

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6068 of 2010

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1. Reshma Khatun W/O Md. Irfan Alam Permanent Address C/O- Md. Meraj Alam, At- Hasnabad, P.O.- Champanagar, P.S.- Nathnagar, Distt.- Bhagalpur
..... Petitioner/s

Versus

1. Indian Oil Corporation Ltd. through General Manager Bihar State Office, IOC Ltd. (M.D.), Loknayak Bhawan, Dak Bunglow Road, Patna, Bihar
2. Senior Manager (LPG-S), Bihar State Office, IOCL Loknayak Bhawan, Dak Bunglow Road, Patna, Bihar
3. Dy. General Manager (LPG) Bihar State Office, IOCL, Loknayak Bhawan, Dak Bunglow Road, Patna, Bihar
4. Area Manager, IOC Ltd. (M.D.) Indane Area Office, Begusarai, P.O.- Barauni Oil Refinery, Distt.- Begusarai- 851114
5. Asstt. Manager (LPG-S) IOC Ltd. (M.D.), Bhagalpur Sales Area, Under Begusarai Area Office,
6. Sarika Kumari, daughter of late Prabhash Chandra Tiwary, resident of village Kaneri, P.O. and P.S. Jagdishpur, District Bhagalpur

..... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6151 of 2012

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1. Sarika Kumari Daughter of Late Prabhash Chandra Tiwary Resident of Village- Kaneri, P.O. & P.S.-Jagdishpur, District-Bhagalpur

..... Petitioner/s

Versus

1. The Indian Oil Corporation Ltd., G-9, Ali Yavar Jung Marg Bandra (East), Mumbai-400051, through its Managing Director
2. The Managing Director Indian Oil Corporation Ltd., G-9, Ali Yavar Jung Marg Bandra (East), Mumbai-400051
3. The General Manager, Indian Oil Corporation Ltd. (M.D.), Bihar State Office, Lok Nayak Jai Prakash Bhawan (5th Floor) Dak Bunglow Chowk, Patna-800001
4. The Deputy General Manager (Retail Sales) Bihar State Office, Indian Oil Corporation Ltd. Lok Nayak Jai Prakash Bhawan (5th Floor) Dak Bunglow Chowk, Patna-800001
5. The Senior Divisional Retail Sales Manager, Begusarai Divisional Office, Barauni Oil Refinery, Begusarai (Bihar)
6. The Senior Area Manager, Indian Oil Corporation Ltd. (M.D.) Eastern Region, Indane Area Office, Patna, Sahi Bhawan, Exhibition Road, Patna
7. The Area Manager, I.O.C. Ltd. (M.D.) Indane Area Office, Begusarai, P.O.- Barauni Oil Refinery, District-Begusarai
8. The Assistant Manager (L.P.G.-S), I.O.C. Ltd. (M.D.) Bhagalpur Sales Area under Begusarai Area Office at Begusarai
9. Reshma Khatun, wife of Md. Irfan Alam, permanent address C/o- Md. Meraj Alam, at Hasnabad, P.O. Champanagar, P.S. Nathnagar, District Bhagalpur.

..... Respondent/s

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Appearance :

(In CWJC No. 6068 of 2010)

For the Petitioner/s :

Mr. Jitendra Singh, Sr. Adv.
Mr. Shailendra Kumar Singh, Adv.
Mr. Neeraj Kumar Gupta, Adv.
Mr. Anil Kumar Sinha, Adv.
Mr. Y.V. Giri, Sr. Adv.

For the Respondent-Corporation :

For the private respondent No.6 :

(In CWJC No. 6151 of 2012)

For the Petitioner/s :

Mr. Y.V. Giri, Sr. Adv.
Mr. Diwakar Upadhyaya, Adv.
Mr. Anil Kumar Sinha, Adv.
Mr. Shailendra Kumar Singh, Adv.

For the Respondent-Corporation:

For the respondent No.9 :

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 22-02-2016

Whereas the petitioner in C.W.J.C.No.6068 of 2010 (hereinafter referred to as the 'first writ petitioner') is aggrieved by the order dated 25.11.2009 (Annexure-4) whereby the respondent authorities of the Indian Oil Corporation (hereinafter referred to as the 'Corporation') have informed the petitioner regarding the cancellation of his candidature for award of LPG distributorship under the Rajiv Gandhi Gramin LPG Scheme inter alia on grounds of offering land outside the advertised location for the purpose of showroom, the petitioner in C.W.J.C. No.6151 of 2012 (hereinafter referred to as the 'second writ petitioner') is aggrieved by the allotment of marks awarded by the respondents in relation to the land offered by her and prays for issuance of the dealership in her favour after modification of marks and more particularly since the candidature of the first empanelled candidate that is the petitioner in the first writ petition, has been cancelled.

Since the outcome of the writ petitions are inter related and would have a bearing on the outcome of the other writ petition hence the two writ petitions are being disposed of by this common judgment at the stage of admission itself with consent of the parties.

For the sake of convenience I shall be referring to the pleadings and annexures as occurring in C.W.J.C.No.6068 of 2010 unless clarified with specific reference to the other writ petition.

Mr. Jitendra Singh, learned Senior Counsel has appeared for the petitioner in C.W.J.C.No.6068 of 2010 while Mr. Y.V. Giri, learned Senior Counsel has appeared for the private respondent in the said writ petition who is the petitioner in the second writ petition and the Corporation and its authorities are represented by Mr. Anil Kumar Sinha.

Mr. Jitendra Singh learned Senior Counsel has appeared for the petitioner and has with reference to the advertisement placed at Annexure-1 and the brochure issued by the Oil Company, the extract of which is placed at Annexure-5 questioned the decision inter alia on grounds of being in deviation of the conditions stipulated in the advertisement and in the teeth of the judgment passed by the Bombay High Court placed at Annexure-13.

Mr. Singh referred to the advertisement placed at Annexure-1 to submit that a notice for appointment of LPG distributorship in the

State of Bihar was published by the respondent Corporation and which amongst others also included the location at Jagdishpur within the district of Bhagalpur which was for the category of women applicants in the Marketing Plan 2004-07 for catering to the urban and rural consumers.

Mr. Singh straightway referred to the infrastructural requirements as set out in paragraph 13 of the advertisement to submit that whereas for the purpose of construction of a godown, the intending applicant was required to offer land located within 15 kilometers or in the area of operation (trading area of the advertised location) on the other hand for construction of the showroom, the applicant had to offer land or a shop located in the area of operation (trading area of the advertised location).

Mr. Singh referred to Clause 14 of the advertisement to submit that for the purpose of construction of a godown and showroom, the land owned by the family members as defined in the eligibility criteria was held acceptable but an affidavit of consent had to be given by the family members concerned in favour of the applicant. Mr. Singh next referred to the definition of a family unit given in the eligibility criteria to submit that a 'family unit' would consist of the individual concerned, his/her spouse and their unmarried son(s)/daughters(s). In case of unmarried applicant the 'family unit' would consist of the

individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s).

Mr. Singh referred to the brochure issued by the respondent Corporation placed at Annexure-5 and with particular reference to Clause 8.1. and 8.2 he submits that the advertised stipulations are reiterated and whereas for the purpose of construction of the godown the land could be located within 15 kilometers or in the area of operation, in so far as construction of showroom is concerned, it had to fall in the area of operation (trading area of the advertised location) and which should be easily accessible to general public through an approach road. Mr. Singh referred to the application filed by the petitioner, a copy of which is placed at Annexure-8 to submit that the petitioner as against information desired at paragraph 13A (i) in respect of godown and 13B in respect of showroom had accordingly declared that she has suitable land for the purpose and the details of which are also mentioned in the application form itself. It is with reference to the census data present at Annexure-7 submitted that the location of Jagdishpur advertised at Annexure-1 was inclusive of the Rural and Urban population. He next refers to a clarification issued by the Oil Companies in a meeting held on 3.2.2010 in which while discussing the issue of location of godowns it was clarified that in case of urban/rural location, the area of operation would be within 15



kilometers radius of the location. He has also referred to a reply given by the Government of India to a query made under the Right to Information Act to submit that whereas the area of operation of urban market has been limited to the municipal limits of the town or part of the town concerned, in the case of rural as well as urban/rural distributorship the area has been extended to a 15 kilometers radius of the concerned location. Learned counsel has also referred to a similar query made by the applicant placed at Annexure-18 which was responded to by the Oil Company vide Annexure-19. It is submitted that despite the position being self-eloquent and free from any dispute yet the respondent Corporation has disqualified the petitioner on her candidature inter alia on grounds that the land offered by her was situated at Puraini which is a village located outside the advertised location at Jagdishpur. Learned counsel with reference to the judgment of the Bombay High Court in Writ Petition No. 5232 of 2009 (**Mukesh Vs. Indian Oil Corporation**) placed at Annexure-13 has submitted that in identical circumstances the Bombay High Court while interpreting identical provisions arising from an identical advertisement while rejecting a similar stand taken by the Indian Oil Corporation that the location of the showroom was outside the advertised location, has held in paragraph 10 that the information given by the applicant of the said case that the show room was located



within the advertised location suffered from no misrepresentation of fact and her removal from the candidature was not correct. He submits that the special leave petition preferred by the Indian Oil Corporation before the Supreme Court was also dismissed summarily vide order placed at Annexure-14. He submits that the issue stands concluded by the judgment of the Bombay High Court and has attained finality by the dismissal of the special leave petition and since identical provisions were in consideration before the Bombay High Court, the judgment is binding on the respondent Corporation.

The argument of Mr. Singh is contested by Mr. Anil Kumar Sinha and his sheet anchor for the opposition to the reliefs claimed by the petitioner is Clause 13B of the application form placed at Annexure-8 which required the show room offered by the applicant to be located in the location advertised. Mr. Sinha referring to the brochure present at Annexure-4 submits that Clause 11(d) of the brochure made it very clear that the application form would be a part of the advertisement and the applicants were expected to go through the conditions mentioned in the application form as well as the advertisement before offering their candidature and since admittedly the land offered by the petitioner fell outside the advertised location which is the requirement made at Clause 13B of the application form, the petitioner had failed in the eligibility criteria. While trying to



distinguish the judgment of the Bombay High Court Mr. Sinha referred to a judgment of the Orissa High Court in Writ Appeal No. 145 of 2014 (**Satya Ranjan Mallick Vs. IOC**) placed at Annexure-R/2 to the counter affidavit filed by the intervenor/private respondent to submit that the judgment of the Bombay High Court has been discussed and distinguished by the Orissa High Court and it has been held that where the area mentioned in the advertisement is specific, the Court cannot make a roving enquiry under Article 226 of the Constitution of India. Mr. Sinha thus defends the impugned order by submitting that even if the location of the godown could be within 15 kilometers radius of the advertised location or within the trading area of the advertised location, in so far as the location of show room is concerned, the application form made it abundantly clear that the show room had to be within the advertised location. With reference to the field investigation report present at Annexure-R/1 to the counter affidavit of the respondent Corporation he submits that it is clearly mentioned that the area of land offered by the petitioner was at a distance of 3 kilometers from Jagdishpur market and thus not within the advertised location. Mr. Sinha concluded by submitting that there is no infirmity in the order impugned rejecting the candidature of the petitioner and since admittedly the land offered by the petitioner is beyond the advertised location hence she is not entitled for any

indulgence.

Mr. Y.V. Giri learned Senior Counsel appearing for the private respondent while contesting the claim of the writ petitioner in C.W.J.C.No.6068 of 2010 and advancing the claim of the petitioner in C.W.J.C.No.6151 of 2012 has submitted that it is wholly on account of faulty marking by the respondent- Corporation that the petitioner in C.W.J.C.No.6068 of 2010 was empanelled as a first candidate when in fact it is the private respondent who is the petitioner in the other writ petition, should have been placed on the said position. With reference to Annexure-6 to C.W.J.C. No. 6151 of 2012 he submits that the brochure provides for the manner in which the marks have to be awarded and Clause 14 thereof provides for the evaluation. Referring to the marking against land/shop for showroom as occurring in the brochure he submits that candidates having clear title were to be awarded 10 marks while other having firm offer were granted 7 marks with those who could make arrangement for the same were to be awarded 5 marks. He submits that the petitioner was granted only 7 marks against this category while the petitioner in the first writ petition was awarded 10 marks.

To support his contention that the private respondent had clear title to the land, learned counsel has referred to the copy of the sale deed present at Annexure-3 series of C.W.J.C.No.6151 of 2012 and to



submit that the sale deed is in the joint name of the petitioner and one Archana Tiwari who is the sister- in- law of the petitioner and the area purchased is 435.6 sq. ft. He submits that since the title is joint hence the petitioner has a clear title over 50% of the said land which would be 217.8 sq. ft. and since the land required for showroom is only 145.32 sq. ft. hence clearly the petitioner had title over the said area of land. He thus submits that whereas the petitioner had clear title on the land, the land offered by the other writ petitioner was not fit for consideration because it was not in the advertised location rather was in a different village at village Puraini which is 3 kilometers away from the village Jagdishpur. To support his contention of having the clear title, learned counsel has relied upon judgment of this Court reported in **2011(1)PLJR 601(Smt. Dharamshila Kumari Vs. Union of India)**.

It is next submitted that whereas the petitioner in the other writ petition was put on first position securing 94 marks, the private respondent was granted 93.2 marks due to faulty marking against the land eligibility criteria. According to Mr. Giri, the private respondent/second writ petitioner should have been awarded 10 marks and not 7 marks against the land criteria and the moment she gets such marks then her total marks become 96.2 which is much higher than the marks secured by the petitioner in the first writ petition.

According to Mr. Giri it is wholly on account of faulty marking that the private respondent who is the petitioner in the other writ petition has been placed on the second position.

Having canvassed the case of the private respondent/second writ petitioner on merits and to establish that she should have been given the first position, Mr. Giri turned to oppose the claim advanced by the first writ petitioner for the moment the petitioner No.1 stands disqualified, the second writ petitioner being the second empanelled candidate automatically becomes entitled for the award of dealership.

Contesting the argument of Mr. Jitendra Singh appearing for the first writ petitioner, Mr. Giri returned to the advertisement to submit that the location is clearly mentioned as Jagdishpur and there is no confusion about it. Referring to Clause 8 of the advertisement he submits that the application form is a part of the advertisement and which specifically makes a query at Clause 13B whether the showroom is located in the advertised location having a suitable approach road. He thus submits in such circumstances, the confusion whatsoever present in Clause 13(2) of the advertisement stands clarified. With reference to Clause 19(b) of the advertisement he submits that no addition or deletion or alteration is permitted in the application form and reading the said clause along with Clause 13B of the application form, the petitioner had to say in the affirmative or



negative whether he had suitable land in the advertised location. He submits that the two conditions have to be interpreted purposefully. It was argued that even when there is an option given with regard to the situs of a godown to be located within 15 kilometers of the advertised location, which position is reiterated in Clause 13A(2) of the application form, there is no such option given in so far as showroom is concerned. Learned counsel turning to the copy of the brochure, the extract of which is placed at Annexure-5 submits with reference to Clause 8 that similar is the position mentioned therein and Clause 11(d) makes it very clear that the conditions stipulated in the application form is to be satisfied and the candidates were required to go through the conditions mentioned in the advertisement as well as the application form. Responding to the opinion of the authorities of the Corporation as regarding the area of operation present at Annexure-6 he submits that it is not of binding character and in so far as the RTI response from the Corporation, present at Annexures-18 and 19 to the third supplementary affidavit is concerned it is stated that it is an influenced response due to the position held by the husband of the first writ petitioner. He with reference to the impugned order placed at Annexure-4 submits that the Selection Committee have expressed an opinion in the available circumstances which prima facie is not perverse and since it is a possible view taken, a mere

second opinion would not render it illegal. Learned counsel to support his submission has relied upon a judgment of the Supreme Court reported in (1997)1 SCC 738 paragraphs 8 to 11 (**Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction**).

Responding to the reliance on the judgment of the Bombay High Court rendered in the case of Mukesh (supra) he submits that firstly, the judgment has been distinguished by the Orissa High Court in the case of Satya Ranjan Mallik(supra) and secondly a mere dismissal of the Special Leave Petition by the Supreme Court vide Annexure-14 is not a confirmation of the opinion and does not amount to affirmation of the decision. With reference to the judgment of the Supreme Court in the case reported in (2000)6SCC359 (**Kunhayammed Vs. State of Kerala**) paragraph 44, he submits that the doctrine of merger does not apply in such cases. Concluding his submission it was argued that since the location was specifically mentioned as Jagdishpur hence there was no room for speculation

Mr. Jitendra Singh in his short reply has submitted that there is a distinction between a normal LPG Dealership and a dealership under the Rajiv Gandhi Gramin LPG Scheme. According to Mr. Singh whereas in a case of a general dealership the village specific in the advertised location is a necessary condition but in the case of a dealership under the Rajiv Gandhi Gramin LPG Scheme, it is

extended to the trading area which is also clearly stipulated in the advertisement. In support he refers to the following decisions of this Court.

(a) C.W.J.C.No.19720 of 2014(Bajrangi Prasad Vs. Bharat Petroleum Corporation Ltd.); and

(b) 2014(2) PLJR 378 (Pallavi Vs. Indian Oil Corporation).

Learned counsel further relying upon a judgment of this court reported in **2012(2) PLJR 783 (M/s Indian Oil Corporation Vs. Ram Kumar Jha)** has with reference to paragraphs 8 and 10 submitted that the respondents cannot make variations in the tender conditions as advertised.

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

Although exhaustive arguments have been advanced by the parties in support of their respective cases but the issues falls in a very narrow compass. I would be considering the case of the two writ petitioners alongside for in case the argument of Mr. Giri on evaluation of marks is upheld, then automatically the second writ petitioner in C.W.J.C.No.6151 of 2012 becomes the first empanelled candidate and the entire argument advanced by Mr. Jitendra Singh would become academic. It is only if the petitioner in C.W.J.C.No.6151 of 2012 fails in her pursuit that the case of the first

writ petitioner would require a consideration. I would thus be considering the claim raised in C.W.J.C.No.6151 of 2012 before I would consider the arguments of Mr. Jitendra Singh on the cancellation of the candidature of the first empanelled candidate.

The prayer made by the petitioner in CW.J.C.No.6151 of 2012 merely seeks a direction to the respondents to issue a letter of intent in her favour in respect of LPG distributorship for the location at Jagdishpur following the selection held pursuant to the advertisement dated 7.10.2007 especially when the candidature of the first empanelled candidate Reshma Khatoon has been cancelled vide order dated 25.11.2009. The petitioner filed an interlocutory application bearing I.A.No.4959 of 2015 inter alia to consider her case for awarding proper marks. The petitioner raising identical issues had earlier moved this Court in C.W.J.C.No.7911 of 2009 and vide order passed on 5.8.2009 placed at Annexure-9 to C.W.J.C. No. 6151 of 2012, the writ petition was disposed of with the liberty to the petitioner to file a representation before the Deputy General Manager raising her issues and which was to be disposed of by the speaking order. The claim raised by the petitioner at Annexure-10 to the said writ petition was disposed of by the Deputy General Manager vide order passed on 23.9.2009 upholding the earlier decision of award of 7 marks against the land qualifications. Now this order was never



questioned by the petitioner probably because in the mean time, the empanelment of the first candidate that is the first writ petitioner was cancelled vide order passed on 25.11.2009 and in view of the stipulations present at Clause 16(2) of the brochure, upon the first empanelled candidate being disqualified, the distributorship would be offered to the second candidate. It is thus after the filing of C.W.J.C.No.6068 of 2010 by the first empanelled candidate to question the cancellation of her candidature that the petitioner decided to espouse her claim and when the second writ petition was filed. May be the second writ petitioner had her reasons for not raising the issue earlier due to cancellation of the candidature of the first writ petitioner but then even after having decided to approach this Court after lapse of 3 years since the disposal of her representation 23.9.2009 vide Annexure-11 yet the decision has not been questioned on its merits.

The issue raised and canvassed by Mr. Giri on evaluation is that in view of the title reflecting from the sale deed present at Annexure-3 series to the second writ petition, the second writ petitioner was entitled to 10 marks, and in support he relies on the judgment of this Court passed in the case of **Dharamshila Kumari** (supra). There is no dispute that the land is held jointly by the 2nd writ petitioner and her sister- in- law (Nanad). It is also not in dispute that a sister- in- law (Nanad) does not come within the definition of a 'family unit'.



According to the Corporation the 'Bajidawa' was submitted belatedly and not along with the application form as also held by the Deputy General Manager while disposing of the representation of the petitioner vide Annexure-11 and which order has not been challenged by the second writ petitioner on merits. Further since the order placed at Annexure-11 has not been questioned on merits, there cannot be an order of reevaluation. Another aspect which does not persuade this Court to grant an indulgence to the issue raised is that the consent of the sister- in- law was not submitted with the application form. In such circumstances, the reasons assigned by the authorities to grant 7 marks to the second writ petitioner as against the land qualification, cannot be faulted with.

The reliance by Mr. Giri on the judgment of Dharamshila Kumari (supra) would not come to his rescue in view of the fact that the land was held jointly coupled with the fact that a sister-in-law (Nanad) did not come within the definition of a 'family unit' and thus even if the title was there but the possession is in nature of joint ownership. The view taken by the Selection Committee to award 7 marks in the circumstances existing, suffered no perversity to interfere with. For the reasons discussed, I am not persuaded to consider the prayer of the second writ petitioner on the reevaluation of marks.

It is now to be seen whether despite this position, the prayer



made by the 2nd writ petitioner in C.W.J.C.No.6151 of 2012 is capable of acceptance since it is conditional upon the failure of the first writ petition. Reverting to the issues raised in C.W.J.C.No.6068 of 2010, it is to be tested whether the first writ petitioner failed on the land qualification or her candidature has been wrongfully cancelled on grounds that the land offered by her for showroom, was situated in village Puraini which is outside the advertised location.

The advertisement is placed at Annexure-1 and the location in question is Jagdishpur appearing at Serial No.1 situated in District Bhagalpur. The type of market has been marked as urban/rural.

Clause 13 of the advertisement relates to the basic infrastructure facilities and Clause 13.1 relating to godown requires its location within 15 kilometers or in the area of operation (trading area of the advertised location) freely accessible through motorable approach road. Clause 13.2 of the advertisement relates to showroom and provides that it is to be constructed in a shop/land located in the area of operation (trading area of the advertised location) and accessible through a suitable approach road. The application form also forms part of the advertisement at Appendix- B and Clause 13 B thereof relates to showroom. Clause 13B (1) requires the applicant to answer the queries regarding location of land offered in the advertised location in affirmative or negative. If the answer to the query made at



Clause 13B (1) is in affirmative then the applicant has to file an affidavit to that effect, failing which he has to proceed in terms of Clause 13B(2) or 13B (3) as the case may be. The copy of the application form submitted by the first writ petitioner is placed at Annexure-8 of the writ petition and in response to the query at Clause 13B(1) the petitioner has answered in the affirmative and has given the details thereafter which clearly mentions that the land offered is situated at village Puraini and which admittedly is not the advertised location.

The arguments of Mr. Jitendra Singh has been relying upon the stipulations of the advertisement as present in Clause 13.2, to submit that since the advertised location would include the area of operation that since the stipulation permitted that land to be located in the area of operation (trading area of the advertised location) hence there was no incorrectness in the information given by the first writ petitioner because village- Puraini did fall in the area of operation. Annexure-1 to the C.W.J.C.No.6151 of 2012 is a letter of the Circle Officer, Jagdishpur addressed to the authorities of the Corporation in which it has been stated that Puraini and Jagdishpur both fall within Block Jagdishpur but in different Gram Panchayats. There is no dispute that whereas advertisement present at Annexure-1 in its Clause 13(2) permitted the showroom to be located in the area of operation (trading



area of advertised location), Clause 13B (1) of the application form required the applicant to inform whether he had suitable land in the location advertised. Clause 11(d) of the brochure, the extract of which is present at Annexure-5 requires each applicant to go through the conditions mentioned in the application form as well as the advertisement to ensure that relevant conditions are filled up. Although the land offered by the first petitioner was situated in village Puraini which admittedly, is not the advertised location but she answered in the affirmative to the query made against Clause 13B (1) of the application form regarding the location of land but then while giving the details thereof, she has specifically mentioned the village in which the land is located. Thus reading the stipulations present in Clause 13B (1) alongside condition 13.2 of the advertisement neither there was any incorrect statement made by the petitioner nor there was any suppression since she had clearly mentioned the village Puraini in respect of the location. The relevant aspect of the matter is that the market area in the present context consists of urban as well as the rural population as is manifest from the details present at Serial No.1 of the advertisement present at Annexure-1. Meaning thereby, the area of operation of the dealership was neither restricted to urban nor to the rural population rather it had to cater to the needs of both urban as well as the rural population. In such circumstances, the stipulations



present in Clause 13.2 of the advertisement permitting the showroom to be located within the area of operation (trading area of the advertised location), could not have been given a restricted meaning on interpretation of Clause 13B(1) of the application form and even if the answer of the writ petitioner to Clause 13B(1) technically should have been in the negative, the error whatsoever stood corrected when she disclosed the situs of the land at village Puraini. Certainly, her candidature can not be cancelled for this technicality and if the advertisement makes her eligible to apply, she cannot be disqualified by giving a restrictive meaning to the requirements present at Clause 13B(1) of the application form.

This issue has been appropriately discussed in the judgment of the Bombay High Court. The judgment is enclosed at Annexure-13 to the supplementary affidavit and is in context with a similar advertisement issued in relation to the same Marketing Plan i.e. 2004-07. In fact the case of the present petitioner is on identical footing to the said writ petitioner for in both cases, the land offered was within 3 kilometers of the advertised location but within the trading area. The reliance by Mr. Sinha appearing for the Corporation and Mr. Giri appearing for the private respondent on the judgment of the Orissa High Court enclosed at Annexure-R/2 to the counter affidavit of the private respondent which though seeks to distinguish the judgment of



the Bombay High Court, but the opinion so expressed by the Orissa High Court in my opinion, comes in aid of the petitioner in C.W.J.C.No.6068 of 2010 for the stipulations in consideration before the Orissa High Court and the Bombay High Court were dissimilar and arising from distinct advertisements. The copy of the advertisement which was in consideration before the Orissa High court has been placed by the petitioner in his supplementary affidavit placed at Annexure-15 and which clearly reflects that it is in respect of general dealership and not in respect of a dealership under the Rajiv Gandhi Gramin LPG Scheme. In fact the stipulation present at Clause 10 clears all speculations for there is no such relaxation regarding the location of the showroom present in the advertisement in consideration before the Orissa High Court which is present in the advertisement present at Annexure-1. Whereas in the case in consideration before the Orissa High Court, the location was village specific at 'Betnoti' to cater to the rural population and thus the stipulation required the location of the showroom at the advertised location but there is a clear deviation in the stipulations present in the advertisement present at Annexure-1 which consciously relaxes such requirement.

In my opinion, even though the Orissa High Court has distinguished the judgment of the Bombay High Court for recording

its opinion but considering that the stipulations present in the advertisement put for consideration before the Orissa High Court was different to those existing in the present case, the opinion so expressed would not bind the case at hand.

Although a lot of reliance has been placed by learned counsel for the respondents on the condition stipulated at Clause 11(d) of the brochure to canvass that the application form is to be treated as part of the advertisement and the stipulations present therein would govern the case but I am at loss to appreciate as to how this would make any difference to the situation for in my opinion such stipulation would again go to favour the writ petitioner in C.W.J.C. No. 6068 of 2010 and the conditions present at Clause 13B (1) of the application form and the response given would stand explained by the stipulation present in condition 13.2 of the advertisement.

It is rather regretful that despite the view expressed by the Bombay High Court on identical issue and in identical situation which has attained finality by the dismissal of the Special Leave Petition by the Supreme Court and thus binds the Corporation, yet they have unnecessarily and wrongfully engaged the writ petitioner in C.W.J.C.No.6068 of 2010 for all the past 6 years.

For the reasons aforementioned the order dated 25.11.2009 of the Area Manager, Indian Oil Corporation impugned at Annexure-4

cancelling the candidature of the writ petitioner in C.W.J.C.No.6068 of 2010 cannot be upheld and is accordingly set aside. The writ petition is allowed. Since admittedly the said writ petitioner is placed at serial no.1 of the empanelment hence the Corporation shall take necessary consequential steps for issuance of LOI in her favour.

As a consequence of the order passed in C.W.J.C.No.6068 of 2010, the prayer made in C.W.J.C. No. 6151 of 2012 is rendered infructuous and the writ petition is disposed of accordingly.

Bibhash/-

(Jyoti Saran, J.)

N.A.F.R.

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