

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17001 of 2012

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1. Sushil Kumar S/O Birendra Kumar Sharma R/O Kavivar Nepali Path, Lal Bazar, P.O.& P.S.-Bettiah, District-West Champaran

.... Petitioner/s

Versus

1. The Union Of India , Through The Secretary, Ministry Of Petroleum & Natural Gas Government Of India, Shastri Bhawan, New Delhi
2. Hindustan Petroleum Corporation Limited Petroleum House, 17j, Tata Road, Mumbai-400020, Through Its Chairman
3. The Deputy General Manager, LPG SBU (East Zone) Pubanchal Bhavan, 771, Anandapur, 2nd Floor, EM By Pass, Kolkata-700107
4. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd., Lok Nayak Bhawan, 6th Floor, Fraser Road, Patna
5. Raman Kumar Mishra S/O Late Sachidanand Mishra R/O Narkatiaganj, P.S.-Shikarpur, Distt-West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate.

Mr. Suraj Samdarshi, Adv.

For the Respondent/s : Mr. Chitranjan Sinha, Sr. Adv.

Mr. Abhay Kumar Singh, Sr. Advocate.
Mr. Shiv Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 04-05-2015

Heard counsel for the petitioner and the respondents.

In this case, petitioner is challenging the order dated 17th July 2012 passed by the Deputy General Manager, Respondent no.3 enclosing the speaking order in which it has been held that the petitioner while submitting application for LPG Distributorship suppressed the fact about his father, placing basic reliance on the written statement filed by the petitioner in Title Suit No. 63 of 2000.



The short facts of the case is that the Hindustan Petroleum Corporation Ltd. (hereinafter to be referred to as the 'Oil Corporation') issued an advertisement dated 31st December 1997 (annexure-1) for the appointment of LPG Dealer under the general category. In pursuance thereof, the petitioner filed the application on 10th February 1998 as the last date for the submission of the application was 13th February 1998. Raman Kumar Mishra, respondent no.5 had also applied for LPG Dealership against the aforesaid advertisement.

As that advertisement was not acted upon, the Oil Corporation published a 2nd advertisement dated 28th August 2000 (Annexure-1/A) under the same category where Clause 10 with note and sub-clause (ii) mentioned that the intending candidates were to file the application on or before 12th October 2000 at the address mentioned in Clause 9 but the persons who have applied against 1997 advertisement, were also to submit their application annexing the receipt of the same. In Clause 2 it has been mentioned that the qualification would remain the same as of earlier advertisement. Further condition has been attached that those who have already deposited the fee were not required to again deposit the same.

The panel was prepared and the petitioner was placed at Sl.no. 1 by the Dealers Selection Committee for appointment of Dealer of LPG at Ramnagar whereas respondent no.5 was placed at

Sl. No.2. Field inspection was done, report was submitted and conditions attached to the advertisement were found to have been satisfied as petitioner was found to have possessed all the criteria mentioned in the advertisement.

Raman Kumar Mishra, respondent no.5 filed a complaint with the Oil Corporation making allegation of suppression of certain facts about petitioner's parentage. Subsequently, a writ petition was filed vide CWJC No. 846 of 2004 where it has been disclosed that the petitioner is not the son of Birendra Kumar Sharma, rather he is son of Narendra Kumar Sharma on the basis of written statement filed in Title Suit No. 63 of 2000 pending before the Munsif at Bettiah, District West Champaran.

On receipt of the complaint from the respondent no.5, the Oil Corporation entered into enquiry into the matter and also asked clarification about his parentage in response he submitted documents, such as, educational certificate right from College certificate dated 3rd July 1989, Matriculation certificate dated 30th January 1990, residential certificate, Election I-Card, Driving Licence and his Passport and also filed an affidavit showing his father's name as Birendra Kumar Sharma.

Even after issuance of overwhelming documents showing his father's name as Birendra Kumar Sharma, the Oil



Corporation did not issue letter of intent in his favour on the ground of pendency of a writ petition vide CWJC No. 846 of 2004 filed by Raman Kumar Mishra against the Oil Corporation impleading the present petitioner as respondent no.5 where prayer was made for cancellation of selection of petitioner, qualified as 1st candidate for retail dealership of LPG at Ramnagar in the district of West Champaran. During the pendency of that writ petition the Oil Corporation issued a letter of intent in favour of Raman Kumar Mishra, respondent no.5. That led to filing of writ petition by the petitioner vide CWJC No. 18555 of 2008.

The writ petition filed by the petitioner was disposed of vide order dated 3rd March 2009 (Annexure-6) where this Court in Single Bench quashed the letter of intent issued in favour of Raman Kumar Mishra, respondent no.5 further directing that as there is no impediment nor stay from any court of competent jurisdiction, the Oil Corporation was advised to proceed with the matter forthwith in accordance with law. While passing the order, the learned Single Judge has quoted Para-11 of the counter affidavit filed in CWJC No. 846 of 2004(Annexure-5). Later on another Single Judge of this Court decided CWJC No. 846 of 2004 vide order dated 30th June 2010 (Annexure-8) arrived to a finding that the selection of present petitioner who was respondent no.5 of that writ petition was declared bad and, accordingly, selection made by

the Oil Selection Committee was set aside and the matter was remanded back to the Selection Board for taking a fresh decision in accordance with law after examining the relevant and material facts.

Sushil Kumar, the present petitioner being aggrieved by the decision in CWJC No. 846 of 2004 filed LPA No. 1433 of 2010 and Raman Kumar Mishra, respondent no.5 of the present case being aggrieved by the order passed in CWJC No. 18555 of 2008 filed LPA No. 425 of 2009 and the Oil Corporation being aggrieved by the order passed in CWJC No. 18555 of 2008 filed LPA No. 465 of 2009. All the aforesaid Letters Patent Appeals were heard together and vide order dated 19th December 2011 (in which I (Shivaji Pandey,J) was also a party were disposed of with a direction to the Oil Corporation to consider all the documents made available on behalf of appellant Sushil Kumar (present petitioner) regarding his parentage including amended written statement for coming to the conclusion as to whether he has suppressed any material of real fact with respect to his parentage or not. The observation made by the writ Court in favour or against any party will not cause any prejudice to either of the parties. With the aforesaid clarification/observation, the Division Bench directed the Oil Corporation itself to decide the controversy raised with respect to the candidature of Sushil Kumar (appellant).

At this stage it will be relevant to mention that during



the pendency of LPA, the present petitioner filed an amendment application dated 11th February 2009 (Annexure-11/B) seeking certain amendments in the body of written statement filed in T.S.No. 63 of 2000. In the amendment application plea has been taken that under some misconception and due to incorrect legal advice, certain contrary facts pertaining to the case has been mentioned in his written statment and sought amendment of Para-10 with regard to formal adoption dated 14th January 1975 on the auspicious day of *Makar Sankranti* has been made under the incorrect legal perception as the adoption was intended and never acted upon.

The decision of adoption was taken on 14th January 1975 but actually giving and taking never took place. In Para-3 and 4 he has given the circumstances under which the property was purchased in the name of Sushil Kumar, petitioner tried to show in what circumstances he had shown himself son of Narendra Kumar and in Para-6 the statement of adoption be read and construed as “Adoption which was intended but never acted upon”. In Para-7 same thing has been reiterated and the amendment petition was allowed by the court below vide order dated 24th July 2010.

On account of the amendment of written statement the Division Bench of this Court has given observation that the Oil Corporation while considering the case of present petitioner would

also examine the effect of amendment made in the written statement.

After disposal of aforesaid LPA the petitioner filed his representation dated 4th June 2012 mentioning the facts in detail attached 20 documents to show that he has/had not suppressed any material fact from the Oil Corporation with respect to filing of application. The details will be considered at the appropriate stage.

The Oil Corporation considered the case of petitioner along with documentary evidence submitted by him and arrived to the conclusion that the petitioner has suppressed the fact that he himself had filed written statement, affidavit in support of his written statement, Vakalatnama in Title Suit No. 63 of 2000 stating in each of the document as son of Narendra Kumar. Failure of the petitioner to bring this fact to notice of the Oil Corporation amounts to suppression of fact as Sri Narendra Kumar has dealership of another public sector, this also becomes suppression of material fact as this disclosure would have led to disqualification of the present petitioner.

Counsel for the petitioner has submitted that the Oil Corporation has acted illegally in holding that the petitioner had suppressed his parentage as this Court in the Division Bench while remanding the case, in Para-9 has held that the written statement stands amended, in such a situation, directed the Oil Corporation to

consider all the documents made available on behalf of appellant regarding his parentage including the amended written statement for coming to the conclusion about his suppression of material facts or real facts with respect to his parentage.

In view of amended written statement applying the principle of relation back, the statement 'adoption' has been substituted with the "intention of adoption but never acted upon". In such a situation whatever statement was there in the written statement got substituted by the amended statement.

Apart, in order to dispel the confusion has filed large number of documents showing his father's name as Birendra Kumar. He has submitted that to prove the fact that he was son of Birendra Kumar, filed School Certificate, Driving Licence, Passport, "copy of will", copy of Civil Revision Petition (Annexure-14), copy of family arrangement dated 2nd March 1997 (Annexure-13) where the petitioner has been shown to be son of Birendra Kumar Sharma and that was signed by all the three sons of Kapildeo Sharma, namely, Bharat Kumar Sharma, Birendra Kumar Sharma and Narendra Kumar Sharma. These are unimpeachable and the clinching evidences, emphatically showing he is son of Birendra Kumar Sharma, and not the son of Narendra Kumar Sharma.

He has further submitted that the Oil Corporation has

failed to take into consideration the material fact which he was required to look into and has taken into consideration the immaterial facts which he was not required to look into and committed an illegality in rejecting the claim of petitioner.

The petitioner on the principle of doctrine of 'relation back' with respect to amendment petition, placed reliance on (2002)7 SCC 559 (Para-10) & (2001)8 SCC 561 (Para-10) and has further submitted that the Oil Corporation while considering the case of petitioner has exceeded its jurisdiction with regard to giving observation about the adoption, adopted father and natural father of the petitioner, as these issues are pending for adjudication before the civil court, placed reliance on (2009)10 SCC 273 (P-41 to 43) & AIR 1959 SC 504 (P-12 and 13), further submitted that it is permissible in law that the admission made in the written statement can either be withdrawn or can be clarified and explained through amendment petition placed reliance on (2006)6 SCC 4998 (Para-7, 13, 14, 15) (2009)14 SCC 38 (Para-12 to 14) AIR 1967 SC 314 AIR 1959 SC 504 (P-12 and 13). On the point that after amendment of plaint or written statement the verification Vakalatnama loses its value is decided in AIR 1964 Pat. 372.

He has further submitted that as in Clause 10(ii) it has been mentioned that qualification for selection will be the same as that of the first advertisement and admittedly in the first



advertisement there was no specific clause mentioned in the advertisement requiring to disclose the name of father of applicant, as such, the criterion and qualification mentioned in the first advertisement will continue to be qualification for second advertisement will be basis for consideration of selection of dealers, reliance has been placed on (2005)7 SCC 484 (P-5) & AIR 1978 SC 851 (P-8).

He has also placed reliance on the injunction order passed in TS No. 63 of 2000 where it has been mentioned that the factum of adoption will be seen at the time of final order.

He has also submitted that while considering candidature for being appointed as retail dealer, the Oil Corporation did not take into consideration the second application, rather the letter dated 12th December 2008 (Annexure-4 to the supplementary affidavit) specifically mentions about the application dated 13th February 1998.

On that basis the counsel for the petitioner has submitted that the reasons assigned for rejection of his candidature by the Oil Corporation is not sustainable and the same should be set aside.

Counsel for the private respondent by and large adopted the submission of counsel for the Oil Corporation. The counsel for the Oil Corporation has submitted that, the authority



while passing the impugned order, not only confined its consideration to the materials of written statement, amended written statement, documents filed in the Title Suit No. 63 of 2000 but has also considered other documents, placed reliance on Para-10 to 24 of the impugned order. He has also submitted that the authority, while making submission on factum of adoption, relied on Section 12 and 15 of the Hindu Adoption Act and on that strength counsel for the respondents submits that once a person is adopted he cannot return back to the original family, will remain with the family of adoptive father. He has relied on (2003(4) PLJR 173 (SC) 2005(3) PLJR 97 (SC) (P-13) 2013(1) PLJR 402 with respect to exercise of power under judicial review and limits of relief to be granted.

Learned counsel for the respondent Oil Corporation has drawn the attention of this Court to the application form (Annexure-A to the counter affidavit filed by respondent nos. 2 to 4), placed reliance on Clause 8 of the Application Form which deals with relationship with Oil Company Dealers/Distributors or Holders of letter of intent where as sub-clause (a) provides as follows: (a) Do you or any of your close relatives (including step relatives) as mentioned in clause 8(a) holds a letter of intent for Retail Outlet/ 2-3 Wheeler MS Outlet/Kerosene/LDO dealership or LPG distributorship of any

Public Sector Oil Co.?" Relatives have been defined (i) Spouse (ii) Father/Mother (not applicable to daughter) (iii) Brother/Brother's wife (not applicable for women applicants) (iv) Son/daughter in law

Thereafter answer has to be given Yes or No. The petitioner has given answer "No".

Sub-clause(b) of Clause 8 of the Application Form provides that " Are you or any of your close relatives (including step relatives) shown under item 8(a) above, dealers/distributors or partners in any Retail Outlet/2-3 wheeler MS Outlet/Kerosene/LDO dealership or LPG distributorship of any Public Sector Oil Co.?" The answer was to be given in Yes or No. The petitioner has given answer "No". He has also submitted that before putting signature he has to give a declaration that he has made true statement to the best of his knowledge or belief and any wrong information, suppression of fact will disqualify him from being considered for dealership/distributorship. He has also drawn the attention of the affidavit filed by the petitioner, undertaking given by him where he has mentioned his father's name as Birendra Kumar. There in paragraph nos.3 of the affidavit he has made similar declaration having any relation being dealership/distributorship of MS/HSD/SKO-LDO/LPG by any public sector undertaking but the petitioner for the purposes of

getting the dealership of LPG has made incorrect statement in his application as in the Title Suit No.63 of 2000 he has specifically stated that he is not the son of Birendra Kumar Sharma rather claimed to have been taken as adopted son of Narendra Kumar Sharma. Thereby he has misrepresented to the Corporation as Narendra Kumar Sharma has distributorship of the Oil Company.

Learned counsel for the petitioner, in reply, has submitted that as per the advertisement there is no column mentioned about giving of details of fact relating to any pendency of the case and except in the affidavit portion in the application form (Annexure-A), there is no column to give the name of father. Whole of the advertisement/application form does not specifically provide for giving details of pendency of the case which is still subjudice where his application for amendment of written statement was allowed and statement made in the original statement substituted, be only basis for consideration of his application, respondent-Corporation wrongly rejected his representation. When no specific column in the application requiring him to give any statement relating to the pendency of the case, taking ground that the petitioner gave wrong parentage depicted him to have suppressed the material fact from the Corporation is completely misdirected, misconstrued, wrong exercise of power in depriving the petitioner from distributorship



of LPG. He has relied on the judgment of Madhya Pradesh High Court in 2007(1) M.P.L.J. 362 (Union of India and others Vs. Hari Om). He has also relied on (2009) 1 SCC 297 Paragraph nos. 12,13, 14, submitted that Hon'ble Supreme Court has taken a view that when the column of advertisement does not specifically mention about providing information of a particular fact, depriving the person from consideration on that account is wrong exercise of power, rejection of his representation is not sustainable in law. He has further submitted that the Corporation can not take a plea that this Court may refuse to entertain the application on account of elapse of so much time on the ground of granting equitable relief, has claimed a wrong doer cannot be allowed to take such plea, relied on AIR 1954 Bombay 232, paragraph no.4 where it has been said if the Officers of the department failed to discharge his statutory duty, the citizen cannot be deprived of his right which the law has given to him. He has further argued that respondent no.5 has wrongly been favoured by the Corporation. In support of his contention he has submitted that as per the advertisement the requirement of dimension of land was 36 meter/29 meters which the respondent no.5 in his application has quoted also mentioned in letter of intent dated 12.12.2008 (Annexure 4 of the supplementary affidavit)but the letter of the Regional Manager dated 15.1.2009



the dimension of land has mentioned measuring 27M/26.15M which itself shows that respondents are unreasonably and wrongly favoured by the Respondent no.5. He has further submitted that the Corporation in C.W.J.C. No.18555 of 2008 has taken a plea that the T.S. No.63 of 2000 relating to ownership of piece of land where assertion has been taken to be adopted son of Narendra Kumar cannot be acted upon as the matter is subjudice but at the later stage they have taken an opposite stand, wrongly issued the letter of intent in his favour of Respondent no.5. He has further submitted that this Court in Division Bench has directed the Corporation to consider all materials while considering representation, instead confined his consideration with the original written statement did not consider the effect of amendment inserted by the petitioner allowed by the court and as such the action cannot be justified and impugned order is liable to be set aside.

In the present case, the parties have raised number of issues for consideration by this Court but for the purpose of disposal of the case, this Court feels that there is no need to address all the issues raised by the petitioner.

On remand by this Court vide order dated 19th December 2011 in LPA No. 1433 of 2010 and analogous cases, this Court directed the Oil Corporation to consider the case of the

petitioner afresh and take decision with respect to suppression of facts relating to his parentage. In pursuance thereof the Deputy General Manager, respondent no.3 considered and rejected his representation.

The principle of judicial review of the administrative action relating to contract has been considered in detail in *Tata Cellular v. Union of India*, reported in (1994)6 SCC 651 declaring guideline for testing action taken by the administrative authorities. Basically the Court has taken a view of the principle of judicial review will apply to examining the manner, contractual matter has been dealt with, by the Government bodies, emphasis is to prevent abuse of power, decision be not actuated with mala fide, arbitrariness or favoritism, mentioned inherent limitation. The Government is the guardian of the finances of the State, expected to protect its financial interest. After exhaustive consideration of large number of judgments, the Hon'ble Court enunciated the principle, the modern trend is judicial restraint in administrative matter. The Court does not sit in appeal but merely review the manner the decision was taken. The Court does not have expertise to correct the administrative decision. If review of the administrative decision is permitted, it will be substituting its own wisdom without necessary expertise which itself may be fallible.



In other words, the fair play enjoins the Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must be tested by the application of Wednesbury principle of reasonableness and must be free from arbitrariness not affected by bias or actuated by mala fides. It must also be pointed out quashing the decision may impose a heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

As has been mentioned hereinabove, this Court has to examine the decision making process and not the decision, and has also to find out whether while taking a decision on administrative matter whether the authority has taken into consideration the proper material for arriving to a finding.

In that context, it has been decided by the Hon'ble Supreme Court in *Municipal Committee, Hosiarpur v. Punjab SEB*, reported in (2010)13 SCC 216, held that if a finding of fact is arrived at by an authority ignoring or excluding relevant material or by taking into consideration irrelevant materials or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of law. If the findings of the



Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated.

On completion of the aforesaid proposition, the perversity of finding recorded by the administrative authority will also be a consideration for interference by this Court. Perversity is one of the facets for consideration or testing the validity of the order. In that consideration, the Court on many a occasions has tried to find out the meaning of expression 'perverse' by taking assistance from the English Dictionaries. In one of the cases in *Arulvelu v. State* reported in (2009)10 SCC 206 in Para-24 has considered in what circumstances the finding recorded by an authority can be said to be perverse finding and for example it has been held that the finding of the subordinate authority will suffer from perversity if the same are not supported by evidence brought on the record or they are against the law or suffers from the vice of procedural irregularity. The finding will be perverse when it is against the weight of evidence so much so against the evidence

itself. It will be apt to quote Para -24, 25 and 26 of the Judgment which are as follows:

Para -24: The expression “perverse” has been dealt with in a number of cases. In *Gaya Din v. Hanuman Prasad*, (2002)1 SCC 501 this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

Para- 25: In *Parry’s (Calcutta) Employees’ Union v. Parry & Co Ltd*, AIR 1966 Cal.31, the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In *Triveni Rubber & Plastics v. CCE* 1994 supp,(3) SCC 665 the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

Para- 26: In *M.S.Narayanagouda v. Girijamma*, AIR 1977 Kant 58 the Court observed that any



order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough*, (1878) 1 LR Ir. 331 the Court observed that a “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Gadfrey v. Godfrey* 106 NW 814, the Court defined ‘perverse’ as “tuned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.”

So the basic principle that has emerged is that the authority while deciding the issue is required to take into consideration the relevant facts should not take irrelevant facts into consideration and the findings arrived should not be a perverse. If the decision suffers from those vices, this Court will have a jurisdiction to interfere with the decision taken by the administrative body.

Paramount consideration of this Court in exercise of judicial review, would be that, there should not be miscarriage of justice and miscarriage of justice be prevented. The Hon’ble Supreme Court in *Air India Ltd. v. Cochin International Airport Ltd.* AIR 2000 SC 801 has taken a view that the award of contract whether it is by a private party or by a public body or by



the State is essentially a commercial transaction for arriving to a just decision. The State can fix its own method to arrive at a decision. It can fix its own term of invitation in tender, not open to judicial review. It can inter into negotiation before finally deciding to accept the offers made to it. The Court would examine the decision making process and interfere if it is found visited by mala fide, unreasonableness and arbitrariness. The State, the Corporation, instrumentalities of State and its agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its power of judicial review with great care and caution and should be exercised in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. It will be appropriate to quote Para-7 of the judgment:

“Para 7 : “The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R. D. Shetty v. International Airport Authority, (1979) 3 SCC 498 : (AIR 1979 SC 1628); Fertilizer Corporation Kamgar Union v. Union of



India, (1981) 1 SCC 568 : (AIR 1981 SC 844);
Asstt. Collector, Central Excise v. Dunlop India
Ltd., (1985) 1 SCC 260 : (AIR 1985 SC 330);
Tata Cellular v. Union of India, (1994) 6 SCC 651
: (1994 AIR SCW 3344 : AIR 1996 SC 11);
Ramniklal N. Bhutta v. State of Maharashtra,
(1997) 1 SCC 134 : (1997 AIR SCW 1281 : AIR
1997 SC 1236) and Raunaq International Ltd. v.
I.V.R. Construction Ltd., (1999) 1 SCC 492 :
(1999 AIR SCW 53 : AIR 1999 SC 393). The
award of contract, whether it is by a private party
or by a public body or the State, is essentially a
commercial transaction. In arriving at a
commercial decision considerations which are of
paramount are commercial considerations. The
State can choose its own method to arrive at a
decision. It can fix its own terms of invitation to
tender and that is not open to judicial scrutiny. It
can enter into negotiations before finally deciding
to accept one of the offers made to it. Price need
not always be the sole criterion for awarding a
contract. It is free to grant any relaxation, for bona
fide reasons, if the tender conditions permit such a

relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, is corporations, @page-SC805 instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, is corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.”



In view of the aforesaid discussions and the facts involved in the present case this Court is not required to engage itself to resolve the dispute of adoption, effect of adoption, the amendment, all issues are subject matter of Title Suit and this Court will not go to that area but has to test as to whether, Respondent no.3 has considered the representation, visited the issue involved in the present case, while passing order correctly dealt with the matter in terms of direction by this Court, with respect to suppression of material fact in consideration to father's name.

This Court in LPA No. 1333 of 2010 (Annexure-9) in Para -9 and 10 has quoted some facts and gives direction as follows:

“Para-9. It would not be proper for us to make any observation with regard to the matters involved in Title Suit No.63 of 2000 because those matters and issues must be decided by a competent court in accordance with law. We would like to make it clear that the appellant had no doubt suppressed the stand taken on his behalf in his written statement and the same stand continued for few years but that has been ultimately given up by taking a firm stand before this Court and in the



amended written statement and hence it cannot be held that he actually suppressed his real parentage but in all fairness to the Corporation, the appellant, at the relevant time ought to have disclosed and made available whatever was claimed by him in his written statement. Now when the written statement stands amended, it will be for the Corporation to consider all the documents made available on behalf of the appellant regarding his parentage including the amended written statement for coming to a conclusion whether he has suppressed any material or real facts in respect of his parentage or not. The observations made by the writ Court in favour or against any of the parties will not cause prejudice to either of the parties.

Para-10. With the aforesaid clarification and observation we endorse the view taken by the writ Court that the Corporation should itself first decide the controversy raised with respect to the candidature of the appellant on the basis of relevant facts without being prejudiced by the order of this Court. That should be done at an early date preferably within a period of three

months. The select list contained in Annexure A/2 shall abide by such decision.”

In Para-9 has to be read properly. It can be divided in two parts. One part exposits the fact that the appellant had no doubt suppressed the stand taken on his behalf in the written statement and the same continued for years but that ultimately has been given up by taking a firm stand in the amended written statement. Hence, it cannot be held that he actually suppressed the real parentage. So in 1st part deals with, the Court took view of suppressing the material fact but 2nd part on account of taking the firm stand on his parentage in the amended written statement, hence it cannot be held that he actually suppressed his real parentage, but said, in all fairness should have disclosed and made available to the Corporation. In turn this Court has directed the Oil Company that the respondent Oil Company should consider all the documents made available on behalf of appellant regarding his parentage, including the amended written statement for coming to a conclusion for the purpose of arriving to a finding of suppression of any material and real fact in respect of his parentage. Further the Court has directed the Corporation itself first to decide the controversy raised with respect to candidature of the appellant on the basis of relevant facts without being prejudiced by the order of this Court.

Now consideration of this Court would be to see whether while deciding the representation of the petitioner the Corporation has considered the matter in terms of the direction given by this Court.

On perusal of the representation filed by the petitioner it appears that the petitioner attached altogether twenty documents for consideration of the respondent Corporation for the purpose of proving his case that he has not suppressed the fact of his parentage while filling up the form. As it appears from the order, the Oil Corporation was required to consider all the relevant documents attached by the petitioner which may ultimately affect the finding arrived at by the authority. The evidences were required to be looked into by the Respondent no.3 for arriving to a just decision.

As it appears petitioner has submitted large number of documents but basically the respondent Corporation has decided the case on the basis of written statement where he has mentioned that his father's name is "Narendra Kumar", being adopted son and the amendment petition where he has taken the stand, due to wrong opinion led to mistaken plea, rectified by amendment where he has given up claim of adoption, staked his claim to be son of Birendra Kumar. The impugned order does not show anywhere that the Oil Corporation while rejecting the

application has considered other materials which were brought by the petitioner for the purpose of consideration to the Oil Corporation where this Court has specifically directed to consider all the documents filed by the petitioner but in utter violation confined its consideration to the title suit, vide T.S.No. 63 of 2000. As such this Court is of the view that the Oil Corporation while deciding the case has not acted in terms of direction of the Division Bench, suffers from procedural irregularity, the finding can safely be said to be perverse, in essence, the documents which may affect the factual position of the parentship of the petitioner have not been taken into consideration and, as such, the impugned order dated 17th July 2012 is hereby quashed and the matter is remanded back to the Oil Corporation for passing a fresh order in accordance with law. The same should be done within a period of two months from the date of production/receipt of copy of this order.

This Court is not deciding other points raised by the petitioner. If the order goes against him, he will have liberty to take all the points in future litigation, if any.

With the above observation/direction, this petition is allowed.

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(Shivaji Pandey, J)

