

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22910 of 2012

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1. Naveen Kumar, Son of Shri Ram Chandra Singh, Resident of Village: Awabakarpur, P.O: Manpura, P.S. Bangra Tajpur, District- Samastipur.

2. Praveen Kumar Singh, Son of Shri Ram Chandra Singh, Resident of Village: Awabakarpur, P.O: Manpura, P.S. Bangra Tajpur, District- Samastipur.

.... Petitioners

Versus

1. The India Oil Corporation Ltd. through its Managing Director, having its registered Office at G-9, Aliyaware Jung Marg Bandra (Mumbai)-400001 (India).

2. The General Manager, Indian Oil Corporation Limited, 3A, Maurya Lok Complex, Dak Bunglow Road, Patna-800001

3. Senior Divisional Retail Sales Manager, Begusarai Division Office, Indian Oil Corporation Ltd, P.O. Barauni Oil Refinery, near Barauni Refinery Police Station, Begusarai- 851114.

4. Suman Kumar, Son of Shiv Bhagya Narayan Rai, resident of Village - Gauspur Sarsauna, P.S.- Bangra, District- Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Baidyanath Thakur, Advocate

For Respondent-IOC : Mr. K.D. Chatterji, Sr. Advocate

Mr. Amlesh Kumar Varma

Mr. Anil Kumar Sinha, Advocates

For Respondent No. 4: Mr. Chitranjan Sinha, Sr. Advocate

Mr. Ranjeet Kr. Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-08-2018

Heard learned counsel for the petitioners, learned senior counsel for the respondent-Indian Oil Corporation Limited as well as learned senior counsel for the respondent no. 4.

2. This writ petition has been filed for a direction to the respondents concerned to award the dealership of retail outlet in petrol/diesel at location Tajpur-Hajipur Road (within 5 K.Ms. from Tajpur Chowk to Hajipur), Samastipur to the petitioners; and for connected reliefs.



3. Learned counsel for the petitioners seeks an adjournment of about ten days in view of the non-availability of learned senior counsel engaged to appear in this matter. The prayer for adjournment however cannot be acceded to. This Court in its order dated 17.07.2018 had taken note that the matter had been repeatedly adjourned at the instance of the petitioners since 05.12.2017 and as prayed, final indulgence was granted for two weeks. The petitioners were permitted to make some alternative arrangement, if necessary, as no further time would be granted on the next date. The record of the case shows that from the very beginning, numerous adjournments have been sought by, and granted to, the petitioners as far back as from 21.06.2013 itself and the matter has remained pending long enough. It is therefore not possible for this Court to accede to the prayer of the petitioners for any further adjournment.

4. Learned counsel for the petitioners was thus requested to proceed with submissions on the merits of the matter but he has expressed his inability to do so.

5. Mr. K.D. Chatterji, learned senior counsel appearing on behalf of the respondent-Corporation, on the other hand, submits that the writ petition itself has become infructuous by efflux of time. It is further submitted that no relief ought to be granted to the petitioners by reason of delay and laches on their



part and they have not acted with due diligence. It is pointed out that the petitioners had been awarded the dealership of retail outlet at location Tajpur-Hajipur Road. Despite the petitioners having full knowledge that their selection was proposed to be cancelled and the same was to be awarded to the private respondent no. 4 as evident from the averments made in paragraph 6 of the writ petition, no action was taken by the petitioners. The selection of the petitioners came to be cancelled by letter dated 13.10.2012 (Annexure-15), considering that the land offered by them was Government land (*Gairmajarua Khas*) and was in their illegal possession by encroachment. A letter of appointment was issued on 20.06.2013 in favour of the respondent no. 4 after getting the No Objection Certificate from the district administration on 31.03.2013 and the retail outlet was commissioned on 24.06.2013. The petitioners in the meantime had filed a representation under grievance/complaint redressal mechanism before the respondent-authority against the award of dealership to the respondent no. 4 which was however also not entertained and it was held that the respondent no. 4 had a clear and marketable title in respect of the land offered by him. It is submitted that cancellation of selection of the petitioners as well as disposal of their complaint petition by the impugned letters dated 13.10.2012 were challenged for the first time through I.A. No. 9218 of 2016 and I.A. No. 7083 of 2017, i.e.



after inordinate delay of four years and five years respectively. In the meantime, the retail outlet has been commissioned and made operational since year 2013 itself. It is further submitted that the petitioners have repeatedly been attempting to obstruct the functioning of the retail outlet. It transpires that on their complaint, the No Objection Certificate issued in favour of the respondent no. 4 was cancelled by the District Magistrate and ultimately the matter reached this Court in CWJC No. 18284 of 2017 and CWJC No. 18231 of 2017 preferred by the respondent-Corporation and respondent no. 4 respectively. The writ petition of respondent no. 4 was allowed and the order of the District Magistrate cancelling the No Objection Certificate was quashed as being without jurisdiction. The petitioners had sought to be impleaded as interveners in the writ petitions but their prayer was declined. Being aggrieved by the same, the petitioners preferred LPA No. 467 of 2018 but the same stood dismissed as having no merit. In support of his contentions, reliance has been placed on the decision of the Apex Court in *Sanjay Kumar Shukla Vs. Bharat petroleum Corporation Limited & Ors.* (2014) 3 SCC 493.

6. Mr. Chitranjan Sinha, learned senior counsel appears on behalf of the respondent no. 4 and submits that upon rejection of selection of the petitioners, the respondent-Corporation has rightly awarded the dealership to the respondent no. 4 in line with



Clause 18(B)(ii)(b) of the brochure. It is further submitted that the respondent no. 4 has made considerable investment and has successfully been operating the retail outlet for the past about five years and ought not to be disturbed.

7. Having heard learned counsel for the respondents and on careful consideration of the materials relied upon by them, this Court is not inclined to exercise its discretionary jurisdiction to interfere in the matter. It is evident that the petitioners were aware that the selection was on the verge of being cancelled and the dealership awarded to the respondent no. 4 as apparent from the averments in paragraph 6 of the writ petition. It must be noticed that a submission was made that the order of cancellation of selection was not served on the petitioners but however, no specific pleading in this behalf has been made in the writ petition. Pursuant to order of this Court dated 13.10.2017, a supplementary counter affidavit has been filed on behalf of the Corporation containing a positive assertion that the letter dated 13.10.2012 as aforesaid was sent to the petitioners individually through speed post, which has not been controverted by the petitioners despite having filed a rejoinder thereto.

8. It is significant to take note of the decision of this Court in *Kaushal Kishore Vs. The Union of India & Ors.* reported in 2000(2) PLJR 475 wherein it has been observed as follows –



“8. I am, therefore, convinced that in the peculiar facts and circumstances of the present case it would not be a sound exercise of discretion to allow this writ petition, even though I have held hereinabove that the impugned order suffers from the infirmity of non-application of the mind and being unsupported by reasons. The interview had taken place way back on 5.2.99, and the petitioner had submitted his representation quite a few months thereafter. Furthermore, as has been found hereinabove, respondent no. 7 has by now made heavy investments. The entire project is complete and is about to become operational. In that view of the matter, in exercise of the powers conferred on this Court in the prerogative writ jurisdiction under Article 226 of the Constitution of India, I refuse to exercise my discretion in favour of the petitioner. The delay has mainly been caused by the petitioner. In that view of the matter, C.W.J.C. No. 6819 of 1999 is hereby dismissed.”

9. The need for cautious exercise of discretion, moreso in contractual matters, has been reiterated in *Sanjay Kumar Shukla Vs. Bharat petroleum Corporation Limited and others* (supra) observing as follows –

“19. We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by



public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast changing economic/market scenario are some of the pitfalls that may occur.”

10. Having regard to the aforesaid principles, the fact of commissioning of the retail outlet by the Respondent No. 4 in the year 2013 after making considerable investment, the offered land of the petitioners being ineligible for consideration, as well as the delay and laches on the part of the petitioners, this Court does not find merit in the writ petition, which accordingly stands dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
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