SUPREME COURT OF INDIA

Moumita Podder

Vs.

Indian Oil Corporation Ltd.

C.A.Nos...of 2010.

(Altamas Kabir, Cyriac Joseph and Surinder Singh Nijjar JJ.)

30.07.2010

JUDGEMENT

Surinder Singh Nijjar, J.

1. Leave granted.

2. These appeals have been filed against the judgment and order passed by the High Court of Assam, Nagaland, Meghalaya, Manipur, Mizoram, Arunachal Pradesh and Tripura, Bench at Agartala in Writ Appeal No: 53/2005 along with connected Writ Appeal No: 54/2005, wherein the Division Bench was pleased to set aside the common order of the Single Judge in W.P (C) No. 259/2004.

3. We may briefly notice here the facts which are necessary to decide the legal issues raised herein:

> "Indian Oil Corporation, respondent No.1, published a notice on 19.2.2004 for appointment of Retail Outlet Dealership in local newspapers in the State of Tripura situated at Ranirbazar and Agartala.
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> The advertisement shows that for Ranirbazar, the type of dealership offered was "Dealer owned". The advertisement further indicates that dealership at both the locations were for women. At Ranirbazar the dealership was only for Open Category (Women). The last date for submission of applications was 19.03.2004. The relevant clauses for advertisement were as under:
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> "NOTICE Appointment of Retail Outlet Dealer Indian Oil Corporation Limited (Marketing division) Invites applications for appointment of Dealers for Retail Outlet dealership in the State of Tripura at the following locations for dealer owned/ Company Owned Retail Outlets on site owned by Dealer/to be taken by the Company on outright sale or lease:

Sl. Location Revenue Type of D'ship Category No. Dist. Co. Owned/ Dealer owned

1. Ranirbazar West Dealer owned OP Tripura (Women) Agartala West Company ST . Tripura owned (Women) Important Note (a) The candidate should furnish along with the application, details of land, which he/she may make available for the Retail Outlet.

(b) Considering the location of the land from the point of view of suitability from commercial angle and rates acceptable to IOCL (AOD), applicants already having land and willing to transfer the land on ownership/long lease to IOCL (AOD), would be given preference.

(c) If an applicant, after selection is unable to provide the land indicated by him/her in the application form within a period of two (2) months from the date of Letter of Intent (LOI), the Company will have the right to cancel the allotment of dealership to him/her. Suitability of land will be decided by the Company. There is no commitment from the Company for taking the offered land from the applicant."

2 "14. APPLICATION FORMS AND ENCLOSURES COMPLETE IN ALL RESPECTS MUST BE SUBMITTED IN DUPLICATE ALONG WITH NON-REFUNDABLE FEE SO AS TO REACH THE OFFICE ADDRESS MENTIONED ABOVE BEFORE THE CLOSE OF OFFICE ON 19.03.2004."

4. In response to this advertisement, the appellant submitted her application on 12.3.2004, for appointment of Retail Outlet Dealer in Open Category (Women) for the location at Ranirbazar. In her application, the appellant offered to set up the dealership on land, purchased by her mother-in-law, being C.S. Plot Nos. 2172, 2173 and 2174/4035 and another land purchased by her father-in-law, Mr. Binoy Krishna Poddar, measuring 1.36 Acres in Dag No.1075, Hal Dag No. 1679 of Khatian No.491 situated in Mouja Bridhya Nagar, Tehsil:

"Khoyerpur, Bridhya Nagar at the periphery of Ranirbazar, the entire area being commonly known as Ranirbazar. According to the appellant, the aforesaid land being situated on the Assam-Agartala Road, (National Highway-44) with the frontage of 51.5 Metres on the road, is most suitable for the purpose of setting up the Retail Outlet. Both her mother- in-law and father-in-law furnished an undertaking that the said land could be used by the appellant for the aforesaid purpose. They had duly executed documents expressing their readiness and willingness to allow the appellant to use the aforesaid land for installation of the retail outlet dealership and to lease out the same to respondent No.1, on long term basis, if she was offered a letter of intent. All the relevant documents were furnished with the application for the said dealership."

5. On 18.03.2004, the respondent No.2, Smt Alpana Saha submitted her application. She indicated in the application form that she had suitable site readily available for the dealership. Giving details of the land, she stated that she was offering two lease deeds, being Deed No.381/ dated 16/3/2004; and Deed No.616/ dated 25/2/2004; in support of the land offered by her. Reference is also made to a non- encumbrance certificate relating to proposed site at "Location No.181 IFP 200 ft.". With regard to dimension of plot, it is mentioned "Location No. II frontage 42 metres depth 52". The lease deed dated 16.03.2004 was to remain in full force from 16.3.2004 for a period of 49 years, It specifically provides that respondent No.2 "shall carry on over the rented vacant landed property for the purpose of Oil Business under I.O.C. Limited in [Assam Oil Division] DIGBOI Assam". However Clause 4 of the lease deed provides as under:

> "4 That, in no circumstances the second party will not sub- let the leased out landed property to any person or party(s) authority."

6. Clause 5 of the lease deed gives the option to respondent No.2 to take further period of lease by executing a fresh deed. The aforesaid lease deed is not a registered document. It is, however, authenticated by a notary public at Agartala. By a further deed of tenancy agreement dated 18.3.2004, the terms and conditions contained in the lease deed dated 16.3.2004 have been supplemented. In the supplementing lease agreement dated 18.3.2004 it is provided as under:

> "The second party shall have right and/or power to create sub-tenancy, or the sub-let or to create or grant lease in favour of any person, individual or body corporate of the property and/or in respect of the properties described in the scheduled attached to the tenancy agreement dated 16.3.2004 as per terms and conditions as would be determined by the second party for the tenure not exceeding the terms what has been granted in the terms and conditions as laid down in the said tenancy Agreement dated 16.3.2004."
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> The aforesaid Clause undoubtedly removes the negative covenant in the Lease Deed dated 16.3.2004. However, it seems that even this Lease Deed is not registered."

7. On 25.05.2004, the appellant received a Registered Letter from the Respondent No.1, calling upon her to appear before the Interview Board on 16.06.2004 at Guwahati. The appellant was asked to bring all the original documents, details of which had been submitted by her in her above said application. On 11.06.2004, the appellant was informed by Depot Manager (Marketing), Kunjaban, Agartala, of the respondent No.1 over telephone that the Survey Team of the respondent No.1 would visit the sites offered by the respective applicants on 12.06.2004 for the purpose of inspection of the land offered by the applicants. Thereafter, on 12.06.2004, the above Depot Manager (Marketing) informed the appellant that the visit of the Survey Team on 12.06.2004 had now been deferred to 14.06.2004. Subsequently, on 14.06.2004, the appellant was informed that the proposed visit of the Survey Team of the respondent No.1 had been cancelled and the appellant would be

subsequently informed of the date for the said inspection of land. However, the appellant did not receive any such intimation nor was any inspection ever carried out by the said Survey Team.

8. The appellant has highlighted that the proposed inspection was of paramount significance in ascertaining the desirability of the offered site for setting up the Retail Outlet. The policy of the respondent No.1 stipulated that the technical/commercial suitability of the land offered by the applicants would be ascertained by a team of IOC Officers before the Interview.

9. On 16.06.2004, the interviews were conducted by the respondent No.1 for appointment of Retail Outlet Dealers for the abovementioned location of Ranir Bazar. Nine persons, including the appellant and the Respondent No.2, appeared before the Interview Board. The interview board, upon evaluation of the inter se merits of all the nine applicants, in terms of the policy circular dated 4.9.2003, empanelled three candidates in order of merit. Respondent No.2 is placed at Sl.No.1 in order of merit.

> "The appellant was not amongst the first three candidates and was consequently not empanelled. After the declaration of the result, the site offered by respondent No.2 was verified by respondent No.1 on 29.6.2004. By a communication dated 8.7.2004, respondent No.2 was informed that Letter of Intent had been issued in her favour."

10. The action of respondent No.1 in offering the letter of intent to respondent No.2 was challenged by the appellant before the Guwahati High Court, Agartala Bench by way of writ petition being W.P.(C)No.259/2004. Smt. Payel Biswas, one of the unsuccessful candidates, also challenged the selection/ appointment of respondent No.2 by way of Writ Petition (C) No.256/2004. Both the writ petitions were decided by the learned Single Judge by a common judgment and order dated 14.9.2004.

11. It was held that the selection of respondent No.2 was contrary to the applicable policy guidelines. The entire selection process was vitiated on the ground of non-application of mind and arbitrariness. It was observed by the learned Single Judge that in the absence of site verification the selection committee could not have adjudged the suitability of the site/land offered by the respective candidates. It was further held by the learned Single Judge that the selection was arbitrary as it had been made by taking into consideration the facts which did not exist. It was observed by the learned Single Judge that the lease deed dated 18.3.2004 could not have been produced before the interview committee. It is noticed by the learned Single Judge that prior to the filing of the additional affidavit dated 28.5.2005 respondent No.2 had not mentioned in any of the pleadings that lease deed dated 18.3.2004 was in fact produced at the time of interview. It was, therefore, concluded by the learned Single Judge that lease deed dated 18.3.2004 was not in existence at the time of interview, but was subsequently, i.e., long after the filing of the writ petition, manufactured by the respondent to defeat the case of the appellant and conversely to strengthen the case of the respondents.

12. We may notice here the observations made by the learned Single Judge in regard to what we have noticed above. These observations are as follows:

> ‘True, this agreement apparently refers to the earlier Tenancy Agreement dated 16/3/2004 and purports to confer additional benefits/advantages to the respondent no: 2 allowing her the power to create sub-tenancy in respect of land offered by her in favour of IOCL (AOD). However, neither the counter-affidavits of the respondents nor their additional affidavits filed by them prior to 28/5/2005 throw any light on the existence of this documents even though it was projected to have been executed as early as 18/3/2004.
>
> It should have been, if there contention is correct, in the custody of either of the respondents. No satisfactory explanation is forthcoming from any of them for this mysterious omission. In view of this, I am persuaded to believe that Annexure 10 (tenancy agreement dated 18/3/2004) was not in existence at the time of the interview but was subsequently, i.e. long after the filing of this Writ Petition, manufactured by them to defeat the case of the appellant and conversely, to strengthen the case of respondent No: 1. Consequently, reliance cannot be placed upon this document to hold that the respondent No: 2, at the time of her interview, had any land of her own or land for creating long lease to the IOCL(AOD). Therefore, the Selection Committee has acted arbitrarily and grossly erred in law in placing the respondent No.2 as the No.1 candidate in the merit panel."
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> "16. In the instant case, I have recorded my findings that in the absence of site verification, which is the sine qua non for proper assessment on the suitability or otherwise of the lands offered by the respective candidates, the respondent No.1 and the Selection Committee constituted by it have violated the guidelines contained in the Brochure issued by the IOC Ltd. and have not taken into account the relevant factors for selection of the dealership in question. I have also concluded that no Tenancy Agreement was produced by the respondent No.2 at the time of her interview evidencing her right to transfer any land to the respondent No.1 on long lese. Upon those findings, I have no alternative but to hold that the entire selection process for appointment of the dealership in question sands vitiated on the ground of non- application of mind and arbitrariness. It is, however, contended by Mr. D.B. Sengupta, the learned senior counsel for the respondent No.1, that the guidelines contained in the Brochure of the Corporation are merely instructions to be followed, have no force of law and are, therefore not binding upon the respondent No.1. According to him, while very effort was made by the respondent No.1 to comply with such guidelines in the selection process of the dealership in question, such guidelines, in the nature of things, having no force of law, any or every infraction thereof cannot have the effect of vitiating the selection process. It is true that administrative instructions or guidelines issued by the executive authorities do not have the force of law like a statute passed by legislatures and deviation from such instructions/guidelines may not have the same effect as violation of a statutory

provisions. But it must be remembered that these guidelines are not framed only to be ignored or only to be observed in breach. On the contrary, they are framed to ensure fairness, transparency and non- arbitrariness by the executive authorities in their dealing with the public."

13. The learned Single Judge rejected the submission that there had been substantial compliance with the applicable guidelines and that no manifest injustice has been caused to the appellant. It is held that it was open to the respondents to demonstrate that the course of action adopted in this case was not arbitrary and was based on rational principles. The learned Single Judge declined to take into consideration that the pump outlet has been in operation since 12.5.2005. The learned Single Judge also held it to be irrelevant that huge amounts of money had been spent by respondent No.2 in establishing the retail outlet. It was also considered to be irrelevant by the learned Single Judge that the retail outlet has been functioning regularly and to the benefit of general public. It was held that if the contentions of the respondents were accepted "then every unsuccessful bidder in public tender will be held barred by the principles even if the tender process is vitiated by non application of mind, illegality, irrationality or procedural impropriety thereby sounding the death-knell for judicial review of administrative action. Therefore, the contention of the learned senior counsel in this behalf has no force and is, accordingly, rejected." With these observations the learned Single Judge granted the following reliefs:

"For the reasons stated in the forgoing, W.P.(C) No.259 of 2004 is allowed. The letter of intent No. SM 2/8-482 dated the 8th July, 2004 issued by the respondent No.1 and the selection process in connection therewith are hereby quashed. The respondent No.1 shall now start the selection process afresh by constituting a Selection Committee, which shall consider the case of the petitioner and other eligible candidates for allotment of the dealership in question on the basis of the land documents etc. submitted by them as on 16.06.2004 and in accordance with the Brochure dated 01.11.2004 (or the Brochure/ guidelines applicable) issued by the IOC Ltd. and thereafter makes the selection. It is made clear that the Selection Committee shall not take into account the Tenancy Agreement dated 18.03.2004 (Annexure-10), the Sale Deed bearing No.1-13161 dated 15.12.2004 and the Sale Deed bearing No.1-13162 dated 15.12.2004, which obviously came into existence long after the date of interview. Having held that the respondent No.2 is not entitled to any mark on land and infrastructure, the respondent No.1 is directed to allow the respondent No.2 to wind up the Retail Outlet Dealership is question within 30 (thirty) days of the receipt of this judgment at her own cost of expenses. W.P. (C) No.256 of 2004 is hereby dismissed. The parties in the two writ petitions are directed to bear their own costs."

14. Against the aforesaid judgment in WP (C) No.259/2004 respondents filed writ appeals being Writ Appeal Nos.53 and 54 of 2005.

"Both the appeals have been allowed and the judgment of the learned Single Judge was set aside by the impugned judgment dated 30.5.2008.

The Division Bench noticed the three issues identified by the learned Single Judge which are as follows:

First Issue: Suppression of material facts by the appellant in her writ petition.

Second Issue: Applicability of the norms for grant of dealership as circulated by the brochure dated 1.11.2004 and the compliance of the said norms by respondent No.1 - Corporation in the matter of selection of respondent No.2.

The Third Issue separately identified by the learned Single Judge: Was the lease deed dated 18.3.2004 brought on record by respondent No.2 in the writ petition a genuine and acceptable document so as to form the basis for deciding the eligibility of respondent No.2 for the award of 25 marks in the selection process under the head "capability to provide land and infrastructure/facilities". The Division Bench, accordingly, confined the consideration of the matter to the aforesaid three issues."

15. The Division Bench accepted the finding of the learned Single Judge on the first issue and held that there was no suppression of material facts by the writ petitioner, the appellant herein. It is noticed that it was not the requirement of the advertisement that the land documents had to be submitted along with the application.

16. The Division Bench however did not accept the conclusion of the learned Single Judge on the second issue which was based on Clause 14 and the norms contained in the brochure dated 1.11.2004. It was held that "A reading of policy circular dated 4.9.2003 would show that the said circular comprehensively lays down the norms for dealer selection under three different categories as already noted. Not only the eligibility of the candidates and the selection procedure has been set out, even three parameters on the basis of which the selection is to be conducted by award of marks under different heads have been spelt out in the Policy Circular dated 4.9.2003." The affidavit filed by respondent No.1 was accepted wherein it was clearly stated that the selection has been held in accordance with policy circular dated 4.9.2003. It was, therefore, held that since the policy circular dated 4.9.2003 held the field on the date of the interview/selection on 16.6.2004, the circular dated 1.11.2004 would have no application. It is further observed by the Division Bench that under the policy circular dated 4.9.2003 site verification prior to the interview is not contemplated. It was introduced by the norms published in the brochure dated 1.11.2004. Therefore, the learned Single Judge erred in holding that the selection process is vitiated as the land of the appellant had not been verified prior to the interview or the land of respondent No.2 was verified after the interview.

17. With regard to the third issue, the Division Bench has concluded that even though the tenancy agreement dated 18.3.2004 has not been registered, it could still be a genuine document. It has been held that non registration of the document as required under Section 107 of the Transfer of Property Act would not affect the genuineness of the document which

stands established by the attestation of the document by a notary public notified under the Notaries Act, 1952. Therefore, even though the document may not have been before the Selection Committee at the time of award of 25 marks to respondent No.2, under the head of "capability to provide land and infrastructure/facilities" the existence of the document which has to be accepted will not materially influence the end result, i.e., the award of 25 marks to respondent No.2. Consequently, it is held that since the ultimate award of 25 marks in favour of respondent No.2 will have to remain unchanged/unaltered the grant of dealership to respondent No.2 cannot be said to be vitiated on the ground of arbitrariness.

18. We may notice here that the Writ Petition (C) No.256 of 2004 filed by Payel Biswas was also dismissed by the learned Single Judge. Her grievance in the writ petition was against the failure of respondent No.1 to conduct spot verification of the land offered by the candidates including her own. Her candidature was, however, rejected on the ground that her husband is a partner of M/s. Biswas and Sons an existing retail outlet dealing with Petroleum products, which is carrying on such business at Agartala town. She was accordingly held not to be eligible for dealership in terms of Clause 1(c) and (d) of the advertisement. Consequently, the writ petition was dismissed on the ground that she had no locus standi.

19. We have heard both the appeals together. Mr. Pradeep Ghosh learned senior counsel appearing for the appellant submitted that the entire selection process is vitiated. It is submitted that the important note contained in the advertisement shows that the suitability of the land offered by the candidate had to be considered from commercial angle. It was necessary for the candidates to give details of the land which could be offered on ownership/long lease to respondent No.1. Such a candidate will have to be given preference. The candidates were required to furnish details of the land which they may make available. An outer period of two months has been prescribed to provide the land indicated in the application form from the date of allotment. According to Mr. Ghosh, since respondent No.2 was not in a position to offer land even on a leasehold basis her candidature could not have been considered.

> "Mr. Ghosh has placed strong reliance on the negative covenant contained in Clause 4 of the lease deed dated 16.3.2004 which was sought to be rectified by execution of the supplementary lease deed dated 18.3.2004.
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> 14 Even otherwise it could not have been relied upon as the same was not registered. According to learned senior counsel, mere notarization would not make it a valid lease, as it was for a term of 49 years. Therefore, on the date of the application respondent No.2 was not having a valid lease in her favour. Therefore, even if the lease deed had been furnished, the same could not be taken into consideration. This would render the decision of the selection committee arbitrary as no reliance could have been placed on a non-existent document. Mr. Ghosh then submitted that procedure provided in Clause of the brochure dated 1.11.2004 having been ignored, the selection is vitiated on this ground alone. Mr.Ghosh then makes a reference to the norms for evaluating the candidates as contained in Clause 16(1) of the brochure.

According to the learned senior counsel, since respondent No.2 could not be granted any marks under the category for "capability to provide land and infrastructure/facilities" her selection by granting her 25 marks out of a total of 35 marks is clearly arbitrary and violates Article 14 of the Constitution."

20. Countering the submissions, Mr. P.K. Goswami, learned senior counsel appearing for respondent No.2, submits that the circular dated 1.11.2004 was not applicable in this case. It came into force after the entire selection process was over and the letter of intent having been issued to respondent No.2. Learned counsel further submitted that criteria for evaluation of candidates are elaborately stated in the policy circular dated 4.9.2003. On the basis of this circular, respondent No.1 had issued the advertisement dated 19.2.2004. The advertisement clearly stated that the applicant shall furnish details of land which she may make available for the retail outlet. There was no requirement for attaching any document in the application. Merely because the appellant has attached the documents, is of no consequence. Respondent No.2 had complied with the necessary requirements. Her candidature was evaluated on the basis of the criteria laid down in the circular dated 4.9.2003. The Division Bench correctly concluded that the brochure dated 1.11.2004 has no application to the facts of this case.

"Mr. Goswami submitted that the criteria under the circular dated 4.9.2003 were not as rigid as the criteria under the circular dated 1.11.2004. The procedure prescribed under this circular does not require any site verification prior to the conduct of the interview. In support of this submission, learned counsel had relied on Clause 5(2) of the Circular which only provided that the candidate will be evaluated by the selection committee through interviews based on the marking system as given in Annexure-A. Under these criteria, the committee was required to prepare a panel of three candidates in order of merit. Only thereafter, it was necessary to conduct investigation. The procedure contemplated under Clause 14(1) of the brochure dated 1.11.2004 would not be applicable in this case. Mr.Goswami then submitted that the learned Single Judge wrongly held that the supplemental lease dated 18.3.2004 was not produced by respondent No.2 at the interview. He has made a reference to the pleadings of the respondent No.2 and submitted that the lease deed dated 18.3.2004 was one of the original documents produced before the interview board. All the applicants had been directed to bring the original documents of all the enclosures as stipulated in the application form. Even if the document was not registered, it could still be relied upon by the selection board as it had been duly notarized. He submitted that there was no material before the learned Single Judge to conclude that the document dated 18.3.2004 is a manufactured document. According to the learned counsel, the genuineness of the document has rightly not been put in issue by the Division Bench, as it has been duly notarized. Mr. Goswami then submitted that the respondent No.2 had been correctly given 25 marks under the category "capability to provide land and infrastructure/facilities". The criteria contained in the circular dated 4.9.2003 did not require the candidate to be a land owner/lease holder. The only requirement was that the candidate has a firm offer from the land owner who is willing to give the same to the company. In fact, even the candidate who can arrange

land would also be eligible. Therefore, according to Mr. Goswami, respondent No.2 has been correctly given 25 marks. The decision of the selection committee, according to him, is not against the provisions of the applicable policy and, therefore, not arbitrary. Mr. Goswami then submitted that even though the appellant had only submitted two undertakings from her mother-in-law and father-in-law, she was also given 25 marks. Therefore, respondent No.2 was in a better position compared to the appellant as she had offered an unregistered lease deed in her favour whereas appellant had only furnished the two undertakings given by her in-laws. He further submitted that the appellant having taken advantage of the same parameters cannot possibly complain of any breach of Article 14 of the Constitution of India.

Lastly, he submitted that in view of the subsequent events, it would not be an appropriate case for this Court to interfere with the judgment of the Division Bench in exercise of extra ordinary jurisdiction under Article 136 of the Constitution of India. Learned counsel highlighted that respondent No.2 has made huge investments to a tune of more than rupees one crore to commission and operate the petrol pump. At present she has outstanding loans of more than rupees one crore. Even respondent No.1 has spent Rs.25 lakhs or more in establishing the outlet. According to the learned counsel, to shut down the dealership at this stage would not be in public interest. Learned counsel also brought to our notice that by two sale deeds dated 15.12.2004, respondent No.2 had purchased substantial portion of the land. This fact was brought to the notice of the learned Single Judge through additional affidavit dated 27.7.2005. It was, however, wrongly not taken into consideration. It is also brought to our notice that subsequently by sale deed dated 14.12.2007 respondent No.2 has purchased even the remaining portion of the land. The learned counsel added that the outlet of respondent No.2 has been adjudged to be the best in the State of Tripura. Apart from this, learned counsel submitted that the appellant did not come within the three empanelled candidates in the order of merit and, therefore, no relief can be granted to her. In support of his submission, the learned counsel relies on a number of judgments of this *B.L.Sen*[1].

21. Mr. Parag P. Tripathi, learned senior counsel, appearing for respondent No.1 has submitted that the aforesaid selection was conducted at the time when respondent No.1 was trying to restructure the selection procedure. The policy with regard to allotment of dealership was in a transient period after the selection board had been disbanded.

"The effort of the respondent No.1 was to make the criteria transparent.

The policy was undergoing refinements with issue of the successive circulars. He has made a reference to a number of successive policy circulars which have been issued making a reference to the provisions of the circular dated 4.9.2003. Learned counsel submitted that respondent No.1 was looking for candidates who were either owners of land or had firm offer from land owners for purchase of land or those who could arrange land. It was a flexible criteria not confined only to the owners or lease holders

of land. Learned counsel submitted that the policy has been made uniformly applicable to all the candidates and therefore the selection cannot be held to be arbitrary or violative of Article 14 of the Constitution of India."

22. We have considered the submissions made by the learned counsel for the parties. We have also perused the relevant clauses of the policy circular dated 4.9.2003 and the brochure dated 1.11.2004. The public notice dated 19.2.2004 stipulated that the candidate should furnish along with application, details of land, which she may make available for the retail outlet. This condition was certainly fulfilled by respondent No.2. She had given the details of the land. No document was required to be attached. Clause (b) of the important note stated that applicants already having land and willing to transfer the land on ownership/long lease to respondent No.1 would be given preference. It appears to us from the facts noticed above that neither the appellant nor respondent No.2 would have been eligible for any preference. Whilst the appellant had offered the undertakings given by her mother-in-law and father in law to make the land available on lease, respondent No.2 was only in possession of a lease, which contained a negative covenant. Therefore, the candidature of both the appellant as well as respondent No.2 could only be considered under the category that they were prepared to make the site available.

23. The eligibility and the relative merit of the candidate was clearly to be adjudged on the basis of the criteria contained in the policy circular dated 4.9.2003. There could be no deviation therefrom. This circular provides elaborate guidelines. The selection procedure is as follows:

"SELECTION PROCEDURE:

5.2.1 Advertisement:

Selection of dealers will be done through advertisement in the newspapers.

5.2.2 Application processing Fee:

An application processing fee (Non refundable) of Rs.1000/- will be charged from the applicants other than SC/ST. In case of SC/ST applicants, the application processing fee will be Rs.500/-.

5.2.3 Selection Committee:

The selection will be done by a Committee consisting of 3 `E' Grade officers of IOC from outside the State as nominated by the Head of the State Office providing such officers.

The candidates will be evaluated by the Selection Committee through Interviews based on the marking system as given in Annexure A.

The Selection Committee will prepare a panel of 3 candidates and the approval for award of dealership will be given by the State Head.

5.3 Preparation of Panel:

The Selection Committee will prepare a panel of 3 candidates in order of merit. The panel will be finalized immediately on completion of interview for a particular dealership. The State Head will approve issuance of Letter of Intent to the No.1 candidate in the merit panel.

5.4 Letter of Intent :

Letter of Intent will be issued to the No.1 candidate in the merit panel after conducting necessary Field Investigation. If the LOI to No.1 candidate has to be cancelled for any reason like, he refuses to accept the dealership, is unwilling to give the land to IOC on acceptable terms within a specified period etc., the LOI will be given to the next candidate in the merit panel with the approval of the State Head."

Clause 6.7 provides for selection of site/location as per existing guidelines in this regard. Clause 7 provides that all eligible candidates will be called for interview by Committee consisting of three officers of IOC. Evaluation parameters of the candidates are set out in Clause 7.1 which is as under:

"7.1 Evaluation Parameters:

The selection committee will Interview the candidates as per the following evaluation criteria:

Retail Outlet:

Sr. Parameters Marks No. Retail SKO- Outlet LDO a. Capability to provide land and 35 35 infrastructure /facilities b. Capability to provide finance 25 35"

24. The detailed evaluation system is provided in Annexure-A to the instruction. The relevant portion of the evaluation criteria and weightage for selection of dealer was as under:

"Evaluation criteria and weightage for selection of dealer:

The evaluation criteria has been designed as under to maintain uniformity, objectivity, transparency and the methodology of assessment has been designed for ease of quantification.

Each candidate during the interview will be assessed by the Selection Committee broadly under the following parameters:

Retail Outlet a. Capability to provide land and infrastructure/ facilities 35 marks b. Capability to provide finance 25 marks c. Educational qualifications 15 marks d. Capability to generate business 10 marks e. Age 4 marks f. Experience 4 marks g. Business ability / acumen 5 marks h. Personality 2 marks Allocation of marks on various parameters Exist Sub Description Marks Details/alloc ing heads ation of Head marks Land Suitable Owns 35 Marks to be and land for land/has allotted, infra retail firm offer owns land struc outlets from and willing ture landowner to give to /can company:

arrange 35, has firm land offer and willing to give to company: 25, owns land and not willing to give to company but is willing to use for development of Retail Outlet: 20, firm offer but not willing to give to company but is willing to use for development of Retail Outlet : 15 Sub total 35"

25. Both the appellant as well as respondent No.2 were assessed on the basis of the aforesaid criteria and secured 25 marks each out of a total of 35 marks. From the record, it appears that on the date of the application, respondent No.2 would not fall under the category of land owner. She was, however, a lease holder, but was unable to create a sub lease, in view of the negative covenant contained in Clause 4 of the lease deed dated 18.3.2004. Furthermore in the application, she did not make available any other material to show that she could make the land available. She, however, claims to have produced the supplementary lease deed dated 18.3.2004, at the time of the interview. But there appears to be no material on the record to indicate that it was actually produced before the Interview Board. Even at the time of hearing, no material was produced before us by any of the respondents to show that it was actually produced before the Interview Board. In such circumstances, the learned Single Judge, in our opinion, correctly observed that the lease deed dated 18.3.2004 was perhaps not produced before the Interview Committee.

26. We, however, find that the Single Judge has unnecessarily jumped to the conclusion that it was not a genuine document. It had been duly notarized, therefore, it could not be said to be a fake document in the absence of any other material. In our opinion, the Division Bench has correctly accepted the genuineness of the document. Non-registration of lease as required under Section 107 of the Transfer of Property Act, 1882, may affect the legal rights of the parties inter se. But here Respondent No.2 is not seeking to enforce any such rights. She merely offered the lease deed as proof of her "capability to provide land" for being used by Respondent No.1 as a Retail Outlet Dealership. By virtue of Important Note (c) of the Public Notice dated 19.2.2004, respondent No.2 could make the land available within two months of the issue of Letter of Intent, which was issued on 8.7.2004. This, however, will not change the legal position. Even if the second lease deed is genuine, the same was not available before the interview board. No material was placed before this court to show that the document was in fact available at the time when the interview was conducted. Therefore, she

could not have been allotted any marks, for her capability to provide land, in view of the negative covenant contained in the lease deed dated 16.3.2004.

27. A clear cut procedure has been laid down in the circular dated 4.9.2003 for making the selection under Clause 5. It is clearly provided that the candidates will be evaluated by the selection committee through interviews based on the marking system as given in Annexure-A.

> "Annexure-A clearly stipulates three categories of candidates, namely, i) owner of the land who is willing to give the land to respondent No.1 by sale/lease; ii) individuals who have firm offers from land owner who are willing to give the land to respondent No.1; and iii) candidates who can arrange land. Both on the date of the application and the date of the interview, in our opinion, the respondent No.2 did not fall within any of the aforesaid categories. Therefore, her selection was vitiated, as the Selection Committee has deviated from the criteria laid down in the Circular dated 4.9.2003. In the absence of the lease deed dated 18.3.2004, the Interview Committee had no material before it, to award any marks to respondent No.2, against the column "capability to provide land"."

28. There is hardly any difference in the provisions contained in the circular dated 4.9.2003 and the brochure dated 1.11.2004 with regard to the candidate's capability to provide land. Clause 16(1) of the brochure dated 1.11.2004 contained the same provision as the provisions contained in Annexure A of the circular dated 4.9.2003. The brochure dated 1.11.2004 clarified the parameters which were applicable to individuals in the allocation of marks. Under the parameter "land and infrastructure" ; sub head suitable land and retail outlet provides a clear description of the desired candidates. In substance, however, the provision in both the circulars dated 4.9.2003 and the brochure dated 1.11.2004 are identical. On the issue of allocation of marks, therefore, it would have made no difference as to whether the candidature of the appellant and the respondent No.2 had been considered under either of the guidelines.

29. The difference between the circular dated 4.9.2003 and the brochure dated 1.11.2004 is that under the latter, Clause 14(1) postulates that the site verification shall be before the interview for that location. But this precondition, as noticed by the Division Bench, could not be made applicable to the selection process which had been completed. The interview in the ongoing selection has been held on 4.6.2004. The panel, according to Clause 5.2.3 and Clause 5.3 is to be prepared immediately on the completion of interview. Such a panel was duly prepared. It is the accepted position before us that the appellant did not fall within the panel of three most meritorious candidates. Thereafter, according to Clause 5.4, the Letter of Intent had to be issued to the candidate at No.1 of the merit list. Respondent No.2 being in such position was given the Letter of Intent on 8.7.2004. The brochure was published after the letter of intent was issued to respondent No.2. A provision which was not in existence when the selection procedure was completed could have had no application, unless it is made retrospective in operation.

30. Having said all that, we may now consider the question as to whether it was necessary for the learned Single Judge to quash the entire selection. We are of the considered opinion, that in the peculiar facts of this case, the learned Single Judge adopted a very pedantic and doctrinaire approach to a problem which in fact, had to be viewed pragmatically. The Learned Single Judge not only failed to take note of the ground realities, but ignored the relevant clauses of the policy circular dated 4th of September, 2003. Under the aforesaid Circular, upon the selection and appointment of respondent No.2 being declared illegal, the entire selection could not have been held to be vitiated. In such circumstances, the Letter of Intent would be issued to the next candidate in the panel of three, in terms of Clause 5.4. This Clause specifically provides that if the letter of intent is cancelled for any reason, it will be given to the next candidate in the merit list. In this case, even such an eventuality would not have arisen, as the candidates at Nos.2 and 3 were not the writ petitioners before the High court. Therefore, in our opinion, the learned Single Judge needlessly set aside the entire selection. At the same time the Division Bench also committed an error of law, in upholding the selection of respondent No.2.

31. In view of our findings recorded above, the normal order would be to set aside the impugned judgment of the Division Bench. Further direction would have been to offer the dealership to the next candidate on the panel of three. But these candidates have shown no interest in these proceedings. In these circumstances, the learned counsel for respondent No.2 has made strenuous efforts to persuade the Court, not to interfere in the grant of the dealership to respondent No.2. The same prayer was also made before the learned Single Judge. It was, however, rejected with the observations reproduced in the earlier part of the judgment. The learned Single Judge rejected the submission by placing of *India and Others*[2]. In our opinion, the aforesaid judgment was rendered under some very peculiar and exceptional circumstances. It was a case where allotment of retail outlets or petroleum products had been made by a Minister in violation of all norms while exercising his discretionary powers for making the allotments. These allotments had been made in the absence of any guidelines. The circumstances were such that this court was constrained to make the observations relied upon by the learned Single Judge which are as under:

> "23. So far as the fifth question is concerned, it is no doubt true that the appellants have invested considerable amount in the business and have operated it for about eight years but even on equitable considerations, we do not find any equity in favour of the appellants. The conduct of the Minister in making the discretionary allotments has been found to be atrocious, in the very three-Judge Bench decision of this Court and in relation to similar allotments made by the said Minister in favour of 15 persons who were respondents in common cause case. This Court came to hold that the allotments of the public property had been doled out in an arbitrary and discriminatory manner and the appellants had been held to be beneficiaries of such arbitrary orders and allotments. The question of granting the allottees relief on equitable consideration did not arise at all, for the same reasons in a case like this, a sympathetic consideration on the ground of equity would be a case of misplaced

sympathy and we refrain from granting any relief on any equitable consideration. In our view, the appellants do not deserve any equitable consideration."

The above observations make it abundantly clear that this Court was dealing with a situation where the concerned Minister had bestowed undue favour on the appellants in that case. Such is not a situation in the present case. Therefore, the aforesaid observations would be of little assistance to the appellant herein."

32. The facts and circumstances of this case are not such where this court would be reluctant to come to the aid of a selected candidate, against whom there are no allegations of manipulation or any undue favour having been shown to her. In our opinion, this is not a case of such an exceptional nature where equitable considerations would be impermissible. The peculiar facts of this case are such that it would be appropriate for the Court to take into consideration the subsequent events, in order to do complete justice between the parties. In the case of Kedarnath (supra) this Court delineated the circumstances in which the subsequent events could be taken into consideration in the peculiar facts and circumstances of a particular case. It was emphatically observed as follows:

"16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action.

This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all.

It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

(i) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or (ii) it is necessary to take notice of subsequent events in order to shorten litigation; or (iii) it is necessary to do so in order to do complete justice between the parties.

(Re Shikharchand Jain v. Digamber Jain Praband Karini Sabha, SCC p.681, para 10.)" In view of the above, we find that the course adopted by the Division Bench was appropriate, as well as being legally correct."

33. It appears to us that the learned Single Judge wrongly brushed aside the observations made by this Court, in the case of Rashpal Malhotra (supra) wherein it is observed as follows :- "7. It has to be borne in mind that this is an appeal under Article 136 of the Constitution.

This Court in Heavy Engineering Corporation Ltd., Ranchi v. K. Singh and Co., Ranchi expressed the opinion that although the powers of this Court were wide under Article 136 it could not be urged that because leave had been granted the court must always in every case deal with the merits even though it was satisfied that the ends of justice did not justify its interference in a given case. It is not as if, in an appeal with leave under Article 136, this Court was bound to decide the question if on facts at the later hearing the court felt that the ends of justice did not make it necessary to decide the point.

> "Similarly in Baigana v. Deputy Collector of Consolidation this Court expressed the view that this Court was more than a court of appeal. It exercises power only when there is supreme need. It is not the fifth court of appeal but the final court of the nation. Therefore, even if legal flaws might be electronically detected, we cannot interfere save manifest injustice or substantial question of public importance. "
>
> _____ "It has to be borne in mind that this Court in exercising its power under Article 136 of the Constitution acts not only as a court of law but also as a court of equity and must subserve ultimately the cause of justice." (Emphasis supplied) These observations are fully applicable to the present case."

34. Again in the case of Municipal Board of Pratabgarh (supra) this Court observed as under:- "6. What are the options before us. Obviously, as a logical corollary to our finding we have to interfere with the judgment of the High Court, because the view taken by it is not in conformity with the law. It is at this stage that Mr Sanghi, learned counsel for the respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and, therefore, this Court is not bound to tilt at every approach found not in consonance or conformity with law but the interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, `rule of law must run akin to rule of life. And life of law is not logic but experience'. By pointing out the error which according to us crept into the High Court's judgment the legal position is restored and the rule of law has been ensured its pristine glory. Having performed that duty under Article 136, is it obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Article 136. In approaching the matter this way we are not charting a new course but follow the precedents of repute. In Punjab Beverages (P) Ltd., Chandigarh v. Suresh Chand, this Court held that the order of dismissal made by the appellant in that case in contravention of Section 33(2)(b) of the Industrial Disputes Act did not render the order void and inoperative, yet this Court did not set aside the order of the lower court directing payment of wages under Section 33(2)(c) and affirmed that part of the order. While recording this conclusion this Court observed that in exercise of the extraordinary jurisdiction this Court was not bound to set aside every order found not in conformity or in consonance with the law unless the justice of the case so requires. The

Court further observed that demands of social justice are paramount while dealing with the industrial disputes and, therefore, even though the lower court was not right in allowing the application of the respondent, the Court declined to exercise its overriding jurisdiction under Article 136 to set aside the order of the Labour Court directing the appellant to pay certain amount to the workers.

> "Following this trend in State of M.P. v. Ram Ratan, this Court while holding that the High Court was in error in directing reinstatement of the respondent in service, took note of the fact that by passage of time the respondent superannuated.
>
> The Court paid him back wages till the day of superannuation in the round sum of Rs.10,000. In other words, while formally setting aside the order of the High Court directing reinstatement, treated the respondent in that case in service and paid him back wages because physical reinstatement on account of passage of time was not possible. From the academic's point of view the later decision is the subject-matter of adverse comment but we feel reasonably certain that it stems from narrow constricted view of the jurisdiction of the Court under Article 136. We adhere to our view after meticulously examining the learned comment. Having noted that criticism, we still adhere to the view that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render this Court a normal Court of appeal which it is not."
>
> These observations leave no manner of doubt that the court would be failing in its duty if it does not take due notice of the equitable considerations and mould the relief, to do complete justice between the parties."

35. The aforesaid observations were reiterated in the case of Taherakhatoon (supra):

> "19. We may in this connection also refer to Municipal Board, Pratabgarh v. Mahendra Singh Chawla9 wherein it was observed that in such cases, after declaring the correct legal position, this Court might still say that it would not exercise discretion to decide the case on merits and that it would decide on the basis of equitable considerations in the fact situation of the case and "mould the final order."

36. In our opinion, the facts and circumstances of this case are such that the approach adopted by the Division Bench, in taking note of the subsequent events, was appropriate and legally permissible. The clumsy handling of the entire selection process by respondent No.1 ought not to result in disqualification of the respondent No.2 who was perhaps not properly guided. There are no allegations made that respondent No.2 has either manipulated the selection or that any undue favour has been shown to her by the Selection Committee. We

also can not ignore the fact that candidates at Nos.2 and 3 of the panel have not challenged the selection and grant of dealership to respondent No.2. The appellant could also not get any relief, not being in the panel of selected candidates. It is also to be noted that the dealership has been operating for more than five years. It is stated to be one of the best, if not the topmost, outlet in the State. Entire infrastructure has been made available with the combined efforts of respondents No.1 and 2. Closure of the dealership, at this juncture, would result in disastrous consequences to respondent No.2. We have already noted that the decision of the Selection Committee is rendered arbitrary due to non- observance of the stipulated criteria in the Policy Circular dated 4.9.2003 and the Public Notice dated 12.2.2004. We have also noted that it is not a case where the selection is vitiated by proved mala fides; nor any allegations of undue favour being shown to respondent No.2 have been made. Even leaving aside the loss which would be incurred by respondent No.2 it would not be possible for this court to ignore the far reaching consequences of cancellation of the retail outlet in the small State of Tripura where such facilities are not in abundance. Therefore, keeping in view the over all public interest, we decline to exercise the extra ordinary jurisdiction of this court under Article 136 of the Constitution of India for setting aside the selection made in favour of respondent No.2.

37. Both the appeals are dismissed with no order as to costs.

1 [1957] SCR 359
2[2001] 10 SCC 305