

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24049 of 2019

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Neelam Kumari, Daughter of Ram Baikash Paswan, Wife of Suraj Paswan,
Resident of Village- Kariyat, Ward No. 12, Police Station- Mahalgaon, Post
Office- Bagnagar, District- Araria, Bihar- 854325.

... .. Petitioner/s

Versus

1. Bharat Petroleum Corporation Limited through its Chairman, Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai- 400001.
2. The Chairman, Bharat Petroleum Corporation Limited, Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai- 400001.
3. Head of Territory Office, Bharat Petroleum Corporation Limited, T.M. Retail, Barauni, Barauni TOP Paprour, District- Begusarai.
4. Territory Manager (Retail), Bharat Petroleum Corporation Limited, Barauni TOP Paprour, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Advocate
For the Respondent/s	:	Mr. Suresh Kumar AC to GP 1
For BPCL	:	Mr. Siddhartha Prasad

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-12-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“That the present writ application is being filed for quashing of the letter dated 22.03.2019 issued under the signature of Head of Territory Office, Bharat Petroleum Corporation Limited (hereinafter to referred as 'corporation' for the sake of brevity) Barauni, whereby and where under it has



been held that the land offered by the petitioner for in the appointment of regular/rural retail outlet (petrol pump) dealership for the location at between Araria to Kariyat on NH-57 LHS, District- Araria, under schedule cast category is not valid for consideration under Group-1, hence, the candidature of the petitioner was found ineligible. It has further been stated that the candidature of the petitioner may get considered for selection along with Group-3 applicants as per the guidelines.

The petitioner has been held to be ineligible, despite the fact that the petitioner has offered a land as per the specification required in the advertisement, which is in tune with the guidelines/norms dated 24.07.2013, issued by the Ministry of Road Transport & Highways, Govt. of India. A certificate to this effect has also been issued by the Executive Engineer, Road Construction Department, Road Division, Araria and other Authorities.

The petitioner has also not been given an opportunity as per the provision contained in Note-2 of Clause-4 (V) of the guideline on selection of dealer for regular and rural outlets through draw of lots/bidding process whereas, similar opportunity has been given to the other participant.



A photo copy of the letter dated 22.03.2019 is annexed hereto and marked to as this **Annexure-P/1** petition.”

Sri Siddhartha Prasad, learned counsel appearing on behalf of the BPCL states that third party rights stands created inasmuch as the site in question stands already allotted to private individual. Further, that the petitioner failed to comply with her undertaking in terms of representation dated 3.10.2019 (Annexure 11 at page 41), which fact is seriously disputed by the petitioner.

Be that as it may, after the matter was heard for sometime, learned counsel for the petitioner submits that the petitioner be permitted to approach respondent no. 4, namely Territory Manager (Retail), Bharat Petroleum Corporation Limited, Barauni TOP Paprour, District- Begusarai venting out the grievances, subject matter of the present petition, moreso in view of the factual matrix as set out by the petitioner, which cannot be adjudicated in the present petition filed under Article 226 of the Constitution of India.

Prayer is allowed.

The Hon'ble Supreme Court in ***D. N. Jeevaraj Vs.***



Chief Secretary, Government of Karnataka & Ors, (2016) 2

SCC 653, paragraphs 34 to 38 observed as under:-

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not inter parties disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”

36. A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be



encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150: 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [*Saraswati Industrial Syndicate Ltd. v. Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged



breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 11, p. 106:

‘198. *Demand for performance must precede application.*—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.’

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

As such, petition stands disposed of in the following terms:-

- (a) Petitioner shall approach the authority concerned i.e. Respondent No.4, namely Territory Manager (Retail), Bharat Petroleum Corporation Limited, Barauni TOP Paprour, District- Begusarai within a period of four weeks from today by filing a representation for redressal of the grievance(s);
- (b) The said authority shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of four months from the



date of its filing along with a copy of this order;

(c) The order assigning reasons shall be communicated to the petitioner;

(d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioner to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All



issues are left open;

- (j) The proceedings shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode;

The petition stands disposed of as withdrawn in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Spd/-PKP

AFR/NAFR	
CAV DATE	
Uploading Date	07.12.2022
Transmission Date	

