
(2022) 12 PAT CK 0090

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 888 Of 2022

Chanda Singh

APPELLANT

Vs

Indian Oil Corporation Limited

RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:

Citation : (2022) 12 PAT CK 0090

Hon'ble Judges : Sanjay Karol, CJ; Partha Sarthy, J

Bench : Division Bench

Advocate : Neeraj Kumar Gupta, Sanat Kumar Mishra

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

The petitioner has filed the instant application for the following relief(s):

"i. For issuance of an appropriate writ/s, order/s, direction/s preferably in the nature of certiorari, setting aside the illegal and arbitrary show cause notice dated 06.12.2021 issued under the sign and signature of Respondent no. 4 whereby and whereunder wrong allegation has been alleged by the respondents on misconceived, false and baseless plea with respect to suppression and misrepresentation of material fact by the petitioner in her application submitted for the award of the subject Dealership.

ii. For issuance of an appropriate writ/s, order/s, or direction/s preferably in the nature of mandamus commanding the respondent authorities not to take any stern action such as cancelling the appointment of the petitioner as a dealer of IOCL and further termination of the Dealership Agreement dated 27.07.2015 pursuant to the show cause notice dated 06.12,2021 issued by respondent no.4 on misconceived ground and the false and baseless plea taken by the respondents that the petitioner has suppressed or misrepresented any material fact in her application submitted for the Award of the subject dealership.

iii. For issuance of appropriate Writ/s, Order/s or direction/s in the nature of Mandamus directing the respondent authorities not to interfere with the sales and supply of the retail outlet dealership of the petitioner on the wrong assumption or presumption that she has suppressed or misrepresented any material fact in her application for the award of RO dealership.

iv. For any other relief/reliefs which the Hon'ble Court may grant in the interest of the petitioner that may be deemed appropriate and necessary in this case."

Subsequently during pendency of the writ application on the respondent Indian Oil Corporation Limited ('IOC Ltd.' in short) coming out with the order dated 25.2.2022 terminating the 'B' site Kisan Sewa Kendra ('KSK' in short) M/S S.S. Petroleum of the petitioner, on an application filed by the petitioner, the following prayers were added:

"(v) For quashing the letter dated 25.02.2022 as contained in Ref. No. MDO/R/SS Petroleum whereby and where under the Respondent no.4 has terminated the "B" site Kisan Sewa Kendra in the name and style M/s SS Petroleum at Chanchora, Dist- Saran by terminating the Dealership Agreement dated 27.07.2015 executed between the Corporation and the Petitioner and effect thereof the petitioner has cease to be the Dealer of the respondent corporation for the aforesaid "B" site KSK forthwith.

(vi) For a direction to the respondents that till disposal of the writ petition to stay the order contained in the letter of termination dated 25.02.2022."

The facts in brief are that on the respondent IOC Ltd. coming out with an advertisement on 19.8.2011 for appointment of KSK outlet dealers within the State of Bihar, the petitioner made an application for allotment of KSK outlet dealership against the location advertised at serial no. 84 of the advertisement which on translation from Hindi read as 'Chapra-Marhaura road within 5 kms from Chapra' under the open (women) category. The land offered was within 5 kms from Chapra and appertaining to Mauja Chanchaura, PS- Chapra Mufassil, Thana no. 345, Khata no. 74, Khesra no. 182(P) on Chapra-Marhaura road. It was mentioned in the site plan submitted along with the application that the same was a PWD road.

As per procedure of selection, the Technical Committee for selection of land for setting of the retail outlet visited the land offered by the petitioner and submitted their report dated 10.4.2012 (Annexure-2) finding the land to be suitable for development of a retail outlet and confirmed that the subject land is at the advertised location. A Letter of Intent ('L.O.I' in short) dated 6.9.2012 was issued in favour of the petitioner. As required, the petitioner obtained no objection certificate (Annexure-6) as per Petroleum rules from the District Magistrate, Saran, Chapra on 13.12.2014. Having received all clearances as also the L.O.I, the petitioner proceeded with the construction work at the site constructing the underground tanks and other structures as required by the IOC Ltd. and the KSK outlet was commissioned on 29.1.2015. The dealership

agreement was executed between the IOC Ltd. and the petitioner on 27.7.2015 and since then the petitioner started running the KSK outlet.

It further transpires that inspections of the KSK outlet of the petitioner were got conducted on 29.12.2020 and 14.2.2021 and samples collected for lab test, however no irregularities were found. A show cause notice with respect to negative stockvariation was issued by the IOC Ltd. on 26.2.2021 to which the petitioner replied on 21.5.2021. The explanation given in the reply was accepted and the petitioner relieved from the same. Further inspections were conducted on 15/16.9.2021 and again on 29.10.2021 but no irregularities were found. A legal notice dated 7.11.2021 was got served by the petitioner on the Chairman and Managing Director of IOC Ltd. alleging harassment. Further complaints were also made by the petitioner.

It transpires that a show cause notice dated 6.12.2021 was issued by the IOC Ltd. under the signature of respondent no. 4 alleging therein of the petitioner having furnished false information and of having suppressed facts at the time of her application. The petitioner replied to the same on 20.12.2021.

During pendency of the writ application, by order contained in letter dated 25.2.2022, the respondent no. 4 terminated the KSK outlet of the petitioner by terminating the dealership agreement dated 27.7.2015 entered into between the IOC Ltd. and the petitioner as a result of which she ceased to be the dealer of IOC Ltd. As such an Interlocutory Application (I.A. no. 1 of 2022) was filed for amending the prayer made in the writ application which was allowed by the order dated 27.9.2022 and the prayers as quoted above were added to the main application.

It was submitted by learned Senior counsel appearing for the petitioner that from the show cause notice dated 6.12.2021 (Annexure-8) issued by the IOC Ltd. to the petitioner, the main allegation therein was to the effect that at clause 12 of the advertisement it was clearly mentioned that the land should not be situated on State Highway or National Highway. It was also mentioned in the advertisement that in case any information furnished by the applicant is found to be false at any point of time before or after appointment as dealer, the appointment will be cancelled and dealership will be terminated. Learned Senior counsel submitted that a detailed reply to the show cause notice was given on 20.12.2021 (Annexure-9). It was stated therein that the land provided by the petitioner on which the KSK outlet dealership of IOC Ltd. was commissioned was in accordance with the advertisement ie it is within 5 kms from Chapra and situated on Chapra-Marhaura road.

It was further submitted that the Land Evaluation Committee ('L.E.C' in short) of the IOC Ltd. conducted an inspection and verified the suitability of the same. In course of verification, as would be evident from the report (Annexure-2) of the L.E.C that at clause 7 of its report the L.E.C takes note of the fact that the road had been transferred by PWD (Public Works Department) to S.H. (State

Highway) on 29.10.2011 ie after the date of advertisement. The committee gave its recommendation to the effect that the land is suitable for development of a retail outlet and confirmed that the subject land is at the advertised location. Taking note of the report and other documents the L.O.I was issued by the IOC Ltd. in favour of the petitioner on 6.9.2012, the KSK outlet was commissioned and dealership agreement dated 27.7.2015 was executed between IOC Ltd. and the petitioner. It was submitted that ever since the agreement entered into, the lady petitioner has been running the outlet without any complaint whatsoever from any authority. It is under the influence of other persons as narrated in detail in the reply to show cause notice as also the writ petition that the petitioner was harassed with frequent inspections, however no irregularities were found. It was as a result of the same that ultimately the petitioner has been served with this show cause notice six years after the KSK outlet dealership was commissioned.

It was further submitted by learned Senior counsel appearing for the petitioner that so far as the allegation that it was clearly mentioned in the advertisement at clause 12 that the land offered should not be situated on State Highway or National Highway is concerned, it is submitted that besides the petitioner being a lady, to the knowledge of the public at large the said road on which the land is situated was a PWD road and accordingly it was mentioned in the petitioner's application. It is further submitted that from the report dated 10.4.2012 of the L.E.C (Annexure-2) it would transpire that the committee took note of the fact that the said road has been transferred by the PWD to the State Highway on 29.10.2011 ie after the date of advertisement. Taking this report into consideration as also all other materials on record including the no objection certificates given, the petitioner was allotted the KSK outlet dealership and agreement entered into. It has been more than six years that the lady petitioner has been operating the outlet.

So far as the notification no. 1952 dated 12.2.2008 issued under the signature of the Principal Secretary, Road Construction Department, Patna, Bihar by which the road in question was transferred from the PWD to the State Highway is concerned, it is submitted that on inquiry under the Right To Information Act (RTI Act) as to whether with respect to the road in question any gazette notification has been received before the Gulzarbagh Press, Gaighat, Patna City for its gazette publication in newspaper, it was informed by Letter no. 1167 dated 4.12.2021 (Annexure-10) that the above notification dated 12.2.2008 has not been received in the office for its gazette publication. It was thus submitted that the said notification with respect to the road in question having been transferred to the State Highway not having been published in the gazette, the same did not come into effect. It was prayed that the order impugned dated 25.2.2022 terminating the dealership agreement executed between the IOC Ltd. and the petitioner was illegal, unsustainable and as such be quashed.

Learned Senior counsel appearing for the IOC Ltd. submitted that the advertisement published by the IOC Ltd. on 19.8.2011 clearly prescribed the

condition that the offered plot for the KSK must not be on the National Highway or State Highway. It was mentioned that in case the information furnished by the applicant is found to be false at any point of time before or after appointment as dealer, the appointment would be cancelled and dealership would be terminated, if commissioned. The petitioner in her application showed the land offered to be situated on PWD road. She was selected for dealership on the basis of the information provided in her application. The evaluation of the land was carried out on 10.4.2012 by the designated L.E.C as per terms of the selection brochure and was finalised on 11.5.2012 after taking clarification from the Executive Engineer, PWD, Chapra on status of the road on which the land of the applicant fell. Interview was held on 24.7.2012 and the petitioner was declared as the first empanelled candidate. The no objection certificate was issued by the District Magistrate on 13.12.2014 and the KSK was commissioned under the name and style of M/S S.S. Petroleum on 29.1.2015. Agreement was entered into between the IOC Ltd. and the petitioner on 27.7.2015. It was further submitted that on receipt of a complaint, information was sought on the status of the road and as per information received from the Executive Engineer, Road Construction Division, Chapra the road in question on which the land is situated was categorised as a State Highway on 12.2.2008 ie before the advertisement on 19.8.2011. It was submitted that the notification came into effect from the date of issuance of the notification itself ie on 12.2.2008. Reliance was placed on the decision of learned Single Judge of this Court dated 28.8.2019 passed in CWJC no. 21766 of 2018 (Nishi Singh vs. The Bharat Petroleum Corporation Ltd. and Ors.), Annexure-9 to the counter affidavit filed on behalf of the respondent nos. 2-4 to the amended writ petition.

Having heard learned counsel for the parties, the facts not in dispute are that the respondent IOC Ltd. came out with an advertisement on 19.8.2011 for KSK/ Retail outlet dealership at different locations mentioned therein. The list of locations advertised included at serial no. 84 a location namely, 'within 5 kms from Chapra on Chapra-Marhaura road, District- Saran, under category open (women)'. The advertisement provided that the plot/land offered for KSK must not be on National Highway or State Highway.

It is the case of the petitioner that as per knowledge of not only the petitioner but also of the public at large, the plot/land offered by the petitioner for allotment of KSK at the site advertised at serial no. 84, the land was situated on a PWD road and thus the petitioner mentioned the same as a PWD road in the site plan submitted along with her application.

It further transpires that the L.E.C visited the land offered by the petitioner for setting up of retail outlet on 10.4.2012 and a report of the committee dated 10.4.2012 along with a rough sketch map has been brought on record as Annexure- 2. From the contents of the said report it transpires that at serial no.7 of the report, the L.E.C while considering as to whether the road was a National Highway or a State Highway or a major road or a PWD road has observed that

the same is a State Highway, the land having been transferred by PWD to State Highway on 29.10.2011 ie after the date of advertisement. The L.E.C, taking note of the land being on State Highway made its recommendation to the effect that the land is suitable for development of a retail outlet and it further confirmed that the subject land is at the advertised location.

A letter was written by the IOC Ltd. on 13.4.2012 to the Executive Engineer, Public Works Department, Chapra (Saran) requesting him to confirm the status of the Chapra to Marhaura road prior to the advertisement dated 19.8.2011 as also post advertisement. A reply was received contained in letter dated 25.4.2012 written by the Executive Engineer, Road Division, Chapra stating therein that the road in question ie the Chapra-Marhaura road had been transferred as a State Highway on 29.10.2011. The respondent IOC Ltd. in their counter affidavit have brought on record a copy of the Letter no. 1729 dated 5.10.2021 written by the Executive Engineer, Road Division, Chapra to the IOC Ltd. stating therein that the road in question where the land/plot of the petitioner was situated was declared as a State Highway by Notification no. 1952 (s) dated 12.2.2020. Subsequently the Executive Engineer came out with a corrigendum contained in Memo no. 1760 dated 8.10.2021 to the effect that in the letter dated 5.10.2021, in paragraph no.3 the date 12.2.2020 be read as 12.2.2008. Thus, it was submitted that the road in question stood categorised/notified as a State Highway on 12.2.2008 itself ie long before the advertisement on 19.8.2011 and thus, one of the conditions in the advertisement being that the land should not be situated either on a National Highway or a State Highway, the KSK outlet being on a State Highway, the dealership agreement has rightly been terminated and there was no illegality in the same.

From the facts narrated herein above it would transpire that although the petitioner in her application had described the land in question to be situated on a PWD road, nevertheless the L.E.C in its report categorically mentioned that the land was on a State Highway, in view of the fact that the road had stood transferred from PWD road to a State Highway on 31.10.2011 itself. In spite of this fact and being fully conscious of the same being on a State Highway, the L.E.C of the IOC Ltd. in its report observed the land to be at the advertised location and being suitable for development of a retail outlet and being fully conscious of all these facts, the KSK outlet dealership was allotted to the petitioner. The same was commissioned on 29.1.2015 and the agreement entered into between the petitioner and the IOC Ltd. on 27.7.2015. Thus, with effect from the date the L.E.C submitted its report dated 10.4.2012, the respondent IOC Ltd. were fully conscious of the fact that the land in question was situated over a State Highway. Nevertheless they proceeded to interview the petitioner on 24.7.2012, issued the L.O.I on 6.9.2012, NOC was issued by the District Magistrate vide memo dated 13.12.2012, the KSK was commissioned on 29.1.2015 and the agreement entered into on 27.7.2015.

It may further be noted here that as per the contents of the L.E.C report land

was transferred from PWD road to a State Highway on 29.10.2011. The land was so declared as a State Highway on 29.10.2011 is also evident from contents of the letter dated 25.4.2012 of the Executive Engineer, Road Division, Chapra. However the respondent IOC Ltd. have brought on record a copy of the letter dated 5.10.2021 and corrigendum dated 8.10.2021 from which it transpires that the road in question was categorised as a State Highway on 12.2.2008 itself. The fact which transpires from these averments is that even the respondent authorities including the L.E.C as also the Road Construction Department are not fully aware of the date that the said road which was a PWD road was categorised as a State Highway. The answer/reason for this is found in the information sought and the reply received by one Chandan Kumar under the RTI Act. On a query made by one Chandan Kumar under the RTI Act with respect to the road in question as to whether any gazette notification had been received in the Gulzarbagh Press, Gaighat, Patna City for its gazette publication in the newspaper, it was informed by Information no. 1167 dated 4.12.2021 that the Notification no. 1952 (s) dated 12.2.2008 of the Road Construction Department has not been received in the office for gazette publication. The categorical averments of the petitioner with respect to the reply received under the RTI Act as made in paragraph no. 24 of the writ application is being reproduced herein below for ready reference:

"24. That it is pertinent to state that it was inquired under RTI by one Chandan Kumar with respect to the road in question as whether any Gazette Notification had been received before the Gulzarbagh Press, Gai Ghat, Patna City for its Gazette publication in the Newspaper so that it could be known to the public at large but vide information bearing No. 1167 dated 04.12.2021, it was informed that the notification of the PWD bearing No. 1952 (s) dated 12.02.2008 has not been received in the office for its Gazette publication and as such any adverse action taken by the Corporation is not sustainable in the eyes of law.

A photo copy of letter bearing No. 1167 dated 04.12.2021 is annexed herewith and marked as Annexure-10 to this writ petition."

Although a counter affidavit sworn on 6.5.2022 was filed on behalf of the IOC Ltd. and another counter affidavit sworn on 19.10.2022 again on behalf of the IOC Ltd. was filed, the respondent IOC Ltd. has chosen not to give any reply to the statement made in paragraph no. 24, as quoted above.

The Hon'ble Supreme Court dealing with the affect of publication of the subordinate legislation in the official gazette as in the case of B.K. Srinivasan and Ors. Vs State of Karnataka and Ors. [(1987) 1 SCC 658] held as follows:

"15. There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint

of Justice Holmes's "unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient." (emphasis supplied)

It is equally important to mention here that while the advertisement prescribed that the land in question should not be either on a State Highway or on a National Highway, on a categorical query by the Court as to whether any part of the road/location described in the advertisement at serial no. 84 could be said to be at a place which is neither a State Highway or a National Highway, the reply of learned Senior counsel appearing for the IOC Ltd. was in the negative.

Besides the facts stated herein above it is equally important to take note of the fact that against the advertisement dated 19.8.2011, the respondent IOC Ltd. through the report of the L.E.C dated 10.4.2012 were conscious of the road being a State Highway. Nevertheless they conducted the interview of the petitioner, issued L.O.I in her favour, entered into an agreement and the KSK retail outlet was commissioned in the year 2015 itself. More than seven years have passed and in spite of so many inspections, no irregularities have been found. At this stage the action of the IOC Ltd. in terminating the dealership agreement executed between IOC Ltd. and the petitioner on 27.7.2015 is illegal and unsustainable.

Thus, in view of the facts and circumstances stated herein above, the order contained in letter dated 25.2.2022 whereby the respondent no. 4 has terminated the 'B' site Kisan Sewa Kendra of the petitioner by terminating the dealership agreement entered into on 27.7.2015, is hereby quashed.

The writ application is allowed.