

SR. DIVISIONAL RETAIL SALES MANAGER, INDIAN OIL CORPORATION LTD. THROUGH POA HOLDER & ORS. A

v.

ASHOK SHANKARLAL GWALANI
(Civil Appeal No. 9101 of 2012)

DECEMBER 14, 2012 B

**[SWATANTER KUMAR AND SUDHANSU JYOTI
MUKOPADHAYA, JJ.]**

Public Distribution - Allotment of petrol/diesel dealership - First round of selection for allotment cancelled due to irregularities in the selection process - In the second round of selection, respondent selected - This selection also cancelled due to irregularities - In the third round of selection, candidature of the respondent rejected - Writ petition by respondent challenging rejection of his candidature - High Court allowing the appeal, directing the company to issue Letter of Intent in favour of the respondent - On appeal, held: Decision to cancel the selection was taken by the competent authority - High Court ought not to have interfered with such decision in exercise of its jurisdiction under Article 226 of Constitution - Constitution of India, 1950 - Article 226. C D E

Appellant-company invited applications for grant of petrol/diesel retail outlets (dealership) for various locations in the State of Maharashtra. The respondent, alongwith others, applied for one of the locations. In the first round of the selection process, 'K' was selected by the Interview and Screening Committee. The respondent was placed at 2nd and 3rd position in the merit list by the Interview Committee and Screening Committee respectively. On complaint, the Investigation Officer placed the respondent at 1st position. Ultimately the selection was cancelled and all the candidates were called for re-interview. Thus in the second round of F G

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A selection, after re-interview, the respondent was found to
 be only candidate in the merit panel. Complaints were
 lodged against the same. Inquiry Commission was
 appointed to investigate into the complaints. Writ petition
 was also filed against the company by 'K' challenging the
 B order whereby the merit list where he was declared as No.
 1 candidate was cancelled. High Court dismissed the
 petition. After inquiry, the complaints were found to have
 merit and therefore, the company again advertised for re-
 interview of all the candidates. Thus in the third round of
 C selection, the Committee, before whom the applications
 of all the eligible candidates were placed, rejected the
 candidature of the respondent on the ground that
 'Relationship Affidavit' was not as per the format.
 Respondent's writ petition, challenging the rejection of
 D his candidature was allowed by High Court. Hence the
 present appeal.

Allowing the appeal, the Court

HELD: 1. The Interview Committee, Screening
 E Committee and the Investigation Officer assessed the
 three candidates in three different groups due to which
 the position of the candidates changed in the merit list
 prepared by the Interview Committee, Screening
 Committee and the Investigation Officer. The High Court
 F has not noticed and discussed the aforesaid facts and
 without discussing the further developments as taken
 place after 24.12.2008 (i.e. the date the respondent was
 placed in merit list in the second round of selection)
 directed the appellants to issue the Letter of Intent in
 G favour of the respondent. Though the High Court noticed
 the stand taken by the appellants that the 'Relationship
 Affidavit' submitted by the respondent was not as per
 format, it failed to discuss the effect of such an
 incomplete affidavit in the matter of selection. [Paras 15
 and 16] [1139-F-H; 1140-A]

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2. Generally, if an irregularity is detected in the matter of selection or preparation of a panel, it is desirable to have a fresh selection instead of re-arranging the panel which is found to be vitiated. In the present case, the Authority empowered to appoint, is the competent authority to decide as to whether the panel should be discarded and there should be a fresh selection in view of the facts. In such circumstances, the High Court under Article 226 of the Constitution of India ought not to have interfered with the decision of the competent authority in canceling the selection. Accordingly, the impugned order is set aside with a liberty to the Competent Authority to re-advertise the petrol/diesel retail outlets in question and to make a fresh selection in accordance with law. [Paras 17 and 18] [1140-B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9101 of 2012.

From the Judgment and Order dated 29.09.2010 of the High Court of Judicature at Bombay in WP No. 5032 of 2010.

G.E. Vahanvati, AG, Jaideep Gupta, Rahul Narayan, Meenakshi Arora, Prashant Bhushan, Sumeet Sharma, Sanjiv Kumar Saxena, Ruchi Misra, Partha Sil and Kunal Chatterjee for the appearing parties.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. The present appeal has been filed against the impugned order dated 29th September, 2010 passed by the Bombay High Court in Writ Petition No. 5032 of 2010 wherein the High Court has granted the Writ of Mandamus directing the Indian Oil Company to allot the dealership of the site located at Thane Belapur Road, Village Mahape, Navi Mumbai, Maharashtra to Shri Ashok Shankarlal Gwalani (hereinafter referred to as the "respondent")

A 3. The relevant facts as pleaded by the appellant are as follows:

On 11th June, 2005, the Indian Oil Corporation Limited (hereinafter referred to as the "Company") published a proclamation in leading newspapers and invited applications for grant of petrol/diesel retail outlets (dealership) for various locations in the State of Maharashtra. The respondent on 14th July, 2005, amongst others applied for the same. Interviews were conducted on 9th-10th December, 2005. One Mr. Nilesh L. Kudalkar was placed at the top of the merit panel while the respondent was placed second and one Mr. K. Srinadha Rao was third. However, since the difference between the marks of the top three candidates was within 5%, the result of the interview was kept in abeyance in accordance with the policy of the company dated April 7, 2005. A Screening Committee was established which reviewed the markings and carried out another interview of the three candidates. The result was declared on 4th April, 2006 and Mr. Nilesh L. Kudalkar was first in the merit panel.

4. Being aggrieved respondent and Mr. K. Srinadha Rao both made complaints on 10.4.2006 and 19.4.2006 respectively to the company alleging irregularities in the selection process. In accordance with the policy dated 1st September, 2005, an investigation was made by the Company into the allegations made by them. It was found, among other things, that the respondent and Mr. Srinadha Rao had not been marked correctly as regards their financial capability and that both had failed to provide the attested documents as had been specifically required under the advertisement. Since the allegations in the complaints were found to have merit, the selection was cancelled and all the candidates were to be called for re-interview. In the meantime, on 28th April, 2006, one Mr. Pritesh Chhajed, who was an M&H Contractor operating on the site filed Civil Suit No. 230/2006 before the Thane Sr. Division Court seeking an injunction against the company from terminating the contract and evicting him from the land. He was

unsuccessful in the same and filed an appeal before the Bombay High Court which was dismissed by the High Court on 27th June, 2008 and he was asked to vacate the site by December 31, 2008. A

5. Re-interviews were conducted on 22nd and 24th December, 2008. The respondent was found to be the only candidate in the merit panel. However, complaints were received from Mr. Pritesh Chajjed (who had also appeared in the interviews) on 26th December, 2008 and from Mr. K. Srinadha Rao on 16.12.2008, 23.12.2008, 30.12.2008, 2.01.2009 and 10.02.2009. Again on 30.12.2008, a one man Inquiry Commission was appointed to investigate the allegations contained in the complaints. Also on 14.1.2009, Mr. Nilesh L. Kudalkar filed a Writ Petition vide no. 113 of 2009 against the company for cancelling the merit list and declaring him to be the no.1 candidate. The High Court of Bombay was pleased to dismiss the aforementioned writ petition in April, 2009. B C D

6. In the meantime, the inquiry instituted by the Company revealed that the complaints made by various persons had merit. E

7. Therefore, on 6th August, 2009, the appellants sought approval from their management for re-advertisement of the location. On 18th August, 2009, the Company management advertised for re-interview of all the candidates including scrutiny of all documents from the initial stage in order to remove all errors from the selection process. Since the code of conduct for elections was in force, the re-interview was deferred till its withdrawal. F

8. In December, 2009, the L-1 Committee was appointed before which the applications along with other documents of all ten eligible candidates were placed. The Committee submitted its report. The candidature of the respondent was rejected on the ground that the 'Relationship Affidavit' was not as per the format. G H

A 9. On 3rd June, 2010, respondent was communicated about the rejection of his application.

B 10. Being aggrieved respondent filed a writ petition being WP(C) No. 5032 of 2010 before the Bombay High Court on 17.6.2010 praying inter alia for issuing of an appropriate writ directing the appellants to allot the dealership at the site as per the advertisement dated 11.6.2005 and setting aside the letter dated 3.06.2010 to enforce the decision of the Selecting Committee dated 24.12.2008, which was allowed by the impugned order.

C According to the appellants, considering that all the former merit panels were vitiated on account of grave errors, including complaints received with regard to all the interviews, the Company is desirous of undertaking the selection process de novo by re-advertising the location.

D 11. Learned counsel for the appellant submitted that on 8th December, 2009, L-I Committee was nominated in view of the complaints filed by one Srinadhras and Shri Pritesh Chajed. These complaints were thoroughly investigated and report dated 24th March, 2009 was received by the Company. Pursuant to the said report the Company decided to look into the matter from the scrutiny level and to re-interview all the candidates so as to remove the defects in the selection process. Re-scrutiny of all the applications was made and during that process the documents including the application submitted by the respondent found to be suffering from deficiencies. It was contended that the affidavit submitted by the respondent was not as per the format and, therefore, his application was liable to be rejected as per the policy. Consequently, the impugned letter was issued to the respondent.

G 12. The aforesaid fact was disputed by the learned counsel appearing on behalf of the respondent. They invited the affidavit filed by the Company in Writ Petition No. 113 of 2009

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wherein they supported the selection process as well as the merit list prepared by the Selection Committee on 24.12.2008. In the said affidavit, the allegation that the respondent was less meritorious was denied by the Company. The stand of the Company was that the decision to award dealership to the respondent did not suffer from any manifest error, equity, fair play and justice. In the said case, the Company pleaded that the decision in favour of the respondent was transparent and was not motivated on any consideration other than probity. The said case was filed by second person challenging the selection of the respondent. The Division Bench of the Bombay High Court after hearing both the parties vide order dated 17th April, 2009 in Writ Petition No. 113 of 2009 held that the High Court could not sit in appeal over the decision of the selection committee and the decision is not arbitrary. The Court further held that the writ petitioner of the said case (Writ Petition No. 113/2009) having participated in the subsequent selection without any protest, could not revert back to the earlier selection process.

13. On 17th September, 2012, after hearing both the parties, this Court requested the learned Attorney General who was appearing on behalf of the Company to give us the reasons in detail for cancellation of the first and second rounds of the selection process held by the authorities concerned. The learned Attorney General after meeting with the representative of the Company in his office on 22nd September, 2012 and after going through the relevant papers of interviews submitted a report; the relevant portion of which reads as under:-

"In respect of the first round of the selection process, in which interviews were conducted on 9th and 10th December, 2005, the Screening Committee had released the results on 4.4.2006 subsequent to which complaints received from Shri Ashok Shankarlal Gwalani on 10.04.2006 and from Shri K. Srinadha Rao on 19.4.2006. The General Manager, Maharashtra State Office of the Indian Oil Corporation appointed an inquiry committee to

A investigate the complaints. Based on the Inquiry Report, which was submitted on October 7, 2006, the Maharashtra State Office prepared a Note dated 17.10.2006 which was finally approved and endorsed on November 7, 2006 by which a decision was taken in accordance with existing guidelines to re-interview eligible candidates as the merit panel had been vitiated due to errors in evaluating financial parameters of the candidates in the merit panel which resulted in a change in the merit panel. A typed copy of the Note dated 17.10.2006 has been annexed by the petitioner in the Application to bring on record facts, subsequent events and documents, marked as Annexure P-5 thereto.

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4. In respect of the second round of the selection process, in which interviews were conducted on December 22-24, 2008, two complaints were received from Shri Pritesh Chhajed on 26.12.2008 and from Shri K.Srinadha Rao on 16.12.2008 with a reminder on 10.1.2009. An inquiry report was prepared by investigating officer on 24.3.2009 which was finalized by the Maharashtra State Office vide Note dated 13.4.2009. In relation to the complain of Shri Pritesh Chhajed, it was found that after giving benefit to the complainant, the following position emerged:

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F "a) Even if it is considered giving benefits to the complainant candidates Sri Pritesh J. Chajjed as eligible based on enquiry findings, the number one empanelled candidate remains unchanged as 1st in the Merit Panel, however, the panel will get changed by adding other qualified candidates in 2nd rank at least.

G b) The other two complainant candidates would be ranked hypothetically as below"

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Name of the candidate	Marks by the L1 committee	Marks by the L2 committee	% marks allotted by interview committee (out of total 65 marks)	Empanelment by interview committee	% marks evaluated if deviations taken into consideration	Empanelment after deviations taken into consideration (analysis)
Shri Ashok Gwalani	41.78	5.2	72.38%	1	NA	
Shri Pritish Chhajed	35.67	7.4	Ineligible (42.07) (66.26)	Ineligible	66.26%	
Shri K. Shrinadharao	31.00	6.9	58.30	Not qualified	NA	
Shri Keshavrao Gopairao Shinde	32.85	5.8	59.46	Not qualified	NA	

A Based on evaluation by L1 (Annexure A) and L2
 (Annexure B) committee the mark sheet as
 complied by the interview committee (Annexure C),
 the marks awarded to the complainant Sri Pritosh
 Chhajjed is computed in the above table, though the
 B same was not declared by the committee due to his
 ineligibility.)

C Considering that the marks allotted by L1 (35.67)
 and L2 (7.4) to Sri Pritish Chajjed is added, he gets
 66.26% marks (i.e. 43.07 out of 65) and would have
 become 2nd in the merit panel whereby the original
 merit panel dated 23.12.08 undergoes a change
 with two candidates in the merit panel instead of
 one empanelled candidate and thus the selection
 gets vitiated. Hence, as per policy in vogue, since
 D the above referred selection gets vitiated and also
 there are other eligible candidates available, the
 location should be reinterviewed with all the eligible
 candidates.

E c) From the records, it is also observed that the
 location Mahape had been originally advertised on
 11.6.2005 against which based on interview, the
 first merit panel was declared on 4.4.4006,
 thereafter there were complaints and after
 F investigation as per grievance redressal procedure
 and the decision by the competent authority, re-
 interview of all the eligible candidates was
 conducted on 22.12.08 to 24.12.2008 and
 accordingly the above referred merit panel dated
 G 24.12.2008 was declared by the interview
 committee. The selection process for this location
 remained inconclusive for the last four years and is
 yet to be concluded. Further it is also observed that
 this will be a case of 2nd re-interview with all the
 H eligible candidates for the same location. In all
 likelihood, based on the above investigation details

and analysis, there may not be any further change in the merit panel in respect of the first empanelled candidate. Additionally, there may be other candidates who may come in the panel in the 2nd and 3rd position. Though as per policy in vogue re-interviews recommended." A
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5. In view of this, the following recommendations were put up for final verdict by the competent authority in the matter:-

" 1. Since the above referred selection process on investigation gets vitiated and also there are other eligible candidates available, the location should be re-interviewed with all the eligible candidates as per selection guidelines in vogue. C

2. However, the competent authority, i.e. State Head, MSO while giving the final order in the above investigation (vide report dated 6.2.2009 and 24.3.2009 by Sri R. Ganeshan as placed below), may also like to take a view on the facts given in para (c) above, whether to continue with the existing merit panel dated 24.12.08 with the lone candidate whose position is not disturbed as per above analysis remaining as 1st empanelled candidate or to go for re-interview as per extant guidelines. D
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3. Action is recommended in view of the lapses by the DO Coordinating officer and interview committee (L2) for not accepting the duplicate of original marksheet as detailed above in the IO's report in tabulation. G

6. These recommendations were studied/reviewed by the new Retail team at the MSO and comments were prepared on 29.07.2009, which were approved on 3.08.2009: H

- A 1. Since vitiation in the selection process has been established, as recommended, it is agreed/recommended that the location should be re-interviewed as per the extant policy guidelines.
- B 2. In view of Sr. No.1 above, in which vitiation in the selection process has been established and re-interview recommended, in order to have transparency in selection it is recommended that re-interview be done with all the eligible candidates as per the extant policy guidelines.
- C 3. Chief Manager (RS), MSO has proposed action against the DO Co-ordinating and the L2 Committee. Our comments are as under:
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E In this case the candidate had brought the Duplicate copy of the original, which in its strictest sense is not the original. Logically duplicate copy of the documents should have been considered as original for the purpose verification. This could/ should have been got confirmed by the coordinating officer and implemented.

F However it appears that the DO coordinating officer/L2Committee has strictly gone by the policy guidelines in this regard to verify the attested copy of the document submitted with the application, from the Original to be brought by the candidate at the time of interview. Therefore technically the DO coordinating Officer/L2 Committee has strictly followed the guidelines.

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ED MSO has detailed his views & finally opined as follows in:

H "In order to avoid any further complication and to

give fair chance to everyone, in my opinion this selection process should be cancelled and the location should be Re-advertised. Since there is no specific policy in this regard it is suggested that HO opinion may be sought."

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14. From the pleading of the parties as noticed above and the record, the following facts emerges:-

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(a) The proclamation was made on 11.6.2005 i.e. more than seven years ago but till date no person has been granted the dealership in question.

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(b) The first interview was conducted on 9th-10th December, 2005 in which one Mr. Nilesh L. Kudalkar was placed at the top of the merit panel while the respondent was placed second and one Mr. K. Srinadha Rao was third. When complaints were made against the selection as well as an allegation of irregularity in the process, after investigation, the Company found that the respondent and Mr. Srinadha Rao had not been marked correctly and both failed to provide the attested documents as had been specifically required under the advertisement and therefore the first selection was cancelled.

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(c) The second re-interview was called for and conducted on 22nd and 24th December, 2008. In the said re-interview the respondent was the only eligible candidate in the merit panel. On the basis of the complaints made by other persons a one man Inquiry Commission was appointed. On the basis of the report of the Investigating Officer dated 6.2.2009 and 24.3.2009, it was found that there were lapses by the DO Coordinating Officer and the interview committee (L2), in not accepting the duplicate of the original mark-sheet of a candidate as detailed in the Inquiry Officer report in tabulation.

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(d) The record further shows that the respondent submitted

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A a representation before the Chairman of the Company on
24.8.2009 with the reminder filed on different dates
including the one dated 23.1.2010. The Senior Divisional
Retail Sales Manager by communication dated 3.06.2010
B informed the respondent that *"on perusing the application
and the accompanying documents it is observed that
Relationship Affidavit not as per format. We regret that
in view of the same your application is found ineligible."*

C In the aforesaid background, the DGM (RC) by its note
dated 13.8.2009 rejected the opinion submitted by the
Office for re-interview.

15. It is not clear as to how the assessment was made by
the authorities as apparent from the investigation report
(Annexure-R6). The Investigating Officer in the summary of
D investigation submitted his conclusion, the relevant portion of
which reads as follows:

"Summary of Investigation:

E Based on documents provided/handed over by DO, as
also application the policy guidelines RO/6002 dt.
7.4.2005 & 4.4.2006 the following is the conclusion:

A) L-1 Committee has not strictly followed the guidelines
regarding signing of all documents for assessment.
F However, irrespective of this deviation, L-1 Committee has
considered all documents for assessment.

B) In case of 'Liquid Cash in the form of Bank Fixed
Deposit etc. and 'Fixed and Movable Assets" as detailed
G in my report, for financial capability, the L-1 Committee,
Screening Committee has given weight-age to documents
of family members/ relatives even though 'No Consent'
affidavit/letter is available. Therefore, in my final
assessment, in line with the policy 'No weight-age has
H been given to documents without consent. Therefore final

marks have undergone change. Hence in line with the above the final result is as under: A

As per Interview Committee (in line with merit):

Sr.No.	Name of candidate	Total marks
1	Shri Nilesh Laxmikant Kudalkar	56.50
2	Dr Ashok Shankarlal Gwalani	55.33
3	Shri K. Srinadharao	54.33

B

As per Screening Committee (in line with merit):

Sr.No.	Name of candidate	Total marks
1	Shri Nilesh Laxmikant Kudalkar	59.0
2	Shri K. Srinadharao	57.0
3	Dr Ashok Shankarlal Gwalani	52.0

C

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As per Investigation (in line with merit):

Sr.No.	Name of candidate	Total marks
1	Dr Ashok Shankarlal Gwalani	56.78
2	Shri K. Srinadharao	53.63
3	Shri Nilesh Laxmikant Kudalkar	48.52

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From the aforesaid report, it is clear that the Interview Committee, Screening Committee and the Investigation Officer assessed the three candidates in three different groups due to which the position of the candidates changed in the merit list prepared by the Interview Committee, Screening Committee and the investigation Officer. F

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16. In the present case, the High Court has not noticed and discussed the aforesaid facts and without discussing the further developments as taken place after 24.12.2008, directed the appellants to issue the Letter of Intent in favour of the H

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A respondent. Though the High Court noticed the stand taken by the appellants that the 'relationship affidavit' submitted by the respondent was not as per format, it failed to discuss the effect of such an incomplete affidavit in the matter of selection.

B 17. Generally, if an irregularity is detected in the matter of selection or preparation of a panel it is desirable to have a fresh selection instead of re-arranging the panel which is found to be vitiated. The Authority empowered to appoint, is the competent authority to decide as to whether the panel should be discarded and there should be a fresh selection in view of the facts
C narrated above. In such circumstances, the High Court under Article 226 of the Constitution of India ought to not have interfered with the decision of the competent authority in canceling the selection.

D 18. For the reasons aforesaid, we have no other option but to set aside the order of the High Court. Accordingly, the order and judgment dated 29.9.2010 passed by the High Court of Bombay is set aside with a liberty to the Competent Authority to re-advertise the petrol/diesel retail outlets in
E question and to make a fresh selection in accordance with law. The appeal is allowed with aforesaid observation and directions. There shall be no order as to costs.

K.K.T.

Appeal allowed.