

P.Shanmugam vs The State Coordinator (Tamilnadu And ... on 20 January, 2014

Author: M.Venugopal

Bench: M. Venugopal

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2014

CORAM

THE HONOURABLE Mr. JUSTICE M. VENUGOPAL

W.P.No.33985 of 2012

&

M.P.Nos.1 & 2 of 2012 & 1 of 2013

P.Shanmugam

... Petitioner

Vs

1. The State Coordinator (Tamilnadu and Pondicherry)

& CPIO Retail

Bharat Petroleum Corporation Limited,

1, Ranganathan Gardens,

11th Main Road,

Annanagar West, Chennai-600 040.

2. M.Kathiresan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.O.R.Santhanakrishna for R1

Mr.A.Thiyagarajan for R2

O R D E R

The Petitioner has preferred the instant Writ of Certiorarified Mandamus calling for the records of the First Respondent/the State Co-ordinator (Tamil Nadu and Pondicherry) and CPIO Retail Bharath Petroleum Corporation Limited, Chennai, made in proceedings No.SCO(TN&P)/COMP/CBE, dated 14.11.2012 and to quash the same. Further, he has also sought

for passing of an order by this Court in directing the First Respondent to consider the Petitioner for selection to the Petroleum Retail Outlet at Avinashi to Karuvalur Road, Tiruppur District, pursuant to the Notification, dated 15.03.2012, issued in Daily Thanthi vide Sl.No.361.

The Writ Petition facts:

2.The First Respondent/Bharath Petroleum Corporation Limited (referred to as BPCL) invited the applications for selection of distribution of Petroleum Retail Outlet at Avinashi to Karuvalur Road in Tiruppur District. The Petitioner applied for the same under Open Category. But the selection of Retail Outlet Dealership was issued in favour of the Second Respondent at Avinashi to Karuvalur Road.

3.The Petitioner was awarded 91.9 marks and the Second Respondent scored 93.3 marks out of 100 marks. The difference between the Petitioner and the Respondent was 1.4 marks and resultantly, the Petitioner missed the selection. He made a request under the Right to Information Act, whereby the First Respondent officials with an malafide intention, in order to suppress the illegality committed by them during the selection of the Second Respondent, wilfully and wantonly refused to furnish the documents.

4.The Petitioner, in order to make a complaint as per Brochure terms and conditions No.19 requested for supply of certain documents. However, the Authorities wilfully and wantonly, with a view to conceal the information and in collusion with the Second Respondent, without even furnishing the required details, have suppressed the information by not even furnishing the Land and Property details, Financial Status, etc. As a matter of fact, the Information Officer while taking Xerox copy has wilfully omitted certain column in taking Xerox which clearly shows that there is a case of suppression.

5.Indeed, the BPCL Brochure for selection of Petrol/Diesel Retail Outlet Dealership mentions that the information and documents provided by the applicants may be disclosed by BPCL to third parties under the Right to Information Act, 2005. The Petitioner made a request to the First Respondent through letter dated 09.08.2012 stating that unless the documents are furnished, he would be greatly prejudiced. He has also made an Appeal under the RTI Act in this regard. When a person, who opted for Dealership submitted the documents, it is the bounden duty of the Selection Committee to scrutinise the particulars.

6.Clause 10 of the Brochure terms and conditions speaks about the application Form and Sub Clause (k) enjoins as under :

"If any statement made in the application or in the documents enclosed therewith by the candidate at any stage is found to be incorrect or false and / or the applicant conceals any information which if declared would have made him/ her ineligible for

dealership the application, the application i.e. Liable to be rejected and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases the candidate / dealer shall have no claim whatsoever against the oil company."

That apart, Clause 13 of the Brochure terms and conditions speaks about 'evaluation of applicants'. The Petitioner has received only the partial documents even though he requested for supply of entire documents. The First Respondent's Office at Coimbatore has given the application form comprising of pages 1,2,3 and 6 alone. In fact, in the application, despite the Petitioner making a specific request (under RTI Act) to furnish the application Form, property details, audited statement of accounts, etc, so as to enable him to submit a detailed complaint to prove the irregularities, illegalities and gross misrepresentation committed by the Second Respondent (selected candidate) for the location.

7.The officials furnished only Page 3 whereby it concealed the columns 3, 4, 5, 11, 12 of the application. The Column No.3 relates to Gross Income during last financial year ended [2010-11]. Column No.4 related to present occupation. Column No.5 relates to Mandatory Production of Income Tax Assessment, in case the person who applied for dealership is an Income Tax Assessee.

8.After obtaining the partial RTI particulars, the Petitioner has perused the Experience Certificate dated 16.04.2012, wherein it is stated that one MKP and Company [a dealer in Hindustan Petroleum Corporation Limited] having office at No.15/381, Main Road, Avinashi, 641 654] has issued Experience Certificate to the effect that M.Kathiresan, S/o. P. Marappan, Door No.6/51, Nambiampalayam, Avinashi Taluk, Tirupur District [the Second Respondent] was working as a Supervisor for a period from 01.02.2007 to 01.02.2012. The Second Respondent should have submitted the gross income during the last financial year, namely 2010-11. If the person worked as a Supervisor in Petroleum Dealership concern, then the minimum wage as per the Minimum Wages Act would be more than Rs.6,000/- and the same would be reflected in the source of income in the Income Tax Assessment.

9.The Petitioner understands that the Second Respondent at no point of time worked during the said period from 01.02.2007 to 01.02.2012 and he obtained a fabricated and bogus certificate for the purpose of selection. Further, if the Second Respondent had worked really in the said M.K.P & Co., it would have given him salary which would have been reflected in the wages register maintained by the said company. More over, clause-5 of the application requires about the details of Income tax Assessment. Also, that Column No.11 of the application is with regard to the particulars of land. In regard to the details of the land is concerned, the person should mention the land area nearest to KMS stone site map with dimension, property document, etc.

10.It is to be pointed that page 4 of the application contains only Clause No.13. Clause 12 refers to the details of sources of fund, land valuation certificate, loan guarantee certificate and these particulars were also hidden by the BPCL. Also that Clause 16 of the application speaks about 'undertaking'. The Second Respondent secured five (5) marks out of five (5) marks for 'Tied Up Volume'. In the Certificate dated 16.04.2012 issued by M/s.Bharath Transports [the proprietorship concern], it is mentioned that M/s.Bharath Transports owned 25 lorries by quoting the registration

number of the lorries whereby it is seen that Serial.Nos.10 and 11 comprised of lorries bearing Regn. Nos.TN-39 AZ 0796, TN 30 AZ 1596 is again repeated at Sl.Nos.13 and 14 which amply proved that there is a clear manipulation and fabrication of records. The said Bharath Transports owner does not own 25 vehicles as claimed in the letter and it stands on different name.

11.Added further, one Sudharsan Exports furnished a Certificate dated 16.04.2012 stating that it owned nine Vans, Car, etc and mentioned the Serial No.9 as TN BZ 2467. The said registration Number is not available in the Tamil Nadu Registration of Motor Vehicles Department which is a bogus one. As such, the marks awarded under the caption 'for Tied Up Volume' ought not to have been awarded. The Second Respondent who has stated untrue, incorrect, false particulars for the purpose of securing the Retail Outlet Dealership is ineligible by virtue of the violation of the declaration made by him as contained in Brochure.

12.The Petitioner made a complaint dated 18.09.2012 with the available information to investigate the issue consisting senior officials and made a thorough enquiry after providing the entire documents requested by him and also to provide a personal hearing, etc., Further, he made an application dated 09.08.2012 to the Public Information Officer to furnish an application form, list of all documents and enclosure submitted by the selected candidate [viz. The Second Respondent] so as to enable him to file a detailed complaint as per Brochure's terms and conditions No.19. The Public Information Officer failed to furnish the details on a request made by him and therefore, the Petitioner filed a complaint to the First Respondent [by typing mistake wherein it is mentioned as Information Officer] on 18.08.2012 stating that the documents and in the application form, there was some misrepresentation made by the selected candidate and therefore, the said person is ineligible for selection. Also, he has mentioned in the complaint that he sent a request letter dated 09.08.2012 to furnish him the copy of the application form, list of documents and enclosures submitted by the Second Respondent for Retail Outlet Dealership under the Right to Information Act, etc.

13.The Information Officer by letter dated 23.08.2012 rejected the request of the Petitioner by stating that the information sought for by him relates to third party information and permitted to inspect the relevant records [except financial details, Permanent Account Number, Property details relating to third party] in respect of selection process of Dealership, etc.

14.The First Respondent caused a reply dated 24.08.2012 to the complaint made by the Petitioner stating that in respect of subject matter, the Petitioner had already sent the RTI Application dated 09.08.2012 received by him on 13.08.2012, for which, a reply dated 23.08.2012 was furnished and further, he was directed to act accordingly as stated in the reply. The Petitioner had obtained partial documents from the First Respondent viz. Application form comprising of the pages 1, 2, 3 and 6 alone. As such, he made a request to investigate the subject matter in issue by making a thorough enquiry on his complaint after providing entire documents requested by him and also to provide a personal hearing. In the mean while, he made an appeal under the RTI Act before the Appellate Authority to furnish the information. He obtained information under the R.T.I Act from Avinashi R.T.O. Office and the false misrepresentation were found in the certificates which was submitted to obtain marks for Tied Up Volume [Capability to generate business].

15. The appellate authority through his communication dated 15.10.2012 has inter alia stated that the redressal of grievance in respect of selection of Retail Outlet Dealership for location at Avinashi to Karuvalur Road, Tiruppur District does not come under the purview of R.T.I. Act.

16. According to the Petitioner, the First Respondent had stated that as per the selection procedure of Petroleum and Diesel Outlet Dealership, an eligible applicant would be evaluated out of total marks of 100 through a 3 tier process comprising the following steps which are as follows :

"a) The L1 Committee will evaluate the offered land as per laid down parameters and will decide the marks in respect of parameter 'Capability to provide land and infrastructure/facilities' which carries maximum mark of 35

b) the L2 Scrutinising Committee will scrutinise the documents and allocate marks with regard to documents based parameters out of a maximum of 56 marks.

c) The L3 Interview Committee will carry out personal interview and award marks out of the remaining maximum 9 marks based on specified parameters and complete the selection process."

The First Respondent's counter averments:

17. The Petitioner is not an aggrieved person to maintain the writ petition since he has taken part in the selection process and having failed to get selected, is estopped by his conduct in challenging the impugned order of the First Respondent dated 14.11.2013. There is no malafide, arbitrariness and unreasonableness attributed by the Petitioner in the Writ Petition against the selection process of the Corporation in awarding the Retail Outlet in question to the Second Respondent. Further, the evaluation done by the Selection Committee cannot be called in question in a writ Petition under Article 226 of the Constitution of India in as much as the said Committee after considering the materials on record, personnel assessment of merit, ability, capability, etc., has prepared a panel according to their merits and selected the Second Respondent who is the empanelled candidate.

18. The Bharat Petroleum Corporation Limited had advertised for location for selection of Retail Outlet Dealer at the location Avinashi to Karuvalur Road, Tiruppur District and the Petitioner was one of the applicants. In all, seven persons applied for the location in issue and they attended the interview that took place on 31.07.2012. The First empanelled candidate was the Second Respondent while the Second empanelled candidate was the Petitioner. The Second Respondent secured 93.3 marks whereas the Petitioner obtained 91.9 marks. The results of the interview were declared by the Corporation on 31.07.2012.

19. The Petitioner made a request on 09.08.2012 to the Information Officer of the Corporation under the Right to Information Act asking for the application form, list of documents and enclosures submitted by the selected candidate so as to lodge a complaint. Also, another letter dated 18.08.2012 was addressed by the Petitioner to the Territory Manager of the Corporation, since he made an application under R.T.I. Act seeking copies of documents submitted by the selected candidate. The

First Respondent by means of letter dated 23.08.2012 informed the Petitioner that the information sought for by him relates to third party personal information, the disclosure of which has no relationship to any public activity or interest and therefore denied his plea under Section 8(1)(j) of the Right to Information Act, 2005.

20.The Petitioner was advised to inspect the relevant records [except financial details, Permanent Account Number, Property details relating to third party] in respect of selection process of the dealership, etc. It was also highlighted after inspection, he may obtain extracts of documents desired by him from the Territory Manager-Retail, Coimbatore, after paying the requisite fee of Rs.2/- per page by Demand Draft/Banker's Cheque(Pay Order)/Indian Postal Order drawn in favour of the Corporation. Also, the Petitioner was informed by letter dated 24.08.2012 in response to his letter dated 18.08.2012, the same has been replied by letter dated 23.08.2012. The Petitioner through letter dated 08.09.2012 [addressed to the Territory Manager of Bharat Petroleum Corporation Limited, Coimbatore, asked for records of the second Respondent and enclosed a Pay Order of Rs.100/-] through letter dated 08.09.2012, the Territory Manager of the Corporation, Coimbatore, enclosed the extracts of 50 Nos of documents of the Second Respondent.

21.As per Clause 19(a) of the Brochure for selection of Petroleum/Diesel Retail Outlet Dealers as on 15.09.2011, an aggrieved person may send his / her complaint to the oil company at the address of the customer service cell displayed at the nearest retail outlet of the concerned oil company. Complaints can also be lodged on the website of the oil company. Being the complaints against dealer selection received after 30 days from the date of publication of the merit panel after the interview will not be considered / entertained under any circumstances.

22.In the present case on hand, the results were declared by the Corporation on 31.07.2012. In fact, no complaint was lodged by the Petitioner within 30 days from the date of declaration of the result by the Corporation [31.07.2012] in so far as the selection process is concerned, as visualised under Clause 19 (a) and (b) of the Brochure.

23.The Petitioner sent a letter dated 18.09.2012 by way of appeal to the Executive Director [Retail] of the Corporation, requesting him to entertain his appeal, furnish the information as required and or to initiate departmental action against the officials for not furnishing the information despite specific provisions contained in the Brochure for selection of dealership. In the mean while, the said appeal was disposed of on 15.10.2012 by the Executive Director (Retail) of BPCL, the Petitioner has a right of Second Appeal to the Central Information Commissioner, New Delhi under Section 19(3) of Right to Information Act, 2005. The order of the Executive Director (Retail) has become final and conclusive. Therefore, it is not open to the Petitioner to club the issue regarding non supply of documents [when he is not entitled to] in the Writ Petition.

24.The Petitioner sent another letter dated 27.09.2012 requesting the First Respondent to accept the supplementary complaint and reject the selection of the Second Respondent and to award the Retail Outlet Dealership to him. This was examined by the First Respondent and the Petitioner was informed by the impugned order dated 14.11.2012 to the following effect:

(1) As per the selection procedure of Petrol/Diesel Retail Outlet Dealers, eligible candidates will be evaluated out of a total marks of 100 through a 3 tier process comprising the following steps:

(a) The L1 committee will evaluate the offered land as per laid down parameters and will decide the marks in respect of parameter 'capability to provide land and infrastructure/facilities' which carries a maximum mark of 35.

(b) The L2 Scrutinising Committee will scrutinise the documents and allocate marks with regard to documents based parameters out of a maximum of 56 marks.

(c) The L3 Interview Committee will carry out personal interview and award marks out of the remaining maximum 9 marks based on specified parameters and complete the selection process.

(2) In so far as Tied Up Volume evaluation is concerned, the same is based on affidavit submitted along with application. Tie up of 1/3rd or higher volume of the quantity indicated in the advertisement will qualify for full marks and proportionate for lower volume. Hence, Evaluation is based on the volume of tied up quantity as per affidavit submitted by the applicant along with the application from prospective customers.

Viewed above, the 1st Respondent informed the Petitioner the selection of the candidature for the subject site was conducted by the expert committee members as per the current laid down policy and the same stands valid. As such, it is submitted there is no illegality, irrationality and procedural impropriety in the impugned order. On this ground also, the Writ Petition is liable to be dismissed.

By the impugned order dated 14.11.2012, it was highlighted to the Petitioner that the candidature for the subject site was conducted by the expert committee members as per current laid down policy and the same stands valid.

It is submitted that the 2nd Respondent offered land for which a lease deed was registered. The lease is for 30 years with effect from 30.04.2012 till 31.03.2042 on a monthly rental of Rs.9,000/- executed between one Sundramoorthy (Lessor) and the second Respondent (Lessee).

The offered land of 2nd Respondent was evaluated as per laid down parameters by the evaluation committee which in turn decided the marks in respect of parameters "capability to provide land and infrastructure/facilities".

It is submitted availability of suitable site for setting up of retail outlet at the advertised location is the essence of project. Accordingly, the 2nd Respondent who has a registered lease for a minimum period of 30 years at the location was given weightage vis-a-vis the land offered by the Petitioner. In addition, the technical/commercial viability of site was ascertained by the Corporation based on the

prescribed parameters and this was done on the basis of the details submitted along with the application. Moreover, the technical/commercial suitability of the site offered by second Respondent was ascertained by a committee of Oil Company officers based on prescribed parameters as found in the brochure.

Viewed above, the Second Respondent was awarded 34.3 marks as against 35 marks.

L2 Committee scrutinised the documents submitted and allotted marks with regard to documents based on parameters out of a maximum of 56 marks.

Parameter Maximum Marks Marks awarded to 2nd Respondent Evaluation Finance Based on verifying the documents submitted Educational Qualification Based on documentary evidence submitted Age Based on documentary evidence Capability to Generate business

(i) Tie Up Volume

(ii) Project Report

(iii) Experience Based on the volume of tied up quantity as per affidavit from prospective customers Satisfaction by Committee Members (L2) based on the project report submitted Based on furnishing of documentary evidence to establish the service.

Viewed above, the second Respondent was awarded the marks in accordance with the parameters and based on the documentary evidence submitted.

L3 Committee conducted personal interview and awarded the remaining 9 marks based on parameters.

Parameter Sub-heads Description Maximum marks Marks awarded to 2nd Respondent Evaluation Assessment by interview committee Overall judgment of candidate's ability to generate business including future plans 1.5 As per the assessment of the committee based on leading questions.

Business ability Assessment by interview committee Based on Project report/leading questions with regard to earlier handling of business & specific situations.

Personality Assessment by interview committee 1.5 Assessment based on observation and leading questions.

Viewed above, it is submitted marks were awarded based on the assessment by the Interview Committee."

25. There is no need to give personal hearing to the Petitioner. There is no fabrication of records or mal-practices. The First Respondent has acted based on the certificates produced by the Second Respondent. The selection process made by the Corporation is as per Policy laid down by it. On the

other hand, the selection is done in a transparent manner and whatever documents the Petitioner is entitled to under the Right to Information Act has been complied with by the Corporation. In regard to 'Business Experience', marks are awarded by L2 Committee based on furnishing documentary evidence in relation to retail trade of Petroleum Products, related petroleum trade/transport/automobiles. There is no irregularities, illegalities, much less gross misrepresentation made by the Second Respondent.

The Counter Pleas of the Second Respondent:

26. He has not produced any bogus document as alleged by the Petitioner. He has submitted all the necessary documents as required by BPCL and on scrutiny of those documents, marks were awarded to him by L2 Scrutinising Committee. The BPCL had awarded marks for Tied Up Volume only based on the affidavit produced with the application. The affidavit should show the sales potentials as estimated by the oil companies. Based on the volume of Tied Up quantity as per affidavit from prospective customers, the marks were awarded.

27. The evaluation is based on the affidavit filed along with the application from prospective customers. In entering the registration Number, there is a typographical error occurred. The actual registration Number is TN 39 BZ 2467 but not TN BZ 2467. The Petitioner has not filed the complaint within 30 days from the date of publication of merit panel. As per Clause 19 of the Brochure for selection of Petroleum Retail Outlet Dealers, a complaint received after 30 days from the date of publication of merit panel after the interview will not be considered or entertained under any circumstances. The L1 Committee has evaluated the land offered as per the laid down parameters and awarded the mark as 34.3. He has taken the said land for lease for a period of 30 years, for which he is paying a sum of Rs.9,000/- per month as rent.

28. Since there is a case pending before this Court, the First Respondent has sent a reply dated 01.02.2013 that they will not be able to proceed further in the matter pending disposal of the case. He has invested huge amount to run the business. He is suffering both financially and mentally due to the pendency of the writ petition. The process of appreciating and weighing the numerous factors, materials and rival merits is the function of the First Respondent Board, which is having the necessary expertise and experience to perform its duties properly. There is no arbitrariness or collusion as alleged by the Petitioner.

The Petitioner's Contentions:

29. The Learned Counsel for the Petitioner submits that the impugned order dated 14.11.2012 passed by the First Respondent is an arbitrary and illegal one. The Learned Counsel for the Petitioner urges before this Court that the second Respondent obtained certificates from the 5 customers containing the vehicle quantity and proposed demand and filed along with the application with an affidavit. Further, the Petitioner in his complaint dated 18.09.2012 and 27.09.2012 has stated that the certificates produced by the Second Respondent are absolutely fabricated and bonus certificates for the purpose of obtaining full marks under the caption of 'Tied Up Volume'.

30. Advancing his arguments, the Learned Counsel for the Petitioner projects an argument that the impugned order passed by the First Respondent dated 14.11.2012 is based on non-application of mind and in fact, the Petitioner has pointed out that the fabrication of records, misrepresentation or mal-practices committed by the Second Respondent. Further, the First Respondent failed to go through the complaint dated 18.09.2012 which related to the wrong information provided by the Second Respondent pertaining to his experience which itself palpably shows that the impugned order has been passed on non-application of mind, which consequently render the selection of the second Respondent as an invalid one.

31. Expatiating his submissions, the Learned Counsel for the Petitioner submits that Clause 19 of the Brochure deals with Grievance/Complaint redressal system. As per Clause 19(b), when a decision is taken to investigate the complaint, the investigation will be done by one Senior Official of Oil Company and will pass a speaking order after giving due opportunity to the complainant etc. Also that a copy of the speaking order will be given to all concerned, etc. More over, the First Respondent simply closed the complaint in respect of specific allegations levelled against the second Respondent by the Petitioner.

32. The Learned Counsel for the Petitioner cites the order dated 18.01.2006 in Civil Miscellaneous W.P.No.2939 of 2006, between MANOJ KUMAR V. HINDUSTAN PETROLEUM CORPORATION LTD. THRU' ITS CHAIRMAN [2006] RD-AH 1250, whereby and whereunder, it is observed and held as follows:

"By the impugned order dated 15th November 2005, annexure-11, which has been challenged in this writ petition, it is stated that the Petitioner have 'volume commitment' letters (tied-up volume affidavits) for showing that the Petitioner would be able to muster at least this much custom for the out-let. Out of the 8 commitment letters submitted by the Petitioner at the time of interview, 2 purported to be from petty dealers and 6 purported to be from transporters.

According to the impugned order, the Senior Sales Officer of Etah went on the spot of verification of these commitments but could not trace out even a single person out of the 8 persons whose affidavit were given. Faced with this situation, the Hindustan Petroleum Corporation issued repeated letters to the Petitioner to produce the persons, whose affidavits had been given, so that the authenticity of the commitments could be verified. First such letter was sent on 3rd August 2005 i.e., almost six months ago. Thereafter, reminders were sent but the Petitioner could not be produce a single person out of the 8 persons.

In this writ petition also, the Petitioner only seeks further time, which to our mind is meaningless.

It may have been a different matter, if some of those 8 persons had been produced and some may not have been traced out, but where not even a single one of the commitments could be authenticated despite grant of repeated opportunity for a

period of six months, it would cast sufficient serious doubt upon the bona fides of the Petitioner's documents.

In the circumstances, if the selection of the Petitioner as first empanelled candidate for location saurinkh has been cancelled by the impugned order, the same would not call for any interference in the discretionary jurisdiction of this Court.

The writ petition is accordingly dismissed."

33.To lend support to the contention that the Second Respondent has suppressed the material information or given false information and therefore, he is not entitled to be selected for the Dealership in issue, the Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in KENDRIYA VIDYALAYA SANGATHAN AND OTHERS V. RAM RATAN YADAV reported in 2003 (3) SCC at page 437 at special page 439, wherein it is observed and laid down as follows:

"The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents of the Respondent as on the date of filing and attestation of the form to judge his suitability to continue in service. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the Respondent in relation to his continuance in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment."

34.The Learned Counsel for the Petitioner invites the attention of this Court to the decision of the Hon'ble Supreme Court in SHIV KANT YADAV V. INDIAL OIL CORPN. AND OTHERS reported in (2007) 4 SCC 410, wherein it is observed and held as under:

"There was a requirement to disclose the true and correct fact which does not appear to have been done.

In view of the undertaking that if any factual misstatement or declaration is made that permits cancellation of the allotment, the order of the High Court does not suffer from any infirmity to warrant interference."

35.He also seeks an aid of the decision of the Hon'ble Supreme Court in STATE OF A.P. AND ANOTHER V. T.SURYACHANDRA RAO reported in (2005) 6 SCC at page 149 at special pages 152 to 155, wherein paragraph Nos.8 to 17, it is observed and laid down as follows:

8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill-will towards the other is immaterial. The

expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla (Dr.) v. Delhi Admn.* 1963 Supp (2) SCR 585 : AIR 1963 SC 1572 at pp. 1576-77 para 14: (1963) 2 Cri LJ 434 and *Indian Bank v. Satyam Fibres (India) (P) Ltd.* (1996) 5 SCC 550]

9.A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P.Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1.)

10."Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319)

11."Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares.' It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact, whether by words or by conduct,

by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with the intent to deceive another. From dictionary meaning or even otherwise fraud arises out of a deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with the knowledge that it was false. In a leading English case i.e. Derry v. Peek (1886-90) ALL ER Rep 1: (1889) 14 AC 337 (HL) what constitutes "fraud" was described thus: (All ER p. 22B-C) "[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja v. Secy. of State of Home Deptt.* (1983) 1 All ER 765: 1984 A 74: (1982) 1 WLR 948 (HL) that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute.

" 'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.' Present-day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive." (See *Shrisht Dhawan v. Shal Bros.* 7 (1992) 1 SCC 534 SCC p. 554, para 20.)

12. In that case it was observed as follows: (SCC p.553, para 20) "20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case *Derry v. Peek* (1886-90) ALL ER Rep 1: (1889) 14 AC 337 (HL) what constitutes "fraud" was described thus: (All ER p. 22B-C) '[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.' "

13. This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal* (2002) 1 SCC 100: 2002 SCC (L&S) 97, *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* (2003) 8 SCC 311, *Ram Chandra Singh case* (2003) 8 SCC 319 and *Ashok Leyland Ltd. v. State of T.N.* (2004) 3 SCC 1.

14. Suppression of a material would also amount to a fraud on the court. (See *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu case* (1994) 1 SCC 1.

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav case* (2003) 8 SCC 311.

16. In *Lazarus Estates Ltd. v. Beasley* (1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA) Lord Denning observed at QB 99. 712 and 713: (All ER p.345 C) "No judgment of a court, no order of

a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker, L.J. Observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity".

17. Considering the aforesaid principles of law and the background facts, the Tribunal was justified in modifying the earlier order and varying it. The Appellate Tribunal did not commit any error in upholding it. The High Court's order is clearly unsustainable and is set aside."

36. Apart from the above, the Learned Counsel for the Petitioner cites the following:

a) In the decision of the Hon'ble Supreme Court MOHINDER SINGH GILL AND ANOTHER V. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS reported in 1978 (1) SCC at page 405, wherein it is observed that 'action to be judged by the reasons stated while making the order and supplementary reasons in the shape of affidavits are to be excluded'. Further, in the aforesaid decision, it is also held that 'the administrative action is as much subject to natural justice as judicial and quasi-judicial ones'.

b) In the decision of the Hon'ble Supreme Court in BHAURAO DAGDU PARALKAR V. STATE OF MAHARASHTRA AND OTHERS reported in 2005 (7) SCC at page 605 at special page 606 and 607, it is observed and held as follows:

"Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. "Fraud" in relation to the statute must be a colourable transaction to evade the provisions of a statute.

Suppression of a material document would also amount to a fraud on the court. Although negligence is not fraud but it can be evidence on fraud.

"Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. Fraud and justice never dwell together. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted

with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*."

c) In the decision of this Court between *INDIAL OIL CORPORATION LTD. V. J.RANJITH* reported in 2012 (5) Current Tamil Nadu Cases at page 577 & 578, it is observed and held as under:

"The condition regarding capability to arrange the site was made with a specific purpose. The Applicant, who is in possession of the suitable godown or land for construction of godown for storage of filled LPG Cylinders would be given marks, meaning thereby, the Applicant who is not in possession of land or has not made any arrangement to take the land would not be given marks on that count. Since the Selection Committee will be awarding marks to a candidate on the basis of his declaration that he is in possession of a particular land for construction of godown, there is no question of permitting him to change the site subsequent to the selection. In the event the selected candidate is not in a position to construct the godown on the land indicated in his Application, it is as if he is not in possession of land. The Selection Committee awarded the marks only on the basis of his possession of land. In case he is not in a position to construct the Godown on the said land subsequent to the selection, he is not entitled for the marks on the ground that he is in possession of land. In case, permission is given to a selected candidate to change the land, necessarily such indulgence should also be given to other candidates. There should be a level playing field in such cases.

When the selection is made on the basis of a prescribed procedure made known to the candidates sufficiently earlier it is not open to the Corporation to make a deviation at a later point of time.

We are called upon to test the legality and correctness of the decision taken by a Public Sector Oil Corporation on the basis of the selection criteria and guidelines governing the field. The Corporation was not expected to flout the selection norms indicated in the Notification. The norms are applicable equally to the Corporation and the Applicants. The Courts cannot direct the State or its instrumentalities to violate their own regulations. The Respondent is not a layman. He is a qualified medical practitioner and he has made the Application after reading the Notification. He has given a declaration that in case he is not in a position to construct the godown on the site mentioned in the Application, his candidate could be rejected and in case the selection is made, the Letter of Intent could be withdrawn. Having accepted such a condition and made an Application, it is not open to the Respondent to make a Complaint that the Corporation erred or illegality in the order passed by the Corporation. The mandatory condition incorporated in the Notification was not taken note of by the learned Single Judge. Therefore, we are constrained to set aside the order passed by the learned Single Judge. Accordingly, the order dated 22 January 2011 in W.P.No.22320 of 2010 is set aside.

The First Respondent's Submissions:

37.The Learned Counsel for the First Respondent contends that the evaluation done by the Selection Committee cannot be called in question in a writ proceedings under Article 226 of the Constitution of India because of the reason that the Committee after considering the materials on record, personnel assessment of merit, ability, capability, etc, has prepared a panel according to their merits and selected the Second Respondent as an empanelled candidate. Therefore, there cannot be any reappraisal or reappraisal of relevant factors, relative qualification and evaluation of the comparative merits of the candidates in a Writ Proceedings under Article 226 of the Constitution of India.

38.The Learned Counsel for the First Respondent submits that the Petitioner has not filed the complaint within 30 days from the date of selection of the dealers as per Clause 19 of the Brochure for Selection of Petroleum/Diesel Retail Outlet Dealership (as on 15.09.2011) and in fact, the results were declared by the Corporation on 31.07.2012. In the instant case on hand, the Petitioner raised a complaint in regard to the selection process of the Corporation in respect of the Retail Outlet in question through letter dated 18.09.2012 wherein he prayed for investigation of the issue by making a thorough enquiry by the Corporation and also to grant him the personal hearing, etc.

39.The Learned Counsel for the First Respondent submits that the selection of the candidature by oversight was conducted by the expert committee as per the current laid down policy and as such, there is no illegality or arbitrary, impropriety or even irrationality in the impugned order dated 14.11.2012 passed by the First Respondent.

40.The Learned Counsel for the First Respondent submits that the evaluation in respect of 'Tied Up Volume' was based on the affidavit submitted along with application from prospective customers and therefore, the Corporation acted on the certificate produced by the Second Respondent. Also that there is no fabrication of records or malpractices and further, there is no need to give personal hearing to the Petitioner and added further, there is no negation of Principles of Natural Justice.

41.The Learned Counsel for the First Respondent takes a stand that the Committee concerned went through the documents and allotted marks. In fact, L2 Committee awarded marks to the persons concerned based on the documents submitted. Further, it is represented on behalf of the First Respondent that the Petitioner having taken part in the selection process, cannot challenge the selection made by the First Respondent, and therefore, the writ Petition filed by him is not maintainable per se in the eye of law. Also that the Court of law will not interfere in the selection process unless the Petitioner is able to establish mala fide action and arbitrariness on the part of the First Respondent. The Learned Counsel for the First Respondent contends that the Brochure does not say that the First Respondent should verify the concerned materials submitted by the applicant.

42.The Learned Counsel for the First Respondent cites the Division Bench of this Court dated 04.12.2009 in W.A.No.1573 of 2009 and W.A.No.1574 of 009 wherein in paragraph Nos.12 to 14, it is observed and held thus:

"12. (a) In the decision reported in AIR 2002 SC 790 (G.N.Nayak v. Goa University) the question considered was as to whether a candidate, who applied pursuant to the notification and after taking part in the interview without protest, can be permitted to contend that the eligibility criteria were wrongly framed. The Supreme Court held that such candidate is not entitled to challenge the mode of selection after participating in the interview since because he was not selected.

(b) Same is the view taken by the Supreme Court in the Decision reported in AIR 2008 SC 5 (Union of India v. S.Vinodh Kumar). In paragraphs 18 and 19, the Supreme Court held thus, "18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil.) (See also Rashmi Mishra v. M.P. Public Service Commission.)

19. In Chandra Prakash Tiwari v. Shakuntala Shukla, it was held: (SCC p.148, para 32) 2. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla v. Akhilesh Kumar Shukla a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise. It was further observed: (SCC p.149, para 34) 4. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process. "

(c) In the decision reported in (2009) 5 SCC 515 (K.A.Nagamani v. Indian Airlines) also same view was taken. Paragraphs 54 and 55 are extracted hereunder, "54. The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting Respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

55. In *Madan Lal v. State of J&K* this Court observed: (SCC p.493, paras 9-10) 9. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair .

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. Reference may also be made to the decision of this Court in *Chandra Prakash Tiwari v. Shakuntala Shukla*."

13. The scope of interference by the Court under Article 226 of the Constitution of India in the matter of selection of Distributorship of Indane Gas is considered by the Division Bench of this Court in the decision reported in (1995) 2 MLJ 458 (*V. Chandran v. Oil Selection Board*).

14. Admittedly no male fide is alleged against the Respondents by the Petitioner. The Petitioner, having been treated like other candidates, who participated in the interview and the Selection Committee having awarded marks for the experience on the basis of the questions put to the candidates and the answers given by them, there is no arbitrariness as alleged by the Petitioner in awarding marks to 46 candidates."

43. He also relies on the Division Bench Judgment of this Court dated 16.04.2009 in W.A.No.270 of 2009, wherein in Paragraph Nos.5 and 6, it is upheld as follows:

"5. Mr.Singaravelan, learned counsel for the appellant submitted that this marking was erroneous and the factors, as emphasized by him, were not correctly considered by the authorities of the Selection Committee. Now what is to be noted is that the Distributorship Selection Committee consists of a Chairman (not below the rank of Chief Manager) and two members (not below the rank of Manager), as stated in para 8 of the counter filed by the first Respondent before the learned Single Judge. They are nominated 48 Distributor. Thus there is hardly any scope for any interference nor is there any such allegation made. The grievance made is with respect to the analysis of the various factors by the Selection Committee. Now as can be seen, the relevant clause which has been quoted above contains a guideline and there is no hard and fast rule therein. The parameters, which are mentioned therein, are to be considered and with a view to arrive at an objective decision, marks are provided under various heads. That still leaves an appropriate direction to the authorities concerned. In the present case, the Selection Committee has given higher marks to the fourth Respondent after considering all the factors.

6. In our view, it is not possible for the Court or any other body to take a different view where there are quite a number of subjective factors also. After considering all these factors, the Committee has given the marks. We cannot say that we are better suited to have a re-appreciation of the evaluation done by the officers of the Bharat Petroleum Corporation. They know their requirement quite well. By applying the

specified yardstick, they are entitled to decide as to who is better suited and, therefore, we decline to take a different view from the one which the learned Judge has taken."

44. Apart from the above, the Learned Counsel for the First Respondent placed reliance on the following decisions:

(i) In the order dated 20.07.2012 in W.P.No.11696 of 2012 between MANIKANDAN KOLANDAIVELU V. BHARAT PETROLEUM CORPORATION LTD. AND ANOTHER, this Court in paragraph Nos. 9 and 10, it is observed and held as follows:

"9. He also referred to another decision of the division bench in R. Kalaivani Vs. Chairman, Indian Oil Corporation Ltd., Corporate Office, New Delhi-110 049 and others reported in (2010) 1 MLJ 742, wherein the very same experience parameter was considered by the division bench in paragraph 10. The quality of experience has to be judged based on the response to the questions related to experience and that the marks will be awarded on the quality rather than amount of experience. In the same judgment, in paragraphs 13 and 14, it was observed as follows :

"13. The scope of interference by the Court under Article 226 of the Constitution of India in the matter of selection of Distributorship of Indane Gas is considered by the Division Bench of this Court in the decision V. Chandran V. Oil Selection Board (1995) 2 MLJ 458.

14. Admittedly, no mala fide is alleged against the Respondents by the Petitioner. The Petitioner, having been treated like other candidates, who participated in the interview and the Selection Committee having awarded marks for the experience on the basis of the questions put to the candidates and the answers given by them, there is no arbitrariness as alleged by the Petitioner in awarding marks to 46 candidates."

10. In the light of the above factual matrix and legal precedents involved, this court do not think that any case is made out by the Petitioner to interfere with the impugned selection of the second Respondent. Hence the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.

(ii) In the order dated 04.07.2006 in W.P.No.4844 and 11066 of 2011 between K.INDIRA v. UNION OF INDIA (UOI) REP. BY ITS SECRETARY MINISTRY OF PETROLEUM AND NATURAL GAS, HINDUSTAN PETROLEUM CORPORATION LIMITED, DEALER SELECTION BOARD AND M.ANDAL, this Court in paragraphs No.12 to 14, it is observed as follows:

"12. The second Respondent/corporation has issued notification dated 19.05.1998 inviting applications to grant LPG distributorship for Hindustan Petroleum Gas in Taramangalam locality, Salem District in Open(Women) Category list. After receipt of applications, selection process for new dealership was kept in abeyance by the

Ministry of Petroleum and Natural Gas. Again, after clearance from the Ministry, notification was issued on 28.08.2000, applications were received and processed. The third Respondent conducted interview and selected three candidates including the Petitioner, in which, the fourth Respondent herein was first among them. The selection process was made by allotting marks to each and every candidates on their merit and the highest scorer will be the first.

13.Considering the facts and circumstance of the case, it is not proper for this Court to go deep into the records of the Board or Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such re-appraisal, to decide whether the selection was properly made or not. In this context it would be relevant to look into the decision of a Division bench of the Calcutta High Court reported in (Chinmoy Sarkar and etc., v. Md.Shaniat Hossain and etc.) MANU/WB/0050/1990:AIR1990Ca1412 wherein in para-4 it was held thus:

4.Now, it must be pointed out at the outset that this Court in Writ Jurisdiction cannot sit in appeal over the selection of a Dealer for a Retail Outlet made by the board. True, the Corporation and the Board are amenable to the Writ Jurisdiction since they are "State" within the meaning of Article 12 and also "authority" or "person" within the meaning of Article 226, and what is involved in the selection for Retail Dealership of articles of monopoly business carried on by a wholly-owned Government Company. However, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to well-known limitations. If the selection is vitiated by a arbitrary or irrational exercise of power or by malafides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant factors including eligibility, the Writ Court would and should, on proof of the relevant facts grant and appropriate relief. However, it is not for the Writ Court to delve deep into the records of the Board or the Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such re-appraisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a Writ. It cannot be overlooked in this connection that the Board, which is vested with the function of selection, is an independent entity. It is a high level body consisting of a retired High Court Judge and a retired Civil Servant. Ordinarily, there would be minimal scope for alleging malafides against such a body although it can conceivably be alleged and proved and in a given case that the selection made by it is otherwise vitiated.

14.In this case, the third Respondent, after considering the materials on record, personal assessment on merits, business ability, capacity, etc., of the applicant has prepared a panel according to their merits, hence, judicial review would be permissible only on the established grounds like malafide, arbitrariness or unreasonableness. In this case, I do not find any such grounds. In the absence of such grounds and the fact that the Board, which is vested with the functions of selection, is an independent entity consisting of retired Judges and retired Civil Servants

possessing necessary expertise and experience to perform their duty properly, there is only minimal scope for alleging malafide against such a body. As mentioned above, such elements like malafide, arbitrariness and unreasonableness were not effectively canvassed and proved by the Petitioner. In this context, it would be useful to refer the decision of a Division Bench of this Court reported in (V.Chandran v. Oil Selection Board, Tamil Nadu, Pondicherry and Andaman and Nicobar Islands, Mandras and Ors.) MANU/TN/0013/1996: AIR1996Mad87 wherein in para-14, it was held thus:

14.As already seen, the first Respondent Board is a high level body consisting of a retired Judge of this Court, one retired Deputy Accountant General and former member and acting Chairman of Tamil Nadu Public Service Commission and another respectable person. The first Respondent, after considering the materials on record and the personal assessment on merits, business ability, capacity etc., of the applicants, has prepared a panel according to their merits and granted the distributorship to the 4th Respondent by the Letter of Indent dated 29.03.1994. The process of appreciating and weighing the various factors, materials and rival merits, is the function of the 1st Respondent Board, which is having the necessary expertise and experience' to perform its duties properly. In our view, there cannot therefore be any re-appreciation or re-appraisal of relevant material factors, relative qualifications and evaluation of the comparative merits of the candidates in a writ proceeding under Article 226 of the Constitution of India."

Equivalent citation : (2006) 3 MLJ 1492.

(iii) In the decision of the Hon'ble Supreme Court in SAJEESH BABU K. V. N.K.SANTHOSH AND OTHERS reported in 2012 (12) SCC at Page 106 at Special Page No.107, it is observed as follows:

" In a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the three experts in the Selection Committee. In such circumstances, it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry, etc. and awarded marks. In such circumstances, the High Court ought not to have sat as an appellate court on the recommendations made by the Expert Committee. Further, in order to ascertain the genuineness of the contents of experience certificates Exts. P-2 and P-3, the Corporation deputed responsible persons for verification and, in fact, they met the issuing authority and were satisfied with the correctness of their statement. Therefore, the Single Judge as well as the Division Bench committed an error in

interfering with the decision of the Selection Committee."

(iv) In the decision of the Hon'ble Supreme Court in SWAPAN KUMAR PAL V. ACHINTYA KUMAR NAYAK AND OTHERS reported in 2008 (2) MLJ at page 569 (S.C.), it is observed and held as follows:

"For exercising the power of judicial review, the Court has a limited role to play. It could interfere only if any legal error has been committed in the decision making process. It cannot enter into the merits of the decision."

45.Lastly, the Learned Counsel for the First Respondent submits that both the Petitioner and the Second Respondent were awarded marks by the Committee concerned based on documents and in fact, the Petitioner must challenge the procedure and not the documents.

The Contentions of the Second Respondent:

46.The Learned Counsel for the Second Respondent submits that the complaint dated 18.09.2012 lodged by the Petitioner is out of time, since he has not preferred the complaint within 30 days from 31.07.2012, the day on which the results were declared by the Corporation in regard to the selection process of Retail Outlet in question. According to the Learned Counsel for the Second Respondent, the Petitioner is not entitled to say that the Second Respondent has not worked and since this disputed fact/facts cannot be raised in the Writ Petition.

47.The Learned Counsel for the Second Respondent projects an argument that even if the impugned order dated 14.11.2012 is set aside, it will not affect the Second Respondent's selection. Further, after selecting the empanelled candidate/the Second Respondent, the Authorities had investigated the spot and found everything intact. Added further, knowing fully well about the contents of process for selection of Petroleum / Diesel Retail Outlet Dealers dated 15.09.2011, the Petitioner is estopped and also not entitled to question the same before this Court in the Writ Proceedings. Moreover, three Committees have looked into the matter and selected the Second Respondent. Also that there is no illegality made against the expert committee.

48.In support of the contention that the candidates were taken part in the selection process knowing thoroughly well about the procedure prescribed are not entitled to assail the same, the Learned Counsel for the Second Respondent cites the decision of the Hon'ble Supreme Court in UNION OF INDIA AND OTHERS V. S.VINOD KUMAR AND OTHERS in AIR 2008 SUPREME COURT at Page 5, wherein it is held as follows:

" It is now settled principle of law that even wait listed candidates have no legal right to be appointed. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

49.Also, he has relies on the Division Bench of this Court in V.CHANDRAN V. OIL SELECTION BOARD, TAMIL NADU, PONDICHERRY AND ANDAMAN, NICOBAR ISLANDS AND OTHERS reported in 1995 MLJ at page 458, wherein it is held as follows:

"The process of appreciating and weighing the various factors, materials and rival merits, is the function of the 1st Respondent Board, which is having the necessary expertise and experience to perform its duties properly. In the court's view there cannot therefore be any re-appreciation or re-appraisal of relevant material factors, relative qualifications and evaluation of the comparative merits of the candidates in a writ proceedings under Art.226 of the Constitution of India."

50.He invites the attention of this Court to the decision of the Hon'ble Supreme Court in U.P.FINANCIAL CORPORATION AND OTHERS V. NAINI OXYGEN & ACETYLENE GAS LTD AND ANOTHER reported in (1995) 2 SCC at page 754, at Special Pages 761 and 762, in paragraph Nos.21 and 23, it is observed as follows:

"21. However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

23.The process of appreciating and weighing the various factors, materials and rival merits, is the function of the 1st Respondent Board, which is having the necessary expertise and experience to perform its duties properly. In the court's view there cannot therefore be any re-appreciation or re-appraisal of relevant material factors, relative qualifications and evaluation of the comparative merits of the candidates in a writ proceedings under Art.226 of the Constitution of India."

DISCUSSIONS:

51.It comes to be known that Clause 13 of the Brochure for Selection of Petroleum Retail outlet Dealers dated 15.09.2011 speaks of 'Evaluation of applicants' based on the parameters mentioned in SL.Nos. a to h therein for maximum marks of 100 for each caption/head like for example [a. Capability to provide land and infrastructure / facilities, maximum marks of 35 has been prescribed]. Further, Clause-13 also deals with allocation of marks on various parameters in respect of individual applicants and the evaluation will be done by the Committee. For land and infrastructure, finance, etc, parameters have been laid down as maximum marks 35, 25, etc. Clause

No.16 of the Brochure refers to 'Results of the Interview' and Clause 16(c) speaks about 'Field Verification and Offer of Dealership'. Clause 19 refers to 'Grievance/Complaint redressal system'. Mere 'furnishing of false information/concealing information' is finalised under Clause 21 of the Brochure dated 15.09.2011.

52.For a better and full appreciation of the subject matter in issue, this Court makes an useful reference to Clause 21 of the Brochure dated 15.09.2011 which runs as follows:

"21. Furnishing of false information/concealing information:

If any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer or conceals any information which if declared would have made him/her ineligible for dealership, the allotment will be cancelled forthwith and dealership terminated, in case commissioned."

53.It is to be noted that Clause 19(a) of the Brochure dated 15.09.2011 enjoins that an aggrieved person may send his/her complaint to the oil company, etc., and further, the complaints against the dealer selection received after 30 days from the date of publication of the merit panel after the interview will not be considered/entertained in any circumstances. Also that Clause 19 (b) of the said Brochure specifies:

"When a decision is taken to investigate the complaint, the investigation will be done by one Senior Official of Oil Company and will pass a speaking order after giving due opportunity to the complainant etc. Copy of the speaking order will be given to all concerned. Thereafter, decision on the complaint will be taken as under:

(i) Complaints not substantiated: The decision to be conveyed by way of Speaking Order to the complainant by the Regional office.

(ii) Established complaint: Action will be taken as under:

* In case the dealer selection was done as per the laid down guidelines and the complaint against the first empanelled candidate is established, action will be taken to cancel the selection of the 1st empanelled candidate and issuance of LOI to the next candidate in the merit panel. Similar action will be taken in case of established complaint against second empanelled candidate also.

* In case where complaint is due to error in evaluation of documents by Scrutinising Committee, re-evaluation of all the applicants by a fresh scrutinising committee nominated by Regional Head will be arranged. During re-evaluation, the committee will record justification for any change in marks (for every candidate under any parameter).

*There will be no interview and the marks awarded earlier by the Interview Committee will be considered for revised result.

A high level committee of two members not below the rank of JG 'E' nominated by Regional Head with one member from Regional office and one Territory Manager other than the Territory to whom the complaint pertains will examine the re-evaluation done by the fresh scrutinising committee and submit recommendations to the Regional Head.

a) Where there is change of rankings in merit panel revised mark sheet and panel will be displayed on the notice board/website besides separate communication to be sent to all empanelled candidates (pre-revised and revised empanelled candidates) by the Territory Manager within 7 days from receiving the decision from Regional Head's office. Regional Office should also communicate the decision to the complainant by way of speaking order.

b) Where there is no change of rankings in merit panel the decision should be conveyed by way of speaking order to the complainant by the Regional office.

* In case where complaint is substantiated due to error by the Interview committee:

*Where there is transcribing or totalling error (in scrutinising committee's marks), a committee of two members not below the rank of JG 'E' nominated by Regional Head with one member from Regional office and one Territory Manager other than the concerned territory will prepare revised result based on evaluation by original scrutinising committee and marks on interview based parameters awarded by original interview committee.

Wherever there is error in award of marks by the Interview committee which affects merit panel, re-interview of all the eligible candidates, who have appeared in the interview earlier, will be conducted.

*The existing practice of issuing LOI only if no complaint is pending for disposal will continue. If complaint is received after issuance of LOI, the LOI should be held in abeyance till the disposal of complaint."

54. The Petitioner in his Additional Affidavit dated 06.12.2013 in Paragraph Nos.2 to 8 as stated as under:

"2. The 1st Respondent BPCL concealed and not given some important pages of application pages, attachments and details when the Petitioner asked through the RTI Act which creates substantial doubt on their part while selecting the 2nd Respondent.

3. The 2nd Respondent Kathiresan had not worked during the time period (01.02.2007 to 01.02.2012) as stated in his experience certificate. If he worked on that period, it should reflect in his financial statement (Income tax return) for the year 2010-2011 which was submitted by him. The BPCL officials concealed these document which was requested by the Petitioner under the RTI Act.

4. The Petitioner submits that if the 2nd Respondent produced his income tax statement for the year 2010-2011 which was submitted by him it will be proved his bogus certificate of experience. Based on the bogus certificate BPCL has given 4 marks for selection of his candidature.

5. As per BPCL selection Brochure (Tapping of sales potential) they given 5 marks to Kathiresan for tied up volume with transporters. Kathiresan has attached Appendix A3 Affidavit on behalf of 5 transport and mill owners with following untrue statements.

A) Bharath Transport Proprietor K.K.Velmurugan has given following untrue statements Repeated Vehicle no's on his statement i.e. Sl.no.10 and 11 vehicle no's repeats on Sl.no.13 and 14.

TN 40 Y 3996 Owner name is Easwaran TN 37 AQ 1641 Owner name is N.Shanthi-Coimbatore TN 37 BF 5464 Owner name is S.Supriya-Coimbatore TN 37 AP 7396 Owner name is J.Grace Mathew TN 37 AP 3853 Owner name is J.Grace Mathew TN 37 AP 3655 Owner name is J.Grace Mathew B) Sri Valarmathi Textiles Proprietor M.Kuppusamy has given below untrue statement as below (He has given statement for 7 Lorry's) TN 40 W 5585 actual owner name is Rajaram TN 40 W 2345 actual owner name is Velumani and the type of vehicle is CAR TN 40 X 4079 actual owner name is Poongodi and the type of vehicle is TWO WHEELER TN 40 Z 2927 actual owner name is Avinashiappan and the type of vehicle is TWO WHEELER C) SudharsanExports Proprietor S.Kandasamy has given below untrue statement as below (He has given statement for 9 Van and Car) TNBZ2467 This kind of registration no. no where in Tamilnadu TN40B0124 actual owner name is Sathick and the type of vehicle is TWO WHEELER D) PonSankarTransports Proprietor N.Durairaj has given below untrue statement as below (He has given statement for 10 Lorry's) TN57 B 4999 Actual owner name is R.Lakshmi and the type of vehicle is LMV CAR TN57 B 2232 actual owner name is V.Gopalakrishnan TN 40 X 1666 actual owner name is Murugesan and the type of vehicle is TWO WHEELER E) Thirumurugan Spinners has given below untrue statement as below (They have given statement for 6 Lorry's) TN37 BF 7782 actual owner name is K.Karuppusamy and the type of vehicle is TWO WHEELER

6.The above 5 transport & mill owners given Appendix A3 Affidavit for Kathiresan's business tied up volume. On a perusal of the same, it is found that the above five statements are found with untrue, MISREPRESENTED and incorrect particulars.

7.As per Kathiresan's Appendix A Affidavit point no.6. Read a follows:

"if any information / declaration given by me in my application (or) in any document submitted by me in support of application for the award of retail outlet dealership at Avinashi, Karuvalur Road or in this affidavit shall be found to be untrue (or) incorrect or false Bharat Petroleum Corporation Ltd. Would be within rights to withdraw the letter of intent/terminate the dealership (if already appointed) and that I would have no claim whatsoever against BPCL for such withdrawal/termination."

8.Apart from that the 2nd Respondent has also produced the experience certificate which is not a true one."

55.It is to be borne in mind that when there is a requirement to disclose the exact/correct fact and when it was not done so and further, if any wrong statement in the application form and if an individual acts contra to the undertaking furnished by him and a subsequent period if any factual mistake of declaration so made is found out, it will result in disastrous consequences. Although there is any suppression of material information by an applicant, it will entail cancellation, as opined by this Court. At this stage, this Court points out that a specific plea of the Petitioner is that the Second Respondent by mentioning untrue, incorrect and false particulars has obtained the Retail Outlet Dealership and when he is not eligible for the said dealership, the aspect of untrue, incorrect and false particulars, etc, are to be investigated by the Senior Officials of the First Respondent/Corporation.

56.Whether the Second Respondent has not worked during the period from 01.02.2007 to 01.02.2012 as stated in his Experience Certificate also is an aspect which requires to be looked into/enquired into by the First Respondent/Corporation, as contended by the Petitioner. Even as per the Second Respondent, Appendix-A, Affidavit Point No.6 speaks about if any information /declaration given by him in his application or in any document submitted by him in support of application for the award of Retail outlet dealership at Avinashi, Karuvalur Road or in this affidavit shall be found to be untrue or incorrect or false, Bharat Petroleum Corporation Limited would be with its rights to withdraw the letter intent/terminate the dealership, etc.

57.At the risk of repetition, the Petitioner sworn to an additional affidavit dated 06.12.2013 making detailed averments therein which is already mentioned in detail as stated supra.

58.The grievance of the Petitioner is that he made a complaint on 18.09.2012 which was duly replied by the First Respondent on 29.09.2012 and later, after the receipt of certain documents, he made a supplementary complaint on 27.09.2012. But the First Respondent passed the impugned order dated 14.11.2012, it referred only to the complaint dated 27.09.2012 and not made any reference about his original complaint/first complaint dated 18.09.2012. Succinctly, the Petitioner in his complaint dated 18.09.2012 and 27.09.2012 has stated that the Certificate produced by the Second Respondent is absolutely a fabricated and bogus Certificate for the purpose of securing full marks under the head "Tied Up Volume".

59.This Court, on going through the impugned proceedings of the First Respondent dated 14.11.2012, is of the considered opinion that it has not referred to the original complaint of the

Petitioner dated 18.09.2012. Per contra, it only referred to his complaint letter dated 27.09.2012. In short, this Court is of the view that the complaint of the Petitioner dated 18.09.2012 is a very detailed and elaborate one by stating that the Second Respondent is ineligible by virtue of violation of declaration made by him as contained in Brochure and etc. Further, the said complaint also touches upon the aspect of the Second Respondent Affidavit details, which, according to the Petitioner, are untrue, incorrect and false one.

60.It is to be pointed out that the Golden Maxim of 'Fraus Et Jus Nunquam Cohabitant' [Fraud And Justice never dwell together] has a vital significance and it continues to operate in letter and spirit, as opined by this Court. Further, when any fraud or mischief, or misrepresentation or mala fide practice is indulged in by any person and gained unfair advantage by getting selected to obtain the Petroleum Retail Outlet Dealership, then this Court is of the considered view that no legal right vests in a candidate in that regard and further, he is not to reap benefits thereby jeopardising the interests of meritorious / worthy candidates, as opined by this Court.

61.Ordinarily, when an authority passes an administrative or quasi judicial order, then he is to discuss every part of the averments made in the complaint / subject matter in issue. Further, while passing orders, the said authority is to apply his mind by assigning cogent, convincing and coherent reasons. To put it shortly, the concerned authority, while passing the orders in question in a given case, must cover all points/aspects involved in the complaint /subject matter in issue based on the available materials on record. To put it differently, the Authority's order must contain decision on which points arising for consideration and addressing the relevant issues/points involved in the matter in question. To put it succinctly, it would suffice, if the authority renders his/its independent judgment based on the materials available on record.

62.Be that as it may, on a careful consideration of respective contentions and in the light of detailed qualitative and quantitative discussions as mentioned supra, this Court in Writ Jurisdiction (which is summary in nature) without going into the merits and demerits subject matter in issue and also not expressing any opinion on the merits and demerits of the matter, dispose of the writ petition. [Even though, the Petitioner has lodged his first complaint dated 18.09.2012 after the final results were declared on 31.07.2012] by setting aside the impugned order dated 14.11.2012 passed by the First Respondent, since it does not meet/deal with the contents of the complaint of the petitioner dated 18.09.2012, [especially, the aspect of the purported fabrication of records, misrepresentation or malpractices committed by the Second Respondent or the wrong information provided by him] and as such, the said order is bereft of necessary qualitative and quantitative discussions/details in the considered opinion of this Court. Further, this Court to prevent an aberration of justice and to promote substantial cause of justice, directs the First Respondent to consider the complaint of the Petitioner dated 18.09.2012 afresh in a Fair, Just and in a dispassionate manner and to pass a reasoned and speaking order (Of course after providing adequate/enough opportunities to the respective parties) uninfluenced by any of the observations made by this Court in this writ petition. The said exercise shall be carried out by the First Respondent within a period of four weeks from the date of receipt of a copy of this order. Liberty is granted to the respective parties to raise all the factual and legal pleas before the Competent Authority in the manner known to law and in accordance with law.

63.With the aforesaid directions, this Writ Petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

20.01.2014

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Index : Yes/No

Internet : Yes/No

Note: Issue Order Copy on 21.01.2014

To

The State Coordinator (Tamilnadu and Pondicherry)
& CPIO Retail
Bharat Petroleum Corporation Limited,
1, Ranganathan Gardens,
11th Main Road,
Annanagar West, Chennai-600 040.

M.VENUGOPAL, J

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M.P.Nos 1 & 2 of 2012 & 1 of 2013

20..01.2014