

(2012) 11 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 20615 of 2010

Amit Kumar Singh

APPELLANT

Vs

M/s. Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Hindu Succession Act, 1956 — Section 15(1)(a), 16

Citation : (2013) 3 PLJR 512

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : P.N. Shahi and Shailendra Kumar Singh, for the Appellant; Gautam Kumar Kejriwal for the Respondent No. 4 and Mr. Neeraj Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Singh, J.—Petitioner has filed this writ application for setting aside the "statement of performance" (Provisional Merit Panel) notified on 6.9.2010, vide Annexure-3, on the basis of an interview held on that very day, in which, petitioner was placed at serial No. 2, whereas the private respondent was placed at serial No. 1. He has further prayed for quashing of the order dated 29.10.2010 of the respondent Deputy General Manager, communicated to him by letter dated 9.11.2010, vide Annexure-7, by which decision of the respondents on his complaint filed on 8.9.2010 has been communicated. It appears that a complaint was filed by the petitioner in respect of no marks allotted to him by the Selection Committee in the interview held on 6.9.2010 under the head "Capacity to provide infrastructure and facility", due to which he was placed second in the merit panel, prepared for award of dealership for opening petroleum retail outlet at the location "Between Ojwalia More and Agiaon Bazar, District-Bhojpur". He has further prayed for direction to the respondents to award him marks according to the parameters under the said head and to prepare the result of the interview afresh for the location and draw up a fresh selection list.

2. As per the pleadings, the respondent-Hindustan Petroleum Corporation Limited (hereinafter referred to as "the Corporation") published an advertisement, vide Annexure-1, in the Hindi daily "Hindustan" on 11.6.2010 for award of dealership of retail outlets at various locations, including the said location mentioned, at serial No. 140. In response to the advertisement, petitioner applied for the said location. It is stated that the entire selection process was to be held by the Corporation in terms of the Brochure/Selection Manual. A copy of the said Brochure applicable from April, 2009 is annexed as Annexure-2 with the writ application. It is stated that he fulfilled all the eligible criteria for selection and, accordingly, the land offered by him was inspected by the Technical Team which awarded him 94.5 out of 100 marks. Thereafter, petitioner was called for interview which was held on 6.9.2010. After completion of the interview, result was published on that very day in which respondent No. 4 was empanelled as first candidate with 77.33% marks, whereas petitioner was placed at serial No. 2 in the panel with 60.84% marks. The result also disclosed the detail marks allotted to the respective candidates under different heads. Petitioner was surprised to find that under the head "Capacity to provide infrastructure and facility", he had been awarded zero marks, although he had submitted registered lease deeds alongwith all supporting documents, as per the Brochure, whereas respondent No. 4 had been wrongly awarded 25 marks. It is stated that because of zero marks awarded under the (sic) said head, petitioner was placed at 2nd serial in the impugned panel, Annexure-3. Thereafter, as per Grievance Redressal System prescribed in the Guidelines/Brochure, petitioner represented the respondent No. 3 through his letter dated 8.9.2010 (Annexure-4), raising a grievance that he had been wrongly awarded zero marks under the said head by the Selection Committee although he had submitted two registered lease deeds bearing Nos. 1391 and 1395, both dated 30.7.2010, and had also submitted supporting documents with regard to the land. Alongwith the complaint he also submitted documents in his support, to show that his lessors had correctly executed lease deeds in his favour. It is stated in the writ application that the Corporation, without giving any reasons for not allotting any marks under the said head, asked for further details and documents, vide its letter dated 13.9.2010 (Annexure-5). It is alleged that the said letter was issued to the petitioner mechanically without any application of mind. However, petitioner, in compliance to the said letter, submitted a reply to respondent No. 3, through his letter dated 6.10.2010 (Annexure-6), in which he categorically explained his case, in support of his complaint filed earlier. Alongwith the reply, he submitted copies of registered lease deeds, land possession certificates and also a "Suddhipatra" issued by the Circle Officer, Piro, to show that after mutation it had been issued and also annexed a sketch map of the plots with their location, to establish the fact that the land was situated within the advertised location. However, petitioner received a letter on 9.11.2010 from respondent No. 3 enclosing the impugned speaking order dated 29.10.2010 (Annexure-7), passed by respondent No. 2, in which it was specifically mentioned that complaint of the petitioner was reviewed and it was found that in the lease deeds submitted by

him there was no clause of sub-lease incorporated. Hence, as per point 12 of the Dealer Selection Guidelines/Brochure, lease deeds did not conform to the requirements of a valid offer of land.

3. It is stated in the writ application that, on the complaint, respondents did not apply their mind and the order was passed without properly investigating and examining the case and documents of the petitioner. It is stated that lease deeds were for a term of 50 years and there was nothing in the deeds to show that the lessee i.e. petitioner was restrained from not giving the lands on sub-lease to the Corporation. It is also stated that land is given on sub-lease to the Corporation after issue of Letter of Intent (LOI) within a stipulated time, failing which candidature was liable to be cancelled. Hence, nothing stopped the Corporation from accepting the offer of the petitioner with issue of LOI and allowing him time to sub-lease the plots in favour of the Corporation, Alongwith the writ application, petitioner has also annexed an affidavit dated 2.12.2010 (Annexure-8) sworn by the lessors/landowners of the two plots in support of a liberty to the petitioner to execute sub-lease of the plots in favour of the Corporation. In the circumstances, it has been asserted that the Corporation had wrongly awarded zero marks to the petitioner, in spite of his having fully qualified on the parameters under the said head, and had wrongly empanelled him at serial No. 2, whereas the first empanelled candidate, i.e. respondent No. 4, had wrongly been awarded 25 marks without sufficient papers.

4. Petitioner has filed a supplementary affidavit also, alongwith which he has annexed copies of the two registered lease deeds (Annexure-9 series) executed in his favour. It is stated that the lease deeds were executed in his favour for a period of 50 years and in them lessors had noticed and accepted that petitioner was taking the two plots on lease for opening a retail outlet of HPCL. It is stated that thus, lessors were ready and agreeable for opening of the retail outlet at the plots and, therefore, petitioner had implied consent of the lessors to sub-lease the plots in favour of the Corporation. It is also stated that in Annexure-8, the lessors had categorically, accepted on oath that petitioner had power to sub-lease the plots in favour of the Corporation. It is again reiterated that sub-lease has to be executed in favour of the Corporation after issue of LOI and, if within the stipulated time, the sub-lease was not executed, the LOI could be cancelled. It is stated that respondent No. 4 had played fraud with the Corporation by submitting a firm offer of one Kanhaiya Singh in respect of a piece of land of a joint family which came to the notice of the father of said Kanhaiya Singh and hence he filed an objection before the S.D.O. with affidavit (Annexure-10). It is further stated that the said father of Kanhaiya Singh i.e. Bishram Singh had also submitted an application before the Corporation on 21.12.2010 (Annexure-11) that said Kanhaiya Singh had no power to give a consent letter in favour of respondent No. 4 in respect of the land.

5. When the matter was taken up on 13.1.2011 by this Court, learned counsel for the Corporation sought time to seek instructions and file counter affidavit in

the case. By the said order notice was also issued to respondent No. 4 and interim order was passed restraining the Corporation from issuing Letter of Intent to respondent No. 4, if not already issued.

6. Thereafter respondent No. 4 appeared and filed an interlocutory application bearing I.A. No. 4233 of 2012 for vacating the stay order. The Corporation has also appeared and filed its counter affidavit. In its counter affidavit it is stated that the Guidelines applicable in the matter is of 2010 and not of 2009. A copy of 2010 guidelines i.e. Brochure is annexed as Annexure-R/1 with the counter affidavit. It is stated that petitioner was rightly awarded zero marks under the head "Capacity to provide infrastructure and facility" as, in terms of clause 12 of the Guidelines of 2010, it is specifically required that "consent letter to Lessee by Lessor for sub-lease of offered land" must be submitted unless lease agreement specifies that no consent of sub-lease is required. It is stated that, neither in the lease deeds submitted by the petitioner, there was any clause of sub-lease, nor he had submitted any separate consent letter of his lessors permitting him to sub-lease the plots in favour of the Corporation. It is also stated that, as against this, the first empanelled candidate i.e. respondent No. 4, had submitted an "ekrarnama" with Kanhaiya Singh and had also filed separate affidavit alongwith the same, giving consent to respondent No. 4 to sub-lease the land in favour of the Corporation. In the circumstances, the respondent No. 4 was rightly awarded 25 marks whereas petitioner was awarded zero marks under the said head.

7. Respondent No. 4 has filed a counter affidavit and two supplementary counter affidavits in this case. In the counter affidavit it is stated that as per clauses 9(g) and 9(h) of the Guidelines, land offered by an applicant must also accompany an affidavit or a consent letter of the owner of the land for giving the land on lease to the Corporation. It is also stated that if an applicant himself was a lessee of the land offered, the lease deed must contain a clause empowering the lessee to give the land on sub-lease to the Corporation. It is submitted that the location in question was proposed to be developed as company owned outlet for which, in terms of clause (III) of the Notes of the advertisement, the same had to be given on lease in favour of the respondent Corporation by the applicant for establishing the retail outlet. Hence, an applicant, if he was himself a lessee, was required to have a clear authority to sub-lease the land in favour of the Corporation, if he was selected for award of dealership. Thus, reading the clause of the advertisement together with clauses 9(g) and 9(h) of the Guidelines, it was clear that application of petitioner suffered from serious lacunae as the lease deeds in his favour did not contain any clause permitting him to sub-lease the two plots in favour of the Corporation. Since lease or sub-lease in favour of the Corporation would amount to creating a third party right, this was an essential requirement to be fulfilled at the time of submission of application itself. It is stated that, documents in that respect, petitioner had to produce at the time of submission of application itself, which he failed to do. Moreover, even with his objection as contained in Annexure-4, he did not produce any consent letter of his lessors. He also did not produce the land possession certificate or "Suddhipatra" or the

sketch map and other documents alongwith his first objection, which he belatedly produced only with his reply to the letter of Corporation dated 3.9.2010. It is also stated that 96 marks awarded to the respondent has not been challenged by the writ petitioner in his writ application. It is also stated that application and affidavit of Bishram Singh, father of Kanhaiya Singh produced by petitioner are forged documents. It is stated that Bishram Singh had given his consent to the lease deed of Kanhaiya Singh in favour of respondent No. 4 through his affidavit dated 6.7.2010. Subsequently, Bishram Singh had also sworn affidavit on 15.4.2011 (Annexure-B), giving his consent for sub-lease by respondent No. 4 to the Corporation of the land in question in very specific terms. It is stated that thereafter all the relevant documents have been signed by Bishram Singh. Land possession certificate, tax receipt, genealogical table, voter I.D. Card, passbook of post office etc. executed by Bishram Singh have been annexed as Annexure-C with the counter affidavit. A supplementary counter affidavit was also filed by respondent No. 4 in which more or less the same stand has been taken by her as taken in the main counter affidavit.

8. Petitioner has filed a rejoinder to the counter affidavit filed by respondent No. 4 as well as of respondent-Corporation. In the reply it is stated that, in terms of Section 108(J) of the Transfer of Property Act (for short "the T.P. Act"), a lessee has a right to sub-lease the property in favour of a third party, unless and until specifically prohibited. Hence, the lease deeds in favour of the petitioner by his lessors were perfectly valid and he had the liberty, by virtue of the provisions of the said Section 108(j) of the T.P. Act, to sub-lease the plots in favour of the Corporation, after award of Letter of Intent to him. It is stated that the offer of respondent No. 4 was not in accordance with law as she had not submitted the land papers in terms of clause (B) of Item No. 16 of the Guidelines, which required a firm offer of land by producing an agreement to purchase, offer letter on stamp paper, affidavit or power of attorney, duly supported by land documents. It is stated that respondents ignored the same and, in contravention of the said provision, awarded 25 marks to respondent No. 4. It is stated that the lease agreement by Kanhaiya Singh in favour of respondent No. 4 did not accompany the title documents. It is stated that the said lease agreement did not bear the signature of his father, who was the Karta of the family. A certificate of the Mukhiya dated 28.7.2012 has been annexed as Annexure-1 with the rejoinder giving genealogy of the family of the said Bishram Singh i.e. father of Kanhaiya Singh.

9. In view of this affidavit, respondent No. 4 also filed second supplementary counter affidavit in which she gave details of family of Bishram Singh. In this affidavit it is stated that Bishram Singh had one son Kanhaiya Singh and two daughters, namely, Maya Devi and Kalawati alias Prabha Devi. Maya Devi died soon after marriage and thereafter her husband married again to a stranger and thus got disconnected from the family. It is stated that the land given by Kanhaiya Singh on lease to respondent No. 4 belonged to her mother. Hence, as per Hindu Succession Act, at best, father of Kanhaiya Singh and remaining

daughter will have only 1/3rd share in the plot. Alongwith the second supplementary counter affidavit, one affidavit of Kanhaiya Singh and also an affidavit of remaining daughter Prabha Singh, besides an affidavit of husband of other deceased daughter of Bishram Singh, have been annexed as Annexures-D, E and F.

10. Mr. Shahi, learned counsel appearing for the petitioner, submitted that the lease deeds produced by the petitioner alongwith his application were strictly in terms of Clause 12 of the Information Brochure of 2010, annexed as Annexure-R/1 with the counter affidavit of the Corporation. He submitted that the lease deeds were, in clear terms, a firm commitment from the lessor in respect of the plots for the purposes of establishing petroleum retail outlet by the Corporation. The lease deeds were for 50 years and, therefore, they were long term lease, as required. Hence, it completely fulfilled the requirement as per Brochure. He also referred the second paragraph of Clause 12 to submit that, after selection, an applicant was required to sub-lease the plot in favour of the Corporation, within a period of two months from the date of issue of Letter of intent, failing which the offer was to stand cancelled. He referred to Section 108(j) of the Transfer of Property Act which reads as follows:--

.... (J) The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his Interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee...

11. Learned counsel for the petitioner submitted that, in view of this provision of the Transfer of Property Act, once plots had been given to the petitioner on long term lease, under law he was authorised to sub-lease them in favour of the Corporation. Therefore, clearly the Corporation was legally not correct in awarding zero marks to the petitioner under the head "Land and Infrastructure". He referred to Annexure-8 also, the subsequent no objection of the lessors and submitted that petitioner should have been awarded full 35 marks under this head. He submitted that the Brochure laid down a detailed procedure for award of marks in the process of selection of a candidate for award of dealership, which prescribed objective criteria and parameters and once a candidate fulfilled the criteria, there was no discretion with the Corporation to reject his application or allot zero marks. In this connection he also referred to sub-clause (b) of Clause 16 of the Brochure to submit that the manner in which the marks is to be allotted under the head "Land and Infrastructure" is clearly laid down. Therefore, an application of any candidate has to be considered on the parameters laid down therein and in reference to the documents produced. He submitted that

respondent No. 4 was not entitled for 25 marks as she had not submitted a firm offer to the Corporation. He also submitted that stipulation of the Brochure as contained in Clause 12 at page 128 of the brief, to the effect that "Consent letter to Lessee by Lessor for sub-lease of offered land to HPCL to be submitted unless lease agreement specifies that no consent for sub-lease is required" is being used against petitioner, whereas under law, no such consent letter was required as, in terms of the said Section 108(j) of the Transfer of Property Act, petitioner had power to sub-lease the plots in favour of the Corporation. He submitted that, on the other hand, plot offered by the respondent No. 4, belonged to a joint family and father and sister of Kanhaiya Singh had not signed the lease documents. As such, Kanhaiya Singh, on his own, was not authorized to lease the land in favour of respondent No. 4. Hence the offer of land by respondent No. 4 did not qualify as firm commitment. He submitted that father of Kanhaiya Singh had objected to lease of the land by Kanhaiya Singh in favour of respondent No. 4. In the circumstances, it was respondent No. 4 who should have been awarded zero marks under the parameters for land and infrastructure and not the petitioner.

12. Learned counsel for the Corporation placed his counter affidavit before this Court and submitted that apparently, the Corporation has not taken a final decision in the matter of respondent No. 4. He submitted that the Impugned order of the Deputy General Manager dated 29.10.2010 itself shows that although the complaint of the petitioner was not found to have been substantiated, it was stated that "during FVC (Field Verification Credentials), facts and details given in the applications, particularly with regard to land of the first empanelled applicant, need to be verified before issue of 101 and if it is found that the documents are not in line with the actual facts, needful action shall be taken including cancellation of empanelment". Thus, he submitted that, though the claim of petitioner that he was entitled for award of 35 marks for land and, infrastructure, was not found substantiated and was rejected, still, in the light of his complaints in respect of the defects pointed out by the petitioner in the land offered by respondent, the Corporation has kept it open for itself to verify it during Field Verification Credential scrutiny and to cancel her empanelment, if necessary.

13. Mr. Kejriwal, learned counsel appeared for respondent No. 4. He placed the facts and submitted that Brochure was a Bible for the Corporation which provided for its strict compliance. He submitted that admittedly, with his application as also with his objection, petitioner did not submit any consent letter of his lessors. He also submitted that, admittedly in the lease deeds of the petitioner, there was no stipulation in respect of any liberty to the petitioner to sub-lease the plots in favour of the Corporation. Hence, subsequent LPC or the consent letter of his lessors, produced in this writ proceeding were of no use as they were much beyond the cutoff date and could not be legally entertained. He submitted that, even though the lessors in the lease deeds, executed in favour of the petitioner, had noticed and acknowledged the purpose of lease, still it could not be accepted

as their implied consent for sub-lease of the plots. He submitted that provision of the Transfer of Property Act was an enabling provision and the same did not fill up the lacuna in the lease deeds of the petitioner as required by the Brochure. He submitted that the notice of facts and purpose of lease in the lease deeds by his lessors was of no use as lessors may not be aware that their plots were required to be sub-leased by the petitioner in favour of the Corporation creating third party rights on them. In support of his submissions he relied upon a Division Bench judgment of this Court in the case of M/s. Indian Oil Corporation Limited and Another Vs. Raj Kumar Jha and Others, , and submitted that requirements of the Brochure have to be strictly complied with and even the slightest, mistake in the application, though bona fide, makes the application fit to be rejected. He submitted that so far as land offered by the respondent, which originally belonged to mother of Kanhaiya Singh, is concerned, Kanhaiya Singh had two sisters-one of them died early and her husband got disconnected from the family, therefore, after death of his mother, the surviving sister had only joint claim in the land in terms of Section 15(1)(a) read with Section 16 of the Hindu Succession Act. Hence, father of Kanhaiya Singh, namely, Bishram Singh, Kanhaiya Singh and the surviving sisters had only 1/3rd share in the plot each. Taking the worst view, even if the surviving sister was not a party to the lease of the said plot, which is of 75 decimals, Kanhaiya Singh, with consent of his father, has given on lease only 40 decimals to respondent No. 4, which dearly amounts to lease of his own share as well as of his father only in favour of respondent No. 4, leaving out the share of the sister. He also placed the affidavit of Bishram Singh available on record to submit that he had, in fact, consented to the lease of the plot in favour of respondent No. 4. He submitted that lease by Kanhaiya Singh in favour of respondent No. 4 specifically mentions about the purpose of the lease and consent of Kanhaiya Singh in favour of respondent No. 4 for its sub-lease to the Corporation. Hence, it confirmed the requirements of the Brochure and, therefore, respondent No. 4 was rightly awarded 25 marks under the parameters of land and infrastructure.

14. Mr. Shahi, learned senior counsel for the petitioner, in reply submitted that the provisions of the Transfer Property Act is a general provision and has to apply in each and every case of valid lease by a lessor in favour of the lessee. He submitted that affidavit of Bishram Singh with the lease deed of Kanhaiya Singh in favour of respondent No. 4 was not a consent letter. Hence it did not conform to the requirements of Brochure.

15. After considering the submissions of the learned counsel for the parties, it is clear that challenge of the petitioner to the decision of the Corporation is in two parts. First part is that he was wrongly awarded zero marks under the parameters for "land and infrastructure" and the second part is that respondent No. 4 was wrongly awarded 25 marks under this head and she should have been awarded zero marks.

16. So far as the first part is concerned, it is first necessary to look to the

advertisement and Brochure prescribed for guidance to all the public sector oil companies, including HPCL, for selection of retail outlet dealers. It is not disputed that Information Brochure of 2010 is the guidelines which had to be followed by the Corporation in matters of award of dealership in question. This is also not disputed that Guidelines deal with, in detail, the documents required for offered land, on the basis of which marks had to be allotted. The Guideline of 2010 is annexed as Annexure-R/1 with the counter affidavit of Corporation. Clause 12 of the Guidelines contains details of "Availability of suitable land" and on the next page specific documents are indicated which are required in respect of the land for consideration of an application. This is not disputed that, amongst the documents of land, "a registered lease deed for a minimum period of 15 years with a renewal option of 15 years" was also acceptable but it had to be accompanied with a "consent letter to lessee by lessor for sub-lease of the offered land to the HPCL", unless the lease agreement itself specified that no consent for sublease was required. This is also not disputed that the two lease deeds, executed in favour of the petitioner by the two lessors, did not contain any such stipulation permitting for sub-lease of the plots in favour of the Corporation nor did they accompany with any consent letter of the lessors as required. Thus, this essential requirement, laid down by the Brochure, did not stand fulfilled in the offer of land by the petitioner. The entire argument of learned counsel, in support of the case of the petitioner, is based on the said provisions of Section 108(j) of the Transfer of Property Act., He may be right that the said provisions of the Act do give general power to a lessee to sub-lease the property to any third party, but whether that is binding on the Corporation and makes it obligatory for it to waive the requirement of such stipulation in the lease deed itself or a supporting consent letter in that regard, is the question for consideration. This Court is of the view that the provision in the Brochure, that the lease deed should contain such stipulation or accompany with consent letter in this regard from the lessor or the deed itself should specify that no consent for sub-lease was required, has apparently been inserted into Brochure deliberately as, having so much at stake in a commissioned outlet and with so much public interest involved, the Corporation cannot be exposed to the risk of being dragged into litigation on this score. As a lease deed in favour of the applicant does not extinguish the right of the owner and its sub-lease to the Corporation creates a third party right, the Corporation can never be expected to take a risk of entering into litigation with the owner of the land on the ground that owner had not specifically consented to sub-lease of the property to the Corporation and that the owner of the land, at the time of registering the lease deed in favour of the applicant, did not know that the land was to be sub-leased to the Corporation for such a long period. The said provision of the T.P. Act may be a general provision governing the law in the field, but surely it is open to the Corporation to put extra fader and condition for an applicant while offering a land to safeguard its interest in the long run. This Court, therefore, cannot hold that the Corporation was under any obligation to ignore the said requirement in the lease deeds, accompanying the application of the petitioner, and accept his application as valid

by taking support from the said general provisions of the Transfer of Property Act. It may also be pointed out that the Brochure provides for terms and conditions under which selection of a dealer has to be made by the Corporation, from which the Corporation has no liberty to deviate. In this case, petitioner has not challenged the said requirement laid down in the Brochure. Hence, it is not open to the petitioner to pray for a mandamus from this Court to the Corporation to ignore it. Moreover, if the submission of learned counsel for the petitioner is accepted, then it will amount to directing the Corporation to keep itself abreast with thousands of acts and rules and accept applications, even if not conforming to the terms and conditions of the Brochure, by taking aid of one act/rule or another. This will only amount to throwing the Brochure to the winds and creating a state of uncertainty and chaos for the Corporation.

17. It is an admitted fact that petitioner did not submit any constant letter or any affidavit by his lessors with his application. It is worthwhile to note that even with his objection, petitioner did not submit any consent letter of his lessors. It is clear that he got all the documents created in his favour by his lessors and the Government officials only after receipt of the letter of the Corporation dated 13.9.2010, requesting him to submit supporting documents. Therefore, on the basis of the documents created later on, award of zero marks to the petitioner under the said head at the time of interview cannot be held illegal. Therefore, this Court does not find any error in the decision of the Corporation in the matter.

18. So far as the second part of challenge of the petitioner to the decision of the Corporate is concerned, this Court finds that there is no prayer in the writ application of the petitioner challenging the award of 25 marks to respondent No. 4. There is no pleading also therein as to in what manner the petitioner alleged that respondent No. 4 was wrongly awarded 26 marks. It is admitted that an Interview was held on 6.9.2010 and on that very day the result was announced, with details of marks vide Annexure-3. This is also not disputed that at the time of interview, parties or their representatives were present. Thereafter petitioner filed his complaint on 8.9.2010, in terms of clause 19 of the Brochure, vide Annexure-4. This complaint also does not contain a single word against the respondent No. 4 and is confined only in respect of his objection against award of zero marks to him under the said head. It is only his subsequent reply, filed on 6.10.2010, i.e. Annexure-6, which, for the first time, contains his objection to the award of marks to respondent No. 4 giving the details of the family members of Kanhaiya Singh. Thus, the details of the alleged defect in the application of the respondent No. 4 were available with the petitioner on that date at least. Still, in the writ petition, no pleading at all has been made in respect of nature of the defect in the application of the respondent, except only a vague state-merit made in paragraph 18 of the writ application complaining that petitioner was deprived of being awarded full marks whereas first empanelled candidate just on the basis of affidavit executed by Kanhaiya Singh has been awarded 25 marks under the said head. Being aware of the alleged nature of defect in the application of respondent No. 4 at least on 6.10.2010, petitioner did not make

any prayer in his writ application challenging the award of marks to her. Thus, clearly petitioner neither challenged the empanelment of respondent No. 4 at serial No. 1 or award of marks to her before the Corporation, in terms of clause 19 the Brochure nor has he formally challenged it before this Court. However, from the impugned order of the Deputy General Manager dated 29.10.2010 it is clear that, objection of the petitioner in respect to award of marks to respondent No. 4, raised only through his reply dated 6.10.2010, was also considered by the Corporation. The documents, available on file as submitted by respondent No. 4, have been noticed in the order and it has been held that she was rightly awarded 25 marks. Still the Corporation has kept it open for itself to cancel her empanelment, if any defect was found in the application during the FVC (Field Verification Credentials).

19. Learned counsel for the petitioner has very strongly argued that application of respondent No. 4 was defective as lease deed was executed in her favour only by Kanhaiya Singh and without any consent or endorsement by his father on the deed or without any supporting consent letter from him. In the circumstances, this Court requested learned counsel for the Corporation to produce photocopies of the original file dealing with the application of respondent No. 4, which she produced. The file shows that, alongwith her application, apart from other documents, respondent No. 4 had enclosed a lease deed executed by Kanhaiya Singh in her favour in respect of a portion of the plot having an area of 75 decimals. This document is accompanied with an affidavit of Kanhaiya Singh himself giving his consent for sublease of the plot in favour of the Corporation and also an affidavit of father of Kanhaiya Singh stating that Kanhaiya Singh was his only heir and he was swearing that affidavit in support of the same. On the same date, both the affidavits were sworn and thereafter lease deed was executed by Kanhaiya Singh in favour of respondent No. 4. Thus, it is clear that all these were in the same transaction and within full knowledge of each and every party. This Court refrains from making any further comment in the matter and has just noticed the factual position appearing from the file, due to the reason that in the impugned order, the Deputy General Manager of the Corporation has kept it open for the Corporation to reject the application of respondent No. 4 if in FVC (Field Verification Credential) any fact or details in the application and particularly with regard to the land were not found in the line with the actual facts. Concluding part of the impugned order which makes it clear that final acceptance of the application of respondent No. 4 and her eligibility to get a letter of intent is still open, reads as follows:--

However, during the FVC, the facts and details given in the applications particularly with regard to land of the first empanelled applicant need to be verified before issuance of LOI and if it is found that the documents are not in line with actual facts, needful action shall be taken Including cancellation of empanelment.

20. In the circumstances, it will not be proper for this Court to give its findings

with regard to merits and eligibility of the application of respondent No. 4, which the Corporation is yet to decide and is granted liberty to do so. However, in any case, this Court has found that the objection of the petitioner under clause 19 of the Brochure against the award of zero marks under the said head was rightly rejected by the Corporation. This Court has further come to the conclusion that it could not be held obligatory for the Corporation to take into account the provisions of the Transfer of Property Act, for testing the eligibility of the application of the petitioner and validity of his offer of land and it was perfectly justified in confining itself to the terms and conditions of the Brochure in the matter.

21. In the circumstances, this Court does not find any merit in the writ application. The same is dismissed. Let the records produced by learned counsel for the Corporation be returned to him.