

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2360 OF 2007

(Arising out of S.L.P.(C) No. 10279/2005)

SRI SUVENDU KUMAR PARIDA

.....

APPELLANT

(S)

:VERSUS:

SENIOR DIVISIONAL MANAGER, BHARAT

.....

RESPONDENT

PETROLEUM CORPORATION LTD. AND ORS.

(S)

O R D E R

Leave granted.

Appellant filed a writ petition before the High Court of Orissa

praying for the following reliefs:

"A. Issue a writ of mandamus quashing the order/letter awarding Retail Outlet Dealership of Bharat Petroleum Corporation Ltd., at Baripada as advertised for vide Annexure-1 to OP No.4 & 5 after calling for the same from the custody of Opp. parties No.4 and 5 and 1 and 2.

B. Direct the Opp. parties No.1 and 2 grant retail outlet dealership at Baripada to petitioner in pursuance of the Advertisement Annexure-1 within a specified time.

C. Call for the relevant record/file from the custody of Opp. parties No.1 and 3 relating to awarding Retail Outlet Dealership at Baripada in pursuance of the Advertisement vide Annexure-1.

D. Allow this application with costs."

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It is not in dispute that before the Dealer Selection Board,

Respondent No.4 herein secured No. 1 position in the merit list,

followed by the appellant and one Smt. Sumitra Mishra. The High

Court by reason of the impugned judgment opined that selection of

Respondent No.4 has not validly come into being and thus it was not

eligible to prosecute the application for grant of licence submitted by

Orissa Maritime & Chilka Area Development Corporation Ltd.. The

High Court directed:

"In the result, our considered opinion is that the letter of intent in favour of opp. party No.4 is not sustainable

and we hereby quash the order of opp. part Nos.1 and 2 along with the entire selection process of Dealer Selection Board dated 21.1.1999. The Oil Corporation is to proceed with the Selection afresh in accordance with law."

The special leave petition filed by Respondent No.4 has been dismissed on the ground of delay. Respondent Nos. 1 & 3 have not filed any special leave petition. In the aforementioned situation, Mr. Vishwanathan, learned counsel appearing on behalf of the appellant submitted that the High Court should have directed grant of licence in favour of the appellant herein in view of the decision of this Court in Anil Kumar Singh vs. The Chairman, Dealers Selection Board, Patna & Ors., (2003 (3) SCALE 28). In Anil Kumar Singh (supra) this Court opined:

"In this case, cancellation of agency of Smt. Veena Rani Singh was sought on the ground that she was not qualified. This case is more in consonance with the judgment of this Court dated 23rd August, 1995 in Civil Appeal arising out of SLP(C) No. 15191/1994. In that case on identical facts a three Judges Bench has held

that once the person to whom the allotment was made has become ineligible, the distributorship must be awarded to the person who is 2nd in the merit list.

It is, however, pointed out to us that under the dealers selection manual, if the first person in the selection list is found ineligible, then the matter would be referred by the ED/JM of the concerned oil company to the Chairman of the Dealers Selection Board, who will take a decision on issuance of Letter of Intent to the second empanelled candidate. The Indian Oil Corporation would be at liberty to follow this procedure. However, we add that the normal practice should be that unless and until there is some disqualification or special reason for not doing so an allotment would be made by the Dealers Selection Board to the second empanelled candidate."

Ordinarily, although we might have issued such a direction,

but we decline to do so as a long time has elapsed since the selection

was made. The writ petition was filed in the year 1999 and the High

Court has set aside the said selection in December 2004 by the

impugned judgment dated 23.12.2004.

Keeping in view the passage of time, we are of the opinion that

Respondent Nos. 1 to 3 herein should be directed to issue a fresh

advertisement in terms of the guidelines framed by them. We hope and

trust that, as this Court has granted a stay of operation of the

impugned judgment of the High Court, the said respondents shall take

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all steps for allotment of the petrol pump as expeditiously as possible.

It goes without saying that all eligible persons would be entitled to apply for allotment in response to the fresh advertisement.

The appeal is allowed with the aforementioned observations and direction.

.....J

(S.B. SINHA)

.....J

(MARKANDEY KATJU)

NEW DELHI,

MAY 4, 2007.

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S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10279/2005

(From the judgement and order dated 23/12/2004 in OJC No. 4384/1999 of
the HIGH COURT OF ORISSA AT CUTTACK)

SRI SUVENDU KUMAR PARIDA

Petitioner(s)

VERSUS

SR.DIV.MANAGER, B.P.C.L. & ORS.

Respondent(s)

(With prayer for interim relief and office report)

(FOR FINAL DISPOSAL)

Date: 04/05/2007 This Petition was called on for hearing today.

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CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. K.V. Vishwanathan,Adv.

Mr. C.D. Singh,Adv.

Mr. Merusagar Samantaray,Adv.

Mr. Vairagya Vardhan,Adv.

Mr. Devendra Singh,Adv.

For Respondent(s)

Mr. Parijat Sinha,Adv.

Ms. R. Rea Sinha,Adv.

Mr. S.C. Ghosh,Adv.

Mr. Debapriya Samanta,Adv.

Mr. R. Venkataramani, Sr.Adv.

Mr. Ashok Panigrahi,Adv.

Mr. Satya Mitra Garg,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Heard the learned counsel for the parties.

The appeal is allowed in terms of the signed order.

(A.S. BISHT)

COURT MASTER

(PUSHAP LATA BHARDWAJ)

COURT MASTER

(Signed order is placed on the file)