

HIGH COURT OF MADHYA PRADESH  
BENCH AT GWALIOR

**Writ Petition No.9245 of 2012**

**Smt. Rani Soni**

**Vs.**

**The Indian Oil Corporation and others**

**&**

**Writ Petition No.1857 of 2015**

**Pawan Kumar Jain**

**Vs.**

**The Indian Oil Corporation and others**

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Shri Prashant Sharma, Advocate for the petitioner in W.P.No.9245/2012.

Shri A.K.Jain, Advocate for the respondents No.1 and 2 in W.P.No.9245/2012 and respondents in W.P.No.1857/2015.

Shri Arun Katore, Advocate for the respondent No.3 in W.P.No.9245/2012 and petitioner in W.P.No.1857/2015.

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**ORDER**  
(29/09/2016)

**Rohit Arya, J**

Regard being had to the similitude of the controversy involved in W.P.Nos.9245/2012 & 1857/2015, they have been heard analogously and disposed of by this singular order.

**(I) W.P.No.9245 of 2012:**

This writ petition, under Article 226/227 of the Constitution of India, is at the instance of one of the applicants for award of retail outlet (petrol pump) dealership at Village Ishwari on the National Highway 3 (Agra – Mumbai), Tahsil Badarwas, District Shivpuri, seeking indulgence in the matter of marks awarded to the respondent No.3 i.e., 35 out of 35 by L.I. Committee, in relation to the capability to provide the Land and infrastructure by him. Later on, petitioner amended the writ petition whereby Letter of Intent dated 03/02/2014 [page Nos.23-A to 23-B of the paper book] issued by Indian Oil Corporation Ltd.(for short “IOC”)] in favour of respondent No.3 has been challenged.

**(II) W.P.No.1857 of 2015:**

This writ petition, under Article 226/227 of the Constitution of India, is at the instance of Pawan Kumar Jain, in whose favour retail outlet (petrol pump) dealership at Village Ishwari on the

National Highway 3 (Agra – Mumbai), Tahsil Badarwas, District Shivpuri, has been awarded seeks indulgence in the matter of implementation of Letter of Intent dated 03/02/2014 issued by IOC.

For the sake of convenience, the facts in the **W.P.No.9245 of 2012** have been dealt with.

2. It is the contention of the petitioner that the difference of the marks between the petitioner and the respondent No.3 is only 1.30. The land offered by the respondent No.3 falls within the definition “firm offer”, as provided for under clause 14(a) and (b) of the Brochure of the IOC, therefore, respondent No.3 was only entitled to be awarded 25 marks instead of 35 marks. It is submitted that under these circumstances, petitioner is entitled for award of the dealership at the aforesaid site.

3. Facts relevant and necessary for disposal of this writ petition are to the effect that an advertisement was published in the news paper on 20/06/2012 (Annexure P/1) by IOC calling applications for award of petrol pump at various locations. Relevant for the purpose of this writ petition is the one appearing at S.No.45 of the advertisement. Petitioner and the respondent No.3 are amongst other candidates who applied for the same. Respondent No.3 had offered the land purchased by him alongwith his brother, Sunil Kumar Jain by a registered sale deed dated 02/07/2012 admeasuring 0.710 hectare falling in survey Nos.406 and 407/2 situated at village Ishwari, Tahsil Badarwas, District Shivpuri. Alongwith the sale deed, respondent No.3 had also submitted a notarized affidavit of his brother, Sunil Kumar Jain dated 11/07/2012 together with demarcation report attached with a map, wherein Sunil Kumar Jain had stated that he has no objection for installation of petrol pump at the site of the land jointly owned by him with respondent No.3 (from pages 300 to 305 of the paper book). Sunil Kumar Jain had also executed a power of attorney in favour of his brother, Pawan Kumar Jain (respondent No.3) dated 07/07/2012 (pages from 297 to 299 of the paper book).

4. The Committee constituted by IOC had considered the relative merits of the petitioner and the respondent No.3 with other candidates and prepared a Chart on 25/09/2012. Petitioner and respondent No.3 have been given 35 marks by the LI committee in respect of the land, however, in aggregate, the petitioner has been awarded 85 marks and the respondent No.3 has been awarded 86.30 marks.

5. Petitioner had filed an objection on 20/10/2012 (page No.108-109 of the paper book) by raising twofold objection, firstly; the land offered by the respondent No.3 does not meet the requirements as set out in the advertisement inasmuch as, the same is not within the required proximity of the location mentioned in the advertisement and secondly; there is *inter se* dispute between the respondent No.3 and his predecessor-in-title in respect of the land offered. The committee after affording opportunity to the respondent No.3 and the petitioner decided the objection vide order dated 17/04/2013 (page Nos.197 to 198 of the paper book) consequent upon inspection conducted on 10/04/2013 and rejected the same by a self-contained explanatory order wherein it is found that the land is well within the required proximity of the site as per the specification under the advertisement and there is no dispute between the respondent No.3 and his predecessor-in-title. This order was never challenged at any point of time and even not challenged in this case by the petitioner.

6. In this writ petition, petitioner takes exception to the land offered by the respondent No.3 and the marks awarded for the reasons, namely; (i) as per clause 6(I) of the Indian Oil Corporation Limited Brochure for Selection of Petrol/Diesel Retail Outlet Dealers issued on 1<sup>st</sup> July, 2009 (at page Nos. 12-141 of the paper book), the respondent No.3 being a married person cannot offer the land of the joint ownership of his brother as a 'family unit' as the brother cannot be said to be 'family unit' inasmuch as, the clause contemplates that where the applicant is married; namely; the 'family unit' shall consists of spouse, unmarried son and unmarried daughter; (ii) "Owned land" and

“Firm Offer” are separately defined under clauses 14(a) and 14(b) of the Brochure. As the land held by respondent No.3 being in joint ownership with his brother falls under clause 14(b), therefore, as per clause 13.1.1 of the Brochure (at page 129 of the paper book), the respondent No.3 was entitled to be awarded maximum 25 marks, therefore, as per the comparative assessment made by L.I., committee, the petitioner is entitled for grant of the aforesaid petrol pump dealership. That was not done.

7. Learned counsel for the petitioner submits that the aforesaid requirement has been further clarified at page 136 of the paper book; Note (f) appended to the aforesaid clause 14 of the Brochure and for ready reference revelation portion thereof is quoted below:

Sl. No.	Situation of Ownership	Share of applicant land	Documents required (In addition to land ownership/Revenue record)	Evaluation as
4	Share with Others	Share of applicant more than IOC requirement	Registered agreement with demarcation of land (portion of land to be given for dealership by the applicant)	Owned land
5	Share with Others	Share of applicant more than IOC requirement	Registered agreement without demarcation of land (portion of the land to be given for dealership by the applicant)	Firm Offer

wherein it is provided that if the applicant holds the land with others and share of the applicant is more than IOC requirement, in that event, if the registered agreement with demarcation of land (portion of the land to be given for dealership by the applicant) is submitted, the same shall be treated as 'owned land' and if the registered agreement without demarcation of land (portion of the land to be given for dealership by the applicant) is submitted, then

the offer shall be treated as 'firm offer'. In the instant case, the land offered by the respondent No.3 does not fall in the category of land offered by 'family unit' as though notarized affidavit is submitted, yet in absence of the registered agreement even the land offered by the respondent No.3 could not have been treated as 'owned land', much less, 'firm offer land'. Therefore, the respondent No.3 was not entitled for allotment of the petrol pump dealership for the aforesaid location.

8. Learned counsel further submits that even otherwise the land offered since stands acquired by the National Highways Authority vide award dated 07/01/2013 (at page No.142 of the paper book), therefore, the land offered by the respondent No.3 could not have been considered for the purpose of award of petrol pump dealership for the aforesaid location. With the aforesaid submissions, learned counsel for the petitioner prays for quashment of LOI issued to the respondent No.3 and direction to IOC to award the petrol pump in favour of the petitioner at the site in question.

9. *Per contra*, Shri Jain, learned counsel for the IOC has raised preliminary objections, namely; (i) award of the petrol pump outlet dealership by IOC to an aspirant by inviting applications through advertisement, in fact and in effect, is in the realm of commercial transaction, fulfillment of requirements of various conditions though is assessed based on relevant considerations as provided for under the Brochure issued by IOC from time to time but upon subjective satisfaction of the competent authority. It is therefore, submitted that IOC is in the best position to ascertain the fulfillment of all the requirements for award of dealership being the principal which has to regulate and control the dealership. As such, the scope of interference in extra ordinary jurisdiction under Article 226/227 of the Constitution of India is limited in nature and the assessment carried out by the experts committee cannot be assailed on merits, as this Court cannot substitute its findings for that of the experts committee in the matter of finalization of the merit list for award of the dealership based on assessment; (ii) subject to the aforesaid objection, it was further contended that as the petitioner has

raised twin-objection before the committee viz. firstly, the land offered by the respondent No.3 does not come within the requirements of the advertisement as the same is not situated on the main road and secondly; there is a dispute between the respondent No.3 and the predecessor-in-title of the land. However, the grounds raised in this writ petition are independent of those two objections and, therefore, cannot be permitted to be raised for the first time before this Court under Article 226/227 of the Constitution of India; (iii) even otherwise the contentions raised by the petitioner in the context of various clauses of the Brochure, in fact and in effect, are of no consequence as in the instant case the award of petrol pump dealership is based on the guidelines which were in existence with effect from 2<sup>nd</sup> September, 2011. It is submitted that for the purpose of award of petrol pump dealership pursuant to the advertisement issued on 20/06/2012, the guidelines contained in the Brochure dated 02 September, 2011 is the relevant consideration. Therefore, the entire writ petition based on the guidelines contained in the Brochure dated 1<sup>st</sup> July, 2009 is miserably misconceived and misdirected and, therefore, none of the contentions advanced in that behalf deserves any consideration.

10. On merits, learned counsel for respondents-IOC further contends that the land offered by the respondent No.3 though is of the joint ownership with his brother, Sunil Kumar Jain admeasuring 0.710 hectare, of which respondent No.3 has half share; i.e., 0.355 hectare whereas the requirement of land is only 2025 square meters as per the guidelines contained under the Brochure, relevant portion of clause 14 is quoted below:

**14. Preference for Applicants Offering Suitable Land:**

Sl. No.	Situation of Ownership	Share of applicant land	Documents required (In addition to land ownership/Revenue record)	Evaluation as
4	Self with Others	Share of applicant more than IOC requirement	Notarized affidavit with demarcation of land (portion of land to be given for dealership by the applicant)	Owened land

5	Self with Others	Share of applicant more than IOC requirement	Notarized affidavit without demarcation of land (portion of land to be given for dealership by the applicant)	Firm Offer
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11. It is submitted that in the instant case, Sunil Kumar Jain brother of the applicant has submitted notarized affidavit to the effect that he has no objection for installation of the petrol pump at the site of the joint ownership and has also submitted demarcation report with map of the land, therefore, the land offered by the respondent No.3 has to be treated as 'owned land'. Hence, the marks 35 out of 35 awarded by the committee cannot be faulted with.

12. Learned counsel further submits that true it is that award dated 07/01/2013 has been passed in favour of National Highway Authority (pages 142 to 152 of the paper book) whereunder several parcels of land have been acquired and amongst them is part of the land owned by respondent No.3 and Sunil Kumar Jain; i.e., 0.056 hectare and 0.090 hectare; total 0.146 hectare out of 0.170 hectare from survey Nos.407/2 and 406 respectively. Hence, it is incorrect to say that part of the land offered by respondent No.3 since acquired, therefore, land is not available for installation of petrol pump dealership. Even otherwise, the Ministry of Road Transport & Highways, Government of India vide order dated 14/08/2014 (at page No.341 of the paper book) and other departments, viz., Office of Collector (Food Division) District Shivpuri on 14/10/2014 (at page Nos.336-338 of the paper book), Revenue Department on 20/06/2014 & 07/06/2014 (at page No.339 & 340 of the paper book), Superintendent of Police on 18/08/2014 (at page No.342 of the paper book), Office of Managing Director, Madhya Pradesh Village Road Development Authority, Shivpuri on 09/05/2014 (at page No.344 of the paper book), Office of Executive Engineer, P.W.D., on 09/05/2014 (at page No.345 of the paper book), Office of Madhya Pradesh Road Development Corporation, Gwalior on 30/04/2014 and Office of the Forest Department, Shivpuri on 10/09/2014 (at page No.348

of the paper book) have also given no objection for installation of petrol pump dealership at the site. Hence, no exception can be taken to the land offered by the respondent No.3 for the purpose of installation of petrol pump dealership. He has placed reliance on the Order passed by this Court reported in **2014(4) MPLJ 668, Vijay Pratap Singh Parihar Vs. Union of India and others.**

13. Shri Katore, learned counsel for the respondent No.3 has adopted the aforesaid submissions advanced by Shri Jain, learned counsel for the IOC. In addition, he has submitted that the controversy involved in this writ petition stands settled in the Order passed by a coordinate Bench of this Court in W.P.No.8699 of 2011, **Smt. Manju Bala Choukse Vs. Indian Oil Corporation Lt., and others decided on 21/08/2012.** Hence, prayed for dismissal of the writ petition.

14. Heard learned counsel for the parties.

15. In the light of the revised guidelines contained in the Brochure dated 02/09/2011 issued by the IOC which are in vogue at the time of consideration of the candidature of the candidates for installation of the petrol pump dealership at the site in issue, the arguments advanced by the learned counsel for the petitioner in the context of the guidelines contained in the Brochure dated 01/07/2009 are of no consequence and, therefore, cannot be countenanced. Clause 14 of the Brochure effective from 02/09/2011 clinches the issue involved in this case inasmuch as, the land offered by the respondent No.3 is of the joint ownership of respondent No.3 and his brother, Sunil Kumar Jain shall fall in the category of "owned land" for the reason that Sunil Kumar Jain has submitted notarized affidavit alongwith copy of map based on demarcation report declaring that he has no objection for installation of the petrol pump at the site. That apart, the contention that the land in question has been since acquired, the same cannot be considered for award of petrol pump to the respondent No.3 is not based on complete correct factual premise as the total land shown in the sale deed was 0.710 hectare, out of which the area acquired by National Highways



Authority was only 0.146 hectare and the remaining land 0.564 hectare is in possession of the respondent No.3 whereas the requirement of land for installation of petrol pump is only 2025 square meters as per guidelines contained under the Brochure of IOC. That apart, the Ministry of Road Transport & Highways, Government of India vide order dated 14/08/2014 (at page Nos.336-338 of the paper book) and various other departments as detailed in paragraph 12 of this Order have given no objection for installation of the petrol pump dealership at the site in favour of the respondent No.3.

16. In view of the aforesaid facts and circumstances of the case, in the opinion of this Court the marks 35 out of 35 awarded to the respondent No.3 under the head 'capability to provide the Land and infrastructure by L.I., Committee cannot be faulted with. Further, as LOI has already been prepared and issued in favour of respondent No.3 on 03/02/2014 (page Nos.23-A to 23-B of the paper book), the authorities of the IOC shall be at liberty to proceed in the matter, in accordance with law.

17. Writ Petition No.9245 of 2012 sans merit and is hereby dismissed and Writ Petition No.1857 of 2015 stands disposed of, accordingly.

18. A copy of the order be kept in the record of the connected W.P.No.1857 of 2015.

**(Rohit Arya)**  
**Judge**  
**29/09/2016**

b/-

**Writ Petition Nos.9245 of 2012 & 1857 of 2015**

**29/09/2016**

Shri Prashant Sharma, Advocate for the petitioner in W.P.No.9245/2012.

Shri A.K.Jain, Advocate for the respondents No.1 and 2 in W.P.No.9245/2012 and respondents in W.P.No.1857/2015.

Shri Arun Katore, Advocate for the respondent No.3 in W.P.No.9245/2012 and petitioner in W.P.No.1857/2015.

Arguments heard.

Order passed separately, signed and dated.

**(Rohit Arya)**  
**Judge**

b/-