IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2832 of 2012

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Pragati Mehta son of Shiv Shankar Mehta, Resident of Modern Art Studio, Gidhaur, P.S. Gidhaur, Disrict Jamui

.... Petitioner

Versus

1. The Union of India through the Ministry, Govt. of Bihar, Patna
2. The Chairman-cum-Managing Director (C.M.D.), Hindustan Petroleum Corporation Ltd., Mumbai, Jamshedjee Tata Road, Mumbai-400020
3. Dy. General Manger, Hindustan Petroleum Corporation Ltd., Lucknow
4. Senior Regional Manager, Hindustan Petroleum Corporation Ltd., Lok Nayak Jai Prakash Bhawan, 6th Floor, Post Box No. 40, Dak Bunglow Chowk, Patna-1

.... Respondents

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Appearance :

For the Petitioner	:	Mr. N.K. Agrawal, Sr. Advocate
		Mr. Kunwar Narayan Jamuar, Advocate
For the HPCL	:	Mr. Rajeev Prakash, Advocate
For the Intervenor	:	Mr. Ranjit Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 02-05-2016

The present writ petition has been filed for quashing the letter/order dated 14.10.2011 vide Ref. No. PTRO/NRO/R1/AB/ 009 issued by Sr. Regional Manager (Respondent no. 4) by which the petitioner has been conveyed that the provisional merit panel released by Hindustan Petroleum Corporation Limited subsequent to the interview conducted on 10.02.2011 at Patna Retail Regional Office for Retail Outlet dealership at the location within 3 K.Ms. from Gidhaur and Jamui Road, Sl. No. 82, District Jamui has been cancelled.

2. At the very outset, learned senior counsel for the petitioner very fairly submits that during the pendency of the writ

petition, a similar issue has also been decided by a coordinate Bench of this Court in Amit Kumar Singh Vs. M/s Hindustan Petroleum Corporation Ltd & others [2013(3) PLJR 512] wherein a similar challenge on the strength of the provisions of Section 100(j) of the Transfer of Property Act but without furnishing the requisite document was repealed with the following observations;

> "17. So far as the first part is concerned, it is first necessary to look to the advertisement and Brochure prescribed for guidance to all the public sector oil companies, including HPCL, for selection of retail outlet dealers. It is not disputed that Information Brochure of 2010 is the guidelines which had to be followed by the Corporation in matters of award of dealership in question. This is also not disputed that Guidelines deal with, in detail, the documents required for offered land, on the basis of which marks had to be allotted. The Guideline of 2010 is annexed as Annexure-R/1 with the counter affidavit of Corporation. Clause 12 of the Guidelines contains details of "Availability of suitable land" and on the next page specific documents are indicated which are required in respect of the land for consideration of an application. This is not disputed that, amongst the documents of land, 'a registered lease deed for a minimum period of 15 years with a renewal option of 15 years' was also acceptable but it had to be accompanied with a 'consent letter to lessee by lessor for sub-lease of the offered land to the HPCL', unless the lease agreement itself specified that no consent for sub-lease was required. This is also not disputed that the two lease deeds, executed in favour of the petitioner by the two lessors, did not contain any such stipulation permitting for sub-lease of the plots in favour of the Corporation nor did they accompany with any consent letter of the lessors as required. Thus, this essential requirement, laid down by the Brochure, did not stand fulfilled in the offer of land by the petitioner. The entire augment of learned counsel, in support of the case of the petitioner, is based on the said provisions of Section 108(j) of the Transfer of Property Act. He may be right that

the said provisions of the Act do give general power to a lessee to sub-lease the property to any third party, but whether that is binding on the Corporation and makes it obligatory for it to waive the requirement of such stipulation in the lease deed itself or a supporting consent letter in that regard, is the question for consideration. This Court is of the view that the provision in the Brochure, that the lease deed should contain such stipulation or accompany with consent letter in this regard from the lessor or the deed itself should specify that no consent for sub-lease was required, has apparently been inserted into Brochure deliberately as, having so much at stake in a commissioned outlet and with so much public interest involved, the Corporation cannot be exposed to the risk of being dragged into litigation on this score. As a lease deed in favour of the applicant does not extinguish the right of the owner and its sub-lease to the Corporation creates a third party right, the Corporation can never be expected to take a risk of entering into litigation with the owner of the land on the ground that owner had not specifically consented to sub-lease of the property to the Corporation and that the owner of the land, at the time of registering the lease deed in favour of the applicant, did not know that the land was to be subleased to the Corporation for such a long period. The said provision of the T.P. Act may be a general provision governing the law in the field, but surely it is open to the Corporation to put extra rider and condition for an applicant while offering a land to safeguard its interest in the long run. This Court, therefore, cannot hold that the Corporation was under any obligation to ignore the said requirement in the lease deeds, accompanying the application of the petitioner, and accept his application as valid by taking support from the said general provisions of the Transfer of Property Act. It may also be pointed out that the Brochure provides for terms and conditions under which selection of a dealer has to be made by the Corporation, from which the Corporation has no liberty to deviate. In this case, petitioner has not challenged the said requirement laid down in the Brochure. Hence, it is not open to the petitioner to pray for a mandamus from this Court to the Corporation to ignore it. Moreover, if the submission of learned counsel for the petitioner is accepted, then it will amount to directing the Corporation to keep itself abreast with thousands of acts and rules and accept applications even if not conforming to the terms and conditions of the Brochure, by taking aid of one act/rule or another. This will only amount to throwing the Brochure to the winds and creating a state of uncertainty and chaos for the Corporation.

18. It is an admitted fact that petitioner did not submit any consent letter or any affidavit by his lessors with his application. It is worthwhile to note that even with his objection, petitioner did not submit any consent letter of his lessors. It is clear that he got all the documents created in his favour by his lessors and the Government officials only after receipt of the letter of the Corporation dated 13.9.2010, requesting him to submit supporting documents. Therefore, on the basis of the documents created later on, award of zero marks to the petitioner under the said head at the time of interview cannot be held illegal. Therefore, this Court does not find any error in the decision of the Corporation in the matter."

3. In the above view of the matter, therefore, the writ petition cannot succeed and is dismissed as such.

(Vikash Jain, J)

B.T/-

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