

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1241 of 2021

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Kumari Nikita Singh, aged about 22 years (Female) Wife of Ratneshwar Kumar, Resident of Village and P.O.-Teghara, P.S.-Babubarhi, District-Madhubani.

... .. Petitioner/s

Versus

1. Bharat Petroleum Corporation Limited 12/E and F, Maker Towers Cuffe Parade, Post Box No. 19949, Mummbai-400005.
2. Head of Territory Manager, BPCL, Retail Muzaffarpur POL Depot, Near Narayanpur Anant Railway Station, Muzaffarpur.
3. Regional Manager, BPCL, Retail POL Depot, Near Narayanpur Anant Railway Station, Muzaffarpur.
4. Area Sales Manager, BPCL, Retail POL Depot, Near Narayanpur Anant Railway Station, Muzaffarpur.
5. The Chief Divisional Manager, BPCL, Exhibition Road, Patna, Bihar-800001.
6. Deepak Kumar Singh S/o Sri Ramchandra Singh R/o Pachrukhi Tole, Khoyer, P.S.- Babubarki, Dist- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Advocate.

For the Respondent/s : Mr. Siddhartha Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 29-07-2024

Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“(i) To issue an appropriate writ order direction in the nature of certiorari for quashing the letter bearing reference no. 15455627859308 dated 03.12.2019 whereby the territorial manager retail, Muzaffarpur has cancelled the candidature of the



petitioner on the basis of the information furnished during field verification of credentials without giving reasonable opportunity to the petitioner (Annexure-7 Pg. 29).

(ii) To declare and hold that the land/plot offered by the petitioner for award of RO dealership within 2 km. from Barail chowk towards Donwari Hatt on Madhubani Babubarhi Khutona Path, District Madhubani under open category through application form no. 15455627859308 is not offered by another applicant for the same location and the said land exclusively has been offered by the petitioner for the location.”

3. Pursuant to the advertisement issued by the Respondent-Corporation seeking applications for award of the Retail Outlet Dealership at within 2 Km. from Barai Chok towards Donwari Haat on Madhubani-Babubarhi-Khutona Path District-Madhubani, the petitioner has applied for allotment of the above Retail Outlet Dealership of petrol pump on 23.12.2018. Thereafter, in the draw of lots/bidding process for the above location under open category was conducted on 26.07.2019. The petitioner was declared as a selected candidate and the same was communicated to the petitioner on 29.07.2019 vide letter No. 15455627859308. The petitioner has deposited an amount of Rs. 40,000/- towards initial official security deposit along with requisite documents for processing his application further. Though the field verification of



the site was fixed on 26.09.2019, the same was not conducted and thereafter vide letter dated 03.12.2019 the candidature of the petitioner was cancelled. The cancellation was on the ground that the plot offered by the petitioner was also offered by another applicant, namely Manisha Kumari for the very same location.

4. Learned counsel for the petitioner has stated that the rejection of the candidature of the petitioner on the ground that the land offered by the petitioner and one Manisha Kumari who has admittedly withdrawn her application is one and the same, is totally erroneous, contrary to the facts of the case, done without verification of the record, illegal, arbitrary and the same is liable to be set aside on the ground of non-application of mind. Learned counsel for the petitioner has stated that the requirement for the award of dealership is 35 mt. (frontage) x 35 mt. (Depth) i.e. total 1225 sq. mts. and the petitioner has offered the land in Plot No. 1982,1982 bearing Khata No. 201, 158, 221 and 159 at village Teghara Taluka/Tahsil Babubarhi, District-Madhubani. Learned counsel has further stated that the total area of the land in the above khata numbers is more than 2500 sq. mtr. and the petitioner had offered only 1225 sq mtr. out of the total area of more than 2500 sq. mtr. as per the advertised area. That the other area of 1225 sq. mtr. has been offered by the said Manisha Kumari who has admittedly withdrawn her application after the draw of lots.



Therefore, as on the date of rejecting the application of the petitioner, the total land of 2,500 sq. mtr. was available and there was no other application pending before the authority. Even for the sake of argument if any application was pending, the same pertains to another area, not the area offered by the petitioner. Learned counsel appearing on behalf of the petitioner has submitted that the impugned order passed by the authorities rejecting the candidature of the petitioner is liable to be set aside on the ground that no show cause notice was issued to the petitioner prior to the cancellation nor the petitioner was given an opportunity of filing his explanation. In case the same was done, the petitioner could have proved that the land offered by the petitioner is distinct and different from the one offered by the Manisha Kumari. Even otherwise, the petitioner could have had the opportunity of offering some other alternate land if the land offered was not found suitable. That the authority concerned without physically inspecting the subject land as fixed on 26.09.2019 has simply rejected the candidature of the petitioner in a mechanical manner. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned order and pass necessary orders directing the Respondent-Corporation to process the application of the petitioner further and grant him the Retail Outlet Dealership.

5. Per contra, the learned counsel for the



Respondent-Corporation has vehemently opposed the very maintainability of the present writ petition and stated that the land offered by the petitioner was also offered by his own sister-in-law i.e. Manisha Kumari and the petitioner has suppressed the same. When it came to the knowledge of the Respondent-Corporation that the land offered by the petitioner has been offered by some other candidate, the application was liable to be rejected on the said sole ground. Learned counsel has stated that the petitioner has not submitted any document to show that the land which was offered by the petitioner and the one by Manisha Kumari was partitioned and holding was separate. That the petitioner has kept quiet for a period of more than one year after his candidature was rejected and, thereafter, filed the present CWJC. Further, it is stated that the letter of intent was already given to the Respondent No. 6. It is further stated that there is no allegation of any malafides against the Respondent-Corporation in cancelling the allotment. Therefore, the present writ petition filed by the petitioner is misconceived and liable to be rejected.

6. While supporting the contentions made by the Standing Counsel for the Respondent-Corporation, the learned counsel for the Respondent No. 6 has stated that the Respondent No. 6, has been given the letter of intent on 23.11.2020 after the candidature of the petitioner was rejected. Further, learned counsel



has stated that the Respondent No. 6 has spent more than Rs. 50 Lakhs for commissioning the retail outlet of petrol pump after the same was allotted in his favour. Learned counsel has stated that the petitioner has played fraud on the Respondent-Corporation by not disclosing the correct facts and there is no indefensible right which exists in favour of the petitioner which warrants any interference by this Court. That the petitioner did not raise any objection with regard to the field verification. Further, it is stated that the Respondent No. 6 has already got “No Objection Certificate” (N.O.C.) from three authorities and some more had to be obtained. That in case the CWJC is allowed, the Respondent No. 6 will be put to great irreparable loss as has spent substantial amount for commissioning of the unit after receipt of LOI in his favour.

7. In reply, the learned counsel for the petitioner has stated that there are no pleadings made by the Respondent No. 6 with regard to the amounts spent by him. Further it is stated that the injunction application in respect of the land offered by the Respondent No. 6 was vacated and an appeal was pending before the competent civil court and therefore, the land offered by the Respondent No. 6 is not free from litigation. Learned counsel has stated that once it is established that the impugned order passed by the authority is contrary to the facts and without issuance of any show-cause notice or calling for any explanation, the same is



opposed to the principles of natural justice and equity and liable to be set aside. Learned counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the case of ***Poonam Vs. State of Uttar Pradesh and Ors.*** reported in ***2016 (2) SCC 779***.

8. Admittedly, in the present case as culled out from the record, pursuant to the advertisement given by the Respondent-Corporation, the petitioner has applied for the land showing the Plot No. 1982, 1984 bearing Khata No. 201, 158, 221 & 159 at Village Teghra Taluka/Tehsil Babubari, District Madhubani admeasuring 1225 sq. mtr. only. It is pertinent to note that the requirement of the land is only 1225 Sq. mtr. having dimensions of 35 mt. (frontage) x 35 mt. (Depth). It is an admitted fact that the sister-in-law of the petitioner has also applied for the very same location offering an area of 1225 sq. mtr. in the very same khata number.

9. A perusal of the documents filed by the petitioner reveals that the available land in the said khata number is more than 2,500 sq. mts. Therefore, the conclusion reached by the authority that the land offered by the petitioner and the said Manisha Kumari is one and the same is contrary to the record. The authority before cancelling the candidature of the petitioner ought to have taken the minimum steps of getting the land verified and in



case the land offered by the petitioner and the said Manisha Kumari was found to be one and the same, they could had taken necessary steps for cancelling the candidature. However, in this case for the reasons best known to the Respondent-Corporation they did not do so. The minimum that was expected by the Respondent-Corporation was to at least put the petitioner on notice and call for his explanation before taking any action. But the same has not been done and the same is opposed to the principles of natural justice and equity. The impugned order is liable to be set aside on this ground alone. It is also to be noted that as on date of rejection of the candidature of the petitioner, the application of the Manisha Kumari was not before the authority as she had already withdrawn the same, therefore, the contentions of the respondents that the land offered by the petitioner is one and the same is also without any legal basis and factually wrong.

10. Having regard the fact that the authority did not verify as to whether the land offered by the petitioner and one said Manisha Kumari is one and the same and passed the order of rejecting the candidature without issuing any show-cause notice, the same is set aside. The contentions of the Respondent No. 6 are also liable to be rejected on the ground that the once it is held that the order of rejection of candidature of petitioner is held to be bad the consequential action of the respondents in giving the LOI to



the Respondent No. 6 does not have any legs to stand on its own as it is only a consequential order. The contention of the Respondent No. 6 that he has spent substantial amounts for commissioning the unit also cannot be gone into in the absence of any proof to substantiate the same, more particularly when the petitioner is vehemently opposing the said contention and no report has been filed by the Respondent-Corporation in support of the Respondent No. 6. Further, this Court adjudicating under Article 226 of the Constitution of India cannot go into disputed question of fact. The question as to how was spent by the Respondent No. 6 for commissioning the petrol pump require evidence to be led by the parties and can be adjudicated in the Civil Court only. Therefore the prayer for granting compensation or refund of the amounts spent also cannot be granted.

11. It is apt to extent the relevant portions of the judgement of the Hon'ble Supreme Court in the case of ***Poonam Vs. State of Uttar Pradesh and Ors.*** reported in **2016 (2) SCC 779** are as under:-

“48. A few examples can be given so that the position can be easily appreciated. There are provisions in some legislations pertaining to Gram Panchayat or Panchayat Samiti where on certain grounds the competent authority has been conferred the power to remove the elected Sarpanch or the Chairman, as the case may be on certain counts. Against the



order of the Collector, an appeal lies and eventually either a revision or a writ lies to the High Court. After his removal, someone by way of indirect election from amongst the members of the Panchayats or the Panchayat Samiti is elected as the Sarpanch or the Chairman. The removed Sarpanch assails his order of removal as he is aggrieved by the manner, method and the reasons for removal. In his eventual success, he has to hold the post of the Sarpanch, if the tenure is there. The question, thus, arises whether the person who has been elected in the meantime from amongst the members of the Panchayat Samiti or Sabha is a necessary party. The answer has to be a categorical "No", for he cannot oppose the order of removal assailed by the affected Sarpanch nor can he defend his election because he has come into being because of a vacancy, arising due to different situation.

49. In the instant case, Shop No. 2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is, the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not



a necessary party. It is the State or its functionaries who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.”

12. For the reasons and grounds mentioned above and the impugned order is set aside, the authorities are directed to process the application of the petitioner and grant him the letter of intent, if he is otherwise eligible. The present writ petition is allowed accordingly. It is also made clear that in case the Respondent No. 6, if so advised, can file a civil suit for compensation or for recovery of the amounts spent by him.

A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2024
Transmission Date	NA

