



THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION (C) No. 2291/2023

1. Sri Mongve Rongpi, S/o Sri Jayanta Rongpi,
Aged about 35 years, R/o Rongpharpi
Nokbe, Diphu, P.O. & P.S. – Diphu, District –
Karbi Anglong, Assam, Pin – 782460.

.....Petitioner

-Versus-

1. The Indian Oil Corporation Limited,
Represented by its Chairman 3079/3, J B
Tito Marg, Sadiq Nagar, New Delhi, Pin -
110049.
2. The Senior Manager [RS], Indian Oil – AOD,
Indian Oil Corporation Limited, Tinsukia
Divisional Office, Sripuria, P.O. & District –
Tinsukia, Assam, Pin - 786125.
3. The Karbi Anglong Autonomous Council,
represented by its Principal Secretary,
Diphu, Karbi Anglong, Assam, Pin - 782460.

.....Respondents

Advocates :

Petitioner : Mr. B.D. Das, Senior Advocate
: Mr. H.R. Das, Advocate

Respondent nos. 1 & 2 : Mr. M.K. Choudhury, Senior Advocate
: Mr. P. Bharadwaj, Advocate

Respondent no. 3 : Mr. R.S. Ronghang, Standing Counsel
Karbi Anglong Autonomous Council

Date of Hearing : 13.02.2024

Date of Judgment & Order : 20.04.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [CAV]

The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India seeking setting aside and quashing of a Letter bearing no. TDO/R/RO Dealership/Diphu Town/731 dated 17.02.2023 issued by the respondent no. 2 on behalf of the respondent Indian Oil Corporation Limited [IOCL] and for a direction in the nature of mandamus to the respondent authorities in the Indian Oil Corporation Limited [IOCL] to award the Retail Outlet Dealership at the location, Diphu Town Not on NH/SH, District – Karbi Anglong to the petitioner.

2. The respondent no. 1, Indian Oil Corporation Limited [IOCL], a Public Sector Oil Marketing Company [OMC], published an Advertisement on 25.11.2018 inviting applications from eligible persons for appointment as a dealer in respect of a proposed

Retail Outlet Dealership for the location at Diphu Town Not on NH/SH, District – Karbi Anglong [hereinafter referred to as 'the subject-location', for easy reference] in the State of Assam. The Advertisement mentioned that Retail Outlet Dealership would be awarded to a candidate belonging to the Scheduled Tribe category. The petitioner herein, an MBBS Degree-holder, responded to the said Advertisement by submitting his application on-line along with all the necessary supporting documents, and his application was registered as Application Ref. no. 15455382257935.

3. It was on 04.07.2021, the petitioner was intimated that he had been qualified for the Draw of Lots for selection of Retail Outlet Dealership for the subject-location. The petitioner was requested to be present personally along with the documents, indicated therein, at the address mentioned on 14.07.2021 for the Draw of Lots. However, the Draw of Lots, scheduled on 14.07.2021, got deferred and the same was re-scheduled on 27.08.2021 at Hotel Royal Highness, Khaitan Plaza, Tinsukia, which fact was intimated to the petitioner by a Communication dated 17.08.2021. The Draw of Lots scheduled on 27.08.2021 was again deferred and finally, the Draw of Lots was held on 25.08.2022 at the venue : Jubilee Hall, IOCL Township, Noonmati, Guwahati. Subsequent to the Draw of Lots held on 25.08.2022, the petitioner was informed about the result of the Draw of Lots for Retail Outlet Dealership at the subject-location by a Communication dated 26.08.2022. By the Communication dated 26.08.2022, the petitioner was informed that in the Draw of Lots held on 25.08.2022, the petitioner was declared as selected. It was further informed that the same was only a preliminary intimation towards selection of the petitioner for the Retail Outlet Dealership at the subject-location and the award of dealership would be subject to compliance of the terms and conditions of the IOCL. After his selection in the Draw of Lots, the petitioner was informed by a Communication dated 11.11.2022 that the Land Evaluation Committee [LEC] would visit the site offered by the petitioner at the subject-location for inspection. The petitioner was asked to be present personally at the site along with the relevant documents. After the task of the Land Evaluation Committee [LEC] was over, the petitioner was informed by another Communication dated 28.11.2022 to the effect that the officers of the IOCL would pay a visit on 08.12.2022 for carrying out Field Verification of Credentials [FVC] and the petitioner was asked to be present personally along with all the original documents submitted in connection with his application for

Retail Outlet Dealership for the purpose of verification by the members of the Field Verification of Credentials [FVC] Committee. After completion of the process of Field Verification of Credentials [FVC], the respondent no. 2 issued the impugned Letter bearing no. TDO/R/RO Dealership/Diphu Town/731 dated 17.02.2023 in connection with award of Retail Outlet Dealership for the subject-location.

4. By the said Letter dated 17.02.2023, it has been informed to the petitioner that during Field Verification of Credentials [FVC] carried out on 08.12.2022, it has been established that the petitioner is a member of the Karbi Anglong Autonomous Council [hereinafter also referred to as 'the Council', at places, for convenience]. The respondent no. 2 has further mentioned that as per the Dealer Selection Guidelines dated 24.11.2018, a selected candidate would not be eligible for taking up any employment. If the selected candidate is already employed, he/she would have to resign from the employment and produce a Letter of Acceptance of Resignation by the employer before issuance of Letter of Appointment by the IOCL. Reference has been made to an Order dated 07.12.2022 issued by the Karbi Anglong Autonomous Council whereby the Council has granted approval to voluntary relinquishment of the monthly salary by the petitioner. It has been conveyed that under the extant Industry Dealer Selection Guidelines, there is no provision for award of dealership to any individual for surrendering of benefits like salary/perks/emoluments from the Central/State Government while the said individual continues to be an elected representative. The petitioner has been asked to submit a confirmation by 28.02.2023 stating whether he would be willing to resign from the nominated post of member, Karbi Anglong Autonomous Council so that the petitioner's candidature could be considered further. It has been further conveyed that in the event of failure to submit such confirmation, the petitioner's application/candidature would be made ineligible and selection of candidates for the subject-location would be made from the remaining lot of applicants.
5. I have heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. H.R. Das, learned counsel for the petitioner; Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. P. Bharadwaj, learned counsel for the respondent nos. 1 & 2; and Mr. R.S. Ronghang, learned Standing Counsel, Karbi Anglong Autonomous Council for the respondent no. 3.

6. Mr. Das, learned Senior Counsel appearing for the petitioner has submitted that the reasons cited by the respondent IOCL authorities to not process the application of the petitioner further are clearly arbitrary and unjustified. It is his contention that the petitioner is only a nominated member of the Karbi Anglong Autonomous Council. He has pointed out that the petitioner was not a nominated member of the Council at the time of submission of the application. It was only on 07.07.2022, the petitioner had been appointed as a nominated member to the 13th Karbi Anglong Autonomous Council by a notification of even date issued by the Hill Areas Department, Government of Assam. As such nominated member, the petitioner used to receive a nominal sum every month as monthly salary since his date of appointment. But he had voluntarily relinquished the monthly salary as a nominated member of the Karbi Anglong Autonomous Council w.e.f. 01.11.2022 and the said fact is clearly reflected in an Order bearing no. KAAC/LD.350/2019/22 dated 07.12.2022 issued by the Principal Secretary, Karbi Anglong Autonomous Council. Thus, it is clear that on and from 01.11.2022, the petitioner has not been receiving any monthly salary as a nominated member of the Karbi Anglong Autonomous Council. Mr. Das has further contended that a nominated member is not under any employment with the respondent Karbi Anglong Autonomous Council and there is no existence of employee-employer relationship between the petitioner and the Karbi Anglong Autonomous Council. To buttress his submissions, he has referred to the various provisions of the Assam Autonomous Districts [Constitution of District Councils] Rules, 1951 [‘the 1951 Rules’ and/or ‘the Rules, 1951’, for short], more particularly, Rule 6[3] thereof. He has submitted that it is evident from Rule 6[3] that a nominated member continues to hold his office at the pleasure of the Governor. He has submitted that in such backdrop, the respondent IOCL authorities, by taking resort to Clause 6 of the Brochure, have clearly erred in law to hold that the petitioner is under any kind of employee-employer relationship with the Karbi Anglong Autonomous Council. As the relationship of the petitioner with the Karbi Anglong Autonomous Council is not an employee-employer relationship, the decision of the respondent IOCL authorities, as reflected in the impugned Letter dated 17.02.2023, not to process the application of the petitioner further, despite his selection in the Draw of Lots, is clearly arbitrary, irrational and unjustified. As regards the duties and functions of a nominated member, he has referred to a Letter dated 13.10.2023 of the Deputy Secretary to the Karbi Anglong Autonomous Council, Legislative Department to submit

that the petitioner in the preceding Session of the Council, was required to attend the Session only for 4 [four] days and the petitioner is not a member of any Committee/Commission of the Council. He has submitted that, therefore, the petitioner is not required to discharge any full-time duties and his nominated membership in the Council would not come in the way of the day-to-day management of the Retail Outlet Dealership if the Letter of Intent [LoI] is issued in his favour. By referring to the matter of award of another Retail Outlet Dealership to an elected member of the Council on 20.05.2022, it is contended that in the said case, the respondent IOCL authorities had awarded Retail Outlet Dealership but in the case of the petitioner, they have adopted a discriminatory stance, which is in violation of Article 14 of the Constitution of India. To buttress his submissions, he has referred to a decision of the Hon'ble Supreme Court of India in *Ashwini Kumar Upadhyay vs. Union of India and another*, reported in [2019] 11 SSC 683, which, according to him, has deliberated on the exact nature of relationship between a Legislator and the Legislature.

7. Mr. Choudhury, learned Senior counsel appearing for the respondent IOCL authorities has submitted that the Draw of Lots for selection of a dealer for Retail Outlet Dealership for the subject-location was held on 25.08.2022 whereas the petitioner took oath as a nominated member of the Karbi Anglong Autonomous Council on 08.07.2022. He has submitted that at the time of submission of an application in response to the Advertisement dated 25.11.2018, an applicant is required to submit a notarized affidavit, as prescribed in Appendix-XA. Clause-13 of the Notarized affidavit [Appendix XA] requires the applicant to confirm that he would neither take up any other employment nor would draw any salary/perks/emoluments from State/Central Government upon his appointment as a dealer. The said clause has further provided that if the applicant is already employed, he has to resign from the employment and to produce proof of acceptance of resignation by the employer before the acceptance of the Letter of Appointment [LoA] to be issued by the IOCL. It is his contention that as soon as the petitioner accepted his appointment as a nominated member of the Council, he is entitled to salary/perks/ emoluments, etc. from the Council and the matter of salary/perks/emoluments, etc. are governed by the provisions of a statute. Attention is also drawn to an affidavit required to be submitted by a Letter of Intent [LoI] holder in a form, prescribed by Appendix-IV. By the said affidavit, a Letter of

Intent [LoI] holder is required to declare that he is neither employed in the private sector nor draws any salary/perks/emoluments from State/Central Government. It is contended that Karbi Anglong Autonomous Council is a Council constituted under Paragraph 2 of the Sixth Schedule to the Constitution of India. Sub-Paragraph [1] of Paragraph 2 of the Sixth Schedule has provided for constitution of a Council like the Karbi Anglong Autonomous Council. Sub-Paragraph [1] of Paragraph 2 of the Sixth Schedule has further provided for nomination of members to a Council like the Karbi Anglong Autonomous Council by the Governor and as per Sub-Paragraph [6A] thereof, a nominated member holds office at the pleasure of the Governor. As such, the petitioner's appointment and continuation as a nominated member is under the constitutional provisions. It has been submitted that the Karbi Anglong Autonomous Council has both executive power and legislative power. The position of a member in the Karbi Anglong Autonomous Council is akin to a member in the State Legislative Assembly [MLA]. Though the petitioner has relinquished to receive monthly salary as a nominated member of the Karbi Anglong Autonomous Council w.e.f. 01.11.2022, he is continuing as a member of the Council. Submission is advanced to the effect that it is not relinquishment of the salary/allowances/ emoluments, etc. associated with the nominated member of the Council which is relevant, but it is the salary/perks/emoluments, etc. receivable by a member of the Council, which is of relevance. To buttress his submissions, reliance is placed in a decision of the Hon'ble Supreme Court of India titled *Jaya Bachchan vs. Union of India and others*, reported in [2006] 5 SCC 266. It is his further submission that the matters of selection and appointment of a dealer for Retail Outlet Dealership are regulated by the provisions of the Brochure/Guidelines and in the case in hand, it is Clause 6 which has fallen for consideration. It is his submission that the person selected for the dealership is required to pay attention towards day-to-day management of the dealership by personally managing the affairs of the Retail Outlet Dealership. Mr. Choudhury has contended that the case in hand is not similar to the case in *Ashwini Kumar Upadhyay* [supra]. In *Ashwini Kumar Upadhyay* [supra], the question arose in relation to statutory provisions whereas in the case in hand, it is the selection and appointment of a dealer for a Retail Outlet Dealership, which is purely a commercial proposition. The relationship between an employee and an employer is not to be considered in a narrower sense in the case in hand and the relationship is to be examined from a

broader prospective. It has been submitted that the matter of appointment of a dealer is not only to be looked from the perspective of an applicant, but also to be looked from the standpoint of the Oil Marketing Company, IOCL as it has the responsibility not only to appoint the dealer but also to ensure the dealership is being run in an efficient manner and caters to the public in a satisfactory manner. It has been contended that a nominated member of the Council even if it is assumed that he is not in direct employment of the Council, but as a nominated member of the Council he has duties and responsibilities to discharge as a public servant. The word, 'employment' appearing in Clause 6 of the Brochure is to be best left for interpretation by the authority appointing the Retail Outlet Dealer with the Letter of Intent [LoI]. Mr. Choudhury has submitted that it is not possible to envisage every possible future situation and to incorporate specific terms in respect of every possible situation in the Guidelines/Brochure and in the event of any situation arising in a case for which there is no specific terms in the Guidelines/Brochure and if two interpretations of the any existing terms are possible, it is the interpretation which is made by the appointing authority, as has been settled by a long line of decisions, is to be accepted. In the case in hand, it is the interpretation of the term, 'employment' appearing in the Guidelines/Brochure which is given by the IOCL as the dealer appointing authority in the broader sense, which is to be accepted. By the impugned Letter dated 17.02.2023, the petitioner has been given the option to resign from the membership of the Council by 28.02.2023 so that his candidature could be considered and processed further for selection. As the petitioner has not resigned from the membership of the Council and instead, has instituted a present writ petition, the petitioner's candidature for dealership in respect of the Retail Outlet Dealership at the subject-location cannot be considered.

8. Mr. Ronghang, learned Standing Counsel, Karbi Anglong Autonomous Council has submitted that the Karbi Anglong Autonomous Council is constituted under Paragraph 2 of the Sixth Schedule to the Constitution of India and 4 [four] nos. of persons can be nominated to the Council by the Governor. The matter of nomination is also reflected in the Assam Autonomous Districts [Constitution of District Councils] Rules, 1951 and Karbi Anglong District [Members' Salary and Allowances] Act, 1958, as amended. He has submitted that the petitioner took oath as a nominated member of the 13th Karbi Anglong Autonomous Council on 08.07.2022 and was drawing his salary till October,

2022. The petitioner had voluntarily relinquished from drawing his monthly salary w.e.f. 01.11.2022 and the Principal Secretary, Karbi Anglong Autonomous Council approved the matter of voluntary relinquishment of the monthly salary by the petitioner w.e.f. 01.11.2022 vide an Order dated 07.12.2022. He has submitted that the petitioner, a nominated member of the Council, is not an employee of the Karbi Anglong Autonomous Council.

9. I have given due consideration to the submissions of the learned counsel for the parties. I have also gone through the averments made on record by the parties through their pleadings and the decisions cited by the learned counsel for the parties in support of their respective submissions.
10. The concept of equality enshrined in Article 14 of the Constitution of India is a positive concept. If any illegality or irregularity has been committed in one case, others cannot invoke the extra-ordinary writ jurisdiction under Article of the High Court and seek a direction that the same irregularity or illegality be committed his favour by the State or its agencies/instrumentalities. In view of such settled position of law, it is necessary to examine the facts and circumstances obtaining in the case in hand in entirety at first.
11. The process of selection and appointment of Retail Outlet Dealership in respect of Public Sector Oil Marketing Companies [OMCs] like IOCL, BPCL and HPCL are conducted by following the set of Guidelines laid down in the Brochure, ***‘Brochure for Selection of Dealers for Regular & Rural Retail Outlets’***. In the case in hand, it is ***‘the Brochure for Selection of Dealers for Regular & Rural Retail Outlets’***, published on 24.11.2018 [hereinafter referred to as ‘the Brochure’ and/or ‘the Guidelines’, for easy reference], which has laid down the Guidelines to be followed for selection and appointment of Retail Outlet Dealership for the subject-location.
 - 11.1. As per the Brochure/Guidelines, the selection process consists of an on-line application process. It has laid down a common eligibility criteria for individual applicants [proprietorship/partnership] with regard to [i] citizenship; [ii] residential status; [iii] age; [iv] educational qualification; and [v] land. The Brochure/Guidelines have also set

forth specific eligibility criteria for applying in different reserved categories :- [a] Scheduled Caste [SC]/Scheduled Tribe [ST] category; [b] Other Backward Category [OBC]; [c] Defence Personnel [DEF]; [d] Government and Public Sector Personnel; [e] Physically Handicapped [PH] category; [f] Outstanding Sports Persons [OSPs]; and [g] Freedom Fighter [FG].

- 11.2. The relevant Advertisement for selection of Retail Outlet Dealership for the subject-location was published on 25.11.2018. As per the Brochure, applications are to be submitted in the format prescribed as Appendix-I A [for individual applicants] only through on-line mode in the prescribed web-portal, along with the requisite application fees. At the time of submission of the application on-line, an individual applicant is required to submit an affidavit in the standard format confirming facts as per Appendix-XA. After processing of the applications received, a list of eligible candidates for the concerned location, category-wise, is to be made available in the web-portal and the shortlisted candidates are to be intimated about the date, venue and time of the Draw of Lots. The candidate selected in the Draw of Lots for each location is to be intimated to remit Initial Security Deposit [ISD] on-line and also to submit requisite documents within a stipulated time period. As per the list of documents, one of the documents, which is required to be submitted by the candidate selected in the Draw of Lots is a notarized affidavit as per Annexure-XA. After completion of such formalities, the concerned Divisional/Regional/Territory Office after intimation to the selected candidate, carries out site evaluation through a Land Evaluation Committee [LEC] to ascertain whether the land offered by the selected candidate meets the norms. In case the offered land is found suitable, the Land Evaluation Committee [LEC] submits its recommendation to the Divisional/Regional/Territory Head for carrying out Field Verification of Credentials [FVC]. The objective of the Field Verification of Credentials [FVC] is to verify the correctness of the details given by the selected candidate in the application form and the documents submitted thereafter. At the time of Field Verification of Credential [FVC], the candidate is required to produce all original documents, which were submitted after selection in the Draw of Lots. If the information given in the application by the applicant is found to be correct, then the Letter of Intent [LoI] is issued to the selected candidates. A candidate who has been given the Letter of Intent [LoI] is required to fulfill the terms and conditions as contained therein, so as to

commission the Retail Outlet Dealership within the stipulated time period. Before commissioning, a Letter of Appointment [LoA] is to be issued, besides executing a Dealership Agreement.

12. In response to the Advertisement dated 25.11.2018 inviting applications for appointment of Retail Outlet Dealership for the subject-location, the petitioner had duly submitted his application bearing Application Ref. no. 15455382257953 on 23.12.2018 offering a plot of land. After processing of his application, the petitioner was included in the list of candidates shortlisted for the Draw of Lots. As has been mentioned earlier, the Draw of Lots was finally held on 25.08.2022. After the result of the Draw of Lots, the petitioner was informed by a Communication dated 26.08.2022 that he had been declared as selected for the subject-location and the award of the Retail Outlet Dealership would be subject to compliance of the terms and conditions of the IOCL. The petitioner had thereafter, submitted the documents as laid down in the Brochure/Guidelines which included the notarized affidavit as per Appendix-XA, at the Tinsukia Divisional Office of the respondent IOCL on 13.09.2022. Thereafter, the Land Evaluation Committee [LEC] carried out land evaluation by visiting the site/plot of land offered by the petitioner. The process of Field Verification of Credentials [FVC] was carried out on 08.12.2022. It was thereafter, the impugned Letter came to be issued on 17.02.2023.
13. The controversy herein is neither related to the common eligibility criteria nor to the specific eligibility criteria though the Retail Outlet Dealership for the subject-location is reserved for Scheduled Tribe [ST] category. The petitioner appears to have fulfilled such common eligibility criteria and also the specific eligibility criteria laid down for Scheduled Tribe [ST] category.
14. The learned counsel for the parties are consensus *ad item* that process of selection of the dealer for a proposed Retail Outlet Dealership at the subject-location is governed by the brochure, '**Brochure for Selection of Dealers for Regular & Rural Retail Outlets**', dated 24.11.2018, ['the Brochure' and/or 'the Guidelines', for short], issued by three Oil Marketing Companies viz. Indian Oil Corporation Limited [IOCL], Bharat Petroleum Corporation Limited [BPCL] and Hindustan Petroleum

Corporation Limited [HPCL]. The learned counsel for the parties are also *ad item* that the petitioner has otherwise fulfilled the eligibility criteria laid down in Clause 4 of the Brochure in respect of individual applicant [proprietorship].

15. Before any dilation on the impugned decision of the respondent Corporation communicated by the Letter dated 17.02.2023, it is apt to discuss the following two decisions relied on by the learned senior counsel appearing for the two contesting sides.

- 15.1. In *Ashwini Kumar Upadhyay* [supra], the petitioner had prayed for issuance of a writ of mandamus or direction to debar the Legislators from practicing as advocates during the period when they were Members of either the Parliament [MP] or of any State Legislative Assembly/Council [MLA/MLC] in the spirit of Part-VI of the Bar Council of India Rules, 1975 [‘the 1975 Rules’, for short] or, in the alternative, to declare that Rule 49 of the 1975 Rules as arbitrary and ultra vires the Constitution and not to permit all public servants to practise as advocates. The 1975 Rules have been framed under the Advocates Act, 1961 [‘the 1961 Act’, for short]. Rule 49 has prescribed that an advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose Roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment. It has been held that there is no express provision in the 1961 Act or in the 1975 Rules framed thereunder to suggest that any restriction has been imposed on elected people’s representatives, MPs or MLAs or MLCs to continue to practise as advocates and in absence of an express restriction, it is not open to the Court to debar elected people’s representatives from practising during the period when they are MPs or MLAs or MLCs. It has also been held that the fact that Legislators [MPs/MLAs/MLCs] draw salary and different allowances in that capacity does not result in creation of a relationship of employer and employee between the Government and the Legislators, despite description of payment received by them in the name of salary and even Rule 49 cannot be invoked and applied to the Legislators.

15.2. The question which arose before the Hon'ble Supreme Court of India in *Jaya Bachchan* [supra] was whether the petitioner because of her appointment by the Government of Uttar Pradesh and continuing thereafter as the chairperson of the Uttar Pradesh Film Development Council, was holding any 'office of profit' and whether such appointment would make the petitioner disqualified for being a member of the Rajya Sabha in view of the provisions contained in Article 102[1][a] read with Article 103[1]&[2] of the Constitution of India. As a chairperson of the Uttar Pradesh Film Development Council, the petitioner was entitled to honorarium, allowances and other facilities. The Election Commission of India opined that the petitioner would stand disqualified from being a member of the Rajya Sabha on and from 14.07.2004, that is, the date of appointment as the chairperson of the Uttar Pradesh Film Development Council, which was also the date from when the petitioner was given a rank of a Cabinet Minister. The Hon'ble President of India by an Order dated 16.06.2006 had held the petitioner disqualified. It was contended by the petitioner that the post of chairperson and the conferment of the rank of Cabinet Minister were only decorative and the petitioner did not receive any remuneration or monetary benefit from the State Government. It was contended that the petitioner never claimed any reimbursement; and accepted the chairpersonship honourarily and did not avail any of the facilities and as such, the petitioner could not be said to be holding any office of profit. It is in that context, the Hon'ble Supreme Court has observed to the effect that if any pecuniary gain is receivable in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. The said decision is rendered in the context of Article 102 of the Constitution of India [Disqualifications for membership]. The mandate contained in Article 102[1][a] is that a person shall be disqualified for being chosen as and for being, a Member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by the Parliament by law not to disqualify its holder. It may be relevant to point out that similar provision of disqualification for being chosen as, and for being, a member of any State Legislative Assembly/Council [MLA/MLC] is contained in Article 191 of the Constitution of India [Disqualifications for membership].

16. The matter of constitution of District Council is provided in Paragraph 2 of the Sixth Schedule 6 to the Constitution of India. Sub-paragraph [1] of Paragraph 2 has provided that there shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage. As per sub-paragraph [3] of Paragraph 2, each District Council shall be a body corporate by the name, 'the District Council of [name of district]', shall have perpetual succession and the common seal. Sub-paragraph [4] has *inter alia* provided that the administration of an autonomous district shall be vested in the District Council for such district. Sub-paragraph [6] of Paragraph 2 has enumerated the matters on which rules can be made by the Governor. As per sub-paragraph [6A], the elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections of the Council, unless, the District Council is sooner dissolved under Paragraph 16 thereof and the nominated member shall hold office at the pleasure of the Governor.
17. The Karbi Anglong District, contained in Part I of the Table is one of the Tribal areas defined in Paragraph 20 of the Sixth Schedule to the Constitution of and it is an autonomous district.
18. The Rules, 'the Assam Autonomous Districts [Constitution of District Councils] Rules, 1951 [hereinafter referred to as 'the 1951 Rules' and/or 'the Rules, 1951', for short] have been framed in exercise of the powers conferred by sub-paragraph [6] of Paragraph 2 of the Sixth Schedule to the Constitution of India. As per Rule 2 [15], 'member' means a member of the Autonomous Council. In so far as the composition of the Karbi Anglong Autonomous Council is concerned, as provided by Rule 6 [1] r/w Appendix-I, the composition of the Karbi Anglong Autonomous Council is 30 nos. of members and there can be 26 nos. of elected members as against 4 nos. of the nominated members. As per Rule 6[3], the nominated member is appointed by the Governor and the member so appointed shall hold office at the pleasure of the Governor. Both elected members and nominated members, as per Rule 7 [2], shall hold office during the life of the Karbi Anglong Autonomous Council and the Karbi Anglong

Autonomous Council, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting [Rule 7 (1)].

19. The Karbi Anglong District [Members' Salary and Allowances] Act, 1958 ['the Act, 1958' and/or 'the 1958 Act', for short], as amended from time to time, has provided for salary and allowances of the members of the Karbi Anglong Autonomous Council. The definition of 'Members' is provided in Section 2[a] of the said Act and as per Section 2[a], 'Members' means the Members whether elected or nominated, of the Karbi Anglong Autonomous Council. Section 3 of the 1958 Act which has provided for salaries and allowances, has provided that there shall be paid to every member a salary per mensem, at the rate prescribed. In so far as the rate of salary per mensem is concerned, the same has undergone a number of amendments. Section 4 of the 1958 Act has provided that the Executive Committee of the Karbi Anglong Autonomous Council shall, subject to approval of the District Council, make rules prescribing the rates of travelling and halting allowances of the members for attending Sessions of the District Council in connection with their duty as members of the District Council, or for attending meetings of any Committee constituted by the District Council. Thus, it is evident that a member of the Karbi Anglong Autonomous Council, whether elected or nominated, is statutorily entitled to a salary per mensem at a prescribed rate and to travelling and halting allowances for attending Sessions of the District Council in connection with their duties as members of the District Council or for attending meeting of any Committee constituted by the District Council, as per the rates prescribed in the Rules made by the Executive Committee of the District Council.
20. The petitioner submitted his application bearing Application Ref. no. 15455382257953 on 23.12.2018, in response to the Advertisement for selection of Retail Outlet Dealership for the subject-location, published on 25.11.2018. The petitioner came to be appointed as a nominated member of the 13th Karbi Anglong Autonomous Council by a Notification no. HAD.89/2022/14 dated 07.07.2022, issued under Orders by the Governor. The said Notification has been issued under the hand of the Additional Chief Secretary to the Government of Assam, Hill Areas Department. Thus, at the time of submission of his candidature for Retail Outlet Dealership for the subject-location on 23.12.2018, the petitioner was not a nominated member of the Karbi Anglong

Autonomous Council. On being appointed as a nominated member, until further orders, by the Notification dated 07.07.2022, the petitioner became entitled to the salary at the rates prescribed by the Act, 1958 and also to travelling and halting allowances at the rates as fixed by the Executive Committee in the Rules framed with the approval of the Karbi Anglong Autonomous Council, in terms of Section 3 of the Act, 1958. When the Draw of Lots was held on 25.08.2022, the petitioner has already become a nominated member of the Karbi Anglong Autonomous Council, on being appointed vide the Notification dated 07.07.2022.

21. The respondent no. 3, Karbi Anglong Autonomous Council in its affidavit-in-opposition, filed through the Joint Secretary, Legislative Department has stated that the Governor of Assam has been pleased to appoint the petitioner as the nominated member of the 13th Karbi Anglong Autonomous Council until further orders vide a Notification no. HAD.89/2022/14 dated 07.07.2022. A reference has been made to the provisions of Section 2 and Section 3 of the Act, 1958, as already alluded hereinabove. It has been stated that the petitioner took his oath as a nominated member of 13th Karbi Anglong Autonomous Council on 08.07.2022 and was drawing his salary till October, 2022. The petitioner has voluntarily relinquished from drawing his monthly salary with effect from 01.11.2022. The Principal Secretary, Karbi Anglong Autonomous Council approved the voluntary relinquishment of the monthly salary by the petitioner with effect from 01.11.2022 vide an Order no. KAAC/LD.350/2019 dated 07.12.2022. It has been asserted that the petitioner is a nominated member of the Karbi Anglong Autonomous Council and he is not an employee of the Karbi Anglong Autonomous Council. For ready reference, the contents of the Order no. KAAC/LD.350/2019 dated 07.12.2022 are reproduced hereinbelow :-

KARBI ANGLONG AUTONOMOUS COUNCIL,

DEPARTMENT OF LEGISLATIVE

KAAC :: SECRETARIAT

DIPHU-782460

::O R D E R::

Dated Diphu the, 07th December, 2022.

No. KAAC.LD.350/2019/22 :: The authority of Karbi Anglong Autonomous Council, [KAAC], Diphu is pleased to approve the voluntary relinquishing of the monthly salary of Shri Mongve Rongpi, Hon'ble MAC, KAAC with effect from 1st November, 2022.

<i>Finance & Account Officer [C],</i>	<i>Principal Secretary</i>
<i>Karbi Anglong Autonomous Council,</i>	<i>Karbi Anglong Autonomous Council,</i>
<i>DIPHU</i>	<i>DIPHU</i>

22. During the course of the present writ proceedings, the petitioner on 09.10.2023 represented to bring materials on record to demonstrate that being a nominated member of the Karbi Anglong Autonomous Council, he is not required to discharge any full-time duty which may come in the way of managing the Retail Outlet Dealership on day-to-day basis. Thereafter on 19.10.2023, an additional affidavit has been filed on behalf of the petitioner to describe his roles, duties and functions as a nominated member. The relevant excerpts of the said additional affidavit read as under :-

4. *That the deponent respectfully states that being a nominated member of Karbi Anglong Autonomous Council [KAAC] the duties and functions of the deponent is only to ask questions in the Session of the Council if so required. Further the deponent has not been entrusted/assigned with any committee/commission of the Karbi Anglong Autonomous Council. In this regard the deponent respectfully states that the Deputy Secretary to the Karbi Anglong Autonomous Council [KAAC], Legislative Department, Diphu by a letter dated 13.10.2023 informed the deponent that he has attended only for four days in the Karbi Anglong Autonomous Council [KAAC] session and the deponent has not been entrusted with any commission/committee of Karbi Anglong Autonomous Council [KAAC]. The Deponent further respectfully states that he attended hardly one to two hours as when the session of Karbi Anglong Autonomous Council [KAAC] was held as reflected in the letter dated 13.10.2023 and there is no other involvement of the*

deponent with the Council and he is not an employee of Karbi Anglong Autonomous Council [KAAC].

23. From the above, it has emerged that when the Field Verification of Credentials [FVC] was carried out on 08.12.2022, the petitioner has continued as a nominated member of the Karbi Anglong Autonomous Council but on and from 01.11.2022, he has voluntarily relinquished to receive the salary prescribed to a member of the Karbi Anglong Autonomous Council. From the contents of the Order no. KAAC/LD.350/2019 dated 07.12.2022, it is reflected that the petitioner as a nominated member, has voluntarily relinquished to receive only the monthly salary, entitled to him as a nominated member of the Karbi Anglong Autonomous Council. The petitioner has not ceased to be a member of the Karbi Anglong Autonomous Council. At the time of issuance of the impugned Letter dated 17.12.2023, the petitioner has continued to be a member of the Karbi Anglong Autonomous Council. In the Order no. KAAC/LD.350/2019 dated 07.12.2022, there is no mention that the petitioner has also relinquished the travelling allowance and halting allowance, as statutorily entitled to him as a nominated member of the Council. The statement to the effect that the petitioner has not been entrusted/assigned with duties in any Committee/Commission of the Karbi Anglong Autonomous Council does not mean that he has been debarred from being part of any Committee/Commission by the Karbi Anglong Autonomous Council. It does not also mean that there is no possibility of the petitioner being made a part of any Committee/Commission by the Karbi Anglong Autonomous Council in future. From such standpoint, the submission advanced on behalf of the respondent IOCL authorities to the effect that it is not relinquishment of the salary associated with the nominated member of the District Council which is relevant, but it is the salary and other allowances receivable by the members including a nominated member, of the District Council which is of relevance, is not one which can be ignored, as it is of relevance. It is also clear that mere declaration not to receive the salary per mensem, which is otherwise statutorily entitled, and grant of approval thereto, have not relieved the petitioner from the role, duties and functions associated with a member of the Karbi Anglong Autonomous Council. It is also not open for the petitioner to say that if in future, he is made any Committee/Commission by the Karbi Anglong Autonomous Council he will not discharge such duties and responsibilities.

24. The process initiated by the Advertisement dated 25.11.2018 for selection of Retail Outlet Dealership at the subject-location is a process for distribution of State largesses. The process stood halted by the Letter dated 17.02.2023 at a stage prior to issuance of the Letter of Intent [LoI]. In so far as the stages of selection of the petitioner as the selected candidate by the Draw of Lots and land evaluation by the Land Evaluation Committee [LEC] are concerned, there is no allegation of any arbitrariness on the part of either of the two contesting sides against the other.
25. In the impugned Letter dated 17.02.2023, it has been mentioned that during Field Verification of Credentials [FVC] on 08.12.2022, it has been established that the petitioner is a member of the Karbi Anglong Autonomous Council. The petitioner has been informed that as per the Guidelines dated 24.11.2018, the selected candidate will not be eligible for taking up any employment and if the selected candidate is already employed, he/she will have to resign from the employment and produce a letter of acceptance of resignation by the employer before the issuance of Letter of Appointment [LoA] by the Oil Company. In the impugned Letter, the respondent IOCL authorities have acknowledged receipt of the Order dated 07.12.2022 issued by the Karbi Anglong Autonomous Council granting approval for voluntary relinquishment of monthly salary made by the petitioner. It has been conveyed to the effect that under the extant Dealer Selection Guidelines, there is no provision for award of dealership to any individual for surrendering of benefits like salary/perks/emolument from the State/Central Government, while the said individual continues to be an elected representative. The petitioner has been requested to submit his confirmation by 28.02.2023 as to whether he is willing to resign from the nominated post of member, Karbi Anglong Autonomous Council so that his candidature can be considered for further selection process. The petitioner has been informed that in the event of failure to submit such confirmation, his application/candidature would be made ineligible and selection of candidate for the subject-location would be made from the remaining lot of candidates.
26. It has been contended on behalf of the petitioner that the petitioner being a nominated member of the Karbi Anglong Autonomous Council, his position is akin to a Member of

Parliament [MP] or a Member of any State Legislative Assembly/Council [MLA/MLC] and as such, the decision in *Ashwini Kumar Upadhyay* [supra] is clearly applicable. The core issue which has fallen for consideration in *Ashwini Kumar Upadhyay* [supra] is whether Legislators can be debarred from practising as advocates under the Advocates Act, 1961 r/w Rule 49 of the Bar Council of India Rules, 1975 during the period when they continue to be MPs or MLAs or MLCs. From the discussion already made above, it is evident that the decision in *Ashwini Kumar Upadhyay* [supra] is rendered in the context of the specific statutory provisions contained in the Advocates Act, 1961 and the Bar Council of India Rules, 1975. On the contrary, no statutory or constitutional provision is found involved in the case in hand. Such position is clear as in the General Conditions pertaining to the Advertisement, it has been specifically made clear that the selection of Retail Outlet Dealership is purely a business proposition and has normal business risks. Thus, this Court does not find itself in agreement with the contention advanced on behalf of the petitioner that the decision in *Ashwini Kumar Upadhyay* [supra] is applicable *proprio vigore* to the case in hand.

27. It has also been strenuously urged that the relationship between a member and the Karbi Anglong Autonomous Council is not a relationship of employee-employer kind and as such, the petitioner is not in employment of the Karbi Anglong Autonomous Council, it is not open for the respondent IOCL authorities to ask for resignation from the membership and such decision is clearly arbitrary, unfair and irrational. The said aspect would be adverted to in the later part of the order.
28. It is apposite, at this stage, to dilate on the aspect of the right of a bidder in the matter of award of contracts by the State or the instrumentalities/agencies of the State. The Dealership Agreement to be entered into pursuant to the Letter of Intent [LoI] and the Letter of Appointment [LoA] is neither a statutory contract nor a contract made in exercise of the executive power of the Union or the State, covered by Article 299 of the Constitution. Notwithstanding the same, the matter of award of Retail Outlet Dealership by the respondent IOCL, an instrumentality of the State under Article 12 of the Constitution, is in the form of distribution of State largesses. Distribution of State Largesses by the State or its instrumentalities/agencies partakes the character of a trust. The process to be adopted for distribution of State largesses must be fair and

transparent providing an opportunity to all the interested persons to participate in the process.

- 28.1. The scope of judicial review in matters relating to award of contracts by the State or its instrumentalities/agencies is settled by a long line of decisions. It has been recognized that power exercised by the Government or its instrumentalities/agencies in regard to allotment of contract is subject to judicial review at an instance of an aggrieved party. It is trite to say that tender is an offer. It is something which invites and is communicated to notify acceptance. It has been held that submission of a tender in response to a notice inviting tender is no more than making an offer which the State or its instrumentalities/agencies are under no obligation to accept. The bidders participating in a competitive bidding process cannot insist that their tenders should be accepted simply because a given tender is the highest or the lowest or the best possible offer depending upon whether the award of contract is pertaining to sale of public property or for execution of works on behalf of the Government or its instrumentalities/agencies, allotment of any kind of licence, permit, etc. All that participating bidders is entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It has been held to be well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. It has been held that the matter of award of contracts, the Government and its instrumentalities/agencies have to act reasonably and fairly. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest [Ref :- *Meerut Development Authority vs. Association of Management Studies and another*, [2009] 6 SCC 171; and *Maa Binda Express Carrier and another vs. North-East Frontier Railway and others*, [2014] 3 SCC 760].
29. By issuing a Letter of Intent [LoI], a party expresses its intention to enter into a contract with the other party in future. A Letter of Intent [LoI] is not ordinarily intended

to bind either party ultimately to enter into any contract. On issuance of a Letter of Intent [LoI] *simpliciter*, no binding relationship between the parties comes into existence. In certain situations, a Letter of Intent [LoI] can, however, be construed as a Letter of Acceptance [LoA] if such intention is demonstrated from the terms and condition contained in the Letter of Intent [LoI]. In the case in hand, it is evident from the Brochure/Guidelines that a Letter of Intent [LoI] is only a prelude to the process of issuance of a Letter of Acceptance [LoA]; execution of a Dealership Agreement; and commissioning of the Retail Outlet Dealership. It is, thus, clear that the controversy herein has arisen at a stage prior to issuance of a Letter of Intent [LoI] *simpliciter*.

30. It has, thus, become necessary to examine what are the Guidelines laid down in '*the Brochure for Selection of Dealers for Regular & Rural Retail Outlets*' dated 24.11.2018 ['the Brochure' and/or 'the Guidelines', for short] and what terms and conditions have been set forth by the respondent IOCL authorities in the Advertisement dated 25.11.2018. According to the Brochure, locations for setting up Retail Outlets are identified by the respective Oil Company based on commercial/minimum volume considerations. It has been specifically set forth in the General Conditions pertaining to the Advertisement that award of Retail Outlet Dealership is purely a business proposition and not an application for job and has normal business risk and does not guarantee any assured returns or profits. Clause 11 of the Brochure requires the applicants to submit a notarized affidavit in the standard format confirming facts as per Appendix-XA [for individual] and such affidavits should be made after the date of the Advertisement. An applicant submitting his candidature for Retail Outlet Dealership for any location has *inter-alia* to give an undertaking that he is aware that he cannot take up any other employment nor can draw any salary/perks/emoluments from State/Central Government upon his appointment as a dealer. An applicant has also to give an undertaking to the effect that if selected, he shall be paying attention towards day-to-day working of the dealership by personally managing the affairs of the dealership and will not be eligible for taking up any employment. An applicant has also to give an undertaking that he is aware that eligibility for Retail Outlet Dealership will be decided based on the information given in the application and if on verification by the Oil Company it is found that the information given by the applicant is incorrect/false/misrepresented then his candidature will stand cancelled and he will be

declared ineligible for the Retail Outlet Dealership. In Clause 17 of the Brochure, it is mentioned that in case candidature of a selected candidate is cancelled due to discrepancy found post-Draw of Lots i.e. during Applications Scrutiny/Land Evaluation/Field Verification of Credential [FVC] or the Letter of Intent [LoI] is withdrawn, draw for selection would be held again from the remaining eligible candidates. Similarly, in the event of rejection of candidature selected through bidding process, next highest bidder will be considered for selection.

- 30.1. Clause 13 of the notarized affidavit which is required to be submitted by an applicant as per Appendix-XA reads as follows :-

13. That I hereby confirm that I will neither take up any other employment nor will draw any salary/perks/emoluments from State/Central Government upon my appointment as a dealer.

If I am already employed I will resign from the employment and produce proof of acceptance of resignation by my employer before the acceptance of Letter of Appointment to be issued by the Oil Company.

- 30.2. As per the Brochure, a notarized affidavit from the applicant with respect to employment in private sector/drawal of salary/perks/emoluments from State/Central Government is required to be submitted by the individual Letter of Intent [LoI] holder before acceptance of Letter of Appointment [LoA] for dealership in Appendix-IV. The candidate in the notarized affidavit prescribed in Appendix-IV has to give the following undertaking :-

3. I hereby declare that I am neither employed in private sector nor drawing any salary/perks/emoluments from State/Central Government.

Or

I was employed and have resigned from the employment. Proof of acceptance of resignation is attached.

4. *I also affirm that during the tenure of the Dealership I will not take any employment in Private Sector and draw any salary/perks/emoluments from State/Central Government.*

30.3. Clause 6 of the Brochure reads as under :-

RETAIL OUTLET MANAGEMENT

A person selected for the dealership shall be paying attention towards day to day working of the dealership by personally managing the affairs of the dealership. He/She will not be eligible for taking up any employment. If the selected person is already employed he/she will have to resign from the employment and produce the letter of acceptance of resignation by the employer before the issuance of Letter of Appointment by the Oil Company.

Further at the time of issuance of letter of appointment, the LoI holder will have to give notarized affidavit stating that he/she is not employed in Private Sector or is not drawing any salary/perks/emoluments from State/Central Government [Appendix - IV]. The LoI holder will also affirm that during the tenure of the Dealership he/she will not take up any employment in Private Sector or will not draw any salary/perks/emoluments from State/Central Government.

A Non-Individual applicant [entity] selected for the dealership will have to manage day to day working/affairs of the dealership under control/supervision of their own employee[s] and in line with the provisions of dealership agreement.

31. A combined reading of the afore-mentioned clauses of the Brochure and the terms and conditions set forth in the Appendix with the Undertaking required to be given by a candidate aspiring to become a Retail Outlet Dealer, goes to show that the person selected for the Retail Outlet Dealership shall have to pay attention towards day-to-day working of the Retail Outlet Dealership by personally managing the affairs of the dealership. The Oil Marketing Companies [OMCs] including the IOCL, as the appointing authorities of Retail Outlet Dealerships have placed a restriction in the form that the appointed Retail Outlet Dealers will not be eligible to take up any other employment,

be it with the State Government or the Central Government or in the Private Sector. It has been further made clear that if the appointed Retail Outlet Dealer is already employed in the private sector or in the Central Government or in the State Government then he will have to resign from the employment and produce proof of acceptance of resignation by his employer before acceptance of Letter of Appointment [LoA] to be issued by the Oil Marketing Company [OMC]. The appointed Retail Outlet Dealer cannot even be employed in the private sector nor can he draw any salary/perks/emoluments from the State Government or the Central Government. It has to be affirmed by Letter of Intent [LoA] holder that during the tenure of the Retail Outlet Dealership, he will not take any employment in the private sector nor he can draw any salary/perks/ emoluments from the State Government or the Central Government.

32. The respondent Indian Oil Corporation Limited [IOCL] is an instrumentality of the State under Article 12 of the Constitution of India. It is settled that an action on the part of the State or of an instrumentality/agency of the State having public element is amenable to writ jurisdiction under Article 226 of the Constitution of India. An action of the State or its instrumentalities/agencies having public element should be just, fair and reasonable and such action should not be suggestive of having any element of discrimination or arbitrariness or biasness. An action of the State or an instrumentality/agency of the State would stand vitiated if the action, in essence, lacks bona fide.
33. It is true that the relationship between the petitioner as a nominated member and the Karbi Anglong Autonomous Council is akin to a relationship between a legislator and the Legislature. A legislator is one who is a member of a legislative body. The role of a legislator is vital for the functioning of democracy as he acts as the representative of the people and work towards enacting legislations, formulating policies, etc. which are expected to serve best interests of the constituents. The duties and responsibilities of a legislator can vary depending on the kind of membership and on the specific legislative body in which he is a member. However, there are several common duties and responsibilities that a legislator generally undertakes. It is, therefore, also true that the relationship between a legislator and a legislative body cannot be equated with the

kind of relationship which exists between an employee and an employer. But, the issue which has been contended by the respondent IOCL in the present case is that the term, 'employment' in the matter of selection and appointment of a dealer for a Retail Outlet Dealership cannot be constricted to the kind of employer-employee relationship *stricto sensu* and the term, 'employment' has to be looked at from a much broader prospective *qua* the nature of distribution of State largesses involved.

34. There is sufficient force in the postulation advanced on behalf of the IOCL as the dealer appointing authority that in the matter of selection and appointment of a dealer for a Retail Outlet Dealership which is a commercial decision and also a process for distribution of State largesses, the issue is not only to be looked at from the perspective of an applicant like the petitioner, but also to be looked at from the standpoint of the Oil Marketing Company, IOCL as it has the responsibility not only to select and appoint the dealer but also to ensure that the dealership will run in an efficient manner and caters to the public in a satisfactory manner. The stand which has been taken here is that a nominated member of the Karbi Anglong Autonomous Council even if it is assumed that he is not in direct employment of the Council, but as a nominated member of the Council he has duties and responsibilities to discharge as a representative of the public. Just because the petitioner was not a member of any committee/commission at any earlier point of time, it does not mean that he cannot be a member of any committee/commission in future and he cannot be appointed as a member of a committee/commission at any point of time.
35. The Guidelines incorporated in the Brochure have to be accepted as Guidelines formulated by taking into consideration the factors germane for selection and appointment of a dealer for a Retail Outlet Dealership. It has been held in a series of judgments of the Hon'ble Supreme Court of India that the authority which authors a tender document is the best person to understand and appreciate its requirements and thus, its interpretation should not be second-guessed by court in judicial review proceedings. It has been held in *Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation*, [2016] 16 SCC 818, that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must

defer to this understanding and appreciation of the tender document, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given. In *Bharat Coking Coal Limited vs. AMR Dev Prabha and others*, [2020] 16 SCC 759, it has been observed to the effect that interpretation of contractual terms is inherent on the part of the tendering authority when it undertake the exercise to enforce the terms of the tender document. It has to be kept in mind that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes. In *Shilppi Constructions Contractors vs. Union of India and another*, [2020] 16 SCC 489, it has been observed as follows :-

19. *This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have*

the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give 'fair play in the joints' to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.

36. It is the stand of the respondent IOCL as the dealer appointing authority that on establishment of the fact that the petitioner is a nominated member of the Karbi Anglong Autonomous Council, it has examined the entire fact situation *qua* the Guidelines laid down in the Brochure and taking note of all the aspects contained in Clause 6 of the Brochure read with Clause 13 of the affidavit required to be submitted by the applicant as per Appendix-XA and Clause 3 and Clause 4 of the affidavit required to be submitted by a Letter of Intent [LoI] holder, it has reached a conscious decision that furthering the process with the petitioner as the selected candidate would not be in

the best commercial interests, if the petitioner continues to be a member of the Karbi Anglong Autonomous Council. From the contents of the impugned Letter dated 17.02.2023, the respondent IOCL authorities appear to have reached a conscious decision that appointment of the petitioner who is a nominated member of the Karbi Anglong Autonomous Council, as a dealer for the proposed Retail Outlet Dealership at the subject-location, would not be a prudent commercial decision. It has been urged on behalf of the respondent IOCL that a person selected by it for the dealership shall have to pay attention towards day-to-day working of the dealership by personally managing the affairs of the dealership and unless the petitioner ceases to be a member of the Karbi Anglong Autonomous Council the offer of dealership to the petitioner will not be a prudent business proposition not only from the standpoint of the respondent IOCL as the dealer appointing authority but also from the perspective of public interest as the dealership is required to be run in an efficient manner by a person personally managing its affairs on day-to-day basis and the dealership has to cater to the public in a satisfactory manner. It has been urged that the decision, in view of the fact situation obtaining in the case, which has been arrived at and conveyed to the petitioner by the impugned Letter dated 17.02.2023 is to be respected and not to be interfered with as the decision is not arbitrary, irrational and the decision involves public interest. It has been urged that the decision is neither mala fide nor discriminatory as it has been decided to select and appoint a person from remaining lot of applicants, who are also eligible for consideration but are not considered as the petitioner emerged as the luckiest one in the Draw of Lots.

37. It has been observed in *Jagdish Mandal vs. State of Orissa and others*, reported in [2007] 14 SCC 517, that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a

procedural aberration or error in assessment or prejudice to a tenderer, is made out. It has been further observed that a court before interfering in tender or contractual matters in exercise of power of judicial review should pose to itself the following questions : [i] Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached'; and [ii] Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226.

38. It can be appreciated that the petitioner as a member of the Karbi Anglong Autonomous Council and as a legislator, he has a vital role to play in the proper functioning of democracy as he acts as the representative of the people and is expected to serve best interests of the constituents. This Court is not persuaded to accept that the duties and responsibilities of a legislator like a member of the Karbi Anglong Autonomous Council are limited to attending hardly one to two hours for four days during the Session of the Karbi Anglong Autonomous Council, as has been projected by the petitioner in his additional affidavit, in view of the discussion made in the preceding paragraph no. 33. It has been contended by the respondent IOCL that the matter of appointment of a dealer is not only to be looked from the perspective of an applicant, but also to be looked from the standpoint of the Oil Marketing Company, IOCL as it has the responsibility not only to appoint the dealer but also to ensure the dealership is being run in an efficient manner and caters to the public in a satisfactory manner. The interpretation that has been sought to be given by the respondent IOCL is that on a combined reading of the clauses of the Brochure and the terms and conditions set forth in the Appendix with the Undertaking, the term, 'employment' is not to be looked in a narrower sense like a relationship that exists between employee-employee *strict sensu* but is to be considered in a broader sense and the term, 'employment' used in the Brochure and the terms and conditions set forth in the Appendix with the Undertaking means that the proposed dealer cannot maintain any relationship or engagement either in the private sector or with the State Government or with the Central Government or for that matter, with the Karbi Anglong Autonomous Council, either in the form of employment or any kind of relationship like a member of

the Karbi Anglong Autonomous Council, with honorarium/remuneration receivable in the form of salary/allowances/perks/emoluments, etc. which does not result in cessation of the relationship. The main reason behind such interpretation is that with any kind of such relationship existing in any form, the same will come in the way of paying attention by the proposed dealer in the day-to-day management of the Retail Outlet Dealership, as any kind of relationship or involvement will have the potential of diverting the attention from the day-to-day management of the affairs of the proposed dealership.

39. The court cannot be oblivious to accept a situation that it is possible to envisage every possible future situation and to incorporate specific terms in respect of every possible situation, that may arise in future, in the Guidelines/Brochure. It may not be conceivable at the time of formulating the Guidelines/Brochure that a applicant like a nominated member of a District Council, whose position is somewhat akin to a Member of either the Parliament [MP] or of any State Legislative Assembly/Council [MLA/MLC], would apply for Retail Outlet Dealership. In the fact situation obtaining in the case in hand, as have been adumbrated above, this court has found the contention of the respondent IOCL that in the event of any situation arising in a case for which there is no specific terms in the Guidelines/Brochure and if two interpretations of the existing terms are possible, it is the interpretation which is made by the appointing authority is to be accepted, is justified, rational and reasonable one. Having regard to Clause 6 of the Brochure read with Clause 13 of the affidavit required to be submitted by the applicant as per Appendix-XA and Clause 3 and Clause 4 of the affidavit required to be submitted by a Letter of Intent [LoI] holder *vis-à-vis* the fact that the petitioner is a member of the Karbi Anglong Autonomous Council who is not inclined to give up his such membership even if he is offered the Retail Outlet Dealership, the interpretation given by the respondent IOCL as the dealer appointing authority to the term, 'employment' in the broader sense is not found to be one which cannot be given on a combined reading and analysis of the Clause 6 of the Brochure read with Clause 13 of the affidavit as per Appendix-XA and Clause 3 and Clause 4 of the affidavit required to be submitted by a Letter of Intent [LoI] holder. Thus, the standpoint of the respondent IOCL that the petitioner so long he continues to be a member of the Karbi Anglong Autonomous Council, is not eligible for being offered the Letter of Intent [LoI] cannot

be said to be a decision which is arbitrary, irrational and unreasonable and which has been taken without consideration of the factors relevant for selection and appointment of a dealer for a Retail Outlet Dealership. Such decision of the respondent IOCL which it has taken as the dealer appointing authority, as regards the proposed Retail Outlet Dealership at the subject-location, is required to be looked into by it both from the commercial perspective and from the standpoint of the public interest. In such view of the matter, the decision contained in the impugned Letter dated 17.02.2023 cannot be termed to be a decision which no responsible authority acting reasonably and taking into purview all germane commercial factors, could have reached. The answers to the two questions posed in *Jagdish Mandal* [supra] are, thus, found not in the affirmative. It is relevant to note that the petitioner herein did not emerge as the highest bidder or his offer was found to be the best one. It was only on his emergence as the luckiest applicant in the Draw of Lots held on 25.08.2022, his offer was considered. The decision to go for selection of the candidate for Retail Outlet Dealership for the subject-location, in the event of failure of the petitioner to abide by the impugned Letter dated 17.02.2023, from the remaining lot of candidates is not a decision which can be termed as either as mala fide or biased, intended to favour someone, by any stretch, as the said decision is found in conformity with Clause 17 of the Guidelines/Brochure which mandates that in case the candidature of the selected candidate is cancelled, draw for selection would be held again from the remaining eligible candidates.

40. Having regard to the settled position of law that if an instrumentality or agency of the State has acted reasonably, fairly and in public interest in the matter of distribution of State Largesses in the form of award of Retail Outlet Dealership which requires to serve not only the interests of the appointed dealer but also the interests of the dealer appointing authority and the public and no person could claim fundamental right to carry on business with either the State or an instrumentality/agencies of the State, this Court in the fact situation obtaining in the case, has not reached a finding of disagreement with the decision-making process or the decision of the respondent IOCL authorities, conveyed by the impugned Letter dated 17.02.2023. As this Court while exercising the power of judicial review is only to examine whether the decision is made lawfully and not to examine whether the decision is sound, this Court does not find any good and sufficient reason to the interfere with the decision of the respondent IOCL

authorities conveyed by the impugned Letter dated 17.02.2023. Thus, this Court is also of the considered view that no direction in the nature of mandamus, as sought for by the petitioner, is called for. In view of the observations and findings made hereinabove, the petitioner is not entitled to any relief in the context of Article 14 as the same would amount to negative equality whereas Article 14 is strictly a positive concept.

41. Consequently, the writ petition is found bereft of any merit and is liable to be dismissed. The writ petition is, therefore, dismissed. The interim order, passed on 04.05.2023, to maintain *status quo* with regard to the Retail Outlet Dealership at the subject-location stands recalled. There shall, however, be no order as to costs.

JUDGE

Comparing Assistant