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

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Date of decision: 17.02.2016

+ LPA 105/2016

CHAMAN LAL

..... Appellant

Through Mr.Ravinder Yadav, Mr.Vinay
Mohan Sharma, Mr.P.S.Sridhar Raj and
Mr.Vinayak Sharma,Advs.

versus

INDIAN OIL CORPORATION LTD & ANR..... Respondent

Through Mr.M.M.Kalra, Adv. with Ms.Sonali
Kumar, Adv. for R-1
Mr.Rakesh Tikku, Sr. Adv. with Ms.Arpan
Wadhawan, Adv. for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

Caveat No.132/2016

Since counsel for the Caveator has entered appearance, Caveat stands discharged.

CM No.5690/2016 (exemption)

Exemption allowed, subject to all just exceptions.

LPA 105/2016

1. The present appeal is filed seeking to impugn the order dated 16.9.2015 passed by the learned Single Judge by which the Writ Petition

was dismissed. The Writ was filed seeking to impugn the letter of intent dated 29.09.2008 whereby respondent No.1 offered distributorship of LPG at Mundka, Delhi to respondent No.2. Other connected reliefs were also sought.

2. The brief facts which led to filing of the Writ Petition are that an advertisement was issued by respondent No.1 in respect of allotment of LPG distributorship at Mundka village, Delhi sometimes in 2000. The appellant applied for the dealership. Respondent No.2 was placed at serial No.1 in the selection process whereas the appellant was placed at serial No.2 in the merit list. In the meantime a complaint was received by respondent No.1 against the selection of respondent No.2. Respondent No.1 carried out an investigation through a committee. The committee concluded that respondent No.2 had filed a false affidavit of a dead person in order to show availability of land for the LPG distributorship. Accordingly, respondent No.1 cancelled the selection on 22.7.2004. As the appellant was at Serial No.2 he was on 2.12.2004 issued a letter of intent. It is the contention of the appellant that he started construction and also invested huge funds.

3. In the meantime, respondent No.2 filed a Writ Petition being W.P.(C)19525/2004 before this Court challenging the order of respondent No.1 cancelling his selection. This Court vide judgment dated 17.1.2007 quashed the letter issued by respondent No.1 dated 22.7.2004 whereby the selection of respondent No.2 had been cancelled.

4. Before the Division Bench, the order of the learned Single Judge dated 17.1.2007 was upheld vide order dated 25.4.2008. Against the said order of the Division Bench an SLP was filed before the Supreme Court. The learned Single Judge and the Division Bench had noted that one of the

affidavits filed by respondent No.2 showing title to the land was of one Pratap Saini who had passed away, a fact which was not mentioned in the affidavit. The affidavit was signed by Shri Surjit Saini his son on his behalf. The LRs of the deceased Shri Pratap Saini realising their mistake, before any steps could be taken by respondent No.1, had submitted a fresh affidavit pointing out that they had no objection to hand over the land to respondent No.2 on lease. Hence, the Court concluded that there was no reason for cancellation of the allotment.

5. Accordingly, respondent No.1 withdrew the letter of intent issued in favour of the appellant on 15.9.2008. A letter of intent was issued in favour of respondent No.2 on 29.09.2008. Subsequently, the SLP filed against the order of the Division Bench was dismissed on 4.3.2013.

6. Thereafter the appellant has with undue haste within about 15 days i.e. on 20.3.2013 filed the present Writ Petition seeking to challenge the LPG dealership allotted to respondent No.2. It is contended in the present Writ Petition that the challenge to the allotment in favour of respondent No.2 in this Writ Petition is on grounds which are different than what were raised by the parties in the earlier round of litigation. It is stated that contrary to the terms and conditions of the 'advertisement inviting applications' respondent No.1 has permitted respondent No.2 to substitute the original land on the basis of which the application was filed by respondent No.2 and which formed the basis for his selection. It is submitted that from this fact it is obvious that there was no land in existence with respondent No.2 when he applied for the dealership originally. In connivance with respondent No.1 and fraudulently now he has been permitted to substitute the land with a fresh land. It is the stand of the appellant that on this ground which has now

come to the knowledge of the appellant, the dealership of respondent No.2 is liable to be cancelled.

7. The learned Single Judge in the impugned order noted the submission of the counsel for respondent No.1 that there is no prohibition against change in the land by a dealer as long as the working of the distributorship remains unaffected, subject to requisite parameters being met. The order also notes that there could be various reasons where after a distributor has commenced work, he may for diverse reasons be divested of the land on the basis of which the allotment had been made in his favour. In such an eventuality, if the distributor is able to offer another land to the satisfaction of respondent No.1, there would be no reason for respondent No.1 to terminate such a distributorship. The impugned order also notes that even if it is presumed that there was some fault on the part of respondent No.1 and the dealership is cancelled, no right would accrue in favour of the appellant. Merely because the appellant was at serial No.2 on the panel that was drawn up in the selection process would not *ipso facto* give a vested right in favour of the appellant to seek allotment of the distributorship. Respondent No.1 would be required to invite fresh applications for the distributorship.

8. We have heard learned counsel for the parties and gone through the record. Learned counsel appearing for appellant has reiterated the submissions stated in the Writ Petition which we have noted above. On a query to the counsel from the Court as to what was the defence taken by respondent No.1 in the counter-affidavit before the learned Single Judge, it transpires that the appellant has not placed on record before this Court a copy of the counter-affidavit filed by respondent No.1.

9. Learned senior counsel appearing for respondent No.2 has strenuously

urged that before the Supreme Court, in the SLP that was filed, the respondent No.2 had placed before the Supreme Court documents of the new land. This fact of permission for a new land was an issue before the Supreme Court when the SLP was dismissed and hence the appellant cannot raise the issue all over again.

10. The submission of the learned senior counsel for respondent No.2 appear to be in order. Within 15 days of dismissal of the SLP by the Supreme Court the appellant has moved the present Court with this Writ Petition relying on documents submitted by respondent No.2 to respondent No.1. It is obvious that the appellant has lost the first round of litigation where the Courts have held that the cancellation of the selection of respondent No.2, who was at serial No.1 on the selected list, was illegal. It is obvious that the appellant cannot now be permitted to restart the litigation and again challenge the allotment done in favour of respondent No.2. The appellant was impleaded as respondent No.3 in the writ petition(CWP 19525/2004) filed by respondent No.2 i.e. the earlier round of litigation.

11. The documents which are being relied upon by the appellant pertain to the year 2009. It was up to the appellant to have brought to the notice of the Hon'ble Supreme Court the subsequent developments that have taken place while the SLP was pending and urge his submissions. Admittedly, the substitution of land was allowed on 6.5.2009 while the SLP was dismissed on 4.3.2013. Further, as per respondent No.2 the documents of the said development/substitution were filed before the Supreme Court. This fact is not denied by the appellant. The appellant cannot now be permitted to raise this contention in a fresh round of litigation.

12. However, when the above was put to the learned counsel for the

appellant it was contended that these documents and the permission of respondent No.1 to substitute the old land offered by respondent No.2 is something which has only recently come to the knowledge of the appellant. This, however, appears to be an incorrect statement. There is no such averment made in the Writ Petition filed before the learned Single Judge. Even otherwise, the Writ Petition has been filed within 15 days after dismissal of the SLP leaving hardly any time frame for the appellant to have gained knowledge of the said documents. It would not be permissible to permit the appellant to now restart another round of litigation on the same issues challenging the selection of respondent No.2.

13. Reference may be had to a judgment of the Supreme Court in ***Ishwar Dutt vs. Land Acquisition Collector, (AIR 2005 SC 3165)***. That was a case in which the High Court issued a Writ of Mandamus. The direction of the High Court was acted upon. Hence, the Supreme Court held that respondents could not have raised any contention contrary or inconsistent to the judgment of the High Court in any subsequent proceedings. The Court further held as under:-

“19.Reference in this regard may be made to Wade and Forsyth on Administrative Law, 9th Ed.,pg.243, wherein it is stated:

“One special variety of estoppel is res judicata. This results from the rule, which prevents the parties to a judicial determination from litigating the same question over again even though the determination is demonstrably wrong. Except in proceedings by way of appeal, the parties bound by the judgment are estopped from questioning it. As between one another they may neither pursue the same cause of action again, nor may they again litigate any issue which was an essential element in the decision. These two aspects are sometimes distinguished as ‘cause of action estoppel’ and

‘issue estoppel’.”

The validity of selection of respondent No.2 in the selection process was the central issue and the central element of the earlier decision. The appellant cannot now seek to challenge the selection of respondent No.2 all over again in the present round of proceedings claiming alleged discovery of new facts.

14. Even otherwise, in our opinion, there is no merit in the contentions of the appellant.

15. The impugned order rightly notes that once the selection is completed there is always a possibility of the distributor seeking change of location of land. This could be for various reasons and respondent No.1 may accept the same, subject to satisfaction of other terms and conditions. Counsel for respondent No.1 has also pointed out that there is no prohibition against such change in land.

16. We have also called for the writ records. In the counter-affidavit filed by respondent No.1 before the learned Single Judge it has been clearly stated that the process has been done in accordance with the policy of respondent No.1.

17. Further, in our opinion no fault can be found with the act of respondent No.1 in permitting change of land. The selection of respondent No.2 was cancelled on 22.7.2004. He was re-allotted the dealership on 29.9.2008 after a gap of 4 years. Respondent No.2 could not be expected to hold on to the leased land at considerable expense when the selection itself had been cancelled. For a meaningful relief to respondent No.2 after the judgments of this Court, this step was necessary. Respondent No.1 also

confirms the step is as per their policy.

18. We see no reason to differ with the view of the learned Single Judge.
The appeal is dismissed.

JAYANT NATH, J

CHIEF JUSTICE

FEBRUARY 17, 2016/n