

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10190 of 2011

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Ravi Kant S/o Sri Raghawjee Pandey R/o Vill. - Kushahara, P.O. Nandpur Amwari,
P.S. Andar, Panchayat - Kushahara, Distt. - Siwan.

.... Petitioner/s

Versus

1. M/S Bharat Petroleum Corporation Ltd., having its registered Office at Bharat Bhawan, 4 & 6, Currimbhoy Road, Ballard Estate, Post Box No.- 588, Mumbai-400001 through the General Manager.
2. Senior Regional Manager, M/S Bharat Petroleum Corporation Ltd. Having Its Office at Ashiana Chamber (3rd Floor), Exhibition Road, P.B. No. - 20, P.S. Gandhi Maidan, Distt. - Patna.
3. Area Marketing Manager, M/S Bharat Petroleum Corporation Ltd. Amm'S Office, Patna (Retail), Ashiana Chamber (3rd Floor), Exhibition Road, P.B. No. - 20, P.S. - Gandhi Maidan, Distt. - Patna.
4. Dealer Selection Board, M/S Bharat Petroleum Corporation Ltd. C/O Area Marketing Manager, Ashiana Chamber (3rd Floor), Exhibition Road, P.B.No. - 20, P.S. - Gandhi Maidan, Distt. - Patna.
5. State Of Bihar through the District Magistrate-cum-Collector, Siwan.
6. The District Magistrate-cum-Collector, Siwan.
7. Sub-Divisional Officer, Sadar Siwan, Distt. - Siwan.
8. Circle Officer, Raghunathpur Block, Distt. - Siwan.
9. Circle Officer, Andar Block, Distt. - Siwan.
10. Ashutosh Kumar Dwevidi S/o Late Bachha Dwevidi R/o Vill. - Andar, P.O. & P.S. Andar, Panchayat - Andar, Distt. - Siwan.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Advocate
Mr. RAJU GIRI, Advocate
For the State : Mr. KUNDAN BHADUR SINGH, SC-22
Mr. Madanjeet Kumar, AC to SC-22
For Respondent No. 4: Mr. Sanjay Singh, Advocate
For private Respondent : Mr. Binod Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-02-2016

Mr. Y.V. Giri, learned senior counsel assisted by Mr. Raju

Giri, has appeared for the petitioner, the Oil Company is represented

by Mr. Sanjay Singh, the State is represented by Mr. Madanjeet

Kumar, Assisting Counsel to SC-22 and the private respondent no. 10 is represented by Mr. Binod Kumar Sinha.

The petitioner has prayed for the following reliefs:

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- “i) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the letter dated 7.6.2011 issued by the respondent no. 3 by which the compliant petitions dated 4.3.2011 and 20.5.2011 of the petitioner with regard to dealer selection for the proposed MS/HSD Retail outlet at Jamanpura in Raghunathpur Block, District-Siwan for which interview was conducted on 23.2.2011 has been rejected (as contained in Annexure13).
 - ii) To issue an appropriate writ/order/direction declaring the respondent no. 10 as disqualified for being considered as an applicant for award of Retail Outlet Dealership of M/s Bharat Petroleum Corporation Ltd. (hereinafter referred to as the ‘Corporation’) at location Jamanpura (Andar-Rathunathpur Road), District-Siwan (Category O.P.) and further for a direction to the respondent Corporation to delete the name of the respondent no. 10 from the selection merit list dated 23.2.2011.
 - iii). To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondent Corporation to award the Retail Outlet Dealership of the Corporation at location



Jamanpura (Andar-Raghunathpur Road), District-Siwan to the petitioner in view of the fact that after disqualification of respondent no. 10, the petitioner being the second empanelled candidate in the selection merit list, becomes the first empanelled candidate and in view of the judgment passed in the case of Anil Kumar Singh Vs. The Chairman, Dealer Selection Board, Patna & ors. by the Hon'ble Apex Court reported in 2004(1) PLJR (SC)-30, qualifies for award of the Retail Outlet Dealership.

- iv) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to produce the residential certificate of respondent no. 10 issued by the respondent no. 7 wherein respondent no. 10 has been wrongly declared as resident of village Haibatpur and then to issue writ of certiorari for quashing the said residential certificate issued in favour of respondent no. 10.
- v) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

The reliefs itself reflects the contest in between the parties.

In short both the petitioner as well as the respondent no. 10 along with some others were applicant for grant of dealership for the Bharat Petroleum Corporation Limited (hereinafter referred to as ‘the



Corporation' in which selection process the private respondent no. 10 was placed at serial no. 1 of the panel while the petitioner was placed at serial no. 2. The empanelment is present at Annexure-3. The petitioner aggrieved by the empanelment moved this Court in CWJC No. 8071 of 2011 and vide order passed on 16.5.2011 placed at Annexure-11 the writ petition was disposed of with direction to the respondents to decide the complaint so preferred by the petitioner within 30 days of receipt of the order and until such time the issuance of any letter of intent was stayed. The respondent Corporation through its Area Marketing Manager considered the claim of the writ petitioner and disposed of the same vide communication dated 7.6.2011 upholding the candidature of the private respondent at serial no. 1. The complaint was disposed on grounds of being devoid of merit and the petitioner being aggrieved is before this Court.

This matter was taken up on 20.7.2011 and when a Bench of this Court while issuing notice to the private respondent had restrained the Corporation from issuing the letter of intent in favour of the private respondent. The status quo position continues to operate.

Since the pleadings are complete and the parties have been heard at length hence with the consent of the parties the writ petition is being disposed of by this judgment at the stage of admission stage itself.

Mr. Giri has referred to the advertisement placed at Annexure-1 and with reference to the location placed serial no. 60 of the advertisement he submits that the location is Jamanpura (Aandar-Raghunathpur Road) in the district of Siwan.

The sum and substance of argument of Mr. Giri is that the private respondent is a resident of village Aandar and is not a resident of the advertised location. In support of his submission Mr. Giri has referred to the voter list of village Aandar placed at Annexure-4 which is dated 05.4.2010 to submit that the name of the respondent no. 10 appears at serial no. 179 confirming him to be a resident of village Aandar which does not even fall within Raghunathpur Block and thus the respondent no. 10 was not even eligible to apply. Mr. Giri next has referred to a residential certificate issued by the Circle Officer, Aandar dated 19.12.2008 to submit that it fortifies his stand that the respondent no. 10 is a resident of village Aandar. The next document referred to by Mr. Giri is an appointment order issued by the Panchayat Secretary appointing the respondent no. 10 to the post of Panchayat Teacher bearing Memo No. 9 dated 30.12.2010 which is after the advertisement published on 30.5.2010 and in which the residence of the respondent no. 10 has been clearly mentioned as village Aandar. The next document referred to by Mr. Giri is a voter identity card which again confirms the residence of respondent no. 10



as village Aandar. Mr. Giri has also referred to the voter list of village Haibatpur which is being claimed by the respondent no. 10 as his residence village, for canvassing the issue that the name of the respondent no. 10 does not find mention in the voter list although it is published on 30.1.2011 i.e. six months after the publication of the advertisement as well as to demonstrate that village Haibatpur would fall in Kushhara Panchayat while Jamanpura which is the location advertised falls under Chakari Panchayat.

It is the contention of Mr. Giri that the location Jamanpura on the Aandar-Raghunathpur Road falls under Chakri Panchayat within Raghunathpur Block in the district of Siwan.

Mr. Giri has referred to the eligibility criteria present in the advertisement and with reference to clause-2(iv) thereof he submits that although all residents of Raghunathpur Block were held eligible to apply for the dealership but such of the applicants who were residents of the revenue village concerned were awarded 20 marks and those being residents of the Gram Panchayat concerned were awarded 10 marks. According to Mr. Giri while the residents of Raghunathpur block could be applicants for the dealership but such applicants who were the residents of location Jamanpura would be awarded 20 marks and those applicants who were residents of a village other than Jamanpura but within the Chakri Panchayat would

get additional 10 marks.

Mr. Giri has next referred to the merit list prepared by the Selection Committee present at Annexure-3 to submit that it rests on the qualifications possessed by the parties and although the private respondent had secured only 61.71 marks while the petitioner secured only 66.30 marks but since the respondent Oil Company has awarded 10 additional marks to the respondent no. 10 by treating him to be the resident of revenue village that his marks was enhanced to 71.73 and which placed him at serial no. 1 of the panel. The short argument advanced by Mr. Giri is that if these 10 additional marks incorrectly granted to the respondent no. 10 for being a resident of the revenue village is reduced then he comes at serial no. 2.

Mr. Giri has referred to the order of this Court passed on 12.12.2013 to submit that it is in the circumstances existing and in the nature of contest advanced that this Court directed the Sub Divisional Officer, Sadar Siwan to enquire into the matter of residence of respondent no. 10 after opportunity to the parties and inform the Court by filing a personal affidavit. It is submitted that the report has since been placed on record through a counter affidavit filed on 15.1.2014 at Annexure-C thereof. It is in reference to the enquiry report argued that whereas the Circle Officer, Aandar has confirmed that the private respondent is a resident of village Aandar which admittedly does not



fall in the Raghunathpur Block and that the respondent no. 10 is neither a resident of village-Haibatpur as claimed by him nor Jamanpura which is the location advertised. It is submitted that neither the report has been questioned on its veracity by the respondent no. 10 nor he has filed an affidavit contesting the position which by itself is sufficient to drive home the allegations set up by the petitioner.

The argument of Mr. Giri has been rather strenuously contested by Mr. Singh who while understandably supporting the selection process has even traveled beyond to comment on the exercise undertaken by the Sub Divisional Officer, Sadar Siwan, even when the report is prepared under the orders of this Court and the private respondent does not contest the findings. I am rather surprised as to how the Oil Company is required to comment upon an exercise which is undertaken under the order of this Court more so when the affected party i.e. the respondent no. 10 does contest it. The opinion expressed by the Sub Divisional Officer is questioned by the Oil Company simply on grounds that he does not proceed to hold the earlier residential certificate issued in favour of the respondent no. 10 forged or fabricated. While being critical of the report, Mr. Singh has avoided to answer in the light of the findings recorded by the Sub Divisional Officer which confirms that the respondent no. 10 is

neither a resident of the advertised location nor of village Haibatpur.

The records of the proceeding manifest that even though the affected party i.e. the respondent no. 10 has not chosen to contest the report for whatsoever reason that may be, the Oil company had adventurously filed a rejoinder to comment upon the report which I find most unwarranted. In substance the argument of Mr. Singh has been that the Oil Company has proceeded on the basis of the certificates produced by the parties and since at the relevant time when the empanelment was carried out there was nothing to doubt the veracity of the residential certificate produced by respondent no. 10 hence attributed to the empanelment.

Mr. Sinha learned counsel appearing for the private respondent while justifying the residential certificate placed at Annexure-A to the counter affidavit of the Oil Company has relied upon a sale deed present at Annexure-C to the counter affidavit of the private respondent to canvass that he is the resident of village Haibatpur even when the sale deed is executed on 21.5.2011 i.e. almost an year after the advertisement. I wonder as to how the private respondent can claim to be a resident of village Haibatpur even when the sale deed has been executed more than one year after the advertisement.

I have heard learned counsel for the parties and perused the



records. There is nothing on records of the proceedings which confirms the claim of the respondent no. 10 of being a resident of village Haibatpur except for the sale deed at Annexure-C and the residential certificate at Annexure-A to the counter affidavit of the Oil Company. In my opinion, none of the two documents are worthy of reliance. The sale deed was executed one year later to the advertisement and thus it does not make the respondent no. 10 a resident of the village Haibatpur on the date of application. Further in absence of any document to support the residence of the respondent no. 10 at village Haibatpur, the residential certificate dated 17.6.2010 issued by the Sub Divisional Officer, Siwan in the light of the recommendation of the Circle Officer, Raghunathpur dated 10.6.2010 placed at Annexure-A series to the counter affidavit of the Oil Company is incorrect and has been rightly disbelieved by the Sub Divisional Officer while submitting his report before this Court.

The discussion aforementioned on the undisputed facts on record does confirm that the respondent no. 10 has obtained marks on residential qualifications wholly illegally and the Selection Committee is a party to it. The position is self eloquent. Even assuming for the sake of argument that the respondent no. 10 is a resident of village Haibatpur which falls in Kushara Panchayat under the Raghunathpur Block, yet the private respondent does not get a premium of 10 marks.



Clause 2(iv) of the advertisement grants 10 additional marks to the residents within the Gram Panchayat of the advertised location Jamanpura which happens to be Chakri Panchayat. Thus where admittedly the respondent no. 10 was a resident of a different Panchayat, he could not be granted 10 additional marks by the Selection Committee which made him senior to the writ petitioner.

On the other hand, the documents relied upon by Mr. Giri present at Annexures-4, 6, 7, 8 and 9 leave nothing to speculate that the respondent no. 10 is a resident of village Aandar and has somehow procured the residential certificate placed at Annexure-A which was the foundation for his application and the only document on record to support the said residential certificate is the sale deed relied upon by the private respondent which was executed almost one year later than the advertisement. Obviously the respondent no. 10 while applying against the dealership would not have claimed residential qualification of village Haibatpur in anticipation.

Last but not the least is the report submitted by the Sub Divisional Officer, Sadar Siwan on the directions of this Court, by way of affidavit on 15th of June, 2014 which seals the fate of the private respondent. Although a period of almost two years has passed since the filing of the affidavit but the private respondent has not chosen to contest the same nor has questioned its veracity.

In the circumstances so confirming it was running against the tide for Mr. Sanjay Singh to criticize this report even when the private respondent did not bother to challenge the same. In view of the conclusive report submitted by the Sub Divisional Officer, Sadar Siwan enclosed at Annexure-C holding the respondent no. 10 to be a resident of village Aandar which falls in Aandar Block and not Ragnathpur Block, he was disqualified to apply against the dealership and in the circumstances the rejection of the complaint of the writ petitioner by the respondent Oil Company impugned at Annexure-13 becomes unsustainable and is accordingly set aside. Since the respondent no. 10 stands disqualified to be an applicant for the dealership and consequently removed from the candidature hence in view of clause 16(c) of the guidelines placed on record by the petitioner at Annexure-15, the petitioner being the next in the panel becomes entitled to the dealership. The respondent Oil Company are accordingly directed to issue the letter of intent in favour of the petitioner and to complete the selection process within six weeks from the date of receipt / production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

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