

**(1996) 03 SHI CK 0007**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.W.P. No"s. 59 of 1994**

Ashutosh Kapil

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

**Date of Decision :** 29-03-1996

**Acts Referred:**

Constitution of India, 1950 — Article 14

Prevention of Food Adulteration Act, 1954 — Section 16(1), 7(1)

**Citation :** (1996) 2 ShimLC 309

**Hon'ble Judges :** S.N. Phukan, C.J.;A.L. Vaidya, J

**Bench :** Division Bench

**Advocate :** Om Parkash, in C.W.P. No. 59 of 1994, Trilok Chauhan, in C.W.P. No. 139 of 1994 and V.D. Khidtta, in C.W.P. No. 189 of 1994, for the Appellant; K.D. Sood, for Respondent Nos. 1, 2 in C.W.P. Nos. 59, 139, 189 of 1994 and Ramakant Sharma, in C.W.P. Nos. 59, 139, 189 of 1994, for the Respondent

## Judgement

S.N. Phukan, C.J.—By this common judgment and order, we dispose of three writ petitions registered as Civil Writ Petition Nos. 59, 139 and 189 of 1994 as the facts are similar and points involved are same.

2. Respondent No. 1, namely, Bharat Petroleum Corporation Ltd., issued an advertisement in the newspaper dated 27-3-1993 inviting applications for dealership for retail outlet at Ghagas, District Bilaspur of the State of Himachal Pradesh. The said advertisement has been annexed as Annexure P-I with the writ petition registered as C.W.P. No. 59 of 1994 and is quoted below:

Bharat Petroleum Corporation Limited

Notice

Dealership for Retail Outlet

1. Bharat Petroleum Corporation Ltd. proposes to appoint a Dealer for a Dealer-owned retail outlet at:

Location Town / Area Rev. Disit. State Ghagas Ghagas Bilaspur H.P.

2. Eligibility: Applicant should be-

(a) Indian by Nationality.

(b) Not less than 21 years of age and not more than 50 years of age on the date of application.

(c) Minimum Matriculate or recognised equivalent.

(d) Resident of Bilaspur Distt. for a period of not less than 5 years immediately preceding the date of application.

(e) Having family (as defined in the application form) income of not more than Rs. 50,000 annually (last financial year).

(f) Not having any dealership/distributorship of any Oil Company.

(g) Having no close relatives (as defined in the application form) as a dealer/distributor of any Oil Company.

However, details of the eligibility criteria and conditions as mentioned in the application form will be applicable.

3. (a) Corporations owned or controlled by State Government and Consumer Co-operative Societies are also eligible. However, restrictions relating to Annual Income. Residence and Multiple Dealership would not be applicable to Corporations owned or controlled by the State Government.

(b) Other things being equal-

(i) Preference may be given to Consumer Co-operative Societies compared to unemployed graduates.

(ii) Amongst the unemployed graduates, unemployed engineering graduates would be given preference.

4. In case of partnership, each partner should submit separate application form.

5. Application should be made on prescribed form available on payment of non-refundable fee of Rs. 50 (Rs. fifty only) (Rs. 25 (Rs. twenty five only) in case of SC/ST candidate) by a crossed account payee Demand Draft on any Scheduled Bank or Postal Order in favour of Bharat Petroleum Corporation Ltd. payable at Chandigarh from Divisional Office indicated below, either personally or by making a written request, through Registered Post.

Chief Divisional Manager Chandigarh Divisional Office, Bharat Petroleum Corporation Limited, Tel-Bhawan, Plot No. 6-A, Madhya Marg, Sector 19-B, Chandigarh Pin 160019.

6. Public Sector Nationalised Banks and Indian Scheduled Commercial Banks in Private Sector will consider advancing loans at reasonable terms to suitable

candidate who are selected under "Social Objective" Categories for award of dealerships/ distributorships by the oil companies.

7. Application Forms and enclosures complete in all respects must be submitted in duplicate so as to reach the office address mentioned under Item 5 above on or before the close of office on 27-4-1993. The Company reserves the right to cancel/withdraw/Postage this Advertisement at its sole discretion without assigning any reason.

8. Regarding payment of non-refundable fee at the time of procuring application form the details have been given in Item No. 5 above. In addition to the same, at the time of forwarding the duly completed application form, an amount of Rs. 50 (Rs. Fifty only) (Rs. 25 (Rs. twenty five only) in the case of "SC/ST" candidates) will have to be forwarded by a crossed Account Payee Demand Draft on any Schedule Bank or Postal Order in favour of Bharat Petroleum Corporation Ltd. payable at Chandigarh Divisional Office indicated above.

3. All the three writ Petitioners in the present writ petitions have applied for the dealerships alongwith others including Respondent No. 3 Sh. Jagdish Kumar Sharma. Oil Selection Board-Respondent No. 2 considered all the applications and granted dealership for the above retail outlet to Respondent No. 3 and the applications of all the writ Petitioners were rejected. Hence the present petitions.

4. The writ Petitioner in the writ petition registered as C.W.P. No. 59 of 1994 is an unemployed engineer. The writ Petitioner in C.W.P. No. 139 of 1994 is a Co-operative Society, namely, Bilaspur District Cooperative Marketing and Consumer Federation Ltd. and the writ Petitioner in C.W.P. No. 189 of 1994 is a lady and she is an unemployed graduate.

5. The grievance of the writ Petitioners is that allotment of dealership to Respondent No. 3 is contrary to the advertisement, inasmuch as, he has got hotel business, trucks and he was also convict u/s 16(1)(a)(i) read with Section 7(1) of the Prevention of Food Adulteration Act, 1954. It has been urged that the income of Respondent No. 3 is more than Rs. 50,000. On the other hand, the writ Petitioner in C.W.P. No. 59 of 1994 has claimed that being an unemployed engineer and his income being less than Rs. 50,000, he should have been given preference. The writ Petitioner-society in C.W.P. No. 139 of 1994 has also claimed preference in allotment being a Co-operative Society. The writ Petitioner in C.W.P. No. 189 of 1994 has claimed that she being a lady and educated unemployed also has preference over others. All the writ Petitioners have challenged the allotment of dealership to Respondent No. 3.

6. In the reply-affidavit filed on behalf of Respondent No. 1, namely, Bharat Petroleum Corporation Ltd, the main thrust is that the selection was made by the Oil Selection Board headed by a retired High Court Judge and, therefore, the selection is fair. It has also been stated that the writ Petitioner in the above writ petition (C.W.P. No. 59 of 1994) has not disclosed his source of income. It has also been stated that Respondent No. 3 in his application disclosed that he was a

partner of Chitrakut Hotel and Restaurant at Ghagas and his income is less than Rs. 50,000. It has also been urged that the writ Petitioners in the above writ petitions is below the merit list.

7. In the reply filed on behalf of Respondent No. 2, namely, Oil Selection Board, it has been stated that though Respondent No. 3 disclosed in his application that he is running Hotel and Restaurant, he shown his income less than Rs. 50,000. A clear statement has been made that if any fact is brought to the notice of Board dis-entitling Respondent No. 3 from grant of dealership the matter can be reconsidered by Respondent No. 2.

8. In the reply filed on behalf of Respondent No. 3, it is admitted that Respondent No. 3 is a partner of Hotel and Restaurant at Ghagas and the vehicles mentioned in the writ petition belong to the said partnership firm. Regarding the allegation made in the writ petition of a criminal case wherein Respondent No. 3 was convicted, it has been stated that the judgment of the trial Court has been stayed by the appellate Court and a copy of the order of the appellate Court has been annexed as Annexure R-3/A.

9. We have heard the learned Counsel for all the Petitioners, learned Counsel for Respondents No. 1 and 2 and also Respondent No. 3. Records have also been produced before us.

10. Mr. K.D. Sood has urged that the selection was made by the Selection Board headed by a retired High Court Judge and this Court cannot sit in appeal. In support, learned Counsel has placed before us a decision of the apex Court in Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, In that case, the apex Court held that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the case and whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee. However, it was held by the apex Court that the decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved mala fides affecting the selection.

11. The next case on which Mr. K.D. Sood has placed reliance is a decision of Calcutta High Court in Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc., . This was also a case regarding selection of dealership by the Oil Selection Board. The Calcutta High Court, inter alia, held that selection made by the Board by weighing various things cannot be reappreciated by the High Court in writ jurisdiction. We are in respectful agreement with the Calcutta High Court but we may add here that if any selection is made by suppressing any facts or by not disclosing the full facts by a particular person, definitely this Court can interfere in such selection.

12. Learned Counsel for the Petitioners have placed reliance on a decision of the apex Court in New Horizons Limited and Another Vs. Union of India (UOI) and

Others, The apex Court held that the State, in exercise of its functions including awarding of contract, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably. In our considered opinion, this ratio is not applicable to the case in hand as we have to examine the limited point as to whether Respondent No. 3 had disclosed all the facts before the Selection Board before obtaining dealership.

13. From the records, we find that according to item No. 21, the applicant has to disclose by filing an affidavit as per Appendix "A" as to whether he was convicted or any proceedings are pending against him in a Court of law for any criminal offence involving moral turpitude and/or economic offence (other than freedom struggle) or are there any charges framed by the Court against him. We have perused the affidavit of Respondent No. 3 annexed with the application form and he denied that any charge has been framed against him or that he was ever convicted or tried for any criminal offence involving moral turpitude and/or economic offence other than freedom struggle. It is true that the judgment of the trial Court convicting Respondent No. 3 has been stayed by the lower appellate Court but Respondent No. 3 ought to have disclosed this important fact before the Selection Board and we hold that non-disclosing is fatal as the Selection Board had no opportunity to consider this aspect of the matter.

14. The application form further discloses under item No. 10(c) in respect of question "if self-employed, please give full details", and against that item, Respondent No. 3 mentioned "Hotel business". Against item No. 11 in respect of full details of business, he gave the following information:

Yes, I am partner of Hotel Chiterkoot at Ghagas, which is fully managed by me.

Against item No. 12 regarding experience, Respondent No. 3 gave the following information:

Yes, I have employed eight person in our Hotel. I am personally manage the Hotel business.

After giving the above information, atleast a preliminary enquiry should have been conducted regarding the income of Respondent No. 3, but nothing was done by the Respondents. That apart, in the application form Respondent No. 3 did not disclose that the alleged partnership-firm owns vehicles. Therefore, the Selection Board was mis-led regarding the total income of Respondent No. 3.

15. Regarding the conviction of Respondent No. 3, in the criminal case under the Prevention of Food Adulteration Act, he was required to give the information as per item No. 21 of the application form. In the affidavit, he gave a wrong information which also mis-led the Selection Board.

16. For the above reasons, in the affidavit filed on behalf of Respondent No. 2, it has been specifically stated that the Selection Board will reconsider the matter if more particulars are placed before it which would disentitle Respondent No. 3

from obtaining dealership.

17. For what has been stated above, we are of the opinion that due to non disclosure of full information, the Selection Board wrongly selected Respondent No. 3 for dealership and, therefore, the grant of dealership to Respondent No. 3 is liable to be quashed, which we hereby do.

18. Though all the writ Petitioners have claimed that they are entitled to get the dealership, it will not be proper on our part to select a dealer as it is the function of the Selection Board. Therefore, we direct Respondent No. 1 to place all the applications and full particulars before the Selection Board. Prior to placing the record before the Selection Board, Respondent No. 1, that is, Bharat Petroleum Corporation Ltd., shall make a preliminary enquiry, if necessary, and also ask for further details from all the applicants. As public interest is involved, we direct that the entire process shall be completed within three months.

With the above directions and observations, all the three petitions are disposed of.

Costs on the parties.