

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2498 of 2008**

- Mukesh Rai Aged About 18 Years S/o Sunil Rai R/o Daupara, Ratanpur, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through the Secretary, Ministry of Petroleum and Natural Gas, New Delhi
2. Indian Oil Corporation Ltd. (I.B.P. Division) Registered Office : Indian Oil Bhawan, G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai - 400051

---- Respondents

For Petitioner	:	Shri R.K.Gupta, Advocate
For Respondent No.1	:	Shri B.Gopakumar, Advocate
For Respondent No.2	:	Shri N.Naha Roy, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****05/12/2019**

By this petition, under Article 266 of the Constitution of India, the petitioner has prayed to issue writ of mandamus or suitable direction to declare the result of selection process which was initiated in the year 2007 in the matter of allotment of petrol pump outlet at Ratanpur station. The petitioner has also prayed that the communication dated 25/11/2008 by which, a decision to cancel all the pending selection process was communicated, be also quashed. In addition, ancillary relief has also been prayed for.

2. The factual backdrop giving rise to this petition are that way back on 17/02/2004, an advertisement / public notice was issued inviting applications for

allotment of retail outlets for petrol / diesel at different places in the State of Chhattisgarh including one at Ratanpur town, by the then petroleum company namely Indo Burma Petroleum (for short 'IBP'). The petitioner and other desirous candidates applied by submitting their applications claiming such allotment. The process of selection remained pending and finally some of the shortlisted candidates including the petitioner were called for interview in March, 2007. However, after the interview was held, the process of selection was stalled and results were not declared. The petitioner kept on making representations to the authorities from time to time at different dates between the period from 04/05/2007 to 26/09/2007 which are collectively filed as Annexure P/5. When nothing happened, the petitioner finally approached this Court by filing present writ petition, by which, a prayer has been made to direct the respondents to declare the results of selection and also to restrain the respondent company to quash/cancel the selection process for any reason whatsoever.

3. After issuance of notice, when the respondents filed their reply, it was disclosed by them in their reply that during the period the process of selection was pending, the process of merger of IBP into another oil company i.e. Indian Oil Corporation (for short 'IOC') was pending and finally IBP merged into IOC on 30/04/2007. It was further disclosed in the return that the two companies finally decided that in respect of those pending selection processes initiated by IBP in the matter of allotment of retail outlet, where interviews have been conducted but Letter of Intent (for short 'LOI') has not been issued, such selection will be cancelled. According to the respondents, as Ratanpur location was also one of such case where interview was held but LOI was not issued, a decision was taken on 24/09/2008 to cancel the process at Ratanpur location also.

4. On such disclosure being made which was communicated to the petitioner

vide communication dated 25/11/2008, the petitioner extensively amended the writ petition and challenged the decision also.

5. Learned counsel for the petitioner vehemently argued in extenso, against action of cancellation of selection process way back in the year 2007, putting forth that the decision of the respondent authority to keep in abeyance, the process of selection was highly arbitrary. Referring to the communication dated 02/12/2019 disclosing information under Right to Information Act (Annexure P/15), it is submitted that the action of the respondent authority is sought to be justified by stating that the process of selection was kept in abeyance on the basis of policy and letter dated 07/04/2005 of IOC whereas, such policy, at the time when decision was taken to keep the selection process in abeyance, merger of IBP with IOC had not taken place. He would submit that even according to the respondents, merger had taken place only on 30/04/2007 and not before that. Therefore, it was contended that it was *per se* arbitrary on the part of respondent to contend that the decision to keep the process of selection in abeyance was based on any informed reason. Learned counsel for the petitioner would further submit that even if it is assumed that policy dated 07/04/2005 is treated to be applicable, though not admitted, the conditions on which the process of selection could be kept in abeyance were not present and obtaining on records of the case. Therefore, the stand taken by the respondents that on the basis of policy dated 07/04/2005, decision was taken to keep in abeyance, the process of selection, does not stand to reason and is patently arbitrary.

6. The next submission of learned counsel for the petitioner is that the respondents have come out with a case of policy decision having been taken by the two companies to stall all the selection process vide decision dated 10/07/2007 in the meeting of officers of IBP and IOC. However, the material documents in support of such decision which have been filed by the respondents do not inspire confidence

as the documents are not properly signed and no details of meeting have been placed before the Court. He would argue that even though, the scope of judicial interference with the policy decision is limited, in the present case, the decision taken by the respondents to stall all selection process, where LOI was not issued, does not stand on any reasonable basis, logic and reasoning. It is further contended that the cut off date on the basis of non issuance of LOI had no basis. Further submission in this regard is that the stand taken on the basis of meeting dated 10/07/2007 is self contradictory because it is an admitted position that IBP had already merged with IOC on 30/04/2007. Therefore, resolution passed and decision taken in some meeting by the officers of the two companies, appears to be farce of proceedings and it was only intended to frustrate the relief sought in the writ petition. Finally, learned counsel for the petitioner argued that on account of arbitrary inaction in not finalising the process of selection after holding interview, results were not declared and the petitioner could not get any benefit of the process of selection in which, he had not only participated but according to his information, he secured highest marks and entitled to allotment. It is submitted that in case of another retail outlet at Tilda where process of selection was simultaneously going on, results were declared and LOI was also issued on 23/05/2007. Thus, the respondents adopted pick and choose policy. It is submitted that the respondents did not proceed with the process of selection to issue LOI and such arbitrary decisions were made on the basis of cut off date under so called resolution dated 10/07/2007 for scraping the pending proceedings. In support of his submission, he has relied upon decision of the Supreme Court in the cases of **Directorate of Film Festivals and ors. v. Gaurav Ashwin Jain and ors.**, 2007 (4) SCC 737, **Monika Gupta v. Union of India and ors.**, (2010) 6 SCC 574, **East Coast Railway and anr. v. Mahadev Appa Rao and ors. (with K. Surekha v. Mahadev Appa Rao and ors.)**, (2010) 7 SCC 678, **Smt. S.R. Venkataraman v. Union of India and anr.**, (1979) 2 SCC 491, **Common Cause, A Registered Society v. Union of India and ors.**, (1996) 6

SCC 530 and Kumari Shrilekha Vidyarthi and ors. v. State of U.P. and ors., (1991) 1 SCC 212.

7. On the other hand, learned counsel for respondent No.2 would argue that in the present petition, the grievance raised by the petitioner relates to a very old and stale process of selection which was initiated way back in the year 2004. He would argue that the petitioner, merely by participation, does not get indefeasible right to get selected for allotment of petrol pump outlet. It is an admitted position that when the process of selection was going on, process of merger of IBP with IOC was at advance stage and infact, on 30/04/2007, merger of IBP had taken place. It is submitted that a policy decision was taken for adjustment of all administrative matters that those process of selection for allotment of retail outlet which was initiated by IBP, in which, LOI was not issued, will be cancelled. He would submit that such decision was taken by the two companies in view of merger of one company into the other and it cannot be said to be arbitrary decision because the Court would not enter into administrative arrangement and various measures taken subsequent upon merger of one company into other. Learned counsel for the petitioner submits that there is no specific allegation, much less any material on record to show that cancellation of process of selection was an outcome of any malafide exercise because the respondents had cancelled all the selection process where LOI was not issued which included the petitioner also. As far as Tilda allotment is concerned, it is submitted that in Tilda case, LOI was issued on 23/05/2007 which was prior to taking policy decision on 10/07/2007. Therefore, that cannot be made a basis to raise grievance of discrepancy or pick and choose policy.

8. This Court had directed learned counsel for the respondent to produce the records of selection process initiated in the year 2004. Learned counsel for the respondents submits that till date, no records have been received. He, however,

would submit that during the pendency of this petition, another process of selection was initiated in the year 2011, in which, retail outlet at Ratanpur was reserved for women category. Though process of selection was not completed in the year 2018, another process of selection was initiated by keeping Ratanpur retail outlet in open category. That process was also not finalised and thereafter, another process of allotment was initiated by issuing advertisement in the year 2018, in which, it has been kept reserved for S.T. category and that process is still pending. According to him, one candidate has been selected in the selection process of 2018.

9. I have heard learned counsel for the parties and also perused the record.

10. As the record speaks, the process of selection was initiated way back in the year 2004. The material on record leaves no manner of doubt that interview was held on 20/03/2007 but the declaration of result was kept in abeyance. That means, the process was stalled. Moreover, I find that the petitioner, thereafter, made several representations to the respondent authorities but the process remained incomplete. The reply of respondents discloses that later on, a decision was taken by the officers of IOC and IBP that all the process of selection which have been initiated but had remained pending and LOI have not been issued, be cancelled. This material has been brought on record by the respondents by way of memo of submission dated 07/09/2015 (Document D). This document D reads as minutes of the meeting of IBP merger at Chennai. It has been mentioned that 12 members of IOC and 7 members of IBP attended the meeting. It has been mentioned that during the course of meeting, certain action points emerged. In clause 3, it has been mentioned '*interview conducted but LOIs not issued, such selection will be cancelled*'. It is on this basis that letter dated 24/07/2008 was issued towards cancellation of selection process. After filing of this document, the petitioner has not come out with any affidavit raising any doubt with regard to the authenticity of such a document.

Specific averment with regard to passing of resolution dated 10/07/2007 has already been made in the reply / counter affidavit filed by the respondents and the document has been filed only in respect of that contention. The petitioner, in his rejoinder and subsequent affidavit, has not come out with the case that no such meeting had ever been taken place and he has only challenged the correctness of that decision.

11. The submission of learned counsel for the petitioner that even if resolution dated 10/07/2007 does not explicitly record that action points emerged was finally brought to its logical end, it should be taken to mean that no such decision was ever taken. This submission of learned counsel for the petitioner does not merit acceptance. Respondents, in so many words in the return, have clearly stated that process of selection in all those cases, where LOI was not issued was cancelled. The language used in the minutes of meeting is on administrative side while taking certain policy decision. Nothing could be placed on record to show that after taking policy decision on 10/07/2007, LOI was issued and retail outlet was allotted to those, whose allotments were pending on 10/07/2007. As far as contention of learned counsel for the petitioner that decision to keep the process of selection in abeyance was arbitrary, respondents have taken a stand that the decision was taken in the light of circular dated 07/04/2005. In the petition, the petitioner has pleaded that after the interview was held, process of selection was kept in abeyance and he started making various representations but when, no decision was taken, he has filed petition before this Court. I find that there is no specific relief sought by the petitioner that the decision of the respondents to keep the selection process in abeyance, be declared illegal or arbitrary. Even then, it appears that the respondents, for some undisclosed reason, were not declaring the results, may be the process of selection, for some reason, had to be stalled. However, even if I have to hold that there was some arbitrariness in keeping the process of selection in abeyance, keeping in view subsequent developments that IBP merged into IOC and

then a policy decision was taken on 10/07/07 to cancel other process of selection where LOI was not issued, it is difficult for the Court to extend relief in favour of the petitioner at this distance of time.

12. Challenge is made to the policy decision taken on 10/07/07 on the ground which are not tenable. It is well settled legal position that the scope of interference against policy decision is very limited. The background in which the resolution was on 10/07/07 are that IBP merged into IOC and this was on the basis of the decision taken between the two companies which culminated in decision on 30/04/2007. The minutes of meeting dated 10/07/07 speaks that as a result of merger, number of administrative decisions to streamline administrative functioning were taken in the meeting of the two companies. Such decisions are purely administrative, aimed at streamlining and rearranging work and functioning of IOC upon merger of IBP. The decision to cancel all the selection process initiated by IBP, where LOI was not issued, apparently on account of merger of IBP with IOC, cannot be said to be arbitrary or so unreasonable, that should warrant interference by this Court against such decision.

13. It also cannot be lost sight of that the process of selection was initiated way back in the year 2004. It is not a case that in place of the petitioner, some other person was allotted petrol pump and still operating. In the present case, the entire process of selection was itself cancelled way back in the year 2007. The process of selection was initiated by IBP which stood merged with IOC since the year 2007. Learned counsel for the respondents, upon instructions, submits that thereafter, number of selection processes have been initiated and latest process of selection of the year 2018 is still pending. In that view of the matter, this Court is not inclined to grant any discretionary relief under Article 226 of the Constitution of India in favour of the petitioner so as to reopen an old process of selection which was scrapped in the

year 2007. Therefore, no relief can be granted. The petition is, accordingly, dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Deepti