

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17401 of 2011

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Sanjay Kumar S/O Sri Rajendra Kumar Resident Of Main Road,
Nasariganj , P.S.- Nasariganj, District - Rohtas , Bihar.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry Of Petroleum and Natural Gas, New Delhi.
2. The Deputy Secretary to the Government of India, Ministry Of Petroleum and Natural Gas, New Delhi.
3. The Hindustan Petroleum Corporation Ltd. (A Government of India Enterprises) Having it's Registered Office At 17 , Jamshedji Tata Road, Mumbai - 400020.
4. The Hindustan Petroleum Corporation Ltd. (A Government Of India Enterprises) Having It's Regional Office At Lok Nayak Jay Prakash Bhawan , 6th Floor, Post Box No.40 Dak Banglow Chowk , Patna.
5. The Senior Regional Manager (Retail), the H.P.C.L. Lok Nayak Jai Prakash Bhawan, 6th Floor, Dak Banglow Chowk , Patna.-1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate
Mr. Rohit Mishra

For the Respondent s : Mr. Kanak Verma, C.G.C.
Mr. L.N. Das
Mr. Nazir Alam

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

19 01-05-2017 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the Hindustan Petroleum
Corporation Limited (hereinafter referred to as the 'HPCL').

2. The petitioner seeks a writ of certiorari quashing the
order dated 01.08.2011 issued under the signature of Respondent
No. 5 by which the empanelment of the petitioner has been
cancelled on the ground that his marks has been reduced from
84.52 to 55.83.

3. A further writ/ direction is sought by the Respondents



for quashing the rejection order by which the merit panel of the location between Tarachandi Temple and Dehri-on-Sone town on NH-2 has been cancelled.

4. The petitioner seeks further writ/direction to the Respondents to give effect to the select-list prepared for the candidates for allotment of retail outlet dealership of petrol-pump for the said location and to allot the dealership in favour of the petitioner.

5. The brief facts of the writ application are that he was an applicant for allotment of retail outlet dealership for location at Tarachandi by HPCL. The petitioner's application dated 19.07.2010 was scrutinized on 22.11.2010 by the Technical Committee for the verification of the land. Within a fortnight thereof, second verification of land was done by the Technical Committee and on 18.01.2011, a call letter was issued in favour of the petitioner fixing the date of interview on 09.02.2011. On the said date, the result of the application was published wherein the petitioner found his name at Serial No. 1. However, on 30.05.2011, a letter was given to the petitioner informing him that there was no sub-lease clause in the registered lease deed filed by him and hence a reply to the objection was called for till 15th of June, 2011. The petitioner filed his reply on 13th of June, 2011.



The petitioner was issued two letters informing him that the panel-list has been cancelled and a fresh interview would take place, the date of which would be communicated to him later on.

6. Learned counsel for the petitioner submits that the petitioner had been selected on 09.02.2011 itself and the result was published on the same date and a total percentage of marks had been shown as against his name to be 84.52 per cent in the Select-list and he had been placed at Serial No. 1. Nevertheless, for the reasons best known to the HPCL, the letter of appointment for retail outlet dealership was kept in abeyance and a letter dated 30.05.2011 issued under the signature of the Respondent No. 5 informing him that “after scrutinizing of the application, it has been found that there is no sub-lease clause in the registered lease submitted by the petitioner” and, therefore, the marks awarded to him toward “Land and Infrastructure” had been changed to zero mark instead of the 32.2 marks allotted to him earlier. By the said letter, the petitioner was also asked to submit his application in the office of Respondent No. 5 within 15 days. The said objection to his application was answered by the petitioner on 13th June, 2011. In the objection filed by the petitioner, he stated that the Lessor had all the intention to allow the petitioner to sub-lease the land and by not mentioning the word “sub-lease” in the lease deed,



does not imply that there is no provision to “sub-lease” and to satisfy the requirements of the Respondents. The petitioner got a lease deed modified to the extent that specific clause of “sub-lease” was inserted in the leased deed. The amended lease deed was also submitted along with the said objection/representation.

7. However, the Respondents failed to take any notice of the said corrected lease deed which led the petitioner to file several representations before the Respondents and ultimately vide letter Ref. PRRO/NRO/AB/02 dated 01.08.2011, the Respondent No. 5 has informed the petitioner that the marks awarded to him under “land and infrastructure fixed” and “moveable assets and income” have been slashed. As a result thereof, the petitioner’s marks awarded to him came down to 55.83 which was less than the cut-off marks and the empanelment of the petitioner in the merit-list stood cancelled. It is against this order that the petitioner has moved the present writ application.

8. Learned counsel for the petitioner further submits that such an action on behalf of the Respondents is wholly illegal, arbitrary and unjust and cannot be sustained and the petitioner be informed that such a statement with regard to sub-lease offered by him was a mandatory requirement in his application form and for the said reason alone, his application could not be rejected. He



further submits that such a clause was not available in the original advertisement issued to him and the guidelines was of the year 2009 which was stated in the application alone would provide the parameters for filing his application which he has duly complied.

9. Learned counsel for the petitioner further submits that he had fulfilled all the requirements and it was only thereafter that his selection was made and he was placed in the merit panel at serial No. 1. He, thus, prays for appropriate directions and interference by this Court under Article 226 of the Constitution of India.

10. A counter affidavit has been filed by the Respondent-HPCL in which they have categorically submitted that the petitioner altogether ignored the guidelines of the advertisement and had followed the 01.04.2009 guidelines which is wholly incorrect and such an action by the petitioner itself disentitled him to any relief from this Court as he had not strictly followed the guidelines and the terms of the agreements as issued by the HPCL.

11. Learned counsel appearing on behalf of the Respondent-HPCL submits that as per the guidelines, a clause was made available in the lease-deed relating to sub-lease in favour of the HPCL by the lessor. Alternatively, the Lessee was duty bound to submit a consent letter by the Lessor for his intention to sub-



lease of offered land to the HPCL.

12. Referring to Annexure-A of his counter affidavit, learned counsel appearing on behalf of the Respondent has submitted that the guidelines for selection of retail outlets dealership clearly provides in Clause 9(h) that “no additional documents whatsoever will be accepted or considered after the cut-off date for submission of application”. It is in the wake of such a clause in the advertisement/application form itself that additional documents supplied by the petitioner have not been accepted. It is further submitted by learned counsel appearing on behalf of the HPCL that the petitioner was wholly guided by Clause 18(e) of the Information Guidelines wherein it has been mentioned that provisional merit panel shall be deemed to be final only after its post selection scrutiny of marks by a competent Senior Officer of the HPCL.

13. Referring to Clause 18 (e) of the Annexure-B which is the guidelines for filing of application form, he submits that clause 18(e) specifically states:

“The Merit Panel declared/displayed the Selection Committee after the interview, shall be deemed to be final only after its post selection scrutiny of marks by a competent Senior Officer of the Corporation. In case of any change in the Merit Panel, if found on scrutiny, the empanelled candidates shall be advised suitably in this regard by the competent authority.”



14. Thus the petitioner's application having been found to be as against the guidelines fixed by the HPCL, his selection in the merit-list has been rejected as marks awarded to him by way of 'Land and Infrastructure' has been changed to zero mark in respect of 32.2 marks originally awarded to him. Such cancellation of marks has brought down his marks considerably and has fallen short of the cut-off marks fixed by the HPCL for award of dealership. It is for the said reason alone that the petitioner's selection in the merit-panel has been cancelled. Thus, the impugned order does not suffer from any anomaly and the writ application is fit to be dismissed.

15. In response to the submissions advanced by learned counsel for the Respondent-HPCL, learned counsel for the petitioner has categorically asserted that there was no such guidelines of providing and stating specifically that the lease land would be sub-leased in favour of the HPCL under the guidelines which were provided along with his application form at the time the same was issued to him on 19.07.2010. He categorically submits that in the application form and brochure offered along with the said application, it was referred to, that the guidelines as applicable on 01.04.2009 would hold good for the purposes of filing of application and it was in pursuance of these guidelines



alone that the petitioner has submitted his application. He further submits that the Respondent-HPCL is now applying the guidelines issued on 01.04.2010 which was not the condition as per the terms of advertisement and, therefore, the said guidelines which are referred to therein cannot be held applicable in his case. He, thus, seeks the appropriate relief from this Court.

16. After hearing learned counsel for the petitioner and learned counsel appearing on behalf of the HPCL, this Court has earlier directed that the HPCL to provide the original application form and the corrigendum which was issued changing the terms of the agreement and the guidelines which were to be followed. In pursuance of the said direction, a supplementary counter-affidavit has been filed on behalf of Respondents No. 3 to 5 in which they have brought on record the corrigendum issued by the HPCL on 19th of June, 2010 whereas the original advertisement was issued on 11th of June, 2010. In the subsequent corrigendum issued, it was not clear as to from which place the said advertisement had been issued, therefore, the supplementary affidavit was called for from the respondents to indicate as to the place and date of issuance of such a corrigendum. It appears from the two supplementary counter-affidavits filed that the original advertisement having been issued on 11th of June, 2010, the same



was followed by a corrigendum on 19th June, 2010 in which it was stated that the date 01.04.2009 referred to in the original documents should, henceforth, be read as 01.0.4.2010 and, therefore, the terms of the advertisement itself stood modified.

17. In reply to such a submission made by the HPCL, learned counsel for the petitioner submits that such corrigendum was never issued in the referred place of circulation and was issued merely from Patna. Moreover, at the time of filing of application, it was the 2009 guidelines which was supplied to him along with the brochures and not 2010. Moreover, even the corrigendum was not attached to the application issued to the petitioner. It was further submitted that if after the advertisement there was any issuance of the corrigendum, the petitioner categorically submits as the same corrigendum was not appended to his application form and he cannot be punished on account of the laches of the respondents. As and when required by the respondents (vide Annexure-5), this petitioner had filed the necessary documents which would go to show that any lacuna, if at all, present in his application had been duly rectified by him by means of the amended lease deed. Thus, the respondents could not take recourse to their cause that no further documents could be acceptable after the date of application. Furthermore, it was the



HPCL who had given the opportunity to give the necessary explanation which he has duly satisfied.

18. Thus, it is contended by learned counsel for the petitioner that since the corrigendum has not been brought to his knowledge on the date of filing of the application, the action of the respondents in cancelling the merit-panel is wholly illegal and arbitrary and warrants interference by this Court.

19. Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the HPCL, it appears that the petitioner's application had moved forward and after due scrutiny of the application vis-à-vis that of others, the petitioner was placed in the merit-panel at Serial No. 1. Subsequently, using Clause 18(e), the petitioner's case was subjected to re-assessment by the Senior Officer of the HPCL who noticed that no such clause regarding sub-leasing of the property was present in the petitioner's application filed earlier. Accordingly, vide Annexure-5 the petitioner was noticed to submit his application. It was the contention of the HPCL that the petitioner had made his application as per the guidelines issued on 01.04.2009 and not at 01.04.2010 in which clause 18(e) was available. Thus, the contention of the respondent that the petitioner having not followed the guidelines, his application was liable to rejection,



does not appear to be fair and reasonable.

20. It is evident from the pleadings of the parties that admittedly at the time of issuance of the application form, the brochure attached to the petitioner's application was containing the guidelines dated 01.04.2009 and not 01.04.2010. Thus, the petitioner could not be subjected to the modified guidelines even though he had made his application after the date of corrigendum as no such corrected application/guidelines was supplied to him at the time of filing of his application. Furthermore, the petitioner being called upon to explain as to whether his lease hold property was available for being sub-leased has provided the necessary documents at the time of query made by the Senior Officer of the HPCL. Such action proves bonafide of the petitioner and, therefore, his marks in the merit panel could not be slashed for want of knowledge of 2010 guidelines.

21. A contention has also been raised by learned counsel for the HPCL that vide Annexure-C dated 23rd June, 2014, the dealership applicants were given an opportunity to re-apply on such locations which had become the subject-matter of scrutiny under the instant policy and under the new system of draw of lots.

22. Learend counsel for the petitioner submits that the



petitioner having already submitted sale-deed cannot be subjected to such draw of lots as he has now fulfilled the requirements of new policy even if that may be considered equal in his case. It is under such circumstances that this Court feels that the action of the Respondents in requiring the petitioner to go through the fresh process of application to be wholly unreasonable and stand vitiated.

23. Under such circumstances, this Court feels that the impugned order dated 01.08.2011 is in the teeth of the principles of law and also the law as settled by this Court and is fit to be quashed.

24. Accordingly, the impugned order dated 01.08.2011 contained in letter no. Ref. PTRO/NRO/AB/002 issued by the Respondent No. 5 (The Senior Regional Manager (Retail), the H.P.C.L, Lok Nayak Jai Prakash Bhawan, 6th Floor, Dak Banglow Chowk, Patna-1) is quashed and the writ application is allowed.

25. It is informed that the outlet under reference has not yet been awarded to any other person. As such, in the given facts and circumstances of the case, it shall be now open to the respondent-HPCL to proceed in accordance with law expeditiously.

(Anjana Mishra, J)

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