

GAHC010173542024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4369/2024

PRABIN DAS
S/O- MADHAB DAS, R/O- WARD NO. 4, KOKRAJHAR, ASSAM, PIN- 783370.

VERSUS

BHARAT PETROLEUM CORPORATION LIMITED AND 6 ORS
HAVING ITS TERRITORIAL OFFICE AT 1ST FLOOR, NEXIA PARK, GMCH
ROAD, CHRISTIAN BASTI, GUWAHATI-781005, KAMRUP(M),
REPRESENTED BY ITS HEAD OF TERRITORY OFFICE (T. M. RETAIL).

2:THE HEAD OF TERRITORY OFFICE (T.M. RETAIL)

TERRITORY OFFICE
BHARAT PETROLEUM CORPORATION LIMITED
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005
KAMRUP(M).

3:OLSEN KUMAR KISHU
THROUGH HEAD OF TERRITORY OFFICE
(T.M. RETAIL)
BHARAT PETROLEUM CORPORATION LIMITED
TERRITORY OFFICE
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005
KAMRUP(M).

4:DHANANJOY BARMAN
THROUGH HEAD OF TERRITORY OFFICE (T.M. RETAIL)
BHARAT PETROLEUM CORPORATION LIMITED
TERRITORY OFFICE
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005
KAMRUP(M).

5:JULINA BESERA
THROUGH HEAD OF TERRITORY OFFICE
(T.M. RETAIL)
BHARAT PETROLEUM CORPORATION LIMITED
TERRITORY OFFICE
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005
KAMRUP(M).

6:SINESH MURMU
THROUGH HEAD OF TERRITORY OFFICE
(T.M. RETAIL)
BHARAT PETROLEUM CORPORATION LIMITED
TERRITORY OFFICE
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005
KAMRUP(M).

7:ARUP NATH
THROUGH HEAD OF TERRITORY OFFICE
(T.M. RETAIL)
BHARAT PETROLEUM CORPORATION LIMITED
TERRITORY OFFICE
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005
KAMRUP(M)

For the petitioner (s) : Mr. A. Lal, Advocate

For the respondent (s) : Mr. S. Borthakur, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

30.08.2024

Issue notice making it returnable on 23.09.2024.

2. Mr. S. Borthakur, the learned counsel appears on behalf of the respondent Nos.1 & 2, and as such, extra copies of the writ petition be served upon him during the course of the day.

3. During the course of the hearing, Mr. S. Borthakur, the learned counsel appearing on behalf of the respondent Nos.1 & 2 has submitted that pursuant to the rejection of the petitioner's application vide the impugned communication dated 09.06.2024, the selection amongst the Group-I candidates were carried out. In the said selection so carried out, the respondent No.3 was successful.

4. Taking into account the said submission, the learned counsel appearing on behalf the petitioner submits that the names of the respondent Nos.4 to 7 may be struck off. Accordingly, the names of the respondent Nos.4 to 7 are struck off,

5. The counsel appearing on behalf of the petitioner is directed to file a fresh Memo of Parties before the Registry of this Court on the basis of the instant order by tomorrow, i.e. on 31.08.2024 and on the basis of the Memo of Parties so filed, the Registry shall make necessary correction in the Cause Title of the instant writ petition as well as update the same in

the CIS.

6. In view of the above, this Court issues notice only upon the respondent No.3. It is seen that the address of the respondent No.3 has been mentioned to be C/o-the respondent No.2.

7. Mr. S. Borthakur, the learned counsel appearing on behalf of the respondent Nos.1 & 2 submits that he would be in a position to effect the service of the notice upon the respondent No.3. Accordingly, another extra copy of the writ petition be served upon him during the course of the day.

8. From the materials on record, it transpires that on 28.06.2023, an advertisement was issued for appointment of Regular/Rural Retail Outlet (Petrol Pump) Dealership by the Bharat Petroleum Corporation Limited. Pursuant thereto, the petitioner participated in the said selection proceedings along with the various other persons. As the petitioner had no land of his own, he had taken on lease two conjoint plots of land from one Barsha Hasda and Samuel Hembrom respectively and in that regard, two registered Deeds of Lease were executed on 19.09.2023 in favour of the petitioner for a period of 30 years. In each Deed of Lease, the land leased out by each of the lessor named above is 1 bigha 1 katha 5 lechas each. It is also seen from the record and more particularly the record of rights pertaining to Dag No.203 of Patta No.33 enclosed at Page Nos.92 to 95 that pursuant to the field mutation order dated 11.09.2007, the Circle Officer had mutated 1 bigha 1 katha 5 lechas of land of Dag No.203 in favour of Sri Samuel Hembrom and another 1 bigha 1 katha 5 lechas of land of Dag No.203 in favour of Sri Barsha Hasda on the basis of purchase. It is the submission of the learned counsel appearing on behalf of the petitioner that as each owner had 1 bigha 1 katha 5 lechas of land

in Dag No.203, i.e. Sri Samuel Hembrom and Sri Barsha Hasda, both the owners executed two separate Deeds of Lease. The same prima-facie appears to be based upon the records so produced.

9. Be that as it may, vide the communication dated 08.06.2024, the application of the petitioner was rejected with the reason "*all co-owners of the offered land have not executed lease deed and as per DSG 2023 {Clause 4 (vi) (a)} such lease deed is treated as invalid.*" The learned counsel appearing on behalf of the petitioner submitted that the reason on which the application of the petitioner had been rejected is ex-facie not tenable in as much as there is no question of co-ownership in as much as each of the lessors of the petitioner were owners of 1 bigha 1 katha 5 lechas of land each, and as such, they had executed two separate Deeds of Lease and this aspect of the matter is evident from the record of rights which were also placed before the authorities concerned. He therefore submitted that Clause 4 (vi) (a) could not have been made applicable to the facts of the instant case.

10. On the other hand, Mr. S. Borthakur, the learned counsel appearing on behalf of the respondent Nos.1 & 2 submitted that the perusal of the Lease Deed would show that there are no boundaries. He further submitted that as from Annexure-19, the land which was proposed by the petitioner in his application was a conjoint plot of land wherein there are two owners, and as such, there should have been one Lease Deed executed by two co-owners. He therefore defended the reason assigning in the impugned communication on the basis of the said submission.

11. This Court has given an anxious consideration to the said respect. As regards the first submission of Mr. S. Borthakur, the learned counsel

appearing on behalf of the respondent Nos.1 & 2, the said contentions cannot be taken by this Court as that was not part of the reason for issuing of the impugned communication. However, the second submission so made on the basis of Annexure-19 would require an adjudication.

12. This Court during the course of the hearing enquired with Mr. S. Borthakur, the learned counsel appearing on behalf of the respondent Nos.1 & 2 as to what is the present stage of the selection proceedings. He submitted that pursuant to the bidding process the respondent No.3 has been selected and his papers were verified.

13. This Court is of the opinion that in the meantime, if there is any order passed thereby granting the dealership to the respondent No.3, further complications may arise. Under such circumstances, in view of a prima-facie case being made out and taking into account the balance of convenience and the irreparable loss, harm and injury which may be caused, this Court directs the respondent Nos.1 & 2 not to further proceed with the selection process as well as not to grant any dealership on NH27 (within 10 Km from intersection of NH27 with NH127B) towards Guwahati on LHS, District Kokrajhar till the next returnable date.

14. List accordingly.

JUDGE

Comparing Assistant