IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1071 of 2017
IN
Civil Writ Jurisdiction Case No. 11915 of 2016

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M/s Sadbhavna H P Gas, located at near Nawada More, Janipur Road, Balmi, Dist. Patna-801506 through its Proprietor, Smt. Nupur Srivastava, W/o Ajeet Kumar Sinha, Resident of Road No. 39, Gardanibagh, Anishabad, Patna

.... Appellant/s

Versus

1. Hindustan Petroleum Corporation Limited through Senior Regional Manager, Patna, L.P.G., Region Office, 6th Floor, Lok Nayak Jaiprakash Bhawan, Dak Bunglow Chowk, District- Patna
2. Raj Kumar Chaudhary, son of unknown, resident of C/o Chotan Singh, B.N.R. Pathrighat, Gulzarbagh, Patna-800007
3. Sandeep Kumar, son of Shyam Balak Sinha, Resident of Flat No. 205/B, Jyotipuram Apartment, Thana- Shastrinagar, Patna
4. Bihar School Examination Board through Secretary, B.S.E.B., Patna

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Binod Kumar Kanth, Sr. Advocate Mrs. Shama Sinha, Advocate
For the H.P.C.L.	:	Mr. Chittaranjan Sinha, Sr. Advocate Dr. Pankaj, Advocate
For the B.S.E. Board	:	Mr. Ranjit Sinha, Advocate
For the Resp. No. 2	:	Mr. Kumar Madhvendra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 17-08-2017

In this Letters Patent Appeal, the appellant has assailed the elaborate judgment dated 19.7.2017 passed by the learned Single Judge in CWJC No. 11915 of 2016.

The writ petition was filed by the appellant against the decision of the respondent-Hindustan Petroleum Corporation Limited

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(hereinafter referred to as 'the Corporation') initially against the show cause notice dated 13.6.2016, later on the appellant filed I.A. No. 7268 of 2016 challenging the order of termination dated 31.8.2017passed by the Corporation.

The Corporation issued show cause notice to the appellant on detection of fraud on verification from the Bihar School Examination Board in the matriculation certificate of the writ petitioner used for obtaining the distributorship, matriculation certificate was found to be forged and fabricated and not related to the appellant but of one Surendra Karmali, S/o Jeet Ram Karmali. The appellant thereafter filed reply to the show cause notice during the pendency of the writ application. The appellant has submitted her reply as follows:

(i) She never had the occasion of verifying the veracity of matriculation certificate as it always remained with her elder brother.

(ii) She further stated that she was never informed by her late father or elder brother about veracity of matriculation certificate.

(iii) She stated that as a girl candidate she had never fabricated the marks sheet or she was informed by her father or brother that it was

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fabricated.

(iv) She also stated that neither knowingly nor unknowingly any fake or fabricated document was submitted nor she ever tried to mislead the Corporation in order to get distributorship.

On consideration of the show cause reply and on arriving at the conclusion that there is falsehood in the submission of certificate at the time of award of distributorship, the Corporation decided to terminate the distributorship.

In the aforesaid backdrop of the fact the writ petition was heard and the Writ Court on the basis of submissions and notes of argument filed by the appellant formulated six points for consideration which are as follows:

1. " The first issue has been raised by the petitioner that the respondent Nos. 2 and 3 maliciously with an ulterior motive has made a complaint though they are not the public figure having any past history to espouse such nature of issue of public domain with respect to any private individual.

2. The second point is required to be gone into as has been claimed that the Corporation has not followed fair and proper procedure maintained transparency, failed to

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observe principle of natural justice while taking decision against the petitioner.

3. The third point has been raised that the credential of the petitioner attached with the application were examined by the Corporation at several stages by different agencies and only, thereafter the dealership was awarded to the petitioner, after long lapse of time, scraping the agreement, on the basis of having filed a forged and fabricated matriculation certificate, is not sustainable in law in view of the fact that the Corporation is backed by strong batteries of employee, having all when withal to have made scrutiny of credential, failure to identify defect in the certificate cannot be a basis of scrap the agreement and deprive the petitioner in the right of business.

4. The forth point is that the undertaking on affidavit which has been obtained from the petitioner with respect to having found any wrong, the Corporation will be at liberty to terminate the agreement has been taken in terrorem, is not part of brochure, cannot be a basis of termination of the agreement.

5. The fifth point is that the Corporation has not tried to

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find out the passing of matriculation examination by the petitioner as a private candidate rather an enquiry has been conducted in a peculiar strange manner with respect to Surendra Karmali and never any effort was made find out about the petitioner to have passed the matriculation as a private candidate. The matriculation certificate was not obtained for the purpose of getting the dealership but, it is an incidental, the main purpose was the educational pursuit and thus the petitioner cannot be said to have obtained certificate by fraud or misrepresented the Corporation. The fraud is deliberate action, is a serious matter, has to be proved beyond reasonable doubt either in the criminal case or civil proceeding. As the petitioner was a minor girl, she has not played any fraud in obtaining the matriculation certificate.

6. The last but not the least, it has been claimed that on equitable consideration, the period of agreement is going to expire in the month of April, 2018, even in the findings recorded against the petitioner on equitable consideration, she should be allowed to run her business till completion of the period. “

The Writ Court thereafter elaborately discussed each and

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every issue raised by the appellant with reference to the foundational fact and on detail scrutiny of the judgments on the point referred by the parties, dismissed the writ petition.

The Writ Court on meticulous examination of the entire facts and circumstances and the Apex Court judgment in the case of **Ramana Dayaram Shetty Vs. The International Airport Authority of India and Ors.: AIR 1979 SC 1628** and also on consideration of various other judgments and submissions about the manner of complaint to be entertained by the Corporation in the light of the judgment of the Apex Court in the case of **Ram Chandra Singh Vs. Savitri & Ors.: (2003) 8 SCC 319** held out that in the instant case the complaint regarding production of forged certificate for procuring the distributorship was received by the Corporation and the Prime Minister office also forwarded such complaint for appropriate action by a public Corporation like the respondent which is State within the meaning of Article 12 was justified in taking action and the submission of the appellant as to mala fide of the complainant does not cut much ice in the matter.

The learned Single Judge considered the submission of the appellant threadbare on the point that the certificate submitted by the appellant was scrutinized with open eyes at various levels and as such in view of the judgment of the Apex Court in **Sri Krishna Vs.**

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The Kurukshtra University, Kurukshtra: AIR 1976 SC, 376, the Corporation is precluded from terminating the distributorship of the appellant as the Corporation ought to have detected the fraud or fabrication in the certificate before issuing the distributorship. The learned writ court referring to various judgments of the Supreme Court including the **Lillykutty Vs. Scrutiny Committee, SC& ST & Ors.: (2005) 8 SCC 283, Ram Chandra Singh vs. Savitri and others: (2003) 8 SCC 319, Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education & Ors.: AIR 2003 SC 4268, Prestige Lights Ltd. Vs. State Bank of India: (2007) 8 SCC 449, Manoj Kumar Vs. Government of NCT of Delhi & Ors.: (2010) 11 SCC 702, Guru Nanak Dev University Vs. Sanjay Kumar Katwal & Anr. : (2009) 1 SCC 610, Suresh Sajeesh Babu K. Vs. N.K. Santosh and others: (2012) 12 SCC 106, Central Airmen Selection Board & Anr. Vs. Surendra Kumar Das: AIR 2003 SC 240** held out that the person who misrepresents the authorities by making a false statement cannot invoke the principle of promissory estoppel. The writ court on consideration of the various judgments of the Apex Court mentioned above wherein the Apex Court has considered the effect of forgery and misrepresentation, held out that the writ petitioner has mislead the Corporation by suppressing the fact as to the passing of matriculation certificate. The document

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found to be forged and fabricated in the enquiry cannot be allowed to take advantage of the equitable principles of promissory estoppel as equity begets equity.

Adverting to the submission of the appellant about the alleged unfair procedure followed in the decision making process the writ court on scrutiny of the entire facts and circumstances in which the decision to terminate the distributorship of the appellant was taken held out that principles of natural justice and fair play was followed in the case of the appellant. The writ court has examined the case of the writ petitioner in the light of the judgment in the case of **Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan: (2000) 7 SCC 529, A.K. Kripak & Ors. Vs. Union of India & Ors.: AIR 1970 SC 150, S.L.Kapoor Vs. Jagmohan & Ors.: AIR 1981 SC 136 and Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati & Ors.: (2015) 8 SCC 519** noted that transparency is a part of natural justice which ensures fair play and secures justice and in all cases involving civil consequences the compliance of natural justice is a must in order to avoid arbitrariness in the decision making process. However, the writ court on detailed scrutiny of the principle discussed in the judgment mentioned hereinabove and on consideration of the foundational facts of the instant case held out that there is no violation of principles of natural

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justice and fair play in the instant case and the writ petitioner was provided reasonable opportunity to explain her position with reference to use of matriculation certificate for procuring the distributorship.

After a detailed discussion the writ court noticing the fact that before taking action the Corporation issued show cause notice and the appellant has submitted her reply wherein there is no denial that the document, namely, matriculation certificate enclosed at the time of application for grant of distributorship was not a fabricated document rather she has in her defence submitted that the said certificate was submitted by her elder brother and her brother-in-law has attested the marks sheet and on that basis she pleaded total innocence. The writ court in the totality of the fact situation held out that the petitioner was given fair chance to defend but from her explanation itself it is evidently clear that she has accepted that the certificate of matriculation is not genuine and as such there is no substance in her plea that the forgery was not committed by her but the same was attributable to her elder brother and brother-in-law and in the aforesaid backdrop of the fact the writ court held out that in the circumstances once proper procedure was followed by the respondents in decision making process, it cannot be termed as perverse and as such declined to interfere with the decision of the Corporation terminating the distributorship of the appellant. The writ court has

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also considered the submission of the writ petitioner with reference to the judgment of the Apex Court in the case of **Union of India Vs. M/s. Chaturbhai M. Patel and Co. : AIR 1976 SC 712** on the point that suspicion howsoever strong it cannot partake the character of proof and in the instant case adverse circumstance at best can be taken as suspicion and not proof justifying the action of termination. The writ court considered the case of the appellant in the light of the judgment of the Apex Court in **M/s. Chaturbhai M. Patel** (supra) and also in the light of the judgment in the case of **Fedco (P) Limited and another Vs. S.N.Bilgrami & ors.: AIR 1960 SC 415** and held out that since the appellant is beneficiary in the process of procuring distributorship there is no question to see that she has not fabricated the document but her brother has provided that document. The writ court noted the submissions of the appellant that she was minor at the relevant time as such she could not know the issuance of certificate. The writ court not only considered the submission of appellant in this regard but in order to ensure that the certificate was forged and fabricated summoned the Bihar School Examination Board to produce the record. The Bihar School Examination Board produced the record which was verified by learned counsels and then the writ court noted the fact that Roll number and Roll Code as claimed by the appellant was not of the appellant but of different person. The writ court noted

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and discussed in para-66 of the judgment that the fact which constitute a definite material about the forged certificate used by the petitioner for taking the benefit of distributorship. The writ court thereafter held out that the petitioner has used the certificate by practicing fraud and misrepresentation for getting the benefit of distributorship of LPG.

Mr. Kanth has submitted that simply because the marks sheet belongs to another person cannot be taken a conclusive prove that the writ petitioner has not passed the matriculation examination. In fact she has pursued intermediate and graduation and on that submission was advanced that it is just possible that she appeared as private candidate and as such, there may be misconstruction at the roll number and roll code of regular candidate and the private candidate and on the basis of enquiry from the Board it cannot be conclusively held out that the certificate issued was not genuine. Para 11 of the judgment of the Writ Court is complete answer to the submission of Mr. Kanth which is quoted below for ready reference:

> "11. Earlier this Court passed the order dated 17.2.2017, whereby, a direction was given to the Bihar School Examination Board to produce original record with respect to the maintenance of mark-sheet of the candidates appearing as a regular student as well as private student, it has been informed to this Court that the B.S.E.B maintains single register comprising regular and private candidate, maintains roll code and roll no. in

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singular pattern uniformly. This Court directed if any separate record is maintained by the B.S.E.B for private candidate, the original of the same must also be produced for perusal of this Court. In pursuance thereof, on 27.2.2017, the BSEB produced the original record and filed an affidavit made statement that there is no separate register for the private student. The records were produced in the sealed cover, was opened in presence of the parties and this Court directed that whosoever are interested to examine the record are at liberty to examine the same in presence of the counsel for the BSEB and directed the counsel for the BSEB to keep the record with himself till disposal of the case. It is also made clear that as the parties have examined the record and the petitioner failed to identify any anomaly, any irregularity or discrepancy in maintaining the record, the counsel for the petitioner has submitted out from the record, it shows the entry with respect to the regular student or ex regular student but, nowhere in the register there is any separate column for private student. Learned counsel for the BSEB has explained that the ex regular students includes the private student also. Counsel for the Board has also submitted that annexure 5B is the marks sheet of Kumari Noopur Shrivastava, wherein the name of the school mentioned as S.S.High School, Gola, the roll code 2119 and Roll No. 0352. From the record he has shown and explained that the aforesaid roll code runs from page 443 to 470. The examination center is public H.S.Kuju page 443 to 444 is related to school Naya Nagar and from

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page 445 to 459 is related to High School, Chitarpur and page nos. 456 to 460 is related to N/S Dewari Bhurkunda. He has further submitted that Roll Code 2119 is not related to S.S.Gola High school. He has submitted that it is completely a false and fabricated document which has been produced by Nupur (Noopur) Shrivastava."

The writ court also answered the submission of the writ petitioner about obtaining of undertaking in terrorem. The writ court has held out that the appellant cannot be allowed to take the plea of innocence and manner as on the date of submission of application for distributorship she was major and as such she cannot say that she was not aware of the fact that the document was used for matriculation was not a forged document at least she was aware on that day that the matriculation certificate she was using for award of distributorship was not a genuine matriculation certificate.

The writ court on the issue of hon'ble exit by the appellant on the ground that the tenure of the distributorship is going to expire on 3.2.2018 and as such the court should consider the case equitably particularly on the ground that she has served as distributorship for a pretty long time and invested huge amount in the business during the entire period and there is no grievance raised by any customer against the writ petitioner. The writ court referring to the judgment of the Apex Court in the case of **Tax Officer, Banaras**

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& Ors. Vs. Kanhaiya Lal Mukundlal Saraf: AIR 1959 SC 135 held out that the petitioner does not deserve equity as the writ petitioner has procured the dealership by suppression of fact and as such the writ petitioner is not entitled to any relief.

In the instant case Mr. Kanth, learned Senior counsel appearing for the appellant has more or less advanced the same argument which was advanced before the writ court and duly considered by the writ court in its detailed judgment rendered in 103 pages wherein the entire factual and legal submission was noted and answered by the writ court.

The main thrust of the argument of Mr. Kanth, senior Advocate is that the writ court has failed to consider the case of the appellant in the light of the judgment of the Apex Court in the case of Shri Krishna Vs. **The Kurukshetra University, Kurukshetra: AIR 1976 SC 376** and submitted that the Corporation could have detected with open eye if at all there was forgery in this case. He has referred to detailed procedure required to be followed in the process of scrutiny and submitted that 145 days was consumed by the Corporation in scrutiny of the document including field investigation report and if the Corporation failed to detect or discover any forgery in the matriculation certificate, the Corporation is precluded from reopening the matter after such a long time. Although the writ court

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has answered this submission on the details as discussed above, but for the sake of clarity it is noted here that fraud vitiates every decision as held out by the Apex Court in the case of **S.P. Chengalyaraya Naidu V. Jagannath : (1994) 1 SCC 1= AIR 1994 SC 853.** The writ Court has also considered the aforesaid submission of the appellant in the light of the judgment of the Apex Court in the case of **Ram Chandra Singh Vs. Savitri & Ors: (2003) 8 SCC 319**. The writ court has quoted paras 15 to 27 of the said judgment which dealt with various aspects of fraud.

Even silence may constitute fraud. '**Keer on Fraud & Mistake'** has noted that even silence may constitute fraud and has noted at page 110 as follows:

> "The principle is not limited to cases where an express and distinct representation by words has been made, but applies equally to cases where a man by his silence causes another to believe in the existence of a certain state of things, or so conducts himself as to induce a reasonable man to take the representation to be true, and to believe that it was meant that he should act upon it, and the other accordingly acts upon it and so alters his previous position. Where there is a duty or obligation to speak, and a man in breach of that duty or obligation holds his tongue, and does not speak and does not say the thing he was bound to

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> say, if that be done with the intention of inducing the other party to act upon the belief that the reason why he did not speak was because he had nothing to say, there is fraud (e).

The appellant has not disputed at any stage of the proceeding that the certificate which was enclosed in her application for grant of distributorship the certificate was a genuine and if the petitioner who has used the certificate does not claim to be genuine certificate, is guilty of suppression and as such liable to the consequence of fraud.

The next submission of Mr. Binod Kumar Kanth, Sr. Advocate is that after 16 long years the exercise of the respondent-Corporation to cancel the distributorship is uncalled for.

It may be relevant to mention here that limitation has no role to play in fraudulent transaction. The time span between the benefit procured on the basis of forged document and detection of fraud is not a factor for consideration in writ proceedings. Fraud is fraud and cannot be perpetuated and beneficiary of fraud cannot be extended any kind of relief in exercise of equitable jurisdiction under Article 226 of the Constitution.

Mr. Kanth also submitted that the case of the appellant is pure and simple contractual matter in private law and the provisions

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of Sections 17 and 19 of the Indian Contract Act is applicable in this regard and as such it should be examined in the context of private law between two parties to the agreement. The aforesaid submission of Mr. Kanth is fallacious as the appellant has not approached the ordinary civil Court invoking common law remedy but the appellant has approached public law remedy under Article 226. Secondly the distributorship granted by the Corporation to the appellant is not a pure and simple agreement in private law field as private agreement but it relates to relationship of State distribution privilege in the nature of distributorship. The writ court in detail discussed with reference to the Apex Court Judgment in the case of the **R.D. Shetty V. International Airport Authority of India & Ors**. (supra) and held out that the Corporation as State is under obligation to answer and to deal with as State even in the matter of distribution of largess and as such the Corporation was obliged to take corrective measures on detection of fraud in the matter of procurement of dealership. Even otherwise the case is not falling within the fore corner of Sections 17 and 19 of the Contract Act. The submission of the appellant that in terms of Sections 17 and 19 of the Contract Act, the conduct of the writ petitioner cannot be termed as forged and as such cannot be a ground to terminate the dealership. The submission of the appellant is unsustainable in the peculiar facts and circumstances of the case. The

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allegation of fraud in the instant case is not in dispute. The submission that it was not done by the appellant but by her brother or brother-in-law cannot improve the case of the appellant as being the beneficiary of use of such document. She is not entitled to any relief and the writ court is not expected to step in and interfere with the order of the Corporation as otherwise, it would amount to perpetuating illegality and fraud.

Adverting to the submission of Mr. Kanth, Sr. Advocate referring to the undertaking of the writ petitioner that the undertaking was in terrorum in view of the judgment of the Apex Court in **Kurukshetra University** case (supra), Mr. Kanth submitted that the respondents cannot rely upon the undertaking of the writ petitioner for terminating the distributorship. The relevant part of the undertaking of the appellant runs as follows:

> "That if any information/declaration given by me in my application or in any document submitted by me in support of my application for this award of LPG dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false, Hindustan Petroleum Corporation Limited would be within its right to withdraw the letter of intent/ terminate the dealership/distributorship (if already appointed) and that I would have no claim, whatsoever, against Hindustan Petroleum Corporation Limited,

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for such withdrawal/termination."

In view of the peculiar facts and circumstances of this case, the judgment of the Apex Court in **Kurukshetra University** case (supra) is not attracted. The case of the appellant is distinguishable on fact. In that case the undertaking was given not at the initial stage but at the stage when the University asked the appellant to give undertaking at the time of 2nd years LL.B. examination whereas in the instant case fact situation is clearly different. The appellant was asked to execute undertaking not after allotment of distributorship but before allotment of distributorship and as such she can take the plea of undertaking in terrorum and as such the situation of the instant case cannot be equated with the situation prevalent in the case of **Shri Krishna Vs. Kurukshetra University** (supra).

Per Contra Mr. Chitranjan Sinha, Sr. counsel appearing on behalf of the Corporation has supported the judgment of the Writ Court and he has placed reliance on the judgment of the Apex Court in the case of Shiv Kant Yadav Vs. Indian Oil Corporation & Ors: (2007) 4 SCC 410 wherein in similar fact situation the Apex Court approved the action of cancellation/allotment of dealership for suppression of material information.

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Mr Kanth on the facts of the case submitted that in the instant case the Corporation took a decision and thereafter formality of show cause notice was issued which is post decisional notice. The submission of Mr. Kanth is unsustainable. In the context of the present case not only show cause notice was issued to the appellant to establish that the certificate used by her is genuine, even at the stage of hearing of the writ petition the appellant was provided opportunity to establish the genuineness of the certificate. In fact the original record of the Bihar School Examination Board was summoned by the writ court and the counsel appearing for the parties have the occasion to peruse the record produced by the Bihar School Examination Board but the writ petitioner could not establish that the certificate of matriculation used by her at the time of procuring the distributorship was genuine certificate.

The last limb of argument of Mr. Kanth is with regard to equitable hon'ble exit. I do not find merit in the submission. The Writ Court has rightly rejected the submission of the writ petitioner relying on the judgments of the Apex Court. In the case of **Union of India Vs. Amar Singh: (2007) 12 SCC 621** in paras 14 and 15 the Apex Court held out that a person who seeks equity must come with clean hand. It is now well settled that equity begets equity and no equitable relief can be granted which leads to perpetuating illegality. Recently

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the Apex Court has reiterated this principle in the case of **State of Odisha Vs. Bibhishan Kanhar** in Spl. Leave to Appeal No. 7712 of 2016 dated 17.7.2017.

Thus, I do not find any scope of speculation in the matter.

Considering the entire facts and circumstances of the case, I do not find any infirmity in the decision making process by the Corporation. The judgment of the writ court is well founded, well discussed and does not merit any interference in this intra-Court appeal. It is accordingly, dismissed.

(Anil Kumar Upadhyay, J)

Rajendra Menon – I agree**.**

S.Pandey/-

(Rajendra Menon, CJ)

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