

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20129 of 2011

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1. Balendra Rai, son of Basudeo Rai.
 2. Jai Dayal Rai, son of Rajendra Rai,
Both resident of Village- Goherua, P.O. Guthani, P.S. Guthani, Dist- Siwan.
- Petitioner/ss

Versus

1. The Hindustan Petroleum Corporation Limited through its Chairman 17 Jamshedji Tata Road, Mumbai-30020.
2. The Chairman HPCL, 17 Jamshedji Tata Road, Mumbai-30020.
3. The General Manager HPCL, 17 Jamshedji Tata Road, Mumbai-30020.
4. The Zonal Manager HPCL 6 Church Lane Post Box NO. 146, Kolkata 700001, West Bengal.
5. The Regional manager Retain HPCL, Lok Nayak Bhawan, Dak Banglow Chowk, Fresher Road, Patna- 800001.
6. The Marketing Manager HPCL, Lok Nayak Bhawan, Dak Banglow Chowk, Fresher Road, Patna- 800001.
7. The D.M. Siwan.
8. The Civil S.D.O. Siwan.
9. The C.O. Guthani, Dist- Siwan.
10. Sri Rakesh Kumar Gupta, son of Sri Awadhes Kumar Gupta, Resident of Village- Guthani, P.S. Guthani, Dist. Siwan.

.... Respondent/s

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Appearance :

For the Petitioners/s : Mr. Vipin Kumar, Adv.
For the HPCL : Mr. Rajeev Prakash, Adv.
For the Resp. Nos. 7 to 9 : Mr. Shyam Kishore Sharma, GA-1.
Mr. Shalini Raut, AC to GA-1
For the Resp. No. 10 : Mr. Amaresh Kumar Sinha, Adv.
Mr. Ram Praves Nath Tiwari, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-04-2016

Heard learned counsel for the petitioners and the respondents.

2. The present writ petition has been filed for quashing the advertisement dated 22.09.2011 published in Daily Newspaper "Hindustan" by M/s Hindustan Petroleum Corporation Ltd. (HPCL) so far as it concerns serial no. 108 being tailored to

suit only one or two persons and excludes open competition for grant of Govt. largesse; and for a direction to the respondent Corporation to enlarge to scope of advertisement for grant of retail outlet so far as it concerns serial no. 108 of advertisement dated 22.09.2011 inviting offers for grant of retail outlet.

3. Learned counsel for the petitioners assails the advertisement on the ground of being discriminatory in nature, submitting that the length of Saraiya village on the State Highway is about 400 meters having only one or two plots which fulfilled the requirement of 40m x 40m size land for the retail outlet. It is submitted that serial 108 of such advertisement has been issued to only accommodate one Awadhesh Kumar Gupta, and in respect of which the petitioners had given a legal notice dated 23.10.2011 to the respondent Corporation but no response thereto was received. It is further submitted that pursuant to an R.T.I. application, the petitioners had been informed that the advertised location at serial no. 108 of the advertisement merely covers a radius of about 500 meters whereas the area covered for most of the other locations is more and hence the petitioners have been prevented from making an application for the retail outlet.

4. Learned counsel for the respondent Corporation, on the other hand, submits that the location for establishing a retail outlet primary depends on the commercial viability and



marketability as perceived by the Corporation. The claim of the petitioners that the stretch of Saraiya village on the State Highway is only about 400 meters is factually belied from the report of the Circle Officer dated 27.04.2012 (Annexure-R/2 Series A), according to which the concerned stretch is said to be about 4105 ft. with at least 12 suitable vacant plots of land on either side of the road. The reasons for selecting the concerned advertised location has been detailed in para-7 of the counter affidavit, on behalf of the respondent Corporation, which is being reproduced herein for the sake of convenience:-

"7. That it is stated and submitted that the respondent Corporation issued the present advertisement i.e. on sr. no. 108 with respect to the location Saryan on Guthani Mehrauna Road on State Highway-47 in District of Siwan, which is under challenged before this Hon'ble Court, on the ground that the length of Saryan village Mauza (71) on state Highway is of only 400 mtrs and only one or two plots fulfilled the requirement of retail outlet, which is completely wrong and baseless as the respondent Corporation selected the said stretch, which is of 628 mtrs from Guthani More, and there is availability of several plots on the said stretch, which location is selected by the Corporation after fully examining its marketing potentiality and only thereafter chosen the said location for setting up of retail outlet after having found the location viable after feasibility study by the respondent Corporation, hence therefore, the contention of petitioners is completely misconceived

therefore there is no illegality on part of respondent Corporation as alleged by the petitioners as such this writ petition is fit to be dismissed by this Hon'ble Court".

5. Learned counsel appearing for the private respondent no. 10 has also opposed the writ petition, submitting that the contention of the petitioners is misconceived. The advertisement nowhere required a person to own a plot of land of requisite size of 40m x 40m at the advertised location as sought to be contended by the petitioners. As a matter of fact, the respondent no. 10 himself did not own any such land and made efforts to obtain the requisite land by entering into a lease agreement with one land owner namely Shri Nathuni Singh of that locality and accordingly offered land on the strength of sub-lease agreement executed and registered on 24.08.2013.

6. Having heard the parties and on consideration of the materials on record, this Court does not find merit in the writ petition. The decision with regard to the location where a particular outlet is required to be established falls within the discretionary domain of the respondent Corporation, and such decision has to be founded upon sound commercial considerations, keeping in mind how best public need would be sub-served. In the instant case, the Corporation has afforded detailed justification for its decision to establish an outlet at the advertised location in question, with which no fault can be found.

The petitioners have also not been able to satisfy this Court why they could not have taken steps for procuring requisite land whether by way of purchase or on lease, and applied for the retail outlet, if this was possible for the respondent no. 10 as was done.

7. For the above reasons, the writ petition stands dismissed.

(Vikash Jain, J)

Md. Ibrarul/-

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