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POONAM KUMARI

v.

JAI PRAKASH PANDEY & ORS.

(Civil Appeal No. 2871 of 2008)

APRIL 21, 2008

B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C

*Constitution of India, 1950 – Article 136 – Dealership in respect of retail outlets of petrol pump – Selection of appellant by Dealer Selection Board (DSB) – Challenged in writ petition by respondent – Appellant not served with notice – Writ petition allowed and selection made by DSB quashed – LPA – Disposed of, with observation that appellant be granted liberty to file application for consideration of her case – Application by appellant – Single Judge of High Court held that though she was not afforded opportunity of hearing before allowing writ petition, there was no necessity for changing the ultimate decision – Division Bench of High Court held that since matter was remitted to DSB for fresh consideration, there was no illegality in the order – Challenge to – Held: Matter to be considered by high officials of IOC – No interference called for – As procedural irregularities were noticed by Single Judge, consideration be made by Selection Committee nominated by GM, IOC.*

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**Appellant was selected on the basis of interview for appointment of dealer in respect of certain retail outlets of petrol pumps and was issued Letter of intent on 8.11.2001. According to appellant, she had made substantial investment in making retail outlet operational. The entire infrastructure was put up by IOC including the arrangement of the land, the oil tanks were installed and certain persons were employed as members of staff and with effect from 12.11.2001, appellant started operating the Retail Outlet.**

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Respondent no.1, who was also one of the applicants and whose name did not figure in the select list, filed a writ petition in the High Court challenging the selection made by the Dealer Selection Board (DSB). The main allegation of Respondent no.1 was that even though his father had made the land available to IOC, he was not given a preference in the matter of allotment and appointment as a dealer. In the Writ petition appellant was also impleaded as a party. However, no notice was served on her. The Writ Petition was allowed on 15.1.2004 and the selection made by the DSB was quashed. Since appellant claimed that no notice was served on her and she was not in a position to place her case before Single Judge who heard and allowed the Writ Petition, she filed LPA. After hearing the parties, the Division Bench disposed of the LPA observing that in the interest of justice, the appellant should be granted liberty to file application for consideration of her case so that the Court could pass such orders as it may deem fit and just on her application and if an application is filed for consideration of the writ court within a week, this matter would be placed as a fresh case. Pursuant to the said order, an application was filed praying that the order dated 15.1.2004 in the Writ Petition be recalled.

Single Judge took up the matter and after noticing the grievance of the appellant held that though she was not afforded the opportunity of hearing before allowing the writ petition, there was no necessity for changing the ultimate decision. The Appellant filed the LPA questioning the said order. By the impugned order the Division Bench of the High Court held that since the matter has been remitted to the DSB for fresh consideration, there was no illegality in the order.

In appeal to this Court, appellant contended that in view of the order passed by this Court in another case and on account of the fact that the appellant has made

A huge investments and had made the retail outlet operational and it was functioning, without any reason the facility has been withdrawn and therefore, prayed that pending disposal of the matter she should be permitted to operate.

B Respondent contended that noticing that there were several irregularities, the DSB was asked to reconsider the matter.

Disposing of the appeal, the Court

C HELD: It appears from the order of the Single judge that he found that there were certain procedural irregularities committed by the DSB and therefore a fresh consideration was warranted. The counsel of the IOC informed that the DSB is not in existence since 9.5.2002 and further pointed out that in another case, the Court directed that the matter should be considered by high officials of IOC in its zonal office. While declining to interfere in the matter, because of the procedural lapses noticed by Single Judge, it is directed that instead of DSB, which is no longer in existence, in the line of what has been directed by this Court in another case, consideration should be made by the Selection Committee nominated by the General Manager, IOC, Bihar State Office, Patna, who is stated to be the State Head. The Committee is directed to deal with the matter expeditiously. [Paras 8-10] [745-G, H; 746-A, B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2871 of 2008.

G From the final Judgment and Order dated 07.04.2004 of the High Court of Judicature at Patna in L.P.A. No. 409 of 2004.

Himanshu Shekhar Jha and Rameshwar Prasad Goyal for the Appellant.

H Dr. R.G. Padia, Ranjan Mukherjee, S.C. Ghosh, H.K. Puri,

Priya Puri, S.K. Puri, V.M. Chauhan, Tufali A. Khan, B.K. Prasad, A  
M.P. Parmeshwaran and Shiv Sagar Tiwari for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

Challenge in this appeal is to the order of a Division Bench B  
of the Patna High Court dismissing the Letters Patent appeal  
filed by the appellant.

2. Background facts in a nutshell are as follows:

On 1.9.2000, the Indian Oil Corporation Ltd. (in short the C  
'IOC') issued advertisement inviting applications for appointment  
of a dealer in respect of certain retail outlets (petrol pumps) in  
various places including one in Brahampur in State of Bihar.  
The appellant was one of the applicants. The applications were  
verified by IOC and the applications of all the eligible candidates D  
were forwarded to the Dealer Selection Board (in short the  
'DSB') for making selection. The DSB issued interview letters  
to all those candidates who were found eligible. It considered  
the materials placed before it by the applicants and produced  
during interviews, and on the basis of the interview allegedly E  
prepared a select list on merits in the following order:

1. Smt. Poonam Kumar-Appellant,
  2. Shri Dinesh Kumar Singh; and
  3. Shri Anil Kumar.
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On being placed at no.1 in the Select List, a letter of Intent  
was issued on 8.11.2001 and the necessary order was handed  
over to the appellant. She claims to have made substantial  
investments in making the Retail Outlet operational. The entire  
infrastructure was put up by IOC including the arrangement of G  
the land, the oil tanks were installed and certain persons were  
employed as members of staff and with effect from 12.11.2001,  
appellant started operating the Retail Outlet

One J.P. Pandey (Respondent no.1), who was also one of H

A the applicants and whose name did not figure in the select list, filed a writ petition in the High Court challenging the selection made by the DSB. There the main allegation was that even though his father had made the land available to IOC, he was not given a preference in the matter of allotment and appointment as a dealer. In the Writ petition appellant was also impleaded as a party. However, no notice was served on her. By a judgment dated 15.1.2004 the Writ Petition was allowed and the selection made by the DSB was quashed. Since appellant claimed that no notice was served on her and she was not in a position to place her case before learned Single Judge who heard and allowed the Writ Petition, she filed LPA No.93 of 2004. On 3.2.2004 after hearing the parties, the Division Bench disposed of the LPA observing as follows:

D “On record it is clear and apparent and some of the Respondents were not before the Writ Court to make a submission for the simple reason that they were without notice.

E This Court is of the opinion that it would be expedient and appropriate in the interest of justice that the appellant (respondent No. 6 in the Writ petition) is granted a liberty to apply for having the matter considered upon her case so that the Hon’ble Court may pass such orders as the Court may deem fit and just on her application.

F Regard being had to the circumstances of this case if an application is filed for consideration of the writ court within a week, this matter will be placed as a fresh case.”

G Pursuant to the said order, an application (MJC No.256 of 2004) was filed praying that the order dated 15.1.2004 in the Writ Petition (C.W.J.C No. 14506 of 2001) be recalled.

H 3. Learned Single Judge took up the matter on 3.3.2004 and after noticing the grievance of the appellant held that though she was not afforded the opportunity of hearing before the Writ Petition was allowed, there was no necessity for changing the

ultimate decision. The Appellant filed the LPA 401 of 2004 questioning the order passed. By the impugned order the Division Bench of the Patna High Court held that since the matter has been remitted to the DSB for fresh consideration, there was no illegality in the order. A

4. Learned counsel for the appellant submitted that learned Single Judge accepted that the appellant had not got the opportunity of being heard. The earlier reasoning could not have been repeated to dismiss the application. B

5. It is pointed out that the appellant was placed at serial No.1 of the select list and had been given permission to operate retail outlet and had made huge investments and therefore her selection could not have been nullified by learned Single Judge. It is therefore submitted that the LPA should have been allowed. C

6. Learned counsel for the appellant has further pointed out that in view of the order passed by this Court, and on account of the fact that the appellant has made huge investments and had made the retail outlet operational and it was functioning, without any reason the facility has been withdrawn. It was, therefore, prayed that pending disposal of the matter she should be permitted to operate. D E

7. On the other hand, learned counsel for the respondents submitted that noticing that there were several irregularities, the DSB was asked to reconsider the matter. F

8. It is pointed out that the writ petitioner had brought to the notice, in the writ petition, that his father had given land to IOC on lease for about thirty years with an option of further renewal for thirty years. It was, therefore, pleaded that preference ought to have been given to the writ-petitioner, but had not been really given. It appears from the order of the learned Single judge that he found that there were certain procedural irregularities committed by the DSB and therefore a fresh consideration was warranted. G

9. It is pointed out by learned counsel of the IOC that the H

A DSB is not in existence since 9.5.2002. It is further pointed out that in another case, the Court directed that the matter should be considered by high officials of IOC in its zonal office.

B 10. While declining to interfere in the matter, because of the procedural lapses noticed by learned Single Judge, we direct that instead of DSB, which is no longer in existence, in the line of what has been directed by this Court in another case, we direct that consideration shall be made by the Selection Committee nominated by the General Manager, IOC, Bihar State Office, Patna, who is stated to be the State Head. Let the  
C Committee deal with the matter expeditiously. Since the matter is pending long, we direct the Committee to consider the matter in its proper perspective, by taking into account all the materials already on record and to be placed by the parties. Let the exercise be completed within a period of four months from today.  
D We make it clear that we have not expressed any opinion on the merits of the case.

11. Appeal is disposed of accordingly. No costs.

D.G.

Appeal disposed of