

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 21.10.2013

Date of Decision: 30.10.2013

+ W.P.(C) 4963/2007 & CMs 9271/2007 & 683/2010
SHIV PATTI

..... Petitioner

Through: Mr. Sanat Kumar and Mr. Gaurav
Khanna, Advs.

versus

UOI & ANR

..... Respondent

Through: Mr. A.D.N. Rao, Mr. A.
Venkatesh and Ms. Vaishali
Ramesh, Advs. for R-2

+ W.P.(C) 8785/2007 & CM Nos. 2835/2009 & 6507/2009
R.C.GUPTA & ANR

..... Petitioner

Through: Mr. Sanat Kumar and Mr. Gaurav
Khanna, Advs.

versus

UOI & ANR

..... Respondent

Through: Mr. A.D.N. Rao, Mr. A.
Venkatesh and Ms. Vaishali
Ramesh, Advs. for R-2

+ W.P.(C) 9148/2007
AVINASH CHAND GUPTA

..... Petitioner

Through: Mr. Sanat Kumar and Mr. Gaurav
Khanna, Advs.

versus

UOI & ANR

..... Respondent

Through: Mr. A.D.N. Rao, Mr. A.
Venkatesh and Ms. Vaishali
Ramesh, Advs. for R-2

+ W.P.(C) 8786/2007 & CM Nos.2833/2009,6506/2009
PARVEZ AHMED

..... Petitioner

Through: Mr. Sanat Kumar and Mr. Gaurav
Khanna, Advs.

versus

UOI & ANR

..... Respondent

Through: Mr. A.D.N. Rao, Mr. A.
Venkatesh and Ms. Vaishali
Ramesh, Advs. for R-2

+ W.P.(C) 8920/2007 & CM Nos.2831/2009 & 6552/2009
CHANDER BHUSHAN DUBEY & ANR.

..... Petitioner

Through: Mr. Sanat Kumar and Mr. Gaurav
Khanna, Advs.

versus

UOI & ANR.

..... Respondent

Through: Mr. A.D.N. Rao, Mr. A.
Venkatesh and Ms. Vaishali
Ramesh, Advs. for R-2
Mr. Jatan Singh, CGSC for UOI

Judgment reserved on: 22.10.2013

+ W.P.(C) 9213/2007
HARINAM SINGH & ANR

..... Petitioner

Through: Mr. A Maitri and Ms. Radhika
Chander Shekhar, Advs.

versus

UOI & ANR

..... Respondent

Through: Mr. A.D.N. Rao, Mr. A.
Venkatesh and Ms. Vaishali
Ramesh, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

CM 6507/2009 in W.P(C) No.8785/2007

CM 6506/2009 in W.P(C) No.8786/2007

CM 6552/2009 in W.P(C) No.8920/2007

1. During pendency of these petitions, the aforesaid applications were filed by the aforesaid petitioners seeking amendment of the writ petitions. Vide order dated 18.5.2009, the aforesaid petitioners were allowed to file the amended writ petitions. Vide order dated 1.7.2009, BPCL was permitted to file counter affidavits to the amended writ petitions subject to its right to oppose the amendment applications and the petitioners were permitted to file rejoinder to the said counter affidavits. Consequently, the amended writ petitions as well as the pleadings are on record. Considering the aforesaid developments, the applications are allowed and the amended pleadings are taken on record.

The applications stand disposed of.

W.P(C) No.4963/2007

2. The petitioner in this case is the owner of land measuring 1050 square meters in Village Khanpur alias Birbhanpur, Pargana & Tehsil Salon, District Chatrapati Sahuji Maharaj Nagar, U.P. An advertisement was issued by the respondent – Bharat Petroleum Corporation Ltd. (hereinafter referred to as ‘BPCL’) in the newspapers, seeking proposal from the land owners, for sale or lease of the land for a period of thirty (30) years, for establishment of retail outlets. Vide Lease Deed dated 23.9.2003, the above referred land in Village Khanpur alias Birbhanpur, Pargana & Tehsil Salon, District Chatrapati Sahuji Maharaj Nagar, U.P was leased by the petitioner to respondent no.2 – BPCL for a period of thirty (30) years, with effect from 1.9.2003, for running a retail outlet/ petrol pump on the said land. Vide communication dated 28.10.2003, BPCL appointed M/s Shanti Filling Station as an ad hoc dealer for running the retail outlet on the land which the petitioner had leased out to BPCL. The aforesaid ad hoc dealership, unless terminated earlier, was to come to an end on 27.10.2004. In case the dealer was interested to carry out business even after expiry of the said date, he was to make a formal application and obtain approval of BPCL before 28.10.2004, failing which the dealer was to be treated as trespasser.

Though the case of the petitioner, as set out in the writ petition is that M/s Shanti Filling Station was his nominee, the said averment has been denied by BPCL, and there is no communication from the petitioner to BPCL nominating M/s Shanti Filling Station for grant of above referred ad hoc dealership. The Lease Deed executed between the parties also carried no stipulation requiring BPCL to grant ad hoc dealership on the land leased out by the petitioner only to the nominee of the petitioner. Though the case of the petitioner is that he had leased

out the aforesaid land to BPCL on the assurance that the dealership would be given to her or her nominee, there is no document evidencing such an understanding. The ad hoc dealership granted to M/s Shanti Filling Station was, however, terminated vide letter dated 11.6.2007 on the ground that in order to conform to the directives issued by the Government of India, BPCL had decided to award temporary COCO/ ad hoc dealership for running retail outlets to the existing LoI holders belonging to SC/ST, Corpus Fund Category. The ad hoc dealership agreement was terminated by giving one month notice to the dealer in terms of clause 21 of the agreement executed between the dealer and BPCL on 28.10.2003, whereby BPCL had reserved the right to terminate the said dealership, without assigning any reason whatsoever. The petitioner therefore is seeking the following reliefs in this writ petition:

- i) Quashing the notification/ Circular No.P-19011/9/2001 – IOC dated 6th September, 2006 as the same is *ultra vires*, illegal, arbitrary and contrary to the principles of equity, fair play and natural justice.
- ii) Quashing the notification no. No.P-19011/9/2001 – IOC dated 6th September, 2006 qua the petitioner's retail outlet/ petrol pump at Salon, Distt. Chatrapati Sahuji Maharaj Nagar, Rai Bareilly, U.P.
- iii) To restrain the respondent no.2/oil company from terminating/ cancelling the petitioner's retail outlet/petrol pump at Salon, Distt. Chatrapati Sahuji Maharaj Nagar, Rai Bareilly, U.P. on the basis of Notification No.P-19011/9/2001 – IOC dated 6.9.2006.

- iv) If for any reason this Hon'ble Court is of the opinion that granting of above reliefs will not meet the ends of justice, the respondent no.2/oil company be directed that since the object of taking the land on lease for allotment of retail outlet for the petitioner or his nominees has been frustrated the lease in respect of land admeasuring 1050 square meters comprised in Plot/Khasra No.209, Khata/ Khatauni No.317 situated at Village Khanpur alias Birbhanpur, Pargana & Tehsil Salon, District Chatrapati Sahuji Maharaj Nagar, U.P. be surrendered to the petitioner and petitioner be put in actual and physical possession of land within the time frame to be fixed by this Hon'ble Court.

W.P(C) No.8785/2007

3. The petitioner no.1 in this matter is the owner of the land measuring 1114.65 square meters in Pargana & Tehsil Sadar, District Pratapgarh, U.P. He also executed a similar lease deed dated 9.7.2003 in favour of BPCL, which appointed M/s Partapgrah Auto Stores as ad hoc dealer to run the retail outlet on the aforesaid land for a period of one year commencing 28.6.2003. After expiry of the aforesaid dealership agreement, the respondent no.2 short-listed four other persons for award of ad hoc dealership. One such dealer was M/s Speed Motors in which son of the petitioner no.1 is a partner. In the course of evaluation, M/s Speed Motors obtained highest marks and, therefore, the ad hoc dealership on the aforesaid land was awarded to the said firm. The case of the petitioner is that BPCL is threatening to cancel the aforesaid dealership agreement with Speed Motors, pursuant to the communication dated 6.9.2006 sent by the Government of India to Oil

Marketing Companies. This is also the case of the petitioner no.1 that the petitioner no.2 who is his daughter and nominee was interviewed by BPCL for grant of a retail outlet, but instead of awarding the dealership to her and by way of an interim arrangement, ad hoc dealership was granted to M/s Speed Motors. The petitioner, therefore, is seeking the following reliefs:

- “i. to call for records of the case from the Respondent Oil Company including all their files containing the landowner policy guidelines framed from time to time; and
- ii. Quashing the Notification/Circular No.P-19011/9/2001-IOC dated 6.9.2006 as the same is ultra vires, illegal, arbitrary and contrary to the principles of equity, fair play and natural justice.
- iii. Quashing the Notification No.P-19011/9/2001-IOC dated 6.9.2006 qua the petitioner’s retail outlet/petrol pump at Sukhpal Nagar, Distt. Pratap Garh, U.P.
- iv. To restrain the respondent No.2/Oil Company from terminating/canceling, suspending the sales and supplies of the retail outlet being run by the Petitioner at Sukhpal Nagar, Distt. Partap Garh, U.P. on the basis of Notification No.P-19011/9/2001-IOC dated 6.9.2006.
- v. To direct the Respondent Oil Company to grant dealership of the petrol pump being run by the Petitioners at Sukhpal Nagar, Distt. Pratap Garh, U.P. to Petitioner No.1 or his nominee; and
- vi. If for any reason this Hon’ble Court is of the opinion that granting of above reliefs will not meet the ends of justice, the Respondent No.2/Oil Company be directed that since the object of taking the land on lease for allotment of Retail outlet for the Petitioner or his nominees has

been frustrated and leased out land admeasuring 1114.65 sq.mtrs. falling in khata/khatauni No.164, Khasra of each Gata No.625 and 626/1 situated in Pargana & Tehsil Sadar, Distt. Pratapgarh, U.P. be surrendered to the Petitioner and petitioner be put in actual and physical possession of land within the time frame to be fixed by this Hon'ble Court.”

W.P(C) No.9148/2007

4. The petitioner in this case is the owner of land at Nabi Ganj, Mainpuri, U.P which he leased out to respondent – BPCL vide lease deed dated 27.2.2003. The case of the petitioner is that the aforesaid lease was conditional and subject to allotment of dealership to the petitioner. His case is that on 31.3.2003, he was allowed to run the petrol pump on the aforesaid land and since then the petrol pump is being run by him at the aforesaid site. According to him the officials of BPCL have conveyed to him that they are going to allot the aforesaid dealership to some other person. Being aggrieved, petitioner is before this Court seeking the following reliefs:

- i) restrain the respondent no.2/ oil company from terminating/ cancelling, suspending the sales and supplies of the retail outlet/ petrol pump being run by petitioner at Nabi Ganj, District Mainpuri, Uttar Pradesh on the basis of notification no.P-19011/9/2001 – IOC dated 6.9.2006 till the decision of the writ petition.

W.P(C) No.8920/2007

5. The petitioner no.1 in this petition is the co-owner of the land measuring 2000 square meters situated in Village Siyarabasi, Pargana & Tehsil Patti, District Pratapgarh, U.P. Vide lease deed dated 14.10.2003,

the petitioner no.1 leased out the aforesaid land to the respondent – BPCL for a period of thirty (30) years. Vide communication dated 31.3.2004, M/s Baghrai Automobiles was appointed as ad hoc dealer to run a retail outlet on the aforesaid land purely on temporary basis. The lease was to expire on 30.3.2005, unless terminated earlier. It was, however, stipulated that if the dealer was interested to carry on business even after expiry of the said date, it will have to make a formal application and obtain its approval before 31.3.2005 failing which it shall be deemed to be a trespasser and BPCL reserved its right to terminate the lease without assigning any reasons. According to BPCL it had short-listed four dealers including M/s Baghrai Automobiles and since the highest marks were obtained by M/s Baghrai Automobiles, ad hoc dealership was awarded to it for a period of one year commencing 31.3.2004 whereafter it has continued on temporary basis. The petitioner has, therefore, sought following reliefs:

- “i. to call for records of the case from the Respondent Oil Company including all their files containing the landowner policy guidelines framed from time to time; and
- ii. Quashing the Notification/Circular No.P-19011/9/2001-IOC dated 6.9.2006 qua the retail outlet/petrol pump run by the Petitioner at Sheera Basi, Distt. Pratapgarh, U.P.
- iii. To restrain the respondent No.2/Oil Company from terminating/canceling, suspending the sales and supplies of the retail outlet/petrol pump being run by the petitioner at Sheera Bassi, Distt. Partapgarh, U.P. on the basis of Notification No.P-19011/9/2001-IOC dated 6.9.2006.

v. To direct the Respondent Oil Company to grant dealership of the petrol pump being run by the Petitioners at Sheera Bassi, Distt. Pratap Garh, U.P. to Petitioner No.1 or his nominee; and

vi. If for any reason this Hon'ble Court is of the opinion that granting of above reliefs will not meet the ends of justice, the Respondent No.2/Oil Company be directed that since the object of taking the land on lease for allotment of Retail outlet for the Petitioner or his nominees has been frustrated and the lease in respect of land admeasuring 2000 sq.mtrs. comprising of Gata Nos.34 & 35 khata/khatauni No.17, situated at Village Siyarabasi, Pargana & Tehsil Patti, District Pratapgarh, U.P. be surrendered to the Petitioner and petitioner be put in actual and physical possession of land within the time frame to be fixed by this Hon'ble Court.”

W.P(C) No.8786/2007

6. The petitioner in this case is the co-owner of the land measuring 1187.10 square meters in Pargana & Tehsil Chail, District Kaushambi, Uttar Pradesh. Vide lease deed dated 20.2.2003, he leased the aforesaid land to BPCL for a period thirty (30) years. The retail outlet on the aforesaid land was awarded to one M/s Janta & Company after evaluating three dealers including M/s Janta & Company which obtained highest marks during the aforesaid evaluation. The petitioner before this Court is a partner of M/s Janta & Company. The petitioner is seeking the following reliefs in this writ petition:

“i. quashing the Notification No.P-19011/9/2001-IOC dated 6.9.2006 qua the Retail Outlet/Petrol being run by the Petitioner at Kasenda, Distt. Kaushambi (U.P.).

ii. To restrain the respondent No.2/Oil Company from terminating/cancelling, suspending the sales and supplies of the Retail Outlet/Petrol Pump being run by the Petitioner at Kasenda, Distt. Kaushambi (U.P.) on the basis of Notification No.P-19011/9/2001-IOC dated 6.9.2006.

iii. If for any reason this Hon'ble Court is of the opinion that granting of above reliefs will not meet the ends of justice, the Respondent No.2/Oil Company be directed that since the object of taking the land on lease for allotment of Retail Outlet for the Petitioner or his nominee has been frustrated the lease in respect of land measuring 1187.10 sq.mtrs. comprising of Gata No.69 & 130, Pargana & Tehsil Chail, District Kaushambi (U.P.) be surrendered to the Petitioner and Petitioner be put in actual and physical possession of land within the time frame to be fixed by this Hon'ble Court.”

W.P(C) No.9213/2007

7. The petitioner no.1 in the aforesaid matter was appointed as a dealer in respect of a filling station at Sadat, Ghazipur, Uttar Pradesh. The retail outlet at Sadat, however, was re-sited to a place called Chaktalvi, District Ghazipur, Uttar Pradesh in the year 1999. Thereafter, the site at Sadat also became suitable for such an outlet on account of improved connectivity and the land at Sadat was leased out by the petitioner no.1 to BPCL for a period of thirty (30) years, vide lease deed dated 3.1.2004. Pending appointment of a regular dealer at Sadat site, BPCL, after considering as many as seven (7) dealers, awarded ad hoc dealership on the aforesaid site to M/s Shiva Filling Station for a period of one year commencing on 21.2.2004, on the basis of highest marks obtained by the said dealer during the process of evaluation. The

apprehension of the petitioners is that the aforesaid outlet at Sadat will be terminated by BPCL. Accordingly, they are claiming following reliefs in this petition:

- i) quashing the notification no.P-19011/9/2001-IOC dated 6.9.2006 qua the retail outlet/ petrol pump being run by the petitioner at Sadat, Ghazipur, U.P.
- ii) to restrain the respondent no.2/ oil company from terminating/ cancelling, suspending the sales and supplies of the retail outlet/ petrol pump being run by the petitioner at Sadat, Ghazipur, U.P. on the basis of notification no.P-19011/9/2001 – IOC dated 6.9.2006.
- iii) If for any reason this Hon'ble Court is of the opinion that granting of above reliefs will not meet the ends of justice, the respondent no.2/ oil company be directed that since the object of taking the land on lease for allotment of retail outlet for the petitioner or his nominee has been frustrated the lease in respect of land ad measuring 1689.2 SQ. MTRS, falling in Gata/ Khasra no.230, Khata/ Khatauni no.141, situated at Village Mardapur, Pargana – Shadibad, Tehsil Jakhania, District Ghazipur, U.P. be surrendered to the petitioner and petitioner be put in actual and physical possession of land within the time frame to be fixed by this Hon'ble Court.

8. The first question which arises for consideration in these cases is as to whether the communication/decision dated 06.09.2006 sent by the Government of India to the Oil Marketing Companies is liable to be

quashed or not. A perusal of the aforesaid notification would show that in order to provide commercial freedom to the Public Sector Oil Marketing Companies, the Government had decided that such companies would formulate their own policies and procedures for operating retail outlets where sites had been prepared and facilities created or which had de-commissioned because of termination of dealership on COCO/ad hoc basis till regular dealers were appointed, but that could not be done on a uniform basis. Based upon the discussion in a meeting held on 19.07.2006 and 25.07.2006, it was decided to lay down certain broad parameters on the basis of which the companies could finalized their guidelines for operation of COCO retail outlets. To the extent it is relevant, the said communication, reads as under:-

“(i) While the OMCs may operate permanent COCO retail outlets (i.e. flagship ROs, Jubilee Retail Outlets, Model Outlets, etc.) by their own officers (without job contractors or ad-hoc dealers), they should phase out the existing temporary COCO retail outlets within a time frame preferably within a year. However, in special circumstances like court cases, complaints, etc., they may have to operate some ROs on temporary COCO basis till final decision on those court cases/complaints.

...

(vi) The phasing out of temporary COCO ROs preferably within a year may be completed as follows:

The temporary COCO ROs may first be offered and handed over, subject to suitability, to the pending Letter of Intent (LOI) holders under the following categories in the other these are indicated:-

- (a) Special Scheme (Operation Vijay – Kargil) the Kargil allottees.
- (b) Discretionary quota scheme.
- (c) Corpus Fund Scheme (SC/ST category of dealerships, widows and women above 40 years of age without earning parents).
- (d) Other categories as prescribed in the marketing plans.
- (e) The industry may pool their available temporary COCO ROs for offering to the categories under (a) & (b) above. In case no LOI-holder under these categories are available, then these dealerships should be advertised for selection of dealers under normal process.
- (vii) The OMCs should stop job-contractorship or ad-hoc dealership for operating the temporary COCO ROs also. The system of ad hoc dealership may be resorted to only in cases of dealerships which have been terminated and where new dealers are to be appointed. The period of ad hoc dealership should not, in any case, be more than four months as adhoc dealership violates the multiple dealership norms. If the dealer cannot be appointed within this period of four months, the RO may be taken over by the OMC concerned and operated as temporary COCO with the selection of labour contractor by advertisement.”

It would thus be seen that vide above-referred decision, the Government decided to phase out the existing temporary COCOs by handing them over to the pending Letters of Intent holders under certain specified categories. It was further decided by the Government that the Oil Marketing Companies should stop granting ad hoc dealership for operating the temporary COCO retail outlets. I fail to understand how the aforesaid policy of the Government can be said to be illegal, arbitrary or irrational in any manner. The aforesaid policy, as such in any manner, did not mandatorily affect leases already executed by the Oil Marketing Companies nor did it have the effect of withdrawing/cancelling the regular dealerships already granted by such companies. It is primarily for the Government and the Oil Marketing Companies to decide how they want to operate the Company Owned Company Operated retail outlets and so long as the decision taken by them does mandatorily affect any legal or contractual right of the petitioners, they would have no locus standi to challenge such a decision. The said decision did not mandate the OMCs to terminate a valid and subsisting contract. As regards ad hoc dealership, no right accrues to an ad hoc dealer to continue such dealership on a perpetual basis and the Oil Marketing Company was entitled in law to terminate such dealership at any point of time so long as such termination did not affect an existing contractual obligation of the concerned Oil Marketing Company. During the course of arguments, the petitioners failed to show how the aforesaid decision of the Government can be said to be arbitrary, illegal or irrational in any manner. Their contention was that the said decision cannot be applied to their case. Even if that be so, cannot be a ground to quash the decision itself. I, therefore, find no

merit in the challenge to the aforesaid decision of the Government. It goes without saying that the aforesaid decision of the Government cannot, in any manner, have the effect of terminating an existing contract, if any, between the parties, during the subsistence of the said agreement.

9. The thrust of the case of the petitioners is that the land owned by them was leased out by them to BPCL at a concessional rate, pursuant to a promise made by BPCL to grant regular dealership of the retail outlet, to be commissioned on the leased land, to them. This is also their case that BPCL had granted ad hoc dealership of the aforesaid outlet to them or their nominees, till the time regular dealerships in their favour was finalized. A similar plea came to be considered by the Hon'ble Supreme Court in Special Leave Petition No. 5849/2013 titled **Mohd Zamal v. Union of India** and other connected matters, decided on 08.07.2013. The appellants in the aforesaid cases were aspirants for dealership in respect of retail outlets of Indian Oil Corporation and the IBP. The Oil Marketing Companies had come out with the concept of Company-Owned-Company-Operated (COCO) outlets as a means to enable them to run and operate their own outlets, which were to be run as model retail outlets. The land for these outlets were to be under the control of the marketing company either by way of purchase or on long-term lease basis and the outlets were to have facilities and amenities to be developed by the dealers in line with the norms laid down by the oil companies. It appears from the aforesaid judgment that the scheme formulated by the Oil Company provided that dealership of Company-Owned-Company-Operated (COCO) outlet would be first given to the landlord of the land on which the outlet was situated subject to his being

found suitable for such dealership and in the event of his declining to accept the dealership, it was to be offered to the Maintenance and Handling Contractors (MHC). In the event of even the Maintenance and Handling Contractors, declining to accept the dealership, the same was to be offered to be best candidate available. The appellant before Supreme Court Shri Mohd. Jamal applied for a retail outlet dealership for his land in the category of land owners, pursuant to an advertisement, issued by the oil company. He also submitted a dealership form to the company and his land was found suitable for developing a retail outlet. The company even sought prior approval for his site from the Joint Chief Controller of Explosives and a recommendation was then made for grant of dealership of the said outlet to him. When the matter for grant of dealership to the appellant Mohd. Jamal was at final stage, the policy, pursuant to which he had applied for dealership, was suspended. The appellant also claimed that it was mutually agreed that till the issuance of Letter of Intent as an interim measure, his nominee would be appointed as a Maintenance and Handling Contractor to run the petrol pump and based on such assurance he offered his land on lease to the oil company and a contract for Maintenance and Handling was also executed between the oil company and his nominee, who was his brother. The monthly rent of the land was initially fixed at Rs 27,000/- per month, which, according to the Mohd. Jamal, was reduced to Rs 21,000/- on account of the above-referred understanding between the parties. According to the appellant before the Supreme Court, a circular dated 30.03.2005 was then issued by the company, whereby the land owners of Jubilee Retail and COCO outlets were disqualified from being appointed as dealers. This was

followed by a new policy dated 06.09.2006, whereby concept of offering dealership to land owners was abandoned to their prejudice at the time when Letters of Intent for dealership were pending, despite the fact that their land had been taken on long-term lease. By virtue of the new policy, oil company proposed to run outlets on their own and/or through Labour Contractors.

The appellant first filed a writ petition before this Court seeking quashing of the aforesaid notification dated 06.09.2006 and also to restrain the respondents from terminating/canceling the arrangement with respect to running of the retail outlet on his land through his nominee. The alternative relief sought by him was the return of his land, if dealership was not granted to him. A learned Single Judge of this Court referred a bunch of these writ petitions involving similar issue to a Division Bench which, while retaining 11 writ petitions, which in view of the Division Bench, required further consideration since they projected an implied promise and/or understanding between the land owners and the oil companies having regard to the low lease rentals, dismissed the remaining writ petitions. The decision of the Division Bench is reported as IBP Company Limited versus Nand Kishore Bajpai and others [147 (2006) DLT 764(DB). Being aggrieved from the aforesaid order of the Division Bench, dismissing his writ petition, Shri Mohd.Jamal, approached the Apex Court by way of Special Leave Petition No. 5849/2008. The following were the primary contentions raised by the appellant before the Supreme Court:

(a) having acted on the basis of a policy by which the Respondent Oil Companies had offered full dealership to land owners and having

caused such land owners to alter their position to their disadvantage, the Oil Companies were now estopped from going back on their promise;

(b) the decision to discontinue the grant of dealership and to introduce the new concept of COCO outlets, to be run by the Maintenance and Handling contractors, could not be used to the disadvantage of those land owners in whose favour a decision had already been taken to issue Letters of Intent for grant of dealership;

(c) these cases were clearly covered by the doctrine of promissory estoppel, inasmuch as, in these cases the land owners had altered their positions to their detriment in several ways;

(d) in most cases the rates of rents at which the lands were offered to the Oil Companies were extremely low and did not reflect the market rental of such lands, which is one of the indications that a promise had been made to the land owners that they would be granted dealerships in respect of the said lands, which was in tune with the policy, which had been declared by the Oil Companies earlier;

(e) the landlords had invested large sums of money, as in the case of Mohd. Jamal, in preparing the land offered for operating the retail outlets of petroleum and petroleum products, ostensibly on the promise that they would be granted dealership for running the said outlets.

(f) In certain other cases, the land owners had been persuaded to enter into long term lease agreements, again at nominal rents, on the assurance that their nominees would be appointed as Maintenance and Handling Contractors of the different COCO units, pending the decision to grant full dealership in respect of such retail outlets, in keeping with

the earlier policy of reducing the number of COCO units and retaining a few to be run by the Oil Companies as model outlets.

The counsel for some of the appellants before the Hon'ble Supreme Court, inter alia, contended (a) the lease deeds executed by the land owners and the Maintenance and Handling Contracts were kept separate, since it was the intention of the Oil Companies that in terms of the policy of the Indian Oil Corporation dated 23.7.2003, despite the two contracts being separate, as and when the Policy permitted, dealership would be awarded to the land owners or their nominees. It was, however, pointed out that in all the cases it had been decided to grant Maintenance and Handling Contracts to nominees of the land owners to enable them to run the retail outlets till a final decision was taken in the matter; (b) the very fact that in the Policy of the Indian Oil Corporation dated 23.7.2003, the Company had specifically permitted the land owners to nominate anyone from the family or from outside the family for being appointed as the Maintenance and Handling Contractor, was sufficient indication that it was the intention of the Respondents to grant permanent dealership to the land owners once a clarification had been received in the matter.

Some of the appellants also urged before the Apex Court that the lease deed executed between the parties did not represent the totality of the matter, but were only the part of the transaction.

The learned Attorney General, who appears for the respondent, however, submitted that once an agreement is entered into, the parties are bound to the terms of the said agreement which extinguishes any

claim of promissory estoppel, which may have arisen prior to the signing of the Agreement.

Rejecting the appeals, the Apex Court, inter alia, observed and held as under:-

“56. Upon deregularisation of the distribution of petroleum products, the Oil Companies issued guidelines dealing with the procedure for locations outside the marketing plans. It was also stipulated that for the purpose of selection, the dealerships would be categorised as indicated in the guidelines and all retail outlets would be developed only on A/C sites basis, which finds place in Clause (2) of the guidelines.

57. The said guidelines referred to grant of dealership which is completely different from the grant of long-term leases by the land owners to the Oil Companies upon the condition that the same could be used by the lessees in any way they liked, which included the right to sublet the demised plot. The concept of Company Owned and Company Operated outlets was sought to be introduced on 6.9.2003, in supersession of Policy No.MDPM- 319/02 dated 8.10.2002 and the two cannot be co-related unless a link can be established by the Appellants that they had entered into the lease agreements with the Oil Companies upon the understanding that once the earlier policy was restored, the land owners would be given the option of having the COCO units converted into regular retail outlets.

58. In order to appreciate the difference between the two concepts, it has to be understood that the concept of a dealership in respect of a retail outlet is completely alien to the concept of a COCO unit. While the former deals with the right

of the dealer to independently operate the retail outlet, in the case of a COCO unit, the entire set up of the retail outlet is owned by the Oil Companies and only the day-to-day operation thereof is outsourced to a M&H Contractor. With the discontinuance of the earlier policy of granting dealerships in respect of retail outlets and the introduction of a new policy awarding M&H Contracts in respect of the COCO outlets, in our view, the land owners who had entered into fresh lease agreements after the policy to grant dealerships had been suspended, cannot now claim any right on the basis of the earlier policy in the absence of any Letter of Intent having been issued thereunder. Had any Letter of Intent, which tantamounts to grant of dealership, been issued and then in respect of the same lands COCO units were established, the situation would have been different. Placed in such a position, the land owners cannot claim any relief in these proceedings and, if any loss or damages have been suffered by them on account of the assurance earlier given regarding grant of dealership, particularly in making the sites ready therefor, the remedy of such applicants would lie elsewhere.

59. We are inclined to hold that the doctrine of promissory estoppel and legitimate expectation, as canvassed on behalf of the Appellants and the Petitioners, cannot be made applicable to these cases where the leases have been granted by the land owners on definite terms and conditions, without any indication that the same were being entered into on a mutual understanding between the parties that these would be temporary arrangements, till the earlier policy was restored and the claim of the land owners for grant of dealership could be considered afresh. On the other hand, although, the nominees of the lessors were almost in all cases appointed as the

M&H Contractors, that in itself cannot, in our view, convert any claim of the land owner for grant of a permanent dealership. As has been indicated hereinbefore, even the M&H Contractor had to submit an affidavit to the effect that he did not have and would not have any claim to the dealership of the retail outlet and that he would not also obstruct the making over possession of the retail outlet to the Oil Company, as and when called upon to do so.”

I propose to deal with each writ petition in the light of the view taken by the Apex Court in the above referred case and the facts and circumstances in each petition.

W.P(C) No.4963/2007

10. The lease in this case was executed on 23.09.2003. The lease rent fixed at that time was Rs 1450/- per month, which was enhanced by 15% after every five years. There is absolutely no indication in the lease deed that while taking the land of the petitioner on lease, the respondent had assured the lessor that the retail outlet to be commissioned on the lease land would be allotted only to him or to his nominee. Initially, one Shanti Filling Station was appointed as ad hoc dealer to run the aforesaid outlet for a period of one year, which could be extended subject to approval of the respondent. Though the petitioner claims that Shanti Filling Station was his nominee, the said claim has been denied by the respondent and there is absolutely no material on record which it may be inferred that the ad hoc dealership to Shanti Filling Station was awarded as a nominee of the petitioner. There is no document on record to indicate that before taking the land of the petitioner on lease, BPCL had given an assurance to award

dealership only to her or her nominee. Since the dealership awarded to Shanti Filling Station was only an ad hoc dealership which, in terms of the clause 21 of the Allotment Letter, could be terminated at any time, without assigning any reason, the respondent BPCL was competent in law to terminate the said ad hoc dealership. In fact, it was clearly stated in the Allotment Letter that BPCL was in the process of finalizing regular dealership for the location in question and it was pending such finalization that Shanti Filling Station was being appointed purely on temporary basis and such licence shall not create any right, title or interest in its favour in the aforesaid retail outlet nor shall it have any right to have the dealership of the said retail outlet in due course. Had the dealership granted to Shanti Filling Station been a regular dealership, the aforesaid dealer could have been justified in contending that his dealership cannot be terminated on account of the policy decision contained in the communication dated 06.09.2006 sent by the Government of India to the Oil Marketing Companies, but, an ad hoc dealership could be terminated at any point of time and on any ground, including the policy decision contained in the communication dated 06.09.2006. In any case, M/s Shanti Filling Station has not come to this Court expressing any grievance against the respondent, and the petitioner, who is neither the proprietor nor a partner in Shanti Filling Station, has no locus standi to file a writ petition against cancellation of ad hoc dealership awarded to the said firm. I, therefore, find no merit in the aforesaid writ petition.

W.P.(C) No. 8785/2007

11. The lease in this case was executed on 09.07.2003 and the lease rent was fixed at Rs 5000/- per month which was to be revised by 10%

after every five years. The lease deed contains no assurance that the dealership of the outlet, which was to be commissioned on the leased land, would be only given to the lessor or his nominee. There is no material before the Court to find out what was the prevailing rental value at the time the aforesaid lease deed was executed.

In fact, a Writ Court cannot go into a question of this nature unless the respondent admits that the lease rental prevailing in the market at the time the aforesaid lease rent was higher than the lease rent fixed by way of the said lease deed.

The M/s Partapgarh Auto Stores was appointed as ad hoc dealer to run the retail outlet on the aforesaid land for a period of one year commencing on 28.03.2003. There is no material on record to show that M/s Partapgarh Auto Stores was a nominee of the petitioner before this Court. In fact, even the petitioners do not claim that M/s Partapgarh Auto Stores was his nominee for the purpose of award of ad hoc dealership. After expiry of the ad hoc dealership between M/s Partapgarh Auto Stores and the respondent BPCL, the ad hoc dealership in respect of the aforesaid outlet was awarded to Speed Motors in which son of the petitioner No. 1 was a partner. Though the case of the petitioners is that allotment of ad hoc dealership to Speed Motor was on account of Speed Motors being his nominee, there is no material on record to substantiate this claim of the petitioners. The case of the respondents, on the other hand, is that in the course of evaluation, for grant of ad hoc dealership, Speed Motors had obtained highest marks, which resulted in awarding of the ad hoc dealership to it. A perusal of the Allotment Letter dated 31.07.2004, issued to Speed Motors, would show that it was appointed as ad hoc dealer till finalization of regular

dealership on the aforesaid outlet. This Allotment Letter also contained terms and conditions similar to the terms and conditions contained in W.P.(C) No. 4963/2007 and, therefore, the aforesaid ad hoc dealership could be terminated at any time, in exercise of the powers preserved by BPCL under clause 21 of the Allotment Letter. In any case, Speed Motors has not come to this Court expressing apprehension of cancellation of its ad hoc dealership and the petitioners, neither of whom is even a partner in the said firm has any locus standi to seek an order against cancellation of ad hoc dealership awarded to Speed Motors. I, therefore, find no merit in the aforesaid writ petition.

W.P.(C) No. 8920/2007

12. The lease deed in this case was executed on 14.10.2003 and the lease rent was fixed at Rs 6000/- PM, which was subject to enhancement by 15% after every five years. This lease deed also contains no obligation on the part of the lessee to award dealership of the outlet, to be commissioned on the lease land, only to the lessor or his nominee. Ad hoc dealership of the outlet on the aforesaid land was initially awarded to M/s Baghrai Automobiles and in terms of clause 21 of the Allotment Letter, it was competent for BPCL to terminate the grant at any time, without assigning any reason. Therefore, the respondent was entitled in law to terminate the aforesaid dealership on account of the policy decision taken by the Government and conveyed to the Oil Marketing companies vide letter dated 06.09.2006. Petitioner's contention is that it is he, who is running the aforesaid outlet in the name of M/s Baghrai Automobiles, though the writ petition does not disclose as to who is the proprietor of M/s Baghrai Automobiles and what connection the petitioner has with the aforesaid firm. Moreover, as

stated in the counter-affidavit of BPCL, it had listed as many as four outlets, including M/s Baghrai Automobiles for award of the aforesaid dealership and since highest marks were obtained by M/s Baghrai Automobiles, the ad hoc dealership was awarded to it for a period of one year commencing 31.03.2004. Be that as it may, since neither the lease deed carried any obligation on the part of the lessee to award dealership of the aforesaid outlet only to the lessor or his nominee there is no material to show that the lease rent agreed with BPCL was substantially lower than the prevailing rent in the market and there is no document on record, which would indicate any promise on the part of BPCL, to award dealership of the aforesaid outlet only to the petitioner or his nominee and the dealership awarded to M/s Baghrai Automobiles was only on ad hoc basis, which could be terminated at any time, the petitioner can have no grievance even if the aforesaid ad hoc dealership is terminated on account of the policy decision taken by the Government.

W.P.(C) No. 8786/2007

13. The lease in this case was executed on 20.02.2003 and the lease rent was fixed at Rs 2000/- PM, which was subject to enhancement by 25% after every five years. This lease deed also contains no obligation on the part of the lessee to award dealership of the outlet, to be commissioned on the lease land, only to the lessor or his nominee. It has come in the counter-affidavit of respondent-BPCL that the only reason for awarding the aforesaid outlet to M/s Janta & Company in which the petitioner claims to be a partner, was the highest marks obtained by the said firm during the process of evaluation. Since there is no document, evidencing any promise or assurance by BPCL to the

petitioner to award dealership of the lease land only to him or his nominee or that the lease rent was substantially lower than the lease rentals prevailing in the market at the relevant time, ad hoc dealership awarded to M/s Janta & Company could in terms of the Allotment Letter could be terminated at any point of time, without assigning any reason, the respondent BPCL is entitled in law to terminate the aforesaid ad hoc dealership in view of the policy decision taken in the letter dated 06.09.2006.

W.P.(C) No. 9213/2007

14. The petitioner in this case was initially appointed as MS/HSD Dealer in respect of filling station at Sadat with effect from 07.03.1994 for a period of 15 years. Admittedly, the aforesaid outlet at Sadat was re-sited to Chaktalvi in District Ghazipur of U.P. The site at Sadat remained closed from 1999 to 2004. Since the aforesaid site at Sadat thereafter became suitable for retail outlet on account of improvement in connectivity, the aforesaid land was leased out to BPCL vide lease deed dated 03.01.2004. Vide Allotment Letter vide 21.02.2004, an ad hoc dealership to run a retail outlet at Sadat was awarded to M/s Shiva Filling Station. The aforesaid appointment as in other cases carried a stipulation permitting BPCL to terminate the grant at any point of time, without assigning any reason. A perusal of the counter-affidavit would show that pending appointment of regular dealer at Sadat site, the company considered as many as seven dealers for award of ad hoc dealership and decided to award the same to Shiva Filling Station for a period of one year. The lease deed executed on 03.01.2004, stipulated rent of Rs 6000/- per month which was subject to enhancement by 15% after five years. This lease deed contains no obligation on the part of the

lessee to award dealership for the outlet to be open on the said land only to the lessor or his nominee. There is no document on record which would show that any promise or assurance was given by BPCL to the petitioner that the retail outlet on the lease land would be awarded only to him or his nominee. There is no material to show that the agreed lease rent was lower than the prevailing rent. Therefore, in exercise of the powers conferred upon it under the terms of the Allotment Letter, the respondent was competent to determine the ad hoc dealership at any point of time, without assigning any reason. The petitioner, therefore, can have no grievance even if the aforesaid ad hoc dealership is terminated in view of the policy decision contained in the letter dated 06.09.2006.

A perusal of the counter-affidavit would show that the respondent considered the number of existing dealers in the vicinity, namely, M/s Dophin Service Centre, M/s Shiva Filling Station, M/s Sriranjana Service Station, m/s Jamania Service Station, M/s Bharat Auto Centre, M/s Bhargunath filling Station and M/s Tiwari Filling Station for allotment of ad hoc dealership at Sadat site and since Shiva Filling Station secured highest marks from the aforesaid evaluation, the dealership was awarded to it initially for a period of one year.

Admittedly, the petitioner continues to operate the regular dealership, which was initially granted at Sadat, but was re-sited at Chaktalvi in District Ghazipur. As pointed out in the counter-affidavit, the multiple dealership norms contained in instructions dated 19.08.2003, issued by Government of India stipulate award of only one dealership to one family unit consisting of any individual, his/her spouse and his/her unmarried sons and daughters. The aforesaid norms dated

19.08.2003 stipulate that a person desirous of applying dealership should not be having either Letter of Intent or dealership/distributorship of MS/HSD/SKO/LDO/LPG of any Oil Company in his/her own name or in the name of his/her family members. A copy of the said instructions dated 19.08.2003 has been filed as Annexure R-6 to the counter-affidavit of respondent. The respondent has placed on record the detailed assessment sheet which shows the marks obtained by each dealer who was interviewed for allotment of ad hoc dealership at Sadat and this document fortifies the case of the respondent that grant of ad hoc dealership at Sadat had nothing to do with the lease of the land. I, therefore, find no merit in this petition.

W.P.(C) No. 9148/2007

15. The petitioner in this case has not placed on record any copy of the lease alleged to have been executed by him on 27.02.2003. This is not the case of the petitioner that the aforesaid lease deed contained a stipulation, requiring the lessee to allot the retail outlet to be commissioned on the lease land only to the lessor or his nominee. There is no document on record which would show that any promise or assurance was given by the respondent to the petitioner that the dealership of the retail outlet on the aforesaid land would be awarded to him or his nominee. In the absence of the lease deed, the Court is not in a position to know what exactly were the terms agreed between the parties. The petitioner has not filed even the letter, whereby the dealership was allotted to him on ad hoc basis. Therefore, it is not possible to know what exactly were the terms and conditions on which allotment was made to the petitioner on ad hoc basis. In case the allotment letter carried the terms and conditions identical to the terms

and conditions contained in the Allotment Letters issued by BPCL in other cases, the respondent would be justified in determining the ad hoc dealership at any point of time, without assigning any reason.

It is stated in the list of dates filed by the petitioner that in a meeting held on 18.09.2013, it has been agreed between the parties that the leased land could be bought back by the petitioner for a consideration of Rs 15 lakh and the petitioner has agreed to pay the aforesaid amount to the respondent. If that be so, it is open to the petitioner to execute the aforesaid agreement by paying Rs 15 lakhs to the respondent and simultaneously cancel the lease deed granted by him in favour of BPCL.

16. The learned counsel for some of the petitioners referring to some internal notes of BPCL contended that in terms of the policy as dealership in the aforesaid note, the dealership of the outlet commissioned on the leased land is to be granted only to the land owners/ lessors or their nominees.

The first note dated 6.5.2003 which was submitted to GM (Retail), *inter alia* reads as under:

“We are pleased to advise that the Committee of Functional Directors in its meeting held on 11.4.2003 has approved the proposal for linking landlords and dealerships for a few select sites in our proposed network of new ROs.

Quote:

Shri S. Krishnamurti, ED (Retail) and Shri P. Ghosh, G.M (Retail), HQ, who were invited, explained. The Committee discussed the pros and cons of award of dealerships to landlords as indicated in the agenda note dated 25.3.2003 and approved the proposal for appointment of

landlords as dealers in the event it is decided not to operate the ROs as per the policy as explained in the said Agenda Note, with the following directions:

- A. Such appointment should be made in exceptional cases without diluting the existing guidelines. Only land offered in response to our advertisement for procurement of land should be considered with proper justification, competitive advantage of the site and financial viability of the investment.
- B. Maximum dealership to be awarded under the Scheme should not exceed 100 in number for 2003-2004. While the ED (Retail) is authorized to approve all such appointments, he may allocate certain numbers to each Regional GMs who should submit the proposals to ED (Retail) with proper justifications.
- C. Any provisional commitment to the landlords for dealership should be subject to their fulfilling the criteria for appointment of dealers and strict adherence to the existing guidelines in this regard.
- D. The policy shall be reviewed after six months and in any case immediately when the dealership selection guidelines are approved by the MOP&NG.

Unquote:

- 1. CFD while approving the scheme, suggested that we must have a fully transparent system to establish that all our efforts have been made to locate suitable land before linking the issue of landlords and dealerships. In other words, prior to taking over the land linked to dealership condition, it has to be ensured that no other suitable land is available in the market to set up a retail

outlet and the only recourse left is to agree to the landlord's condition for dealership in the event of company not operating to RO and COCO basis. Further, only land offered in response to our advertisement should be considered with proper justification of competitive advantage of the site and financial viability of the investment.

2. CFD also suggested that such sites should be very high potential locations.
3. Identification of sites:
 - a) Identification of sites would be through Press Advertisements.
 - b) The guidelines in regard to procurement of such sites are given below:
 - (i) The site selection committee comprising of the Territory Manager, Engineering Officer, Sales Officer and the Manager RNF & RE of the region will evaluate the sites offered to BPCL on the basis of site visits and evaluation criteria given below. However, before assessing the same it must be ensured that the title deeds of the property are in order.

A perusal of the note dated 16.6.2003, submitted to GM (Retail) would show that the salient features of the scheme were to be as under:

“There should be no other suitable site available in the trading area under consideration except the one offered by the land lord linking the offer to the dealership.

It should be a good site and also meeting the GAV/IRR norms and also the volume criteria specified under this scheme.

Each case has to be justified from all the above angles and has to be put up only after exhausting all the normal options to commission an outlet in the market has been evaluated.

In this regard, we summarize below the steps to be followed in this regard.

- **Site selection:**

All the steps detailed in the site selection procedure advised to you (copy enclosed for ready reference) has to be strictly adhered to.

The following additional steps has to be followed under technical evaluation.

- a) Ensure that the selected site meets the volume criteria laid down for this process.
- b) Reject any dealership linked landlord proposal if we have proposals without dealership linked available after short list.
- c) If all the offers are dealership linked, then go ahead with the commercial evaluation process as explained in the site selection process mentioned above.

- **Dealer-landlord:**

- a) Issue the letter to the proposed dealer landlord in the enclosed format expressing the willingness to take the land on long term lease. It has to be very clearly explained to the landlord that the offer of dealership would be made by BPCL. ONLY if the eligibility criteria as applicable for selection of dealers at that point of time is met.
- b) Carry out negotiations for land rentals at the appropriate level Committee in accordance with the laid down procedure.
- c) After taking the land on lease make arrangements to run the same on COCO basis till our dealer selection policy is approved by the appropriate authority.
- d) For appointing the COCO operator, the extent policy will apply.

- e) Once the dealer selection policy is in place and if we decide not to run the subject retail outlet on COCO basis, the offer of dealership to the landlord of the Retail outlet will be made subject to meeting all the eligibility criteria specified in the selection policy.
- f) If the land lord meets all the eligibility criteria as per the policy, the landlord will be offered the dealership of the subject retail outlet without any further formalities like interview etc.

The note dated 4.11.2003 submitted to ED(Retail), *inter alia*, reads as under:

“Board approval has been subsequently obtained for selection of dealers for retail outlets and SKO dealership as advised by Company Secretary vide letter SEC. 1.1.8/2003 dated 19.9.2003 and the same has been circulated to the Regions vide note GM (R) Policy. On dated 3.10.2003. The Board approval inter alai provides for linking land lords with dealerships for a few select sites without following the advertisement route and is in line with the earlier CFD approval.

The guidelines for award of such dealerships conveyed vide our note of even reference dated 6.5.2003 and 16.6.2003 is explained below with certain updations, post Board approval:

- A. The Regions have to first decide on whether to operate ROs on the land offered as COCO or not. In case, it is decided to operate the ROs by dealers; the guidelines will be as under:
- B. Such appointments should be made in exceptional cases without diluting the existing guidelines. Only land offered in response to our advertisement for procurement of land should be considered with proper justification of competitive advantage of the site and financial viability of the investment.

- C. It must be made clear to the landlords who are offering sites to BPCL that the same will be linked with a Dealership offer only in case where the sites are found suitable. The lease of the site should be preferably for a minimum period of 30 years and the rentals offered should be lower than the GAV. Any deviations must be clearly justified in the proposal submitted by the Regions to ED (Retails).
- D. All proposals should be accompanied by the site selection committee recommendations and approved by GM of the Region. In this regard, kindly refer to our letters mentioned at para 1 above. All proposals must be evaluated on the basis of strategic importance of the site, sales expected currently as well as the future potential. At RSHQ this aspect will be accorded high importance and proposals with sites having low/nil future potential will not be considered. Proposals must also be supported by the Divya Drishti report.
- E. All landlords offering the sites for dealership must meet the minimum eligibility criteria laid down in the Dealership Selection Guidelines of nationality, age, educational qualifications. The prospective candidates must not have any disqualification criteria like multiple dealership norms, conviction, signatory of terminated dealership/ distributorship on account of adulteration/ malpractice paralyzed or mentally unsound. The evaluation in this regard will be completed by the Territory team of two officials. If the landlord fails to meet the eligibility criteria as above, the location will be advertised for appointment of a regular dealer.
- F. The candidates offering land will be interviewed by a team of three officials nominated by the Regional GM. The Chairperson of the interview Board will be DGM (Retail) of the Region and the members will comprise of two minimum group "F" officials, one being from another SBU. The individual Board members will award a maximum

of 65 marks each and the aggregate score will represent the final performance of the candidate. Candidate securing more than 60% marks i.e. 69% of 65 marks will be eligible for appointment of dealer for the particular site offered by him.

The parameters for evaluation are given below:

Capability to provide finance	-	25 marks
Educational qualification & General Level of intelligence	-	15 marks
Capability to generate Business	-	10 marks
Age	-	4 marks
Experience	-	4 marks
Business ability/acumen	-	5 marks
Personality	-	2 marks
Total	-	65 marks

(For further necessary details on parameters kindly refer to the selection Policy approved by the Board and available with you).

- G. On completion of the above exercise the proposals will be submitted to ED (Retail) by the Regions for his concurrence and on receipt of approval from ED (Retail) to the proposals, the appointment letter of Dealership to the landlord can be issued by the Region after completion of all the formalities like payment of security deposit, submission of affidavit, signing of DPSL etc.

11. In case the landlord fails to score the minimum marks of 39 ($65 \times 60\% = 39$) with regard to the evaluation criteria then the location will be advertised for appointment of a regular dealers. The final recommendation to be approved by the Regional General Manager.”

17. There is absolutely no material on record to show that the petitioners had applied for allotment of a retail outlet and had leased out their respective lands pursuant to the aforesaid Land-Linked Policy contained in the guidelines dated 6.5.2003, 16.6.2003 and 4.11.2003. In fact, the petitioners had responded to an advertisement published by BPCL on 18.1.2003 which did not and could not have any reference to the Land-Linked Policy which came into existence at a much later date. Therefore, no benefit of the aforesaid Land-Linked Policy can be claimed by the petitioners. Even otherwise, there is no material on record to establish that the land of the petitioners was taken on lease pursuant to the Land-Linked Policy as stated in the above referred notings. There is no evidence of the petitioners having leased out their land to BPCL pursuant to the above referred Land-Linked Policy. There is no material on record to show that the petitioners complied with the requirement of the aforesaid policy and their applications were processed in terms of the said policy. As recorded in the noting dated 6.5.2003, the dealership to the landlords was to be awarded only in certain contingencies and such appointment was to be made only in exceptional cases. Had the petitioners applied in terms of the Land-Linked Policy, their applications would have been examined and scrutinized in terms of the norms laid down in the said policy, as amended from time to time. For instance, before taking over the Land-linked to dealership conditions, it was to be ensured that no other suitable land was available in the market to set up a retail outlet and the only recourse left was to agree to the landlord's condition for dealership in the event of company not operating the RO on COCO basis. Moreover, the land offered in terms of the aforesaid policy was to be

considered with proper justification of the competitive advantage of the site and financial viability of the investment, identification of the site was to be done through press advertisements. The dealership from landlord was to be considered only in the locations which were likely to generate minimum 200 KL-MS or combined 500 KL – MA/HSD per month. The proposals for such dealership were required to clearly establish that no other site was available and the Land-Linked Policy was the only recourse left to set up an outlet in that market. The guidelines also envisaged rejection of any dealership linked landlords proposals if BPCL had proposal without dealership linked land available after shortlist. If all the offers were dealership linked then BPCL was to go ahead with the commercial evaluation process. The guidelines also envisaged interviews of the candidates offering land by a team of three officials. Since the petitioners before this Court did not submit applications in terms of the Land-Linked Policy nor were their proposals considered in terms thereof, no benefit of the said policy can be claimed by them. It would be pertinent to note that neither the lease deed nor the letter awarding ad hoc dealership has any reference to the Land-Linked Policy of the respondents.

In IBP Company Limited (supra), the Division Bench took the view that there could be no vested or accrued right to any of the petitioners to be allotted with the dealership licence with any retail outlet on the basis of their holding a lease deed unless there was an agreement and a lease deed was entered into with the said stipulation. The same happens to be the position in the petition before this Court. In none of the petitions, the lease deed contain a stipulation requiring the lessee to award dealership of the outlet to the lessor nor is there any

independent contract to this effect between the petitioners and BPCL. The Division bench rejected the contention that the petitioners had a vested right to be allotted dealership of the petrol pumps that were to be operated out of the lands that were given on lease. It was noted that the lease deed had no expressed or implied promise to this effect. The decision of the Division Bench was upheld by the Hon'ble Supreme Court. The same is the position obtaining in the cases before this Court. As noted by the Division Bench what was sought to be created by executing the lease deed was a jural relationship of landlord and tenant and there was no assurance at any point of time to any of the land owners or any licensee of creating any dealership. That exactly happens to be the position in the cases before this Court and, therefore, as held by the Division Bench the rights and duties of the land owners and the oil companies would be governed by the lease deed executed between the parties, which give no right to the lessor to claim dealership in their favour. A perusal of the advertisement dated 17.1.2003 would show that it was an advertisement only for sale/ lease of the lands and contained no promise to award dealership to the land owners.

18. During the course of arguments, the learned counsel for the respondents vehemently contended that since the head office of BPCL is not situated in Delhi and no transaction between the parties took place in Delhi, this Court has no territorial jurisdiction to entertain the writ petitions. It was also pointed out that all the communications with respect to ad hoc dealership were issued from the office of BPCL outside Delhi and the lease deeds were executed in places other than Delhi. This was also the contention of the learned counsel for BPCL that the petitioners are unreasonably challenging the communication/

decision of the Government dated 6.9.2006 only with a view to create jurisdiction of this Court. However, considering that even otherwise the writ petitions have no merit, I need not take a view on the aforesaid plea taken by the respondent – BPCL.

19. For the reasons stated hereinabove, I find no merit in the writ petitions and the same are hereby dismissed. Interim order, if any, stand vacated. There shall be no orders as to costs.

V.K.JAIN, J

OCTOBER 30, 2013

rd/bgl b'nesh