

**(2008) 11 PAT CK 0107**

**Patna High Court**

**Case No:** CWJC No. 6310 of 2008

Raj Keshwar Prasad

APPELLANT

Vs

M/s Hindustan Petroleum  
Corporation Ltd. and Others

RESPONDENT

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**Date of Decision:** Nov. 7, 2008

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 19(1)(g)

**Citation:** (2009) 1 PLJR 523

**Hon'ble Judges:** Navaniti Pd. Singh, J

**Bench:** Single Bench

**Advocate:** Jyoti Saran, for the Appellant; Ratnesh Kumar Singh for Respondent Nos. 1 to 4, Sri Sahvind Kumar Sharma for Respondent No. 8 (Union of India) and Sri Ran Vijay Narain Singh, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

How irresponsibly counter affidavits are sworn and filed on behalf of Govt, of India in writ petitions is exemplified by this case. The writ petition was filed challenging the guidelines set by Govt, of India for dealership selection of petroleum companies. As the validity of the guidelines was under challenge this court directed the writ petitioner to add Union of India in the Ministry of Petroleum and Natural Gas, New Delhi as a party respondent. Complete copy of pleadings was served to Union of India. They were required to file their counter affidavit. The counter affidavit as filed by them has been verified on 16th October, 2008 by under Secretary, Ministry of Petroleum and Natural Gas, New Delhi. In the counter affidavit, the stand taken is that in view of dismantling of the administered pricing mechanism with effect from 1.4.2002. The entire selection process is to be done by Oil Marketing Companies themselves and the Govt, of India has neither any role in the same nor the Government interferes with the selection. In support thereof reference has been

made to letter of the said Ministry dated 19.8.2003 to show that the Government has withdrawn itself from the selection process. It was thus prayed in the counter affidavit that in view of the above, Union of India may be deleted from the array of parties. I am noticing this because of the palpably false affidavit as affirmed and filed. Hindustan Petroleum Corporation, whose selection process was under challenge, has also filed a counter affidavit. In the writ petition, the guidelines as framed by Union of India for selection of dealers were challenged. On the face of it, to say that Union of India has no role to play was false. Again, in the counter affidavit filed by the Corporation the revised guidelines also issued by the Ministry of Petroleum dated 15th September, 2008 is brought on record, whereby the guidelines issued earlier which were challenged have been substantially amended presumably on basis of observation of this court made in the order dated 22.4.2008. Still the counter affidavit of the Under Secretary noted above says that Govt, of India has nothing to do with the selection process and it should be deleted from the array of respondents. The affidavit is intended to mislead the court, rather than co-operate with the proceedings before the court. The Hindustan Petroleum Corporation issued an advertisement for setting up a distributorship of L.P.G, at Chapra in the Saran under open category. The petitioner and several others applied. Petitioner finding that some of the clauses of the selection guidelines, procedure established by Ministry of Petroleum and Natural Gas were quite arbitrary. He came to this court and challenged those guidelines. In other words, he challenged the selection procedure, which was adopted by the Corporation pursuant to terms of the Ministry of Petroleum, Govt, of India. His contention was that unequal were treated equally in several matter and at several matters there was an unfair advantage was given to a section of the applicants.

2. Briefly stated, his first challenge was that a person applying as an individual offer from disability under the "relationship clause". Relationship clause is a clause, which disentitles an individual to apply for such a dealership, if any of his designated relations for a petroleum dealership, but this disability is not attached to an applicant, who is a corporate entity. He submitted that effectively where an individual or individual family gets precluded from having more than one dealership a corporate entity can monopolize the whole set up and have all the dealerships in the country. This, it was submitted, was hostile discrimination. More so, because when almost a decade backs the dealership clause was challenged before the Apex Court. The Apex Court upheld the restriction on the ground of not permitting monopoly and encouraging distribution amongst people of dealerships available. The effect of the present guidelines was just otherwise. It permitted corporate entities to take other all available retail dealerships, while restricting in that matter.

3. The second challenge was to the manner, in which the marks were awarded for comparative study of various applicants corporate would not be marked for their educational qualification, their age, their personality and as such, as per the guidelines, they were to be awarded maximum marks. This action corporate again

an unfair advantage over individuals. These challenges were noticed by this court in its order dated 22.4.2008, when Union of India was asked to be made a party and it was directed that they file counter in the matter defending their guidelines. The misconceived counter affidavit as noticed above was then filed by Union of India.

4. The Corporation has filed a counter affidavit. It has now annexed the notification of Union of India in the Ministry of Petroleum and Natural Gas dated 15th September, 2008, wherein, Union of India has virtually conceded to the challenges as made by the petitioner on both the counts. Both the offending parts of the guidelines have been substantially changed under the new provisions as noticed, Corporate are under the saddled with the disability clause, whereby a corporate entity cannot get another dealership of petroleum products. Several provisions in that regard have now been incorporated. Thus, the first grievance of the petitioner stands vindicated and Union of India itself has accepted that the guidelines as issued earlier was not legal and needed to be substantially amended.

5. Even with the regard to the second contention of marking, again the said notification clearly shows that the objections as raised by the petitioner have been accepted. The criteria of marking have been substantially changed. Though, there prima facie appears to be still some apparent ambiguity. Giving a closure look would show that every attempt has been made to rationalize the marking. It is well established that it is not for the court to suggest how a work is to be done for i.e. the duty and obligation of the authorities. The court can only judge the correctness or otherwise, the illegality or otherwise of what has been done. Here in this case the corporate entity and individuals have to be evaluated for the same parties at the same time. They are both dissimilar in their personality, but as they are applicant for the same job, a comparable method has to be evolved, which would be nearest to the reality. It may not be near it can be perfect equality. A closure look to the new marking scheme would show how marks have been differently spread out. In my view, there is no hostile discrimination now existing.

6. The result is that Union of India itself has accepted both the challenges of the petitioner to be valid itself and earlier guidelines not to be satisfying constitutional requirement and thus, on both counts they have amended the guidelines themselves before the court to decide the issue. Thus, in my view, petitioner grievances have been met in so far as the attack on the guidelines is concerned.

7. But what is the consequence is to be decided. If, the Union of India not itself amended the provisions, this court would have cleared those provisions ultra vires have followed Article 14 and 19(1)(g) of the Constitution. If the provision so declared ultra vires then the consequence would be that the entire selection process would have taken up again. But such a standard was prevented by Union of India. It had its own amended the provision and made them to be in conformity with the Constitution. It removed itself the discriminatory provisions. Even before the court could deal with those matters.

8. In this view of the matter, I think it would be an appropriate for the respondent-Corporation to re-valuate the selection process of the dealership in question on the basis of the amended provisions and then re-publish the merit list. This benefit would not arise to any other dealership, in which interviews and merit list has already been prepared. With this direction and observation, the writ petition stands disposed of.