
(2013) 10 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 2158, 2419, 2443, 2617 and 2623 of 2011

Amit Kumar Sharma

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 3 RLW 2389

Hon'ble Judges : N.K. Jain-II, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Dinesh Maheshwari, J.—These five intra-court appeals, arising out of the common order dated 27.09.2011, as passed by the learned Single Judge of this court in three writ petitions involving common and inter-related issues, have been considered together; and are taken up for disposal by this common judgment. The multifaceted controversy in these appeals has its genesis in the competing claims of the petitioners of each of the three writ petitions (CWP Nos. 8210/2010, 12640/2010 & 12961/2010), for allotment of a retail outlet of Hindustan Petroleum Corporation Ltd. ("HPCL") at Udaipurwati, Distt. Jhunjhunu; and has its roots in the order passed by the concerned Oil Company HPCL, purportedly in compliance of the orders passed by the Court in this litigation at different stages and allegedly after investigation on the complaints/representations made by or against the concerned candidates.

2. The relevant background aspects leading to these appeals could be noticed in the following: The concerned Oil Company, HPCL issued an advertisement dated 13.07.2009 inviting applications for appointment of dealers on their Retail Outlets at various places. As per the advertisement, the last date for receipt of the applications was 13.08.2009. The petitioners of the three writ petitions namely, Shri Vijendra Singh (CWP No. 8210/2010), Shri Amit Kumar Sharma (CWP No. 12640/2010) and Shri Ishwar Dutt Chaturvedi with Shri Ghanshyam

Singh Shekhawat (CWP No. 12961/2010) offered their candidature by filing the applications before the last date for the outlet in question at Village Udaipurwati, District Jhunjhunu, which was available for allotment in open category; and appeared before the Interview Board on 04.03.2010. The Interview Board declared the result on 04.03.2010 itself and issued a provisional statement of marks wherein, the above-referred writ-petitioners were placed at serial numbers 5, 1 and 2 respectively.

3. Dissatisfied with the result so declared, the said S/Shri Ishwar Dutt Chaturvedi and Ghanshyam Singh Shekhawat, who were placed at serial number 2 in the merit, preferred a writ petition (CWP No. 4875/2010) in this Court, inter alia, with the submissions that Shri Amit Kumar Sharma had wrongly been placed at serial number 1 in the order of merit; and the Selection Committee had violated the norms of maintaining minimum distance between two fuel stations located along the State Highways/MDR's/ODR's. It was submitted that as per the report of Public Works Department, the distance of land offered by the candidate at No. 1 was only 66 metres as against the requisite 300 metres from the existing fuel station.

4. A learned Single Judge of this Court considered the said writ petition on 12.04.2010 and without issuing notices and without going into the merits, proceeded to dispose of the petition with the directions to the competent authority to examine the petitioners' complaint/representation said to be pending and to pass a speaking order thereupon. The order dated 12.04.2010, as passed in CWP No. 4875/2010 reads as under:-

"Instant petition has been filed by petitioners who are applicants for allotment of retail out-let (petrol lump) at Udaipurwati (Jhunjhunu). However, provisional mark-sheet prepared by respondents authority after scrutiny of the forms of candidates, petitioners have been placed at S. No. 2 in order of merit. One of the objections raised is that while placing respondent-5 at S. No. 1 in order of merit, the selection committee has violated norms for the access for fuel stations, service stations & rest areas along State Highways/MDR's/ODR's having been laid down by Public Works Department, Government of Rajasthan vide Circular dt. 27/12/2004 (Ann. 2).

Counsel submits that Cl. 6.2 of Circular (Ann. 2) clearly postulates that minimum distance between two fuel stations alongwith State Highways/MDR's/ODR's would be 300 mtr. in case of plain & rolling terrain in Non-Urban (Rural) Areas and as per report submitted by AEN PWD, the distance in case of present situation is only 66 meters, for which petitioners have made complaint to respondents authority vide representation dt. 08/3/2010 (Ann. 4). Counsel submits that the matter has not yet been finalized so far and any further action if taken by respondents pending complaint for consideration, certainly it would cause prejudice.

Without going into merits of the matter, the writ petition is disposed of with the

direction to the respondents (competent authority) to examine petitioners" complaint/representations pending with it and pass a speaking order within 15 days from the date of receipt of certified copy of this order and the decision may be communicated to the petitioners who if still feel aggrieved, will be free to avail the remedy under law."

5. In the chronology of events, noticeable it is that while the process on the said order passed in CWP No. 4875/2010 remained pending, the other candidate Shri Vijendra Singh preferred another writ petition (CWP No. 8210/2010) stating the grievance that the Interview Board had wrongly omitted to award him marks for the land offered. It was submitted by Shri Vijendra Singh that prior to filling of the form, he had purchased the required land under the sale deed dated 10.08.2009; that the said land was mutated in his name on 07.09.2009 and different Khata of the said land was opened; and that the Tehsildar mentioned in his report on 18.12.2009 that the land of the petitioner was neither of any encroachment nor of any hindrance to the catchment; and further, that the Public Works Department had also issued a No Objection Certificate on 22.09.2009. It was contended by the petitioner Vijendra Singh that in the provisional mark sheet issued on 04.03.2010, he was placed at the last because no marks were awarded to him by the Interview Board for the land provided whereas he was entitled for such marks for the land because the sale deed had been executed in his favour for ? share i.e., 0.71 Hectare out of the total land measuring 1.42 Hectare; and the map, report of the Patwari and verification from the Tehsildar had been deposited along with the application form; and further, before the interview, the process of opening separate Khasra, Khata, mutation, Jamabandi, Girdawari was completed and all those documents were submitted by him on 04.03.2010 at the time of interview. The said petitioner further pointed out that on the receipt of provisional mark sheet, he made a representation to HPCL on 17.03.2010, which was duly acknowledged but was treated as a complaint under Clause 19(a) of the Guidelines for Selection Retail Outlet Dealers (in short "the Guidelines") relating to the grievance/complaint whereas the same ought to have been considered as a representation to correct the error on the part of HPCL, i.e., of not awarding marks for the land, as he was entitled to. In this writ petition, by an interim order dated 09.06.2010, the respondents were directed to consider the case of the petitioner with regard to the marks to be awarded for land, which the petitioner was having under his ownership, and to proceed accordingly. The relevant part of the interim order dated 09.06.2010 reads as under:-

"The respondents are directed to consider the case of the petitioner with regard to marks to be awarded for land, the petitioner has under his ownership and to proceed accordingly."

6. It appears that in the meantime, the concerned Oil Company HPCL had also received a complaint from one Shri Ram Dev Saini and 35 others against the land offered by Shri Vijendra Singh while alleging suppression of material information. The Company had also received a complaint from the empanelled

candidate No. 1 Shri Amit Kumar Sharma that the land offered by Shri Vijendra Singh was unpartitioned and hence, he was not entitled to be awarded the claimed marks. It appears that the Oil Company took up the process of consideration of cross representations and complaints in its Grievance Redressal System of Dealership Selection; and after purportedly carrying out the investigation with reference to the orders passed by the Court, proceeded to pass two order on 09.08.2010, which form the bone of contention in these matters.

7. HPCL stated in the said orders dated 09.08.2010 that the complaint was found true against the land offered by Shri Amit Kumar Sharma that the same was not in accord with PWD norms for being situated only at a distance of 66 metres from a retail outlet of another Oil Company - BPCL where, though, the dealership had been terminated but could be resumed at any time. The Company HPCL, thus, concluded that the site offered by Shri Amit Kumar Sharma was not meeting with the PWD norms and was disqualified. As a consequence of this conclusion, the marks awarded to Shri Amit Kumar Sharma were reduced from 88.84 to 54.89. On the other hand, the complaints made by Shri Amit Kumar Sharma and the said Shri Ram Dev Saini and 35 others against the land offered by Shri Vijendra Singh were also found to be true whereas the representation made by Shri Vijendra Singh in respect of the marks awarded to him was found to be devoid of merits.

8. On the basis of the aforesaid findings and for the position obtaining that the marks awarded to the first empanelled candidate Shri Amit Kumar Sharma were reduced to 54.89 from 88.84 and there was a change in the ranking of merit panel, the Company decided to conduct re-interview of eligible candidates as per the guidelines. The contents of the order dated 09.08.2010, as sent to Shri Vijendra Singh are as under (as taken note of by the learned Single Judge):-

"Sub: Order dated 09/06/2010 in Civil Writ Petition No.

8210/10 passed by Hon"ble High Court by Rajasthan

(Jaipur) - Representation dated 17.3.2010.

Dear Sir,

As per above said order dated 09.06.2010 in Civil Writ Petition No. 8210/10 passed by Hon"ble High Court of Rajasthan (Jaipur) investigation has been conducted in line with the provision of Grievance Redressal System of Dealership Selection in respect of Representation dated 17.03.2010 from Shri Vijendra Singh and we wish to advise as follows:

(1) The Investigation Officer has perused the Sale Deed dated 10.8.2009 and Jamabandi (Khatauni) provided by the Petitioner Shri Vijendra Singh and it was found that vide sale deed dt. 10.8.2009, the Petitioner has purchased 0.71 Hectare of land out of a total of 1.42 Hectares (? share) of land under Khasra No. 2735. As per the copy of Jamabandi/Khatauni provided by the Petitioner, the said

land admeasuring 1.42 Hectare were owned by Shri Dudharam and others and without proper partition, ? share of the land has been sold to Shri Vijendra Singh as per sale deed dated 10.8.2009.

(2) We have also received other complaints regarding the subject Dealership Selection and these complaints were also investigated as per the provision of Grievance Redressal System of Dealership selection and these complaints are disposed of as follows:

Under the above facts and circumstances, the representation of Shri Vijendra Singh is rejected and 56.67 marks awarded to him is confirmed. Due to the reason given above, marks awarded to Shri Amit Kumar Sharma, 1st empanelled candidate is reduced to 54.89 from 88.84. As there is change in ranking of merit panel, it has been decided to conduct re-interview of eligible candidates as per the guidelines."

9. The contents of the other order dated 09.08.2010, as sent to Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat, are as under (Annexure 5 in CWP No. 12961/2010):-

"Sub:- Order dated 12/04/2010 in civil writ petition No. 4875/10 passed by Hon"ble High Court by Rajasthan (Jaipur) - Representation dated 8/03/2010 from the petitioners

As per above said order dated 12/04/2010 in Civil Writ Petition No. 4875/10 passed by Hon"ble High Court of Rajasthan (Jaipur) investigation has been conducted in line with the provision of Grievance Redressal System of Dealership Selection in respect of Representation dated 8/03/2010 from Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat and we wish to advise as follows:

1) Regarding the land offered by Shri Amit Kumar Sharma, first empanelled candidate, the petitioners have alleged that the land situated on SH-37 is only 66 meters from BPC outlet as against the Norm of 300 meters required under Rajasthan PWD Guidelines and as such this land should have been disqualified.

2) It is true that Rajasthan PWD Norms do stipulate a minimum distance of 300 metres between two filling stations on undivided Carriageway. On investigation, it has been revealed that there is distance of only 66 meters between the terminated BPC retail outlet and the site proposed by Shri Amit Kumar Sharma

It was also revealed that though the BPC outlet is not in operation from 2007 onwards, the land of BPC outlet is Co-owned and the outlet may be resumed at any point of time and since BPC outlet has been established from 2002 onwards, the site of Shri Amit Kumar Sharma will not meet the PWD Norms and the site is disqualified. Thus, the marks awarded to Shri Amit Kuma Sharma is reduced to 54.89 from 88.84.

(3) We have also received other complaints regarding the subject Dealership

selection and these complaints were also investigated as per the provision of Grievance Redressed of Dealership selection and these complaints are disposed of as follows:-

In view of the above facts and circumstances, it is found that complaint against First empanelled Candidate Shri Amit Kumar Sharma is established and marks awarded to him is reduced to 54.89 from 88.84. As there is change in ranking of merit panel, it has been decided to conduct re-interview of eligible candidates as per the guidelines."

10. Thereafter, HPCL also proceeded to inform the empanelled candidate No. 1 Shri Amit Kumar Sharma by the communication dated 12.8.2010 about such reduction of marks and the decision to conduct fresh interviews of the eligible candidates who had earlier appeared for the interview on 4.3.2010. This communication dated 12.8.2010 reads as under:-

"Sub: Interview for the location: Udaipurwati within Municipal Limits,

Dist: Jhunjhunu Category Open, Date of Advt. 13.7.2009

Dear Sir,

Reference is drawn to your application dated 18.08.2009 and subsequent interview held at Jaipur on 04.03.2010 for selection of retail Outlet Dealership at the subject location as mentioned above.

The result of the interview was declared and displayed on the Notice Board of the HPCL on the same day as per the policy, wherein you were listed as the 1st empanelled candidate.

Consequent to display of results, complaints were received from you (& 35 others) and other candidates who had appeared for the interview that they did not get proper marks as per the policy under different parameters.

The complaints made by the complainants were investigated and report submitted by Investigating Officer/Committee was perused by the competent authority and it was found that there is a change in your marks. The marks awarded to you have been reduced from 88.84 to 54.89. In view of the above, there is change in the empanelment in the merit list. Accordingly, the Competent Authority has directed to cancel the entire dealer selection proceedings including the cancellation of the empanelment and to conduct fresh interviews of the same eligible candidates who appeared for the interview on 04.03.2010 in the interest of natural justice.

The Schedule and venue of the interview will be intimated to the candidates shortly.

Thanking you for interest shown in our Dealership and regret for the inconvenience caused if any."

11. Aggrieved by the aforesaid communication dated 12.08.2010, the first

empanelled candidate Shri Amit Kumar Sharma preferred another writ petition (CWP No. 12640/2010) contending, inter alia, that such a process of reduction of marks had been violative of the principles of natural justice where he was not given any prior notice; and given a notice, he would have explained the position that the referred petrol pump of BPCL was though allotted in favour of one Smt. Tej Kanwar Shekhawat but was cancelled by the then Prime Minister of India on 06.08.2002 along with several other petrol pumps and the order of the Prime Minister was upheld by the Hon"ble Supreme Court on 12.04.2007; and, therefore, the said petrol pump was completely closed since 12.04.2007 and the licence had already been cancelled by BPCL. With the submission that the closed petrol pump within 300 meters could not have been equated with a running petrol pump, the petitioner contended that the marks awarded to him could not have been reduced. In this writ petition filed by Shri Amit Kumar Sharma, an interim order was passed by a learned Single Judge on 29.09.2010 against finalization of fresh process, if initiated by the respondents. The said order dated 29.09.2010 reads as under:-

"Counsel inter alia submits that petitioner was one of applicants who participated for award of retail outlet dealership of HPCL at Village Udaipurwati (Jhunjhunu) and was empanelled at S. No. 1 but it appears that on a complaint being received, it was inquired upon by respondents and without affording opportunity of hearing to him, his marks awarded while empanelling him were reduced from 88.84 to 54.89 as is evident from letter dt. 12.8.2010 (Anx. 5) impugned vide which the selection, itself has been cancelled and the decision has been taken to hold process of selection afresh. Counsel submits that whole procedure adopted by respondent is behind the back of petitioner and is in violation of principles of natural justice.

Issue notice of writ & stay petition alongwith a copy of this order to respondents returnable within six weeks. Notices be given Dasti, if desired. PF & notices be filed within one week, failing which stay order will stand vacated automatically without reference to this Court. In the meanwhile, fresh process if initiated by respondents for location at village Udaipurwati (Jhunjhunu) under Open category for which petitioner was one of applicants, pursuant to letter dt. 12.8.2010 (Ann. 5) shall not be finalised till further orders without seeking prior permission from the Court. List after service."

12. Apart from the above and adding another dimension to the controversy, the empanelled candidates at serial number 2, Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat, who had earlier filed the writ petition, which was decided without notice by the order dated 12.04.2010 (supra) preferred yet another writ petition (CWP No. 12961/2010) challenging the Company's order dated 09.08.2010 only insofar re-interview had been ordered; and sought the declaration that with reduction of the marks of the candidate empanelled at serial number 1, now they were required to be substituted in his place at number 1 in the merit-list and, accordingly, the dealership in question ought to be allotted to

them.

13. The aforesaid three writ petitions were considered and disposed of together by the impugned common order dated 27.09.2011. The learned Single Judge took note of the rival contentions where the petitioner Shri Vijendra Singh claimed that HPCL had been in error in not awarding him marks for the land offered; and that the verification documents and mutation entries etc. all related to the land already purchased and offered by him, which could not have been ignored from consideration. On the other hand, it was contended on behalf of the petitioner Shri Amit Kumar Sharma that the Oil Company had been in error in reducing the marks as regards the land offered by him with reference to a petrol pump which was completely closed since 12.04.2007 and whose allotment had already been cancelled by BPCL. It was also contended that the proceedings for rejection of marks without any notice were totally arbitrary and violative of the principles of natural justice. Adding another angle to the controversy, it was contended on behalf of the other petitioners Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat that with reduction of the marks of Shri Amit Kumar Sharma, they ought to stand at serial number 1 in the merit and hence, were entitled to the retail outlet in question. The response on behalf of the Oil Company HPCL, who is and has been on the pivot of the controversy, to all such cross-claims had been that after considering the complaints/representations and on the recommendations of the Grievance Committee, the competent authority had rightly decided to hold the re-interview of all the eligible candidates who appeared in the interview dated 04.03.2010. It was also submitted that HPCL would be holding fresh interviews in respect of the retail outlet in question while excluding the correspondence in question and while ignoring the orders dated 9th and 12th August 2010 issued in regard to the respective petitioners. It was submitted that as per Clause (?) of the advertisement, none of additional documents could be accepted and considered after the last date for submission of the application.

14. The learned Single Judge proceeded to take note of clause () of the advertisement as under:-

15. The learned Judge also took note of the orders passed in the different writ petitions then found justified the submissions made on behalf of HPCL that in the given set of circumstances, holding of re-interview of the eligible candidates was just, proper and legal. The learned Judge also observed that because of holding of re-interview, non-issuance of show cause notice to Shri Amit Kumar Sharma was only of academic interest but then, proceeded to consider the merits of the issues as to whether reduction of his marks was justified; and as to whether non-awarding of marks to the other candidate Shri Vijendra Singh was justified. The learned Judge observed as under:-

"(25) Considering the nature of the various interim orders passed in the present writ petitions as also final orders in earlier writ petition, as reproduced above as well as submissions of Mr. Kasliwal that I am of the view that with the change of

marking, the merit list has been revised, therefore, holding of the re-interview of the eligible candidates is just, proper and legal. In view of the aforesaid submission of re-interview, non-issuance of show cause notice to Amit Kumar Sharma is now of academic interest, therefore, the same is left open. Only the two submissions are required to be adjudicated upon - (i) Whether reduction of the marks of Amit Kumar is justified and (ii) non-awarding of the marks for the land to the petitioner Vijendra Singh is justified."

16. The learned Judge, thereafter, found justified the submissions made on behalf of the candidates that clause could not have been interpreted in a mechanical manner and the correct facts as also the relevant documents which were clarificatory in nature were required to be considered. The learned Judge expressed the views that the closed BPCL petrol pump shall have no effect of reduction of marks of the petitioner Shri Amit Kumar Sharma. The learned Judge also held that Shri Vijendra Singh was entitled for consideration of the relevant documents of revenue record which were consequential to the sale deed dated 10.08.2009. The relevant observations and findings in the order impugned read as under:-

"(28) In case Clause is interpreted in a mechanical manner, as submitted by Mr. Kasliwal, then, if the land stands in the Khata of any applicant and subsequently after the last date of application, the said Khatedari is set aside by the revenue court, then the said fact is having relevant bearing and no marks could be awarded but still the HPCL will award the marks of land and allot petrol pump as per Clause which could not be the intention of the advertisement as well as guidelines for allotment of petrol pump.

(29) As regards case of Amit Kumar Sharma, petitioner in CWP No. 12640/2010, the simple situation of BPCL closed petrol pump, which is still closed, will not result in reduction of marks by invoking the PWD norms as the closed petrol pump cannot be equated with the running petrol pump, in respect of which the documents submitted by the petitioner in the writ petition are of clarificatory nature which are required to be considered by adopting just and fair attitude towards the petitioner and situation of the closed BPC petrol pump will have no effect of reduction of the marks of petitioner Amit Kumar.

(30) In case of the petitioner Vijendra Singh (petitioner in CWP No. 8210/2010) who has submitted document of land i.e. the sale deed dated 10.8.2009 along with the application form wherein no separate Khasra Number is mentioned and the same has been subsequently specified by giving separate Khasra Number and mutation in revenue record after affecting the partition which were submitted at the time of interview as the same will relate back to the original sale deed submitted along with the application form being consequential in nature. In case of delay on the part of the revenue authorities to make the consequential entries, then the applicant cannot be allowed to suffer, therefore, Clause of the advertisement dated 13.7.2009 is to be construed harmoniously to advance the cause of justice. Since the delayed entries made in the revenue

record are consequential to the sale deed dated 10.8.2009 submitted along with the application form which were submitted at the time of interview, the same will relate back to the sale deed dated 10.8.2009, therefore, Vijendra Singh is entitled for consideration of the said document for the purpose of awarding marks at the time of interview.

(31) Both the petitioners Amit Kumar Sharma and Vijendra Singh have been made to suffer in the first interview without there being any fault on their part. In case of Vijendra Singh, the partition and mutation actually took place before 4.3.2010 and the documents were submitted at the time of interview. Even after the issuance of the provisional mark-sheet, the petitioner had submitted a representation dated 17.3.2010 which has not been decided as per the aforesaid interpretation of Clause and simply rejected by taking the position as existing on the last date of the application in a mechanical manner. Both the petitioners are entitled for consideration of the said documents which are either clarificatory or consequential to the original document, at the time of re-interview.

(32) For the discussion made hereinabove, and interpretation of Clause , I am of the view that the documents which are of clarificatory nature and further consequential relate back to the original document submitted along with the application form and are required to be considered at the time of awarding the marks."

17. The learned Single Judge summed up his conclusions in the manner that holding of re-interview was legal and proper and the documents submitted by Shri Vijendra Singh as also by Shri Amit Kumar Sharma were required to be considered at the time of holding of re-interview. Accordingly, the learned Single Judge disposed of the three writ petitions in the following manner:-

"(33) In the result, I pass the following final order:

CWP No. 8210/2010

Vijendra Singh vs. Hindustan Petroleum Corporation Ltd.

(34) At the time of re-interview, the consequential documents submitted by Vijendra Singh at the time of original interview in relation to the sale deed dated 10.8.2010 which was submitted along with the application form are consequential in nature, therefore, the HPCL is directed to consider the same at the time of re-interview for awarding marks of land;

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(35) The documents of closure of the BPC petrol pump are of clarificatory nature, therefore, the same are directed to be considered by the HPCL at the time of re-interview while awarding marks for land;

CWP No. 12961/2010

Ishwar Dutt Chaturvedi and Ghanshyam Singh Shekhawat

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(36) Since I have already held that on account of revision of marks, of the empanelled candidates, re-interview is legal, just and proper, no relief can be granted to the petitioners for allotment of the present site as per the marks of original interview.

(37) In view of the above, all the three writ petitions are disposed of in the manner as indicated above and the respondent HPCL is directed to re-hold interview in the light of the directions issued hereinabove."

18. By the order so passed by the learned Single Judge, the appellants of these appeals are aggrieved on different scores although each one of them is satisfied with some part of the directions and observations.

19. To put in a nutshell, the appellant Shri Amit Kumar Sharma (SAW Nos. 2158/2011 & 2419/2011) is aggrieved of two aspects: one about the learned Single Judge having endorsed the process of re-interview; and second about the observations made in favour of Shri Vijendra Singh. The other appellants Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat (SAW No. 2443/2011) are also aggrieved insofar the process of re-interview has been approved by the learned Single Judge because, according to them, with reduction of the marks of Shri Amit Kumar Sharma, they ought to be placed at serial number 1 in the merit and allotted the dealership in question. Another grievance of these appellants is against the part of the observations of the learned Single Judge whereby the documents filed by the other contestants have been ordered to be considered. The appellant Oil Company, HPCL (SAW Nos. 2617/2011 & 2623/2011) is standing for re-interview but is aggrieved of the observations and directions made in favour of the applicants Shri Amit Kumar Sharma and Shri Vijendra Singh, particularly where the documents filed by them at the later stage have been ordered to be considered.

20. Assailing the order impugned insofar the learned Single Judge has not granted the prayer for restoration of his position as empanelled candidate at serial number 1 and has ordered re-interview, the learned counsel for the appellant Shri Amit Kumar Sharma has strenuously argued that there had not been any error or shortcoming in the marks awarded to the appellant in the interview; and the report-cum-order dated 09.08.2010 as also the order dated 12.08.2010 were entirely baseless and ought to have been set aside altogether.

21. It has been contended on behalf of the appellant Shri Amit Kumar Sharma that the orders passed against him on 09.08.2010 and 12.08.2010 fundamentally suffer from violation of the principles of natural justice and cannot be sustained where the marks awarded to him have been purportedly reduced without any notice and without affording him any opportunity to explain. It is submitted that before interviews, the Officer of the Company Shri Om Prakash

Mewara indeed inspected the site on 13.09.2009 and the marks have been awarded in the interview on the basis of this site inspection. Thus, according to this appellant, the fact about the location and its surroundings were known to the Company including the basic fact that the alleged outlet of BPCL was non-functional for the allotment having been finally cancelled and the cancellation having been upheld. It is submitted that the requirement of distance could only be applied in respect of an existing and functional outlet and not in relation to the outlet which is defunct.

22. The learned counsel for the appellant Shri Amit Kumar Sharma has also put a scathing attack on the claim made by the respondent Shri Vijendra Singh with the submissions that the land as offered by Shri Vijendra Singh is not available to be used as a retail outlet. It is submitted that on the basis of the sale deed dated 10.08.2009, the said applicant Shri Vijendra Singh has no right to be awarded the marks because it had been an unpartitioned land and the partition took place only on 07.09.2009, much after the last date of submission of the application and then, the alleged mutation entries were made only on 18.12.2009. The learned counsel has further submitted that the reports sought to be referred by the rival candidate Shri Vijendra Singh are entirely baseless and of no effect; that there is a "Nala" between the land sought to be offered by Shri Vijendra Singh and the main road; and that even a PIL is pending in this Court against the attempt to close the "Nala" in question. It is submitted that the land sought to be offered by Shri Vijendra Singh being not fit to be used as a retail outlet as per PWD norms, no marks could be awarded to him; and the allotment deserves to be made in favour of the appellant Shri Amit Kumar Sharma with his merit standing at No. 1.

23. Assailing the order impugned insofar the learned Single Judge has approved the process of re-interview and has not granted their prayer for award of dealership as empanelled candidate at serial No. 2 the learned counsel for the appellants Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat has vehemently contended that as per the guidelines and as per practice, instead of re-interview, the dealership ought to have been awarded to these appellants after the marks of the candidate at serial No. 1 (i.e., Shri Amit Kumar Sharma) were reduced to 58.89 from 88.84. According to the learned counsel, the learned Single Judge has erred in allowing consideration of the documents filed by the other contestants at a much later stage and much after the cut-off date. The learned counsel has argued that the documents were well within the knowledge of the respective candidates; and in the face of the clear stipulation in the guidelines, no such document could have been taken on record later. According to the learned counsel, clause (?) is required to be read as it is and without supplementing anything thereto; and on a plain reading thereof, it is evident that no document could have been ordered to be considered which had not been filed before the cut-off date. The learned counsel has further submitted that even the suggestion about closure of the pump of BPCL was indeed taken into consideration by the respondent Company while passing the impugned order

dated 12.08.2012 and it was noticed that even if the pump was defunct for the time being, the concerned Oil Company carried with it the lease for a period of 20 years and hence, the pump could be made functional at any point of time.

24. The learned counsel for HPCL has argued on the grievance of the appellant Oil Company against the part of the order impugned wherein and whereby, the learned Single Judge has taken into consideration the documents filed later on by the rival contestants Shri Amit Kumar Sharma and Shri Vijendra Singh both; and has directed their consideration in the course of re-interview. In this regard, the stand of the Company has been the same as that on part of Shri Ishwar Dutt Chaturvedi and Shri Ghanshyam Singh Shekhawat that the learned Single Judge has erred in taking on record the documents filed by the other contestants at a much later stage and much after the cut-off date. It is submitted that in the face of the clear stipulation in the guidelines, no such document could have been taken on record. The learned counsel has particularly assailed the observations based on an illustration by the learned Single Judge that there could be the circumstances where relevant facts might come into existence after the last date of application; and that the intention of the guidelines could not be to ignore the relevant aspects. The learned counsel has submitted that such observations remain entirely irrelevant for the present purpose because in the illustration as given i.e., an eventuality where khatedari is altogether set aside, the contract itself would frustrate and such an illustration cannot be made the basis of eroding the sanctity of a cut-off date in these processes. The learned counsel has referred to Sub-clause (b)(ii) of Clause 19 of the applicable guidelines to submit that when the selection process for a location is found to be not in accordance with the laid down guidelines, the merit panel is to be cancelled and all eligible candidates are to be re-interviewed based on the documents available on record, which had been the case here. The learned counsel has also referred to Clause 18 of the guidelines and submitted that as per the given procedure, the dealership is offered to the candidate standing at serial No. 1 in the interview but only after necessary field verification; and after No. 1 candidate is not found suitable, or fails to fulfill the terms and conditions of the dealership, or where award is to be cancelled for any reason attributable to the candidate, then dealership is to be offered to the candidate at serial No. 2 and so on, but the position had been entirely different in the present case. According to the learned counsel, the appellant Company has rightly ordered re-interview in view of the facts that have surfaced during the course of investigation on the complaints/representations made by the candidates as also by other persons; and it were not a case where the dealership could have been awarded to any of the empanelled candidates.

25. The learned counsel for the respondent Shri Vijendra Singh has endeavoured to defend the order impugned insofar the documents filed by this candidate have been ordered to be taken on record and the learned Single Judge has ruled in his favour with the submissions that the Patwari's report clearly shows that the land in question had been fragmented at the site and different shareholders were in

separate possession. The learned counsel has referred to the decision in Smt. Moumita Poddar Vs. Indian Oil Corporation Ltd and Another, to submit that even the notarised documents could be taken into consideration for the purpose of assessment towards the land offered. The learned counsel has also submitted that even if it be assumed for the sake of arguments that on the date of making of offer, it was a jointly owned land in the technical sense, the respondent Vijendra Singh was nevertheless entitled to be given at least 25 marks for the land offered and could not have been given nil marks on this parameter. The learned counsel has also submitted that the suggestions about existence of "Nala" are entirely irrelevant because there were no obstruction in its flow and availability of the land to be used as a retail outlet cannot be denied. The learned counsel for the respondent has also joined the issue on the claim made on behalf of Shri Amit Kumar Sharma with the submissions that the land of existing nearby site of BPCL is company owned land and their outlet could be resumed at any point of time and, therefore, the land offered by him cannot be used for establishment of the outlet of HPCL.

26. During the course of submissions, the decision of Hon'ble Supreme Court in Rajasthan Co-operative Dairy Federation Ltd. Vs. Shri Mahal Laxmi Mingrate Marketing Service Pvt. Ltd. and Others, has been referred in support of the arguments that no right was created in favour of any person merely for having been placed in the merit at No. 1 in the interviews and no binding relationship came into existence at the given stage. The decision in Indu Bhushan Dwivedi Vs. State of Jharkhand and Another, has also been referred for the submission that every violation of rules of natural justice may not be sufficient for invalidating the action taken by the competent authority particularly when no cause of prejudice is made out.

27. Having given anxious consideration to the submissions made on behalf of the respective parties and having scanned through the record, we are of the considered view that while the learned Single Judge has rightly held that the clarificatory documents by the respective candidates ought to be taken into consideration but then, upholding of the process for re-interview in this matter cannot be approved.

28. Before taking up any other aspect of the matter, we may observe in the first place that we are unable to endorse the part of approach of the learned Single Judge where the question of violation of principles of natural justice qua the cause of the appellant Shri Amit Kumar Sharma has been taken to be that of rather academic interest. It is but apparent that while seeking to take up the proceedings pursuant to the orders of the Court and on the basis of the complaints; and then, while drawing adverse order against the appellant Shri Amit Kumar Sharma, the Company HPCL never extended him any opportunity to explain. In the given set of circumstances, such violation of the basics of principles of natural justice cannot be countenanced.

29. True it is that award of dealership is essentially a matter of the Oil Company

entering into the contract but then, even in the field of contract, the obligation of the respondent Oil Company HPCL to adhere to the basic principles of reasonableness and rationality is not done away with. True further it is that by merely standing in the merit in the interviews, a candidate is not invested with any indefeasible right but then, in the present case, what HPCL carried out was not of an administrative exercise simpliciter but a specific investigation on the complaints directed against the claims made by the candidates standing in merit after interviews. A look at the orders dated 09.08.2010 makes it clear that the Company chose to record a specific finding against Shri Amit Kumar Sharma that the site offered by him was disqualified for not meeting the PWD norms on the basis of the alleged revelation in the investigation that the so-called outlet of BPC was at a distance of 66 metres whereas in the initial markings, the Site Inspection Committee had awarded the same candidate 97% marks on the parameter of his "capacity to provide infrastructure and facility". It is also not clear as to how the total marks of 88.84 of this candidate were suddenly reduced to 54.89. We are clearly of the view that after interviews and issuance of statement of marks, even if provisional, for such a conclusion and decision, which was adverse to the said candidate, it was definitely required that the concerned candidate was at least afforded an opportunity to explain. In the given fact situation, we are unable to accept the contention that in this matter, no opportunity was required to be given to Shri Amit Kumar Sharma. The same analogy applies to the case of Shri Vijendra Singh too, in whose relation, there had been the complaints made by Shri Amit Kumar Sharma as also by Shri Ram Dev Saini & 35 others. In the given set of facts and circumstances, it was again required of the HPCL that Shri Vijendra Singh was at least afforded an opportunity to explain. Interestingly, this candidate Shri Vijendra Singh made a representation on 17.03.2010 with respect to the awarding of marks to him towards the land offered. This representation was also dealt with allegedly as a complaint but, here again, it does not appear as to how, if at all, the submissions sought to be made by this candidate were examined and dealt with?

30. For what has been observed hereinabove, we are clearly of the view that the orders dated 09.08.2010 and 12.08.2010 cannot be sustained and are required to be set aside.

31. The question, then, is about the future course and steps to be taken.

32. In the said orders dated 9.8.2010, HPCL proceeded to reduce the marks of first empanelled candidate Shri Amit Kumar Sharma and then, took the decision to conduct the re-interview. Even from the referred clauses of guide-lines, we are unable to countenance such an approach. As per Clause 18(c) of the guidelines, the dealership is to be offered to No. 1 candidate in the merit panel on the basis of interview after necessary field verification; and upon No. 1 candidate being not suitable or not fulfilling the terms and conditions of award of dealership or in case of award being cancelled for any reason attributable to the candidate, the dealership is to be offered to the second candidate in the merit panel after

necessary field verification and so on.

33. Though we have not approved the orders dated 09.08.2010 for having been passed without affording an opportunity to the concerned candidate to explain but then and further, for the present purpose, it appears appropriate to observe that there has not been a specific finding in the said orders that the selection process for the location in question was not in accordance with the laid down guidelines resulting in wrong selection.

34. In an overall comprehension of the matter, it appears that faced with the claims, counter-claims, complaints and representations, the Oil Company, HPCL, proceeded to adopt the shorter and softer option of putting the candidates to re-interview. In our view, the process of re-interview cannot be so lightly resorted to; and cannot be ordered as a matter of routine. We would hasten to make it clear that in a given case, of course, there could be the requirement of re-interview but specific reasons and basis therefore ought to exist and ought to be spelt out, which are not forthcoming in the orders impugned.

35. So far the aspects relating to the consideration of documents after the alleged cut-off date and the operation of clause of the advertisement are concerned, we are at one with the learned Single Judge that the clarificatory documents by the respective candidates ought to be taken into consideration for the purpose of arriving at just and proper conclusion in the matter.

36. The illustration given by the learned Single Judge has not been altogether inapt. The point has been that the clarificatory documents related with the material aspects of the existing facts cannot be ignored. We are clearly of the view that a document, which only clarifies and explains the substantive documents already on record, cannot be ignored from consideration during the pendency of the process by the concerned authority in the name of so-called cut off date. In our view, on its true intent and purport, what the referred clause of the advertisement prohibits, is the submission of an additional document ; and not the clarificatory document co-related with the document/s already on record. This clause cannot be read in a perfunctory manner that the Oil Company might disable itself from consideration of such document/s which are only clarificatory in nature in relation to the facts which are already on record; and thereby avoid consideration of true, complete and correct facts, even if relevant. As observed, even in the process of awarding a contract, the Oil Company HPCL, as an agency and instrumentality of the Government, is bound by the basic principles of fair play and reasonableness and for that matter, cannot shun off the material and relevant facts presented to it by way of clarificatory documents.

37. We may observe that the process of interviews had been for the purpose of awarding marks to the candidates on different parameters including the parameter of their "capacity to provide infrastructure and facility". For an enquiry directed towards this parameter, in case of any doubt or dispute, HPCL as an agency of the Government would only be acting fair and just by removing such

doubt, and resolving the dispute with reference to the true, correct and existing facts. The suggestion on the part of HPCL as if it would avoid consideration of existing facts in the name of cut-off date cannot be countenanced.

38. We agree with the learned Single Judge that clause of the advertisement or any provision in the guidelines were never intended to avoid consideration of the material and relevant facts. Of course, a matter might be different where the basic and relevant document has not been filed with the application and such a document is sought to be added to the record later. However, such has not been the case here so far the candidates Shri Amit Kumar Sharma and Shri Vijendra Singh are concerned. They only prayed for consideration of the clarificatory facts and documents. Such a prayer has rightly been allowed by the learned Single Judge in the interest of justice and fair play.

39. For what has been observed hereinabove, we are of the view that while setting aside the impugned orders dated 09.08.2010 and 12.08.2010, the matter deserves to be restored for re-consideration of the complaints made against the aforesaid candidates Shri Amit Kumar Sharma and Shri Vijendra Singh as also for re-consideration of the representation made by Shri Vijendra Singh. The consideration afresh shall, obviously, be made by HPCL with reference to the clarificatory documents submitted by these candidates and while affording an opportunity of personal hearing, to the candidates as also the other relevant persons desirous of being heard. Thereafter, the Company shall be required to pass an appropriate speaking order in accordance with law.

40. We would hasten to observe that the observations foregoing are not of debarring the Oil Company HPCL from taking recourse to any steps as envisaged by the guidelines consequent to such decision, when taken after affording opportunity of hearing to the concerned candidate/s and other relevant person/s desirous of being heard. Accordingly and in view of the above; and subject to observations foregoing, these appeals stand disposed of as under:-

(1) SAW No. 2158/2011: Amit Kumar Sharma vs. HPCL is partly allowed; and the findings of the learned Single Judge permitting re-interview are set aside. The writ petition filed by the Appellant Amit Kumar Sharma is partly allowed to the extent and in the manner that the impugned orders dated 09.08.2010 and 12.08.2010 are set aside; and the respondent HPCL is directed to reconsider the complaint/representation against the appellant Amit Kumar in accordance with law keeping in view the observations in this judgment.

(2) SAW No. 2419/2011: Amit Kumar Sharma vs. HPCL seeking to question the observations and directions made by the learned Single Judge for consideration of the documents submitted by Shri Vijendra Singh is dismissed but subject to the clarification that the writ petition filed by Shri Vijendra Singh is allowed to the extent and in the manner that the impugned orders dated 09.08.2010 are set aside; and the respondent HPCL is directed to reconsider the complaint against and the representation by the respondent Vijendra Singh in accordance

with law keeping in view the observations in this judgment.

(3) SAW No. 2443/2011: Ishwar Dutt Chaturvedi & Anr. vs. HPCL, seeking to question the entire of the order passed by the learned Single Judge and seeking the principal relief of award of dealership to these appellants by placing them in the merit at number 1, is dismissed.

(4) SAW No. 2617/2011: HPCL vs. Amit Kumar Sharma and No. 2623/2011: HPCL vs. Vijendra Singh, essentially questioning the directions for consideration of the documents submitted by Shri Amit Kumar Sharma and Shri Vijendra Singh, are dismissed but the writ petitions filed by these candidates shall stand allowed only to the extent indicated above.

(5) The process of re-consideration, as required by this judgment shall be expeditiously completed by HPCL, preferably within 60 days from the date of this judgment.

(6) The parties shall bear their own costs throughout.