

(1995) 06 GAU CK 0011**Gauhati High Court****Case No:** Writ Appeal No. 195 of 1995

Jorhat Consumer Goods
Wholesale Co-operative Society
Ltd.

APPELLANT**Vs**

Indian Oil Corporation Ltd. and
Others

RESPONDENT**Date of Decision:** June 28, 1995**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

Citation: AIR 1996 Guw 11**Hon'ble Judges:** V.K. Khanna, C.J; A.K. Patnaik, J**Bench:** Division Bench**Advocate:** G.N. Sahewalla, A.K. Goswami, B. Goyal and S. Murarka, for the Appellant; B.D. Das, H.K. Sarma, H. Roy and A.R. Banerjee, for the Respondent**Final Decision:** Allowed**Judgement**

Khanna, C.J.

The present appeal has been filed against the judgment of the learned single Judge dated 26-4-1995, passed in Civil Rule No. 5200/94.

2. We have heard Mr. G.N. Sahewalla, the learned counsel for the petitioner/appellant, Mr. H. Roy appearing for respondent No. 3, the Oil Selection Board, North East, Mr. B.D. Das, the learned counsel appearing on behalf of respondent No. 4, Shri Ramani Tanti, and Mr. A.R. Banerjee, the learned counsel appearing on behalf of respondents Nos. 1 and 2, the Indian Oil Corporation Ltd. and the Sr. Area Manager, Indane Area Office, Indian Oil Corporation, Noonmati, Guwahati.

3. The brief facts for the purposes of adjudicating the controversy involved in the present appeal are that respondents Nos. 1 and 2 issued notice inviting applications

for dealership of Indane LPG for Bongaigao, Jorhat and Guwahati by making an advertisement in the Dainik Janambhumi, an Assamese Daily, in its issue dated 16th January, 1994. In pursuance of the aforesaid notice, besides the petitioner/appellant and respondent No. 4, applications were made in the prescribed form by other applicants also. The respondent No. 4, Oil Selection Board, after scrutinising the applications and after holding interview, recommended the name of respondent No. 4 for being selected for distributionship of Indane LPG for Jorhat. The aforesaid recommendation was accepted by respondent No. 1 and consequently, admittedly, the dealership of Indane LPG distribution for Jorhat has been awarded in favour of the respondent No. 4 and has, admittedly, been issued the Letter of Intent and according to respondent No. 4, he has started preparation for starting the supply of Indane LPG at Jorhat to the customers.

4. Being aggrieved by the aforesaid decision of respondent No. 1 of awarding the dealership to respondent No. 4, the petitioner/appellant filed the Civil Rule No. 5200/94 out of which the present appeal arises on the ground that the petitioner/appellant being a Consumers Co-operative Society, was entitled to get preference over respondent No. 4 who was an educated unemployed youth as the Guidelines which have been prescribed clearly give such preference in favour of the petitioner/appellant. At this stage, it may be mentioned that this position has not been disputed by the learned counsel for the parties before us that the Consumer's Co-operative Society in case it possesses all the qualifications for being eligible to be awarded the dealership, will have preference over an educated unemployed youth.

5. In this case, on an earlier occasion we had ordered the Oil Selection Board to produce the original record before us and Mr. H. Roy, the learned counsel for the aforesaid respondent, has placed the original record before us. From a perusal of the original record it is clear that the case of the petitioner/appellant was not at all considered by the Oil Selection Board (North East) and the ground mentioned for not considering its case has been mentioned as "Could not produce the Board's resolution, Bye-laws and the Balance Sheets, so its suitability could not be considered."

6. It has thus to be seen by us as to whether the petitioner/appellant was required and had notice of the fact that before the Oil Selection Board, it has to produce the documents for whose non-production his candidature has not been considered for being given the dealership of the Indane LPG.

7. Admittedly, the advertisement and the printed application forms in which the persons interested in getting the dealership have to make the applications contained no such requirement that the Board's resolutions, bye-laws and the Balance Sheets have to be either appended along with the applications or have to be produced before the Oil Selection Board. Mr. H. Roy has also frankly stated before us and the original record also does not show that the petitioner/appellant was ever asked by the Oil Selection Board to produce these documents for the purposes of

finding out the suitability of the petitioner/appellant for being selected as dealer of Indane LPG. The only thing which is required to be furnished along with the prescribed application in the printed form is the Certificate from a Chartered Accountant for three years showing that the Consumers" Co-operative Society has earned profits during the three years as the eligibility criterion specifically provides that in case of Co-operative Societies there should be net profits during the last three years, and it is only then that the candidature of the Consumers" Co-operative Society will be considered. We have seen the original record and also the affidavit-in-opposition filed by respondent No. 4. From these, it is clear that for the three years, there are Certificates by a Chartered Accountant which shows that the petitioner/appellant had earned net profits during the last three years. Mr. B.D. Das, the learned counsel for respondent No. 4 has, however, urged that the aforesaid Certificates which have been given by the Chartered Accountant are not in accordance with the provisions of the Chartered Accountant Act, 1949.

8. We are, however, of the opinion that from the perusal of the three Certificates which have been given by the Chartered Accountant for the three previous years, it is clear that as far as those three documents are concerned, they show that the petitioner/appellant has earned net profits during the preceding three years. However, this Court by making these observation is not recording a finding that the Certificates given by the Chartered Accountant have to be taken to be correct and the Oil Selection Board for its satisfaction as to whether the Certificates which have been given by the Chartered Accountant are correct or not may satisfy itself by asking the petitioner/appellant to produce any document which it may think fit and proper for coming to such conclusion. However, as we have observed above, the record of Oil Selection Board does not show that any opportunity to the petitioner/appellant has been given to adduce any evidence before the Board for the purposes of satisfying that the Certificates given by the Chartered Accountant are correct. We are thus of the opinion on the entire facts and circumstances of the case that the candidature of the petitioner/appellant could not be rejected only on the ground that it could not produce the Board's resolutions, bye-laws and the Balance Sheets and thus, it would not fall within the field of eligibility for being considered for the purposes of awarding dealership of Indane LPG for Jorhat. As the petitioner/appellant could have satisfied that it had earned net profits during the three preceding years if opportunity would have been granted to the appellant and in that eventuality, according to the Guidelines laid down by the respondents themselves, it would have preference over respondent No. 4. We are thus of the opinion that the question of awarding Indane LPG dealership has to be reconsidered again as in our opinion the Oil Selection Board has to consider the case of the petitioner/appellant after affording him opportunity and thereafter in case he has in fact earned net profits during the three preceding years, apply the Guidelines by giving preference to him over respondent No. 4 who falls in the category of unemployed educated youth. We are, however, making it clear that this

Court is expressing no opinion on merits and it will be for the Oil Selection Board to decide this matter independently on the basis of the materials available before it.

9. As we are of the opinion that the matter should be reconsidered by the Oil Selection Board afresh in so far as the case of the petitioner/appellant is concerned, we are of the opinion that till the Oil Selection Board reaches a decision after reconsideration of the matter, in the interest of the consumers, the respondent No. 4 will be entitled to carry on the business of dealership in Indane LPG for Jorhat subject to the final decision by the Oil Selection Board. The consideration and decision by the Oil Selection Board will be done at an early date. We hope and trust that the aforesaid process will be completed within two months from today.

10. For the reasons stated above, the judgment of the learned single Judge dated 26-4-1995, is set aside and the appeal is allowed in the terms stated above. However, looking to the entire facts and circumstances of the case, the parties shall bear their own costs.