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C.A.No. 2613-2615 OF 1998

ITEM NO.104

COURT NO. 8

SECTION XIA

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

CIVIL APPEAL NOS. 2613-2615 OF 1998

ABRAHAM LUKOSE

.. APPELLANT

VERSUS

MALLAPPALLY SERVICE CO-OP. SOCTY.LTD.& ORS. .. RESPONDENTS
(With office report)

C.A.No.2616/1998-(With office report)

DATE: 27/11/2003 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For appellant (s)Mr. K.K. Venugopal, Sr.Adv.

/respondentMr. Rakesh Dwivedi, Sr.Adv.

Mr. Roy Abraham, Adv.

Ms. Seema Jain, Adv.

for Mr. Himinder Lal, Adv.

For respondent (s)

Mr. E.M.S. Anam, Adv.

IOCMs. Asha Jain Madan, Adv.

Upon hearing counsel the Court made the following

O R D E R

Mr. K.K. Venugopal, learned Senior counsel for the appellant commenced his arguments at 2 p.m. and concluded at 2.40 p.m. After that, learned counsel for the respondents made their submissions for 10 minutes.

Civil Appeal Nos.2613-15/1998 are allowed and Civil Appeal No.2616/1998 is dismissed in terms of the signed order. Parties to bear their own costs.

Sarita (Shelly Sengupta)

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2613-2615 OF 1998

ABRAHAM LUKOSE

APPELLANT

VERSUS

WITH C.A.NO.2616/1998

O R D E R

The common order passed by the Division Bench of the High Court of Kerala in writ appeals is under challenge before us in these appeals. The appellant in C.A.Nos.2613-15/98 was the 4th respondent in the writ petition and the respondent-Society was the writ petitioner in one of the writ petitions. In C.A.No.2616/98, the respondent-Society is the appellant and the appellant in C.A.Nos.2613-15/98 is one of the respondents in C.A.No.2616/98.

The Indian Oil Corporation invited applications for allotment of gas agency in Mallapally, Kerala State on 21.8.1993. The appellant in C.A. Nos.2613-15/98 and the respondent-Society in these appeals, both applied for allotment of gas agency alongwith some others. The Oil Selection Board (Kerala and Lakshadweep), consisting of a retired High Court Judge as Chairman and two other members, conducted interview and selected the appellant for the agency and he was awarded the gas agency. Pursuant to the same, he opened distributorship on 30.5.1994. The persons who were not successful in getting the agency, including the respondent-Society challenged the selection of the appellant by filing writ petitions before the High Court. The learned Single Judge of the High Court set aside the selection made in favour of the appellant on the grounds : (i) The assessment in the interview was not properly done by the two members; (ii) the respondent being a cooperative society, ought to have been given preference; (iii) the selection of the appellant was vitiated on that account. Hence, the allotment of the agency was cancelled and the Oil Selection Board was directed to consider applications afresh for awarding of the agency. Aggrieved by the order of the learned Single Judge, the appellant as well as the respondent filed writ appeals. The appellant made grievance against the order of the learned Single Judge in relation to the findings recorded and also as to the remand made for fresh selection. The respondent was aggrieved by the order to the extent of remanding for fresh selection. The respondent was aggrieved by the order to the extent of remanding for fresh selection. According to the respondent, after canceling the agency made in favour of the appellant, it ought to have been straight away granted to them. The Division Bench of the High Court under the impugned order, on consideration of the rival contentions, concluded that the learned Single Judge was wrong in substituting his opinion in the matter of awarding the marks on the ground that the members had awarded the marks arbitrarily. The Division Bench found fault with the order of the learned Single Judge, dealing with the question of preference to be given to the respondent-Society. Having held in favour of the appellant on the above-mentioned two grounds, the Division Bench maintained the order passed by the learned Single Judge in remanding the matter to Selection Board for fresh consideration of the whole matter on its merits uninfluenced by any observation or finding given by the learned Single Judge.

Learned Senior counsel for the appellant urged that merely because there was variance in awarding of marks by the Chairman and two members of the Selection Board, it could not be concluded that there was any mala fides on the part of the two members in awarding the marks in favour of the appellant particularly when the details of mala fides were not given and the two members against whom the mala fides were alleged were not made parties. He pointed out that the preference could be given to the respondent-society all things being equal but on merits the appellant had secured more marks than the respondent-Society. He added that the respondent-Society did not satisfy one of the eligibility conditions as it did not make profits for the previous three consecutive financial years; after the making of application for allotment of gas agency, the respondent-Society having become a banking company cannot do business of running gas agency in view of the provisions contained in the Banking Regulation Act, 1949.

On the other hand, the learned counsel for the respondent-Society submitted that all was not well with the Oil Selection Board in the background of allegations made against it; the Division Bench of the High Court did not set aside the findings of mala fides on the part of the two members of the Selection Board; even the appellant was not eligible and qualified for awarding of gas agency being a sales-tax practitioner. The learned counsel submitted that the Division Bench was right in maintaining the order of remand to the Selection Board for the purpose of making fresh selection.

We have considered the respective submissions made on behalf of the parties. The two grounds on which the learned Single Judge set aside the selection made in favour of the appellant were reversed by the Division Bench of the High Court. It was not disputed that neither the particulars or details of the mala fides alleged against the two members were given nor they were made parties in the writ petition. Hence, the ground of mala fides could not be sustained. Merely because there was variance in awarding marks by two members of the Board was not a ground to set aside the selection of the appellant for awarding of gas agency. The Division Bench was right in holding so. The Division Bench was again right in taking a view that the preference could be given to the respondent-Society all things being equal but on merits the appellant

had secured more marks than the respondent-Society. In this view, the finding recorded by the learned Single Judge on the question of preference was rightly upset by the Division Bench. However, the Division Bench has not recorded any reason or ground whatsoever to maintain the order of learned Single Judge for remitting the case to the Oil Selection Board for fresh consideration, that too uninfluenced by the observations made or findings recorded by the learned Single Judge. In our view, there is no good ground or justification for remitting the case to Oil Selection Board for fresh consideration. We do not wish to deal with the question as to whether respondent-Society having become a banking company is eligible or not to carry on the gas agency when this question is not specifically raised. Similarly, the question of eligibility of the appellant also need not be examined by us as this question does not appear to have been urged either before the learned Single Judge or the Division Bench of the High Court. We may take note of one more fact that distributorship was started by the appellant on 30.5.1994 and he is continuing to operate. Under the circumstances and in view of what is stated above, Civil Appeal Nos. 2613-15/1998 are allowed and the impugned order to the extent of directing the Oil Selection Board to consider the allotment of gas agency afresh is set aside. C.A.No. 2616/1998 is dismissed. Parties to bear their own costs.

.....J.

(SHIVARAJ V. PATIL)

.....J.

New Delhi, (D.M. DHARMADHIKARI)
November 27, 2003.