on the ground that after due investigation, the complaint of the petitioner had not been found substantiated by the Respondent IOCL and only thereafter the dealership of the outlet had been awarded to him.

9. It is well settled that judicial review concerns itself with the decision making process and not with the decision itself. The petitioner has taken a specific stand that no opportunity of hearing was provided, nor the details of measurement vide Circle Officer's Memo dated 20.08.2013 supplied to her, prior to passing of the impugned order. This has not been controverted in the counter affidavit of the Respondent IOCL. In this behalf, Clause 18

of the brochure dealing with the Grievance/Complaint Redressal System may be adverted to, which reads as follows –

“18. GRIEVANCE/COMPLAINT REDRESSAL SYSTEM:

(A) An aggrieved person may send his/her complaint to IOCL at the address of the customer service cell displayed at the nearest retail outlet of IOCL. Complaints can also be lodged on the website of IOCL. Complaints against dealer selection received after 30 days from the date of declaration of the result of the interview will not be entertained under any circumstances.

(i) Anonymous/pseudonymous complaints will not be investigated and will be filed without taking any action on the same.

(ii) On receipt of a complaint a letter will be sent by IOCL to the complainant through Registered Post, asking him to submit details of allegation with a view to *prima facie* substantiate the allegations along with supporting documents, if any, within 30 days. Response of the complainant will be examined by IOCL and if it is found that the complaint does not have specific and verifiable allegations, the same will be filed. The complainant will be clearly advised that the complaint will be examined by IOCL and if it is established that the complaint does not have any substance, the same will be liable for legal action.



(B) When a decision is taken to investigate the complaint, the investigation will be done by a Senior Official of Oil Company and will pass speaking order after giving due opportunity to the complainant etc. Copy of the speaking order will be given to all concerned. Thereafter, decision on the complaint will be taken as under :-

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10. It is thus clear that in terms of Clause 18(A)(ii), the IOCL is required to send a letter to the complainant through registered post to enable the complainant to further substantiate the allegations made in the complaint with supporting documents within a stipulated period of 30 days. Moreover, Clause 18(B) contemplates a further opportunity to the complainant before passing a speaking order by the IOCL. As noted in this Court's earlier order dated 24.02.2016, learned counsel for the IOCL on the basis of records accepted that neither the requirement of Clause 18(A)(ii) with regard to sending a letter by registered post to the petitioner, nor of Clause 18(B) with regard to grant of opportunity before passing of a speaking order, was complied with as required to be done in accordance with the procedure under the Grievance/Complaint Redressal System. There can therefore be no gainsaying that the decision making process was

vitiated by reason of failure to observe the procedure prescribed in the brochure relating to the complaint redressal system. Consequently, therefore, the subsequent action of the IOCL in passing the impugned order dated 19.02.2014 as well as awarding the dealership and entering into agreement with the Respondent No. 5 cannot be upheld and are hereby set aside.

11. The IOCL shall consider the petitioner's complaint and pass orders afresh after observing the procedure by granting opportunity as well as supplying materials relied upon, to the petitioner in terms of Clause 18 of the brochure. The IOCL shall decide the matter on its own merits without being influenced by any observation as may have been made herein, within a period of eight weeks from the date of receipt/production of a copy of this judgment.

12. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

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