

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23654 of 2019

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Guriya Kumari, Gender- Female, aged about 23 years, W/o- Chandan Kumar Ram, R/o- Village- Kajri Bujurg, Block- Jandaha, P.S. Jandaha, District- Vaishali.

... .. Petitioner/s

Versus

1. Indian Oil Corporation Limited through its Chairman, J.B. Titto Marg, Sadik Nagar, New Delhi.
2. Chairman, Indian Oil Corporation Limited, J.B. Titto Marg, Sadik Nagar, New Delhi.
3. Director Marketing, Indian Oil Corporation Limited, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai- 400051.
4. Chief Area Manager, Begusarai Area Office, Indian Oil Corporation Limited (M.D.). Indane Area Office, Begusarai, P.O.- Barauni Oil Refinery, Bgusarai, Pin Code - 851114.
5. Assistant Manager, (LPG-S), Indian Oil Corporation Limited, Darbhanga.
6. Smt. Rani Kumari, Female, aged 22 years, wife of Dharmbir Paswan, resident of Mauje Jainagar, Ward No. 06, P.O. Jainagar, P.s. Jainagar, District Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner	: Mr. Siddartha Prasad, Adv.
For the Respondent- Corpn.	: Mr. K.D. Chatterjee, Sr. Adv.
	Mr. Amlesh Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
24-12-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the letter dated 26.06.2019 issued by the Chief Area Manager, Indane Area Office, Begusarai (Indian Oil Corporation Limited)



whereby and where-under the candidature of the petitioner for LPG distributorship at location Chhitauni, District Madhubani has been cancelled. The petitioner has further prayed for declaring the fresh draw of lots held on 19.11.2019 in favour of the respondent no. 6 as null and void.

3. The brief facts of the case, according to the petitioner, are that an advertisement was published in the Hindi Daily News Paper namely Dainik Jagran on 17.06.2017 inviting applications for selection of LPG Gramin Distributor at location Chhitauni, Block Basopatti, District Madhubani. The petitioner along with other candidates had applied for being granted LPG distributorship and thereafter draw of lots was conducted on 10.01.2019, in which the petitioner was declared as a successful candidate, whereafter, she had deposited a sum of Rs. 20,000/- as security money for field verification. The petitioner had then submitted the requisite documents for field verification and had offered two different pieces of land, one for go-down and other one for showroom. The land offered for go-down is a piece of land leased out to the petitioner for a period of 15 years vide lease deed dated 04.08.2017 and as far as the showroom is concerned, another piece of land was offered by the petitioner, which has been leased out to her for a period of 15 years vide



lease deed dated 04.08.2017. It is the contention of the petitioner that the said lease deeds dated 04.08.2017 contain a clause to the effect that lease will commence from the date of issuance of LOI to the petitioner by the Oil company so that rent is payable from that date, however, subsequently by way of abundant precaution, a rectification lease deed dated 14.05.2019 was executed in between the petitioner and the lessor with regard to the aforesaid two lease deeds dated 04.08.2017 and the same postulated that the lease period of 15 years will commence from the date of execution of the aforesaid two lease deeds dated 04.08.2017. Nonetheless, the respondent Corporation by the impugned letter dated 26.06.2019 has rejected the candidature of the petitioner for grant of LPG distributorship on account of the following deviation:-

“The successful candidate did not fulfil the relevant condition of “owning” a suitable piece of land for go-down as well as showroom as on the date of submission of application”.

4. The learned counsel for the petitioner has submitted that the respondent Corporation has failed to consider the effect of rectification of lease deed and in any view of the matter, the lease deed cannot be futuristic inasmuch as the same is operational from the date of execution. The learned counsel for



the petitioner has further referred to a judgment reported in 2019 (4) PLJR 663, rendered by a co-ordinate Bench of this Court in the case of **Shankar Kumar Bhagat vs. The Indian Oil Corporation & Ors.**, paragraphs No. 13, 15, 18, 19, 27 and 33 whereof are reproduced herein below:-

“13. The aforesaid other conditions are the bone of contention in the present case. In order to appreciate the same, this Court would take note of the relevant part of the registered lease dated 18.12.2018 as under:-

“मैं लेख्यधारी ऊपर खाना सं० 5 में वर्णित जमीन का अधिपति हूँ और इस पर मेरा अधिकार और दखल कब्जा विवाद रहित है उपर्युक्त लेख्यधारी श्री शंकर कुमार भगत ने मुझसे यह भूमि पट्टे पर देने की प्रार्थना की और मैंने उसे स्वीकार किया। लेख्यधारी श्री शंकर कुमार भगत के पक्ष में इंडियन ऑयल कॉरपोरेशन लिमिटेड (I.O.C.L.) के तहत पेट्रोल पम्प के लिए लीज पत्र लिखा है।

इसलिए लेख्यधारी ने अपनी इच्छा से मन और शरीर की स्वस्थता में बिना किसी दबाव या जोर जबरदस्ती के उपर्युक्त जमीन आज से उनतीस वर्ष की अवधि के लिए 95000/- रुपये वार्षिक किराया पर उपर्युक्त लेख्यधारी श्री शंकर कुमार भगत को पट्टा बना दिया और उक्त श्री शंकर कुमार भगत इस भूमि को vius अधिकार में ले लिया। यह कि लीज की अवधि लेख्यधारी को पेट्रोल पम्प का लाईसेंस मिलने की तिथि से 29 वर्षों के लिए बहाल या बरकरार रहेगा।”

15. In the aforementioned backgrounds of facts now this Court has been called upon to take a view as to whether the rejection of the candidature saying



that the land documents submitted by him were not valid for considering the offered land under Group-I may held correct, in accordance with the terms of the Brochure and in accordance with law.

18. This Court is of the considered opinion that in the facts of the present case, the lease deed was registered in favour of the petitioner on 18.12.2018 clearly stating therein that the land is being provided on lease from today for a period of 29 years at the annual rent of Rs.95,000/-. The lease deed also states that the lessee has taken the land in his possession. Till this there is no difficulty but what has been a matter of controversy is the further line which says that the period of lease will remain maintained for a period of 29 years from the date of receipt of the licence of the petrol pump. The later line stating that it will remain in existence for 29 years from the date of receipt of the licence of the petrol pump is in congruous with the first part of the lease deed, therefore, this Court is of the considered opinion that the entire lease deed is required to be looked into to appreciate its nature and intention of the parties.

19. On reading of the whole lease deed what prevails in the mind of this Court is that by clearly stating about handing over of the possession of the land to the lessee on the date of execution and registration of the lease deed, the lesser had made it clear that the lease deed has come into force and has



been acted upon simultaneously with its execution and registration on 18.12.2018. The intention further gets clarified from the rectification deed dated 19.03.2019 which states that in the lease deed dated 18.12.2018, inadvertently at two places it has been mentioned that the period of lease will be maintained for a period of 29 years from the date of receipt of the licence of the petrol pump. The rectification with regard to the inadvertent error has been rectified.

27. In the opinion of this Court, the I.O.C. has completely erred in construing the registered instrument dated 18.12.2018. It has failed to look into the complete contents of the lease deed which clearly provides that the lease deed has been made from the same date for a period of 29 years on an annual rent of Rs.95,000/- and lessee has taken over the possession of the land (emphasis supplied). It is a transfer of interest of the lessor in favour of the lessee simultaneously with the registration of the deed on 18.12.2018. What has been stated thereafter would not take away the effect of the lease which has been given effect to with some significant act of handing over of possession of land through the registered document. It is for this reason that the Registrar had admitted the document dated 18.12.2018 and registered the same on payment of adequate stamp duty and registration charges with other fees.

33. In result, the impugned e-mail notice dated



08.05.2019 as contained in Annexure-7 to the writ application is hereby set aside and the respondent is directed to proceed further taking the instrument dated 18.12.2018 as a legal and valid document which make available the land to the petitioner in terms of the other conditions mentioned in paragraph 4 of the Brochure, on the date of his application. Let the whole exercise in this regard be completed within a period of three months from the date of receipt/production of a copy of this order.”

5. The learned counsel for the petitioner has also relied on a judgment dated 14.9.2020, rendered by this Court in the case of **Priya Kumari vs. Indian Oil Corporation & Ors.**, passed in CWJC No. 7292 of 2020, relevant paragraphs whereof are reproduced herein below:-

"This Court finds that as far as the first issue is concerned, regarding availability of the offered land with the applicant as on the date of application, no material has been brought on record by the respondent Corporation to show that the offered land i.e. plot no. 633 was not available with the applicant as on the date of application whereas on the contrary the petitioner has produced a rectification deed dated 17.03.2020 whereby the typographical error regarding mentioning of plot number in the original lease deed dated 20.12.2018 has been rectified and in fact the boundaries of the land in



question mentioned in both the deeds are also same and similar, thus there is no reason to doubt about the availability of plot no. 633 with the petitioner as on the date of submitting the application i.e. on 22.12.2018. In fact the judgment referred to by the learned counsel for the petitioner, rendered in the case of Sheodhyan Singh (supra) and Chamru Yadav (supra), clearly buttress the stand of the petitioner on this score. On the contrary, this Court further finds that the judgment referred to by the learned counsel for the respondent Corporation in the case of Neeraj Kumar (supra) is distinguishable in the facts and circumstances of the present case.

Now, coming to the second issue raised by the respondent Corporation that the error in question is non-rectifiable, this Court finds from the "FAQ for field on dealers selection guidelines" that what has been mentioned as a non-rectifiable deficiency is that the Khesra number/ Khatauni/Gut number/Survey number etc. cannot be changed as far as land details mentioned in the application is concerned, however, in the present case, the petitioner is not seeking any change in the land details, as far as her application dated 22.12.2018 is concerned, thus this Court holds that the error in question does not fall under the non-rectifiable category. The judgment referred to by the learned counsel for the petitioner, rendered in the case of Mukesh Kumar Verma (Supra) is clearly



distinguishable in the facts and circumstances of the present case inasmuch as in the said case the learned Division Bench was considering a case where incorrect plot number/ Khesra number was stated in the application itself and the same was being sought to be rectified whereas in the present case correct information i.e. correct plot number has been mentioned in the application filed by the petitioner herein. Moreover, the said Judgment also stands distinguished by a coordinate Bench of this Court in a case reported in 2019(4) PLJR 663 (Shankar Kumar Bhagat vs. The Indian Oil Corporation &Ors.). This Court is of the further view that since the error in question does not fall within the non-rectifiable category, the same can very well be rectified and moreover, the respondent Corporation being State within the meaning of Article 12 of the Constitution of India should act fairly and should not take a hyper-technical view of the matter inasmuch as though the petitioner has rightly mentioned the plot number in her application dated 22.12.2018 but on account of inadvertence the plot number has been wrongly mentioned in the lease deed dated 20.12.2018, which has already stood rectified vide the rectification deed dated 17.03.2020. Consequently, this Court holds that the error in question i.e. wrong mentioning of the plot number in the lease deed dated 20.12.2018, though not in the application form, which has also stood corrected vide the rectification deed dated



17.03.2020, does not violate any essential condition of the advertisement/ brochure of the respondent Corporation/FAQ in question, so as to warrant a hyper technical approach by the respondent Corporation, thus the impugned action of the respondent Corporation, as contained in the letter dated 21.04.2020 and in the E-mail communication dated 16.03.2020, declaring the candidature of the petitioner to be ineligible, is declared to be unreasonable, arbitrary and illegal. Accordingly, the impugned letter dated 21.04.2020 issued by the Chief Divisional Retail Sales Manager, Begusarai Divisional Office, I.O.C.L. as also the E-mail communication dated 16.03.2020 issued by Begusarai Regional Office, I.O.C.L., is hereby set aside and the respondents are directed to re-consider the case of the petitioner for grant of retail outlet dealership, in accordance with law.

The writ petition stands allowed."

6. Per contra, the learned Senior counsel for the respondent Corporation, Shri K.D. Chatterjee, has submitted that during the course of field verification it was observed that the lease deeds dated 04.08.2017, submitted by the petitioner, do not clearly mention in paragraph no.1 that the said lease deeds have been executed for a period of 15 years from any date in between the date of advertisement till the submission of the



application form. Only after the aforesaid defect was pointed out to the petitioner, she submitted a rectified/ corrected lease deed dated 14.05.2019. It is submitted that the basic requirement for land under the selection guideline for SP (w) category is as follows:-

“(vi) Land documents: Documents pertaining to land/ godown/showroom in the name of applicant or member of ‘family unit’, Registered sale deed/ Gift Deed/ Lease Deed (15 years minimum), Mutation and Government records (self-attested photocopy of the original)”

7. It is also submitted by the learned Senior counsel for the respondent Corporation that it has been specifically mentioned in the brochure, as is also apparent from page-17 of the writ petition, that the ownership of land documents offered for go-down or showroom as defined in the Brochure should be valid as per the dates specified therein. It is thus submitted that since the petitioner was not in possession of the land in question on the date of application, which is the basic requirement as per the guidelines, and the rectification/ corrected lease deeds were submitted after the date of application, her candidature has rightly been cancelled.

8. The learned Senior Counsel for the respondents has



further referred to section 105 of the Transfer of Property Act, 1892. It has thus been submitted that the lease deeds dated 04.08.2017 would show the lessor's willingness, only to give the land in question on rent, however, neither possession of the land in question was handed over to the lessee on the date of execution of the said lease deeds dated 04.08.2017 nor the said lease deeds anywhere mention that the same has come into force and has been acted upon simultaneously with the execution or registration on 04.08.2017. The learned Senior counsel for the respondents has also referred to a judgment reported in *2009(3) PLJR 591 (Neeraj Kumar vs. Indian Oil Corporation Ltd. & Ors.)* paragraph no. 10 whereof is reproduced herein below:-

“10. In my view, Mr. Chatterjee is correct, for a simple reason that once a party is required to make an application and lay claims on basis of certain documents knowing fully well that the documents have to be evaluated, accordingly he makes an application then his right to be considered crystallizes on the day the application is made and that cannot be altered subsequently because if that is permitted then all candidates would be changing their basic papers at their free will, till the time of Interview. The cut off is the date when application is filed and subsequent documents cannot be looked into.”



9. I have heard the learned counsel for the parties and perused the materials on record. At the outset, it would be relevant to reproduce herein below the relevant portion of the lease deeds dated 04.08.2017:-

“भूमि की श्रेणी :- वाणिज्य लायक खाली।

गोदाम वास्ते :- 21 मीटर X 26 मीटर

यू बजरिये हाल खतियान बनाम पेदर लेख्यकारी दर्ज है। याने पेदरी सम्पति हिस्सा खास लेख्यकारी है।

चूँकि द्वितीय पक्ष गैस एजेंसी वास्ते ग्राम मौजे महिनाथपुर पंचायत खौना अंचल बासोपट्टी जिला मधुबनी में एलपीजी वितरक नियुक्ति हेतु आवेदन दे रहे हैं लेहाजा द्वितीय पक्ष को ग्राम महिनाथपुर में एलपीजी वितरण हेतु गोदाम बनाने के लिए एवं अन्य तत्सम्बन्धित सामान रखने हेतु जमीन की आवश्यकता है एवं प्रथम पक्ष को ग्राम महिनाथपुर पंचायत खौना अंचल बासोपट्टी जिला मधुबनी में एलपीजी गोदाम बनाने लायक जमीन उपलब्ध है। लेहाजा द्वितीय पक्ष ने प्रथम पक्ष से इस्तद्वाय किया कि अपनी निम्नलिखित जमीन हेतु एलपीजी वितरण हेतु गोदाम बनाने हेतु किराया पर देवे जिसके लिए प्रथम पक्ष तैयार हो गये वो उभय पक्षों में निम्नलिखित शर्त तय पाया –

1. यह कि यह लीज एग्रीमेंट 15 वर्षों के लिए होगा जो द्वितीय पक्ष को गैस एजेंसी द्वारा वितरक नियुक्ति के दिन से चालू होगा तथा 15 वर्षों तक चलेगा।
2. यह जमीन का किराया मो0 36,000/- छत्तिस हजार रुपये वार्षिक की दर से तय पाया जो द्वितीय पक्ष एग्रीमेंट चालू होने के अगले वर्ष के प्रथम सप्ताह में प्रथम पक्ष चेक या ड्राफ्ट या प्रथम पक्ष द्वारा दिये गये बैंक खाते में अन्तरण प्रत्येक वर्ष के प्रथम सप्ताह में अदाय किया करेंगे।



3. यह कि द्वितीय पक्ष दो साल के किराया अदा नहीं करने की स्थिति में द्वितीय पक्ष डिफॉल्टर समझे जायेंगे। वो प्रथम पक्ष को अधिकार होगा की जमीन खाली कराने में वो वकियैता किराया वसूल करें।

4. यह कि द्वितीय पक्ष कम्पनी के निर्देशानुसार प्लान मैप के अनुसार किराये वाले जमीन में गोदाम हेतु मकान बनावेंगे जिसमें प्रथम पक्ष को कोई वोजूर या आपत्ति नहीं होगी।

5. यह कि जमीन का मालगुजारी प्रथम पक्ष अदा करेंगे अलावे इसके एल0पी0जी0 वितरक व्यापार संबंधी सभी प्रकार के करें एवं अनुज्ञप्ति फी वगैरह का भुगतान द्वितीय पक्ष करेंगे एवं उसके भुगतान की कोई भी जिम्मेवारी प्रथम पक्ष की नहीं होगी।

6. यह कि द्वितीय पक्ष गोदाम हेतु बिजली का वायरिंग कनेक्शन वगैरह अपने खर्चा से करवावेंगे। बिजली बील का भुगतान भार द्वितीय पक्ष के उपर होगा।

7. यह कि द्वितीय पक्ष किरायावाली जमीन में सिर्फ एलपीजी व्यापार हेतु ही गोदाम बनावेंगे तथा एल0पी0जी0 का ही व्यापार करेंगे। अन्य किसी तरह का व्यापार नहीं करेंगे।

8. यह कि वार्षिक किराया मो0 36,000/- छत्तिस हजार रुपया प्रति वर्ष निर्धारित हुआ जो गोदाम का कार्य शुरू होगा उस दिन से लागू होगा। यह कि अगर गैस एजेंसी का लाइसेंस नहीं मिला तो मु0 खाना नं0-5 पर प्रभाव शुन्य होगा। इसिलिए उभय पक्ष यह एग्रीमेंट लीज बनाया वो वहक एक दूसरे के तहरीर वो तामील कर दिया कि वक्त पर काम आवे। यह विलेख – पत्र आज दिनांक 04 माह 08 सन् 2017 को गवाहों के समक्ष निष्पादित किया, जो गवाहों के हस्ताक्षर से संपुष्ट होते हैं।

उक्त जमीन भू-हदबन्दी से मुक्त है/ भुदान/ लालकार्ड/
गैरमजरूआ/ आम/ खास से संबंधित नहीं है।

लीजकर्ता का हस्ताक्षर

लीजग्रहिता का हस्ताक्षर”



10. A bare perusal of the aforesaid recital of the lease deeds dated 04.08.2017 would show that on the date of application, the petitioner was not in possession of the aforesaid land in question, which is the basic requirement as per the guidelines mentioned in the brochure, as referred to herein above, as such the candidature of the petitioner has been rightly cancelled. As far as the rectification/ corrected lease deed dated 14.05.2019 are concerned, the same pertains to a period much after the date of application, hence, considering the law laid down by this Court in the case of **Neeraj Kumar** (supra), the petitioner cannot be permitted to alter the documents submitted with the application form. In fact, the present case is squarely covered by a judgment rendered by a co-ordinate Bench of this Court dated 30.07.2019 passed in CWJC No. 11874 of 2019 (**Avinash Aaroahi vs. The Indian Oil Corporation Limited & Ors.**), relevant paragraphs whereof are reproduced herein below:-

"In the present case the petitioner is aggrieved by and dissatisfied with the communication as contained in Annexure '1' to the writ application by which the petitioner has been informed that the land documents submitted by him are not valid for considering the offered land under Group-1.



In course of argument, learned counsel for the respondents has shown from the copy of the lease deed which has been brought on record by the petitioner and is available as Annexure '7' to the writ application that in Paragraph 4 of the lease deed it has been stipulated that the lease deed would be valid for a period of 29 years from the date of receipt of the license. It is submitted on behalf of the respondents that in terms of the guidelines for award of dealership and conditions stated in sub-para (v) of Paragraph 4 that the Group-I applicants must offer a suitable piece of land in the advertised location/area either by way of ownership/long term lease for a period of 19 years 11 months or as advertised by the Oil Marketing Company (OMC). The other conditions stipulated therein provides that the land should be available with the applicant as on the date of application and should have minimum lease of 19 years 11 months from the date or after the date of advertisement but not later than the date of registration.

It is pointed out that if the lease deed contains a recital that it would be valid for a period of 29 years from the date of grant of license by the Petroleum Company, it cannot be held that the petitioner had a land available on the date of his application.

Learned counsel for the petitioner has tried to rely upon a judgment of this Court rendered in C.W.J.C. No. 11683 of 2019, however, learned



counsel for the respondent Corporation has distinguished the said judgment saying that in the said case the stipulations present in the lease deed had been categorically stating that the lease had been executed from today and possession of the land has been received by the lessee on the same day. Therefore, the Court took a view that the subsequent line that the lease would be maintained and remained valid for a period of 29 years from the date of receipt of the license would not take away the effect of otherwise clear stipulation in the lease deed that it had been valid from the date of execution coupled with the fact that the possession of the land had been received by the lessee on the same day. Such stipulation is not present in this case and, therefore, learned counsel for the Corporation submits that no parity may be claimed in the facts of the present case with that of C.W.J.C. No. 11683 of 2019.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that the lease deed containing only recital that it will be valid for a period of 29 years from the date of receipt of the license does not make available the land to the petitioner on the date of his application and, therefore, the information furnished by him in the application form with the respondent Corporation cannot be said to be correct.

In the aforesaid view of the matter, this writ



application has no merit, it is dismissed accordingly."

11. As far as the judgment referred to by the learned counsel for the petitioner in the case of **Shankar Kumar Bhagat** (supra) is concerned, the same is distinguishable in the facts and circumstances of the present case in as much as in the said case, in the registered lease deed itself it was stated that the land is being provided on lease from today (i.e. the date of execution and registration of the lease deed) for a period of 29 years at the annual rent of Rs. 95,000/- and the lessee has taken the land in his possession, however, in the present case a bare perusal of the lease deeds dated 04.08.2017 would show that there is no such stipulation to the effect that either the land has been provided on lease from the date of execution/ registration of the lease deed or that the petitioner has taken the land in her possession whereas the same only shows willingness of the lessor to provide the land in question on rent to the petitioner as also it stipulates that the lease agreement shall be for a period of 15 years w.e.f. the date the petitioner is appointed as a distributor of the Gas Agency, thus, it is clear that the petitioner did not have any land available on the date of submission of her application. In fact, as stated herein above, the present case is squarely covered by the judgment rendered by a co-ordinate



Bench of this Court in the case of **Abinash Aaro**hi (supra). As far as the judgment referred to by the learned counsel for the petitioner, rendered in the case of **Priya Kumari** (supra) is concerned, the same is also distinguishable in the facts and circumstances of the present case as would be apparent from the facts of the said case itself.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(**Mohit Kumar Shah, J**)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	17-08-2021
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