

SUPREME COURT OF INDIA

Chairman cum Managing Director Indian Oil Corporation Ltd.

Vs.

Sunita Kumari

C.A.No.8980 of 2014

(Madan B. Lokur and C. Nagappan JJ.)

18.09.2014

JUDGMENT

MADAN B. LOKUR, J.

1. Leave granted in S.L.P. (Civil) No. 313 of 2012.

2. The question for consideration is whether, on the cancellation of the allotment of a dealership or distributorship for petroleum products in favour of the first ranked or first empanelled candidate, there is an automatic allotment in favour of the second ranked or second empanelled candidate, subject to fulfillment of the conditions of allotment. In our opinion, in view of the decisions of this Court, if the allotment is tainted due to political connections or patronage or other extraneous considerations, the entire selection process is vitiated and, therefore the second ranked or second empanelled candidate is not entitled to an automatic allotment of a dealership or distributorship in his or her favour.

The facts

3. On 10th July 2000, an advertisement was issued by the appellants, that is, Indian Oil Corporation Ltd. (for short ~IOCTM) for the appointment of dealers for superior kerosene oil and light diesel oil (SKO-LDO). The appointment was reserved for women belonging to Scheduled Castes and was for Warisnagar, District Samastipur

(Bihar).

4. Several applications appear to have been received in response to the advertisement and on 24th July, 2001, a panel of selected candidates was prepared by the IOC in order of merit. The panel was as follows:- Smt. Neelam Kumari Smt. Sunita Kumari (respondent no.1 herein) Kumari Anju Chaudhary

5. Sometime in the beginning of August, 2002 a news item appeared on the front page of the Indian Express to the effect that all over the country, a large number of dealerships or distributorships were allotted in respect of several petroleum products to persons close to political functionaries. The news item implied that the allotments were not on merits but on account of political considerations to favour the allottees.

6. The news item resulted in a public outcry and on 5/9 August, 2002 the Government of India passed an order cancelling all allotments for dealerships in petroleum products with effect from 1st January, 2000 including of SKO-LDO dealerships.

7. The blanket cancellation led to a spate of writ petitions being filed all over the country since several thousand allottees were affected. Soon thereafter, transfer petitions were filed to transfer the cases pending in various High Courts to this Court. These transfer petitions were allowed and the writ petitions taken up for consideration.

8. This Court then heard the allottees as well as the Government of India and in *Onkar Lal Bajaj v. Union of India*[1] it was observed that the news item and subsequent news items in the Indian Express made a specific reference to 413 allegedly tainted dealership or distributorship allotments. After considering all aspects of the case, this Court appointed a Committee of two retired judges to examine these 413 allotments and determine, on a preliminary examination of the facts and records, if the allotments were made on merits and not as a result of political connections or patronage or other extraneous considerations.

9. The Committee examined the records of the allotments made and also heard the aggrieved parties and submitted its Report to this Court. Objections were filed to the Report and they were considered and rejected in *Mukund Swarup Mishra v. Union of India*. [2] This Court also considered the allotment of dealerships made in respect of some States and passed appropriate orders. The case was then adjourned for taking up

the allotments made in other States including the State of Bihar.

10. The allotment of dealerships in respect of the State of Bihar was considered by this Court in *Mukund Swarup Mishra v. Union of India*[3] in the light of the Report given by the Committee. It was held therein that the allotment made to Neelam Kumari was not on merits but for extraneous considerations. As a result the allotment made in her favour stood cancelled.

11. Following the cancellation of the allotment in favour of Neelam Kumari, a writ petition was filed by Sunita Kumari in the Patna High Court being CWJC No. 7186 of 2008 next in the list of selected candidates for the SKO-LDO dealership in Warisnagar. In her writ petition, Sunita Kumari claimed that since she was the second ranked selected candidate, the SKO- LDO dealership should be awarded to her after the cancellation of Neelam Kumari's dealership.

Decision of the High Court

12. The writ petition filed by Sunita Kumari was allowed by a learned Single Judge of the Patna High Court by his judgment and order dated 15th April, 2009. While allowing the writ petition the learned Single Judge held that Sunita Kumari was entitled to be treated as the first empanelled candidate upon the cancellation of the dealership in favour of Neelam Kumari.

13. Feeling aggrieved by the decision rendered by the learned Single Judge, a Letters Patent Appeal being LPA No. 307 of 2010 was preferred by the IOC before the Division Bench of the Patna High Court. By the impugned judgment and order dated 10th February, 2011 the Division Bench dismissed the appeal of IOC and upheld the decision of the learned Single Judge.

14. It is under these circumstances, that the present appeal has come up before us.

Discussion

15. It was submitted by learned counsel for the IOC that in view of the decisions of this Court in *Awadesh Mani Tripathi v. Union of India*[4] and *Bharat Petroleum Corporation Ltd. v. Ramesh Chand Trivedi*[5] when the allotment of a dealership is

cancelled due to an illegality in selecting and preparing the panel of successful candidates, the entire selection process is vitiated. Therefore, merely because the first empanelled candidate is found ineligible or the allotment in his or her favour is otherwise cancelled, it would not automatically result in the allotment of the dealership in favour of the next empanelled candidate.

16. Learned counsel for Sunita Kumari on the other hand relied on *Ritu Mahajan v. Indian Oil Corporation*[6], *Raj Bala v. Union of India*[7] and *Anil Kumar Singh v. The Chairman, Dealers Selection Board*.[8] It was contended, on the basis of these decisions that when the allotment in favour of the first empanelled candidate is cancelled, the next empanelled candidate is entitled to an automatic allotment.

17. *Raj Bala* was the first such case in which the second empanelled candidate was awarded the dealership on its cancellation in respect of the first empanelled candidate. That case, however, did not deal with blanket cancellations such as the one we are concerned with. In that sense, that case is somewhat dissimilar to the present case. The facts in *Raj Bala* were that the first empanelled candidate was held eligible for an allotment of a distributorship of petroleum products by the High Court but this finding was set aside in appeal by a three-judge Bench of this Court. It was then held:

Having regard to the ineligibility of the 7th respondent, who was placed first on the merit list, the distributorship ought to have been awarded to the appellant, who was second in the merit list. Having regard to what has transpired, we think it appropriate to direct that the 7th respondent should cease to act as a dealer for the 2nd respondent, pursuant to the award of the dealership to him as aforesaid, on and from 1st September, 1995 and that on and from that date the 2nd respondent should award the dealership to the appellant who would be entitled to conduct business by reason thereof from that date. The appellant shall, of course, be obliged to fulfil all necessary conditions to the satisfaction of the second respondent.

18. *Anil Kumar Singh* also did not pertain to blanket cancellations made by the Government in 2002 nor did it pertain to the case referred to the Committee. However, a Bench of two learned Judges relied upon *Raj Bala* and held that once a person to whom the allotment is made has become ineligible, the distributorship must be awarded to the person who is second in the merit list.

19. In Ritu Mahajan a two-Judge Bench dealt with the allotment of a retail outlet dealership arising out of an advertisement issued by the IOC on 22nd June, 2000. It had been alleged that the allottee (Rani Gauba) was illegally given the allotment. The allotment was one of the many in the blanket cancellations and was a case referred to the Committee set up by this Court in Onkar Lal Bajaj. The Committee found that the allotment in favour of Rani Gauba was indeed illegal and that view was upheld by this Court. Ritu Mahajan then claimed a right to the allotment in place of Rani Gauba. In the final paragraph of the judgment, her prayer was accepted and it was held as follows:-

In that view of the matter, the selection of the fifth respondent for allotment of retail outlet dealership at Dhariwal is set aside and Indian Oil Corporation Respondent 1 is hereby directed to make allotment of the said retail outlet dealership at Dhariwal in favour of the appellant immediately. The appeal is allowed accordingly.

20. It will be seen that this Court proceeded on the basis that there was an entitlement for an automatic allotment in favour of Ritu Mahajan after the retail outlet dealership in favour of Rani Gauba was cancelled.

21. These three decisions proceed on the basis that when an allotment is cancelled in favour of the first empanelled candidate, there is an automatic allotment in favour of the second empanelled candidate. The first two decisions did not deal with blanket cancellations while the third one did.

22. In Ramesh Chand Trivedi a two-judge Bench dealt with a case referred to the Committee and took the view that when the allotment in favour of the first person in the panel is set aside due to some irregularity in the selection and preparation of the panel, the decision taken to have a fresh selection does not call for interference. This view was taken on the basis that the select panel is itself vitiated. Therefore, the two-judge Bench declined to make the allotment of the distributorship to the next eligible applicant as prayed for by Ramesh Chand Trivedi.

23. Awadesh Mani Tripathi concerned itself with blanket cancellations that were referred to the Committee set up by this Court. In that case, a three-judge Bench took

the view that when the merit list prepared by the Selection Board was found to be vitiated due to the influence of extraneous considerations, the petitioner who was placed at no. 2 cannot seek a mandamus for allotment of LPG distributorship. Any such direction by the Court would amount to perpetuation of the illegality committed by the Selection Board.

24. It is clear from a perusal of the decisions mentioned above that the view taken by this Court is that when the selection of the first empanelled candidate for the allotment of a dealership or a distributorship is cancelled, the next empanelled candidate ought to be automatically given the allotment subject to the fulfillment of all necessary conditions. This is clear from the decisions rendered by this Court in Raj Bala in 1995, Anil Kumar Singh in 2003 and Ritu Mahajan in 2009.

25. This Court has, however, taken a different view particularly in the case of mass cancellations which were dealt with by the Committee set up by this Court. The view taken by a two-judge Bench was that if the allotment of the dealership or distributorship in favour of the first empanelled candidate is cancelled then the second empanelled candidate is not automatically entitled to the allotment (Ramesh Chand Trivedi contrary to Ritu Mahajan).

26. The controversy has now been set at rest in Awadesh Mani Tripathi where a three-judge Bench has taken the view that if the selection process is vitiated due to political considerations or patronage or other extraneous considerations, there is no automatic allotment in favour of the second empanelled candidate when the selection of the first empanelled candidate is cancelled. This is because the entire selection process gets vitiated and not just one selection or allotment. If the selection process is itself vitiated, there is no question of going down the list of empanelled candidates. We respectfully accept and follow this view. We make it clear that if an individual selection is cancelled on merits, such as lack of eligibility or erroneous calculation of marks that is cancellation for reasons other than political considerations or patronage or other extraneous considerations, then the entire selection process would not be vitiated and the law laid down in Raj Bala would be applicable.

27. Under these circumstances, in our opinion, the decisions rendered in Raj Bala and Anil Kumar Singh fall in one category since they do not concern themselves with mass cancellations or have any reference to the Committee as in the present case and

also because the entire selection process was not vitiated by political considerations or patronage or other extraneous considerations. These cases dealt with one-off cancellations. On the other hand, Ramesh Chand Trivedi and Awadesh Mani Tripathi fall in a different category altogether. The decision in Ritu Mahajan is contrary to Awadesh Mani Tripathi and so we must hold that it does not lay down the correct law with regard to the allotment of a dealership or a distributorship in favour of the second empanelled candidate in cases concerning blanket cancellations or in cases when the allotment in favour of the first empanelled candidate is cancelled, the allotment having been made for political considerations or patronage or other extraneous considerations.

28. Since the present case concerns itself with the mass cancellations and the Report of the Committee, we are bound by the decision taken by the three-Judge Bench in Awadesh Mani Tripathi. Accordingly we hold, following that decision that when the allotment of the dealership or distributorship in favour of the first empanelled candidate is cancelled as a result of the Report of the Committee appointed in Onkar Lal Bajaj, which Report has been accepted by this Court, the selection process itself is vitiated. In such an event, there is no question of the second empanelled candidate being automatically granted the dealership or distributorship in place of the first empanelled candidate. The entire panel of selected candidates must stand cancelled and a fresh selection process must be initiated.

29. In view of our conclusion, the impugned order of the High Court directing allotment of the dealership in SKO-LDO in favour of Sunita Kumari is quashed. The appeal is allowed. No costs.

Special Leave Petition (Civil) No. 31006 of 2012

30. In this case, the allotment of LPG dealership/distributorship was advertised for Bihiya, District Bhojpur (Bihar).

31. After completing the selection process, the IOC prepared a panel consisting of the following applicants in order of merit:- Kameshwar Prasad Singh Rangi Lal Rai Rajesh Kumar Tiwary (Petitioner herein)

32. The allotment of the dealership/distributorship was in favour of Kameshwar Prasad Singh but it was quashed, pursuant to the decision of this Court in Mukund

Swarup Mishra.

33. Rajesh Kumar Tiwary claimed that Rangi Lal Rai was not eligible for an allotment and therefore being the third empanelled candidate the allotment should be made in his favour. On this basis he filed a writ petition in the Patna High Court being CWJC No. 18809 of 2008. A learned Single Judge of the High Court dismissed Rajesh Kumar TiwaryTMs writ petition by following the decision rendered in another case, that is, CWJC No. 9362 of 2009 and Mukund Swarup Mishra.

34. In appeal, being LPA No. 1291 of 2012 the High Court followed the decision rendered by this Court in Ramesh Chand Trivedi and found no merit in the appeal by the impugned judgment and order dated 13th September, 2012.

35. In view of our discussion in Sunita Kumari (supra) there is no merit in this petition and it is accordingly dismissed. No costs.

[1] (2003) 2 SCC 673

[2] (2007) 2 SCC 536

[3] (2008) 15 SCC 243

[4] (SLP (C) No. 34226/2009 decided on 23rd April, 2013)

[5] (Civil Appeal No. 8586 of 2010 decided on 4th October, 2010)

[6] (2009) 3 SCC 506

[7] (Civil Appeal No.7718 of 1995 decided on 23rd August, 1995)

[8] (Civil Appeal Nos.2012-2014 of 2003 decided on 3rd March, 2003)