

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20339 of 2011

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Suresh Prasad Son of Late Nawab Lal, resident of Village P.O. And P.S.
Nagarnausa, District - Nalanda

.... Petitioner/s

Versus

1. Indian Oil Corporation Ltd. through Senior Divisional Retail Sales Manager,
Block - A, Mauryalok Complex (3rd Floor), Dakbunglow Road, Patna
2. Senior Divisional Retail Sales Manager, Block-A, Mauryalok Complex (3rd
Floor), Dakbunglow Road, Patna
3. Sr. Divisional Manager, Block - A, Mauryalok Complex (3rd Floor), Dak
Bunglow Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Verma, Adv. Mr. Shyameshwar Kumar Singh, Adv. Mr. Ajit Kumar Singh, Adv.
For the Respondent/s	:	Mr. Anil Kumar Sinha, Adv. Mr. Amlesh Kumar Verma, Adv. Mr. Abhimanyu Deo, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: 24-08-2017

In the present writ application, the petitioner seeks a writ in the nature of mandamus directing the 5th respondent – Indian Oil Corporation to issue the Letter of Intent in favour of the petitioner granting dealership of petrol/diesel rural retail outlet also referred to as Kissan Seva Kendra or KSK for short, on the basis of the marks awarded by the land evaluation committee, which has been arbitrarily reduced and given “0” marks out of 35 by the interview committee in and altogether arbitrarily and unreasonable manner. The petitioner further seeks a restrain order to the respondents, not to re-



advertise the sight in question for grant of dealership.

The brief facts as detailed in the writ application are as follows:-

(i) The respondent-IOC came out with a notice published in the daily newspaper namely Hindustan for establishing a retail outlet at various location of the State of Bihar. The petitioner alongwith other interested persons applied in the prescribed proforma for dealership at Nagarnaus (not on NH-30) Revenue District Nalanda, Block Nagarnausa i.e. at Serial 215 of the advertisement.

(ii) In his application against the aforementioned advertisement, the petitioner had given the details of the land which is owned by him as having P.S. No. 209 Khata No. 925 Keshra No. 2512 and 3316 measuring 35 decimals + 3 decimals, as proposed site for opening of the KSK. The land is part of the land purchased jointly by the petitioner alongwith his uncle namely Sri Basant Singh by means of an absolute sale deed dated 6.04.1987, having an area 0.76 decimals and after the death of the uncle of the petitioner one half of the said piece of land i.e. 0.38 decimals land,



came to be in the share of the petitioner

(iii) On 25.05.2011, the petitioner was informed that the Land Evaluation Committee (LEC) of the respondent Corporation would visit the offer site on 07.06.2011 and after due inspection the petitioner was granted 96 marks out of 100 under the head “site inspection”. Thereafter the petitioner appeared before the Selection Committee for interview on 13.07.2011 in the office of the respondent Corporation. However, after interview, both the candidates who had been short listed by the corporation, which included this petitioner was rejected.

(iv) On enquiry made by the petitioner, it came to his knowledge that in the interview under the head “capability to provide infrastructure and facility” he had been awarded only “0” marks out of a total of 35 marks for reasons best known to the respondents.

(v) Constrained by such an action by the respondent Corporation, the petitioner filed a representation but the respondent-IOC failed to take notice of the same and give any reply.

(vi) Accordingly, the petitioner has approached



this court for an appropriate and expeditious remedy under Article 226 of the Constitution of India seeking redressal of his grievance against the arbitrary and unreasonable action of the respondents.

Learned counsel for the petitioner contended that the respondent corporation had already granted the petitioner 96 out of 100 marks by the Land Evaluation committee after making due verification of his land and thereafter, there arose no plausible reason as to why he be granted only “0” marks out of the 35 marks by the Interview Committee. He further contended that the said award of “0” marks by the interview committee was wholly baseless and arbitrary and in violation of Article 14 of the Constitution of India and thus prayed that the respondents be directed to issue the Letter of Intent in his favour and be restrained from the re-advertising the site in question for grant of dealership of KSK. It was further contended that there was absolutely no basis for the said award of “0” marks by the interview committee as the Land Evaluation Committee had already, after due verification of site, granted to the petitioner 96 out of 100 marks. He, thus, contended that such an action on the part of the respondents was for extraneous consideration and warranted interference under article 226 of the Constitution of India, as the respondent Corporation is a statutory body under Article 12 of the



Constitution of India and its action must be reasonable and fair.

Learned counsel for the petitioner also contended, that as per the guidelines, issued by the respondent Corporation to qualify for grant of KSK, a total of 60 marks (a sum of various marks awarded under different heads) are required but only due to arbitrary grant of “0” marks under the heading “capability to provide infrastructure and Facility”, the petitioner could get only 50.53 marks.

Learned counsel for the petitioner also contended that from the details of the commercial plan submitted by the petitioner it is apparent that the rejection of the allotment of KSK in favour of the petitioner is an action of the respondent corporation motivated out of *mala fide* as otherwise the petitioner is very much eligible to be granted the dealership.

Learned counsel for the petitioner further contended that the respondent corporation while granting State Largeesee is under a legal and constitutional obligation to maintain fairness and non-arbitrariness. When the ‘Land Evaluation Committee’ has assessed the same lands offered by the petitioner fit for the dealership in question by awarding 96/100 marks, grant of ‘0’ marks by the interview committee is arbitrary and without any basis whatsoever.



Learned counsel for the petitioner further contended that the award of '0' marks is without any basis and without assigning any reasons for the same whatsoever. The respondents have awarded '0' marks to the petitioner in the interview on extraneous consideration, to shower undue benefits on chosen persons. Even the complaint/representation filed by the petitioner were not being looked into and the respondents with ulterior motive, were sitting tight over the matter, causing him serious prejudice.

It was thus, contended that there was no transparency in the decision of the interview committee in allotting '0' marks to the petitioner and the brochure of the corporation is not such that the petitioner's application could have been rejected on flimsy pretext. Referring to Clause 10J of the Brochure, learned counsel for the petitioner contended that the application is scrutinized after the cut-off date for receiving the application, as given in the advertisement. In case the application were found to be against the parameters fixed in the advertisement, they were liable to be rejected at the time of scrutiny and the concerned applicant would be advised the reasons for such rejection in writing and such applicants were not to be called for interview.

Thus, the petitioner contended that the petitioner's case having not been rejected at the time of scrutiny, there



appeared no reasons why the same should have been done at the time of interview which is to be conducted as per the Clause 13 of the brochure under reference. Clause 13 of the said Brochure is quoted below:-

“The candidate should produce originals of the documents submitted by them with the application, at the time of interview failing which the applications will be rendered ineligible. The candidates will also have to submit a fresh affidavit as per Annexure-A or Annexure –A1 as applicable prior to the date of interview, failing which the candidate will be considered as ineligible for dealership. A committee will evaluate the candidates and select them based on the marks obtained on various parameters based on the documents submitted with the application form and their performance in the interview.”

Learned counsel for the petitioner further contended that the requirement as made out in the Brochure that though the requirement is mandatory, the stage of satisfying the mandatory requirement is directory as two months time have been granted for meeting the basic requirements.

Thus, the action of the respondents in not issuing the Letter of Intent in favour of the petitioner was wholly



illegal and arbitrary and they should be restrained from issuing fresh advertisement.

Responding to the contention/averments of the petitioner, learned counsel appearing on behalf of the respondent IOC, it was submitted that the interview for the grant of KSK dealership at Nagarnausa (not on NH 30) district Nalanda was held on 13.07.2011 in which two candidates appeared in the interview including the petitioner and none of them were selected. The case of the petitioner could not sustain as the land offered by him was jointly owned by Mr. Suresh Prasad i.e. the petitioner and one Mr Basant Singh. As per the KSK dealership Brochure (Clause 14 (C) sub Clause 4 & 5) the petitioner was required to submit a registered agreement of the co-owner of the land alongwith demarcation of the land apart from the land owners documents, but no registered agreement of co-owner was attached by the petitioner along with his application form. Accordingly, while making assessment, the petitioner was awarded '0' marks by the interview committee. Furthermore, as per the clause 21.0 Sub Clause – C & D of the Brochure, it was clearly indicated that no additional document whatsoever will be accepted after cut-off date of application. Therefore, there being no clear demarcation of land along with the registered agreement from the co-owner, the petitioner's case was rejected.



It was further averred that the Brochure itself indicated in clause 17.1 that in case no other candidate is available in the merit panel the location may be re-advertised at the discretion of the IOC. Thus the petitioner having not provided the requisite documents at the time of application, he was awarded '0' marks as per the policy which required him to submit along with his application form a registered agreement of co-owner of the land apart from the land owners document. Since no registered agreement was attached along with the application form, the applicant was awarded '0' marks as per the policy and hence there is absolute transparency in the action of the respondents and the writ application does not warrant interference and is fit to be dismissed.

I have heard learned counsel appearing on behalf of the parties. The contention of the petitioner on the one hand, is that the action of the respondents is absolutely arbitrary and untenable as per the law settled by the court. The petitioner has prayed for issuance of letter of intent relying on the ratio of the judgment reported in **2003 (4) PLJR (SC) K. Binod Kumar Vs. Palani Swami case** wherein it has been held that the requirement of furnishing details of land at the stage of making application was only directory and not mandatory. He has also tried to rely on the ration of the decision of **Priyanka Pratap Singh Vs. The Divisional Manager IVP**



company reported in 2004 (2) BLJR 919 to support his proposition that the details of the land would be provided even subsequent to the filing of the application form and therefore, since the petitioner had provided further material to support his candidature at the later stage, the authorities should not have arbitrarily rejected the application. Thus, non supply of the registered deed of agreement of the co-owner was not such that the petitioner's case ought to have been thrown out in the manner as has been sought to be done in the present writ application which is wholly illegal and arbitrary and cannot be sustained. This court however, feels that the ratio decidend of the said judgments cannot prop up the case of the petitioner as by no stretch of imagination can the terms of the Brochure be given a go-by to benefit the petitioner. This court also finds support in the contention of the respondent corporation that the rejection of the application of the petitioner, being in conformity with the terms and conditions of the brochure, the Corporation being the state within the meaning of Article 12 of the constitution of India is supposed to act fairly, reasonably and uniformly. This is a settled Principle of law as has been consistently followed by this court in a catena of decision as the eligibility criteria clearly held that the applicant should furnish along with the application, in the case of "own land" of-self with others, the registered agreement of co-owner with the demarcation of land



(portion of land to be given for dealership by the applicant). Furthermore, Clause 21.0 C & D which is quoted hereunder clearly shows that the petitioner's application was wanting in the prescribed criteria laid down in the Brochure and therefore, was rejected by the respondents. A quick reference to the aforesaid clause are quoted hereunder:-

Clause 21.0 C & D

- (c) ***“No addition/deletion/altercation will be permitted in the application once it is submitted.***
- (d) ***No additional documents whatsoever will be accepted or considered after the cut-off date of the application”.***

Thus, the decision of the Respondents can well be said to be in order.

The decision of the Division Bench of this Court reported in **2012(2) PLJR 783 Indian Oil Corporation ltd Vs. Raj Kumar Jha** also clearly supports the submission of the respondents and is also being reiterated in this judgment.

“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.

In the result, this court finds that this writ application is without any merit and does not warrant interference by this Court. It is accordingly, dismissed.

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	17.05.2017
Uploading Date	29.08.2017
Transmission Date	

