IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.NOS.1747 OF 2010 AND 35 OF 2013
AND CONNECTED MISCELLANEOUS PETITIONS

W.A.NO.1747 OF 2010

G.Thilagar ... Appellant/2nd Respondent

Vs.

1.Amalorpavam

2.Jesu Ashok ..Respondents 1 & 2/Writ Petitioners

3.Indian Oil Corporation Limited
Represented by Chief Area Manager
Marketing Division
Indane Area Office
No.500, Anna Salai,
Teynampet, Chennai - 600 018.
..3rd Respondent/1st Respondent

4.Dealership Selection Committee
Rep. by Executive Director
Indian Oil Corporation
Indian Oil Bhavan
139, Uttamar Gandhi Road,
Nungambakkam High Road, Chennai - 600 034.
(R4 impleaded as party respondent
vide order of Court dated 30.10.2012
made in M.P.No.1/2012 in W.A.No.1747/2010)
...4th Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 02.08.2010 passed in W.P.No.19537 of 2009.

W.P.No.19537 of 2009:

Petition filed under Article 226 of the Constitution ofIndia praying to issue a Writ of Declaration declaring that the action of the 1st respondent in placing the 2nd respondent in the first position for award of Indane Gas Distributorship for Tambaram

Area as illegal and consequently direct the 1st respondent to place the petitioners in the first position and award the Indane Gas Distributionship for Tambaram Area to the petitioners.

For Appellant : Mr.P.S.Raman
Senior Counsel for
Mr.V.Ramajegadeesan

For Respondents
1 and 2 : Mr.Balan Haridas

For Respondent 3: Mr.PN. Radhakrishnan

W.A.NO.35 OF 2013

Indian Oil Corporation Limited
Represented by Chief Area Manager
Marketing Division
Indane Area Office
No.500, Anna Salai,
Teynampet, Chennai - 600 018. ... Appellant/1st Respondent

Vs.

1.Amalorpavam
2.S.Jesu Ashok ..Respondents 1 & 2/Petitioner
3.G.Thilagar ..3rd Respondent/2nd Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 02.08.2010 passed in W.P.No.19537 of 2009.

W.P.No.19537 of 2009:

Petition filed under Article 226 of the Constitution ofIndia praying to issue a Writ of Declaration declaring that the action of the 1st respondent in placing the 2nd respondent in the first position for award of Indane Gas Distributorship for Tambaram Area as illegal and consequently direct the 1st respondent to place the petitioners in the first position and award the Indane Gas Distributionship for Tambaram Area to the petitioners.

For Appellant : Mr.PN. Radhakrishnan

For Respondent 3 : Mr.M.Sivavarthanan

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.]

Challenging the order dated 02.08.2010, passed by this Court in W.P.No.19537 of 2009, the present appeals have been filed.

2. The Indian Oil Corporation Limited issued advertisement dated 06.02.2008 calling for applications for Indane Gas Distributorship for Tambaram area. The respondents 1 and 2, who are the petitioners in W.P.No.19537 of 2009, along with others have applied for the same. Interview was held on 24.07.2009. The respondents 1 and 2 have also attended the interview. The assessment of candidature is by awarding marks, as stated below:-

(i)	Capability to provide infrastructure	- 35 marks
(ii)	Capability to provide finance	- 35 marks
(iii)	Educational qualification	- 15 marks
(iv)	Age	- 4 marks
(v)	Experience	- 4 marks
(vi)	Business ability / acumen	- 5 marks
(vii)	Personality	- 2 marks
Total		- 100 marks

The total marks was 100 and the person who secured highest marks should be given distributorship. The respondents 1 and 2 were awarded 91 marks and 90 marks respectively, as individual and as partners. They were awarded lesser marks under the head "capability to provide finance". If they were awarded full marks, they could have secured 92.5 marks and placed above the selected candidate, namely, G.Thilagar, second respondent in the writ petition, who had secured 92 marks. Therefore, aggrieved by the non-selection, the writ petitioners have filed the above writ petition.

3. The Indian Oil Corporation Limited has filed counter stating that the selection conducted was proper and there is no illegality in it. Since the second writ petitioner, did not provide any information under the head "capability to provide finance", no marks were awarded and as per the norms, the average mark was taken and the writ petitioners as "partners" were awarded 2.5 marks. In the individual assessment of the first writ petitioner, she was given full marks. As per the clarification letter dated 07.04.2005 issued by the Indian Oil Corporation Limited, it is incumbent on the party to provide. As per the letter dated 07.04.2005, individual partners have to mention their financial capability and the average of the total capability would be taken and give it to all the partners. This method was followed from the year 2005 onwards. It was applied to the selection prior and after the selection made by the

Corporation. It was inadvertently omitted to be printed in the brochure. According to the Corporation, the brochure is not a final document and it contains a disclaimer clause viz., clause 13, as per which, in case of any doubt, the applicants have to get it clarified from the Corporation.

4. The writ petitioners have contended that the selection should have been conducted adhering to the terms and conditions issued in the brochure and cannot go out of the terms of the notification. In so far as the non-adherence of terms and conditions of brochure and introducing a new clause is violative of principles of natural justice and therefore, the selection of the second respondent is liable to be set aside.

5. The second respondent in the writ petition, viz., selected candidate, has filed counter stating that the selection was proper and he was selected on merits, based on the marks secured by him and therefore, his selection shall not be set aside.

6. After hearing the parties, the learned Single Judge has found that the selection must have been conducted strictly adhering to the terms of evaluation mode as set out in the brochure and the respondent Corporation ought not to have gone outside the conditions of the brochure. The mode of selection as contemplated in the selection procedure has been violated. Since the interference that the selection is confined to the decision making clauses and does not interfere with the merits of the decision, the selection made in favour of the second respondent in the the writ petition was declared as illegal and a further direction was issued to place the writ petitioners as first rank by adopting the evaluation mode as specified in the brochure and to award distributorship.

7. Challenging the order of the learned Single Judge, the second respondent in the writ petition, viz., G.Thilagar, has filed W.A.No.1747 of 2010 and the Indian Oil Corporation Limited, has filed W.A.No.35 of 2013.

8. Since the order of the learned Single Judge is challenged in both the writ appeals, both the writ appeals are taken up together for final hearing and disposal.

9. According to the appellants, the order passed by the learned Single Judge is without pursuing the documents, in proper perspective. As per clause 14 of brochure, the evaluation of the candidates is on the following parameters:-

"14.NORMS FOR EVALUATING THE CANDIDATES
The LPG distributor will be selected on the

basis of evaluation of all eligible applicants on the following parameters.

a. Capability to provide infrastructure*	35 marks
b. Capability to provide finance *	35 marks
c. Educational qualifications **	15 marks
d. Age **	4 marks
e. Experience	4 marks
f. Business ability/acumen	5 marks
g. Personality **	2 marks
Total marks	100 marks

The evaluation on the parameters 'a' to 'd' above will be done on the basis of the information given in the application. The evaluation on the parameter 'e' 'f' & 'g' will be done based on the interview.

Parameter	Sub head	Description	Max. marks	Evaluation
Capability to provide infrastructure and facilities (as on the date of application)	Suitable land for LPG storage godown / godown	Owns @ - Having clear title / Registered Sales Deed of the suitable land / godown	25	Based on the information & statement given in the application
		OR firm offer @ - Having agreement to purchase / lease suitable land / godown	18	Based on the information & statement given in the application
		OR Can arrange	10	Based on the information & statement given in the application
	Suitable land / shop for showroom	Owns @ Having clear title / Registered Sales Deed of the suitable land / shop for showroom	10	Based on the information & statement given in the application
		OR Firm offer @ - Having agreement to purchase / suitable land / shop for showroom	7	Based on the information & statement given in the application
		OR Can arrange	5	Based on the information & statement given in the application
		Sub total maxim marks	35	

Parameter	Sub head	Description	Max. marks	Evaluation
Capability to provide finance	Financially sound funds	(a) Amount in saving accounts in Bank (as on date of application) (b) Free and unencumbered fixed deposits in scheduled banks or any other documents / resource which can be readily converted to liquid cash to cover working capital / infrastructure requirements (as on date of advertisement)	18	Based on the information given in the application (Fds/NSCs/Shares/any other investment bonds in the name of self or family members as defined above under relationship clause) Award 0.1 marks on every unit of Rs.10,000/- or more in multiples of Rs.10,000/- and amounts less than complete unit of Rs.10,000/- will not be considered for award of marks. Maximum marks 18. Rs.18,00,000 & above 18.0 marks

Parameter	Sub head	Description	Max. marks	Evaluation	
Capability to provide finance continued	Ability to arrange loan	(c) Bankers / Financial institution certificate for credit worthiness and willingness to extend loan, if required (as on date of application)	7	Based on the letter from Bank / Financial Institution sent with the application. 7 marks in case no Credit worthiness certificate from bankers/ financial institutions but Funds are more than 20 lakhs as mentioned at (a) & (b) above. Otherwise marks to be awarded on the basis of certificate from bankers / financial institutions as under:-	
				Range of loan Rs.	Marks to be awarded
				> = 2 lac to < 4 lac	1
				> = 4 lac to < 6 lac	2
				> = 6 lac to < 7 lac	3
				> = 7 lac to < 8 lac	4
				> = 8 lac to < 9 lac	5
				> = 9 lac to < 10 lac	6
				> = 10 lac	7

Parameter	Sub head	Description	Max. marks	Evaluation	
	Assets	(d) Fixed and other assets (as on date of advertisement)	5	Based on information of application. 5 marks in case no immovable and movable property but funds are more than 20 lakhs as mentioned at (a & b) above. Otherwise marks to be awarded as under.	
				Range of assets value	Marks to be awarded
				> = 3 lacs to < 6 lacs	1 mark
				> = 6 lacs to < 9 lacs	2 marks
				> = 9 lacs to < 12 lacs	3 marks
				> = 12 lacs to < 15 lacs	4 marks
				> = 15 lacs	5 marks

Parameter	Sub head	Description	Max. marks	Evaluation
	Income	(e) Income from all sources such as salary, property, business, agricultural, interest, dividend, rent earnings, royalty etc., per annum	5	Based on information of application. Income as per Income Tax Return of the last financial year and or affidavit on income Maximum Marks 5. Award 0.1 marks on every unit of Rs.10,000/- or more in multiples of Rs.10,000/- and amounts less than complete unit of Rs.10,000/- will not be considered for award of marks.
		Sub total maximum marks	35	

* In case of LPG distributorships reserved under SC/ST category, there will be no evaluation on Land and Financial capabilities.

** Age, Educational Qualification and personality shall not be applicable in case of Govt. Organisations/Corporations/Undertakings, Public Ltd. Companies, Cooperative Societies and Private Companies and full marks shall be awarded.

@ Own means having clear ownership title of the property or on long leased (minimum 15 yrs) in the name of family member as defined in eligibility criteria/multiple distributorship norm duly supported by documents @@ 'Firm offers' means an agreement on stamp paper for sale or lease (minimum 15 years) between the applicant and the owner duly supported by documents.

In respect of partnerships, all partners will have to attend the interview together and they will be evaluated individually for individual parameters like age, educational qualification etc. The land and finance owned by any one of the partners will be treated as the same being owned by the firm as a whole for evaluation purposes.

Every thing being equal, preference will be given to unmarried women above 40 years of age without earning parents and widows for LPG distributorship locations reserved for women.

In case of two or more applicants scores same marks, then applicant who has scored more marks based on documents shall be placed above the other person in the merit panel. In case two or more applicants scores same marks based on documents and in interview, then the applicant who is younger in age shall be placed above the other applicant in the merit panel.

A candidate has to get minimum 40% marks after interview for being included in the merit panel. In case no candidate gets 40% marks, then the location will be re-advertised."

10. In fact, the letter No.SL/1601 dated 07.04.2005 was issued by the Head Office to all State Heads regarding the clarification on evaluation of partnership applicants for selection of Indane Distributorship. The said letter dated 07.04.2005 reads as follows:

"SL/1601
7.04.2005

To
All State Heads
Subject: Clarification on Evaluation of partnership applicants for selection of Indane Distributorship

1. Application for LPG distributorship can be made in partnership. As per extant policy, each partner should individually meet the specified eligibility criteria and should also submit separate application forms along with separate application fee. However, the applications should be clubbed together. If called for interview, all of them must appear together (collectively) for interview. They are required to submit a copy of the partnership deed along with the application.

2. For evaluation of partnerships applicants, extant policy states that, all partners will have to attend the interview together and they will be evaluated individually for individual parameters like age, educational

qualification etc. The land and finance owned by any one of the partners will be treated as the same being owned by the firm as a whole for evaluation purposes.

3. To give better clarity, evaluation criteria-wise explanation is given below:-

3.1. Capability to provide infrastructure facilities (as on the date of application)

The marks under the parameter capability to provide infrastructure is to be given based on the capability on the date of application and as mentioned in the application form.

The capability to provide infrastructure facilities as mentioned in the individual application of the partners (as on the date of application) to be considered as belonging to the partnership firm. Accordingly, maximum marks of any of the partners to be considered as that of the partnership firm and the same should be given to all the applicants of that partnership firm. For example, in partnerships application one partner owns land for godown and another owns showroom, then the all partners should be given 25 marks for godown and 10 marks for showroom.

3.2. Capability to provide finance (Prior to date of advertisement)

The marks on the parameter capability to provide finance is to be given based on the capability prior to the date of advertisement and as mentioned in the application form.

The financial commitment as mentioned in the partnership deed given with the application form will be considered as belonging to the partnership and accordingly the same marks should be awarded to all the partners.

In case nothing regarding financial commitment of partners is mentioned in the partnership deed, then financial capability (which should be prior to that of advertisement) mentioned in the individual application form of partners should be added and treated as belonging to the partnership. Accordingly, marks should be awarded on the combined capability to all the partners.

For example FDs, NSC, bank balance etc., with one partner is 6 lacs and that of other partner is 3 lacs then total for the firm should be taken as 9 lacs and 16 marks should be given to both the candidate. Similarly, ability to arrange loan and assets should be evaluated on the combined strength.

Under the head income, partners should be evaluated individually and marks awards as per the individual strength.

3.3. Education qualification, Age, Business ability / acumen, and Personality should be individually assessed for the partners and marks should be awarded accordingly.

3.4. The average of the marks obtained by all the partners should be taken for deciding the position of the partnership application in the merit panel.

4.Above will form part of the evaluation criteria circulated as Annexure - C vide SL/1601 dated 24.11.2004."

Therefore, the letter clearly states that under the head of income, partners should be evaluated individually and marks would be awarded as per the individual strength. In so far as the partnership is concerned, according to the appellants, there existed no partnership.

11. The learned counsel appearing for the appellants would argue based on the partnership deed and the relevant portion of the same, reads as follows:

"1.Name: The name of the Partnership shall be decided at the time of sanction of DISTRIBUTORSHIP ALLOTMENT.

Place of Business: The place of business shall be at the option of the partners.

2.DURATION: The Partnership shall be "AT WILL"

4.OBJECT: The Object of the Firm shall be Promotion of I.O.C.L. LPG GAS DISTRIBUTORSHIP."

12. The terms stated above would clearly show that the name of the partnership shall be decided at the time of sanction of Distributorship allotment. In the event no sanction, there won't be any partnership at all. The object of the firm shall be promotion of I.O.C.L., LPG Gas Distributorship. Since the Gas distributorship itself was not granted, the partnership firm was obviously stillborn and it cannot be construed as partnership firm at all. Thirdly, the second writ petitioner, who was said to be a partner has left the column blank under the head "capability to provide finance". The aspect of the partnership, existence of partnership was not at all looked into and discussed by the learned Single Judge. Without considering the existence of partnership, the learned Single Judge has erroneously proceeded that there existed a partnership firm and the firm had all rights to apply for the distributorship.

13. The next point argued by the appellants was that the applicants can only have legitimate expectation and do not have vested right for getting the distributorship. The legitimate expectation is based on the terms and conditions imposed by the Indian Oil Corporation Limited. The brochure contains a last clause, which is a disclaimer clause, which reads as under:

> "The content given in this brochure is for general information. It should not be considered as policy document and cannot be legally quoted. Indian Oil Corporation shall be the final authority for giving any clarification or interpretation on the contents given in this brochure. If need be and at its own discretion. Adequate care has been taken to provide relevant information from concerned authority. However, Indian Oil Corporation cannot be held responsible for any loss or damage or consequences from misunderstanding or misinterpretation of the contents in this brochure. The Corporation may revise the contents of this brochure from time to time without giving any notice."

14. The Indian Oil Corporation Limited has revised the contents of brochure time to time without giving any notice. Furthermore, the clarification letter was issued as early as on 07.04.2005, which has been applied for all the selections before and after the selection, for which, challenge has been made before this Court.

15. The learned Single Judge has relied on a judgment of the Hon'ble Supreme Court in DUTTA ASSOCIATES PRIVATE LIMITED

VS. INDO MERCHANTILES PVT. LTD. [1997 (1) SCC 53]. Paras 4, 5 and 7 of the said judgment, as extracted in the order, reads as under:

> "4...........Firstly, the tender notice did not specify the `viability range' nor did it say that only the tenders coming within the viability range will be considered. More significantly, the tender notice did not even say that after receiving the tenders, the Commissioner/Government would first determine the `viability range' and would then call upon the lowest eligible tenderer to make a counter-offer. The exercise of determining the viability range and calling upon Dutta Associates to make a counter-offer on the alleged ground that the was the lowest tenderer among the eligible tenderer is outside the tender notice. Fairness demanded that the authority should have notified in the tender notice itself the procedure which they proposed to adopt while accepting the tender. They did nothing of that sort..........
>
> 5. It is thus clear that the entire procedure followed by the Commissioner and the Government of Assam in accepting the tender of Dutta Associates [appellant herein] is unfair and opposed to the norms which the Government should follow in such matters, viz., openness, transparency and fair dealing. The Grounds No.1 and 2, which we have indicated hereinabove, are more fundamental than the third ground upon which the High Court has allowed the writ appeal.
>
> 7. In the circumstances, we affirm the judgment of the Division Bench in writ appeal on the grounds stated above ......
>
> We reiterate that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice."

The said judgment will not apply to the case on hand, as the very basis of consideration was chattered, whereas, in the instant case, the method of awarding marks was only clarified and even without the issuance of that clarification, the individuals must have filled up the columns. Taking shelter under clause 14.2, will not in any way help the writ petitioners. It is also important to state that to avail the benefit of the said clause, there should have been a firm. But in the instant case, there is no firm and that is why the writ petitioners cannot take advantage of the said clause and the learned Single Judge has erred in applying the clause in favour of the writ petitioners, as if they were partners. The selection was conducted purely on temporary basis and there is no mala fide alleged is involved in the selection and therefore, the selection cannot be interfered with.

16. We have heard the submissions made on either side and perused the materials available on record.

17. The points for consideration before us is that (a) whether this Court can interfere with the selection conducted by the Selection Committee; (b) whether the applicants have vested right; (c) whether the eligibility conditions can be changed; (d) whether there was a firm applied for distributorship; and (e) whether there is any challenge by the said firm against the non-selection.

18. In so far as the jurisdiction of interfering with the selection is concerned, the Hon'ble Supreme Court in SAJEESH BABU K. VS. N.K.SANTHOSH AND OTHERS [2012 (12) SCC 106] has held that in the absence of any allegation as to mala fide action on the part of the selectors or disqualification, etc. interference by the High Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India is not warranted. The Courts are not justified in sitting in appeal over the unanimous recommendations of the Expert Committee. The case cited above was also dealing with LPG Distributorship and the Court has mandated that judicial review is excluded in technical or commercial or export matters.

19. The learned Single Judge has relied on a judgment of the Hon'ble Supreme Court in K.VINOD KUMAR VS. S.PALANISAMY AND OTHERS [2003 (10) SCC 681] wherein the Supreme Court has held that the scope of judicial review in the matters of selection shall be confined to the decision making process and does not extend to the merits of the decision taken. According to the learned Single Judge, the method of selection, by which, the marks was not rightly awarded and the exercise of power, when it is arbitrary, it can be interfered with and it does not amount to interfering with the merits of the decision. The learned Single Judge has proceeded on the basis that when the brochure stipulates certain conditions and the selection shall be conducted only based on that condition and shall not go outside the parameters specified therein. A reading of para 7 of the judgment, reads as follows:

"7. The proceedings of the Dealer Selection Board must satisfy the requirements of a bona fide administrative decision arrived at in a fair manner. There are no mala fides alleged against the Dealer Selection Board or the President or any Member thereof. There is no specific plea raised impugning the manner of marking. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totalled and arranged in the order of merit. The appellant herein topped the list. In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best suitable candidate and, so long as the power is exercised bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable."

The proceedings of the Dealer Selection Board shall confirm to the bona fide administrative decision arrived at in a fair manner. The Board is entrusted with the task of finding out best suitable candidate and, so long as the power is exercised bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. In the present case, the learned Single Judge has found that the Board was not fair in adhering to each standards rather than mentioned in the brochure.

20. The Hon'ble Supreme Court in STATE OF M.P. AND OTHERS VS. RAGHUVEER SINGH YADAV AND OTHERS [1994 (6) SCC 151] has held that the State has got power to prescribe qualification for recruitment. The candidates, who had appeared for the examination and passed the written examination had only legitimate expectation to consideration of their claims according to the rules then in vogue. The amended rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and made final recruitment. Obviously, no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on

the basis of the amended rules. Therefore, it is clearly seen that the candidates who aspire for the distributorship, does not have any vested right, but at the most have only legitimate expectation.

21. In so far as the letter of clarification dated 07.04.2005 is concerned, it is clear that the letter was issued from 2005 onwards and the selections were made only based on the terms indicated therein. It does not appear much in the selection method. In so far as the partnership firms are concerned, a particular method was adopted by the Selection Board. The only defect is that it was not printed in the brochure. The said clause and the letter of clarification dated 07.04.2005 applies to the case of partnership of the firm. In the instant case, we could see that two individuals have preferred the above writ petition. If the contention of the appellants what there existed no firm is ascertained by the documents produced before the Court. The firm does not even have the name and it comes into operation only after the sanction of distributorship in favour of both the individuals. Therefore, the contention that is it stillborn is very much sustainable and it cannot be construed that the firm has challenged the non selection and there existed the firm.

22. In that event, the obligation of the terms and conditions as found in clause 14 of the brochure is not applicable to the writ petitioners, as they are not established that there existed firm. On the allegation of marks is concerned, the writ petitioners had filled in all the columns in the application. The second writ petitioner had provided the deposit available in the Union Bank S.B. Account No.16597 as Rs.30 Lakhs and has left all other columns blank. In so far as the status as to whether the applicant is an individual / partnership / registered cooperative society / organised body, the second writ petitioner has selected "individual" and has not selected "partnership" as mandated in the application form. There is no indication as to whether the individual writ petitioners have applied as partners. In the absence of any indication as to the partnership firm, we are not inclined to accept that the contention of the writ petitioners that they have made out a case for consideration. Even assuming that there was a partnership, the writ petitioners have issued a legal notice dated 31.07.2009 to the Chief Area Manager, Indian Oil Corporation Limited, Marketing Division, Indane Area Office, Anna Salai, Chennai, as to the awarding of marks, to which the respondents have issued a reply notice on 15.09.2009 stating that the second writ petitioner has not given any detail against the gross annual income of last financial year which would be taken as an individual score and average would be arrived at as per selection guideline. But the perusal of the application

submitted by the second writ petitioner clearly shows that the column is left blank. Therefore, the writ petitioners cannot make a hue and cry that the selection was bad. There is no allegation of mala fide.

23. In the absence of mala fide, as per the judgment of the Hon'ble Supreme Court SAJEESH BABU K. VS. N.K.SANTHOSH AND OTHERS [2012 (12) SCC 106] and on the basis of the judgment of a Division Bench of this Court in K.GAYATHRI VS. THE GENERAL MANAGER (MARKETING DIVISION) BHARAT PETROLEUM CORPORATION LTD. [2014 (2) CWC 529] we are not inclined to interfere with the selection.

24. The learned Single Judge has proceeded on the basis that the judicial review is made only confining it to the decision making process and does not extend to the merits of the decision taken. Whereas the consideration of the application and evaluation made by the Expert Committee is certainly involves the evaluation on merits and it does not confine to the method of selection alone. Therefore, when duly constituted Selection Committee has evaluated the candidates on the basis of norms available before them and when there is disputed questions of fact that as to whether there existed a firm or not, this Court cannot interfere under Article 226 of the Constitution of India, into the selection aspect.

25. In the result, the order dated 02.08.2010 passed in W.P.No.19537 of 2009 by the learned Single Judge is set aside and the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

TK
To
1.The Chief Area Manager
Indian Oil Corporation Limited
Marketing Division
Indane Area Office
No.500, Anna Salai,
Teynampet, Chennai - 600 018.

2.The Executive Director
Dealership Selection Committee
Indian Oil Corporation
Indian Oil Bhavan

139, Uttamar Gandhi Road,
Nungambakkam High Road,
Chennai - 600 034.

+1 CC to Mr.M. Sivavarthanan, Advocate sr 77166
+2 CC to Mr.P.N. Radhakrishnan, Advocate sr 77039
+1 CC to Mr. Balan Haridas, Advocate sr 76950.

W.A.NOS.1747 OF 2010 AND 35 OF 2013

GMR(CO)
SP(24/10/2019)