

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20144 of 2013

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1. Namita Singh Wife of Prof. Laxmi Narain Singh Resident of Kharhari Kothi,
North Bisar Tank, District- Gaya

.... Petitioner/s

Versus

1. The Union of India through Secretary, Petroleum, New Delhi
2. The Chairman, Hindustan Petroleum Corporation Jamshedji Tata Road, Mumbai-
400020
3. The General Manager, North Central Zone Hindustan Petroleum Corporation
Ltd., 1- Nehru Enclave, Gomti Nagar, Lucknow- 226010
4. The Hindustan Petroleum Corporation through Chief Area Manager(Retail),
Lok Nayak Jai Prakash Bhawan, 6th Floor, Dakbanglow Chowk, Patna
5. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd., Lok
Nayak Bhawan, Dakbunglow Chowk, Patna
6. Anuj Kumar Mehta S/o Late Sukhdeo Lal Mehta Village- Baradih Baragandhar,
P.S.- Mufassil, District- Gaya, Bihar- 823003

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prakash Sahay, Adv.

For the Respondent/s : Mr. N. A. Shamsi, A.S.G.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-03 -2016

The petitioner by way of this writ petition filed under Article 226 of the Constitution of India prays for an appropriate writ/order/direction for quashing the provisional merit list dated 22.2.2013 enclosed at Annexure-4 to the writ petition and which prayer is accompanied with a direction to the respondents to grant the dealership to the petitioner.

It is following the merit list impugned at Annexure-4 to the writ petition that the letter of intent was issued in favour of the respondent No.6 vide communication dated 23.8.2013 present at Annexure-A to

the counter affidavit of the private respondent and which was followed by the issuance of appointment order and a dealership agreement being entered into between the parties, both are dated 31.3.2015 and are present at Annexure-E and Annexure-D respectively to the same counter affidavit.

Vide order passed on 24.3.2014, a coordinate bench while considering I.A.No.2919 of 2014 permitted the petitioner to add the candidate appearing at Serial No. 1 of the merit list as respondent No.6 and notice was issued to him. The petitioner has also filed I.A.No.8404 of 2013 to seek permission for raising additional questions of law. The petitioner has thereafter filed I.A.No.2615 of 2015 praying for maintenance of status quo by the parties and a second interlocutory application bearing I.A.No.2525 of 2015 seeking an order restraining respondent No.6 from making any constructions. These interlocutory applications have remained pending. In the chain of interlocutory applications, the petitioner has also filed I.A.No.370 of 2016 seeking an amendment in the prayer portion of the writ petition and surprisingly even when the petitioner seeks to add a prayer for quashing the order dated 31.7.2013 whereby the complaint filed by the petitioner, has been disposed of as well as the letter of intent dated 23.8.2013 but no prayer is made for quashing the order of appointment of dealership dated 31.3.2015 or the dealership

agreement of the same date present at Annexures-E and D respectively of the counter affidavit filed on behalf of the private respondent.

Although objections have been raised by the counsel appearing on behalf of the Oil Company as well as Mr. Ashok Kumar Choudhary, learned counsel appearing for the private respondent as to the maintainability of the writ petition in absence of any challenge to the dealership appointment order as well as the dealership agreement but in my opinion, since the very merit list is being questioned on its validity, even if there has been some lapse on the part of the writ petitioner to not specifically challenge the dealership appointment order as well as the dealership agreement, the writ petition cannot be dismissed merely on such technicality for if the merit list itself is held unsustainable, the consequences would take its shape.

Facts are not too elaborate and briefly stated is that the petitioner, the respondent No.6 and two others applied against the advertisement, a copy of which is placed at Annexure-10 to the supplementary affidavit, which was published on 22.9.2011 and inter alia offered retail outlet dealership on LHS within 10 kilometers from Manpur towards Wajirganj on NH 82 in the district of Gaya in the open category. Although each applicant for the dealership was required to fulfil the stipulations so present in the advertisement as

well as in the application form which is a part of advertisement besides the guidelines issued by the Oil Company but since the dispute in the present case is limited to the land qualifications I would confine my discussion on this singular eligibility criteria.

Clause 12 of the application form present at Annexure-10 requires that each of the applicant would have to provide land details and each applicant had to file an affidavit in the format prescribed at Appendix-A1 to the advertisement. The explanatory notes which accompany the advertisement in Clause (v) provides that in case the applicant after his selection fails to give the details of the land within 2 months of the issuance of the letter of intent, then the Hindustan Petroleum Corporation Ltd. (hereinafter referred to as the 'HPCL') would be within its jurisdiction to cancel the allotment of dealership. The clause further provides that the decision on the suitability of the land would stand reserved with HPCL. Note (vi) is also relevant which further grants liberty to the applicant to offer land falling within the family unit which term stands explained in the clause itself. The next important provision which would be relevant for the discussion herein is Clause 12 of the guidelines present in the brochure issued by the Oil Company, a copy of which is enclosed at Annexure-I to the counter affidavit of the private respondent and which in Clause 12 deals with land qualification criteria. It elaborates that in case the



applicant after selection fails to provide the land within a period of two months from the issuance of the letter of intent, then HPCL would have the right to cancel the allotment of dealership. It further provides that the suitability of land offered by the applicant would be decided by HPCL. Clause 18 of the guidelines is also relevant in the present dispute for it inter alia provides that the minimum qualifying marks for the eligible candidate would be 60% in respect of open category. Clause 18C is also relevant for it provides that where the candidate placed at Serial No.1 of the merit list is found unsuitable or fails to fulfill the conditions then the award of dealership would be cancelled and would be offered to the second candidate.

I have consciously dealt with the relevant provisions, conditions present in the advertisement, the application form as well as in the brochure in so far as it concerns land qualification for the contest between the parties herein rests on the land qualification issue exclusively. As I have mentioned at the outset there were several candidates applying for the dealership and amongst whom it is only the respondent No.6 who was found eligible for consideration for the dealership while the rest of the applicants had failed to secure 60% marks as mandated under Clause 18 of the guidelines and thus their candidature was struck off as manifest from the statement of performance present at Annexure-4.



Mr. Rajendra Prasad Singh learned Senior Counsel for the petitioner has appeared for the petitioner assisted by Mr. Prakash Sahay, the Oil Company is represented by Mr. Rajiv Prakash and the respondent No.6 in whose favour the dealership has been awarded is represented by Mr. Ashok Kumar Choudhary. Mr. Singh learned Senior Counsel for the petitioner has questioned the dealership award in favour of the respondent No.6 primarily on two grounds:

(a) whereas the writ petitioner held exclusive title and ownership of land which was offered along with the application form, he has been denied any marks against the land qualification to fail him in the performance test since in absence of any marks against land qualification, the aggregate of marks secured by him is only 56.66% which is below the required 60% as prescribed under Clause 18 of the guidelines.

(b) The respondent no.6 had suppressed material fact regarding dealership held by her close relatives and thus was not even eligible for the same; and

According to Mr. Singh whereas query No.2 of the application form present at Annexure-10 required the applicant to disclose whether any of his close relative possessed any dealership of the Oil Company and although the close relative of the respondent no.6 do



possess dealerships but this fact was suppressed by the respondent No.6. Even when Mr. Singh has chosen to question the dealership award to private respondent also on ground of suppression of material fact regarding the dealership held by close relatives which is an issue of fact to be established by evidence on record but neither there is no pleading in the writ petition to such effect nor any such document has been brought on record by Mr. Singh to support such allegation. Despite query being made by the Court as to whether any of the close relative so defined in paragraph 2 of the application form do possess a dealership, Mr. Singh failed to satisfy the Court. The allegation being vague and unsupported with evidence on record, is rejected.

The claim of the writ petitioner would thus have to be considered on the issue whether she has been wrongfully denied marks against land qualifications. Mr. Singh with reference to the performance chart present at Annexure-4 has submitted that whereas 35 marks has been reserved against land qualifications and even when the writ petitioner did satisfy the said eligibility criteria but she was wrongfully denied any marks. It is the argument of Mr. Singh that on the other hand, the private respondent was not in possession of any land and has offered land only subsequent to the selection. It is argued by Mr. Singh that although a complaint was made by the writ petitioner against such arbitrary action of the Oil Company in denying



any marks against land qualification which has been wrongly rejected vide order passed on 31.7.2013, a copy of which has been brought on record vide Annexure-11 to I.A.No.370 of 2016. With reference to the order passed by the Chief Manager present at Annexure-11 it is argued that although the complaint was entertained by the Oil Company and the Technical Evaluation Committee carried out a site inspection for examining the grievance but on grounds that the land offered by the petitioner was situated on the National Highway and a village road having a width of 3.7 meters was intersecting the highway at a distance of 100 meters from the plot hence as per the guidelines issued by the Ministry of Road Transport and Highways, the Technical Evaluation Team did not approve the suitability of the land so offered.

Mr. Singh next referring to the guidelines of the Ministry of Road Transport and Highways dated 29.5.2003, copy of which is present at Annexure-C/3 to the counter affidavit of the Oil Company has argued that it is only in case of an **intersection** of a rural road having a width of 3.5 meters or more with the National Highway, that such stipulation can be enforced but not in case where the rural road merely meets into the National Highway. According to Mr. Singh it would be only in cases where a rural road/State Highway or the like would cut across the National Highway to make a cross road that the

disqualification mentioned in the guidelines of the Ministry of Road Transport and Highways would come into effect but not in cases where the rural road merely meets into a National Highway as in the present case.

The sum and substance of argument of Mr. Singh has been that the word '**intersection**' has been misinterpreted by the Oil Company to deny the claim of the petitioner. Learned counsel has relied upon Bench decision of the Rajasthan High Court rendered in the case of **Dalpat Singh Vs. Union of India** and with particular reference to the conclusion drawn by the Bench in paragraph 23 of the judgment it was argued that it is in consideration of issue of award of retail dealership that the Bench had held that an '**intersection**' of a Highway would mean the junction of the National Highway with another National Highway and State Highway. It is thus argued that the term '**intersection**' has to be interpreted with the object sought to be achieved and cannot be taken in a literal sense. According to Mr. Singh it is only if the village road would have cut across the National Highway that there could be any reason for the Oil Company to disqualify the petitioner but certainly not in the present case. Learned counsel in support of his submission has referred to a lay out plan enclosed with the reply to the supplementary counter affidavit of the respondent Nos. 2 to 5.



The argument of Mr. Singh has been contested by Mr. Rajeev Prakash appearing for the Oil Company as well as Mr. Choudhary and the arguments of each of the counsel has simply centered around the interpretation of the word '**intersection**' as occurring in the guidelines of the Ministry of Road Transport and Highways. According to Mr. Prakash as well as Mr. Choudhary the term '**intersection**' cannot be given a restricted meaning to limit only such instances where the road cuts across a National Highway rather would include all such instances where a village road or a State Highway or a National Highway meets into a National Highway. It is the argument of learned counsel for the respondents that on not less than three occasions that the complaint of the petitioner has been given indulgence but the result has been the same for it fails to raise valid objections. Learned counsel with reference to Annexure-R/1 of the counter affidavit of the Oil Company has submitted that complaint was enquired into by the Oil Company and was rejected since the situs of the land offered by the writ petitioner did not confirm to the suitability as provided in the guidelines of the Ministry of Road and Transport. With reference to Annexure-R/4 of the counter affidavit it is argued that a second inspection was carried out in the presence of the husband of the petitioner and who while accepting the existence of the village road constructed under the Chief Minister Gramin Sarak Yojana at a

distance of 150 meters from the plot offered by the petitioner, had raised objection on grounds that a mere meeting of the State road in the National Highway cannot be called an '**intersection**'. According to the husband of the writ petitioner, an intersection would mean an existence of at least 4 cross roads.

Since Mr. Singh had raised objection to the situs of the land offered by the private respondent to submit that for the reasons that the land offered by the petitioner has been disqualified, even the land offered by the private respondent suffers the same disqualification, that this Court vide order passed on 8.2.2016 directed afresh measurement to be carried out on 15.2.2016 when the parties were requested to be present at the site. It is following such direction that a report has been submitted before this Court along with map and which makes no difference to the circumstances existing and makes no shift in the opinion of the Oil Company. It is reported that the measurement was carried out in the presence of the representative of the parties, the location were inspected and the distance from the intersection was measured. It is reported that whereas the village road existing across the plot of the private respondent has a width of 3 meters and is at a distance of 118 meters from the plot, on the other hand, the width of the village road situated across the plot of the writ petitioner is 3.9 meters and is situated at a distance of 129.30 meters. It is thus



reported that as per the norms laid down by the Government of India, whereas the plot offered by the private respondent satisfies the suitability criteria by virtue of the width of the road being less than 3.5 meters but since the width of the road lying across the plot of the writ petitioners is more than 3.5 meters hence the land offered by the writ petitioner was not found suitable.

Now although allegations were made by Mr. Sahay, learned advocate on record for the petitioner claiming to be present at the site when the measurement was taken inter alia on ground that the width of the road situated across the plot of the private respondent has not been correctly measured, but considering that the exercise was carried out a third time at the instance of the writ petitioner, I am not persuaded by the objections so raised.

The limited issue in the present context is that whether the village road meeting into a National Highway would be an **intersection** or it has to cut across the National Highway to confirm to the term '**intersection**'. Reliance has been placed by learned counsel for the respondents on a judgment reported in **(2002)2 SCC 560 (Karnataka SRTC vs. Ashrafulla Khan)** to submit that the term has been explained in context with the Motor Vehicles Act. Learned counsel for the respondents have also with reference to a judgment reported in **2011(2) PLJR 660 (Brajesh Chandra Mishra**

vs. Union) submitted that a decision having been taken by the Oil Company on a set of circumstances, this Court would not sit in appeal over the decision of the Selection Committee.

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

Although exhaustive arguments have been advanced by either side but the issue falls in a very narrow compass and i.e. whether an **intersection** would mean where a village road/ State Highway/ National Highway meets in a ‘T junction’ with a National Highway or the village road/State Highway/Nation Highway has to cut across the National Highway to form a cross road to qualify as an **intersection**. The term ‘**intersection**’ stands discussed in the judgment of **Karnataka SRTC**(supra) in paragraph 11 onwards and runs as follows:

“**11.** Learned counsel for the parties heavily relied upon the dictionary meaning of the expression “intersection”.

12. In *Webster’s Dictionary*, Vol. I, the word “intersection” means: as the act of intersecting the point at which lines cut across each other (or the line at which planes do so), a place where two roads cross each other intersectional.

13. In *Black’s Dictionary of Law*, 5th Edn., the word “intersection” means: as applied to a street or highway means the space occupied by two streets at the point where they cross each other. Space common to both streets or highways, formed by continuing the curb lines.

14. In *Chambers English Dictionary*, “intersection” means: “to cut across: to cut or cross mutually; to divide into parts, v.i. to cross each other; *intersect* a point of intersection; *intersection* intersecting: the point or line in which lines or surfaces cut each other (geom.): the set of elements which two

or more sets have in common (math.): a crossroad.”

15. The *Law Lexicon*, Reprint Edn., 1987 “intersect” means as “to cross; literally, to cut into or between; a word which imports the intersection of one line with another”.

16. The *Shorter Oxford English Dictionary*, Vol. I defines “intersection” as the action or fact of intersection; the place where two things intersect; chiefly geom.; the point (or line) common to two lines or surfaces which intersect, 1559.”

The term ‘**intersection**’ does not find defined in the guidelines so issued by the Ministry of Road Transport and Highways present at Annexure-R/1 of the counter affidavit of the Oil Company, hence the term has to be appreciated in context with the object involved. In fact considering the issue raised by the writ petitioner strictly on the basis of the dictionary meaning given to the expression ‘**intersection**’, there is no doubt that the writ petitioner has a valid grievance. The expression ‘**intersection**’ finds interpreted in the dictionaries referred to above and can either be a situation where a rural road/State Highway or a National Highway cuts across another National Highway or it can also be where a Rural Road/State Highway/National Highway meets into a National Highway to form a ‘T Junction’. In fact the judgment of the Rajasthan High Court so relied upon by Mr. Singh also in paragraph 23 gives a similar meaning when it reads as under:

“23. The norms and guidelines are time and again revised and published and as per the revised norms to set up a new fuel station along National Highway it was clearly indicated that no new RO will be set up within one kilometer of

intersection of Highways (intersection would mean the junction of National Highway with another National Highway and State Highway). It is also stipulated that no new RO will be permitted to set up within one kilometer of existing check barrier. Similarly, no check barrier will be set up within one kilo meter of RO.”

The situation becomes rather interesting because it is of the various interpretations given to the term ‘**intersection**’ that the Oil Company has chosen to go by the meaning where a rural road/State Highway or National Highway would meet at a junction with National Highway without crossing over the same to make a cross road. While strictly going by the interpretation of the expression ‘**intersection**’ in the glossaries referred to above, the argument of Mr. Singh that the land offered by the petitioner was not capable of rejection merits consideration but having said that I would also not reject the meaning attached to the expression ‘**intersection**’ by the respondent to form their opinion, which also carries a possible explanation. In my opinion the explanation given by the Oil Company to justify their decision of rejecting the land offered by the petitioner in the light of the guidelines of the Ministry of Road Transport even while capable of twin interpretations, certainly does not fall within the realm of perversity particularly in absence of any definition to the expression found in the guidelines of the Ministry of Road Transport. The interpretation given by the Oil Company even if legally not sound

certainly cannot be rejected outrightly nor can be held perverse. It is a commercial venture and the Oil Company is best suited to take a decision as to which site would be more suitable for the object and purpose for which it is being considered. In the present case if the Oil Company has decided to go with the private respondent on their interpretation of the expression '**intersection**' in the backdrop of the guidelines of the Ministry of Road Transport and even though the explanation given by the Oil Company to justify their conclusion is capable of another opinion, that by itself would not render the decision bad. Another important aspect of the matter is that the retail outlet has since become functional.

In the circumstances so discussed above even though I am of the opinion that the case of the petitioner has been handled with some degree of harshness at the hands of the Oil Company but in the nature of the dispute raised, I am not persuaded to interfere with the decision of the Oil Company to go in favour of the private respondent for the reasons accompanying their decision is not of such nature so as to held a perversity for being struck down. The writ petition is accordingly disposed of.

Bibhash/-
N.A.F.R.

(Jyoti Saran, J)

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