

2. The appellants (Indian Oil Corporation Ltd.), issued an advertisement inviting applications for grant of LPG distributorship for Sohawal, District Faizabad, Uttar Pradesh. The Dealer Selection Committee constituted by the appellants interviewed the eligible candidates and declared a panel of three candidates, on 30.3.2005, in the following order of merit : (1) Guru Shakti Singh (first respondent); (2) Sardar Mahinder Singh; and (3) Lal Rajendra Nath Singh. As per the said selection first respondent had to be granted the LPG distributorship.

2. The second candidate in the list (Sardar Mahinder Singh) filed a complaint with the appellants, alleging illegalities and irregularities in awarding marks by the Selection Committee, resulting in the first respondent being placed as the first in the merit panel. Shortly thereafter, the said Sardar Mahinder Singh filed a writ petition challenging the selection process and the panel of candidates. The said writ petition filed on 4.5.2005, was withdrawn on 18.5.2005. Sometime thereafter the said Sardar Mahinder Singh died.

3. The appellants thereafter cancelled the entire selection process on 27.10.2005, and took a decision for re-interview the candidates. The first respondent filed a writ petition for quashing the said order dated 27.10.2005 and seeking a direction to the appellant to issue him the letter of intent for Distributorship as he was the first in the merit panel. The said writ petition was allowed by the impugned order dated 6.2.2007 holding that there should be no re-interviews and the appellant should proceed with the selection as already conducted in accordance with law. The effect of the order was that the first respondent should be granted the distributorship. The said order is challenged in this appeal by special leave.

4. It is not disputed by the first respondent that the mere fact of a merit panel being prepared with him in the first place does not entitle him to be appointed as a distributor. The case of the first respondent is that as the second respondent who challenged the selection as per the merit panel withdrew the writ petition and none else had questioned the merit panel, the said merit panel continued to be in force and was valid; and therefore, there was no need for re-interviews and he ought to have been granted the distributorship. But the issue is not whether there was a challenge, but whether there was any irregularity in the selection process, and as a consequence whether the decision of appellants to have fresh interviews is open to challenge.

5. Sardar Mahinder Singh filed a complaint alleging that he had been awarded lesser marks and first respondent had been awarded more marks. His grievances in regard to marks were as under :

(a) Though he owned a land and the respondent did not own any land on the date of interview, yet, both were given equal 18 marks. He should have been awarded full marks of 25.

(b) He had not been given proper marks in respect of the parameter "capability to arrange finance". In spite of providing requisite financial details, he was awarded only 7 out of 35.

(c) He had been given lesser marks of 2 out of 5 under the parameter "business ability/acumen" though he was doing business for last 20 years, for which records were placed.

6. The appellant got the said complaint investigated by a committee of senior officers. The investigation revealed that under the evaluation parameter "capability to provide infrastructure" Sardar Mahinder Singh had been awarded only 18 marks whereas he ought to have been awarded 25 marks as

per the company policy as he had submitted the documents in support of ownership of land, along with his application.

It was also found that under the evaluation parameter "capability to provide finance : Banker's/Financial Institution's certificate for loan", Sardar Mahinder Singh had been awarded zero marks out of 7 marks even though he had submitted a certificate dated 20.2.2004 from Bank of Baroda for credit-worthiness along with his application and that he deserved marks under that head also.

7. In view of the said findings of the investigation, the second appellant (General Manager, IOC, UP State Office) took a decision that the selection process violated the guidelines and was vitiated. As a consequence, he directed that the merit panel prepared by the Selection Committee should be cancelled and ordered a re-interview. He also directed that disciplinary action should be taken against the Selection Committee Members. The above factual background leading to the direction for re-interview was completely overlooked by the High Court.

8. The High Court allowed the writ petition filed by the respondents on a rather strange reasoning. We extract below the relevant portion of the impugned order :

"As already observed, since the Indian Oil Corporation after being satisfied about the illegality committed by the Committee in awarding marks to a particular candidate (since deceased), decided to re-interview all the candidates, but before the said exercise could be started, the said person died as such no relief can now be granted to him. Rest of candidates have not raised any grievance about their failure in selection, therefore, there is no question for reconsidering their case."

The High Court appears to have proceeded on the basis that even though the selection process was illegal, as the complainant (Sardar Mahinder Singh), who had alleged the irregularities had died, the irregularities were no longer

relevant and would no longer exist and the merit panel should be accepted. Unfortunately, the High Court failed to deal with the larger issue as to whether the Selection Committee had acted fairly and properly in awarding the marks and preparing the merit panel. If the finding was that the marks were wrongly assigned to the complainant and consequently, first respondent had benefited, it does not follow that when the complainant dies, the irregularity in assigning marks could be brushed aside or ignored. In such selections, any illegality or material irregularity in assigning marks in regard to any person with the intention of favouring some one or excluding some one, vitiates the entire selection process. Such a selection process cannot be saved by holding that the person in regard to whom lesser marks were given had died or failed to pursue his remedy. Once the appellants took cognizance of the illegality in the selection process, the withdrawal of writ petition on death of the aggrieved complainant lost significance. The issue, as already noticed, is whether the selection process was fair and proper and whether the appellant acted arbitrarily or unreasonably in taking a decision to scrap the selection process and re-interview the candidates.

9. Assigning of lesser marks to Sardar Mahinder Singh not only denied him the first place in the panel, but also unjustly and undeservedly gave the first respondent, the first place in the panel. The manner of assigning marks showed a clear intention to favour the first respondent at the cost of the other applicants. It is this finding that persuaded the General Manager of IOC to scrap the selection. The High Court having recorded a finding that the appellant was satisfied about the illegality committed by the selection committee, ought to have rejected the writ

petition, as the decision of the appellants to scrap the selection was reasonable and not arbitrary.

10. As a result, the appeal is allowed, the order of the High Court is set aside and the writ petition filed by the first respondent is dismissed. The appellants are permitted to deal with the LPG distributorship as per its policy.

It

can either re-interview the candidates or at liberty to deal with the matter in accordance with the existing policy.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
February 14, 2011.

.....J.
(A.K. PATNAIK)