

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1065 of 2015
IN
Civil Writ Jurisdiction Case No. 8934 of 2001**

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Govind Upadhyay, Son of Sri Awadheshwar Upadhyay, Resident of Village-
Babhanauli, P.S.- Ara Mufassil, District- Bhojpur (Ara) At present Chitragupta
Mandir Bela Bazar, P.S.- Arrah Town District- Bhojpur, Ara.

.... Appellant/s

Versus

1. Bharat Petroleum Corporation Limited through its General Manager, Eastern Zone, 31 B.B.D. Bagh, Hong Kong Tower, Kolkata.
2. The Regional Marketing Manager, B.P.C.L. 4th Floor Asiana Chamber Exhibition Road Town and District- Patna. null null
3. The Chairman Dealer Selection Board-1, Patna Industries Association Building, Sinha Library Road, Patna.
4. The Dealer Selection Board, Patna Industries Association Building, Sinha Library Road, Patna through its Co-ordinator.
5. Ajit Kumar Singh, Son of Sri Ranjeet Bahadur Singh, Resident of Mohalla- Chougain Kothi, M.P. Bagh C.K. Road, P.S.- Ara Town, District- Bhojpur at Ara.
6. J.R. Sharan, Retired Judge (Chairman D.S.B.) Satyaguru Sadan Road No. 13B Rajendra Nagar, Patna.

.... Respondent/s

with

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**Letters Patent Appeal No. 1064 of 2015
IN
Civil Writ Jurisdiction Case No. 12325 of 2001**

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Govind Upadhyay, Son of Sri Awadheshwar Upadhyay, Resident of Village-
Babhanauli, P.S.- Ara Mufassil, District- Bhojpur (Ara) At present Chitragupta
Mandir Bela Bazar, P.S.- Arrah Town District- Bhojpur, Ara.

.... Appellant/s

Versus

1. Bharat Petroleum Corporation Limited through its General Manager, Eastern



- Zone, 31 B.B.D. Bagh, Hong Kong Tower, Kolkata.
- 2. The Regional Marketing Manager, B.P.C.L. 4th Floor Asiana Chamber Exhibition Road Town and District- Patna.
 - 3. The Chairman Dealer Selection Board-1, Patna Industries Association Building, Sinha Library Road, Patna.
 - 4. The Dealer Selection Board, Patna Industries Association Building, Sinha Library Road, Patna through its Co-ordinator.
 - 5. Makeswar Prasad, Son of Sri Fakira lal, Resident of Mohalla- Mahajan Toli No.1, P.S.- Ara Town, District- Bhojpur at Ara.
 - 6. Ajit Kumar Singh, Son of Sri Ranjeet Bahadur Singh, Resident of Mohalla- Chougain Kothi, M.P. Bagh C.K. Road, P.S.- Ara Town, District- Bhojpur at Ara.
 - 7. J.R. Sharan, Retired Judge (Chairman D.S.B.) Satyaguru Sadan Road No. 13B Rajendra Nagar, Patna.

.... Respondent/s

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Appearance :
(In LPA No.1065 of 2015)
For the Appellant/s : Mr. Om Prakash Upadhyay
Mr. Manoj Kumar Singh
For B P C L : Mr. Sidhartha Prasad
Mr. Om Prakash Kumar
For the Respondent/s : Mr. Anil Kumar Tiwary
Mr. Anand Kumar Tiwary
(In LPA No.1064 of 2015)
For the Appellant/s : Mr. Om Prakash Upadhyay
Mr. Manoj Kumar Singh
For B P C L : Mr. Sidhartha Prasad
Mr. Om Prakash Kumar
For the Respondent/s : Mr. Anil Kumar Tiwary
Mr. Anand Kumar Tiwary

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 26-03-2018

As both these Letters Patent Appeals arising out of a
common order passed on 13.05.2015 by the learned Writ Court in



CWJC No. 8934 of 2001 and CWJC No. 12325 of 2001 both the appeals have been heard together and are being disposed of by this common judgment.

In the matter of selection of Kerosene Oil dealership in Ara by the Dealer Selection Board when respondent no. 5 in the writ petition and the appellant herein was granted the dealership the writ petition in question was filed and the writ petition having been allowed by the learned Writ Court both the appeals by the appellant whose dealership has been cancelled.

Having heard learned counsel for the parties at length, and on going through the detailed order passed by the learned Writ Court we find that in the category of allotment to be made, namely, physically handicapped persons, finding large scale illegalities committed in granting the allotment to respondent no. 5 and also finding the then Chairman of then Selection Board led by Late J R Sharan, a retired District Judge, to have committed various illegalities in favour of respondent no. 5 the learned Writ Court has interfered into the matter.

Even though Shri P K Shahi, learned Senior Counsel tried to indicate that the finding recorded by the learned Writ Court is not correct, we may refer to certain observations made by the Writ Court



in this regard it would be sufficient enough to reject these appeals.

The following observations made by the learned Writ Court may be taken note of:-

“6. This Court has also found from the application filed by respondent no.5 that he had not fulfilled the requirement of residential certificate as prescribed in Column no.7. Similarly the petitioner had also not filled up column no.9 relating to gross income as per requirement in the prescribed proforma. Respondent no.5 in fact while giving detail of source of fund in column no.18 had also given incomplete information either with regard to the amount in the Bank by not at all filling those columns and whatever information were given by him even in respect of fixed deposit receipts were incomplete because the date of original deposit of NSC of Rs.60,000/- and Vikas Patra of Rs.40,000/- had not been filled up. Even the date of maturity was not mentioned and only years of 2001, 02, 03 in Patna High Court CWJC No.8934 of 2001 dt.13-05-2015 5 respect of NSC and 2001, 02, 03, 04 were filled up in Vikas Patra. Respondent no.5 had also not furnished the requirement in column no.21 with regard to furnishing his conviction or pendency of any case against him as per prescribed Appendix „A“. Finally in column no.22 which was to be in form of a declaration with signature of respondent no.5 the same was also not furnished, inasmuch as the signature of respondent no.5 in column no.22 was not found by the Scrutiny Committee.

“8. It appears that these three applications were sent to the Dealer Selection Board consisting of Mr. J.R.Saran, a retired Judge, and he despite the Respondent no. 5 found to be ineligible, had issued interview call letter to Respondent no. 5 and declared him the first in had panel after holding an interview on 16.3.2001.



(Emphasis supplied)

"10. It is however still a mystery as to who and when had put the signature on behalf of respondent no.5 on his application in column no. 22 after screening made on 24.12.2000 by Mr. S.S. Prasad Senior Sales Officer of the Oil Company had found and declared respondent no.5 to be ineligible for having not filled up the application form and particularly placing his signature in column no. 22. This Court has carefully gone into the signature of respondent no.5 on his application form which has been placed by the respondent Corporation in the supplementary counter affidavit at page-58 and would find that the signature of respondent no.5 was in different ink, not matching with the handwriting in the other columns of the application and obtained subsequently in course of interview as also stands admitted on reading of paragraph no. 22 of the writ petition and para-26 of the counter affidavit which reads as follows:-

"26 That besides above, a perusal of Annexure-19 at the bottom will show that the petitioner has put his signature, but if the Respondents are made to present the scrutiny paper given over his application form then it shall be evident that after submission of the application form, the Respondent no. 3 has allowed the Respondent no. 5 to make manipulation and put his signature thereon. The Patna High Court CWJC No.8934 of 2001 dt.13-05-2015 7 action of the Respondents is malafide both in facts as well as in law.

22. That the statement made in paragraph no. 26 are incorrect, mischievous and condonable. The deponent has signed the application in the style he generally puts his signature and during the interview the deponent was asked to sign in English and Hindi which he did in presence of all those who constituted the Interview Board neither the Respondent no. 3 allowed nor the deponent did any act which can be labelled as manipulation. As a matter of fact all through his life the writ petitioner is doing nothing but usurping the gains of clandestine games in tacit support of his family members and relation and



therefore in the judgment of his guilty mind every body appears to be as what the writ petitioner thinks. It is submitted that by making a false and perjurious statement writ petitioner has made himself liable for prosecution."

"11. Thus there is no iota of doubt that the signature of Respondent no. 5 in column no. 22 of the application was obtained subsequently and since it was done after application was sent to the Dealer Selection Board and before his being ranked first in the merit panel prepared by Mr. Saran, the retired Judge, heading Dealer Selection Board, the finger of suspicion will go only against him (Mr. Sharan, the Dealer Selection Board).

(Emphasis supplied)

"12. That in fact is not the end of the matter and in fact what would still weigh against respondent no.5 is that pursuant to the Patna High Court CWJC No.8934 of 2001 dt.13-05-2015 8 direction of Mr. Saran in his letter dated 16.3.2001 when a field survey investigation report was prepared by the officials of the Corporation it was found that whatever details of NSC of Rs.60,000/- and Vikas Patra of Rs.40,000/- furnished by Respondent no. 5 did not pertain to him and actually were in the name of his maternal uncle and grant mother respectively. This report sent by the General Manager of the Corporation dated 16th April, 2001 was based on field investigation report in which it was clearly mentioned that even the amount of Rs.2,39,500/- had been deposited by respondent no.5 after 30.3.2001. The Field Investigation Report (F.I.R.) in respect of respondent no.5 had also gone to show that he had not given specific information with regard to capability of arranging facilities of the site though as noted earlier it was the part of the condition of the advertisement itself that the detail of site had to be provided alongwith the application."



In paragraph-14 after considering various aspects of the matter, the learned Writ Court has made serious observations against the then Chairman of the Selection Board and after taking note of various interim orders and the report of the Committee in Paragraph - 19 has made the following observations:-

“19. Could there be any better manner in which respondent no.5 had been favoured unfortunately by a Judicial Officer who was made member of the Dealer Selection Board? Let it be noted that such Dealer Selection Board under the Chairmanship of the Judicial Officers were constituted only to fair and dispassionate selection based on merits and eligibility conditions but here was the Judicial Officer who went out and out to favour respondent no.5 even by allowing interpolation in the original application of Respondent no. 5.”

Thereafter, the interim orders passed and the order passed in LPA No. 538 of 2009 and LPA No. 539 of 2009 on 04.05.2009 are taken note of and from paragraph-30 onwards scrutiny of the entire record has been undertaken by the learned writ court and it has been evaluated as to how allotment of respondent no. 5 has been cancelled.

After going through the entire records of the Selection Committee in paragraphs-36, 37 and 40 the following observations have been made and finally the writ petition has been allowed and M/s Bharat Petroleum Corporation was directed to conduct the selection process afresh:

“36. As has been noted above the Respondent no. 5 did not even submit the undertaking in Appendix in Form A-2 but some



how that was also collected by Mr. J.R. Sharan from Respondent no. 5 as would be evident from his letter dated 24.6.2001 already discussed in paragraph no. 13 of this judgment.

“ 37. What has really made this court wholly uncomfortable that even when the report of the Enquiry Committee of Mr. S.S. Prasad and Mr. G.Kumar, the Deputy Manager (Sales), Patna as well as SEO, Patna was against respondent no. 5, the Dealer Selection Board headed by the Chairman had recommended for allotment of dealership in favour of respondent no. 5. The very fact that the terms and conditions of the advertisement and the requirement of the application were not furnished by respondent no. 5 should have been good enough for the Dealer Selection Board to reject the candidature Patna High Court CWJC No.8934 of 2001 dt.13-05-2015 29 of respondent no. 5 in the light of report of screening committee dated 20.12.2000 but that was not done but Mr. J.R. Sharan had not only allowed Respondent no. 5 to appear in interview and also declared the first and the best candidate.

“40. Thus there is no escape from irresistible conclusion that the decision to award S.K.O. dealership in favour of Respondent no. 5 was not only contrary to the terms of advertisement and brochure containing the conditions prescribed in the application form but also malafide exercise of power at the behest of Mr. J.R. Sharan, the Chairman of Dealer Selection Board. “

From the detailed findings recorded by the learned Writ Court as indicated hereinabove we find that the learned Writ court has recorded a reasonable finding based on due appreciation of the facts and records and we see no reason to make any indulgence into the matter. Even though it was argued that the appellant has been continuing with the dealership for all this years and he should not be disturbed but once as is apparent from the records that there was illegality committed in recommendation made merely because of



some interim protection granted initially in the writ petition and come in these appeals which are pending since 2015 we are not inclined to perpetuate the illegality and direct the appellant herein to continue with the dealership. Once it is apparent from the records that the Chairman of the then Selection Board has gone out of the way to bestow undue benefit and favour to respondent no. 5 and the learned Writ Court having interfered with the same, we see no reason to make any indulgence into the matter.

The appeals stand dismissed.

(Rajendra Menon, CJ)

(S. Kumar, J)

mr1/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.03.2018
Transmission Date	

