

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1949 of 2016

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Rita Kumari, Wife of Anil Kumar Sharma, Resident of Village- Shamsheer Nagar, P.S.-
Daud Nagar, District- Aurangabad.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Road Transport and Highways, Govt. of India, Transport Bhawan, Parliament Street, New Delhi.
2. The Bharat Petroleum Corporation Ltd. having its registered office at Bharat Bhawan, 4 and 6 Currimbhoy Road, Ballard estate, PB No. 688, Mumbai- 400001 its Chairman -cum- Managing Director.
3. The Chairman -cum- Managing Director, Bharat Petroleum Corporation Ltd. having its registered office at Bharat Bhawan, 4 and 6 Currimbhoy Road, Ballard estate, PB No. 688, Mumbai- 400001.
4. The Regional Marketing Manager, BPCL, Ashiana Chamber, Exhibition Road, Patna.
5. The State Coordinator, BPCL, Ashiana Chamber, Exhibition Road, Patna.
6. The Territory Manager (Retail) BPCL, P.O. - Pakari, Anishabad, District- Patna.
7. The National Highway Authority of India, G-5/6, Sector-10, Dwarika, New Delhi through its Chairman cum Managing Director.
8. The Superintending Engineer (Mechanical Division) NHAI, Aurangabad.
9. The District Magistrate cum Collector, Aurangabad.
10. The Circle Officer, Daudnagar, Aurangabad.
11. Sudha Kumari, W/o Santosh Kumar, R/o Musepur Khaira, P.O.- Arai, P.S.- Daudnagar, District- Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh Mr. Gautam Kejriwal Mr. Uday Pratap Singh
For the Respondent-Union	:	Mr. S.D. Sanjay, ASG with Mr. Arvind Tiway, CGC
For the Respondent-State	:	Ms. Manisha Singh, AC to GP18
For the Respondent- NHAI	:	Mr. S.N. Pathak
For Respondent-Corporation	:	Mr. Sanjay Singh
For the Respondent No.11	:	Mr. Anil Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 04-07-2016

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the letter of intent ('LOI' for the sake of brevity) issued by the respondent Bharat Petroleum Corporation Limited (hereinafter referred to as the 'Corporation') and its authorities in favour of respondent no. 11. Though the copy of the

‘LOI’ has not been impugned with the writ petition but the ‘LOI’ dated 6.9.2013 issued by the ‘Corporation’ has been placed on record vide Annexure-D to the counter affidavit filed on behalf of the ‘Corporation’.

The petitioner has further prayed for issuance of a ‘LOI’ in her favour as according to the petitioner, the location offered by the private respondent no.11 is not suitable as per the guidelines issued by the respondent-Union of India in its Ministry of Road Transport and Highways as well as the guidelines of the respondent- Corporation.

The facts of the case briefly stated is that responding to an advertisement dated 11.12.2011 for award of petrol pump retail outlet at village- Shamsheer Nagar on National Highway-98 applications were filed by the petitioner, the respondent no.11 as well as some others for award of dealership. Selection procedure followed and a merit-list prepared in which the respondent no.11 secured first position in the panel with 81.78 marks as against 76.16 marks obtained by the writ petitioner. An objection was raised by the petitioner to the land offered by the private respondent no.11 while questioning its location as according to the writ petitioner, the location of the land offered by the respondent no.11 was not satisfying the guidelines issued by the Ministry of Road Transport



and Highways dated 25.9.2003, a copy of which is placed at Annexure-4 since the land offered by the private respondent was within 300 meters of intersection of the National Highway with a rural road. The writ petitioner at the same time claimed that the land offered by her though also situated on the National Highway but was beyond 300 meters and thus more suitable. Surprisingly the complaint filed by the petitioner, a copy of which is present at Annexure-B to the counter affidavit of the respondent-Corporation was subsequently withdrawn by the writ petitioner on 17.8.2012 which also forms part of Annexure-B at page 89 and whereupon the complaint was treated as closed and disposed of accordingly by the respondent-Corporation vide order passed on 14.9.2012 which again is a part of Annexure-B Series. It is thereafter that a 'LOI' was issued in favour of the respondent no.11 on 6.9.2013 present at Annexure-D which was followed by issuance of appointment letter dated 28.11.2015 present at Annexure-I to the counter affidavit of the 'Corporation'.

In between a second complaint was received by one Rahul Kumar on 12.12.2014. The said Rahul Kumar was neither an applicant for the dealership nor the reasons for his grievance is known. However, the 'Corporation' acted on the complaint as manifest from their response dated 19.1.2015 present at Annexure-

11 and disposed of the same finding no merit which was communicated to the complainant vide letter dated 12.5.2015 present at Annexure-J.

On the other hand a proposal was mooted by the 'Corporation' for construction of approach road to the outlet vide letter dated 16.2.2015 present at Annexure-F and the Ministry of Road Transport and Highways upon examination of the request granted a 'No Objection Certificate' for construction of an approach road to the proposed outlet subject to the stipulations present in the letter enclosed at Annexure-G to the counter affidavit of the respondent-Corporation and subsequently even the District Magistrate vide Memo No.1137 dated 1.8.2015 present at Annexure-H granted 'No Objection Certificate' to the outlet.

Now although the said Rahul Kumar has not chosen to question the decision of the 'Corporation' present at Annexure-J, it is the writ petitioner who having withdrawn her complaint has chosen to question the award of dealership in favour of the respondent no.11 through the present writ petition more than three and half years since the panel was prepared on 18.6.2012 vide Annexure-2 and after withdrawing her complaint on 17.8.2012.

Mr. Binod Kumar Singh, learned counsel has appeared for the writ petitioner, Mr. S.D. Sanjay, learned Additional Solicitor



General has appeared for the respondent-Union in its Ministry of Road Transport and Highways (hereinafter referred to as the 'MORTH'), the 'Corporation' and its authorities are represented by Mr. Sanjay Singh, the National Highways Authority of India is represented by Mr. S.N. Pathak, the State is represented by Ms. Manisha Singh, learned Assisting Counsel to Government Pleader No.18 and the private respondent no.11 is represented by Mr. Anil Kumar Sinha.

Mr. Binod Kumar Singh, learned counsel appearing for the petitioner while being critical of the award of dealership in favour of the respondent no.11, has submitted that the land offered by the respondent no.11 is within 300 meters of an intersection and thus is in violation of the stipulations available in the guidelines of the 'MORTH' present at Annexure-4 as well as the brochure of the 'Corporation'. According to the petitioner, the land offered by the respondent no.11 is within 190 meters of the intersection. Mr. Singh referred to the guidelines of the 'MORTH' present at Annexure-4 to submit that the norms have been fixed for the location of fuel station on the National Highways and clause 6.1.1 specifically provides that it has to be beyond a distance of 300 meters from any intersection of a rural road with the National Highways where the width of the carriageway is of 3.5 meters or more. It is the argument

of Mr. Singh that this position is not contested rather is supported by the map present at Annexure-5.

With reference to the brochure issued by the respondent-Corporation, a copy of which is present at Annexure-3 and with particular reference to Clause 14 thereof it is submitted that since the site offered by the respondent no.11 was abutting the National Highways hence the guidelines present at Annexure-4 was required to be mandatorily followed. With reference to Clause-16 of the brochure he submits that the merit panel was valid for only one year.

To support his contention Mr. Singh has referred to the counter affidavit of respondent nos.9 and 10 which encloses a sketch map prepared by the Circle Officer and to demonstrate that the location of the proposed outlet is abutting the National Highway and is within a distance of 190 meters from Naudiha intersection. Mr. Singh has also referred to a letter of the Assistant Engineer dated 2.9.2013 present at Annexure-10 to canvass this position. He also refers to a letter of the Circle Officer addressed to the Manager, Bharat Petroleum Corporation Limited for the same purpose. According to Mr. Singh the factual position regarding the location of the land offered by the respondent no.11 though stands confirmed to be within 190 meters of intersection but yet this



important aspect has been ignored by the 'Corporation'. Assailing the letter dated 16.2.2015 of the Territorial Officer of the respondent-Corporation addressed to the Regional Officer, Ministry of Road Transport and Highways he submits that though the 'Corporation' is seeking a permission for construction of approach road to the retail outlet relying upon the circular dated 24.7.2013 present at Annexure-A to the counter affidavit of the respondent-Union but in the present case it is the circular present at Annexure 4 dated 25.9.2003 which would prevail. Even while raising objections on the permission sought, Mr. Singh submits that the distance prescriptions in the circular dated 25.9.2003 (Annexure-4) and 24.7.2013 (Annexure-A to the counter affidavit of the Union), is the same. It is thus the argument of Mr. Singh that where the land offered by the respondent no.11 was not satisfying the distance prescriptions provided in the guidelines of the 'MORTH' present at Annexure-4 to the writ petition and Annexure-A to the counter affidavit of the Union of India, the candidature of the respondent no.11 ought to have been disqualified.

The argument of Mr. Singh has been responded to by the counsel appearing for the set of respondents and Mr. Sanjay Singh, learned counsel appearing for the respondent-Corporation has questioned the locus of the petitioner to maintain her writ petition



having withdrawn her complaint way back on 17.8.2012. According to Mr. Sanjay Singh, the petitioner had filed her complaint questioning the placement of private respondent no.11 at serial no.1 of the merit panel soon after its preparation on 18.6.2012 by filing a complaint on 9.7.2012 but for the reasons unexplained by the writ petitioner she chose to withdraw the same on 17.8.2012 and whereafter the case was closed. According to Mr. Sanjay Singh, the petitioner having withdrawn her complaint, she has no locus to maintain her writ petition which is founded on a communication made by the 'Corporation' to one Rahul Kumar disposing of his complaint and who has not chosen to contest the position. According to Mr. Sanjay Singh, the disposal of a complaint made by Rahul Kumar by the 'Corporation' cannot give a cause of action to the petitioner.

Adverting to the merits of the contest Mr. Singh has referred to the directions present below Clause-14 of the brochure enclosed at Annexure-3 to submit that it clearly mentions that the distance of a location qua any intersection has to satisfy the provisions present in the guidelines issued by the 'MORTH' from time to time. Mr. Singh has referred to the letter of the Territory Manager addressed to the Regional Officer of the Ministry of Road Transport and Highways dated 16.2.2015 to submit that while



seeking permission for developing an approach road to the retail outlet, the 'Corporation' had submitted drawings as well as different guidelines issued by the 'MORTH' on 25.9.2003, 17.10.2003 and 24.7.2013. Mr. Singh next referred to the letter of the 'MORTH' dated 27.5.2015 to submit that 'No Objection Certificate' has been granted by the Ministry subject to completion of certain formalities mentioned in paragraph 3 of the letter. He submits that the proposal also has an approval of the District Magistrate, Aurangabad as manifest from the letter dated 1.8.2015 present at Annexure-H. Mr. Singh referred to the guidelines dated 25.9.2003 more particularly paragraph 4 thereof to submit that the objection raised by the complainant requires to be tested against the said clause which provides for a service road connecting the fuel station and in which case the access to the fuel station would be through the service road and not the Highway. Learned counsel endeavours to submit that there is a distinction where a retail outlet is situated on the National Highways itself and thus is accessible from the National Highway in contrast to a position where the accessibility to the outlet is through a service road and not from the main carriageway. Mr. Singh has next referred to paragraphs 9 and 10 of the counter affidavit filed by the Union of India to submit that the dispute so raised by the petitioner stands answered by the



Ministry and since in the present case the accessibility to the outlet is proposed through a service road hence the distance restrictions of intersections provided under Clause 6.1.1 of the guidelines present at Annexure-4 as well as Clause 4.5.1 of the guidelines present at Annexure-A would not be strictly applicable. It is the submission of Mr. Singh that once the Ministry of Road Transport and Highways has accepted the proposal of the 'Corporation' in consideration of their own guidelines then the petitioner can raise no grievance on the issue and the objection raised is fit to be rejected. Mr. Singh also with reference to the notings of the Technical Evaluation Committee present at Annexure-A has submitted that the land offered by the private respondent has been held to be on a junction and not intersection.

Mr. S.D. Sanjay, learned Additional Solicitor General assisted by Mr. Arvind Tiwary learned Central Government Counsel has made reference to Annexure-G to the counter affidavit of the 'Corporation' which is a letter of the Executive Engineer, Ministry of Road Transport and Highways addressed to the Territory Manager of the 'Corporation' and is in response to the permission sought by him for construction of approach/access road to the retail outlet in question. He submits that the Ministry in consideration of the lay out plan and the guidelines issued on the



subject has been pleased to grant permission to the 'Corporation' subject to certain conditions present at paragraph-3 of the consent letter. He submits that while granting such permission the Executive Engineer has also been directed to examine the safety conditions after the construction of the approach road is complete and in case of any adverse circumstance found, to report the matter to the head office. He thus submits that the Ministry has been careful in granting permission for construction of the approach road to the outlet bearing in mind the safety aspect of the matter.

It is the submission of Mr. Sanjay, learned Additional Solicitor General that the Ministry has no individual interest in the contest rather the response is only in respect of legal position as existing on the issue. He submits that no doubt the guidelines do prescribe that a retail outlet situated *off* a National Highway should have a distance of more than 300 meters from any intersection but then a situation where the approach to the retail outlet is through a service road and not a national highway then the situation becomes different and the distance prescription would not be applicable. He submits that in so far as the present case is concerned since the 'Corporation' intends to construct the service road for accessibility to the retail outlet hence it has to satisfy the prescriptions present at paragraph 3 of the consent letter present at Annexure-G to the

counter affidavit of the 'Corporation'.

Mr. Anil Kumar Sinha has appeared for the private respondent to submit that it is a peculiar situation where the petitioner having withdrawn her complaint, has yet succeeded to delay the functioning of the retail outlet for the last four years by keeping the parties engaged in a litigation. He submits that huge investment has been made by the respondent no.11 and thus she is suffering huge financial loss. Learned counsel has referred to the brochure of the 'Corporation' present at Annexure-3 and with reference to the direction present below Clause-14 he submits that the brochure clearly provides that the guidelines issued from time to time by the Government of India as well as the National Highways Authority of India would have to be complied with. Mr. Sinha has next referred to the guidelines of the 'MORTH' dated 25.9.2003 present at Annexure-4 dated 25.9.2003 and has referred to the stipulations present at clause 4 and clause 6.5 to submit that the distance restrictions present at paragraph 6.1.1 stands explained in the said stipulation and since in the present case the approach to the outlet is through a service road hence distance restriction would not apply. Mr. Sinha has next referred to the spot verification report present at Annexure-A to the counter affidavit of the 'Corporation' to submit that the location is not on an intersection rather has been



found to be within 300 meters of a junction. He submits that the 'LOI' present at Annexure-D to the counter affidavit of the respondent-Corporation was issued on 6.9.2013 and which is followed by a letter of the Territory Manager of 'the Corporation' addressed to the Regional Officer of the 'MORTH' seeking permission for development of approach road to the retail outlet in the light of the guidelines issued on the subject and which permission has been granted by the Ministry vide consent letter dated 27.5.2015 present at Annexure-G to the counter affidavit subject to certain stipulations. He submits that the grant of consent by the Ministry is followed by a consent granted by the District Magistrate, Aurangabad and which is followed by issuance of appointment letter dated 28.11.2015 to the respondent no.11 present at Annexure-I.

With reference to the map enclosed at Annexure-R/1 of the counter affidavit filed on behalf of the private respondent Mr. Sinha submits that although it is a rough sketch of the area but then the issue of intersection stands explained since the rural road though meets in the service road running along the national highway but it does not intersect the same. Mr. Sinha has next referred to the guidelines of the Ministry dated 24.7.2013 enclosed at Annexure-A to the counter affidavit filed on behalf of the Union



of India to submit that the legal position has been reiterated and Appendix-I of the said guidelines specifically provides that in case a location of a retail outlet is within 300 meters of an intersection then a service road has to be provided and which exercise is being carried out by 'the Corporation'. Learned counsel has referred to a judgment of this Court rendered in the case of **Namita Singh vs. The Union of India** arising from CWJC No.20144 of 2013 to submit that the issue of intersection has drawn the attention of this Court and while discussing its dictionary meaning, this Court has held that until such time that the decision of the 'Corporation' on the issue is held perverse, a possibility of a different interpretation of a situation may not be good grounds for interfering with the decision taken by the oil company considering the commercial nature of venture. Learned counsel has also referred to a judgment of the Supreme Court reported in (2016)4 SCC 493 (**Pepsico India Holding (P) Ltd. Vs. Grocery Market Shops Board**) in support of his contention to submit that unnecessary hairsplitting execution should be avoided.

Learned counsel has referred to a judgment of the Supreme Court reported in AIR 2008 SC (Supplement) 1160 (**Virender Chaudhary vs. Bharat Petroleum Corporation**) in support of his argument that a person aggrieved should approach



the court in reasonable time and the fact that the cause of action for the petitioner arose way back in 2012 a delay of four years by the petitioner to approach the Court is by itself sufficient to dismiss the writ petition. Learned counsel with reference to paragraphs 14 to 18 of the judgment under reference has submitted that in the said case the petitioner having approached the Court after two years of grant of the dealership, the interference by the High Court was set aside by the Supreme Court.

Mr. Sinha has referred to a judgment of the Supreme Court reported in **(2014) 3 SCC 493 (Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation)** and with reference to paragraph 15 to 20 of the judgment it is submitted that a word of caution has been advised by the Supreme Court in matters relating to contract unless it is justified by public interest.

Mr. Binod Kumar Singh, learned counsel appearing for the petitioner responding to the argument has submitted that a mere withdrawal of the complaint by the writ petitioner would not close the doors for her to approach this Court in the writ jurisdiction if the action complaint off is found to be illegal and contrary to the legal prescriptions.

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

Although exhaustive arguments have been advanced by the contesting parties but in my opinion, the writ petition has to fail and the reasons are not too many.

Firstly, the petitioner being contestant for the dealership and having participated in the selection process, a merit panel was prepared on 18.6.2012 present at Annexure-2 in which the private respondent was placed at serial no.1 while the petitioner was placed at serial no.2. The petitioner being aggrieved filed a complaint which was received on 9.7.2012 by the respondent-Corporation and a copy of which is present at Annexure-B to the counter affidavit of the 'Corporation' but shortly thereafter on 17.8.2012 the writ petitioner is stated to have filed an application before the Territory Manager of the respondent-Corporation withdrawing her complaint dated 9.7.2012. Since the writ petitioner chose to withdraw her complaint that the same was disposed of by the 'Corporation' and communicated to her vide letter dated 14.9.2012. All these documents form part of Annexure-B to the counter affidavit of the 'Corporation'. The matter rested at that stage since thereafter and no step was taken by the petitioner to re-agitate the issue. Although the petitioner has enclosed a copy of the complaint received on 9.7.2012 by 'the Corporation' present at Annexure-6 but she has suppressed the withdrawal application dated 17.8.2012 and though



the petitioner in her rejoinder at paragraph 9 has denied filing of any such withdrawal application by terming it to be a manufactured document but then she has filed no response to the letter dated 14.9.2012 whereby she was informed by the 'Corporation' regarding disposal of her representation on its withdrawal. The letter dated 14.9.2012 written by the 'Corporation' to the writ petitioner informing her about the disposal of her complaint on its withdrawal has neither been denied by the writ petitioner nor any explanation has been given why she kept quiet for four years since after disposal of her representation to file the present writ petition in 2016. Apparently the petitioner has not come to this Court with clean hands rather has attempted to mislead this Court by suppressing relevant facts. In fact the very argument of Mr. Binod Kumar Singh that there is no estoppel for the petitioner to approach this Court even after withdrawing her complaint only goes to confirm this position.

Further even if for the argument sake it is accepted that the withdrawal application is a manufactured document, it is yet not explained by the writ petitioner why she has kept quiet for four years since after preparation of the panel on 18.6.2012 to prefer the present writ petition in January, 2016. The uncontested position confirms that even on grounds of gross laches and delay and on the

legal principles laid down by the Supreme Court in the case of **Virender Chaudhary** (supra) the writ petition is fit to be dismissed.

On merits either, the petitioner has no case. The foundation for the writ petition lies on the stipulation present at clause 6.1.1 of the guidelines of the 'MORTH' enclosed at Annexure-4 to the writ petition and which inter alia, provides that a minimum distance between a retail outlet and an intersection of a national highway with a rural road should be 300 meters. The same stipulation also is present at paragraph 4.5.1 of the guidelines issued by the Ministry on 24.7.2013 placed at Annexure-A to the counter affidavit filed on behalf of the Union of India. The legal position canvassed by Mr. Binod Kumar Singh, learned counsel appearing for the petitioner as regarding the location of a retail outlet abutting a national highway is sound on the stipulations present and there cannot be any disagreement that a retail outlet situated *off* a national highway should carry a minimum distance of 300 meters from any intersection of the national highway with a rural road. However such distance prescriptions is not absolute and also cater to the eventualities as present in the contest in hand. The guidelines of the Ministry even while prescribing as such, has also taken note of an eventuality where a suitable location may be found within the



prohibitory distance and which is present at clause 4 of the guidelines dated 25.9.2003 and is reiterated in the subsequent guidelines issued by the Ministry on 24.7.2013 enclosed at Annexure-A to the counter affidavit of the Union of India which becomes eloquent from a bare reading of the stipulation present at page 154 which forms a part of the guidelines and provides that where the location is at less than 300 meters from intersection then a service road is to be provided for the purpose.

It is following such stipulations present in the guidelines that a request has been made by the respondent-Corporation before the Ministry, a copy of which is present at Annexure-F to the counter affidavit of the Corporation and is dated 16.2.2015 seeking permission to construct an approach road to the retail outlet and which communication is accompanied with the drawings and guidelines issued by the Ministry from time to time. The permission sought by the 'Corporation' has been granted by the Ministry and communicated vide letter dated 27.5.2015 vide Annexure-G to the counter affidavit of the 'Corporation' but is accompanied with certain obligations to be performed by the 'Corporation'. In fact the directions contained in the 'No objection' granted by the Ministry to the layout plan also provides that the licence deed would be signed only after compliance of paragraph 4.1 of the licence deed as



well as the conditions stipulated thereafter in the letter. The Ministry has not stopped at that stage rather the Executive Engineer concerned has been directed to examine the safety condition at site after the approach road is constructed and in case the conditions are found adverse, has been directed to report the matter to the head office. The letter of the Ministry itself confirms that the Ministry taking note that the situs of the retail outlet is admittedly within a distance of 300 meters from the intersection of a rural road, has granted 'No objection' only upon construction of a service road connecting the retail outlet in tune with the guidelines and its confirmation by the Executive Engineer.

As rightly submitted by Mr. Sanjay, learned Additional Solicitor General the Ministry has no personal interest in the grant of consent rather the Ministry has issued appropriate direction to the 'Corporation' to first ensure compliance of the legal prescriptions which is to be verified and reported by the Executive Engineer.

Although a counter affidavit has been filed by the National Highway Authority of India but they have not contested the position explained by the respondents.

In the circumstances discussed where the Ministry itself has granted no objection to the situs of the retail outlet of the

private respondent in consideration of their own guidelines, in my opinion, the petitioner can raise no grievance. The ‘no objection’ so granted by the Ministry is accompanied with stipulations and it is for the Ministry to satisfy itself whether those stipulations stands complied by the ‘Corporation’.

The discussion on the factual aspect advanced on being considered in the backdrop of the guidelines issued by the Ministry, in my opinion, in view of the circumstances reflecting from Annexures ‘F’, ‘G’ and ‘H’ to the counter affidavit of the ‘Corporation’ the petitioner can raise no grievance and even on merits there is no case to grant indulgence to the prayer made by the petitioner.

For the reasons and discussions made above the writ petition is dismissed. Interlocutory applications, if any, stands disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR	
CAV DATE	
Uploading Date	11-07-2016
Transmission Date	