

SANJAY KUMAR JHA

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v.

PRAKASH CHANDRA CHAUDHARY & ORS.

(Civil Appeal No. 11857-11859 of 2018 etc.)

DECEMBER 05, 2018

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[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Constitution of India:

Art. 226 – Jurisdiction under – Scope of – Held: In exercise of jurisdiction u/s. 226, High Court cannot sit in appeal over the findings recorded by a competent administrative authority, nor reappraise evidence to correct the error of fact and substitute its own findings – Interference with administrative matters is permissible only when the decision is violative of fundamental or basic principles of justice and fair play or suffers from any patent or flagrant error – If the court finds factual error which goes to the root of the decision, appropriate course would be to give the opportunity to the authority concerned to rectify the error – It is only in the rarest case, where factual error is so obvious that it is rectifiable by the court itself, that the Court might, to prevent delay and consequential denial and/or miscarriage of justice, rectify the error – It is not for the High Court to embark upon comparative assessment of the suitability of different candidates for appointment of a dealer of a retail outlet.

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Public Distribution:

Allotment of retail outlet of diesel/petrol etc. – Writ petition, challenging the allotment – Single Judge of the High Court after evaluating the facts of the case, held that the writ petitioner was entitled to be awarded the dealership – Appeal against the order was dismissed by Division Bench of High Court – On appeal, held: High Court embarked upon adjudication of hotly disputed factual issues, which was not permissible in exercise of jurisdiction u/Art. 226 of Constitution – High Court patently erred in brushing aside reports of the competent authorities and arrived at a different finding – Orders of Single Judge as well as Division Bench of High Court are liable to be set aside – Writ Petition is dismissed.

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A **Allowing the appeals, the Court**

HELD: 1.1 In proceedings under Article 226 of the Constitution of India the High Court does not adjudicate, upon affidavits, disputed questions of fact. The High Court cannot sit as a Court of Appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in the present case. [Paras 13 and 16] [898-B, H; 899-A]

1.2 In exercise of discretionary power of judicial review under Article 226 of the Constitution, the High Court might interfere with administrative matters only if the decision is violative of fundamental or basic principles of justice and fair play or suffers from any patent or flagrant error. It is true that the High Court might rectify, in exercise of its power of judicial review, an error of law or even an error of fact, for sufficient reasons, if the error breaches fundamental or basic principles of justice or fair play or if the error is patent and/or flagrant, but not otherwise. However, even in cases where the High Court finds an apparent factual error which goes to the root of the decision, the appropriate course of action would be to give the opportunity to the authority concerned to rectify the error. [Para 19][899-F-H]

2.1 In arriving at the finding regarding the location of the land offered by the respondent, the Single Bench of High Court embarked upon adjudication of a hotly disputed factual issue, which the High Court, while exercising its writ jurisdiction, does not do. Even otherwise, the Single Bench erred in arriving at its aforesaid finding, ignoring the report of the Revenue Authorities, including the District Magistrate. [Paras 13, 14][898-B-C]

2.2 Even assuming that the respondent had erroneously been awarded zero marks, the order of the Single Bench does not disclose the process of reasoning for arriving at the conclusion that the respondent had become the candidate with the highest marks. There was no reason to assume that the respondent would have to be awarded marks that would make him rank first in the

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panel. Even if there had been any error in the computation of marks in respect of fixed and movable assets, the High Court could, at best, have remitted the case of the respondent to the concerned authorities for reconsideration. [Paras 15 and 16] [898-E-F; 899-B] A

2.3 It is not for the High Court, exercising jurisdiction under Article 226 of the Constitution of India to embark upon a comparative assessment of the suitability of different candidates for appointment of a dealer of a retail outlet. The High Court, should not have decided the factual question regarding the location of the land of respondent. The High Court patently erred in brushing aside the reports of the Revenue Authorities and arriving at a different finding. [Para 21][900-C-D] B C

2.4 The Division Bench of High Court has apparently dismissed the appeal filed by the appellant proceeding on the patently erroneous basis that the land of respondent had been found to be situated within the radius of one kilometer of Giriyama chowk whereas the land of the appellant was situated outside the Giriyama circle, which was not even the case of respondent in the writ petition. Even the Single Bench had found that the land of the appellant was within Giriyama. The judgment and order under appeal cannot be sustained and is liable to be set aside on that ground alone. [Para 22][900-E-G] D E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11857-11859 of 2018.

From the Judgment and Orders dated 24.04.2017 and 14.03.2018 of the High Court of Judicature at Patna in Letters Patent Appeal No.855 of 2016 and Civil Review No.215 of 2017 and Civil Review No.231 of 2017 in Letters Patent Appeal No.855 of 2016 respectively. F

With

Civil Appeal Nos. 11860-11862 of 2018. G

Tushar Mehta, SG, Rana Mukherjee, Sr. Adv., Ms. Kashutrika Kumudi, Ms. Ekta Pradhan, Shekhar Kumar, Mrs. Priya Puri, Ms. Vineeta Meghrajani, Ranjay Dubey, Vibhav Shrivastav, Ms. Rashmi Sachdeva, Subhro Sanyal, Advs. for the appearing parties.

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- A The Judgment of the Court was delivered by
INDIRA BANERJEE, J.
1. Leave granted.
2. These appeals are against the judgment and final orders dated 24.04.2017 passed by a Division Bench of the High Court of Judicature at Patna dismissing the appeal being LPA No. 855 of 2016 against the judgment and order dated 8.3.2016 of a learned Single Judge inter alia allowing the writ petition filed by the respondent, Prakash Chandra Chaudhary being CWJ Case No. 2019 of 2015 and directing the Indian Oil Corporation, being the Appellant in SLP (C) No. 16902-16904 of 2018 to issue the Letter of Intent allotting the retail outlet in issue in writ petition to the said respondent and also an order dated 14.3.2018 dismissing the applications for review of the said judgment and order dated 24.3.2017 of the Division Bench being Civil Review No. 215 of 2017 and Civil Review No. 231 of 2017 in LPA No. 855 of 2016.
3. On 19.8.2011, Indian Oil Corporation issued an advertisement in, inter alia, the Dainik Jagran, Patna inviting applications for different Kisan Seva Kendra (Retail Outlet) dealerships in respect of diesel, petrol, lubricant oils etc., at different locations. One of the retail outlets being the retail outlet in respect of which the writ petition being CWJ Case No. 2019 of 2015 was filed, was to be located on Falka Gerabari Road, within one kilometer from Giriya Chowk, Giriya in Katihar District in Bihar, and is hereinafter referred to, for convenience, as the Giriya retail outlet.
4. Pursuant to the said advertisement, Sanjay Kumar Jha being the appellant in appeal arising out of SLP(C) No. 16899-16901 of 2018, (hereinafter referred to as the appellant Sanjay Kumar Jha) and the respondent No.1 in appeal arising out of SLP(C) No. 16902-16904 of 2018 (hereinafter referred to as the 'Respondent Prakash Chandra Chaudhary') amongst others, applied for the dealership of the Giriya retail outlet.
5. The brochure published by Indian Oil Corporation indicates that the eligible applicants who were individuals were to be evaluated on the basis of the following broad parameters:-
- a. Capability to provide land and infrastructure/facilities (35 marks)
 - b. Capability to provide finance (25 marks)
 - c. Educational Qualifications (15 marks)
 - d. Ability to generate business (10 marks)

- e. Age (4 marks) A
- f. Experience (4 marks)
- g. Business ability/ Acumen (5 marks)
- h. Personality (2 marks)

6. It appears that a panel of three candidates was prepared in which the appellant Sanjay Kumar Jha was placed on the first position and the respondent Prakash Chandra Chaudhary in the second position. The appellant Sanjay Kumar Jha was awarded 90.73 marks and the respondent Prakash Chandra Choudhary was awarded 89.93 marks. B

7. The Giriyama retail outlet was allotted to the first empanelled candidate being the appellant Sunil Kumar Jha. Challenging the allotment, the respondent Prakash Chandra Chaudhary filed a writ petition in the High Court Judicature at Patna being CWJ Case No. 2019 of 2015. C

8. By an order dated 8.3.2016, the learned Single Bench of the High court allowed the writ petition and directed the Indian Oil Corporation to grant dealership of the Giriyama retail outlet to the respondent Prakash Chandra Chaudhary. D

9. The learned Single Bench proceeded on the erroneous notion that, as per the advertisement, the only requirement for the Giriyama retail outlet was that the retail outlet should be in Giriyama within one kilometer on a particular well-defined road.

10. The learned Single Bench proceeded on the premises that, the land of the respondent, Prakash Chandra Chaudhary, being the writ-petitioner, was undisputedly within Giriyama Mauza in Falka Block, as was the case of the appellant Sunil Kumar Jha, being the respondent no.6 in the writ petition. The Court observed that the report of the Circle Officer and the District Magistrate to the effect that the land of the respondent Prakash Chandra Chaudhary was not in Giriyama was not only erroneous but clearly collusive in that they were trying to favour the appellant Sanjay Kumar Jha. E F

11. The learned Single Bench held that the action of Indian Oil Corporation in awarding the dealership of the Giriyama Retail Outlet to the appellant Sanjay Kumar Jha was totally against law and patently illegal. G

12. The learned Single Bench thus, in effect, held that the writ petitioner, that is, the respondent Prakash Chandra Chaudhary had wrongly been awarded zero in respect of the fixed and movable assets category. The Single Bench further held that in view of the finding as H

A aforesaid, the writ petitioner, that is respondent Prakash Chandra Chaudhary had become the candidate with the highest marks, entitled to be awarded the dealership of the Giriyama Retail Outlet.

B 13. It is well settled that in proceedings under Article 226 of the Constitution of India the High Court does not adjudicate, upon affidavits, disputed questions of fact. In arriving at the finding that the land offered by respondent Prakash Chandra Chaudhary was located within Giriyama Mauza of Falka Block the learned Single Bench embarked upon adjudication of a hotly disputed factual issue, which the High Court, while exercising its writ jurisdiction, does not do.

C 14. Even otherwise, the Single Bench erred in arriving at its aforesaid finding, ignoring the report of the Revenue Authorities, including the District Magistrate, that the land of respondent Prakash Chandra Chaudhary is situated at a distance of 800 meters from Giriyama chowk towards Falka which is within block Falka but outside the limits of the place Giriyama. The District Magistrate and the Additional Collector D clearly stated that the land was beyond *Nisundhra Bangali Tola*, which is the limit of Giriyama.

E 15. In any case, even assuming that the respondent Prakash Chandra Chaudhary had erroneously been awarded zero, the order of the learned Single Bench does not disclose the process of reasoning for arriving at the conclusion that the respondent Prakash Chandra Chaudhary had become the candidate with the highest marks.

F There was no reason to assume that the respondent Prakash Chandra Chaudhary would have to be awarded marks that would make him rank first in the panel, when the total marks were 4 and one Md. Mojibur Rahman, the third empaneled candidate had been awarded 4 out of 4, while the appellant Sanjay Kumar Jha had been awarded 2.14. The records reveal that the land of the appellant Sanjay Kumar Jha measuring 0.29 acres was within 50 meters from Giriyama chowk on Falka Gerabadri Road whereas the land of Prakash Chandra Chaudhary measuring 0.13 acres was located at a distance of 800 meters from G Giriyama chowk. The land of the appellant Sanjay Kumar Jha was larger in area. Of course, these observations are not to be construed as any factual finding of this Court, that the land of respondent Prakash Chandra Chaudhary was within Giriyama.

H 16. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a Court of Appeal over the findings recorded by a competent administrative authority, nor

reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case. Even assuming that there had been any error in the computation of marks in respect of fixed and movable assets, the High Court could, at best, have remitted the case of respondent Prakash Chandra Chaudhary to the concerned authorities for reconsideration.

17. Being aggrieved by the judgment and order dated 8.3.2016 of the learned Single Bench the Indian Oil Corporation filed an appeal therefrom, being Letters Patent Appeal No.855 of 2016, which has been dismissed by the order dated 24.4.2017 of the Division Bench under appeal in these appeals filed by the appellant, Sanjay Kumar Jha, and the Indian Oil Corporation respectively.

18. By the order under appeal, the Division Bench dismissed the appeal, rightly observing that the allotment was for Giriyama within the radius of one kilometer from Giriyama chowk at Falka Road. The Division Bench, however, fell in error in proceeding on the basis that the plot of the appellant Sanjay Kumar Jha was not situated in Giriyama Chowk and as such the learned writ court had not committed any error in recording its finding. It is a matter of record that there were two reports in respect of the plots, both of which confirm that the plot of the appellant was in Giriyama within 50 meters of Giriyama chowk whereas in case of respondent Prakash Chandra Chaudhary, the Circle Officer, Falka had by letter dated 15.4.2014 confirmed that the land offered by him fell outside the limits of Giriyama. In any case, the plot offered by respondent Prakash Chandra Chaudhary which measured 0.13 acres was smaller than that of the appellant Sanjay Kumar Jha was 0.29 acres.

19. In exercise of discretionary power of judicial review under Article 226 of the Constitution, the High Court might interfere with administrative matters only if the decision is violative of fundamental or basic principles of justice and fair play or suffers from any patent or flagrant error. It is true that the High Court might rectify, in exercise of its power of judicial review, an error of law or even an error of fact, for sufficient reasons, if the error breaches fundamental or basic principles of justice or fair play or if the error is patent and/or flagrant, but not otherwise. However, even in cases where the High Court finds an apparent factual error which goes to the root of the decision, the appropriate course of action would be to give the opportunity to the authority concerned to rectify the error.

A It is only in the rarest of cases, where the factual error is so obvious that it is rectifiable by the Court itself, that the Court might, to prevent delay and consequential denial and/or miscarriage of justice, rectify the error.

B 20. In the instant case, at the cost of repetition, it is reiterated that even assuming that the land of the petitioner was situated within Giriyama, there was no reason to presume that the marks awarded to the petitioner would in the aggregate be the highest when the land of the appellant Sanjay Kumar Jha was located nearer the Giriyama chowk and his area of land was bigger.

C 21. It is not for the High Court, exercising jurisdiction under Article 226 of the Constitution of India to embark upon a comparative assessment of the suitability of different candidates for appointment of a dealer of a retail outlet. The High Court, in our view, should not have decided the factual question of whether the land of respondent Prakash Chandra Chaudhary was in Giriyama in view of the reports of the concerned D Additional Collector, District Magistrate and Circle Officer to the effect that the land of respondent Prakash Chandra Chaudhary was in Falka block and not within Giriyama. The High Court patently erred in brushing aside the reports of the Revenue Authorities and arriving at a different finding.

E 22. In any case, as observed above, the Division Bench has apparently dismissed the appeal filed by the appellant proceeding on the patently erroneous basis that the land of respondent Prakash Chandra Chaudhary had been found to be situated within the radius of one kilometer of Giriyama chowk whereas the land of the appellant Sanjay Kumar Jha was situated outside the Giriyama circle, which was not even the case F of respondent Prakash Chandra Chaudhary in the writ petition. Even the learned Single Bench found that the land of the appellant Sanjay Kumar Jha was within Giriyama. The judgment and order under appeal cannot be sustained and is liable to be set aside on that ground alone. The order of the learned Single Bench is also set aside.

G 23. Accordingly, the appeals are allowed. The judgment and order under appeal as well as the judgment and order of the Single Bench are set aside and the writ petition is dismissed. The parties shall bear their respective costs.