

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

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Judgment reserved on : 06.04.2015

Judgment delivered on: 06.07.2015

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WP(C) 6870/2012

ANITA DEVI

..... Petitioner

Versus

INDIAN OIL CORPORATION & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr T.S.R. Venkatramana, Advocate

For the Respondents: Ms Mala Narayan & Ms Vridhika Mayar, Advocates for R- 1 & 2.

Mr Atul Bandhu, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

1. This writ petition is directed against two orders passed by respondent no. 1 and 2. Respondent no. 1 and 2, in effect, represent the Indian Oil Corporation Ltd. (hereafter referred to as IOCL). The two orders which are impugned are: order dated 30.11.2010 and 11.03.2011.

THE SCOPE OF THE IMPUGNED ORDERS & THEIR EFFECT

1.1 By virtue of order dated 30.11.2010, IOCL communicated to the petitioner, i.e., Ms Anita Devi (who I shall be referring to hereon as Anita Devi-I that she had been de-empanelled. The facts, which will be narrated hereinafter by me, would show that there is, in the record, reference to a namesake of the petitioner; which was a cause of much confusion and concern to Anita Devi-I. Therefore, for the convenience, the namesake will, accordingly, be referred to as Anita Devi-II).

1.2 Continuing with the narrative, the aforesaid impugned order was

suggestive of the fact that the de-empanelment of Anita Devi-I had come about on account of a complaint received that she had violated multiple dealership norm. Besides this, the said impugned order also adverted to the fact that IOCL had received another complaint, albeit of a candidate, of having been awarded less marks qua educational criteria.

1.3 The order conveyed that both these complaints stood substantiated, and hence, the competent authority had ordered cancellation of the earlier panel prepared, which was based on the results displayed on 24.12.2009. The order contained consequential direction for re-evaluation of the marks awarded for the “*document based portion for all eligible candidates, i.e. (those) who had appeared for interview, for preparation of fresh merit panel*”.

1.4 It is this exercise, which had led to the de-empanelment of Anita Devi-I.

2. I must indicate herein that the record shows that in so far as Anita Devi-I was concerned (at this stage), the competent authority in IOCL had come to a conclusion (based on a complaint made), that she had acquired a prior dealership from Hindustan Petroleum Corporation Ltd. (in short HPCL), and had, thus, violated the multiple dealership norm. The other complaint, though, did not relate to Anita Devi-I. It is, however, the charge of multiple dealership against Anita Devi-I which brought Anita Devi-II into the picture. The narration of facts hereafter would show though, that this charge, levelled against Anita Devi-I, could not be “conclusively established”, as per IOCL’s own version.

2.1 The consequences of the issuance of order dated 30.11.2010 was that, respondent no.3. i.e. Anju Kumari topped the merit list, while one Renu Budhisht was slotted in the second place. The third person in the merit list

was, one, Ms Manju.

2.2 This is in so far as the first impugned order is concerned.

3. The second impugned order (i.e. order dated 11.03.2011) came to be passed after a legal notice was sent on behalf of Anita Devi-I, by her advocates, challenging the basis of her de-empanelment, albeit even without a notice. The said legal notice is dated 18.12.2010. In the legal notice sent on behalf of Anita Devi-I, her advocate, made an emphatic assertion that she had not been allocated a retail outlet/ dealership or a petrol pump by any oil company. It appears that a representation was also sent, in this behalf, prior to the legal notice on 10.12.2010.

3.1 Evidently, IOCL ordered an inquiry. The detailed inquiry report is on record, the substance of which, however, is reflected in the second impugned order i.e. order dated 11.03.2011. By this order, IOCL communicated to Anita Devi-I that it could not be established that she had violated the multiple dealership norm. It appears that IOCL's investigations had revealed that Anita Devi-I had a namesake, who existed in flesh and blood. The record throws up though, stupendous coincidence, which is, that not only did Anita Devi-I and Anita Devi-II have husbands who had the identical names but also that, the two, had a common date of birth. What, however, set them apart were their caste certificates, high school certificates, graduation certificates and post-graduation certificates.

3.2 However, despite reaching a conclusion in favour of Anita Devi-I (with regard to the allegation of violation of multiple dealership norms), the earlier order of cancellation of her candidature, dated 30.11.2010, was maintained, on account of the investigators of IOCL coming to the conclusion that the experience certificate dated 05.10.2007, supplied by her, was a false certificate.

3.3 What is interesting to note is, that this certificate has been issued by the proprietor of Sidharth Filling Station, Rampur Road, Doraha, Bajpur, Distt. Udham Singh Nagar; who is none other than Anita Devi-II. IOCL's investigators came to the conclusion that the experience certificate dated 05.10.2007 was false, as it stated that Anita Devi-I had worked at Sidharth Filling Station (i.e., a petrol pump), in the capacity of a manager, for past three (3) years, whereas the said filling station had been commissioned by HPCL only on 10.10.2006.

3.4 Pertinently, before reaching the aforementioned conclusion, once again, no notice was issued to Anita Devi-I.

4. It is this principal grievance, that has brought Anita Devi-I to court. Since, the immediate beneficiary of her de-empanelment is respondent no.3 (i.e. Anju Kumari, whose complaint it appears generated investigation vis-à-vis violation of multiple dealership norm) - in the writ petition, three allegations are raised against her, as well.

4.1 First, that Anju Kumari does not possess a valid post-graduate degree. This allegation is based on the fact that in acquiring the undergraduate degree, she had undergone a two year course at Mahatma Jyotiba Phule Rohilkhand University, Bareilly (in short the Rohilkhand University), which according to UGC regulations (to which I will make a reference in a short while), made Anju Kumari ineligible for acquiring a post-graduate degree. The allegation being: that for Anju Kumari to seek admission to a post-graduate degree course, she ought to have undergone a bridge course, failing which her post-graduate degree was not recognizable in law. In this behalf, reliance is placed on Regulation 2 of the UGC (Minimum Standards of Instruction for the Grant of First Degree through Formal Education in Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce

and Sciences), Regulations, 1985 (in short the 1985 Regulations). The submission is also sought to be supported by placing reliance on the judgement of the Supreme Court in *Annamalai University vs Secretary to the Government & Ors.*, (2009) 4 SCC 590.

4.2 The other two allegations levelled against Anju Kumari are : that there are serious doubts with regard to the experience claimed by her, as also, in respect of the caste certificate submitted by her.

4.3 In so far as Anju Kumari's claim of experience is concerned, it is alleged that it is false for the following reason: In the declaration dated 23.10.2001, filed with the Municipal Corporation of Delhi, Education Department, against question no. 11 – which sought information as to whether the person signing the application form was in service, and if so, the details of the same pertaining to: the name of the organization; the post held; the duration; and the salary – the answer to which, Anju Kumari appears to have given was in the negative.

4.4 In other words, before the Municipal Corporation of Delhi, Anju Kumari took the stand that prior to 23.10.2001, she had not been in service.

4.5 However, this assertion when seen in the light of the claim made by Anju Kumari, while applying for dealership with IOCL, appears to be inaccurate, as she claimed experience under following heads: (i) as a supervisor in a transport company between the period 01.04.1990 to 31.03.1992; (ii) as an assistant teacher, in Gautam Budh Nagar between 04.01.1996 and 11.07.2001; and (iii) lastly, once again, as an assistant teacher between 12.07.2001 to 17.11.2001, in an educational establishment of NDMC.

4.6 This charge is sought to be buttressed by placing reliance on a response dated 12.09.2012 received pursuant to an inquiry by, one, Sh. Arun

Kumar Pandey, under the Right to Information Act, 2005 (in short the RTI Act). In the said communication, it stood conveyed that as per the service book of Anju Kumari maintained with the Education Department of MCD, the date of her first appointment is 26.11.2001.

4.7 In this connection, it is also asserted in the writ petition that since, Anju Kumari is employed as a teacher, earning more than Rs. 2 lacs per annum, she was otherwise not entitled to allotment of a dealership.

4.8 The third allegation levelled against Ms Anju Kumari; as indicated above, is with regard to her claim that she is a scheduled caste. This charge is levelled solely on the ground that the relevant documents were not available on record.

4.9 I must indicate herein that, it appears, IOCL carried out a verification of the caste certificate dated 29.11.2000, issued in favour of Ms Anju Kumari. In this connection, IOCL, evidently, received a communication dated 16.09.2011 from the Office of the Assistant Collector, Gr.-I (Kotwali), Govt. of NCT of Delhi, which is indicative of the fact that the said certificate was issued to Ms Anju Kumari, wife of Mr. B.P. Ashok.

5. The aforesaid is the broad conspectus of the two impugned orders. The twist and turns in the case are obvious, and in order to appreciate the challenge laid before me, the procedure for selection and the background facts obtaining in the case need to be noticed.

APPLICABLE GUIDELINES & PROCEDURE FOR SELECTION

5.1 The Government of India, Ministry of Petroleum and Natural Gas (in short MPNG), evidently, on 09.10.2000, had formulated broad guidelines for selection of retail outlet dealers/ LPG dealers/ SKO-LDO dealers, which had to be applied across the board by all oil marketing companies.

5.2 With the dismantling of the Administrative Price Mechanism (APM),

the MPNG, by a communication dated 19.08.2003 formulated further broad guidelines for selection of retail outlet dealers both for locations which were mentioned in the approved marketing plan, and also for those, new locations, which fell outside the marketing plans.

5.3 Under the 19.08.2003 guidelines, apparently, oil marketing companies were advised to adhere to the same percentage of reservation for various sections of the society, as was prescribed under the earlier guidelines dated 09.10.2000, for at least a period of two years. Furthermore, there was to be no ceiling on income qua prospective dealers. However, multiple dealership norms were modified. Oil companies were generally advised to adopt uniformity in assigning marks to applicants under different criteria stipulated under the guidelines.

5.4 Evidently, based on the aforementioned guidelines of the MPNG, all oil companies formulated their own separate policy and guidelines for selection of retail outlet dealers, which were though rooted in MPNG's guidelines dated 19.08.2003.

5.5 As per the stand of IOCL, as reflected in its counter-affidavit, the initial selection is conducted by an interviewing committee, which comprises of three senior officers. The interviewing committee is charged with the responsibility of adjudging the suitability of the applicants applying for dealership based on comparative merit. The criteria under which comparative merit is adjudged is stipulated in the policy/ guideline formulated by IOCL.

5.6 The interviewing committee upon conducting interviews determines the suitability of three candidates, from amongst those who apply and are interviewed, in order of merit. Out of the three, the candidate found most suitable, is ranked first on the merit panel.

5.7 If, however, the difference in marks obtained (against various criteria prescribed in the policy/ guidelines of IOCL), as between the candidate ranked first and other candidates is less than 5%, or where a candidate is falling short of qualifying marks by 5% or less, the result of the merit panel finalized by the interviewing committee, is required to be kept in abeyance. This fact is though, required to be notified, by having the information displayed on the notice board or uploaded on the website of the IOCL. The notice would indicate not only the fact that the result has been kept in abeyance, but also the fact that it would be declared in 30 days or any other date as may be decided by the competent authority.

5.8 In the interregnum, the interviewing committee is required to handover the merit panel, along with marksheet, obtained by the candidates, to the concerned Divisional Head, who in turn is required to forward the same to the State Head for further reference to a Screening Committee. The Screening Committee is required to be constituted by the concerned State Office. Upon its constitution, the Screening Committee is obliged to conduct fresh interviews of all candidates on the criteria stipulated, and thereupon, make their recommendations.

6. On receiving the recommendation, the State Head is required to take a decision as to whether further action is required to be taken, which would include rectification of marks/ merit panel. Upon reaching a decision the State Head is required to notify the relevant information to all candidates by pasting it on the notice board and uploading it on the website of the IOCL.

6.1 The procedure adopted, of keeping, the result of the interviewing committee in abeyance, when the difference in the marks is within the range indicated above, is evidently, stipulated in a circular dated 07.04.2005.

6.2 According to IOCL, field investigations are conducted after a merit

panel is prepared. In other words, the assertions made by the empanelled candidates and any complaints received qua them are examined vis-a-vis their veracity only after a merit panel is prepared. It is when, the investigations are completed, that a final panel in the order of merit is prepared. In the event no complaints are received, and the field investigation report is found to confirm the facts stated in the candidate's application then, the candidate, ranked first in the merit panel, is offered dealership.

6.3 On receipt of recommendation for award of dealership, IOCL issues a Letter of Intent (in short LOI) to the candidate ranked first in order of merit. Upon the said candidate fulfilling the terms of the LOI, dealership is awarded to such a candidate.

FACTS

7. On 10.09.2007, IOCL took out an advertisement in daily newspapers, whereby it invited applications for award of dealership qua its retail outlet, located at Nand Nagri, Delhi. Applications were invited in this behalf from scheduled caste (women) candidates.

7.1 Number of applications were received, including those from Anita Devi-I and Anju Kumari.

7.2 The interviewing committee called the eligible candidates for interviews, on 26.08.2008.

7.3 The suitability of SC (Women) candidates were adjudged based on marks given against the following criteria: capability for generating business; business ability acumen; personality; experience; age; educational qualification; and lastly, capability for providing finance.

7.4 Notably, in the aforementioned category, there was no requirement for the candidate to demonstrate her capability to provide land and

infrastructure/ facilities for setting up the dealership.

7.5 Apparently, the interviewing committee discovered, upon holding interviews of eligible candidates, that the difference in marks, amongst candidates, who were empanelled was less than 5%. Accordingly, as per circular dated 07.04.2005 (to which I have made a reference above), the results were kept in abeyance.

7.6 Consequent thereto, a Screening Committee was constituted, which conducted fresh interviews of all candidates as per the prescribed criteria. These interviews were conducted on 20.09.2008.

7.7 Based on the marks awarded by the Screening Committee, once again, a merit panel, comprising of three best candidates was prepared. Anju Kumari, was ranked first, having scored 34.5 marks, while Ms Manju was ranked second, with 33.5 marks. Ms Anita Devi-I, ranked third, having scored 33 marks.

7.8 At this point, it came to be noticed that, once again, the difference in marks was marginal. However, before any action could be taken, IOCL is said to have received four complaints against the selection process.

7.9 IOCL, in consonance with its grievance / complaints redressal system, appointed, one, Sh. R.K. Gupta, Sr. Manager (RS), as the investigating officer. The investigating officer submitted his report, which is, dated 12.03.2009. The said report (the copy of which is not filed), was, evidently, referred to the Head Office for clarification regarding interpretation of the policy.

8. The clarification was received from the Head Office, on 11.07.2009. Contrary to what is being stated in the counter affidavit, the report dated 11.07.2009, which is filed along with the counter affidavit of IOCL, is a gist of the complaint, investigation and the recommendation of the IOCL Head

Office, and not, the report of the investigating officer.

8.1 To put it briefly, based on the assessment of the complaints, and the findings returned by the I.O., a conclusion was reached that there were errors in the selection process committed by the L-1 Committee, (which I assume is the interviewing committee) and the Screening Committee, vis-à-vis marks awarded under the experience criteria to two candidates by the name of Ms Meena Rani and one Ms Manju.

8.2 I may only note, in one of the complaints made by one Sh. Ramesh Gautam, an allegation of bribery was also made, which it appears could not be substantiated.

8.3 Accordingly, fresh interviews were held between 22nd and 24th December, 2009. Anita Devi-I, along with all other eligible candidates was interviewed, by a newly constituted Interviewing Committee, comprising of three senior officers of IOCL. The result was declared on 24.12.2009.

8.4 Pertinently, this time around, Anita Devi-I, ranked first, having secured 33.77 marks; Anju Kumari, ranked second, with 33.34 marks; and one, Renu Budhisht, ranked third, with 33.25 marks.

8.5 However, no appointment was made by IOCL, as in the interregnum Anju Kumari had filed a writ petition in this court being : WP(C) No. 13045/2009. In this writ petition, while issuing notice, an interim direction was issued to the effect that though fresh interviews may be held, any appointment made, will be subject to the final outcome of the writ petition. It is for this reason that no appointments were made.

8.6 However, on 31.10.2012, WP(C) 13045/2009, was withdrawn by Anju Kumari, based on the statement made on behalf of IOCL, by its advocate, that interviews had been held and that she had been declared successful. It was noted though, by the court, that Anita Devi-I had already

lodged the instant writ petition with the registry of this court.

8.7 Between the period of the lodgement of the aforementioned writ petition by Anju Kumari and its dismissal upon being withdrawn, IOCL, received a letter dated 01.02.2010, apparently, from Anita Devi-I, which conveyed that she was not willing to run the petrol pump qua which, she had been ranked as number one.

8.8 IOCL, however, as a measure of abundant caution, dispatched a communication dated 03.03.2010 to Anita Devi-I to confirm as to whether she was wanting to surrender her rights and claim to the said dealership. Upon, IOCL not receiving any response, it sent another communication dated 17.05.2005 with an identical purpose. In this communication though, IOCL indicated that if it did not receive any response on or before 01.06.2010 then, it shall presume that the letter dated 01.02.2010 received, was genuine.

8.9 Evidently, vide letter dated 26.05.2010, Anita Devi-I informed that she had not dispatched the letter dated 01.02.2010. Furthermore, by this communication, Anita Devi-I asserted her right to continue to claim dealership. Moreover, she, endeavoured to explain that upon the sudden death of her husband she had moved to her parents' house, and that was perhaps, the reason, that she had not received IOCL's letter dated 03.03.2010. She emphasized that she received information about IOCL's letter dated 17.05.2010, only on her return to her in-laws house for some urgent work, which then, propelled her to write the letter dated 26.05.2010.

9. In view of these circumstances, Anita Devi-I's position in the panel as the top ranked candidate, continued to remain undisturbed till a complaint dated 26.12.2010, was received from AnjuKumari. It is in this complaint, that Anju Kumari had claimed that Anita Devi-I had violated the multiple

dealership norms as she had already a dealership awarded in her favour by HPCL.

9.1 As indicated right in the beginning of my narration that, investigations qua this complaint, led to the issuance of the first impugned order dated 30.11.2010.

9.2 It was only after a representation was made by Anita Devi-I, dated 10.12.2010, followed by legal notice dated 18.12.2010, that the second impugned order came to be passed. The net result was that, while the first impugned order dated 30.11.2010, dis-empanelled Anita Devi-I on the ground of violating the multiple dealership norms, the second impugned order dated 11.03.2011, sustained the decision of dis-empanelment, albeit on a different ground.

9.3 In the second impugned order, IOCL conceded that its investigators could not establish that Anita Devi-I had obtained a retailed outlet dealership from HPCL, as was alleged in the complaint filed by Anju Kumari. However, while exonerating Anita Devi-I of this charge, it came to a conclusion that the experience certificate dated 05.10.2007, obtained by her was false.

9.4 As indicated hereinabove, the conclusion as regards the certificate dated 05.10.2007 being false was reached without calling upon Anita Devi-I to give explanation, if any, she had in that behalf.

9.5 Anita Devi-I on receiving the second impugned order shot off a representation dated 10.04.2011, wherein she attempted to bring to fore the fact that her certificate was genuine, as the petrol pump which was earlier run by Sh. Baljeet Singh under the name of Jaswant Motors was awarded to Anita Devi-II, who ran the same under the name and style of Sidharth Filling Station.

9.6 It was further stated that Baljeet Singh ran the petrol pump between 14.09.2004 till 09.10.2006, whereafter it was run by Anita Devi-II and, as indicated above, under the name and style of Sidharth Filling Station.

9.7 In support of the above, reference was made to the explosive license number issued qua the subject petrol pump. It was asserted that the explosive license number continued to remain the same both when Baljeet Singh was running the subject petrol pump, and even thereafter, when Anita Devi-II took over the dealership. A photocopy of the explosive license was appended to the representation.

9.8 Furthermore, an assertion was made that if, required, she would have Sh. Baljeet Singh file an affidavit to establish the fact that she had worked with him for, approximately, 2 years and 25 days. It was also sought to be explained that the reason Anita Devi-II issued a certificate indicating therein that she (i.e., Anita Devi-I) had experience spanning three (3) years, was that while issuing the said certificate she included the period for which she (i.e. Anita Devi-I) had worked under Baljeet Singh, when the subject petrol pump was run under the name and style of Jaswant Motors.

9.9 It appears, since, the document filed with representation dated 10.04.2011 was not taken note of by the IOCL, the next course of action which came to Anita Devi-I's mind was to file the instant writ petition.

10. Thus, the challenge in the writ petition is, not only to the wrongful de-empanelment of Anita Devi-I, but also to the declaration of Anju Kumari, as a successful candidate.

10.1 I have already in my narration hereinabove, adverted to the grounds on which Anita Devi-I has chosen to challenge the action of IOCL in declaring Anju Kumari as the successful candidate. Anju Kumari, who was ranked second, as per the panel prepared on 24.12.2009, can thus, become

eligible for award of dealership only upon elimination of Anita Devi-I. Therefore, the success of Anju Kumari is quite clearly dependent upon the result of the present writ petition.

11. The question, therefore, which arises for consideration, in the writ petition is: whether the experience certificate dated 05.10.2007, submitted by Anita Devi-I, is false? Furthermore, what requires to be examined is that in coming to the conclusion that it is false, did IOCL have regard to the material which was sought to be placed on record by Anita Devi-I to rebut the allegation made qua her?

12. In so far as this writ petition was concerned, notice was, incidentally, issued by me on, 02.11.2012. At that stage, I had declined, grant of interim reliefs, as sought. In the interim application being : CM No. 17885/2012, Anita Devi-I had sought a direction to the effect that IOCL ought not to appoint any other person as the retail outlet dealer for the outlet in issue (i.e. Nand Nagri outlet), during the pendency of the writ petition.

12.1 For the reasons given in order dated 02.11.2012, I had confined the interim direction to the following: which is, appointments if any made, will be subject to the final outcome of the writ petition. The order dated 02.11.2012 was carried in appeal, which was dismissed by the Division Bench vide order dated 12.12.2012.

13. Since then, pleadings in the matter stand completed. Counter affidavits have been filed both on behalf of IOCL as well as on behalf of Anju Kumari; the two contesting parties.

SUBMISSIONS OF COUNSELS

14. Submissions on behalf of the petitioner have been advanced by Mr T.S.R. Venkatraman, while those on behalf of IOCL have been made by Ms Mala Narayan. Anju Kumari has been represented by Mr Atul Bandhu,

Advocate.

15. Mr Venkatraman, briefly, pressed for setting aside the impugned orders on the following grounds :-

(i) The conclusion reached that the experience certificate was false was unsustainable as it failed to take into account the material and the explanation furnished by the petitioner. Learned counsel submitted that the petitioner had been working at the same outlet for a period of three (3) years, i.e., w.e.f. 14.09.2004. The said outlet, qua which experience certificate was received by Anita Devi-I, was operated earlier, by one, Sh. Baljeet Singh under the name and style of Jaswant Motor Works.

(i)(a). In 2006, Anita Devi-II was appointed as the dealer by the HPCL, and consequently, Anita Devi-I continued to remain in employment at the outlet in issue. This time though, the outlet was renamed as : Sidharth Filling Station. Therefore, the experience certificate dated 05.10.2007 submitted by Anita Devi-I to IOCL was not false as alleged or at all.

(i)(b). A great stress was laid on the fact that, that the explosive license number of the subject petrol pump referred to in the experience certificate dated 05.10.2007 continued to remain the same; thus in a sense, establishing that there was no falsity attached to the experience certificate.

(ii) Apart from the above, it was also contended that no notice was issued to Anita Devi-I prior to the issuance of order dated 11.03.2011 and, therefore, the order had to be set aside on that short ground alone. In this regard, reliance was placed on the judgement of the Division Bench of the Rajasthan High Court in the case of : ***Amit Kumar Sharma vs HPCL***, dated 23.10.2013, passed in DB Spl. Appeal (Writ) 2158/2011.

(iii) This apart, it was stated that Anju Kumari could not have been given any marks for having attained post-graduation qualification, as the degree

obtained, was not valid. This submission was pivoted on the fact that her under-graduation degree was a two-year course, making her ineligible for seeking an admission to a post-graduate course. In support of this submission reliance was placed on the Regulation 2(3) of the 1985 Regulations. Furthermore, reliance was also placed on the judgement of the Supreme Court in the case of *Annamalai University vs Secretary to the Government & Ors, (2009) 4 SCC 590*.

(iv) Additionally, an issue was also raised qua particulars supplied with regard to experience, by Anju Kumari, in the application furnished to IOCL for grant of this dealership.

(iv)(a). In this behalf my attention was drawn to the contradictory particulars furnished by Anju Kumari in her application furnished to the MCD, while applying for a job as a teacher.

(v). In sum, it was contended that while, Ms Anita Devi-I was eligible, Anju Kumari, both on the ground of lack of qualification and experience was ineligible for grant of dealership.

16. Ms Malanarayan, who appears for the IOCL, on the other hand, questioned this court's jurisdiction to review the decision arrived at in the matter by the Screening Committee. It was the learned counsel's contention that under the prescribed procedure, the Screening Committee, had found, upon investigation, that the experience certificate dated 05.07.2007 was false and, therefore, that decision could not be interfered with based on material, which was sought to be supplied, after the cut-off date.

16.1 The learned counsel, in this behalf, relied upon clause 10(h) and clause 10(k) of the brochure dated 01.10.2006, issued by IOCL.

16.2 In so far as Anju Kumari's post-graduation qualification was concerned, Ms Narayan relied upon the documents filed with the counter

affidavit. Based on information received from Rohilkhand University, Ms Narayan, submitted that since, a bridge course, was not available at the said University, prior to 1989, no fault could be found with the post-graduation degree obtained by Ms Anju Kumari.

16.3 As regards the issue raised, with regard to the authenticity of the statements made qua the experience of Anju Kumari, it was stated that no complaint had been received by IOCL in that behalf.

17. Mr Atul Bandhu, who appeared on behalf of Ms Anju Kumari, in substance, supported the stand taken by Ms Mala Narayan. It was the learned counsel's submission that the only issue which arose in the present writ petition, was, as to whether or not the experience gained by Anita Devi-I, with Jaswant Mortor Works could be taken into account. It was the learned counsel's submission that if Anita Devi-I was permitted to do so, she would be taking advantage of her own wrong.

REASONS

18. I have heard the learned counsels for the parties and perused the record in some detail. What has emerged from the record is as follows:

(i) After, IOCL investigators had conducted a detailed inquiry, they came to the conclusion that two persons bearing the same name i.e. Anita Devi, existed. As indicated above, the coincidence went to the extent of the investigators discovering that their husbands bore the same name, and that, they had the same date of birth.

(ii) The investigators, however, also discovered the differences qua the two namesakes (i.e. Anita Devi-I and Anita Devi-II), and these pertained to information provided in : the caste certificates, the high school certificates, the graduation certificates, and the post-graduation certificates. These facts stand recorded in the investigators report dated 28.02.2011.

(iii) Anita Devi-II was awarded a dealership by HPCL which was run in the name and style of Sidharth Filling Station. This dealership though, was awarded on, 10.10.2006.

19. Having regard to these facts, IOCL came to the conclusion that Anita Devi-I's claim that she had experience spanning three (3) years of having worked as, a manager with Sidharth Filling Station, was false. This conclusion, however, was reached without issuing any notice to Anita Devi-I. Therefore, in substance, whilst issuing the second impugned order dated 11.03.2011, IOCL exonerated Anita Devi-I qua the charge of violating multiple dealership norms, which formed the basis of the first impugned order dated 30.11.2010 - it asserted that a false experience certificate had been filed, based on inchoate information derived, presumably from HPCL.

19. Anita Devi-I, upon being served with the second impugned order, quite correctly, represented to IOCL vide letter dated 10.04.2011, wherein she brought to fore the fact that the subject petrol pump was earlier run by one Sh. Baljeet Singh, under the name and style of Jaswant Motor Works. It was also sought to be portrayed that because she was short by a period of five (5) days, qua the minimum eligibility experience of one (1) year, that Anita Devi-II, who was in know of the fact that she was an employee, who had worked under Sh. Baljeet Singh, offered to issue an experience certificate of three (3) years.

19.1 IOCL, for some reason, chose not to entertain the documents submitted by Anita Devi-I, and infact gave no notice to her with regard to its conclusions arrived at in its investigation, prior to issuance of the second impugned order, i.e. order dated 11.03.2011.

20. Therefore, clearly the second impugned order, which was, issued, without giving an opportunity to Anita Devi-I, was violative of principles of

natural justice.

20.1 No doubt, under the procedure prescribed, IOCL, is entitled to carry out field investigation on its own with regard to assertion made by a candidate in its application for award of dealership and also vis-a-vis issues raised in complaints filed, it was, in my view, incumbent upon the IOCL, to at least, call upon Anita Devi-I to explain her side of the case, before passing the second impugned order.

20.2 It was in fact on the representation of Anita Devi-I vis-a-vis the first impugned order, that the IOCL, reversed its findings qua her vis-à-vis the charge of violation of multiple dealership norm. Somehow, the second time around, IOCL for reasons best known to it, refused to entertain Anita Devi-I's representation dated 10.04.2011.

21. In the counter affidavit, there is no denial whatsoever by IOCL or by Anju Kumari with regard to the assertion that Anita Devi-II's petrol pump (i.e. Sidharth Filling Station) continued to hold the same explosive license number which was held by Jaswant Motor Works. Anita Devi-I, in her representation dated 10.04.2011, in fact offered to file an affidavit of Sh. Baljeet Singh, to establish her claim that she had experience which spanned three (3) years. Accordingly, in my view, the second impugned order dated 11.03.2011, deserves to be set aside. If that be so, the first order would also fall by the wayside as the second impugned order sustains the de-empanelment of Anita Devi-I, carried out vide order dated 30.11.2010, albeit on the ground given in the second impugned order.

22. The argument advanced by Ms Narayan (which found complete support from Mr. Bandhu), to the effect that no additional documents could be entertained after the cut-off date for submission of application, and that if, it was found (based on the contents of the application on record and the

documents appended thereto) that any assertion made in the application or, in the document enclosed therewith, by this candidate was incorrect or false, – IOCL had the right to reject the application, in my view, is untenable for the following reasons in the instant case.

22.1 These arguments, as indicated hereinabove, are based on clause 10(h) and 10(k) of the brochure dated 01.10.2006, issued by the IOCL. For the sake of convenience the said clauses are extracted hereinafter:

“....(h) No additional documents whatsoever will be accepted or considered after the cut off date for submission of application....

....(k) If any statement made in the application or in the document enclosed therewith by the candidate at any stage is found to be incorrect or false and/or the applicant conceals any information which if declared would have made him/her ineligible for dealership, the application is liable to be rejected and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases the candidate/ dealer shall have no claim whatsoever against the oil company....”

23. A bare reading of aforesaid two clauses would establish the following:

(i) Clause 10(h), prohibits submission of additional documents after the cut-off date.

(ii) Clause 10(k), confers a right on IOCL to reject an application, if any statement made either in the application or in the document enclosed along with the application by the candidate is found to be incorrect or false or even where it is found that the applicant had concealed any information, which if declared, would have made him or her ineligible for dealership.

23.1 The facts, as delineated above, would show that Anita Devi-I had filed with her application documents which she thought fit to establish her

credentials. In fact, based on the documents filed along with her application and the interview conducted, Anita Devi-I was empanelled and was declared as the first rank holder, in the merit panel vide result announced on 24.12.2009. It is when, IOCL, sought to investigate the allegations detailed out in the complaint dated 23.06.2010 filed by Anju Kumari, that it discovered that there may be a problem with the experience certificate dated 05.10.2007.

23.2 Therefore, it was not as if Anita Devi-I wished to file a document after the cut-off date. It was, in fact, during the course of investigations made by the IOCL vis-à-vis the allegation of alleged violation of multiple dealership norm by Anita Devi-I, that it stumbled upon an aspect, which according to it, tended to indicate that Anita Devi-I's assertion with respect to the period of experience was false. Quite clearly, clause 10(h) can have no applicability since it was the conclusion reached by IOCL's investigators which propelled Anita Devi-I to file additional documents with her representation dated 10.04.2011, only to establish, what she had stated in her original application made to IOCL.

23.3 Similarly, provisions of clause 10(k) can also have no applicability, as that clause confers the power on IOCL to reject the application of a candidate, if any statement made, either in the application or in the document enclosed therewith, is found to be incorrect or false, and/or the applicant conceals any information which if declared would have made him / her ineligible for dealership. Clearly, the facts as they have emerged would show that Anita Devi-I asserts that she has not made any false statement vis-à-vis her experience. As a matter of fact, she asserts, had she declared the factum of having worked with Baljeet Singh, at a point in time when the subject petrol pump was run under the name and style of Jaswant

Motor works, she would have clearly been eligible.

23.4 Therefore, keeping back the information did not help her cause, and if this information had been disclosed, it would not have made her ineligible, which is, the requirement for the applicability of clause 10(k). Thus the argument of Ms Narayan, and Mr Bandhu, which is to the contrary, is in my view, clearly unsustainable.

24. This brings me to the challenge raised by Anita Devi-I vis-à-vis the eligibility of Anju Kumari. The challenge has been mounted on three grounds. First, the invalidity of the post-graduation degree obtained by her. Second, the veracity of caste certificate issued in Anju Kumari's favour. Third, the contradictory stand taken by Anju Kumari vis-à-vis her experience in the application filed for grant of dealership by IOCL, as compared to that, which is, articulated in the application filed with the MCD.

25. In so far as qualifications are concerned what has clearly come through is this: UGC in its letter dated 29.09.2011, has stated that as per the 1985 regulations, a person with a two-year bachelor (Ist) degree, is not eligible to seek admission to a master's course without undergoing a one-year bridge course. This regulation, evidently, come into force from 01.06.1986. The Rohilkhand University vide letter dated 17.10.2011 informed IOCL that, 1988 was the last batch of two-degree course students who, after clearing B.A. Final exam were allowed admission in the same year in M.A. previous year, without passing bridge course. According to the said University, the passing of bridge course was made compulsory from 1989 onwards.

25.1 The information that IOCL had gathered vis-à-vis Anju Kumari vis-à-vis her graduation degree was as follows :

- (i) Mark-sheet No. 33478, Enrolment No. Nil, Roll No. 9331 dated 10.7.1987 for BA-I.
- (ii) Mark-sheet No. 7953, Enrolment No. 866395, Roll No. 19068 dated 20.7.1988 for BA-II.
- (iii) Degree of Bachelor of Arts, Roll No. 19068, Sr. No. 077244 dated 31.12.1988.

25.2 Clearly, the 1985 regulations were applicable. The Rohilkhand University, however, for whatever reason provided for a bridge course only in 1989. The students, therefore, who completed their graduation in 1988, did not have an option of applying and clearing the bridge course. Typically, in these circumstances, the matter really rests between the UGC and the Rohilkhand University. UGC, though having been represented by counsels right from day one, has chosen not to file a counter affidavit in the matter. As a matter of fact, on the dates when the matter was reserved for judgement i.e. 06.04.2015, and the date before that i.e. 12.01.2015, none appeared for the UGC. Therefore, the stand of UGC, vis-à-vis the validity of the post-graduation certificate obtained by Anju Kumari, is not known. Having said so, it is quite clear, that Anju Kumari by herself, perhaps, is not at fault.

25.3 In support of this charge, Mr. Venkatraman has relied upon the judgement of the Supreme Court in the case of *Annamalai University vs Secretary to the Government & Ors., (2009) 4 SCC 590*. The judgement in the said case was delivered in the context of the Indira Gandhi National Open University according a post-graduate degrees to even those students who had not taken a Bachelor's (first) degree, which had a three-year duration. The Supreme Court held that the award of post-graduate degrees in contravention of Regulation 2 of the 1985 Regulations, was invalid.

25.4 The IOCL has clearly not considered the impact of Regulation 2. The stand of IOCL, on this aspect, dehors the provisions of Regulation 2, cannot be accepted.

26. Which brings me to the ground of challenge relatable to Anita Devi-I's alleged ineligibility to apply in SC category.

26.1 IOCL, as indicated above, has got a verification done via the office of the Assistant Collector, Gr. I, Govt. of NCT of Delhi, who has, in turn, issued a communication dated 16.09.2011, which is suggestive of the fact that, Anju Kumari has been correctly categorized as a SC. Therefore, without any other contrary material on record, the conclusion arrived at in favour of Anju Kumari in this regard will have to be accepted.

27. However, in so far as doubts are raised with regard to the experience claimed by Anju Kumari are concerned, there is clearly a contradiction. While IOCL has taken a stand that it received no complaints in that behalf, the averments made in the affidavit are suggestive of the fact that it is unsure of the correct position. This is evident from the following averments made in the affidavit of the IOCL.

“..It is wrong and denied that any complaint to the effect that the experience certificates submitted by the Respondent No.3 are bogus / not authentic has been received by the answering Respondents as alleged. (Please check)...”

(emphasis is mine)

27.1 On the other hand, as indicated in the narration hereinabove, clearly Anju Kumari while filing a form for the post of a teacher in the MCD, had on 23.10.2001, declared that she had held no previous employment, while on the other hand in her application filed with the IOCL, she has claimed experience with various organizations in several capacities right from 1990 to July, 2001. Assertions to this effect have been made in the writ petition

in paragraph 3.16. Neither IOCL, nor Anju Kumari, in their respective counter affidavits have effectively traversed the assertions made with regard to the obvious contradiction in respect of experience claimed by the latter i.e. Anju Kumari.

28. The net result of the aforesaid discussion, in my view, can only be this; as indicated above : that the two impugned orders dated 30.11.2010 and 11.03.2011 be set aside. It is ordered accordingly.

28.1 Furthermore, to my mind, it is incumbent upon IOCL to examine the material submitted by Anita Devi-I along with her representation dated 10.04.2011. If IOCL were to find that there was merit in the claim made by the Anita Devi-I, then obviously, she would have her position at the top of the merit panel, restored.

28.2 Besides, IOCL should also take a position vis-à-vis the validity of the post-graduate certificate placed on record by Anju Kumari in the light of the judgement of the Supreme Court in *Annamalai University vs Secretary to the Government & Ors.* case; and therefore, the impact it would have on the marks to be accorded to Anju Kumari.

28.3 IOCL ought to also investigate the apparent contradiction in the assertions made by Anju Kumari vis-à-vis her experience. The fact that it has come to light, is a matter which should attract the attention of IOCL.

29. Compliance with the aforesaid directions would thus, require recomputation of marks to be issued to both Anita Devi-I as well as Anju Kumari. Once the exercise, as indicated hereinabove, is carried out by the IOCL, a final result should be declared, which should be duly notified both to Anita Devi-I and Anju Kumari. As to who, out of the two, would be finally successful, will depend upon the result of the exercise carried out by IOCL, in consonance with the directions issued hereinabove.

30. Accordingly, the writ petition is disposed of in the light of the
aforementioned directions.

31. Parties shall, however, bear their own cost.

RAJIV SHAKDHER, J

JULY 06, 2015

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