

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.813 of 2010

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Reema Kumari, W/o Rajesh Ranjan Village- Sahit, P.O. & P.S. Vidyapati Nagar,
District Samastipur

..... Petitioner

Versus

1. Bharat Petroleum Corporation Ltd., through its General Manager having its registered office at Bharat Bhawan, 4 & 6, Currimbhoy Road, Ballard Estate, Mumbai
2. The Divisional Manager, Eastern Region, Bharat Petroleum Co. Ltd., having its office at Bharat Bhawan, Plot No. 31, Prince Gulam Md. Sah Road, Golf Green, Calcutta
3. The Area Marketing Manager, Bharat Petroleum Corporation Ltd., having its office at 3rd floor, Ashiana Chamber, Exhibition Road, Patna-1
4. The Area Officer, B.P.C.L., Shahi Bhawan, Exhibition Road, Patna-1
5. The Regional Co-Ordinator, Eastern Regional Office, having its office at Bharat Bhawan, Plot No. 31, Prince Gulam Md. Sah Road, Golf Green, Calcutta
6. Beauty Kumari, D/o Dilip Chaudhry Village Wajidpur, P.O. - P.S.- District Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Neeraj Singh, Advocate

For the Respondents: Mr. Sanjay Singh, Advocate

For Respondent No. 6: Mr. Sanat Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-05-2018

The present writ petition has been filed for quashing the selection-cum-merit list published by the respondent-Bharat Petroleum Corporation Limited dated 16.11.2009 (Annexure-3) in which respondent no. 6 has wrongly been placed above the petitioner; and for connected reliefs.

2. The short facts of the case according to the



petitioner are that pursuant to an advertisement published on 12.07.2009 by the respondent-Corporation for appointment of a distributor of a petrol pump, the petitioner along with others applied for award of the petrol pump in respect of village Vidyapati Nagar, Samastipur (Rural). The guidelines for selection of a suitable candidate and other detailed guidelines for selection were provided in the advertisement and in the brochure published by the respondent-Corporation. A merit list was prepared in which the petitioner was shown to have been awarded 86.75% whereas the respondent no. 5 was awarded 87.15 marks.

3. Learned counsel for the petitioner has raised several grounds for assailing the merit list as being contrary to the conditions and requirements of the advertisement and the brochure, and has made submissions at length, referring to various documents and materials in support of such submissions, which are, to summarize, as under –

(i) Interview Board has acted arbitrarily in not awarding any marks for rural R.O. and this has caused prejudice to the petitioner who is eligible for such marks, and thus the respondent no. 6 has derived an indirect benefit as was not entitled to any marks in that regard as she does not belong to the concerned revenue village or Panchayat. It is submitted that the interview board was bound to award marks in this behalf in terms of the advertisement as well as of



the brochure.

(ii) The respondents have arbitrarily awarded zero marks to the petitioner under the head fixed and immovable assets on the ground that she had not submitted a valuation certificate of an approved valuer, while the respondent no. 6 has been awarded full 4 marks even though the valuation submitted by her was not certified by an approved valuer either.

(iii) It is submitted that it was a mandatory requirement as per the advertisement that the residential certificate be submitted in Appendix-C and this was not so submitted by the respondent no. 6, and as such her candidature ought to have been rejected for want of compliance of this mandatory requirement.

(iv) Further, the resident certificate which was submitted by the respondent no. 6 was a fake, fabricated and forged document. It discloses a different name, village and Panchayat and revenue village but was modified through interpolation subsequently.

(v) The respondent no. 6 thus became ineligible in view of the lacunae, shortcomings and other infirmities in her application form which rendered her candidature liable to be rejected.

4. Learned counsel for the respondent-Corporation, on the other hand, has sought to justify the merit list and has also made detailed submissions to controvert the stand of the petitioner and to justify the selection of respondent no. 6. It has been submitted that



most of the documents and materials relied upon by the petitioner to question the validity of the candidature of the respondent no. 6 were not made available to the Corporation at the time when the decision was taken and merit list prepared, and these have admittedly been procured by the petitioner later on through applications under the Right to Information Act, and otherwise. The Corporation relies on the statements made in the application for the purposes of selection of candidates. It is not expected to carry out a detailed enquiry and investigation into the genuineness or otherwise of the documents submitted by the candidates. There was no occasion to doubt the correctness of the statements made in the application form submitted by respondent no. 6, and there has thus been no irregularity or illegality in the selection of respondent no. 6 who was declared the candidate with the highest marks.

5. Learned counsel for the respondent no. 6 appears and has been heard at length. The writ petition has been resisted with full fervor, submitting that no irregularity or illegality has been committed in the selection process.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court prima facie came to take a view that it is a fit case where the matter should be remitted back to the Corporation for being decided afresh after hearing both the petitioner as well as the respondent no. 6,



considering that new materials have been brought on record by the petitioner which were not made available to the Corporation at the time of taking a decision.

7. However, one of the pleas raised by the petitioner appears sufficient to decide the matter at this stage itself. A specific stand has been taken by the petitioner in paragraph 15(ii) of the supplementary affidavit filed on 09.08.2012 that the respondent no. 6 had filed a residential certificate issued by the Block Development Officer but did not file it in the prescribed Form Appendix-C issued by the proper authority and hence the same was invalid. It has been reiterated by the petitioner in paragraphs 8 and 10 of the rejoinder to the counter affidavit of respondent no. 6, that in view of the eligibility criteria mentioned in Clause 4(a)(iv) of the brochure, candidates were compulsorily required to attach a residential certificate in Appendix-C along with the application form as proof of residence. This condition was thus clearly mandatory in nature and the very eligibility of the candidate was required to be tested on the basis of the validity of such certificate. The advertisement (Annexure 1) prescribed the form of the residential certificate in Appendix-C. While the petitioner claims to have fulfilled this condition, it has been stated that respondent no. 6 did not file the mandatory certificate. Neither learned counsel for the Corporation nor the learned counsel for the respondent no. 6 was able to show from their respective counter affidavits that this statement has



been controverted or denied. Learned counsel for the respondent no. 6 sought to make a feeble submission that the supplementary affidavit of the petitioner had not been served on him. However, I.A. No. 8152 of 2015 filed by the petitioner clearly indicates that a copy of the entire petition along with all annexures and supplementary petitions had been served through Dasti process upon the father of the respondent no. 6. It is evident from the very fact that the respondent no. 6 has since filed appearance, that all these documents including the supplementary affidavit were duly served on the respondent. It is noted that a copy of the aforesaid rejoinder was also served on the learned counsel for the respondent-Corporation as well as respondent no.6 as far back as on 14.01.2016, and again the facts stated therein have not been either controverted or disputed despite lapse of over two years since.

8. In these circumstances, the fact that respondent no. 6 did not file her residential certificate in the mandatory Appendix-C as prescribed in the advertisement, is not in dispute. The Corporation has not explained the circumstances under which the candidature of the respondent no. 6 was not rejected outright in absence of compliance of the said mandatory requirement. Without the requisite residential certificate in Appendix-C being furnished with her application form, her candidature could not have been considered as valid and her candidature had to be rejected at the very threshold itself.



9. It would be apposite here to refer to the judgment of a Division Bench of this Court in the case of M/S Indian Oil Corporation Vs Raj Kumar Jha & Ors reported in 2012(2) PLJR 783 wherein it has been observed as follows –

“...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 advertisement.”

10. In the result, therefore, the impugned merit list dated 16.11.2009 (Annexure-3) requires to be interfered with. The same is quashed only to the extent of inclusion of Respondent No. 6 therein. The petitioner shall be treated as the candidate having secured the highest marks. The respondent-Corporation shall now proceed in the matter in accordance with law. It is made clear that the writ petition is being allowed on the above ground alone and without entering into the merits of the other pleas and submissions raised by the petitioner. I.A. No. 4823 of 2010 and I.A. No. 8152 of 2015 also stand disposed of.

11. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading	22.05.2018



Date	
Transmission Date	N.A.

