

(2013) 07 MP CK 0082
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 422 of 2010

Bharat Petroleum Corporation Ltd. and Others	APPELLANT
Vs	
Laxman Chouhan and Another	RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0082

Hon'ble Judges : Shantanu Kemkar, J;M.C. Garg, J

Bench : Division Bench

Advocate : B.L. Pavecha, Mr. Dilip Kshirsagar, for the BPCL and Ms. Vandana Kasrekar, for Udaysingh, for the Appellant; Vijay Assudani, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.C. Garg, J.—This common order shall dispose of the aforementioned two writ appeals one filed by Udaisingh who has been allotted the petrol pump in this case and the other one filed by M/s. Bharat Petroleum Corporation Limited who has allotted the petrol pump outlet to Udaisingh. Both these writ appeals arises out of a judgment delivered by the learned Single Judge in W.P. No. 3913/2009, whereby the decision taken by the Selection Committee pursuant to the order dated 15.09.2008 passed by the learned Single Judge in W.P. No. 3171/2005 has been quashed and further directions have been given to the Bharat Petroleum Corporation Limited (hereinafter referred to as Corporation). After an advertisement was published in the Dainik Bhaskar inviting applications for allotment of a petrol pump outlet on 07.01.2005 at Badwani, interviews were held at Mangliya Terminal, Indore on 23.08.2005. A panel of three persons was prepared out of which Shri Udaisingh was placed at no. 1 and the outlet was allotted to Shri Udaisingh, the petitioner in W.A. No. 399/2010 and placing the respondent-Laxman Chouhan at no. 2. It may be added here that both Laxman Chouhan and Udaisingh belongs to SC/ST Community and on that aspect there is no dispute.

2. Aggrieved of the aforesaid allotment, respondent Laxman filed a writ petition which was listed as W.P. No. 3171/2005 whereby he challenged the selection of Udaisingh and claimed himself to be placed at serial no. 1. The writ petition was allowed by the learned Single Judge of this Court vide order dated 15.09.2008 thereby directing the Corporation, the appellants in W.A. No. 422/2010 to reconsider the entire matter vis-a-vis the applications submitted by respondents no. 1, 2 and Rajan Mandloi the third person who was one of the incumbent and was shortlisted. The relevant observations which also contains directions in the said writ petition by the learned Single Judge are reproduced hereunder:-

I have duly considered the contentions raised by the learned counsel for the parties and have also gone through the record.

At the outset, it may be noted that a Division Bench of this Court in Writ Appeal No. 2/2007 decided on February 20, 2008, (Smt. Shobha Jaiswal Vs. Hindustan Petroleum Corporation Limited) has struck off certain conditions which were originally incorporated in the brochure for the selection process. On that basis, it is apparent that the marks awarded by the Selection Committee, to the three applicants, who had been shortlisted, and qua whom result had been declared by the Committee, was required to be reappraised. Question would also arise as to whether a project report having not seen by the respondent No. 3, he was entitled to be awarded any marks under heads No. 4, 5, 8 and 9. Question of the petitioner being ineligible or otherwise, having submitted an experience certificate, which was not found to be correct qua the factual position, would also be a matter to be examined by the Committee. The petitioner can always show to the Committee the authenticity of the aforesaid certificate.

In these circumstances, it would be appropriate to require the Selection Committee of the respondent-corporation to look into the aforesaid questions all over gone, more so, since the very criteria to be now adopted by the corporation has apparently gone a sea change in view of the judgment of the Division Bench of this Court in Smt. Shobha Jaiswal's case (supra), rendered during the pendency of the present petition. Reconsideration of the matter by the Selection Committee would also not cause any prejudice to respondent No. 3 since, as noticed above, he has not been allotted the retail outlet so far, which is being run by an ad hoc arrangement by the respondent-corporation itself.

However, it would not be appropriate to any other further comments on the controversy in question, since the matter is to be re-examined by the Committee.

Consequently, the present petition is disposed of with a direction to the respondent-corporation to reconsider the entire matter with regard to the allotment of retail outlet in question at Barwani vis-a-vis the applications submitted by the three applicants, who had been shortlisted in the result Annexure P/6.

It is further made clear that no fresh papers would be permitted to be submitted by any of the applicants, and it would be open to the respondent-corporation to

select any one of the aforesaid applicants, if found eligible, or reject all the aforesaid applications and call for fresh applications, in accordance with law.

3. In short the learned Single Judge of this Court in the process of selection noted various deficiencies and observed as under:-

- a. Reappraisal necessary in view of judgment in Shobha Jaiswal's case.
- b. Whether respondent no. 2 Udaising who had not submitted any project report could be awarded any marks under heads 4, 5, 8 and 9.
- c. Genuineness of the experience certificate submitted by respondent no. 1 Laxman Chouhan.
- d. No fresh paper to be submitted. Corporation is free to select any one of the applicant.

4. Pursuant to the aforesaid directions the Selection Committee comprising of Shri V.S. Sehgal, Shri M.M. Khan and Shri V.R. Nage who were the members of the earlier selection committee also, considered the matter afresh and gave fresh recommendation on 2.04.2009. Thereafter, license was obtained by Shri Udaisingh. The results of the selection of Shri Udaisingh was informed to the respondent on June 1, 2009. The said order reads as under:-

Bharat Petroleum Corporation Limited (A Govt. of India Enterprise) Indore Retail Territory

By Regd. A.D./Hand

Ref No. IND. NRO. Badwani

Date 01.06.09

To Mr. Laxman Chauhan Badwani

Dear Sir,

Sub: Re-examination of Selection of Retail Outlet Dealership at Badwani City District Badwani, M.P. in compliance of High Court Direction vide order dated 15-09-2008.

We have appointed a team of 3 Officers who have gone into all relevant details pertaining to selection of Dealership.

Upon re-assessment and re-examination of relevant paper the Committee observed that marks obtained by various candidates are reflected correctly in line with the prevailing guidelines. Thus Mr. Udaysingh Mandloi has rightly been declared as selected and accordingly LOI has been issued in his favour.

We enclose copy of our examination record of the Committee so appointed.

Thanking you,

Yours faithfully For Bharat Petroleum Corpn. Ltd. Milind M. Apte Dy. Manager,
Sales (Retail)-Indore

5. This re-assessment/re-evaluation was assailed by Shri Laxman Chouhan who filed a second writ petition being W.P. No. 3913/2009 challenging the result of re-evaluation and seeking quashment of the order and agreement made in favour of Udaisingh on 22.06.2009 inter-alia on the following grounds:-

(i) That the appellant/BPCL intentionally failed to consider law laid by the Division Bench of this Hon"ble Court in case of Smt. Shobha Jaiswal.

(ii) That despite non submission of project report by Udaisingh, in disregard to judgment and order dated 15/09/2008 awarded marks to Udaisingh wholly dependent on submission of project report under full knowledge and admission that project report has not been submitted by him.

(iii) That no opportunity of hearing was afforded to the Respondent/Laxman Singh to produce evidence by way of affidavit of dealer of Hindustan Petroleum Badwani qua his experience.

(iv) That the reassessment was mandated for re-evaluation of marks of Udaisingh on the basis of non-submission of project report. In such case 8.67 marks wrongly awarded under 4,6,9 heads were required to be deducted resulting in 21 marks secured by Udaisingh as against 31.17 secured by Laxmansingh.

6. The learned Single Judge while disposing of the W.P. No. 3913/2009 made the following observations:-

18. It is pertinent to note that the same three persons who were the members of earlier Selection Committee were the members of the subsequent committee, which has re-examined the earlier selection in the matter, meaning thereby the Committee which has re-examined the matter was again chaired by Shri V.S. Sehgal and Shri M.M. Khan and Shri V.R. Nage were the two members of the Selection Committee. It is noteworthy to mention that the Committee has simply re-examined the earlier selection and has looked into affidavits submitted by the candidates in respect of tide up volume. The Committee has also looked into the project report and inspite of fact that there was no project report submitted by respondent no. 4, he has been awarded more marks under the business acumen/abilities. The report submitted by the Committee upholding the earlier selection reads as under:

Re-examination of the allotment of Retail Outlet by Dealer Selection Committee for the location, Barwani City, Dist, Barwani M.P.

This has reference to letter GMR(W) DSB dated 30.03.09 on the above subject. GM (Retail), West, vide letter GMR (W) DSB dated 06/04/2009 approved the committee (Dealer Selection Committee) who had conducted the interview on 23.08.05, to re-examine the documents/allotment pertaining to the referred

dealership selection. The Committee comprised following members:-

1 Shri V.S. Sehgal : Chairman

2 Shri M.M. Khan : Member

3 Shri V.R. Nage : Member

The High Court of Madhya Pradesh, Indore Bench vide their order dated 15.09.08 in writ petition no. 3171/2005 directed the Corporation (RPCL) to reconsider the entire matter with regard to the allotment of the Retail Outlet in question at Barwani, vis-a-vis the applications submitted by the three appellants, who have been shortlisted in the result. Accordingly, as per directions received, the committee carried out re-examination of the relevant documents on 21.04.09 at Retail Territory Officer, Indore. Since the petitioner has primarily challenged the result prepared by the Dealer Selection Committee under heads 4,5,8 & 9 accordingly the committee today re-examined the relevant documents and the findings are as given below:

? Head no. 4 (as per mark sheet). Tied up Volume: The marks awarded by the committee to the first three empanelled candidates are as under:-

As per then prevailing guidelines, the evaluation criteria for award of marks under this head states that " The committee will assess the applicant's ability to tap the sales potential for both MS & HSD through leading questions and production of documents including affidavit from prospective customers in support of claim" On re-examination the committee found that the marks awarded are in line with the guidelines:

? Head 5 (as per Mark Sheet):- Project report: The marks awarded by the committee to the first three empanelled candidates are as under:

As per then prevailing guidelines the evaluation criteria for award of marks under this head states that "The committee Members will satisfy themselves through leading questions on the project report submitted by the candidates and assess him accordingly". On re-examination, the committee found that the marks awarded are in line with the guidelines. Sice Empanelled Candidate no. I had not submitted any project report, was not awarded any marks whereas other two candidates were awarded marks based on project report submitted and performance during the interview.

? Head no. 8 (as per Mark Sheet):-

Experience: The marks awarded by the Committee to the first three empanelled candidates are as under:-

As per then prevailing guidelines, the evaluation criteria for award of marks under this head states that " Based on furnishing of documentary evidence to establish the relevant service of minimum one year " On re-examination the committee found that as per the records available on the file/notings recorded by

the Committee Members during interview, there were few candidates who had submitted the documentary evidence towards experience but they failed to establish their experience during interview when the Committee members asked the leading questions. A few such experience are:

3. Shri Laxman Chouhan/Shri Mukam Singh Rawat/Shri Devendra Singh Tomar and Smt. Shiv Kunwar: as per records available in the file, the candidates, though furnished documentary evidence towards experience but did not answer the leading questions to establish the relevant service of minimum one year and hence were awarded 1 out of 4 marks each.

4. Shri Udai Singh Mandloi: As per the records available this candidate was working with MPSRTC as Traffic Superintendent since 1993. Based on his experience in transport trade and the leading questions asked, he was awarded 3 out of 4 marks as per guidelines.

5. Shri Rajan Mandloi: As per records available in the file, the candidate though furnished documentary evidence toward experience, but did not answer the leading question to establish the relevant service of minimum one year and hence was awarded 1 out of 4 marks each

? Head no. 9 (As per Mark Sheet) -Business Ability/Acumen:

As per then prevailing guidelines, the evaluation criteria for award of marks under this head states that "Based on project report/leading questions with regard to earlier handling of business and specific situations.

The scrutiny of the available documents in the file reveals that the candidate who answered leading/relevant questions asked by the committee, got better marks. As per the records, there were many candidates who had submitted project report, but could not answer leading/relevant questions appropriately. Some of them may not even knowing the contents of the project reports submitted by them e.g. how much sales volume, they have considered/mentioned in the report, one of the candidate claimed during the interview that he has experience of two years at a petrol pump whereas his certificate showed experience of only one year etc. Such candidates were awarded less marks which is in accordance with the guidelines.

7. The learned Single Judge also made a reference to the stand taken by the Corporation in answer to the writ petition by Shri Laxman Chouhan in paragraph 3.7 thereof:

It is pertinent to note that, this Hon''ble Court by the said order, ordered re-appraisal of the marks awarded by the Selection Committee to the three short-listed applicants. This Hon''ble Court has not ordered to re-interview the three short listed applicants. It is denied that the respondents failed to comply with mandate of order dated 15.09.2008. Since, this Hon''ble Court by the said order has clearly ordered that no fresh papers would be permitted to be submitted by any of the applicants, the question of affording opportunity to the petitioner to

produce evidence qua factual position of experience certificate by way of affidavit of dealer Hindustan Petroleum Corporation at Barwani did not arise. It is denied that there was any inaction on the part of respondents to comply with the order dated 15.09.2008 passed by this Hon''ble Court. Issuance of notices Annexure P/9 and P/10 by the petitioner to the respondents are admitted however, even after reconsideration of the matter, the falsity of the experience certificate of the petitioner remain unchanged because the same was detected on the basis of his inability to reply the simply questions regarding working and operation of Retail Outlet the question of issuance of experience certificate by the dealer of Hindustan Petroleum Corporation Ltd., Barwani was not relevant and therefore was not required to be examined.

It is also respectfully submitted that, in Shobha Jaiswal's case, this Hon''ble Court has not quashed or condemned the criterion for the selection of dealers as per Dealers'' Selection Guideline, but, in the facts and circumstance of that case, has merely held that for evaluation of "tide up volume" the affidavits obtained from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and therefore, a part from being a promise no credents can be given to such affidavit which do not bind the persons, who have sworned them. This apart, the affidavit produced by the candidates, would ensue the credit of the candidates as they show that there is assured sale, therefore, the selection has been made on the criteria, which cannot be sustained.

In Shobha Jaiswal's case, no comments were made on the other criterion of the Dealers Selection Guideline and this Hon''ble Court has merely condemned the evaluation of "tide up volume" on the basis of affidavits obtained from the residents of the area by the candidates regarding assurance to purchase certain quantity of fuel from the proposed retail outlet. Since, no such controversy is involved in the resent case, it is respectfully submitted that the ratio of judgment passed in Shobha Jaiswal's case does not apply to the present case.

20. The stand of the BPCL is that the judgment delivered in the case of Smt. Shobha Jaiswal (Supra) is not applicable in the facts and circumstances of the present case. It is really unfortunate that in spite there being a categoric direction issued by this Court in the earlier round of litigation to re-apprise the earlier process of selection in the light of judgment delivered in the case of Smt. Shobha Jaiswal (Supra), the Selection Committee has ignored the directions issued by this Court. The same three officers were the earlier members of the first Selection Committee have clearly observed that the judgment delivered in the case of Smt. Shobha Jaiswal (Supra) is not applicable in the present case. In case, if the judgment was not applicable the only remedy available to the respondent/BPCL was to prefer a writ appeal against the order passed by learned Single Judge or should have gone before the Hon''ble Supreme Court for getting the judgment passed in the earlier round of litigation set aside. The act of the officers of the Selection Committee is infact contemptuous in nature.

21. The Division Bench of this Court in the case of Smt. Shobha Jaiswal Vs.

Hindustan Petroleum Corporation Ltd. and one another has dealt with the guidelines framed for the selection of retail outlet dealers and paragraphs 6 to 17 of the aforesaid judgment reads as under:-

6. It is not disputed that the candidature of the appellant and respondent no. 2 was tested on the anvil of the above guidelines, but the grievance of the appellant is that appellant has been awarded only three marks as against the respondent no. 2, who has secured 14 under the caption "tide up volume" and has been awarded zero marks for "experience as against 12 marks awarded to respondent no. 2.

8. The core question that falls for consideration is as to whether the method of making assessment with regard to "tide up volume" to adjudge the capability to generate business, is just and proper or it has the tendency to lead anomalous results.

9. Learned counsel have not disputed that the eligibility/suitability of a candidate seeking Retail Outlet is just for the purpose of ensuring his capability to generate business called a "tide up volume". It is also not disputed for the purposes of adjudging the suitability, "tide up volume is considered on the basis of the affidavits of the persons in the vicinity of the proposed Retail Outlet and on that basis the Committee arrives at the conclusion about the capacity of the particular candidate to generate business. In addition to the suitability adjudged on the anvil of the other criteria. From the criteria, it is clear that capability to generate business and of sales potential is assessed on the applicants ability to tap the sales potential for both MS and HSD through interview and production of documents including affidavits from prospective customers in support of the claim.

10. According to the learned counsel for the respondent no. 1, while the petitioner produced an affidavit about the estimated sale of one kiloliter, respondent no. 2 produced a number of affidavits to the effect that there were buyers for 40 kiloliters of the fuel.

11. The case of the appellant and the respondent no. 2 was considered on the basis of the Site Inspection, the weightage awarded by Interview Committee, in liquid cash in the form of a bank Fixed Deposit fixed and movable asset, income, letter ensuring loan/credit worthiness, educational qualifications, capability to generate business i.e. tide up volume, project report, over all assessment age, experience, business acumen and personality. Though the other criteria for achieving the highest percentage of marks as per the bench mark fixed by the Corporation appears reasonable and proper and relevant for adjudging suitability of the affidavits produced from the inhabitants in the area in which the outlet is proposed, cannot furnish a rationale basis having nexus to the object to be achieved and, therefore, procedure of selection suffers from the irrelevant basis on which decision is taken.

12. We may add that the affidavits filed from the residents of the area do not

bind the residents to purchase quantity of the fuel from the proposed outlet and, therefore, apart from being a mere promise, no credence can be given to such affidavits which do not bind the persons when have sworn them. This apart, the affidavit produced by the candidates would ensure to the credit of all candidates as they show that there is assured sale. Therefore, the selection has been made on the criteria which cannot be sustained.

13. Accordingly, this appeal partly succeeds. Respondent/Corporation is directed to call the appellant and respondent no. 2 for interview afresh and subject them to the selection criteria laid down except that no weightage shall be given to the affidavits filed by the candidates but the documents filed in support of the claim for capability to generate business shall duly be taken into consideration.

14. We expect that the Committee shall take a decision within 45 days from the date of this order. There shall be no order as to costs.

The Division Bench of this Court has held that the affidavits filed by the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and therefore, no credence can be given to such affidavits which do not bind the persons who have sworn them. It was also held that no weightage should be given on the basis of affidavits submitted by a particular candidate, however, documents filed in support of the claim for capability to generate business should be looked into.

22. In the present case, in spite of there being a judgment on the issue in the case of Smt. Shobha Jaiswal (Supra) and in spite there being a clear direction issued by this Court in the earlier round of litigation, the respondent/BPCL has ignored the direction and the three officers who were earlier constituting the Selection Committee have acted as a Judge in their own cause by justifying the earlier selection done by them. In all fairness, the respondent/BPCL should have referred the matter to three independent officers for reviewing the reassessing the matter as directed by this court. The three officers who were the members of the earlier selection have certainly looked into affidavits filed in the mater and petitioner has not been granted any opportunity at any point of time pursuant to the judgment delivered by this Court to establish the authenticity of the experience certificate submitted by the petitioner. Thus, this Court is of the considered opinion that the subsequent exercise pursuant to the judgment delivered by this Court dated 15.09.2008 on behalf of the respondent/BPCL is nothing but an eye-wash and an attempt on the part of the Selection Committee to favour respondent no. 4.

8. It may be observed here that the afore mentioned observations made by the learned Single Judge in the impugned order with respect to the Corporation taking stand that Shobha Jaiswal's judgment was not applicable to the facts of the case or that the said judgment was not at all looked into is apparently wrong in view of the marking made by the Revised Assessment Committee in respect of Head No. 4, 5 and 8.

The judgment was also wrong in reading the return filed by the Corporation as mentioned in para 8 of the judgment in answer to para 3.7 inasmuch as in the aforesaid return the Corporation had submitted that in Shobha Jaiswal's case, this Hon'ble Court has not quashed or condemned the criterion for the selection of dealers as per Dealers' Selection Guideline, but, in the facts and circumstance of that case, has merely held that for evaluation of "tide up volume" the affidavits obtained from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and therefore, a part from being a promise no credence can be given to such affidavit which do not bind the persons, who have sworn them. This apart, the affidavit produced by the candidates, would ensue the credit of the candidates as they show that there is assured sale, therefore, the selection has been made on the criteria, which cannot be sustained. In Shobha Jaiswal's case, no comments were made on the other criterion of the Dealers Selection Guideline and this Hon'ble Court has merely condemned the evaluation of "tide up volume" on the basis of affidavits obtained from the residents of the area by the candidates regarding assurance to purchase certain quantity of fuel from the proposed retail outlet. Since, no such controversy is involved in the present case, the ratio of judgment passed in Shobha Jaiswal's case does not apply to the present case.

9. The learned Single Judge failed to appreciate what was being stated in the return was the crux of the judgment in Shobha Jaiswal's case which even as per the observations made while quashing the said judgment are also clear in para 9 to 12 of the judgment of Shobha Jaiswal as incorporated by the learned Single Judge in the impugned orders that as the affidavits were filed by both sides i.e. Shri Udaisingh as well as by Shri Laxman Chouhan awarded equal marks (three marks) each both to Shri Udaisingh as well as Shri Laxman Chouhan. This Selection Committee infact had taken note of the judgment delivered in the Shobha Jaiswal's case while revising the assessment.

10. The learned Single Judge then also made allegations of malafide against the Selection Committee and quashed the decision of the Selection Committee and also gave fresh directions. The relevant observation in this regard is available in para 23 to 26 of the judgment which are also reproduced hereunder:-

23. It is pertinent to note that the Selection Committee has given its finding on 21.04.2009 and the same was communicated to the petitioner by letter dated 01.06.2009. In the meanwhile, the respondent/BPCL without communicating the result of the subsequent Review Committee has issued the Letter of Intent and entered into an agreement with respondent no. 4 and, therefore, the conduct of the respondent/BPCL and its officers speaks volumes about the malafides involved in the process of selection.

24. Resultantly, this Court is left with no other choice except to quash the recommendations as contained in annexure P/11 dated 21.04.2009 and the matter is remanded back to the respondents/BPCL to place it afresh before the Selection Committee for reviewing it afresh in the light of earlier order passed by

this Court in W.P. No. 3171/2005 dated 15.09.2008.

25. Thus, this Court is of the opinion that respondent/BPCL has not complied with the direction issued by this Court in the earlier round of litigation and the same three persons who have conducted first selection process have again reviewed the selection process and therefore, a cost of Rs. 10,000/- is imposed upon respondents No. 1 to 3 in the matter.

26. It is needless to mention that the matter shall be re-examined by a committee comprising three different officers and not the officers who have earlier conducted the selection who have reviewed the selection. Resultantly, the writ petition is disposed of with the following directions:-

(a) The recommendations of the Selection Committee dated 21.04.2009 is hereby quashed and the impugned letter dated 01.06.2009 is also quashed.

(b) The Letter of Intent and the agreement entered into between respondent/BPCL and respondent no. 4 is also quashed.

(c) The respondent/BPCL is directed to review the matter afresh as directed by this Court in W.P. No. 3171/of 2005 vide order dated 15.09.2008 within a period of 60 days from today.

(d) The respondent/BPCL, in case there is any doubt about the experience certificate submitted by the petitioner shall afford an opportunity of hearing to the petitioner in the matter and the respondent/BPCL shall also be free to afford an opportunity of hearing to the other candidates in the matter.

(e) As this Court has quashed the allotment of Retail Outlet in question developed and established by the respondent/BPCL under the policy and allotted to a person belonging to Scheduled Tribe, therefore, till the fresh selection is done, the respondent/BPCL shall operate the Retail Outlet in the matter. The respondent no. 4 shall not be permitted to operate the Retail Outlet in question, till the matter is reviewed afresh, as directed by this Court. No order as to costs.

11. In short the decision in the second round quashing the selection of the appellant-Udaisingh is basically on the following grounds:-

(1) inapplicability of Shobha Jaiswal's case recorded by Selection Committee and reiterated in the return runs counter to the directions given in order dated 15.09.2008.

(2) Reconsideration by the same committee is illegal which renders it an eye wash.

(3) Failure to grant an opportunity to the petitioner to prove authenticity of his experience certificate annexure P/4 vitiates the selection.

(4) Belated communication on 1.06.2009 of finding dated 21.04.2009 to respondent no. 1 (petitioner) renders the decision malafide:-

Letter of intent was already issued on 3.10.2005.

Agreement has been entered into on 03.06.2009 intimation sent on 01.06.2009.

12. It is against the aforesaid order, these writ appeals subject matter of this order have been preferred and filed both on behalf of Shri Udaisingh on the one hand and M/s. Bharat Petroleum Corporation Limited on the other hand.

13. According to the appellants, the order passed by the learned Single Judge is not sustainable for the reasons:

(I) that the learned Single Judge misdirected and erred in holding that the same three persons who were the members of earlier Selection Committee re-examined the whole issue and that this should have been done by a Committee of three new and independent persons even though as per order dated 15.09.2008 passed in W.P. No. 3171/2005, there was no such direction that a Review Selection Committee was to be constituted of a new members.

(ii) The learned Single Judge further erred in holding that the subsequent exercise pursuant to the judgment dated 15.09.2008 is nothing but an eye-wash and an attempt on the part of the Selection Committee just to favour Udaisingh. In this regard, it has been submitted that no material to indicate any favouritism on the part of the Selection committee was ever placed by anyone before the learned Single Judge.

(iii) It is also submitted that the reference made by the learned Single Judge on the Division Bench Judgment in Shobha Jaiswal's case was not considered is misconceived inasmuch as a bare perusal of the report of the Selection Committee would show that the said judgment has not been ignored inasmuch the said judgment required not giving any preference on the basis of affidavits for the purpose of showing that there were prospective buyers available; marks which have been assigned by the Review Selection Committee are similar to both i.e. Shri Laxman Chouhan as well as Udaisingh who have been given 3 marks each under the head of tied up volume and therefore it cannot be said that the said judgment was ignored. In any event, even if marks are taken off it would not effect the final outcome of the Selection.

(iv) In this regard it is also the case of the appellants that the learned Single Judge has also misled of the fact that, despite no project report was submitted by respondent no. 2, he was awarded more marks under the head business acumen/abilities. The learned Single Judge should have seen that the criterion business ability/acumen of a candidate had to be judged on the basis of project report and/or the answers given by him to the leading questions put in interview which is clear from the following provisions of the brochure:-

(v) The learned Single Judge should have held that allotment of marks under the head of business ability/acumen on the basis of performance in interview to the respondent no. 2 even in absence of project report was permissible and no error much less any malafides or favouritism could be attributed to the Selection

Committee on that count.

(vi) That the Learned Single Judge has erred in criticizing the appellants and the Selection Committee for not affording opportunity to respondent no. 1 for establishing the authenticity of experience certificate submitted by him. The learned Judge should have seen that no such opportunity could be given to the respondent no. 1 in view of the final directions given by this Hon'ble Court in its order dated 15.09.2008 passed in W.P. No. 3171/2005.

(viii) That, the learned Single Judge should have further seen that the authenticity of the experience certificate submitted by respondent no. 1 was clearly rendered doubtful by its performance in interview in respect of the said certificate. In any event no malafides can be attributed to the Selection Committee for the view it has taken in respect of the said certificate in the light of the answers given by respondent no. 1 during interview.

(ix) That the learned Single Judge has committed an error in making an adverse comment on the appellants for failure to give prompt intimation of their decision on the reconsideration of the matter and there was no such requirement in the guidelines or the procedure, whereas the intimation of the decision of Selection Committee was communicated to the respondent no. 1 by letter dated 01.06.2009 with the decision of the Selection committee and the same was filed by the petitioner in W.P. 3913/2009 as Annexure-P/11.

14. We have heard the learned counsel for the parties and have also perused the record. In nutshell it is seen that the criteria for the Revised Selection Committee laid down in the first judgment revolved around the following i.e.:-

- a. Reappraisal in view of judgment in Shobha Jaiswal's case.
- b. Whether respondent no. 2 Udaising who had not submitted any project report could be awarded any marks under heads 4, 5, 8 and 9.
- c. Genuineness of the experience certificate submitted by respondent no. 1 Laxman Chouhan.
- d. No fresh paper to be submitted. Corporation is free to select any one of the applicant.

15. At the outset perusal of the first order as has been quoted in this judgment in paragraph 3 above, nowhere lays down that the re-assessment was to be done by a New Committee comprising of new members rather, the language of the order clearly shows that the reference was "the Committee" means the same Committee which Committee made assessment at the first go. In view of the aforesaid, the decision of the learned Single Judge on the point of examination of the matter by the same Committee while revising assessment being wrong is not sustainable.

16. Now coming to the question of non-application of Shobha Jaiswal's judgment. In this regard, the judgment of Shobha Jaiswal has been considered

by the learned Single Judge in para 20. The basic issue which was raised in Shobha Jaiswal's judgment was that assessment with regard to tied up volume to which the capability to generate business ought not to have been done on the basis of the affidavits of the person in the vicinity of the retail outlet and on that basis the Committee if arrives at a conclusion about the capacity of a particular candidate to generate the business criteria could not be sustained. In the light of the aforesaid observations made by the Division Bench in Shobha Jaiswal's judgment following directions were given:-

12. We may add that the affidavits filed from the residents of the area do not bind the residents to purchase quantity of the fuel from the proposed outlet and, therefore, apart from being a mere promise, no credence can be given to such affidavits which do not bind the persons when have sworn them. This apart, the affidavit produced by the candidates would ensure to the credit of all candidates as they show that there is assured sale. Therefore, the selection has been made on the criteria which cannot be sustained.

13. Accordingly, this appeal partly succeeds. Respondent/Corporation is directed to call the appellant and respondent no. 2 for interview afresh and subject them to the selection criteria laid down except that no weightage shall be given to the affidavits filed by the candidates but the documents filed in support of the claim for capability to generate business shall duly be taken into consideration.

17. Thus what was required to be done on the part of the Revised Selection Committee while reviewing the proposal was to keep in mind the aforesaid mandate of the judgment in Shobha Jaiswal. The marking given by Revised Selection Committee has considered this aspect inasmuch as with respect to tied up volume while making re-assessment, the Selection Committee has given equal marks to both Shri Udaisingh as well as Shri Laxman Chouhan on Head No. 4. This can be seen in the marking done under Head No. 4 as has been observed by the learned Single Judge in the impugned order. The said marking is reproduced hereunder for the sake of reference:-

? Head no. 4 (as per mark sheet). Tied up Volume: The marks awarded by the committed to the first three empanelled candidates are as under:-

18. The second point which ought to have been considered was that the effect of not furnishing the project report should also be considered by the Revised Selection Committee against Shri Udaisingh. This aspect has also been taken note by the Revised Selection Committee while giving marks on Head No. 5, inasmuch as while Shri Udaisingh has not been given any marks whereas Shri Laxman Chouhan has been given 1.5 marks. This aspect is also clear from the reading of the report of the Selection Committee as quoted in the impugned order.

19. At this juncture, it would also be appropriate to take note of other portion of the Shobha Jaiswal's judgment about which reference has not been made in the impugned order. In the aforesaid judgment, in para 9 the procedure for

assessment has been discussed by the Division Bench. The same is reproduced hereunder:-

20. A perusal of this chart shows that with respect to tied up of sales volume 5 marks were allotted and out of the balance 5 marks which were the maximum marks to be considered for on the head of capability to generate business, three were meant for project report and two were meant to be considered on the basis of assessment by way of questioning etc.

21. Thus the question which is relevant for the purpose of considering the selection process by second selection committee even in the light of Shobha Jaiswal's case was only with respect to 5 marks. In that regard even if project report is not submitted the other modes prescribed such as assessment on the basis of examination of candidate by putting leading questions on the project report submitted and assess him accordingly would not be taken away. Thirdly, even if the project report is not there then also the Committee can have the overall assessment of the candidate by putting leadings questions. Thus, the judgment of Shobha Jaiswal is to be considered in the light of the aforesaid discussion. A perusal of the report of Selection Committee shows that while for the tied up volume both the parties have been given equal marks three each for the project report 0 marks has been assigned to Udaisingh. The assessment qua the other criteria is based upon the interview which was taken at the time of first selection. Thus Shri Udai Singh was given more marks because his experience certificate was taken into consideration, whereas experience certificate of Shri Laxman Chouhan was found to be doubtful. Nothing is available on record to show that Laxman Chouhan made any effort to prove the authenticity of his experience certificate. Thus it also cannot be said that the judgment of Shobha Jaiswal was ignored or was not taken into consideration by the Selection Committee while reviewing the decision taken in the first round. Considering the report of the Selection Committee which has been verbatim noted by the learned Single Judge in the impugned order in paragraph 20 thereby incorporating paragraph 6 to 17 of the judgment and criticizing the Selection Committee report by holding that the Committee had not considered the effect of Shobha Jaiswal's judgment is again not sustainable for the reasons as stated above.

22. Now coming to the next point as urged by the learned counsel for the respondent for non-providing of opportunity to the respondent to prove the authenticity of the experience certificate. Having perused the record we find that except for the communication available as Annexure P-9 which is a communication in the form of a legal notice served upon the Corporation by the learned counsel for Shri Laxman Chouhan after the results were announced by the Selection Committee, there is nothing on record to show that there was any effort made by Shri Laxman Chouhan to prove the authenticity of his experience certificate, inasmuch as neither there is any communication as to how the authenticity shall be proved nor any document to prove the authenticity was submitted. Even if we take it as per the order passed in the first writ petition, no

fresh document was required to be taken into consideration, but in this case there is nothing to show that any effort was made on the part of Laxman Chouhan to prove the authenticity of his experience certificate. As far as Annexure P-10 is concerned, it is nothing else but only a request to decide the matter expeditiously by the second Selection Committee which again does not contain anything to show that any effort was made to prove the authenticity of experience certificate by Shri Laxman Chouhan. Even in the return filed to the Writ Appeals there is nothing which may go to show that as to how respondent-Laxman Chouhan even if given an opportunity to prove the authenticity of his experience certificate will prove the same.

23. In view of the aforesaid discussion had by us, we are of the considered opinion that observations made by the learned Single Judge in the impugned order firstly regarding re-examination of the matter by different committee despite no such direction in the first order is not sustainable.

24. As far as the judgment of Shobha Jaiswal is concerned, the Selection Committee has considered that judgment in the sense that out of 10 marks, no special favour has been shown in favour of Udaisingh on the issue of tied up volume. Moreover, on the project report, he has been given 0 marks and rest of the marking is based upon his interview inasmuch as after the bifurcation of the marks as per the brochure on the ground of capability to generate business is concerned 5 marks has been assigned for assessment on the basis of tied up volume with prospective customers. On that head equal marks have been assigned to both Shri Laxman Chouhan and Udaisingh. Even if the marks are taken off there is no difference in the final outcome. As far as non-submission of project report is concerned, Udaisingh has been given 0 marks while Laxman Chouhan has been given 1.5 marks.

As regard general assessment, two marks have been given to Shri Udaisingh based upon the answer given by him at the time of original selection inasmuch as no second interview was held.

25. Moreover, having examined the process of reasonings given by the Selection Committee at the time of review of assessment of the allotment of the petrol-pump site in terms of the directions given by the learned Single Judge in the first Writ Petition, we find, that there is no reason for us to question the decision taken by the Selection Committee on the second occasion as we have already noticed, there was no infirmity in the decision reached by the Selection Committee.

26. We have fortified only decision in the light of the judgment of the Apex Court in the case of K. Vinod Kumar Vs. S. Palanisamy and Others, Mahavir Singh Vs. Khiali Ram and Others, as well as latest judgment delivered in the case of Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Others,

We say so because in this case, the allegations of malafide in the second round of litigation are without any material in as much as merely because

communication of the decision was sent little later to the respondent would not prove malafide or malice in law.

27. In the case K. Vinod Kumar (supra), concept of judicial review was examined. It has been held in that case that judicial review is limited to the decision making process and does not extend the merits of the decision taken. Reference can be made from para-7 of the aforementioned judgment which reads as under:

7. The proceedings of the Dealer Selection Board must satisfy the requirements of a bona fide administrative decision arrived at in a fair manner. There are no mala fides alleged against the Dealer Selection Board or the President or any Member thereof. There is no specific plea raised impugning the manner of marking. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totaled and arranged in the order of merit. The appellant herein topped the list. In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best suitable candidate and, so long as the power is exercised bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable.

As noticed above in this case, the Selection Committee was not obliged to be constituted of different members as there was no such directions in the judgment delivered by the learned Single Judge in W.P. no. 3171/2005. As far as the observations made in Sobha Jaiswal case, we have already noticed that crux of the matter has been taken note of the Selection Committee while revising the assessment. As regard the proof of the authenticity of the experience certificate of the respondent, there being no effort made on his behalf to prove the authenticity, no infirmity can be found in the decision taken by the Selection Committee while revising assessment.

28. In absence of any malafide motive of the Members of the Selection Committee, the process adopted has to be taken bonafide and thus it can only be said that the powers of the Selection Committee was exercised bonafide and thus the decision of the Selection Committee does not call for any interference nor our jurisdiction of judicial review. Same is the position in the case of Mahavir Singh Vs. Khiali Ram and Others, as well as latest judgment delivered in the case of Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Others,

Thus, we find that the order passed by the learned Single Judge (impugned before us) in W.P. No. 3913/2009 is not sustainable and the same is hereby quashed. Consequently, both the writ appeals are allowed.

The order of Selection of the petrol pump qua Shri Udaisingh is maintained. The agreement entered into between the Corporation and Shri Udaisingh is also sustained. There shall be no orders as to costs.

C.C. as per rules.