A RITU MAHAJAN

v.

INDIAN OIL CORPORATION & ORS.

(Civil Appeal No. 804 of 2009)

FEBRUARY 9, 2009

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[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Public Distribution – Allotment of petrol pump – Reservation for woman category – Preference to be given to C *unmarried woman above 40 years without earning parents and widow, other things being equal – Allotment in favour of widow aged 47 years as per merit list – Challenge to, by unmarried woman aged 28 years – Dismissal of writ petition – On appeal held: Unsuccessful candidate was higher in merit in* D *comparison to allottee in all the criteria thus, all factors and consideration cannot be said to be equal – No preference could be given to allottee – Capability to arrange for finance and provide infrastructure not a relevant criteria – Selection of allottee set aside – Oil Corporation to make allotment in* E *favour of the unsuccessful candidate.*

Respondent no. 1-Oil Corporation issued advertisement for allotment of petrol pump. The said location was reserved for woman category and that the other things being equal, preference was to be given to F **unmarried woman above 40 years of age without earning parents and widows. Appellant aged 28 years, was married and had a B.E. Electrical degree and in charge of R & D Section of a Company. Fifth respondent aged 47 years, was a widow. She was matriculate and had 4** G **years experience in running PCO. They both along with others applied for allotment of petrol pump. In terms of the merit list, fifth respondent was selected for allotment. Appellant challenged the same. The Corporation and the Selection Board upheld the selection. Appellant filed writ**

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petition challenging selection of fifth respondent for allotment, which was dismissed. Hence the present matters. A

Disposing of the matters, the Court

HELD:1.1. The Committee constituted by this Court examined the records pertaining to the allotment to the fifth respondent and submitted a Report. On the face of the Total Marks obtained, the committee found that the appellant comes at serial No. 1 with 112 marks, while the fifth respondent comes at serial No. 2 with 110 marks. On examining the three categories, namely, Personality, Business ability and Salesmanship, Educational Qualification and General Level of Intelligence and General Assessment, the Committee held that the allotment made in favour of the fifth respondent was not on merits. The comparison of merits is based on relevant records and therefore the scrutiny and conclusions arrived at by the Committee cannot be said to be in any manner arbitrary or unjustified. The Committee appreciated the respective merit of the two candidates and on such appreciation came to a finding that the appellant is a better candidate for which it gave cogent and valid reasons. [Paras 14, 16 and 17] [1133-C-D; 1134-D-H; 1135-A-D] B C D E

1.2. On scrutinizing the records and on bare perusal of the same, it is found that the appellant was more meritorious than the fifth respondent on all counts. For the operation of the said outlet finance was to be provided by the Oil Corporation, which was to be repaid in 100 equal monthly installments alongwith interest @ 11% per annum and the first installment was to begin from 13th month of commissioning of dealership. Thus, Capability to arrange finance and Capability to provide Infrastructure & Facility could not have been relevant and material criteria. The opinion of the committee constituted F G H

A **by this Court is endorsed. In the instant case, no preference could have been given to the fifth respondent as the same was to be given to unmarried women above 40 years of age without earning parents and widows only on other things being equal. The appellant was higher in**
B **merit in comparison to the fifth respondent in all the criteria and thus all the factors and consideration cannot be said to be equal. [Para 18] [1135-D-G]**

1.3. As regard the objection filed by the fifth respondent against the report of the Committee, in view
C **of the findings and conclusions recorded, the objection has no merit. The report is accepted having found the same as valid and legal. [Para 19] [1136-A-B]**

1.4. The selection of fifth respondent for allotment of
D **Retail Outlet Dealership is set aside and the respondent No. 1-Indian Oil Corporation is directed to make allotment of the said Retail Outlet Dealership in favour of the appellant immediately. [Para 21] [1136-D-E]**

Mukund Swarup Mishra v. Union of India **(2007) 2 SCC**
E **536, Held applicable.**

Onkar Lal Bajaj v. Union of India (2003) 2 SCC 673, referred to.

F **Case Law Reference:**

(2003) 2 SCC 673	**Referred to.**	**Para 14**
(2007) 2 SCC 536	**Held applicable.**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 804
G of 2009.

From the final Judgment and Order dated 1.2.2002 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 7803 of 2001.

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WITH

I.A. Nos. 213-214 in T.C. (C) No. 100/2002

Raghenth Basant [for Gopal Subramonium A.S.G.,(A.C.) for the Appellant.

Rakesh Kumar Khanna, Yashraj Singh Deora, T.S. Sararish (for M/s. K.L. Mehta & Co.) Dr. Rashmi Khanna, Alok Kumar, Pranav Vyas, Shilja Sinha (for Surya Kant) H.K. Puri and T.A. Khan (for P. Parmeswaram) for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. In this appeal, we are concerned with the issue regarding allotment of a Petrol Pump at Dhariwal, which was reserved for women candidate.

3. This appeal is filed against the Judgment and Order dated 01.02.2002 passed by a Division Bench of the Punjab and Haryana High Court, whereby the Writ Petition filed by the appellant was dismissed on the ground that there was no infirmity in the selection of fifth respondent for allotment of the Retail Outlet Dealership.

4. Indian Oil Corporation – respondent No. 1 herein issued an advertisement in the "Tribune" dated 22.06.2000 whereby allotment of Retail Outlet Dealership/SKO-LDU Dealership and LPG distributorship was advertised. In the said advertisement one retail outlet, which was to be set at Dhariwal was also advertised. In the said advertisement, it was mentioned that in respect of the locations reserved for women only, on receipt of their application for Retail Outlet Dealerships/SKO-LDO Dealerships/LPG Distributorship, other things being equal, preference would be given to unmarried women above 40 years of age and widows. It was also mentioned that the Oil Companies would also provide the above women an adequate

working capital for a full operation cycle for the operation of the Dealership/Distributorship.

5. The appellant – Ritu Mahajan, deceased fifth respondent - Smt. Rani Gauba and others applied for allotment of Retail Outlet Dealership at Dhariwal, which was reserved for women only. Pursuant to receipt of the said applications the appellant, the deceased fifth respondent as also others were called for interview on 24.04.2001. The aforesaid interview was taken by Dealers Selection Board (for short 'Board') and after completion of the said interview a merit list was prepared in which the fifth respondent was placed at first position and the appellant was placed at the second position. As there was only one outlet to be allotted at Dhariwal, in terms of the position in the merit list the letter of intent was issued to the fifth respondent.

6. The appellant protested against the selection of the fifth respondent on the ground that she was not eligible to be considered for selection and even otherwise she was inferior to the appellant in all respects on the basis of the criteria laid down. The protest of the appellant, however, did not find favour with the Corporation or the Board and they refused to cancel the allotment in favour of the fifth respondent.

7. Consequently the appellant filed a Writ Petition before the Punjab and Haryana High Court with a prayer for quashing of the allotment in favour of the fifth respondent with a further prayer that the appellant be allotted the aforesaid Petrol Pump. The Division Bench who heard the matter, however, passed the impugned order dated 01.02.2002 holding that the fifth respondent was eligible for allotment of retail outlet dealership and the Board did not commit any illegality in selecting and recommending the name of fifth respondent for allotment of the said dealership.

8. Being aggrieved by the said Judgment and Order of the Division Bench, the present appeal was filed on which we heard the learned counsel appearing for the parties and also

scrutinized the documents placed on record. A

9. Mr. Yashraj Singh Deora, learned counsel appearing for the appellant submitted that in terms of the advertisement for allotment of the petrol pump, the minimum educational qualification was matriculation but the fifth respondent neither attached the matriculation certificate along with the Application Form nor the same was even produced at the time of interview and her application was wrongly entertained and, therefore, the said application was liable to be dismissed at the threshold. It was also submitted that even otherwise as per the criteria the appellant has higher merit in all the fields in comparison to the fifth respondent and, therefore, she deserves to be selected in preference over the fifth respondent. B C

10. Refuting the aforesaid submission, Mr. Rakesh Kumar Khanna, learned senior counsel appearing for the fifth respondent specifically stated that her qualification was matriculation and along with her application she also produced school leaving certificate, which would indicate that she had passed her matriculation in the year 1969. It was also submitted that fifth respondent was selected on the basis of overall assessment, in which she was found by the Board to be more competent than the appellant and the said decision having been upheld by the High Court the same should not be interfered by this Court. D E

11. It is undisputed that an advertisement was issued for allotment of one Retail Outlet dealership of petrol pump at Dhariwal. The said petrol pump was reserved for women category and that other things being equal, preference was to be given to unmarried women above 40 years of age without earning parents and widows. In addition, the oil companies were also to provide an adequate working capital for a full operation cycle for the operation of the dealership/ distributorship. The said amount was to be re-payed in 100 equal monthly installments alongwith interest @ 11% per annum and the first installment was to begin from 13th month of F G H

commissioning of dealership.

12. At the time of submitting the application for allotment, the appellant was 28 years of age and was married. She had completed B.E. (Electricals) from Punjab University, Patiala and had an experience of approximately about 1 ½ years as an in-charge of R & D Section of M/s. Standard Electricals Ltd. The Gross Income (including self, spouse and dependent children) was shown to be Rs. 72,376/- p.m. On the other hand the fifth respondent was alleged to be Matriculate and was of 47 years of age at the time of submission of application. She was a widow and had an experience of near about 4 years of running a P.C.O.

13. The Board was required to assess and allot marks to the candidates under three categories and the marks obtained by the appellant and fifth respondent are as under:

CATEGORY	APPELLANT	FIFTH RESPONDENT
Personality, Business Ability & Salesmanship	36	38
Educational Qualification & General level of intelligence	55	45
General Assessment	21	27
Total	112	110

Under the said three categories the total marks obtained by the appellant was more than the fifth respondent. But, there were two more categories, namely, Capability to Arrange Finance and Capability to provide Infrastructure & Facilities on which also assessment was made. After marking on the later two criteria the fifth respondent was found with the maximum marks and was placed at Serial No. 1.

14. The aforesaid findings and the conclusions of the Board were challenged in writ petition. It may, however, be mentioned at this stage that in a case filed before this Court, titled as *Onkar Lal Bajaj v. Union of India* the issues with regard to the allotment of marks, the criteria followed by the said Board in allotting marks to various candidates were challenged on the ground that the selection was based on Political Consideration. In the said case, this court by the judgment and order dated 20-12-2002 reported in (2003) 2 SCC 673 constituted a committee of two Judges' comprising Mr. Justice S.C. Agarwal, a former Judge of this Court and Mr. Justice P.K. Bahri, a former Judge of the Delhi High Court, to examine 413 cases including the present case pertaining to the allotment to the fifth respondent. The Committee constituted by this Court examined the records and submitted a Report. The relevant portion of the said report is placed on record as Annexure P-3 at page 120 of the paper book.

15. In the said Report, it was mentioned that on the basis of the marks awarded by the members of the Board at the interview, the name of following applicants, in the order of merit, was published on 24.04.2001:

(i) Smt. Rani Gauba;

(ii) Smt. Ritu Mahajan; and

(iii) Smt. Paramjeet Kaur.

It was stated in the said Report that the Board was not required to allot any marks in two categories i.e. Capability to arrange finance and Capability to provide Infrastructure & Facility as the said outlet was a Company Owned Company Operated Retail Outlet and the finance was to be made available in easy terms from the corpus funds to the selected candidates in such reserved category. The Committee, therefore, took out the marks allotted in the aforesaid two categories and the total marks obtained by the three

candidates were found as follows:

	Personality, Business Ability Salesman Ship &	Educational Qualification & Gen. Level Intelligence	General Assess-ment	Total
No. 1 Rani Gauba	38	45	27	110
No. 2, Ritu Mahajan	36	55	21	112
No. 3 Sagarika	39	40	22	101

16. On the face of the Total Marks obtained, the committee found that the appellant comes at serial No. 1 with 112 marks, while the fifth respondent comes at serial No. 2 with 110 marks. The Committee, thereafter, having recorded the aforesaid findings proceeded to examine whether there was any arbitrary allotment of marks to any of the candidates and on examining the first category, namely, Educational Qualification & General Level of Intelligence it was found that the fifth respondent is matriculate whereas the appellant – Ritu Mahajan is B.E. (Electrical). Upon considering the said qualifications, it was found that the allotment of equal marks viz. 25 by the Chairman to the appellant and fifth respondent was unjustified and was held as arbitrary. So far as the category with respect to Personality, Business ability and Salesmanship is concerned the committee observed that the fifth respondent was running PCO since 1996 whereas the appellant – Ritu Mahajan was working as Incharge of R & D Section of M/s Standard Electricals Ltd. in 1995-97, and therefore, it cannot be said that the fifth respondent is having better experience than the appellant. The two members allotted better marks to appellant than the fifth respondent whereas the Chairman allotted higher

marks to fifth respondent as compared with appellant. In this view of the matter the Committee held that the Chairman allotted marks arbitrarily to tilt the balance in favour of the fifth respondent. So far as General Assessment is concerned, it was found that the higher marks given by the Chairman to the fifth respondent again were unjustified. The Committee, therefore, held that the allotment made in favour of the fifth respondent was not on merits. A B

17. The aforesaid comparison of merits is based on relevant records and therefore the scrutiny and conclusions arrived at by the Committee cannot be said to be in any manner arbitrary or unjustified. The Committee has appreciated the respective merit of the two candidates and on such appreciation has come to a finding that the appellant is a better candidate for which it has given cogent and valid reasons. C D

18. We have also scrutinized the records submitted by the parties and on bare perusal of the same, we find that the appellant was more meritorious than the fifth respondent on all counts. For the operation of the said outlet finance was to be provided by the Oil Corporation, which was to be re-paid in 100 equal monthly installments alongwith interest @ 11% per annum and the first installment was to begin from 13th month of commissioning of dealership. Thus Capability to arrange finance and Capability to provide Infrastructure & Facility could not have been relevant and material criteria. On that score we fully endorse the opinion of the committee constituted by this Court. We may also mention that in the present case no preference could have been given to the fifth respondent as the same was to be given to unmarried women above 40 years of age without earning parents and widows only on other things being equal. In the present case as also held by the committee the appellant was higher in merit in comparison to the fifth respondent in all the criteria and thus all the factors and consideration cannot be said to be equal. E F G

19. The said report of the committee was upheld by this H

A Court in *Mukund Swarup Mishra v. Union of India* being Transferred Case (Civil) No. 100 of 2002 reported in (2007) 2 SCC 536. In the present case an objection is filed by the fifth respondent against the report of the Committee. In view of our findings and conclusions recorded hereinbefore, it is held that
B the objection has no merit. We accept the report having found the same as valid and legal.

20. We are of the considered opinion that the ratio of the decision in *Mukund Swarup* (supra) would become fully applicable to the facts and circumstances of this case. In terms
C of the said judgment and order the fifth respondent was liable to vacate the said retail outlet at Dhariwal within 3 months from 12-01-2007. However as the applications filed by the fifth respondent were not disposed of the status quo was directed to be maintained.
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21. In that view of the matter, the selection of fifth respondent for allotment of Retail Outlet Dealership at Dhariwal is set aside and the Indian Oil Corporation – respondent No. 1 is hereby directed to make allotment of the said Retail Outlet
E Dealership at Dhariwal in favour of the appellant immediately. The appeal is allowed accordingly.

22. I.A. Nos. 213-214 in T.C. (C) No. 100/2002 are disposed of accordingly.

F N.J. Matters disposed of.