

**ORISSA HIGH COURT : C U T T A C K**

**W.P.(C) No.5005 of 2020**

*An application under Article 226 & 227 of  
the Constitution of India*

***Bigneshraj Patasani***

***: Petitioner(s)***

*-Versus-*

***Bharat Petroleum Corporation Ltd. & Ors.***

***: Opposite Party(s)***

For Petitioner

: M/s. H.N. Mohapatra,  
A. Samantray

For the Opposite Party Nos.1 & 2

: M/s. S. Patnaik,  
T.P. Paul, N.C. Rout

For Opposite Party No.3

: Mr. S.P. Panda,  
Addl. Govt. Adv.

For Opposite Party No.4

: Mr. J. Patnaik,  
Sr. Advocate  
Mr. B.S. Rayaguru,

**J U D G M E N T**

**CORAM :**

**JUSTICE BISWANATH RATH**

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Date of hearing: 15.07.2022

:: Date of Judgment : 25.07.2022

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1. This writ petition involves the following prayer:-

“It is therefore prayed that your Lordship’s would be graciously pleased to admit this writ petition, call for records, after hearing the parties issue writ / writs in the nature of certiorari / mandamus or any other writ / directions issuing Rule NISI calling upon the Opp. Parties to show cause as to why order dtd.20.01.2020 passed by the Opp. Party No.2 cancelling the candidature of the petitioner vide order dtd.20.01.2020 under Annexure-10, placing him in Group-3 instead of Group-1 and placing the Opp.Party No.4 in Group-1 instead of Group-3, shall not be quashed and as to why direction shall not be given to Opp.Party No.2 to allot the retail outlet dealership for Baramba of Bharat Petroleum Corporation Ltd to the petitioner. If the Opp.Parties do not show cause or show insufficient cause the Rule NISI be made absolute, considering the aforesaid facts and circumstances.

And pass any order/orders direction/directions and writ / writs as this Hon’ble Court thinks fit and proper.”

2. Background involved in this case is that the writ petition involves a challenge to the order at Annexure-10. As per the submission of the learned counsel for Petitioner reading together with the plea in the writ petition, the Bharat Petroleum Corporation Ltd. hereinafter in short be reflected as “the BPCL” published notice on 25.11.2018 for appointment of regular/rural retail outlet Petrol Pump Dealer at various locations in the State of Odisha vide Annexure-1 & the broucher therein at Annexure-2. Pursuant to such notification the Petitioner finding himself to be suitable for applying for the particular area at Sl.No.493 of the Advertisement vide Annexure-3 applied as against the regular and rural retail outlets vide Sl.No.493.

3. Taking this Court to the required criteria therein Mr. Mohapatra, learned counsel for the Petitioner contended that the application of the Petitioner was made on 07.12.2018 along with requisite documents vide Annexure-4. It is claimed that the Opposite Party No.4 had also applied

as against the same retail outlet following advertisement at Annexure-1. It is claimed that both the applicants were asked to attend the Office of the Opposite Party-Corporation at Lwis Road on 15.02.2019 at 9.30 A.M. to participate in the lottery required to be held for the said purpose. But the date was subsequently postponed to 26.02.2019, on which date the lottery could not be held and thereafter it was postponed to 12.03.2019. There was another postponement of the lottery to 19.06.2019. Mr. Mohapatra, learned counsel for the Petitioner through the pleadings in paragraph no.8 claimed that the Petitioner was declared to have been selected in the selection process through the publication on 19.06.2019 vide Annexure-5. It is alleged that while the matter stood thus even after such selection through a lottery process, there was no raising of objection on eligibility of the Petitioner and the Petitioner found qualified and the Opposite Party No.4 becoming unsuccessful filed complaint before the BPCL making an allegation that the land of the Petitioner does not lie within one K.M. from Narayan Chandra Hata towards Sunapala Chhaka on the right hand side of S.H-65. It appears, after such complaint is received the Petitioner was asked to produce report of the Tahasildar showing that his land fulfills the requirement as per the advertisement. It is claimed that on the basis of request of the Petitioner to the concerned Tahasildar, the Tahasildar vide its letter No.2157 dated 5.09.2019 categorically informed that the land of the Petitioner falls within one K.M. from Narayan Chandra Hata towards Sunapala Chhaka and is also situated to the right hand side of the State Highway 65. Such report was submitted before the BPCL authorities for their further consideration. Mr. Mohapatra, learned counsel for the Petitioner claimed that even after receipt of all the certificates from the Tahasildar, there has been further query by the Opposite Party No.2 to the same Tahasildar vide letter No.493 dated

4.10.2019 seeking information regarding factual position of the Plot No.942/224, 942/182, 942/418, 942/527 and whether such plots come within one K.M. from Narayan Chandra Hata towards Sunapal Chhaka on the right hand side of S.H-65? The Tahasildar in its further communication clearly indicated therein that there is a land of the Petitioner situated at the beginning of Narayan Chandra Hata while going from Baramba Town and Sunapal Chhak is situated at a distance of around 500 meters from Narayan Chandra Hata towards Narasinghpur. Thus Mr. Mohapatra, learned counsel for the Petitioner claimed that it could have been safely concluded that the Petitioner's land is situated adjacent to State Highway 65 in right hand side and just from beginning of Narayan Chandra Hata. Mr. Mohapatra, learned counsel for the Petitioner attempted to establish his case through the letter involving the query of the BPCL indicated hereinabove as well as the response of the Tahasildar find place at Annexures-7 & 8 respectively. Mr. Mohapatra, learned counsel for the Petitioner alleged that the Opposite Party No.2 in an attempt to favour the Opposite Party No.4 again sought for another report from the Tahasildar asking for factual position of the lands of the Petitioner. Unfortunately the Tahasildar this time responded to the BPCL vide his letter dated 7.01.2020 stating that the land of the Petitioner does not come in between Narayan Chandra Hata towards Sunapal Chhaka on the right hand side of S.H-65 and on the basis of said report the Opposite Party No.2 cancelled the candidature of the Petitioner and put the Petitioner's candidature in Group 3 as per the guideline. The response of the Tahasildar and the order of cancellation are at Annexures-9 & 10. Mr. Mohapatra, learned counsel for the Petitioner alleged that a decision was already taken vide Annexure-5 in comparison with the document produced by both the Petitioner and the Opposite Party No.4 on 25<sup>th</sup>

November, 2018 and therefore there was no possibility to entertain any further allegation by any party interested. Mr. Mohapatra, learned counsel for the Petitioner also referring to the plea through the rejoinder affidavit to the counter of the Opposite Party No.4 contended that the impugned order at Annexure-10 was passed in deliberate ignorance of the repeated information of the Tahasildar on the aspect of matching of the required criteria one vide Annexure-6 and the another one vide Annexure-8. It is not known as to why the BPCL went on persuading the Tahasildar to get a satisfactory response as appearing at Annexure-9 and this is an attempt of the BPCL only to favour the candidature of the Opposite Party No.4.

4. For the response of the Opposite Party Nos.1 & 2 though did not dispute the advertisement at Sl.No.493 sought location “within one K.M. from Narayan Chandra Hata towards Sunapal Chhaka on the right hand side of S.H-65”, but however, heavily depended on the complaint of the Opposite Party No.4 specifically alleging that the Petitioner’s land does not shoot the required criteria on land specification and claimed that the action impugned to be a justified one. The Opposite Party Nos.1 & 2 admitted the Petitioner to have applied vide Annexure-4 in respect of the land of his father in Khata No.942/224, 942/182, 942/418, 942/527 located in Mouza-Nijagada Baramba under Baramba Tahasil as against the advertised location. There is also admission in paragraph no.7 that the draw of lottery was held on 19.06.2019 in presence of two of the applicants i.e. the Petitioner and the Opposite Party No.4 herein for the above advertised location. It is also not disputed that the Corporation informed the Petitioner to have been selected vide Annexure-5. The BPCL, however, claimed that such selection was subject to verification of the original documents during field verification. Mr. Patnaik, learned counsel for the Opposite Party Nos.1 & 2 through the counter averments

in paragraph Nos.9 & 10 submitted that the land evaluation was conducted on 24.08.2019 in respect of the Sl.No.493 and they came to notice that the location of the land was not meeting the required land criteria. Mr. Patnaik, learned counsel for the Opposite Party Nos.1 & 2 further contended that it is based on raising of a doubt there has been several correspondences made with the Tahasildar, but however, the Tahasildar vide it's communication at Annexure-9 made it clear that the plot submitted by the Petitioner does not situate between Narayan Chandra Hata towards Sunapala Chhaka rather the plot situates in between Narayan Chandra Hata and Baramba Town Chhaka thereby giving intimation to the Petitioner that its offered land does not meet the required criteria and thus selection of the Petitioner for the said purpose was cancelled. For there was no possibility of selection through the lottery process, candidature of the Petitioner was considered under Group 3 along with other contenders and in the process there has been selection of the Opposite Party No.4. Mr. Patnaik, learned counsel for the Opposite Party Nos.1 & 2 taking this Court to the grounds taken in the counter affidavit ultimately attempted to justify their action in passing the order of cancellation vide Annexure-10.

This Court here finds, there is also filing of counter affidavit by the Opposite Party No.4, which appears to be completely in the light of objection raised by the Opposite party Nos.1 & 2. This Court looking to the nature of relief sought for finds, even though there is challenge to the order at Annexure-10 taking out the candidature of the Petitioner, but there is no challenge to the selection of the Opposite Party No.4 involving a subsequent development. This Court finds surprise even in filing rejoinder clearly indicating that in the meantime there has been selection of Opposite Party No.4 after considering the case of both in Group 3.

There is neither amendment to the writ petition nor involving separate writ on the further aspect.

5. While towing the response of the Opposite Party Nos.1 & 2 Mr. J. Pattnaik, learned Senior Advocate attempted to support the claim of the Opposite Party No.4 through its response in counter affidavit. Mr. Pattnaik, learned Senior Advocate appearing on behalf of the Opposite Party No.4 while taking support of the response of Mr. S. Pattnaik, learned counsel for the Corporation further submitted that for the order of selection vide Annexure-5 was subject to further verification of the land materials, the Corporation had scope to move the next stage and as the Corporation ultimately found the land offered by the Petitioner did not match the criteria under the land requirement in Sl.No.493 under the advertisement being supported with the report of the Tahasildar, there is justified reason behind passing of the impugned order at Annexure-10.

In the circumstance Mr. Pattnaik, learned Senior Advocate appearing on behalf of the Opposite Party No.4 referring to the document filed by the Opposite Party No.4 contested the challenge made by the Petitioner.

6. This Court finds, there is also filing of counter affidavit by the Tahasildar supporting the stand of the Management through his response vide Annexure-9.

7. From the stand of the parties involved herein it appears, the writ petition involves a challenge to the cancellation of candidature of the Petitioner as against Sl.No.493 in the advertisement. All the parties relied on all the reports submitted by the Tahasildar. One party submits that after giving reports vide Annexure-6 & 8 pursuant to a query of the Opposite Party Nos.1 & 2 vide Annexure-7, there was no occasion on the part of the Tahasildar to submit the report vide Annexure-9 and the

parties in opposition submit, for there was doubt in the location of the site offered by the Petitioner in the spot verification along with verification of the original records, the Opposite Party Nos.1 & 2 were constrained to refer the specific query vide Annexure-7 to the Tahasildar for his response and finding ambiguity in the answer of the Tahasildar vide Annexure-8 the Opposite Party Nos.1 & 2 were constrained to issue a further letter on 16.12.2019 asking the Tahasildar, Baramba to answer specifically to the questions raised in their letter dated 4.10.2019. Annexure-9 appears to have been issued on 7.01.2020 following such requisition by the BPCL. This Court here finds, the location as per the Annexure-3 involving the Sl.No.493 remains as follows:- “Within 1 K.M. from Narayana Chandra Hata towards Sunapala Chack on RHS of SH-65”. The certificate issued by the Tahasildar on 5.09.2019 disclosed the following:-

“With reference to the above subject cited it is informed that the following land as detailed below falls within 1 KM from Narayan Chandra Hata of Badamba. The schedule of land is situated adjacent to S.H. 65 in the Right Hand side of Khuntuni to Kamaladiha S.H.

| Village        | Khata   | Plot No.      | Area          | Kissam            | Name of RT       |
|----------------|---------|---------------|---------------|-------------------|------------------|
| Nizigarh Baram | 942/224 | 232/2879      | Ac 0.12 dec.  | Gharabari         | Lingaraj Patsani |
|                | 942/418 | 232           | Ac 0.08 dec.  | Gharabari         |                  |
|                | 942/182 | 232/2879/2951 | Ac 0.06 dec.  | Gharabari         |                  |
|                | 942/527 | 233           | Ac 0.082 dec. | Sarad Dofasali-II |                  |

8. Similarly from Annexure-7 this Court finds, the BPCL for raising of doubt on the spot verification send the following questions to be answered by the Tahasildar :-

“1. Whether **Plot No : 942/224, 942/182, 942/418, 942/527 on SH 65** Tehasil : Baramba District : Cuttack is situated between Narayan Chandra Hata and Sunapala Chack on SH 65”

9. It appears, through Annexure-8 the Tahasildar provided the following response :-

“In inviting a kind reference on the subject, I am to clarify that the schedule of land is situated at the beginning of Narayan

Chandra Hata while going from Baramba Town. It may be stated here that Sunapal Chhak is situated at a distance of around 500 meters from Narayan Chandra Hata towards Narasinghpur. So it can be concluded that the schedule of land is situated adjacent to SH-65 in right hand side just at beginning of the Narayan Chandra Hata.”

10. This Court here finds, the communication of the Tahasildar, Baramba dated 5.09.2019 at Annexure-6 never met the required queries. Looking to the communication at Annexure-7, this Court finds, the BPCL specifically asked the Tahasildar; whether the land offered by the Petitioner situates within one K.M. from Narayana Chandra Hata towards Sunapala Chack on right hand side of S.H.65? Annexure-8 disclosed that schedule of the land is situated at the beginning of Narayan Chandra Hata while going from Badamba town and also disclosed that Sunapal Chhak is situated at a distance of around 500 meters from Narayan Chandra Hata towards Narasinghpur. Therefore, there definitely exists un-cleared response of the Tahasildar and the response of the Tahasildar at Annexure-8 did not meet the query of the BPCL at Annexure-7 compelling the BPCL to issue another letter on 16.10.2019 for specific clarification on its question vide Annexure-7 with regard to the location of the land. This time the Tahasildar vide Annexure-9 provided the following answer:-

**“Answer**

The above plots are not situated in between Narayan Chandra Hata and Sunapal Chhaka on SH- 65. Rather the above plots are situated in between Narayan Chandra Hata and Baramba Town Chhaka.”

11. This Court here finds, the Tahasildar made it clear that the plot offered by the Petitioner does not situate in between Narayan Chandra Hata towards Sunapala Chhaka rather the plot situates in between Narayan Chandra Hata and Baramba Town Chhaka.

In the circumstance and for a clear report of the competent authority particularly the Revenue Authority dealing with the land in the locality, this Court finds, there was no other option for the BPCL to take into account the report of the Tahasildar vide Annexure-9 and passing order of cancellation vide Annexure-10.

12. Looking to the other issues involved herein, this Court finds, the Petitioner did not attempt to block the reconsideration aspect being raised by Opposite Party No.4 and in the meantime there involved further development in selecting Opposite Party No.4. It is, on the other hand, the Petitioner not only involved in the reconsideration process, but also went on cooperating and got involved in an outcome. Thus this Court finds, there is no substance in the Petitioner's claiming that the re-initiation of 2<sup>nd</sup> consideration aspect is bad in eye of law.

13. This Court finds, the issue involved here is; undertaking of a curative recourse by the Establishment after a complaint is raised by another contestant on the aspect of ineligibility of the Petitioner so far as the land qualification is concerned, which power is very much there with the Establishment and it is justified in correcting its own decision that too after involving the Petitioner in the said process.

14. In the circumstance, this Court finds, there is no scope to interfere in the impugned action.

15. The writ petition stands dismissed. There is, however, no order as to the costs.

***(Biswanath Rath)***  
***Judge***

Orissa High Court, Cuttack.  
The 25<sup>th</sup> day of July, 2022//  
Ayaskanta Jena,  
Senior Stenographer