

(1992) 08 CAL CK 0002

Calcutta High Court

Case No: Civil Order No. 7203 (W) of 1988 and Civil Order No. 1608 (W) of 1988

Satyendra Nath Mondal

APPELLANT

Vs

Hindusthan Petroleum
Corporation

RESPONDENT

Date of Decision: Aug. 10, 1992

Citation: (1993) 1 ILR (Cal) 503

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Arun Prakash Sircar, Subrata Basu and Nirmalya Bhattacharyya, for the Appellant; Sanat Kumar Seal, for Respondents Nos. 1, 2 and 3, Jaideep Gupta and Dinabandhu Dawan for Respondent No. 4, S.N. Chowdhury, for Respondent No. 5, Pradip Kumar Tarafdar and Mirza Mohammad Farooque, for the Respondent

Judgement

Susanta Chatterji, J.

Both the Civil Orders viz. C.O. No. 7203 (W) of 1988 and C.O. No. 6118 (W) of 1988 are taken up together for disposal.

2. It appears that the writ Petitioner Satyendranath Mondal in C.O. No. 7203 (W) of 1988 has challenged the issuance of the letter of intent in favour of the Respondent No. 5, Radhakrishna Roy, regarding retail outlet dealership at Malancha at the instance of the Hindusthan Petroleum Corporation Limited.

3. In the earlier writ petition being Company No. 6118 (W) of 1988 by another writ Petitioner Kutubuddin Goldar, he has also prayed for a Writ of Mandamus to command the Respondents to give appointment to the writ Petitioner as a Dealer at Malancha and not to give appointment to any other persons who have not fulfilled the requirements for the purpose of appointment of Dealer under the respondents and for other consequential reliefs.

4. Since similar points of facts and law are involved, both the writ applications were heard together and the same is now being disposed of by a comprehensive

judgment.

5. It is admitted that the Respondent No. 4, Oil Selection Board (East), has considered the candidature of the intending dealers and ultimately recommended the application of the Respondent No. 5.

6. The grievance of both the writ Petitioners is that the appointment has not been made properly and they have prayed for consideration of their respective candidature.

7. Having heard the learned lawyers of the respective parties, it appears that a short point has been raised as to whether the Oil Selection Board has considered the matter in the proper perspective and the interference of the Writ Court is required or not ?

8. The attention of the Court, *Chinmoy Sarkar v. Md. Shaniat Hossain and Oil Selection Board (East) v. Md. Shaniat Hossain and Hindusthan Petroleum Corporation v. Md. Shaniat Hossain and Ors.* 1990 (1) C.L.J. 290. this Court held that when the question involves in the selection of retail dealership of petroleum products which are items or articles of monopoly business carried on by a wholly-owned Government company, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to the well-known limitations. If the selection is vitiated by an arbitrary or irrational exercise of power or by mala fides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant factors including eligibility, the writ Court would and should, on proof of the relevant facts, grant an appropriate relief. However, it is not for the writ Court to delve deep into the records of the Board or the Corporation and to examine the validity of the rival claims upon appreciation afresh of the material, on such record and, on the basis of such reappraisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a writ. It cannot be overlooked in this connection that the Board, which is vested with the function of selection, is an independent entity. It is a high level body consisting of a retired High Court Judge and a retired Civil Servant. Ordinarily, there would be minimal scope for alleging mala fides against such a body although it can conceivably be alleged and proved in a given case that the selection made by it is otherwise vitiated.

9. Thus the scope of the writ petition and the jurisdiction of the Oil Selection Board to take effective decision have well been discussed in the above-mentioned judgment of this Court. Being aware of such limitations, this Court finds that in the present case, a lengthy argument has been made on behalf of the writ Petitioners, the Respondents, Corporation, Oil Selection Board, and the Respondent No. 5, namely Radha Krishna Ray.

10. The attention of the Court has been drawn to the advertisement made inviting applications from the intending dealers that the unemployed graduates would apply for dealership in the prescribed form giving details about the eligibility. Admittedly,

the Respondent No. 5 has filled up the form and has described himself as an unemployed person. It is contended on behalf of the writ Petitioners that in fact the said Respondent No. 5 was never an unemployed person and he was not eligible to apply and the selection made by the Oil Selection Board is obviously bad, and if his selection is brushed aside, then the second person, the writ Petitioner, namely, Satyendranath Mondal, should be considered and the dealership should be awarded to him. A lengthy argument has been made that apart from the unemployed person even the self-employed persons can apply. Undisputedly, it appeared at the time of final hearing that the Respondent No. 5 was not an unemployed person. He had his cement business and, as per the defence, he was a self-employed person. Since the said Respondent No. 5 was not having any tangible profit in his self-employed business, he did not refer in the prescribed form as a self-employed person and instead he has described himself as an unemployed person. This Court has specially heard the submissions made by the learned lawyers appearing for the respective parties about the dictionary meaning of "employment" and the scope of "self-employment" and the prohibition regarding the eligibility on advertised and also the points indicated in the prescribed form.

11. Considering the submissions in depth made on behalf of the respective parties, this Court is of the view that the said Respondent No. 5 ought to have disclosed that he was a self-employed person and the Oil Selection Board should have the occasion to consider that as a result of being self-employed person the Respondent No. 5 was having any profit or not and as a self-employed person, whether he was a fit candidate to be selected or otherwise. This Oil Selection Board considered the candidature of the Respondent No. 5 as an unemployed person. There are certain suppressions of the matters before the Oil Selection Board and the said Board had not sufficient opportunity to consider the case of the said Respondent No. 5 in the proper perspective. It is not the case, whether the Oil Selection Board has exceeded its jurisdiction; it is not the case that the Oil Selection Board has acted any irregularity or illegality necessitating any- interference by this Court. This case has a unique dimension that on account of the suppression of facts by a specific candidate who has ultimately been selected, the Oil Selection Board was kept in the dark regarding his employment and to consider whether he has fulfilled the eligibility or not. It is not appreciated by this Court that since the Respondent No. 5, although being self-employed, had no profit and as such he had the occasion to describe himself as an unemployed. There are two specific categories, either to be employed or to be self-employed, while a person was self-employed he had to disclose that he was self-employed and to highlight that he had no profit and his candidature for dealership should be considered in accordance with law. Since the Oil Selection Board was kept in the dark and it had no occasion to consider the case of the Respondent No. 5 as he had deliberately suppressed the fact, this Court is of the view that ultimately the selection made by the Oil Selection Board in the case of the Respondent No. 5 cannot be sustained in law. It is not the case that the candidature

of all the parties have been considered in seriatim and, if one becomes rendered infructuous, the second would be preferred. this Court is of the view that both the writ petitions may be disposed of in the manner following.

12. The Oil Selection Board is directed to consider afresh the candidature of all the intending parties including the writ Petitioners in both the writ petitions and others who participate in accordance with law within a period of three months from the date of communication of the order,

13. It is brought to the notice of this Court that the Respondent No. 5 has been appointed and he has invested certain amount of money in running the business; the attention of the Court has further been drawn to the fact that while the writ petitions were entertained, it was made clear that any step to be taken in the meantime would be subject to the result of the writ petitions.

14. The selection of the Respondent No. 15 is thus quashed and the parties shall take steps in the manner as indicated above.

15. In view of what has been stated above, both the writ petition, stand disposed of, without any order as to costs.

16. Let an urgent certified copy of this judgment be handed over to the learned Advocate on record for the writ Petitioners expeditiously on his depositing the requisite number of stamps and folios.