

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1481 of 2017

In
Civil Writ Jurisdiction Case No.7321 of 2015

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Rakesh Kumar Sah, Son of Gajendra Prasad Sah, Resident of Village-Roshana Bazar, P.O. and P.S.-Pranpur, District-Katihar.

... .. Appellant/s

Versus

1. The Union Of India through the Secretary Department of Petroleum and Natural Gas
2. The Secretary, Department of Petroleum and Natural Gas, Shastri Bhawan, New Delhi.
3. The Indian Oil Corporation, Limited, Corporate Office, lot No. 3079/3, Sadia Nagar, J.B. Tito Marg,
4. The Chairman, Indian Oil Corporation, Limited, Corporate Office, lot No. 3079/3, Sadia Nagar, J.B.
5. The Director Marketing, Indian Oil Corporation Limited, G-9, Ali Yavar Jung Marg, Bandra East, M
6. The General Manager, Indian Oil Corporation Limited Marketing Division, Bihar State Office, Loknayak
7. The Senior Divisional Sales Manager, Indian Oil Corporation Limited, Marketing Division, Begusarai
8. The Manager Refinery Coordination Barauni Marketing Terminal, Indian Oil Corporation Limited Marketing Division
9. The State of Bihar through the District Magistrate, Katihar.
10. The District Magistrate, Katihar.
11. The Deputy Collector Land Reforms, Katihar.
12. The Circle Officer, Pranpur, District-Katihar.
13. Sri Satish Prasad, the then Circle Officer, Pranpur, District-Katihar.
14. Sri Binod Kumar Gupta, Son of Rameshwar Lal Gupta, Resident of Village-Mahadeopur P.O. Mahadeopur, Police Station-Pranpur, District-Katihar.
15. Sri Jeewan Lal Agarwal, Son of Biseshwar Lal Agarwal, Resident of Village-Mahadeopur, P.O. Mahadeopur, Police Station-Pranpur, District-Katihar.

... .. Respondent/s

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with
Letters Patent Appeal No. 1506 of 2017
In
Civil Writ Jurisdiction Case No.9456 of 2015

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Jiwan Lal Agrawal son of Late Biseshwar Lal Agrawal resident of village P.O. Mahadevpur, P.S. Pranpur, District Katihar.



... .. Appellant/s

Versus

1. Indian Oil Corporation Ltd.
2. The Chairman Indian Oil Corporation Ltd., Corporate Office, Lot No. 3079/3, Sadia Nagar, J.B. Tito
3. The Director Marketing, Indian Oil Corporation Ltd., Indian Oil Bhawan, G - 9 , Aliyavar Jung Marg
4. The General Manager, Indian Oil Corporation Ltd Marketing Division, Bihar State Office, Lok Nayak
5. The Chief Manager R.S Indian Oil Corporation Ltd. Bihar State Office, Lok Nayak Jai Prakash Bhawan
6. The Senior Divisional Sales Manager, Indian Oil Corporation Ltd Marketing Division, Begusarai Division
7. The Manager Refinery Coordination, Barauni Marketing Terminal, Indian Oil Corporation Ltd Marketing Division
8. The Circle Officer, Bihar, Patna.
9. Binod Kumar Gupta son of Late Rameshwar Lal Gupta resident of village P.O. - Mahadevpur, P.S. - Pranpur, District - Katihar.
10. Rakesh Kumar Sah S/o Gajendra Prasad Sah resident of Roshana Bazar, P.O. P.S. - Pranpur, Dist - Katihar.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1481 of 2017)

For the Appellant/s	:	Mr.Sanjeev Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam, AAG-12
For the I.O.C.L.	:	Mr. Anil Kumar Jha, Sr. Advocate
		Mr. Sanat Kumar Mishra, Advocate

(In Letters Patent Appeal No. 1506 of 2017)

For the Appellant/s	:	Mr.Rajendra Prasad Sah, Advocate
For the I.O.C.L.	:	Mr. Anil Kumar Jha, Sr. Advocate
		Mr. Sanat Kumar Mishra, Advocate
For Respondent No. 14	:	Mr. Dharmendra Jha, Advocate
		Mr. Jitendra Mishra, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-08-2023

The appeals arise from an order of the learned Single

Judge refusing to interfere with the decision of the Indian Oil



Corporation (for brevity “Corporation”) conferring the right to carry on a retail outlet on the 14th respondent in CWJC No. 7321 of 2015; the facts of which were referred to in the common impugned judgment passed, from which we also ascertained the essential facts.

2. The controversy arose from the appointment of a dealer, to carry on a retail outlet under the Kisan Sewa Kendra at Mahadeopur in the district of Katihar. An advertisement was published by the respondent/ Corporation on 19.08.2011 in a vernacular newspaper. Four persons participated in the tender who were the appellants, the 14th respondent and one another person who has not challenged the appointment made of the 14th respondent. A merit list was notified in which Rakesh Kumar Sah, the appellant in CWJC No. 7321 of 2015 obtained 85.93 marks; the highest among the four, with Bharat Chandra Prasad securing 78.11 marks, Jeewan Lal Agrawal, the petitioner in CWJC No. 9456 of 2015 securing 59.47 marks and the 14th respondent, Binod Kumar Gupta, 55.55 marks. The 14th respondent, was at the bottom of the select list who was given only ‘0’ marks under the heading ‘Capability to Provide Infrastructure and Facilities’, while Rakesh Kumar Shah obtained 100 out of 100 marks. The capability of the 14th



respondent to provide infrastructure and facilities was assessed at 'nil' only since the proposed land was standing in the name of State of Bihar, as reflected from Register-II as Gairmazarua Bihar Sarkar, in revenue village Sakraili. Based on the selection result at Annexure-5 dated 30.12.2012, the Corporation requested for a 'No Objection Certificate' for establishment of the retail outlet in the land offered by Rakesh Kumar Sah. The Circle Officer by Annexure-6 dated 05.03.2013 replied that the property offered by Rakesh Kumar Sah is situated at Mahadeopur, while the land offered by Jiwan Lal Agrawal is situated at mouza Sakraili. The District Magistrate, Katihar by Annexure-6 dated 20.03.2013 granted N.O.C., as requested by the Corporation, when a complaint was made by the 14th respondent to the Senior Divisional Manager of the Corporation.

3. The complaint was of the 14th respondent with respect to his capability to provide infrastructure and facilities having been assessed as '0' while he secured very high marks in all other heads. He also challenged the marks assigned to the other applicants. The Corporation revisited the matter, carried out site inspection and by Annexure-16 dated 17.06.2014 declared the 14th respondent to have secured the highest marks at 89.61. Jiwan Lal Agrawal on revaluation obtained 87.32



marks; above that obtained earlier, while Rakesh Kumar Sah obtained only 84.53 marks; below that obtained earlier.

4. Rakesh Kumar Sah filed a writ petition numbered as CWJC No. 21557 of 2014, wherein a direction was given to afford a fresh hearing and consider the matter *de novo*. The *de novo* consideration also favoured the 14th respondent against which the two applicants had approached the writ Court.

5. Before the writ Court, Rakesh Kumar Sah raised two grounds, one that the land offered by the 14th respondent belongs to the State and the successful applicant has no right over it. The other contention, was regarding the location of the land offered, which was stated to be in Sakraili village and not in Mahadeopur; in which later place the Corporation had intended to establish the retail outlet as evident from the advertisement. Insofar as Jiwan Lal Agrawal is concerned, his only grievance in the writ petition was with respect to the grant of marks for 'fixed and movable assets'. He did not have any contention regarding the revaluation in the other heads, since he obviously received higher marks than the earlier selection.

6. The learned Single Judge found that neither of the appellants raised any ground of malafides, in the revaluation



done or the appointment made. It was found that in judicial review the petitioner cannot challenge the location at which the retail outlet is to be established, especially since it lies within the exclusive domain of the Principal, the Corporation. It was also noticed that the Circle Officer by report dated 04.04.2014 as well as another communication of the Deputy Collector, Land Reforms dated 18.03.2015 affirmed that Sakraili is part of Mahadeopur, though they are situated in different revenue mouza. There was no authenticated document regarding the exact location and the village in which the lands were situated. Finding the contours of judicial review to be limited, the learned Single Judge relied upon the discretionary principle enshrined in Article 226 and the need to ensure the larger public interest, thus denying exercise of discretion under Article 226, even when the litigant has a legal right. Decisions were quoted to emphasize the limited scope for judicial review under Article 226, especially in contractual matters. From a conspectus of the various principles culled out from the decisions cited, from which extracts were also made copiously, in the impugned order, the challenge against the location and the award of marks was found to be unsustainable.

7. Learned counsel for the appellants specifically



pointed out that there is no clarity insofar as the identification of the location is concerned. The revenue authorities have blown hot and cold insofar as the exact location is concerned. It is also argued that the Corporation by the revaluation, interfered with a proper exercise made at the earlier point. The learned Senior Counsel appearing for the Corporation, however, asserted that there is no confusion with respect to the location and the land did not belong to the State of Bihar. The District Collector has granted 'No Objection Certificate' for establishment of the outlet, which would not have been done, if the land was a public land. The learned counsel appearing for the 14th respondent also asserted his superior claim based on the revaluation carried out by the corporation. The 14th respondent has now established the retail outlet and is continuing thereat.

8. As has been noticed by the learned Single Judge, there is no ground of malafides raised. In fact, the exercise earlier conducted by the Corporation was objected to by one of the applicants, which applicant had received '0' marks for the capacity to provide infrastructure and facilities, only on the ground that the land belonged to the State of Bihar. We see from Annexure-25 produced in CWJC No. 7321 of 2015 that the Deputy Collector, Land Reforms verified the land for the



establishment of Farmer Service Center in Pranpur Circle at Post-Mahadeopur, District-Katihar as demanded by one Binod Kumar Gupta, Son of Late Rameshwar Lal Gupta post office-Mahadevpur, P.S.- Pranpur, District- Katihar. The description of the concerned land in mouza Sakraili was extracted. It was found that land was remaining in the name of Sunita Gupta, wife of Binod Kumar, who has an intact possession and the nature of the land is indicated as 'Raiyati'. It is also stated therein that though the land is registered as gair majarua land of Bihar Government in the Khatiyani (records of right) of the land revisional survey, much before, it was settled in the name of Kalu Dhobi who sold it to one Murari Lal Agrawal in the year 1960. In 1994, Murari Lal Agrawal sold 10 decimals of land to Smt. Sunita Gupta and since then the settlement is in the name of Smt. Sunita Gupta till 2014-2015, for which receipt has also been issued in her name. It was also noticed that as on date, there was a weigh bridge installed there. Insofar as the location of the land, it is pointed out, though it comes under mauza Sakraili, the land is situated in Mahadeopur village. The land on both sides of the road leading to the scheduled land is called Mahadeopur village by the local people.

9. We do not find any reason to interfere with the



judgment of the learned Single Judge, especially since the ‘nil’ mark granted to the 14th respondent by the earlier evaluation committee was by reason of the land being alleged to be remaining in the name of the State of Bihar. It has been established that the land belongs to the wife of the 14th respondent and in such circumstance, the revaluation done by the committee cannot be faulted. The location of the land is also said to be within Mahadeopur village, where the retail outlet was to be installed, even as per the advertisement.

10. The appeals are devoid of merit and both stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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