

**A F R**  
**Reserved**

**Court No.4**

**Case :-** WRIT - C No. - 36047 of 2016

**Petitioner :-** Ram Autar

**Respondent :-** Union Of India Through Its Secretary  
Petroleum And 2 Ors.

**Counsel for Petitioner :-** Birendra Singh,P.K. Singh

**Counsel for Respondent :-** A.S.G.I.,Ghan Shyam,Rajesh  
Kumar Jaiswal,S.C.,Vikas Budhwar

**Hon'ble Bala Krishna Narayana,J.**

**Hon'ble Prakash Padia,J.**

**Per Hon'ble Prakash Padia,J.**

1. Heard learned counsel for the petitioner.
2. Sri R. K. Jaiswal learned counsel has accepted notice on behalf of respondent no. 1 and Sri Vikas Budhwar, learned counsel has put his appearance on behalf of respondent nos. 2 and 3.
3. Sri Ghanshyam, Advocate, has filed an application for impleadment on behalf of newly added respondent Smt. Jyoti Yadav w/o Sri Prashant Kumar Yadav.
4. The petitioner has preferred the present writ petition challenging the order dated 09.07.2016 passed by the Chief Regional Manager, Hindustan Petroleum Corporation Limited, 85/4, Ispat Bhawan 3<sup>rd</sup> Floor, Sanjay Place, Agra/respondent no. 3 with further prayer to issue a mandamus commanding the respondents, specially respondent no. 3 to include the application of the petitioner in the forthcoming lottery draw for selection of retail outlet of Hindustan Petroleum Corporation for the location in question namely Faizabad Shamshabad Road KM. Stone between 2 and 4 District Farrukhabad under the OBC category.
5. Facts in brief as contained in the writ petition are

that an advertisement was published by the respondent corporation on 13.10.2014 inviting applications from interested persons in respect of grant of retail outlet distributorship for various locations including the location in question.

6. It is contended in the writ petition that the petitioner is OBC category candidate. He applied on a prescribed form for the retail outlet in question. In this regard the petitioner had taken land on lease for a period of 30 years from one of the co-sharer of Khata No.356, Khasra No.202 area 0.9590 hectare situated in Village Khanpur, Pargana-shamshad, Tehsil Kayamganj, District Farrukhabad.

7. The application form submitted by the petitioner was duly examined by the respondent no.3/Chief Regional Manager, Hindustan Petroleum Corporation Ltd.85/4, Ispat Bhawan, 3<sup>rd</sup> Floor, Sanjay Place, Agra, and he informed the petitioner that the candidatures of the petitioner was not found eligible for retail outlet dealership due to following reasons :-

a. The Khasra/khatauni/gata no. is not mentioned in the lease deed of the offered land.

b. The lease agreement for the offered land does not contain sublease clause, on the contrary sub-lease is barred.

8. In the aforesaid letter it is further stated that if the petitioner has any grievance he can make an application/representation within 10 days from the date of the letter. It is further contended that the petitioner has submitted his representation on 4.6.2016. Along with the said representation the petitioner submitted

the extract of Khatauni no.18020901052 of Khata No.356, Khasra No.202 area 0.9590 hectare situated in Village Khanpur, Pargana-shamshad, Tehsil Kayamganj, District Farrukhabad in the name of Smt. Munni Devi, Revenue Map of the said khata and land drawing map of proposed outlet. Apart from the same petitioner also submitted a supplementary/corrigendum of lease deed executed by Smt. Munni Devi in favour of petitioner, which was registered on 4.6.2016 in the office of Sub Registrar, Kayamganj.

9. In view of the aforesaid it is argued by learned counsel for the petitioner that the petitioner has already removed all the shortcomings, which were very minor in nature and as such petitioner became entitled for consideration of his application form for the grant of retail outlet in question.

10. The representation submitted by the petitioner was rejected by the respondent no.3 vide its order dated 09.7.2016. By the aforesaid order, the petitioner was informed that since he does not fulfill the norms for providing land in accordance with the Point No.4(vi) (kha) of the Dealer Selection Guidelines thus his application cannot be accepted. The order dated 9.7.2016 passed by the respondent no.3 is under challenge in the present writ petition.

11. It is argued by learned counsel for the petitioner that in response to the letter dated 26.5.2016 by which certain shortcomings were informed to the petitioner were removed by him while submitting certain papers and documents along-with his representation dated 4.6.2016. In view of the aforesaid it is argued that since

the shortcomings pointed out by the respondent no.3 had already been removed, the order dated 9.7.2016 passed by him is absolutely arbitrary in nature and the same is liable to be set aside. It is further argued that by way of supplementary/corrigendum of lease dated 4.6.2016 all the shortcomings in land were removed by the petitioner.

12. In the said affidavit it is stated that total four applications were submitted for the aforesaid location, out of which three were rejected including the application form of the present petitioner at the time of scrutiny itself. In view of the aforesaid the only applicant was left to be considered for the grant of retail outlet dealership is Smt. Jyoti Yadav, the proposed applicant for impleadment.

13. It is argued by Sri Vikas Budhwar, learned counsel for the respondent Hindustan Petroleum Corporation that along-with the application form petitioner has submitted a lease deed dated 31.10.2014. From perusal of the same it is clear that there is neither any reference to gata number sought to be leased out nor any condition with respect to sub lease in favour of respondent corporation. During the course of scrutiny certain discrepancies were found in the application form of the petitioner as such a letter dated 26.5.2016 was written by the respondent no.3 to the petitioner. In response to the aforesaid letter petitioner submitted his representation dated 4.6.2016. Along-with the aforesaid representation the petitioner has appended a correction deed dated 4.6.2016 making correction in the lease deed dated 31.10.2014. It is further argued that vide

correction deed dated 4.6.2016 petitioner has sought correction in the lease deed dated 31.10.2014 to the effect that gata no.202 was sought to be mentioned and for the first time provision of sub lease in favour of respondent corporation was made, copy of the correction deed dated 4.6.2016 is appended as annexure 3 to the counter affidavit. It is further argued by Sri Vikas Budhwar that after considering the representation of the petitioner, the corporation authorities passed the order dated 09.7.2016 whereby the claim set up by the petitioner was found “unsuitable” on the ground that in view of express condition of Clause 14-H (Viii) no alteration/addition/deletion is permissible after submission of the application form. It is further argued that the procedure and manner according to which selection ought to be conducted in respect of retail outlet is set out in the brochure for the selection of “Dealer for Regular and Rural Retail Outlet”. The relevant clause being clause-4(vi) is reproduced hereinbelow :-

*'(VI). Land (Applicable to all categories)*

*The applications would be classified into two groups as mentioned below based on the land offered by them in the application form.*

*“ Group 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership/long terms lease for a period of minimum 30 years (as advertised by the Oil Company).*

*Group 2: Applicants having Firm Offer for a suitable piece of land for purchase of long term lease for a period of minimum 30 years (as advertised by the Oil Company).*

*The other conditions with respect to offering of land are as under:*

*a) The land should be available with the*

applicant on the date of affidavit and should have minimum lease of 30 years (as advertised by the concerned Oil Company) from the date or after the date of advertisement but not later than the date of affidavit (Appendix- XA/XB)

b) If the offered land is on Long term lease then the Lease agreement should have a provision to sub-leased the land wherever the locations are advertised under Gorpus Fund Scheme (CFS), Other (Corporation owned Sites ('A"/'CC" sites) and Company leased sites.

For Dealer owned sites ('B"/'DC" sites) the applicant should ensure that the land arranged by the applicant is either registered in the applicant's name or leased in favour of the applicant for a minimum period of 30 years as advertised by the concerned Oil Company)

c) The applicant (s) under Group-1, should furnish at least one of the following documents in support of ownership of land offered for the Dealership.

\* Khasra/Khatauni or any equivalent revenue document or Certified from revenue official confirming status of the ownership of the land.

\* Registered Sale deed/Registered Gift deed.

\* Registered Lease deed for a minimum period 30 years as advertised by the concerned Oil Company.

\* Any other type of ownership/transfer deed document

\* Lease agreement or firm allotment letter issued by Government/Semi Government bodies.

d) The land owned by the family members (the family will comprise of the "Family Unit" as defined in Multiple dealership norms under clause 10 "Disqualification" will also be considered as belonging to the applicant/subject to producing the consent letter in the form of affidavit (Appendix -VA) from the concerned member(s) of the 'family unit'

e) The eligibility of the Land will be decided by Oil Company with reference to a confirmatory letter from an advocate (Appendix VB) to be arranged by the applicant.

f) In case the applicant or member (s) of 'family unit' own the land jointly with third person, the consent letter in the form of an affidavit

(Appendix VA) or Power of Attorney clearly authorizing the applicant for such use of land from third person is also required.

g) The 'firm offer' of land will include land offer from third party based on Agreement to purchase/long term lease (as per terms and conditions of the OMCs) offer/letter should be in the form of an Affidavit (Appendix VA) or Power of Attorney for the purpose along with one of the documents mentioned in (c) above, in support of ownership of land offered for the Dealership.

h) Various situations of ownership for defining owned/firm offer are as under:

S.No	Situation of ownership	Share of applicant in land	Additional documents required	Evaluation as
<b>GROUP 1</b>				
1	Self	Full	Nil	Owned
2	Self with members of family unit or owned exclusively by family members	Part/Nil	Consent letter in the form of affidavit from members of family unit- <b>Appendix V A</b>	Owned
3	.Self with other owners . Family members with other owner(s) . Self with family members & other owners	Part Nil Part	If the share of the applicant and/or family members is more than or equal to land required by the company. Consent letter on stamp paper or an affidavit or Power of Attorney from all Co-owner(s) should be provided- <b>Appendix-V A.</b>	Owned
4	Land owned by Government/Semi-	Full	Allotment Letter from	Owned

	Government bodies		the Government/ Semi-Government bodies in the name of Self with specific mention for use of petrol pump.	
GROUP 2				
5	Land owned by third party in part or full	Part/Nil	Consent letter in the form of affidavit/Power of Attorney from other owner(s)- <b>Appendix V A</b>	Firm Offer

*l) Each applicant will have to declare in the form the category under which offered land falls Supporting the above, a conformity letter from an advocate (Appendix V B) giving details of the current ownership documents relied upon and the category under which the land falls (Group 1 or 2) also is to be submitted. The eligibility and the Group under which the applicants land falls, would be determined based on the declaration given in the application confirmatory letter from the advocate and relevant Clause of the affidavit (Appendix XA/XB as applicable) regarding the same.*

*j) Verification of the supporting documents submitted by the applicant will be carried out for the selected candidates at the time of Field Verification Credentials”*

*Note:*

*a) 'Own' means having ownership by way of Registered Sale deed, Registered Gift deed etc. or title of the property or registered long lease (as per individual OMC norms) in the name of applicant/'family unit' as defined in multiple dealership norm under clause 10 (Disqualification)*

*b) Only one piece of suitable land to be offered by the applicant.*

*c) In-spite of above, if an applicant offers more*

*than one land then, a confirmation in writing is to be obtained by Land Evaluation Committee (LEC) from the applicant with regard to the plot of land to be considered.*

*d) The same piece of land cannot be offered by more than one applicant for a particular RO location against an advertisement. In case more than one application is received offering the same piece of land all such applications would be rejected.*

*e) The selected candidate has to make available the offered land duly developed up to the road level by cutting/filling (as applicable) with good earth/murum layerwise compacted as per standard engineering practice to the satisfaction of the concerned OMC. The selected candidate is also required to provide retaining wall and compound wall of min. height: 1.5 meters designed as per site conditions as per approval of OMC*

*f) There is no commitment by the Oil Company for taking the offered land from the applicant, if an applicant after selection is unable to provide the land indicated in the application form within a period of 2 months (for Group 1) and 4 months (for Group 2) from the date of Letter of Intent (LOI) Oil Company will have the right to cancel/withdraw the LOI issued in favour of the selected candidate for allotment of dealership'.*

14. It is further argued by Sri Vikas Budhwar that in the present case admittedly at the time of submission of application form dated 16.11.2014, though the petitioner mentioned in Clause 9 of his application form khasra and khatauni number 202 and appended the lease deed executed by one Smt. Munni Devi wife of Roshan Lal in favour of petitioner on 31.10.2014 but in the said lease deed neither the gata number was mentioned nor there was any provision of sub lease as provided under Clause 4 -(Vi-b) of the selection guidelines. Apart from the same petitioner in the lease deed dated 31.10.2014 depicted himself to be the sole

and exclusive owner of the land which was sought to be leased out. However, subsequently after rejection of his candidature on 26.5.2016 petitioner submitted a representation dated 4.6.2016 making correction in the lease deed dated 31.7.2014 with respect to khasra no.202 whereby besides lessor being Smt. Munni Devi names of two persons namely Jaiveer and Havaladar was also mentioned as co-owners. The aforesaid facts were not disclosed by the petitioner at the time of submission of his form that these persons were co-owners of the land in question. Apart from the same no consent letter from the co-owners was submitted along with the application form as required under Clause 4 (Vi) of the brochure as quoted above.

15. Sri Vikash Budhwar, learned counsel for the respondent-corporation relied the following judgements :-

I. **Civil Appeal Nos.6928-6929 of 2015 (Bharat Petroleum Corporation Ltd. and others Vs. Swapnil Singh)** decided on September 8, 2015.

II. **Smt. Sunita Gupta Vs. Union of India and others** reported in **2009 (7) ADJ 534 (DB)**.

16. During the course of arguments certain papers and documents were provided by Sri Vikash Budhwar, learned counsel for the respondent corporation, the same are taken on record. It reveals from perusal of the aforesaid papers that the respondent no.4 was issued a letter of intent by the respondent corporation on 29.6.2018, thereafter no objection certificate was also issued on 15.2.2019. It is contended by Sri Vikash Budhwar that after the aforesaid proceedings, a letter

of appointment was also issued in favour of the respondent no.4 and the respondent no.4 is at present running the retail outlet.

17. A short counter affidavit was also filed by Sri. R. K. Jaiswal, learned counsel on behalf of respondent no.1/Union of India. In the aforesaid short counter affidavit it is stated that after dismantling of the Administered Pricing Mechanism (APM) in the petroleum section with effect from 1.4.2002, the selection process of dealers/distributors for retail outlets (petrol pumps)/LPG distributorships (cooking gas agencies) is done by the oil marketing companies themselves subject to broad policy guidelines issued by Ministry from time to time relating to matters, like reservation for weaker section, reconstitution, revival of defunct outlets, resitement, and transparency in selection. The public sector oil companies enjoy commercial freedom in the matter of marketing/distribution of petroleum products, through their respective networks of retail outlet dealership, LPG distributorships and SKO-LDO dealerships. The oil companies choose their own locations for setting up such dealerships/distributorship, if found viable after feasibility study thereof by the oil companies themselves. The Government has no role in the selection of sites. It may be noted that the answering respondent vide its letter dated 19<sup>th</sup> August, 2003 has advised certain broad parameters to the oil marketing companies and, thereafter, the companies frame their own guidelines for selection of dealers/distributorships.

18. It is further stated in paragraph 5 of the short

counter affidavit that the Ministry of Petroleum & Natural Gas, Government of India has issued letter dated 02<sup>nd</sup> September, 2005 for pleading before the Hon'ble Courts all over the country to delete the Union of India from the array of respondents, at the time of admission stage itself. The copy of letter dated 2<sup>nd</sup> September, 2005 is annexed as annexure no.S.C.A.-2 to the short counter affidavit.

19. Heard learned counsel for the parties.

20. With the consent of learned counsel for the parties present writ petition is being disposed of finally at the admission stage.

21. From perusal of the facts as narrated above, it is clear that in terms of the advertisement dated 11.10.2014, an application form was submitted by the petitioner for grant of retail outlet dealership. Since certain discrepancies were found in the application form submitted by the petitioner a letter dated 26.5.2016 was written by the respondent no.3 to the petitioner. A reply dated 4.6.2016 was submitted by the petitioner stating therein that the discrepancies were duly removed. After the aforesaid letter was received in the office of the respondent corporation, the corporation rejected the same vide its order dated 9.7.2016 on the ground that Clause 4 (Vi) (kha) of the guidelines were not fulfilled by the petitioner. It reveals from perusal of the records that while submitting the application form the petitioner has submitted certain papers and documents. Two short comings were pointed out in the application form of the petitioner namely khasra/khatauni number is not mentioned in

the lease deed and lease agreement does not contain any sub lease clause. After the aforesaid letter was received by the petitioner he submitted a representation. Along-with representation petitioner appended the correction dated 4.6.2016 making corrections in the lease deed dated 31.10.2014. By the aforesaid corrections the petitioner had sought correction in the lease deed dated 31.10.2014 to the effect that gata no.202 was sought to be mentioned and for the first time provision of sub lease in favour of the respondent corporation was also mentioned. The petitioner tried to remove the discrepancies as pointed out by the corporation vide letter dated 26.5.2016. Apart from the original lessor of the land two other persons namely Jaiveer and Havaladar were also co-sharers in the land. The aforesaid fact was not disclosed at any point of time by the petitioner or by Smt. Munni Devi before respondent corporation. No consent letters of the aforesaid co-sharers were submitted by the petitioner along-with his application form. Apart from the same corrections, which were made by the petitioner in the correction deed were also not liable to be taken into consideration by the respondent corporation due to the fact that these corrections are not permissible after submission of the application form.

22. In the case of ***Bharat Petroleum Corporation Ltd. (supra)*** it was held by the Supreme Court that :-

*“We have gone through the records of the case along with the assistance of learned counsel for the parties and we find that the brochure read with the application form is absolutely clear in the sense that the applicant must be the owner*

*of specified area of land or must have a registered lease deed of the specified area of land on the date of application. The admitted position (which is also clear from the counter affidavit filed by the respondent in this Court) is that on 13<sup>th</sup> September, 2011 when the application for allotment was made, the respondent was neither the owner of any land nor had any registered sale deed/lease deed in her name. In fact, the lease deed came into existence only on 20<sup>th</sup> December, 2012, and that was registered on 21<sup>st</sup> December, 2012. Clearly, on the date of the application, the respondent was not eligible in terms of the brochure and the application form.*

*The Calcutta High court has proceeded on the basis of a notarized lease agreement which appears to have been produced by the respondent before the High court, photocopy of the notarized lease agreement has been shown to us and that document is dated 13<sup>th</sup> September, 2011. Learned counsel for the respondent has relied upon this document to contend that the respondent was eligible as on 13<sup>th</sup> September, 2011 in terms of the notarized lease agreement.*

*We are unable to accept this contention of learned counsel for the respondent. The brochure and the application form clearly require the applicant to have a registered lease deed in her name. What is shown to us is a notarized document and admittedly this document, even though it may have been in existence, was formalised into a lease agreement only on 20<sup>th</sup> December, 2012 and that was registered on 21<sup>st</sup> December, 2012. The notarized document, therefore, does not advance the case of the respondent any further. Therefore, it is quite clear that the respondent was not eligible on the date of application, i.e., 13<sup>th</sup> September, 2011.*

*Under the circumstances, we allow these appeals and set aside the order passed by the Division Bench of the Calcutta High Court. No costs."*

23. In the case of **Smt. Sunita Gupta (supra)** it was

held by the Division Bench of this Court that :-

*“23. Para 12.1 of guidelines for selection of retail outlet dealers, provides that an application form alongwith relevant documents should be submitted within the time prescribed, no addition/deletion/alteration will be permitted in the application once it is submitted. No additional documents whatsoever will be accepted or considered after the cut-off date of the application. In the present writ petition we have found that the petitioner could not file all required documents alongwith application form. The land proposed for the purpose was found joint ownership of several persons including her husband and no valid and legal partition of the land took place between them. The petitioner's husband was not found the sole owner of the land offered by her for retail outlet dealership. Under these circumstances the respondents were justified in reviewing the decision taken by the selection committee and cancelling the interview and selection of the petitioner.*

*24. On the basis of above submissions made by learned counsel for parties and their pleadings as well as the documents filed on record. We have found that the respondents have not committed any mistake in not taking into consideration the documents which have been submitted subsequent to last date of submission of the application form, because those documents could not be considered in view of Para 12.1 of guidelines. We have also observed that the respondents have afforded full opportunity to the petitioner of being heard and there is no violation of natural justice. No opportunity appears to have been afforded to the petitioner before cancellation of selection, but in pursuance of the order passed by this Court in writ petition, the respondents have afforded full opportunity to the petitioner of being heard on her representation. The respondents have rightly rejected the representation of the petitioner through detailed and speaking order, which does not suffer from any infirmity, mistake or error, because the husband of the petitioner has not been found exclusive owner and in possession of the land proposed for retail outlet and no legal partition has taken place among all co-sharers as memorandum of alleged partition dated 3.7.1984 is a waste paper having no evidentiary value,*

*which cannot be relied on and referred to in any proceeding.*

*25. Under these circumstances no principles of natural justice has been violated by the respondents. The petitioner herself concealed the important facts at the time of presenting her application form and interview about the ownership of land and infrastructure facility. Thus the decision has been validly reviewed and selection of the petitioner has been rightly cancelled, which cannot be said to be vitiated in view of any fact and circumstance. The selection of the petitioner does not confer any right to a prospective candidate because no letter of intent has been issued by the respondents in pursuance of the selection and no agreement has been executed by the parties in response to above selection."*

24. In view of the facts as stated above, we are of the opinion that the order passed by the respondent no.3 dated 9.7.2016, which is impugned in the present writ petition is absolutely perfect and valid order and does not call for any interference by this Court specially under Article 226 of the Constitution of India.

25. The writ petition being devoid of merit is dismissed.

**Order Date :- 31.10.2019**  
Pramod Tripathi