

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17170 of 2013

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Vivek Singh S/O Sri Shyam Sunder Prasad Singh Village/ P.O- Sonbarsa Ghat,
P.S- Chautham, District- Khagaria.

.... Petitioner/s

Versus

1. The State Of Bihar through Collector Khagaria.
2. General Manager, Indian Oil Corporation, Marketing Division, Bihar State Office, Indian Oil Corporation, Loknayaak Jaiprakash Bhawan (5th Floor), Dak Bunglow Chowk, Patna, Bihar.
3. Deputy General Manager (Visilenece), Indian Oil Corporation, L-2, Goriya Hat Road, South Dakuria, Kolkata.
4. Sr. Manager, India Oil Corporation, Begusarai Divisional Office, P.O- Barauni, Oil Refinery, Begusarai, Bihar.
5. Ashish Ranjan S/O Vijay Kumar Singh Resident Of Village/ P.O- Sonbarsha Ghat, P.S- Chautham, District- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Agrawal Mr. Rakesh Chandra
For the IOC	:	Mr. Anil Kumar Sinha
For the Respondent No. 5:		Mr. J.S. Arora, Sr. Advocate Mr. Neeraj Kumar Gupta

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
C.A.V. JUDGMENT
Date: -09-2017

In the present writ application, the petitioner seeks a writ of Certiorari for quashing the selection of Respondent No. 5 for dealership for petrol/diesel Rural Retail Outlet (Kisan Sewa Kendra) for the location of Sonbarsa Ghat, Choutham in the district of Khagaria and a further direction to the Indian Oil Corporation for selecting the petitioner. The petitioner further prays for stay of the selection of the Respondent No. 5 and the further process of establishment of Kisan Sewa Kendra till the disposal of the writ application.

2. On 07.10.2015, this Court had issued notices to add the Respondent No. 5 as party respondent, whereafter he has also appeared to



contest this matter.

3. It further appears that after the filing of the writ application, no interim order was ever issued by this Court and, therefore, the Petrol/Diesel Rural Outlet (Kisan Sewa Kendra), which had been allotted to the Respondent No. 5, the Respondents have proceeded to take further steps in pursuance of the Advertisement.

4. In the background of the impugned order lies the following circumstances:-

- I. In the year 2010, the Indian Oil Corporation issued an advertisement inviting application for the dealership of the petrol/diesel rural retail outlet for the locations Sonbarsha Ghat, Choutham, under Khagaria district.
- II. The petitioner as well as Respondent No. 5 applied for the said dealership and subsequently after verification of the land of the petitioner and Respondent No. 5, the Land Evaluation Committee (L.E.C.), negated the claim of both the parties, as, according to the Indian Oil Corporation, their land did not fall in the area of Sonbarsha Ghat. Consequently, applications were rejected.
- III. The petitioner as well as Respondent No. 5 filed their objections to the aforementioned rejection order in which they have stated that there is no Mouza in the name of Sonbarsha Ghat rather Sonbarsha Ghat is a famous place in Mouza Borne and in support of their claims, a certificate was granted by the Circle Officers, Choutham. The petitioner had also made serious allegations against the officials respondents regarding the members of the Land Evaluations Committee. After enquiry, it was found by the officials respondents that the claim regarding the lands were correct. However, the allegation regarding bias by member of the Land Evaluations Committee was not entertained.
- IV. On 26.06.2016, a merit list was published by the official respondents awarding 91.83 marks to the petitioner and further giving 92 marks to respondent No. 5 (Annexure-1). Being aggrieved by such allocation of marks by the Respondents, the petitioner has challenged the allotment of dealership on the basis of the marks so allotted to Respondent No. 5 on the ground that respondent No. 5 does not possess qualification to the specification of land as he did not possess the lands with proper



dimension as specified in the Brochure.

5. Learned counsel for the petitioner submits that Clause 10 of the advertisement gives clear terms and conditions regarding the manner in which the forms were to be filled up and the relevant documents which were to be attached with the application form. The required directives as contained in Clause 10 of the Advertisement are detailed hereunder:-

“Clause 10(a) Advertisement: The applicants are also asked to furnish Annexure-C, i.e. Index/Check List of the documents, on the top of the application form.”

6. Clause 10 (d) Advertisement which corresponds to Clause 10(h) of the Brochure for Selection (Annexure-6, at Page 45): No additional documents whatsoever will be accepted or considered after the cut off date of the application.

Further as per the Brochure:

“Clause (d) Brochure: Filled application along with relevant enclosures, complete in all respect, be submitted so as to reach the office address before due date, i.e. 13.08.2010.

Clause(g) Brochure : No addition/deletion/alteration will be permitted in the application, once it is submitted.

Clause 1(Kha) of the Advertisement further required that for establishment of KSK the minimum requirement of land will be 20 m. X 20 m. Equivalent to 4303.36 sq. ft.”

7. It was thus apparent from the index/checklist of the documents submitted by Respondent No.5 at serial No. 16 that the he had only submitted a copy of the registered lease deed containing four pages (Annexure 4 at page 30) Furthermore, the lease deed bearing deed No. 5689



dated 29.07.2010 which was executed by one Sanjeev Kumar, son of Jayat Kumar Singh and Sanjula Kumari daughter of Sri Lal Kumar Singh, jointly in favour of respondent No. 5 Ashish Ranjan son of Vijay Kumar Singh for a total area of 39 ft. in width north to south and 70 ft. long under Khata No. 456 Plot No. 6630 having area 2730 sq ft. only. Thus, it was contended by the petitioner, that the requirement of the minimum area for establishment of Kisan Sewa Kendra was 20 x 20 meters i.e. 4303.36 sq. ft., whereas the land offered by respondent No. 5 by only one document i.e. the registered lease deed was of an area 2730 sq. ft. Moreover, as per clause 7 of the advertisement which provides in respect of the marks to be awarded to the different categories having total 100 marks the following parameters have been fixed:

Clause 7 (ka) provides in the case of:
“Own lands”.....35 marks
“Firm offer”.....25 marks

8. Apart from other parameters fixed for markings, it was further submitted by the petitioner, that the Respondent No. 5 having not offered any document for their “own land” and having submitted only the registered leased deeds of his agnates would fall under the category “firm offer” in accordance with Clause 14 (e) of the Brochure. It was further submitted that the Annexure 6 at page 53 also stipulated that in addition to the document, a notarised affidavit was also required to be filed. Nevertheless, the Respondents, ignoring such stipulations in the Advertisements or



Brochures, have published the marks-sheet for the said location in which the petitioner has been awarded 91.83 marks, whereas Respondent No. 4 has been granted marks over the petitioner and has secured 92 marks. Thus by a fraction of a decibel, the petitioner has been placed second which is wholly arbitrary. It was further pointed out by the learned counsel for the petitioner, that in order to select the candidate of the choice the Respondent-Corporation, for extraneous reason, has granted to the respondent No. 52.83 marks under the heading “capacity to generate business in future plan growth” as against the three marks allotted to respondent No. 5. It was further urged by the petitioner that in no case could the Respondent No. 5 be granted more marks with regard to land offered by him for two reasons:-

- i. Respondent 5 has offered as area of 2730 sq. ft. of land only as against the total required area of 4303.36 sq. ft., thus should have been awarded zero marks.
- ii. The land of the respondent No. 5 does not fall under the “own land category” eligible for award of 35 marks, rather will fall under “firm offer” eligible for award of 25 marks only which has been elaborately dealt with in the Brochure (Annexure-6 page 53) and the family unit has been defined at clause 6 of the Brochure (page 43).

9. It was thus contended by learned counsel for the petitioner that the terms of the eligibility criteria having not been followed strictly by the Indian Oil Corporation, their action was far from being “Reasonable” and warranted interference by this Court. The respondent Indian Oil Corporation has illegally and arbitrarily considered respondent No. 5 for selection as KSK dealer even though the documents offered by him were not clear and apparent and were ambiguous and liable to be rejected, or at



best, were eligible for lower marks than the petitioner.

10. In support of his contention learned counsel for the petitioner has relied on the decision of this Court reported in 2012 (2) PLJR 783 (M/s Indian Oil Corporation Limited vs. Raj Kumar Jha). In the said case, this Court has held as follows:-

“9. We are of the opinion that the Corporation being the State within the meaning of Article 12 of the Constitution is supposed to act fairly, reasonably and uniformly and has to be objective in its approach. Once the standard is set out in the advertisement, the Corporation has to adhere to the said standard without any variation. In case, the Corporation allows any alteration the same will amount to subjective approach which is frowned upon by the Courts time and again. To remain objective the Corporation is required to adhere to the standards mentioned in the advertisement. In the present case, it is not in dispute that the application made by the writ petitioner was not in conformation with the requirements mentioned in the advertisement. In our opinion, the Corporation was justified in rejecting the application of the writ petitioner.

10. The learned Single Judge ought not to have interfered with the decision of the Corporation which was taken in consonance with the terms and conditions contained in the advertisement. Besides; may be, in the present case it was a mere typographical error. However, there might be a case of mischief or misrepresentation also. It is difficult to draw a line where an error ends and a mischief or misrepresentation begins. The best way to avoid discrimination is strict adherence to the standards mentioned in the advertisements.”

11. Per contra, the Indian Oil Corporation has filed a counter affidavit submitting that the selection of respondent No. 5 is wholly legal and valid as against the rejection of the case of the petitioner and in accordance with the guidelines as contained in the Brochures of the Respondent Corporation. It was submitted by the respondent corporation that the lease deed No. 5689 dated 29.07.2010 submitted by respondent No. 5 with his application form shows that the dimension of the offered land is 68 ft. x 70 ft. i.e., 20.73 meters x 21.34 meters which is more than the



minimum requirement of 20x20 meters of lands. It was further submitted with reference to Annexure R/2 dated 04.08.2014, which is a Title Search report by the lawyer of the Indian Oil Corporation, that the respondent No. 5 has a marketable title and valid right and peaceful possession over the aforesaid land as Lease owner and Lessee. The said land is free from all encumbrances and disputes and does not come under Gair Mazuran Aam-Khas, Kaiser-e-hind, Khas Mahal, Bhoodan Religious Trust Board and Lands Ceiling Act. No part of the said land has been acquired nor any acquisition proceeding is pending before any authority. It was further submitted in para 12 of the counter affidavit that the lease deed dated 29.07.2010 has a recital to the effect that the respondent No. 5 has title over the offered land (i.e. the land leased by the cousin of the respondent No. 5 along with the land under the ownership of respondent No. 5) have a combine area of 68 ft. x 70 ft. which is greater than the minimum requirement of 20 meters x 20 meters which conforms to the specification called for in the Brochures and stands supported by the report of the Advocate of the Corporation in his Title Search report.

12. Thus, the entire grievance of the petitioner appears to be misconceived and is fit to be rejected.

13. Furthermore, there being no interim order in favour of the petitioner, the Respondent Corporation has proceeded to issue Letter of Intent in favour of respondent No. 5 and thereafter the retail outlet has already been commissioned. Thus, the writ application has been rendered



infructuous as at no point of time has the petitioner filed any amendment petition for amendment of pleadings. Accordingly, the writ is fit to be dismissed on this score also.

14. Referring to a decision of the Apex Court available in (2005) 6 SCC 138 (Master Marine Services (P) Ltd. and Ors. vs. Metcalfe & Hodgkinson (P) Ltd. and Ors.), counsel for the respondent has drawn the attention of this Court with regard to distribution of State largesse/government contracts and Articles 14 and 226 of the Constitution of India the judgment referred to reads as thus:-

“Principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. The modern trend points to judicial restraint in reviewing administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. Fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, should the court interfere.”

15. Learned counsel for the Respondent Corporation has also referred



judgment of Apex Court in the case of Sanjay Kumar Shukla Vs. Bharat

Petroleum Corporation Limited and Ors. reported in (2014) 3 SCC 493:-

Constitution of India-Art. 226-Government contracts- Nature and scope of judicial review, reiterated- Court to be vigilant against agitation of private disputes under writ jurisdiction when there is no improper exercise of power on part of public authority concerned – Caution to be exercised while exercising extraordinary jurisdiction in contractual matters since serious consequences entail as result of entertainment of writ petition – Power to be exercised only when justified by public interest upon having due regard to relevant facts – Delay in inevitable judicial process could work in different ways like deprivation of intended benefit of service or facility to public; escalating costs burdening public exchequer and abandonment of half completed works and projects due to ground realities in fast-changing economic/market scenario, etc.- On facts held, High Court erred in exercising extraordinary jurisdiction under Art. 226 with a somewhat free hand oblivious to the consistently repeated note of caution sounded by Supreme Court with regard to such exercise of power – Whether retail outlet of respondent Corporation was to be operated by appellant or R-7 was of no consequence to ultimate beneficiaries of service – Corporation directed to award same to appellant by completing requisite formalities if it was of the view that operation of retail outlet was still justified by exigencies - Further observed, that instant litigation initiated by R-7 does not seem to be bona fide and driven by desire to deny fruits of selection to appellant.”

16. Responding to the notice issued by this Court, respondent No. 5 has also entered appearance. It is submitted by learned counsel for Respondent No. 5 that an advertisement dated 14.07.2010 was issued by the respondent Indian Oil Corporation inviting applications for selection for suitable/eligible candidates for the appointments of Kisan Sewa Kendra (KSK) petrol pump for 26 location in Bihar including the location at serial No. 283 “Sonbarsha Ghat, Choutham, district Khagaria” under the “open” category in which the last date of duly filled form along with all enclosures have been fixed at 03.08.2010. The respondent No. 5 as well as the petitioner had applied along with the relevant documents. It was submitted



that on 13.01.2011 the, Land Evaluations Committed (LEC) conducted the verification of land. The interview for the same was conducted on 14.01.2012, but both were awarded zero marks as they were said to be not belonging to the location Sonbarsha Ghat. However, on a representation filed by the petitioner as well as respondent No. 5, the matter was placed for re-appraisal. On 24.04.2013, after considering the additional documents/submission made by both the parties and verification of land done by the LEC, the revised marksheet was published wherein respondent No. 5 was declared first empanelled candidate and the petitioner as a second empanelled candidate. Accordingly, after being selected the respondent No. 5 was issued the Letter of Intent on 26.08.2013, wherein it was required for compliance with the terms and conditions of the Letter of Intent. The respondent No. 5, thereafter, duly complied with the terms and conditions and in pursuance thereof on 31.03.2015, the Corporation applied for a No Objection Certificate pertaining to the land offered by respondent No. 5 along with the proposed map. After due verification from the Circle Officer and other departments, the District Magistrate, Khagaria vide its letter dated 428/g dated 31.03.2015, has granted no objection certificate for setting up the proposed KSK outlet over the land in question (Annexure-C filed by respondent No. 5 page 184). Thereafter, on 27.07.2015, the respondent No. 5 has invested about 45 lacs for the establishment of the retail outlet and the same was commissioned by the respondent Indian Oil Corporation on the 27th July, 2015, by entering into a dealership agreement dated 28.07.2015



(Annexure-D filed by respondent No. 5). Since the said date, the retail outlet is functioning and catering to the requirements of the local people especially engaged in agriculture.

17. Learned counsel for the Respondent No. 5 further submits that be that as it may, the selection of Respondent No. 5 has been strictly in line with the Brochure and if accordingly the evaluation of the marks has been done in tune with Clause 13.1.1 of the Brochure, wherein under the heading i.e. “allocation of marks on various parameters and sub heads,” it has been specifically stated that a candidate is entitled to full 35 marks if he submits a registered lease deed for a minimum, period of 19 years and 11 months on the date of application. Since the petitioner, fulfilled the said criteria the respondent No. 5 was awarded full 35 marks and declared to be successful. It was further submitted by respondent No. 5 that the petitioner has also admitted that respondent No. 5 along with his two lessors had purchased three kathas of land and the remaining two persons have executed long term registered lease deed in favour respondent No. 5. The said area of three kathas of land is more than the stipulated area of 20m x 20m in the advertisement. As such, there is no suppression of material fact by the respondent No. 5 nor has he submitted any forged fabricated document before the Indian Oil Corporation and only after selection and issuance of Letter of Intent, the other relevant document in support of title has been verified by the Corporation.

18. So far as the contention raised by the petitioner that no additional



documents could be considered by the respondent Corporation for the evaluation of marks is concerned, it is submitted that the documents which have been submitted at a later stage, has been submitted only for further verification of the land pertaining to the question of right, title and interest of the land offered by respondent No. 5. Such documents have also been supplied by the petitioner himself to which he also admits and thus at the time of re-verification, if both had brought in documents, the petitioner cannot question the same. Respondent No. 5 further submitted that prior to commissioning, a title search is conducted by the Advocate of the Indian Oil Corporation regarding the verification of title regarding the Offer, which has been duly cleared by the Advocate. Furthermore, an NOC has also been issued by the District Magistrate, Khagaria, whereafter the dealership of respondent No. 5 has been commissioned.

19. Learned counsel for the respondent No. 5 has also submitted that though the writ petition was filed in the year 2013, but it appears from the records of the case, that at no stage, was any step taken by the petitioner after issuance of Letter of Intent and or issuance of No Objection Certificate by the District Magistrate, for grant of any interim relief and as such the dealership has been commissioned. It was further pointed out by the respondent No. 5 that as per clause 17.2 of the Brochures was relevant in the present context which reads as hereunder:-

“17.2 VALIDITY OF MERIT PANEL:

The merit panel will be valid for a period of one year from



the date of commissioning of the dealership. If within this period, the dealership offer to the first empanelled candidate is to be withdrawn for any reason whatsoever or the dealership is terminated on account of wrong statement made in the application or any other reason like proven ineligibility (due to complaint etc.) of the dealer or proven malpractice, IOCL will have the option of awarding dealership to the next candidate in the merit panel if he/she meets the eligibility criteria and after necessary field verification.”

20. Hence, it was contended by Respondent No. 5 that in view of Clause 17.2 also the petitioner could not reap any benefit as the validity of the merit panel is valid for a period of one year which has since lapsed even from the date of commissioning of the dealership, which is 27.07.2015.

21. Learned counsel appearing on behalf of Respondent No. 5 further placed reliance on a judgment of this Court reported in 2015(1) PLJR 481 (M/s B.B.Q. Constructions vs. State of Bihar). In the said decision this court has held that in a government contract whether there is notice inviting tender, the authority inviting tenders is bound to give effect, in meticulous detail to every term mentioned in the notice and is not entitled to waive even a technical irregularity of little or of no significance. Furthermore, in paragraph No. 25 and 38 of the said judgment, this Court has held as follows:-

“**25.** It is trite that judicial review by High Court under Article 226 of the Constitution of India cannot be exercised as an appellate authority over the administrator’s decision, which may be a wrong decision. A mere erroneous decision is not amenable to High Court’s extraordinary jurisdiction under Article 226 of the Constitution of India unless the decision is unreasonable, arbitrary, malafide or reached on consideration of factors, which ought to have been kept excluded or by ignoring such factors, which ought to have been taken into consideration before arriving at the decision.



38. Before proceeding to examine the rival contentions of the parties, we need to further point out that judicial review means Court's power to review action of other branches or levels of the Government. In the judicial review of a contractual matter, the writ Court will not sit as an appellate Court or as an appellate forum over the decision of the administrative authority concerned to award the contract in favour of any tenderer unless the decision-making process is unfair, non-transparent, arbitrary, motivated, biased, or contrary to the provisions of law and or *public interest*. Judicial review, in such a case, is not against the decision, but the decision-making process. So long as it is found that an administrative decision has been reached by taking into consideration all such factors, which were relevant, and by keeping excluded from the purview of consideration all such factors, which were irrelevant, the decision cannot, ordinarily, be interfered with by taking recourse to Article 226 of the Constitution of India unless the decision suffers from infraction of law. Judicial review is aimed at preventing arbitrariness and favoritism and is required to be exercised in larger *public interest*, or, when a decision, brought to the notice of the Court, reveals that the power has been exercised for a collateral purpose."

22. Thus, it was contended that the writ application is sans any merit and it is fit to be dismissed.

23. I have heard the parties at length and considered the rival submissions. It is contended by the petitioner that respondent No. 5 had applied for the same Kisan Seva Kendra at Sonbarsa Ghat Chautham, but their applications were rejected by the Land Evaluation Committee, but on representation made by them, the matter was reviewed on the basis of further clarifications and on 26.06.2013, the merit list was published by the official respondents wherein the petitioner got 91.83 marks and Respondent No. 5 got 92 per cent marks. Challenging the same, the petitioner contended in his representations to the official respondents, that the respondent No. 5 did not have the requisite land and there was variation



in the lease deed offered by him. The said representation was rejected by them on 17.07.2013, which is the subject matter of the present writ application.

24. The moot question to be answered in the present writ application is whether the Indian Oil Corporation considered the application of Respondent No. 5 even though he did not have the requisite dimension of the land and the lease deed dated 29.07.2010 was the only document which had been submitted by him at the time of application which proves his title over his “own” claimed land of 29ft as mentioned on the lease deed. The test would lie in assessing the Brochure and the Clause 10(h) which provides that no additional documents whatsoever will be accepted or considered after the cut-off date of the application. On perusal of entire circumstances of the case, it appears that both petitioner and Respondent No. 5, whose applications had been rejected by the Land Evaluations Committee, were again given the opportunity to present their cases wherein further documents were brought before the said Committee to establish their case. Thus, it can well be said that the aforesaid Clause 10(h) was waived for both the parties who had appeared before the Land Evaluations Committee for re-assessment of their documents wherein further material was perused by the authority before allocating marks to the respective parties. Thus, this ground of the petitioner is wholly untenable. Moreover, during the course of argument, it has been substantially demonstrated by the Corporation that the terms of the advertisement had been met by the



Respondent No. 5 and for the said reasons the Letter of Intent was issued in his favour. Further, as was contended by the Respondent Indian Oil Corporation, the lease deed dated 29.07.2010 has been stated to have the effect that respondent No. 5 has title over offered land, that is the land leased by the cousin of Respondent No. 5 and also the land under the ownership of respondent No. 5 and that it had a combined area of 68ft x 70 ft which is greater than the minimum requirement of 20m x 20m. It is further submitted that the title of land was confirmed in the Field Investigation Report (Annexure-R/1) which is done only after the candidate is selected and before the plot is commissioned. After the aforesaid, a fresh evaluation was done by the Land Evaluation Committee and merit of the empanelled candidate was published on 26.03.2013. Thus, the allegations of the petitioners are unfounded and this court finds that the authorities having carefully considered the documents of the parties before coming to a finding. Such a finding cannot be substituted by this Court as this Court is not sitting in appeal on those findings. At best, it can merely dwell into the reasonableness of the findings arrived at by the respondents by drawing its own conclusion.

25. On careful consideration of the entire gamut of circumstances, this Court feels that the action of the respondent Indian Oil Corporation is not unreasonable and cannot be said to be suffering from the vice of arbitrariness which should necessitate inference by this Court. As such, this Court would refrain from interfering with the decision arrived at by the



Indian Oil Corporation. The relief sought for by the petitioner, is for the aforementioned reasons, thus untenable, and is accordingly rejected.

26. In the instant case, as on date, the commissioning of the retail outlet is completing two years and thus the relief as sought by the petitioner is wholly untenable on both facts and laws and is fit to be rejected.

27. So far as the right of respondent No. 5 is concerned, it appears that the Indian Oil Corporation has already entered into a contract with respondent No. 5 in exercise of its powers which is given under Articles 298 and 14 of the Constitution of India and a contract which has been entered into is not open to challenge on the ground of violation of Article 14 or any other ground available on public law field. This aspect of the matter stands decided in the case of Mahabir Auto Stores and Ors. vs. Indian Oil Corporation and Ors. 1990 (3) SCC 752 in which the principle as spelt out in the case of M/s Radha Krishna Agarwal and others vs. State of Bihar and others has been reiterated. In the said judgment reported in (1977) 3 SCC 457, it has been held as such at paragraph No. 9 and 10:-

“It is true that Article 14 of the Constitution imports a limitation or imposes an obligation upon the State’s executive power under Article 298 of the Constitution. All constitutional powers carry corresponding obligations with them. This is the rule of law which regulates the operation of organs of Government functioning under a Constitution.

But the discrimination complained of must be involved right at the threshold or at the time of entry into the field of contract regarding consideration of person with whom the Government would contract. At this stage, no doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by



the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this filed, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.”

28. It appears that in the instant case, the retail out has already been commissioned on 27.07.2015 and thus, not only in view of the Clause 17.2 of the Brochure but also in view of the law as settled by the Apex Court, this Court declines to interfere in the present writ application and being devoid of any merit is persuaded to reject the case of the petitioner. The selection of the dealership of the petitioner and the decision of the Corporation are upheld.

29. As such, the writ application is dismissed.

(Anjana Mishra, J)

Saif/-

AFR/NAFR	AFR
CAV DATE	20.02.2017
Uploading Date	08.09.2017
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