

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12241 of 2018

Binod Kumar Mishra S/o Sri Kamla Kant Mishra, Resident of Village- Simri, P.S.- Simri, District- Buxar.

... ... Petitioner/s

Versus

1. The Indian Oil Corporation Ltd. Regd. Office, G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai -400051
2. The General Manager G.M. Vigilance Indian Oil Corporation, 3079/3 Sadig Nagar, J.B. Titto Marg, New Delhi
3. The Senior Vigilance Manager, Indian Oil Corporation, Indian Oil Bhawan, Mumbai.
4. The Executive Director HR Appellate Authority, Indian Oil Corporation Ltd. Mumbai.
5. The Chief Divisional Manager, Indian Oil Corporation Ltd. Marketing Division, Patna Divisional Office, Maurya Lok Complex, Patna -800001
6. Dealers Selection Board, Patna-II, through its Non Member Secretary, Batika, Kurji More, Industrial Estate Road, Patna
7. The Deputy Manager Sales, Patna-2 Sales Area, Indian Oil Corporation Ltd. Marketing Division, Marketing Division, Maurya Lok Complex Dak Bungalow Road, Patna
8. Central Public Information Officer-cum-General Manager, Indian Oil Corporation Ltd. M.D. Patna.
9. Lab Technician, Market Test, Indian Oil Corporation Ltd. M.D. Patna.
10. Prop. Punam Kumari through Punam Kumari, W/o Not known, C/o Proprietor Baba Brahmeshwar Nath Feeling Station, Brahmmpura P.O.P.S.- Brahmmpur, District- Buxar.
11. The Union of India through the Secretary, Ministry of Oil and Natural Gas, Govt. of India, New Delhi

... ... Respondent/s

Appearance :

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate
Dwivedy Surendra,
Dimpal Kumari, Advocates

For the IOC : Mr. Ankit Katariar, Advocate
For the Respondent No.10: M/s Anil Kumar Jha, Sr. Advocate
Sanat Kumar Jha, Advocate

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 13-12-2024

1. The petitioner has filed the present Writ petition for the following reliefs:



I) Issuance of writ in the nature of certiorari quashing apart of the order dated 20.12.2017 passed by respondent no. 7 by which it is observed that the statement made by respondent no.10 in affidavit at Para 7 is not contrary to the facts.

ii. Issuance of writ in the nature of mandamus commanding the respondents to appoint the petitioner as dealer after cancelling the dealership of respondent no.10 because petitioner position in select list was in 2nd position and against petitioner no criminal case is pending nor any adverse remarks is observed by any authority.

iii) To pass such other order or orders as may deem fit and proper.

2. It is the second round of litigation. At the outset, the petitioner has filed CWJC No. 10224 of 2009 *for setting aside the selection made by the private Respondent No. 10, namely, Punam Kumari on the ground that the allegation of Private respondent no. 10 is that his Tanker No. BR44G/3575 in the name of Private Respondent No. 10 and also the name of Pump*



namely Baba Brahmeshwar Nath Feeling Station, Brahmpur, Buxar was seized by the authority of Indian Oil Corporation Ltd. on 28.05.2007 and the tanker was suspended due to market test the sample of Oil was failed and for issuance of writ of mandamus for directing and commanding the respondent authorities to consider the petitioner for selection and the petitioner published result is 2nd position of merit list vide the Interview dated 23.07.2008 and make a fresh inquiry of reopen the pump, they already suspended and not Blacklisted by the Respondent Authority..."-.

3. This Court on considering the contentions and merits of both the parties passed a detailed order dated 30.01.2015 in CWJC No. 10224 of 2009, which is as follows:

"6. From the reading of the aforementioned column of the application, it does not become very clear as to what was the actual debarment. Whether, mere filing of an F.I.R. could have been a disqualification or whether only after



framing of charge, the person was sought to be disqualified ?

7. In that view of the matter, while this Court would find it difficult to allow the prayer of the petitioner holding respondent No. 10 to be disqualified on the basis of alleged false declaration in respect of pendency of a criminal case, nothing said in this order, however, will come in the way of the petitioner in approaching the authorities of the Indian Oil Corporation in satisfying them that the respondent no. 10, on account of pendency of the criminal case, was disqualified to be allotted the petroleum outlet, in question.

8. With the aforementioned observation and direction, this writ application is disposed of.”

4. This Court vide order dated 30.01.2015 has given liberty to the petitioner to approach the authorities i.e. the Indian Oil Corporation in satisfying them that the respondent no. 10, on account of pendency of the criminal case, was disqualified to be allotted the



petroleum outlet in question. In pursuance thereof, the petitioner submitted his representation on 09.09.2017 to the authorities of Indian Oil Corporation, stating therein that, at the time of allotment, a criminal case was pending and a chargesheet had also been submitted by the police against respondent No. 10, Punam Kumari. This fact was not disclosed in the affidavit submitted to the Indian Oil Corporation. The petitioner also mentioned in his representation that he produced the documents regarding the case against respondent No. 10 to the office of Indian Oil Corporation. However, despite this, and in violation of the provisions, without any investigation and allegedly under the influence of Punam Kumar, the concerned official allotted the license for the petrol pump to respondent No. 10. However, the petitioner's representation was disposed of by the Indian Oil Corporation through a reasoned order which was communicated to the petitioner vide letter dated 20.09.2017 (Annexure-11), which is impugned order in the Writ petition.



5. It is submitted by the Learned Senior Counsel for the petitioner that it was well within the knowledge of the authorities that a case was pending against respondent No. 10 in Buxar (Town) P.S. bearing Case No. 197 of 1989 in which the Learned Court took cognizance on 07.03.2007 against respondent No. 10 and others. It is further submitted that as far as the framing of charges is concerned, at the relevant date when respondent No. 10 applied for retail outlet, respondent No. 10 was an absconder, therefore charges were not framed against the respondent No. 10.

6. It is further submitted that on the date of application for the retail outlet, respondent No. 10 was an accused in a criminal case. Thus respondent No. 10 was not liable for allotment of retail outlet, and the retail outlet was arbitrarily allotted to respondent No. 10.

7. The Learned Senior Counsel for the petitioner relied on the judgments of Hon'ble Supreme Court, which are **1. Ramchandra Singh Vs. Savitri**



Devi & Ors [(2003) 8 SCC 319], 2. Krishnamoorthy Vs. Sivakumar & Ors. [(2015) 3 SCC 467], 3. Ramesh Chandra Sankla & Ors. Vs. Vikram Cement & Ors. [(2008) 14 SCC 58], 4. ABL International Ltd. & anr Vs. Export Credit Guarantee Corporation of India Lts. & Ors. [(2004) 3 SCC 553], 5. Mohinder Singh Gill Vs. The Chief Election Commissioner [(1978) 1 SCC 405], 6. Kunwar Pal Singh (dead) by LRS. Vs. State of U.P. & Ors. [(2007) 5 SCC 85] and 7. UOI & Ors. Vs. N Murugesan Etc [Civil Appeal Nos. 2491-2492 of 2021].

8. A detailed counter affidavit was filed on behalf of respondent Nos. 1 to 9, contending that, as per Clause 4 of the advertisement in question regarding the eligibility criteria, candidates convicted for any criminal offence involving moral turpitude/ economic offence and those against whom charges have been framed by the court (other than for freedom struggle), are not eligible to apply; Thus, from the terms of the



advertisement, it is apparent that only those candidate who are convicted in a criminal case by the court and against whom charges have been framed by the court in a criminal case involving moral turpitude of an economic offence as on the date of advertisement shall not be eligible for allotment as a dealer of a retail outlet. It is further contended that the selection of dealership was conducted in accordance with the prevailing dealer selection guidelines, and marks were also awarded accordingly. It is also contended that the respondent No. 10 submitted an affidavit dated 23.07.2007, in which she has stated that no charges were framed against her by any criminal court and that she has not been made accused in any criminal case involving allegations of moral turpitude and/or economic offence which are punishable under the law. It is further submitted that it was found that a case bearing Sessions Trial No. 390/2006, arising out of Buxar Town P.S. Case No.- 197/89, was registered against Smt Punam Kumari, among others. From the perusal of the ordersheet of the



case, it is apparent that the police submitted a chargesheet against 6 accused persons, including Smt. Punam Kumari on 07.03.2007 before the court of Chief Judicial Magistrate, Buxar. The court took cognizance of the same. Smt. Punam Kumari and two other accused persons had filed a petition on 02.09.2006 stating therein that they were minors on the alleged date of the incident and requested that their case may be sent to the Juvenile Court. Accordingly, the Learned Court passed an order dated 04.01.2007 to split the case records from the original records and send the same to the Juvenile Justice Board for separate proceeding. The office of the concerned court sent the split up records to the Juvenile Justice Board, Buxar, on 10.08.2010 and the same was registered as JJB Case No. 217/13 (State Vs Kamlesh Tiwari & Ors.). It is further averred in the counter affidavit that, from the Order Sheet of the Court, it is evident that charges were framed by the Court against 1. Bora @ Ram Bilah 2. Jai Narayan Pandey @ Guddu 3. Kalawati Devi on 16.03.2007, i.e.



after order dated 04.01.2007 during the case involving minors, including Punam Kumari, to be sent to the Juvenile Court for trial. The charges were framed against three accused, as stated hereinabove, by the Court on 16.03.2007, and no charges were framed by the said court against Smt. Punam Kumari. It is submitted that upon perusal of the order sheet of case JJB No. 217/13, it has been found that charges had not been framed against Smt. Punam Kumari till March 2013. Thus, it is clear that as on the date of advertisement and/or on the date of submission of affidavit to the Corporation, no charges were framed against Smt. Punam Kumari in Case No 390/2006 or in JJB case No. 217/13. Furthermore, Smt. Punam Kumari was not found convicted in any criminal case by any Court, rendering her ineligible for disqualification for the dealership in grant in question.

9. In support of its contention, Learned Counsel placed reliance on the decisions of this Court as well as of Hon'ble Supreme Court which are as



follows:- (1) **Munna Kumar Prasad Vs. Bharat Petroleum Corporation Ltd. and Ors. (2013(2) PLJR 942,** (2) **Kaushal Kishore Vs. Union of India & Ors. (2000)2 PLJR 475,** (3) **Brajesh Chandra Mishra Vs. The Union of India & Ors [2011(2) PLJR 660]** (4) **Indian Oil Corporation Ltd. & Ors. Vs. Raj Kumar Jha & Ors. [2012 (2) PLJR 783]** (5) **Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors [(1979) 3 SCC 489],** (6) **Hindustan Petroleum Corporation Ltd. & Anr Vs. Dolly Das [(1999)4 SCC 450]** (7) **Amalgamated Coalfields V. Janapada Sabha [AIR 1964 Supreme Court 1013]** (8). **Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujarat & Ors [(2019) 17 SCC 1].**

10. A counter affidavit was also filed by Respondent No. 10, contending that Buxar P.S. Case No. 197 of 1989 was registered against several persons, including respondent No. 10 in, which respondent No. 10, along with two others was declared a Juvenile, and the Learned Sessions Court did not frame charges



against respondent No. 10. It is further contended that the Juvenile Justice Board, Buxar, framed charges against respondent No. 10 and two others on 05.07.2018 and finally, respondent No. 10 was exonerated in the aforesaid criminal case vide order dated 06.03.2020 passed by the Juvenile Justice Board.

11. The Learned Senior Counsel for the respondent No. 10 submits that the selection of the respondent no. 10 was challenged and the matter ultimately travelled to the Hon'ble Supreme Court. After decision of the Hon'ble Supreme Court, the applicants were once again subjected to the interview and evaluation process, and respondent no. 10 was again asked, vide letter dated 04.7.2008, to submit her fresh affidavit, which she furnished in the form of an affidavit dated 23.7.2008 It is further averred in the counter affidavit that the typing mistake in the application was apparent and was not in conformity with the requirement. The Information/declaration was only to be made with respect to a pending criminal case



in which charge has been framed or a conviction has been made by a court of law for offences involving moral turpitude/economic offences. Respondent No. 10 had not been charged by any court of law nor she had been convicted as on date of application; The mere pendency of a criminal case in which charges had not been framed was not an impediment to selection, and hence, there was no reason to withhold any information from the Corporation. For this, reason, the Corporation considered the case of respondent No. 10 and did not take any adverse action against her.

12. It is submitted by the Learned Senior Counsel for the respondent No. 10 that after selection, respondent No. 10 made significant investments in obtaining various NOCs & licenses, developing the site, constructing structures, and establishing & Commissioning the retail outlet. It is further submitted that respondent No. 10 was a juvenile at the relevant time and was tried as such, eventually being exonerated by the Juvenile Justice Board. As per section 19 of the



Juvenile Justice Act, 2000, even the conviction of a juvenile cannot act as disqualification. To prevent future embarrassment for juveniles the relevant records are to be removed. It is further submitted that the Writ petitioner, in an attempt to demean the modesty of a woman and a juvenile, flouted the specific provision of law and filed the instant writ petition on entirely incorrect premises. Respondent No. 10 did not suffer from any disqualification, and as such, the writ petition is fit to be dismissed.

13. It is further submitted by the Learned Senior Counsel for respondent No. 10 that the allegation with respect to failure of /black listing of Truck Tanker of the respondent no. 10 is also false which is apparent from the replies of the Corporation given under RTI Act. Moreover, the representation/complaint filed by the petitioner, under the liberty granted by the Hon'ble court, was duly considered and was disposed of by the Competent Authority of the IOCL. Hence, the writ petitioner has no



further case for consideration. In support of their contention, the Learned Senior Counsel has placed reliance on the decisions of this Court as well as of Hon'ble Supreme Court which are as follows:- (1) **Pankaj Kumar Vs. The State of Bihar & Ors. (CWJC No. 2688 of 2022)** and (2) **Virendra Chaudhary Vs. Bharat Petroleum Corporation & Ors. [(2009)1 SCC 297]** (3) **K.Vinod Kumar Vs. S. Palanisamy & Ors [(2003) 10 SCC 681]**, (4). **Avtar Singh Vs. Union of India & Ors. [(2003) 10 SCC 681]** and (5) **Baccarose Perfumes and Beauty Products Pvt. Ltd. Vs. Central Bureau of Investigation & Anr. (Criminal Appeal No. 3216 of 2024)**

14. Heard the rival contentions of the Learned counsel for the petitioner as well as the Learned counsel for the respondents and perused the record.

15. I have also reviewed the citations produced by the Learned Senior Counsel for the petitioner. After examining the contents of the citations (supra), this Court finds that they are not applicable to the facts and



circumstances of the present case and therefore, they are not discussed at length.

16. The Hon'ble Apex Court in the case of **Virendra Chaudhary (supra)** has held as follows:

“13. After the interviews were held and before the letter of intent could be issued, field investigation was carried out. It is during the field investigation, the officials of Respondent 1 came to learn about the fact that two first information reports had been lodged against Respondent 5 and in one of them he had also been charge-sheeted. It is on that basis, a decision was taken to cancel the empanelment of the fifth respondent on or about 10-3-2004. Field investigation in respect of the appellant, however, proceeded. The letter of intent had been issued in his favour on 6-5-2004. It is difficult to comprehend that the fifth respondent was not aware of the issuance of the letter of intent to the appellant herein.

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.

20. *The fifth respondent did not acquire an indefeasible right. He was selected by the Oil Selection Board. The said selection was subsequently cancelled and a letter of intent was issued in favour of the appellant in May 2004. It was not questioned immediately after issuance of the letter of intent in favour of the appellant in May 2004. In his writ application, the fifth respondent did not question the grant of dealership in favour of the appellant. He was afforded an opportunity to amend the writ petition. He filed such an application only after 16*



months. However, the writ petition itself was withdrawn and only in October 2006, the present writ application was filed. 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 the insurance (sic issuance) of the letter of intent granting dealership in favour of the appellant.

21. *Considering the fact that starting of a business in LPG dealership requires a huge investment and infrastructure therefor is required to be provided and a large number of employees are to be appointed therefor, we are of the opinion that the High Court committed a serious error in not taking these factors into consideration in proper perspective. The impugned judgment, therefore, cannot be sustained and is set aside accordingly.*

17. A Co-ordinate Bench of this Court in the case of **Pankaj Kumar (supra)** has held as follows:

“6. The Hon’ble Supreme Court



referred to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. The incident can be summarized in the manner that some students of Welsh being very enthusiastic about the Welsh language came up to London and invaded the High Court and they were punished. It was held by Lord Denning that the ultimate reason for such invasion by the students of Welsh was to promote Wales with English which is more melodious by far "than our rough English tongue". Therefore, the students/defendants were set free, and allowed to go to their parents with an advise to carry on their studies. What the Hon'ble Supreme Court wanted to impress by recording the above-mentioned story and the fact that the modern approach of the justice delivery system is to reform a person instead of branding him as a criminal all his life.

7. In Mohd. Imran v. State of Maharashtra, reported in (2019) 17 SCC 696, the Hon'ble Supreme Court in paragraph 5 observed as follow :-

"5. Employment opportunities are a



scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simplicitor. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation



of a case.”

*9. Having said so, let us now consider the celebrated judgment of the Hon’ble Supreme Court in the case of **Avtar Singh v. Union of India, reported in (2016) 8 SCC 471**. In the instant case also, for furnishing wrong/incorrect information and suppression of material information, the service of the petitioner was terminated. In paragraph No. 38.4.1, the Hon’ble Supreme Court has held as under:-*

“38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.”

17. Further, the petitioner’s wrong submission of information regarding a criminal case instituted against the petitioner be condoned and the petitioner be issued an appointment letter within 30 days from the date of communication of this



order.”

18. A Co-ordinate Bench of this Court in the case of **Kaushal Kishore (supra)** has held as follows:

“7. But then the question which still survives for consideration is as to its effect on the totality of circumstances of the case at the present stage. Learned counsel for respondent No. 7 is right in his submission that the position at the present stage has become irreversible. After the letter of intent was issued to him, he has taken all steps required therein to set up petrol station and he has made heavy investments. He submits that he has already arranged on lease in the name of the Corporation a plot of land covering more than 20 Kathas where earth filling was needed, the building has been constructed, a pucca boundary wall has been constructed round the plot, petrol pump has been installed which will soon become functional. He has also placed before this Court certain photographs to establish that position. He has rightly relied on the judgment passed by me in Smt. Phuljhari



Devi v. Union of India, reported in 2000 (1) Pat LJR 973, paragraph 8 of which is relevant in the present context, and is set out hereinbelow for the facility of quick reference.:

8. Learned counsel for respondent No. 4 has next submitted that the dealership has become functional with effect from 31-3-1997, and he has already made heavy investments. He further submits that he should not be made to suffer for various reasons. He ranked higher than the petitioner before as well as after the interpolation. Secondly the blame for interpolations would go to both the petitioner and respondent No. 4. Learned counsel for the petitioner has not countered the submission at all. In any case, this Court agrees with the contention of the learned counsel for respondent No. 4, that they have made investments, the dealership has become functional since 31-3-1997, and also in view of my finding hereinabove that respondent No. 4 ranked higher in the select list before as well as after the interpolation.”



7.1. He has rightly relied on the well known judgment of the Supreme Court reported in (1979) 3 SCC 489 : (AIR 1979 SC 1628) (R.D. Shetty v. International Airport Authority) where the Supreme Court was unable to grant any relief to the petitioner for similar reasons. The relevant portion of paragraph 35 of the report is relevant in the present context and is set out hereinbelow for the facility of quick reference:

“35. Now, on this view we should have ordinarily set aside the decision of respondent 1 accepting the tender of respondent 4 and the contract resulting from such acceptance but in view of the peculiar facts and circumstances of the present case, we do not think it would be a sound exercise of discretion on our part to upset that decision and void the contract..... Moreover, the writ petition was filed by the appellant more than five months after the acceptance of the tender of respondent 4 and during this period, respondent 4 incurred considerable expenditure



aggregating to about Rs. 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitous to set aside the contracts of respondent 4 at the instance of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of respondent 4 but the appellant allowed a period of over five months to elapse during which respondent 4 altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under Article 226 of the Constitution”.

19. On perusal of the advertisement dated 01.09.2000 i.e. Annexure R/10 at Column No. 4 read as follows:

“Candidates convicted for any criminal offence involving moral turpitude/economic offences



and those against whom charge has been framed Court (other than Freedom Struggle) are not eligible to apply”.

20. As per the content of the advertisement it is to be construed that the candidates who have been convicted or against whom charges have been framed are not eligible to apply. Column No 9 of the advertisement only states that “*application should be made on prescribed form available on payment of a non-refundable fee of Rs. 500/-*. Annexure-14 is the application form of Poonam Kumari. Column No. 20 of Annexure 14 reads as follows: *Have you ever been convicted of any criminal offence in which you have been found accused of moral turpitude and/or economic offence (other than freedom struggle) or is any case pending against you in court or has any court levelled any charges against you? If yes, then please give its details And if no, then enclose affidavit as per Appendix 'A'.*

21. For the above question, the answer given



by the 10th respondent is: “*there is nothing as such. Affidavit is enclosed.*”

22. It is the specific contention of the Learned Senior Counsel for the petitioner that 10th respondent had a pending the criminal case against her, as on the date of the filing of application, and as such, she was not eligible for the dealership of the Indian Oil Corporation.

23. On comparison of the advertisement (Annexure R/10) with the content of Column No. 4, it is evident that the criteria mentioned in the column were not reflected in Annexure-14. The eligibility criteria for disqualifying to a person only arises if they are convicted of any criminal offence or if the Criminal Court has framed charges against them as of the date of the application. The advertisement clearly states that respondent No. 10 cannot be disqualified on the ground that a criminal case pending against her.

24. On perusal of the record, it is also evident that she was arrayed as a juvenile in the criminal case.



The Criminal Court has split up the case against respondent No. 10 and forwarded it to the Juvenile Court. Charges were not framed against 10th respondent as on the date of the filing of the application, and as such, she cannot be declared ineligible for applying for the dealership in question.

25. This Court is of the considered view that the above ratio of Hon'ble Apex Court as well as this Hon'ble Court, passed in aforesaid cases (supra) squarely applies to the present case in hand.

26. In view of above discussion, this Court finds that there is no irregularity committed by the Respondent IOCL in selecting the 10th respondent as an eligible candidate for the said dealership.

27. Accordingly, the Writ petition is dismissed.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2025
Transmission Date	

