

(2012) 04 JH CK 0071
In the Jharkhand High Court
Case No : L.P.A. No. 134 of 2011

Anita Devi

APPELLANT

Vs

Indian Oil Corporation Limited and others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Citation : (2012) 2 JCR 635 : (2012) 4 JLJR 437

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Kalyan Roy M/s R.M. Singh, for the Appellant; V. Shivath and Mr. Amarnath Gupta, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The petitioner applied for the retail outlet of Indian Oil Corporation in pursuance of the advertisement dated 27.02.2004 and she was initially successful and therefore, a letter of intent was issued to her on 12/16.08.2005. The petitioner was not given the land which was required to be given by the Indian Oil Corporation for running the retail outlet. Thereafter, Indian Oil Corporation came out with another advertisement, annexure 3, dated 28.1.2006, wherein according to the petitioner-appellant, the outlet which was reserved for women of Schedule Caste has been made unreserved and given to the general category and that too, without disclosing the name of the place but in fact by second advertisement, the Indian Oil Corporation intended to open outlet at the same place i.e.; "Bonga" which is clear from the Indian Oil Corporation's letter dated 01.11.2007 by which the respondent sought no objection from the Deputy Commissioner for opening the outlet at "Bonga" itself. The Deputy Commissioner sanctioned the land vide letter dated 4.4.2008. Hence, being aggrieved against the said sanction order and inaction of the Indian Oil Corporation, in furtherance of earlier their own decision in favour of petitioner, petitioner-appellant preferred a writ petition being W.P.(C) No.158 of 2011. The said writ petition was dismissed by the learned Single Judge

after taking note of suppression of material facts by the petitioner of filing earlier writ petition being W.P.(C) No.7012 of 2007 and learned Single Judge has also considered the contention of the Indian Oil Corporation that the Indian Oil Corporation could not get the land at "Bonga" and therefore, the outlet was not given to the petitioner. However, it is submitted that annexure-1 scheme has not been cancelled. Learned Single Judge has also accepted the contention of the Indian Oil Corporation that the scheme of annexures-1 and 3 are two separate schemes. Respondent no.6 has been allotted retail outlet under the scheme of annexure-3 and the petitioner's claim is subject to the availability of land. In spite of the said finding recorded by the learned Single Judge that the scheme annexure-1 is alive subject to the availability of land, the petitioner has preferred this L.P.A. to challenge the order of the learned Single Judge dated 24.03.23011.

2. We have considered the submissions of the learned counsel for the parties. It appears that Indian Oil Corporation invited the application by issuing notice on 27.2.2004 and petitioner was found suitable for allotment of retail outlet. The letter of intent was given to the petitioner which is dated 12/16.08.2005. The petitioner, knowing well that the respondent-Corporation has issued another notice dated 28.1.2006 inviting application, approached this Court by filing W.P.C. No. 7012 of 2007. In that writ petition, the petitioner did not pray for issuance of direction against the respondent to allot the retail outlet to the petitioner after obtaining the land and the contention of the learned counsel for the petitioner is that the petitioner is ready to offer her own land. However, the said offer was not acceptable to the Indian Oil Corporation as Corporation is not satisfied with the petitioner's any right, title over the land which she wanted to offer.

3. Be that as it may, the petitioner did not choose to seek any relief for grant of outlet in her earlier writ petition being W.P.(C) No. 7012 of 2007. The said writ petition was withdrawn without obtaining leave to file another writ petition. In view of the above, normal principle of Order II Rule 2 may apply which provides that in a case where relief could have been sought and had not been sought by the party then the said party is not entitled to claim such relief in subsequent litigation. The withdrawal of writ petition also may amount to abandonment of claim. Further in case, in pursuance of the advertisement issued by the Indian Oil Corporation as back as on 27.2.2004 wherein the petitioner was selected, she did not approach this Court for obtaining relief and prefer writ petition after another advertisement, annexure-3, dated 28.01.2006 was issued and then withdrew the writ petition filed in the year 2007. All these facts go against the writ petitioner. However, since the allotment of the outlet in pursuance of the advertisement dated 27.2.2004 is independent and advertisement annexure-3 dated 28.1.2006 is an independent process of allotment of the outlet keeping the first process alive, therefore, the learned Single Judge did not interfere with the impugned order and for the same reason, we do not find any reason to interfere with the impugned order challenged by the appellant-writ petitioner. There is, thus, no merit in this L.P.A., which is dismissed.