

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.159 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 3485 of 2012

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Mukesh Kumar Rai Son of Rakesh Kumar Singh Resident Of Village Udanatrai
Bangra, P.O. Bangra, P.S. Thawe, District Gopalganj

.... Appellant/s

Versus

1. The Hindustan Petroleum Corporation Limited through The Senior Regional Manager, Loknaya Jai Prakash Bhawan 6th Floor, Post Box No.40, Dak Bungalow Chowk, Patna, Bihar
2. The District Collector, Gopalganj
3. The Additional Collector, Gopalganj
4. The Deputy Collector, Land Reform, District Gopalganj
5. The Circle Officer, Manjha, District Gopalganj
6. The Chairman, Bihar Bhudan Yagya Committee, Gardanibagh, Road No.34, Patna
7. Ramnath Patel Son of Late Hiranman Kurmi Resident of Village and P.O. Bangra, P.S. Thawe, District- Gopalganj
8. Braj Kishore Tiwary Son of Kedarnath Tiwari Resident of Village Hajiyapur, Ward No. 5, Gopalganj

.... Respondent/s

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Appearance :

For the Appellant : Mr. Vijay Shankar Shrivastava, Advocate

For the HPCL : Mr. Rajeev Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 10-05-2016

Heard learned counsel for the parties.

The present intra-court appeal under Clause X of the Letters Patent has been filed by the appellant against the order dated 29.10.2013 by which CWJC No. 3485 of 2012 filed by him has been dismissed.

The appellant had filed the appeal for quashing of letter no. 22 dated 06.01.2012 issued by the Collector, Gopalganj refusing to grant 'No Objection Certificate' (N.O.C.) in favour of the appellant with regard to Retail Outlet Dealership at Mauja Bangra, Thana No. 149, Khata No. 293, Plot No. 1766 as also for quashing of letter dated 11.01.2012 issued by the Senior Regional Manager, Hindustan Petroleum Corporation Limited (hereinafter referred to as the 'Corporation') by which 'Letter of Intent' (L.O.I.) dated 13.07.2010 in favour of the appellant has been withdrawn, and consequential reliefs.

The undisputed facts are that pursuant to notice in the papers on 20.06.2009, the appellant applied for Retail Outlet Dealership. He was called for interview by the Selection Committee on 22.10.2009 and was placed at Sl. No. 1 in the merit /selection list. On 13.07.2010, the L.O.I. was also issued in his favour. The proposed land for setting up of the Retail Outlet Dealership was



forwarded by the Corporation to the Collector, Gopalganj for issuing N.O.C. After some correspondence between the Collector and the Corporation, the Collector, by order contained in letter dated 06.01.2012, refused to give N.O.C. Pursuant to the same, the Corporation by letter dated 11.01.2012 withdrew the earlier L.O.I. issued in favour of the petitioner on 13.07.2010. The appellant made objection before the Corporation against such withdrawal of L.O.I. which was rejected and communicated to the appellant through letter dated 20.01.2012.

Learned counsel for the appellant submitted that the reason for the Collector not to grant N.O.C. is erroneous as the appellant had taken the land for the retail outlet on lease from one Indradeo Singh and the land for ingress and egress to the main road belongs to the appellant through a deed of exchange from the elder son of late Hiranman Kurmi, who had been settled the said land by the Bhudan Yagna Committee to whom it was gifted by the original landlord. It was, thus, submitted that refusal to grant N.O.C. by the Collector and the subsequent withdrawal of L.O.I. by the Corporation are bad both on facts as well as in law.

Learned counsel for the Corporation submitted that their action is only a consequence of communication by the Collector refusing to grant N.O.C. and they have only acted as per the



requirement of law. It was submitted that once the Collector has refused to grant N.O.C., the Corporation could not have proceeded with grant of dealership of retail outlet to the appellant as the land to be used for the same was not found fit by the Collector for such purpose. He further submitted that, as of now, the Corporation has already settled the retail outlet and the said person has also established the retail outlet which is functioning.

Having considered the matter, we do not find any merit in the submissions of learned counsel for the appellant. The appellant was required to submit all his relevant papers at the time of making the application. It is an admitted position, which is reflected from the pleadings in the writ application itself, that the appellant had applied for the dealership pursuant to notice dated 20.06.2009 and the interview was also held on 22.10.2009. Thus, on the said date, the factual position stood crystallized, and further, at that time itself, he had to submit all the relevant papers in support of his claim to the authorities. It is not in dispute that the land, which he had shown for the purposes of the Retail Outlet Dealership, which was said to have been taken on lease by him from Indradeo Singh, was not in the name of the lessor as has been verified by the district authorities. To get over the hurdle, the appellant appears to have subsequently got a piece of land settled in his favour through exchange, but most



importantly the said exchange was also done through a registered deed of exchange only on 03.09.2011, i.e., much after submission of form and its verification. The stand of the appellant that due to mistake, this land, which was procured by him through deed of exchange, was also wrongly mentioned in the lease deed of Indradeo Singh, cannot be accepted for the simple reason that on the date of making the application, the appellant did not have any ingress and egress to the plot taken on lease from Indradeo Singh. Thus, as it was obligatory on his part to satisfy the authorities with regard to the same and since on that date he did not possess the land in any capacity, either being the owner or lessee, the said land was also shown as part of the lease from Indradeo Singh, only to get over this difficulty and hoodwink the authorities into believing that he had an agreement over the said land also. Had it been a case where the said land was superfluous for the purposes of grant of retail outlet dealership, matter could have been different. But in the present case, without the said strip of land, there could have been no ingress and egress to the leased land and this position was not fit for approval. The district administration, upon going through the records, and finding that the land was not in the name of Indradeo Singh, the lessor of the appellant, have not committed any illegality in not granting N.O.C. The law operating in the field is well settled on the



point that eligibility of a candidate has to be considered as on the date of making the application along with the documents enclosed and in terms of the advertisement. Admittedly, the appellant did not at least fulfil the criteria relating to the land on which he proposed to set up the Retail Outlet Dealership and any subsequent development would not come to the rescue of the appellant or confer him any privilege, muchless any right for being considered for award of such dealership. In fact, the submission of the lease deed from Indradeo Singh by the appellant showing the land, which did not belong to Indradeo Singh, as part of the land leased to the appellant is nothing short of fraud. However, without going into such aspect, when it is the own case of the appellant that the part of the land, which was essential for setting up of the Retail Outlet Dealership, came to him only on 03.09.2011 whereas the consideration was much prior i.e., 22.10.2009 when he was not fulfilling the criteria, he was clearly ineligible even to make such application. Thus, in the eyes of law, such ineligibility renders him unfit for consideration and any subsequent development, which may have taken place by issuance of L.O.I., cannot confer right on the appellant as the same was done only on the basis of papers submitted by the appellant without any verification by the concerned revenue officials and only later on it has transpired that the applicant had no valid document to show his

right over the land which he has shown before the Corporation for being used for the concerned Retail Outlet Dealership.

In view of the aforesaid, we do not find any error in the action of the respondent authorities as well as the order of the learned single Bench and accordingly, the Letters Patent Appeal stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J *I agree.*

(Hemant Gupta, J)

Anjani/-

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