

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1866 of 2015

IN

Civil Writ Jurisdiction Case No. 1423 of 2014

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Smt. Asha Lohia W/O Sri Sidharth Lohia Resident Of Village- Hasanpur Surat,
P.S.- Patory, District- Samastipur, Proprietor Of The Firm Namely M/S Satyanarain
Fuels, Situated At Village- Shahpur Undi, P.S.- Patory, District- Samastipur

.... Appellant

Versus

1. The Union Of India, Through The Secretary, Ministry Of Petroleum & Natural Gas, Shastri Bhawan, New Delhi
2. The Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Bhawan, 5th Floor, Dak Bungalow Chowk, Patna, District- Patna Through The General Manager
3. The Deputy General Manager, Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Bhawan, 5th Floor, Dak Bungalow Chowk, Patna, District- Patna
4. Sr. Divisional Manager (Retail Sales), Begusarai Divisional Office, Indian Oil Corporation Ltd. (M.D.), P.O.- Barauni Oil Refinery, District- Begusarai- 851114
5. The Assistant Manager (Retail Sales), Begusarai Sales Area, Indian Oil Corporation Ltd. (M.D.), Begusarai Divisional Office, P.O.- Barauni Oil Refinery, District- Begusarai- 851114

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Thakur, Adv.
For the UOI : Mr. A.B.Mathur, Adv.
For the IOCL : Mr. K.D.Chaterji, Sr.Adv.
Mr. Anil Kumar Sinha, Adv.
Mr. Amlesh Kumar Verma, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 23-06-2016

This is an appeal preferred under Clause X of the Letters Patent of this Court assailing an order, dated 28.8.2015, passed by the learned Single Judge in C.W.J.C.No. 1423 of 2014, whereby the learned Single Judge has dismissed the writ application filed by the appellant.

2. We have heard Mr. Sunil Kumar Thakur, learned counsel for the appellant, and Mr. K.D.Chatterji, learned Senior Advocate, appearing on behalf of the respondent- Indian Oil Corporation Limited and its officials.

3. Responding to an advertisement published by the Indian Oil Corporation Limited (hereinafter referred to as 'the IOCL') published on 24.9.2011, the appellant had applied for being considered for her selection as retail outlet dealer, for the location at Shahpur Undi, Patori, District Samastipur. In Clause 4 of the said application form, an applicant was required to answer a query as to whether she or any of her close relatives was a dealer or LOI holder of any MS-HSD/ SKO- KDO dealership or LPG distributorship of any oil company. In addition, an applicant was required to submit an affidavit to this effect. The expression, "close relatives" for the purpose of affidavit was specified, in case of married applicant, as (i) spouse, (ii) unmarried son(s), (iii) unmarried daughter(s). Complying with the requirement of filing an affidavit to this effect, she made the following statement in her affidavit:

"That I am Married. That neither I nor my spouse, unmarried son(s)/ unmarried daughter(s) have dealership/ distributorships or hold Letters of Intent for Retail Outlet or SKO-LDO dealership or LPG distributorship of any Oil Company."



4. After having undergone the process of selection, the appellant was selected, whereafter a Letter of Intent was issued in her favour. The appellant, thereafter, obtained licenses required for running the retail outlet and said to have invested a sum more than 35 lacs in developing infrastructure for the said outlet, which was commissioned and became functional. On 28.6.2013, an agreement was entered into between the appellant and the Corporation. It appears that the Corporation subsequently learnt that the appellant's husband had a franchisee of ESSAR oil retail outlet. On the ground she had concealed this aspect in her affidavit, a show cause notice was served on her, on 2.1.2014, for termination of her dealership in view of misstatement in her application and the affidavit. She filed her reply to the said show cause notice, which was not accepted and accordingly, by an order, dated 5.3.2014, passed by the Divisional Manager (Retail Sales), Begusarai Divisional Office of the Corporation (respondent no.4), her dealership came to be terminated. The appellant challenged the said show cause notice, dated 2.1.2015, and the subsequent order of termination, dated 5.3.2014, by filing an application under Article 226 of the Constitution of India, which gave rise to C.W.J.C.No. 1423/2014, aforementioned.

5. It is evident from the impugned order, dated 5.3.2014, that termination was made on the ground that she had concealed essential



information and provided incorrect/ false affidavit at the time of submission of her application. This is to be noted that Serial No. 2(e) of the advertisement, dated 24.9.2011, clearly prescribed that a candidate would not be eligible for dealership if his/ her close relatives, including spouse, had any LOI/ dealership/ distributorship of any oil company. A plea was taken by the appellant that the expression *any oil company*, occurring in Serial No. 2(e) of the advertisement, would not include a private oil company, did not find favour with the respondents.

6. Learned Single Judge, upon analyzing the pleadings on record and submissions advanced on behalf of the parties in the writ proceedings, dismissed the writ application taking into account the fact that the said Essar Oil Limited was, admittedly, authorized by the Central Government in its resolution, dated 8.3.2002, for the purpose of marketing MS and HSD and, consequent upon such authorization, the Essar Oil Limited came within the description of *oil company* as occurring in clause 2(e) of the advertisement, even though it was a Private Sector Oil Marketing Company and not one of the Public Sectors Undertakings. Learned Single Judge held that the word 'any' preceding the term 'Oil Company' was sufficient to include 'all' Oil Companies, which had been authorized by the Central Government, either public or private.



7. Mr. Sunil Kumar Thakur, learned counsel appearing on behalf of the appellant, has vehemently argued that Essar Oil Company does not come within the meaning of Oil Companies as mentioned in the advertisement and on the ground that the appellant did not disclose the fact that her husband was holding dealership of Essar Oil Company, her statement, in the application and the affidavit, could not have been treated to be incorrect. It has been submitted that the Oil Company has been defined in the guidelines issued by the Ministry of Petroleum and Natural Gas vide No. P-39012/1/1999-IOC dated 9.10.2000, Clause 1.1(xv), which reads thus:

"xv. Oil Company means any person, firm or company authorized by Central Government who is engaged in the sale of Motor Spirit, High Speed Diesel, Liquefied Petroleum Gas, Superior Kerosene Oil or Light Diesel Oil to consumers or dealers. (Oil Company means any of the four Oil Marketing Public Sector Undertakings viz. Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited, Hindustan Petroleum Corporation Limited and IBP Co. Limited)"

8. It has also been argued that for the first time, the change was made in the Brochure, dated 9.10.2014, declaring an intention to include Private Sector Oil Marketing Companies. It has, accordingly, been contended that the appellant was under a *bona fide* belief that the

expression "any Oil Company" referred only to the Public Sector Undertakings Oil Companies only and not to Private Oil Companies.

9. It has, accordingly, been submitted, on behalf of the appellant, that the learned Single Judge ought to have interfered with the decision of termination of the appellant's dealership.

10. Mr. K.D.Chatterji, learned Senior counsel appearing on behalf of the respondent Corporation, has submitted that the submission made on behalf of the appellant, that since the name of Essar Oil Company did not figure in the Ministry's circular, dated 9.10.2000, and, therefore, the said company should not be treated to be an Oil Company within the meaning of Clause 1.1(xv) of the said circular is not at all tenable. He contends that Essar Oil Company Limited was not in existence in the year 2000 and, therefore, there was no question of reference of the said Company in the said circular. He has also submitted that the definition of Oil Company is wide enough to mean any person, firm or company authorized by the Central Government, who/ which is engaged in sale of Motor Spirit, High Speed Diesel, Liquefied Petroleum Gas, Superior Kerosene Oil or Light Diesel Oil to consumers or dealers.

11. Mr. Chatterji, learned Senior counsel, has placed reliance on a Supreme Court's decision in the case of B.R.Chowdhury v. Indian Oil Corporation Ltd. & ors., reported in (2004)2 SCC 177, to

submit that the appellant's plea of her *bona fide*, while answering in negative to the query, whether she or any relative of her held any LOI/ dealership/ distributorship etc. does not deserve to be accepted in the background of the facts and circumstances of the case.

12. The questions, which have emerged to be dealt with, in the present appeal, are as to whether (i) Essar Oil Company Limited is a Oil Company within the meaning of Clause 2(e) of the notice dated 24.9.2011 and (ii) Whether in the facts and circumstances of the case, it was solemn obligation, on the part of the appellant, to have stated, in the application form and in the affidavit, that her husband held the dealership of Essar Oil Company Limited.

13. Dealing with the second question first, we are of the considered view that the appellant was required to disclose the fact that her husband was holding dealership of Essar Oil Company Limited at least in her affidavit. Non-disclosure of this crucial fact, in our opinion, amounts to intentional suppression of material fact, which was relevant for consideration of her application for the said dealership. The question, as to whether Essar Oil Company Limited is a "Oil Company" within the meaning of clause 2(e) of the advertisement, could have been raised and considered thereafter. At least, the respondent Corporation would have had an occasion to take a decision in this regard. Considering the conduct of the appellant in

suppressing material fact at the time of submission of the application, we are of the considered view that the learned Single Judge rightly dismissed her writ application.

14. Mr. Chatterji has rightly relied on the Supreme Court's decision in the case of B.R.Chowdhury v. Indian Oil Corporation Ltd. & ors. (supra). In the said case, Indian Oil Corporation had invited applications for appointment of dealer to a retail outlet. Though the invitation was opened to all, but preference was to be given to unemployed youth. Though the appellant, in that case, was engaged as a "Trainee Professional Sales Representative", he mentioned "NIL" against the relevant column relating to status of his employment and, thus, had succeeded in getting dealership. On an objection having been raised, the Corporation considered the matter and had cancelled dealership given to the appellant of that case. A plea was taken that he was merely a trainee and was not an employee at the time of submission of application form. The Supreme Court rejected the plea of *bona fide* and held that "*that amounted to suppression of material fact.*" The Supreme Court held that nothing could have prevented the appellant of that case from mentioning in the relevant column of his application as against the status of employment, at least, as a trainee. Relevant portion of paragraph 11 of the said decision is being extracted hereinbelow for the benefit of quick reference:



"11. In the application filed by the appellant for securing dealership, as against column 8(c) whether he was temporarily employed, he has filled as "No". In column 9, as against the present occupation, he has shown as "Nil". These statements made by the appellant in column 8(c) and column 9 amount to suppression of material fact. This apart, nothing prevented the appellant from mentioning in column 9 of the application as against the status of employment at least as a trainee. But on the other hand, in column 9 he has shown the status of occupation as "Nil". The contention advanced on behalf of the appellant that the status of occupation as shown was bona fide, cannot be accepted. In view of paragraph 10 of the affidavit filed by him coupled with paragraph 56 of the memorandum, the Corporation was well within its right to terminate the dealership of the appellant, There is no substance in the argument advanced on behalf of the appellee that the Corporation passed the order of termination of the dealership of the appellant mechanically and without application of mind. On the facts found and in view of the findings recorded by Mr. Gupta, it cannot be said that the order passed by the Corporation terminating the dealership of the appellant was mechanical or without application of mind. This Court in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*, reported in (2003)3 SCC 437, while dealing with the effect of suppression of material information took a view that the purpose of seeking



information cannot be defeated which has bearing on the selection. Added to this, if only the appellant had given correct information about the status of his occupation as on the relevant date, as rightly held by the learned Single Judge, which view was affirmed by the Division Bench of the High Court, possibly the position would have been different. At any rate, the appellant is bound by his own affidavit and the memorandum of agreement mentioned above."

15. We do not find, therefore, any infirmity in the reasoning assigned by the learned Single Judge for dismissing the writ application on the ground of deliberate suppression/ mis-statement by the appellant at the time of submission of her application.

16. Coming to the first question as formulated above, learned Single Judge, in our opinion, rightly held that the word 'any' preceding the expression "Oil Company" widens its definition and it means to include 'all' Oil Companies, which had been authorized by the Central Government, whether public or private.

17. In view of the discussions, as above, we do not find any reason to interfere with the order, under appeal, passed by the learned Single Judge.

18. This appeal is, accordingly, dismissed.

19. There shall, however, be no orders as to costs.

(Chakradhari Sharan Singh, J)

I.A.Ansari, ACJ I agree.

(I.A.Ansari,ACJ)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	24.11.2015
Uploading Date	23.06.2016
Transmission Date	NA