

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23000 of 2013

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Manoj Kumar Saksena Son Of Late Bisheswar Paswan Resident Of Village
Bajpatti Got, P.S. Bajpatti, District - Sitamarhi

... .. Petitioner/s

Versus

1. Indian Oil Corporation Ltd. First Floor Shahi Bhawan, Exhibition Road,
Patna – 800001 through its General Manager
2. The Chief Area Manager, Indian Oil Corporation, Patna Area Office, First
Floor, Shahi Bhawan, Exhibition Road, Patna
3. Shri Ajeet kumar Singh The Proprietor M/S Sahid Yogendra Indane ,
Nanpur, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanket, Advocate
For the IOC	:	Mr. Sanat Kumar Mishra, Advocate
For the Respondent-3	:	Mr. Prasoon Sinha, Advocate

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT**

Date : 01-04-2024

This writ application has been filed for issuance of a writ in the nature of Certiorari for quashing the letter No. PAT/ LPG/NEW/ GP/156/02 dated 25.09.13 (annexure-15) issued under the signature of Sri Arun Prasad, the Chief Area Manager, Indane Area Office, Patna, whereby the candidature of the petitioner has been cancelled with a contention that he does not have lands for Godown and Show Room, as on date of application. Further, for issuance of a writ in the nature of Mandamus directing and commanding the respondent to allot regular LPG distributorship to the petitioner in the light of letter



dated 28.4.2013 by which the petitioner was declared as selected candidate.

2. The brief facts culled out of the petition are that the respondents have made an advertisement in daily 'HINDUSTAN' News Paper on 18th May 2012 inviting the application from eligible persons of different categories. Basing on the said advertisement, the petitioner, who got an eligibility certificate from Ministry of Defense, New Delhi on 18.6.12, has made an application. The petitioner is son of an Ex- Army personnel, who worked in Army Medical Core and got retired in the year 1999. Thereafter, in the year 2003 he joined Defense Security Core and on 23.10.2007 he got Martyred, while performing his duty. After obtaining eligibility certificate, the petitioner applied for regular LPG distributorship under GP category on 29.06.12. Along with the said application, he has given 36 documents, including the Notarised Lease agreement deed dated 26.06.2012 for land bearing Plot No. 1731 Khata No. 663, area 36 decimals, in Thana No. 191, under Mauza Nanpur, P.S. Nanpur, District-Sitamarhi executed by one Ramjiwan Choudhary in favour of the petitioner for 30 years. By letter dated 15.01.2013 issued by the Chief Area Manager, Patna Area Office, the petitioner was reminded for the original eligibility



certificate, which was supplied by him. On verification of the documents, the petitioner was considered for draw, thereafter, the petitioner qualified for selection of LPG distributorship, which was informed to him by letter dated 06.04.2013. Further, the respondents also called the petitioner personally and checked his Photo Identity Card on 28.04.2013, at the Indane Area Office Patna, 1st Floor Shahi Bhawan, Exhibition Road, Patna.

3. The Petitioner was declared a selected candidate and he received the letter dated 28.04.2013. The respondents again made verification of the documents with the concerned officials, vide letter dated 14.5.2013 and the caste and residential certificates of the petitioner were verified by the Circle Officer, Bajpatti, District Sitamarhi. Further the Circle Officer replied vide letter No. 319 dated 18.05.2013 that the then Chief Area Manager, Indian Oil Corporation, Patna supporting the papers of the petitioner. On 07.06.2013 the petitioner applied for a Nazri Naksha in the office of Circle Officer, Nanpur of the plot No. 1731, Khata No. 663, which was acquired by the petitioner for the purpose of Godown for the LPG Show Room. The Circle Officer issued a Nazri Naksha of the plot, after due physical verification. The Notarize Lease



Agreement, which was verified by the Registrar of the Registry office, Pupari dated 08.07.2013 of the Chief Area Manager. The Sub Registry Office, Pupari informed that the lease dated 26.6.2012 was not registered in this office. The respondents verified the lease agreement copy and addressed a letter dated 16.07.2013 to the Notary Public Sitamarhi who informed that he notarized the document of the petitioner. The respondent Chief Area Manager addressed a letter to the petitioner on 02.09.2013 for alternate land in the name of applicant/family unit as per advertisement and gave time to reply within seven days.

4. The respondent Indian Oil Corporation has filed a detailed counter affidavit contending that the writ application against the Indian Oil Corporation is not maintainable at all since the petitioner is not eligible for consideration, for LPG distributorship for not providing land owned or registered having a lease deed in favour of the petitioner as on the date of the application. The counter affidavit further disclose that the two applications were received for Nanpur location under GP category and the last date of application was 29.06.2012. Initially the petitioner was declared selected in the draw which was held on 28.04.2013, but as per the selection guidelines they found some deviations in the



application. As on the date of application no land was registered in the name of the petitioner either by sale or lease. Therefore, the second candidate has been allotted with the distributorship as he has complied with all the conditions of the application. Further, the 3rd respondents was running LPG dealership under the name & style of M/s Sahid Yogendra Indane since 25.09.2014. Therefore, prayed to dismiss the writ application as it is devoid of merit.

5. Heard learned counsel for the petitioner as well for the respondents.

6. It is the specific contention of the learned counsel for the petitioner that the letter for alternative land was signed by the Chief Area Manager on 03.09.2013 and was sent by speed post on 04.09.2013 and the same was received by the petitioner on 07.09.2013. Further it is contended that the petitioner handed over an application dated 02.09.2013 to the General Manager I.O.C Ltd. along with the original registered lease deed of the aforesaid land including another 9 decimal of land bearing Khata No. 795, Plot No. 1744, which is adjacent to the land executed by one Chandeshwar Paswan and the aforesaid land by Ram Jeewan Choudhary in favour of the petitioner. It is also contended that without considering these



facts, the respondents have allotted the LPG dealership to respondent no. 3 initially for a period of ten years. Therefore, contended that again respondents, allotting the distributorship to third party is illegal and arbitrary, for which the petitioner is constrained to file the present writ application seeking reliefs to consider his application.

7. Later, I.A. No. 2 of 2023 has been filed by the petitioner on 09.08.2023 to amend the prayer for appropriate writ / order or direction in the nature of Certiorari for quashing the allotment of LPG distributorship at Nanpur, District – Sitamarhi under GP category, advertised on 18.05.2012 in favour of respondent no. 3.

8. On the other hand, learned counsel for the respondent Indian Oil Corporation submitted that initially the writ application is filed only for quashing the Annexure 15 by which respondent Indian Oil Corporation has cancelled the candidature of the petitioner. But the allotment was made to the respondent No. 3 on 28.02.2014.

9. Learned counsel for the Indian Oil Corporation relied upon the judgment of the Hon'ble Supreme Court reported in **AIR 2008 SC (Supp) 1160 [Virender Chaudhary v. Bharat Petroleum Corporation & Ors]**. The



learned counsel for respondent contended that the said case also was dealt with similar circumstances wherein their Lordships have held “From the facts as noticed hereinbefore, there can, therefore, be no doubt that from May 2004 to October 2006, the respondent did not take any step to challenge insurance of the letter of intent granting dealership in favour of appellant.”

“14. The High Court, however, in our opinion failed to take into consideration the effect of delay and laches on the part of the appellant in approaching the High Court. A writ remedy is a discretionary remedy. The court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so. Delay and/or laches, indisputably, are the relevant factors.

“15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasis is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches.

16. In *Uttaranchal Forest Development Corporation & Anr. v. Jabar Singh & Ors.* [(2007) 2 SCC 112], this Court held:



“It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches.”

In *New Delhi Municipal Council v. Pan Singh & Ors.* [(2007) 9 SCC 278], this Court held:

“16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable



jurisdiction. (See Govt. of W.B. v. Tarun K. Roy, U.P. Jal Nigam v. Jaswant Singh and Karnataka Power Corporation. Ltd. v. K. Thangappan.)

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India and M.R. Gupta v. Union of India.)

In Ramdev Food Products (P) Ltd. v. Arvinbhai Rambhai Patel & Ors. [(2006 (8) SCC 726)], it was held:

“Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights for trade mark, trade name, etc.”

Recently in Khoday Distilleries Limited (now known as Khoday India Ltd.) v. The Scotch Whisky Association & Ors. [2008 (9) SCALE 40], this court applied the principle of waiver and acquiescence being a case involving equity and justice. Conduct of the parties has also been considered to be a ground for attracting the doctrine of estoppel by acquiescence or waiver.”

10. Admittedly, the applications were invited by Indian Oil Corporation Ltd. and the petitioner was declared to be selected in the draw on 28.04.2013 and, subsequently, as the petitioner has not produced any registered lease deed, as



on the date of filing of the application, the respondents have considered Sri Ajit Kumar Singh as eligible candidate, who has also made his application within time, along with the petitioner, for allotment of distributorship on 25.09.2013. Petitioner ought to have challenged the allotment of the 3rd respondents at the earliest point of time. Though the present application was filed, challenging for non consideration of the candidature of the petitioner for dealership, but the allotment was made to the respondent no. 3 in the year 2014. I.A. No. 2 of 2023 was filed to cancel the allotment of 3rd respondent for dealership of Indian Oil Corporation. As per the Apex Court judgment squarely applies to the present case and the delay and laches on the part of the petitioner at belated stage cannot be considered, therefore, considering the said facts, the Court is of the opinion that the petition is devoid of merits.

11. In result, the writ petition is dismissed.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2024
Transmission Date	

