IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4290 of 2014

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Alok Kumar Son of Bhuneshwar Prasad Singh, resident of Village- Binvalia, P.S.- Shikarpur, District- West Champaran

.... Petitioner/s

Versus

1. The Indian Oil Corporation through the General Manager, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna 800001
2. The General Manager, Indian Oil Corporation (Marketing Division) Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna 800001
3. The Senior Divisional Retail Sales Manager, Indian Oil Corporation, Muzaffarpur Divisional Office, Akhara Ghat Road, Muzaffarpur
4. Arbind Kumar Mishra S/O Braj Kishore Mishra, resident of Village + Post- Belwa More, P.S.- Lauria, District- West Champaran
5. Mala Devi W/O Anil Kumar Mishra, resident of Village- Mujara, P.O.- Ramnagar, P.S.- Ramnagar, District- West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh
For the Respondent/s (IOC)	:	Mr. Anil Kumar Sinha Mr. Amlesh Kumar Verma Mr. Yash Mathur
For the Respondent No. 4	:	Mr. Nityanand Mishra

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: 10-04-2017

In the present writ application, the petitioner, being aggrieved by a letter having reference no. BSO/KSK/Binvalia dated

23.12.2013 and also a letter having Reference No. BSO/KSK/ Binvalia dated 05.08.2013, seeks a writ of certiorari, for quashing the aforementioned letters, whereby and whereunder the petitioner's representation against his non-selection as dealer of "Kisan Sewa Kendra" has been turned down and his request for re-evaluation of the marks accorded to him has been refused on arbitrary and unreasonable grounds. A further prayer has been made for quashing the order contained in letter having Reference No. 26.03.2013 issued by the respondent no. 2 whereby the re-evaluation of the marks sheet appended to the merit panel dated 10.11.2011, has been done in an erroneous manner and evaluation for "fixed and moveable assets" and "income" has been arbitrarily reduced i.e. 4 marks under each heading has been deducted and "0" marks has been allotted to him resulting in arbitrary reduction of his total marks from 82.70 to 74.70.

The writ petitioner has further prayed for a direction to the respondent-authorities to re-evaluate the marks allotted to the petitioner and also conduct re-appraisal of the eligibility of respondent nos. 4 and 5 and to allot the "Kisan Sewa Kendra" at location Binvalia, West Champaran, Bihar to the petitioner, who is the only eligible and competent candidate for setting up the same.

The brief facts which are necessary for determining the case of the petitioner is that the respondent- Indian Oil Corporation (herein referred to as the “IOC”), published an advertisement for setting up “Kisan Sewa Kendra” (retail outlet) at several places including Binvalia at West Champaran in the “Open” category. In response to the aforementioned advertisement, the petitioner submitted his application alongwith relevant documents. The result of the aforementioned tender was published on 11.11.2011 and the petitioner was placed at 3rd position (Annexure-1 at page 26) having secured 82.70 marks.

It was submitted that while the petitioner had submitted a valid sale deed, the respondent no. 4 had no valid sale deed in his favour and had offered a Mahadnama in support of his application, yet respondent no. 4 had been placed at Serial No. 1, whereas another candidate, who had been placed at Serial no. 2 was not a resident of West Champaran and the land offered by him was not free from encumbrance. Thus, the petitioner alone could be awarded full marks. Therefore, considering the status of the two applicants, the petitioner ought to have been placed at the 1st position, yet he was deprived of the same. It was further submitted that even other facts like income, working and fixed moveable assets were not granted appropriate marks, though for fixed moveable assets, the petitioner had given a certificate from the Government Valueor (Annexure-3).

Referring to the Brochure, learned counsel for the petitioner submitted that as per Clause 13.1.1 (at page -54), the petitioner had a clear title to the land whereas respondent no. 4 did not have land as he had applied for the tender and along with his application a lease deed was annexed in which the description of the land was not clearly given. Further, the quality of land offered by respondent no. 4 was not in terms of the tender notice, as it was a Mahadnama which was too had expired on 02.07.2012 i.e. the time of allotment made in favour of respondent no. 4.

Learned counsel for the petitioner further contended that the description of the land was also not clearly stated in the lease deed and therefore, the respondents could not have fairly arrived at any finding to accept the aforementioned Mahadnama as a legal and valid document. He further contended that so far as experience was concerned, the petitioner has and had been deprived of 4 marks which were to be allotted to him. Thus, there being no strict compliance of the directives available in the Brochure, especially Clause – 13.1.1, the respondents could not proceed any further. As such, it was submitted by the petitioner that in order to arrive at the fairness of the decision the respondents were to meticulously follow the Brochure and no fresh documents could have been submitted by any of the applicants to disfavor the application made by the petitioner.

Opposing the prayer made by the learned counsel for the petitioner, learned counsel for the Indian Oil Corporation has submitted that initially, the tenders applied by the petitioner as well as respondent no. 4 were rejected but on an application made by them, the matter was placed for re-appraisal by the respondents and the Corporation, after considering the documents submitted by the respondent no. 4 which were acceptable in terms of the Brochure at Annexure-5, awarded the respondent nos. 4. to 5 marks towards the land offered by them.

It was submitted by the respondents that the Mahadnama being a Firm Offer is an acceptable document as per terms of the Brochure. It was further submitted that it was a registered document and in terms of the Brochure, being registered, was not required to be notarized in the category “Firm Offer”. Thus, it was for such reasons and also because the land offered by the petitioner has been given full 35 marks over and against the 25 marks given to respondent no. 4, there was no irregularity in the award of marks on this account.

It was further strenuously, urged by learned counsel appearing on behalf of the Indian Oil Corporation that the petitioner was awarded “0” marks, as he had not given his own income rather the income of his family which was not acceptable to the IOC as only individual income was to be accepted. Consequently, the petitioner was given a “0” marks in the category “income”. Similarly, the liquid cash offered was also not given as much weight as was being demanded by the petitioner since the fixed moveable assets shown were in the name of his father and mother. It is also contended that no fresh document was considered as has been alleged by the petitioner. Hence, the decision of the IOC having been arrived at on the subjective satisfaction of the concerned officials, the same could not be questioned in any court of law. He further submitted that the Mahadnama was not required to be notarized as it was a registered document and therefore, the allegation that it was not appended by any affidavit by the offerer of the land is also misconceived and not tenable in terms of the Brochure issued by the IOC. Under such circumstances, the writ application of the petitioner is wholly untenable on both facts and law and fit to be dismissed.

Notice had also been issued to respondent no. 4, who has appeared and contested the matter.

Learned counsel appearing on behalf of the respondent no. 4 has submitted that there is no illegality in the marks awarded to the respondent and his tender documents have been evaluated in terms of the Brochure which is at Annexure-5 of the writ application. He further submits that as per the Brochure, the petitioner had made a Firm Offer and with its application he had annexed a Mahadnama, which was a duly registered document and the same being a Firm Offer was accepted by the IOC after due consideration that the said lease was for a long period and the IOC after considering the same has awarded only 25 marks as against the marks awarded to the petitioner. The respondent no. 4 was also financially sound and finding him superior, in this regard also he was given higher marks than the petitioner and cumulatively he was placed at No. 1. As a result thereof, the respondent no. 4 has been issued a letter of intent and thereafter all his documents have been verified and he has now invested a substantial amount for starting the "Kisan Sewa Kendra" at Binvalia at West Champaran, Bihar.

I have heard learned counsel for the parties and have considered their respective submissions.

Learned counsel for the petitioner has assailed the orders and decision of the Indian Oil Corporation on two basic grounds.

1. The fairness of the decision, inasmuch as

there is no strict adherence to the Brochure issued by the IOC.

2. Arbitrary imposition of marks under various heads, which were against the parameters which ought to have been followed in the case of the petitioner vis-à-vis that of respondent no. 4.

Learned counsel for the petitioner further submits that a government cannot act arbitrary at its sweet will. He submits that if activity of the government has a public element in it, it should conform to reason and be guided by public interest. If the government awards a contract, such award of contract would be liable to be tested on the touchstone of reasonableness and public interest. Learned counsel for the petitioner further contended that the administrative authority in the grant of government contract cannot deviate from the standard of eligibility laid down in the notice for tenders which have been invited. He contends that such departure from standard of eligibility will amount to denial of equality of opportunities to those who were to bound by the standard of eligibility and were prevented from submitting their tenders. Referring to the decision of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others reported in 1979(3) SC, 489, petitioner contended that the administrative authority, being the IOC, had clearly deviated from the terms of the tender and the standard of eligibility by considering the application of respondent no. 4, who had applied on the basis of Mahadnama (lease deed), which had expired on the date of allotment of Letter of Intent in favour of respondent no. 4 by the IOC. Referring to this decision in para 10, it has been held as follows:-

> *"2(a) It is a well settled rule of administrative law that an executive authority must be rigorously held to the standard by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. The defined procedure, even though generous beyond the requirements that bind such agency must be scrupulously observed. This rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. It is indeed unthinkable that in a democracy governed by the rule of law the executive government or any of its officers should possess arbitrary power over the interest of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the*

power involves affection of some right or denial of some privilege."

In order to test the decision taken by the IOC, this Court has considered the terms of the NIT which created provision for the acceptance of Mahadnama which was treated as a "Firm offer" in terms of the NIT. The said Mahadnama was valid on the date of application and was not required to be notarized /affidavited as it was a registered document. Moreover, the petitioner had been allotted full marks with regard to land whereas the respondent no. 4 had been granted only 25 marks as against the 35 marks granted to the petitioner. Thus, the contention of the petitioner does not appear to be correct and the decision of the IOC, in this regard cannot be flawed.

So far as the award of marks to the petitioner in the category "liquid cash" and "fixed moveable assets" is concerned, petitioner had not provided his own capital rather had offered his joint family income which was not acceptable. Furthermore, the income certificate was not granted to him in the proper format given. The category "income" as certified by the Circle Officer was not in the manner prescribed and, therefore, he was not granted marks in that head either. Thus, the fairness of the decision of the IOC in this regard also cannot be faulted. Therefore, the petitioner's contention that the authorities had not acted with fairness and reasonableness does not stand vitiated.

Coming to the contention advanced by the respondent no. 4, I have perused the counter affidavit filed vis-à-vis the clause of the NIT which go to show that the affidavit required to be executed was not necessary in terms of the clause of the NIT as in the case of "Firm Offer" a registered deed of lease was enough to suffice the requirements for making an application. This fact has also been supported by the contention of the IOC as submitted in their counter affidavit.

Learned counsel for the respondent no. 4 further contended that it was under such premises that the IOC had rightly issued a letter of intent in favour of respondent no. 4. Furthermore, after issuance of letter of intent dated 28.02.2014, the respondent no. 4 has complied all the formalities and also fulfilled the terms and conditions imposed upon him in the letter dated 28.02.2014 and he has also invested quite some amount towards the commission of the Kisan Sewa Kendra. Thus, the Court may refuse to give relief to the petitioner as the equities clearly favoured the respondent, who has in the meanwhile changed his position. It appears that much water has flown down the river after the acceptance of the tender of the respondent no. 4. The respondent no. 4 has also altered his position to his disadvantage by investing much in furthering the contract allotted to him. Accordingly, there being no glaring reason to declare the actions of the IOC to be unreasonable and arbitrary, this Court sees no reason to upset the tender awarded to the respondent no. 4 by the respondent –IOC.

The writ application is thus, devoid of merit and is dismissed.

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	NAFR
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