
(2010) 04 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 3537 of 2010

Deepa Ganpatbhai Parmar

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 04 GUJ CK 0095

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : B.B. Naik and Parthiv A. Bhatt, for the Appellant; M.R. Bhatt and Mauna M. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India praying for the direction to the respondents to issue a letter of Intent for grant of Retail Outlet Dealership of the respondent Corporation at Palanpur which is at Sr. No.1 of the advertisement issued by the respondent Corporation on 31.07.2009 in "The Times of India" and on 09.08.2009 in "Divya Bhaskar" and to grant Dealership of Retail Outlet at Palanpur as per the guidelines issued by the respondent. The petitioner has also prayed for an interim relief restraining the respondents from undertaking fresh selection process for grant of Retail Outlet Dealership of the respondent Corporation at Palanpur.

2. This Court has issued notice on 23.03.2010. On 01.04.2010, further order was passed by this Court recording the fact that the respondent Corporation has produced on record of this petition certain documents as referred to in the affidavit-in-reply. A grievance was raised by the petitioner that though certain documents are referred to in the affidavit-in-reply, the same were neither produced nor copies thereof were given to the petitioner. Accordingly, copies are also given to the petitioner. Affidavit-in-rejoinder is filed by the petitioner on

05.04.2010.

3. On 08.04.2010, the respondent was further permitted to produce on record the Policy dated 10.10.2005, complaint given by candidate at Sr. No.2 and Inquiry Officer's report as well as the decision taken by the Executive Director.

4. It is the case of the petitioner that the respondent Corporation, through advertisements invited applications for appointment of Dealers for Retail Outlet Dealership for 15 places situated in Gujarat. All the Dealerships were reserved for Schedule Caste/Schedule Tribe and 4 Dealerships were reserved for women out of SC/ST. On 01.09.2009, the petitioner submitted an application in pursuance of the said advertisement for appointment as a Dealer of the Retail Outlet Dealership situated at Palanpur, which is at Sr. No.1 of the said advertisement. The respondent No.2 issued letter dated 27.11.2009 calling the petitioner for personal interview on 17.12.2009 at 10.00 a.m. at the Ahmedabad Divisional office.

5. It is also the case of the petitioner that as per the result of the proceeding of the Selection Committee with marks signed under various heads as per the guidelines, the petitioner has obtained highest grade and is selected at Sr. No.1, whereas Kalpesh H. Vania was placed at Sr. No.2 and Jignesh K. Patel was placed at Sr. No.3 for grant of Retail Outlet Dealership of the respondent Corporation at Palanpur. Thereafter, field verification of the petitioner was made by the officers of the respondent Corporation and in that field verification also, since nothing was heard from the respondent Corporation, the petitioner wrote a letter dated 12.03.2010 requesting the respondent Corporation to issue a Letter of Intent to the petitioner. By letter dated 15.03.2010, the petitioner was informed by the respondent Corporation that the respondent Corporation has received certain complaints regarding selection process adopted for Palanpur location and the respondent Corporation has investigated the said complaint and the respondent Corporation has found that there are certain lapses in the selection process followed for Palanpur Retail Outlet and in view of the same, the interview process conducted/merit panel prepared for Palanpur location has been cancelled and fresh interview is being arranged.

6. Being aggrieved by the said decision of the respondent Corporation, the petitioner has filed the present petition invoking the writ jurisdiction under Article 226 of the Constitution of India.

7. Mr. B.B. Naik, learned Senior Advocate appearing with Mr. Parthiv Bhatt for the petitioner has submitted that the letter dated 15.03.2010 cancelling the interview process conducted/merit panel prepared for Palanpur location only for awarding Dealership of Retail Outlet of the respondent Corporation is absolutely illegal, unlawful and improper. Once the selection process is completed as per the guidelines issued by the respondent Corporation and a candidate is selected, the respondent Corporation cannot cancel the said selection without affording an opportunity of hearing to the selected candidate i.e. the petitioner. It is the bare

requirement of the principles of natural justice that the person who is likely to be affected by the decision of the authority is required to be heard before taking a decision adverse to him/her. In the present case, no opportunity of hearing was given to the petitioner. Not only that, no indepth investigation is carried out by the respondents as no statement of the petitioner is recorded during the so-called investigation. The so-called investigation is a camouflage to deny the petitioner grant of Dealership for a Retail Outlet of the respondent Corporation at Palanpur location and the same has been done only with a view to favour some one who is not selected at Sr. No. 1 by the Selection Committee. The same Selection Committee has selected suitable candidates for all 15 Retail Outlets for which Dealership was to be awarded and only in the case of Retail Outlet of Palanpur location, the so-called investigation was carried out by the respondents and the said selection was cancelled by the respondents.

8. Mr. Naik has further submitted that even in the letter dated 15.03.2010 issued by the Deputy General Manager (Retail Sales) of the respondent Corporation, no irregularity or illegality committed in the selection process has been enumerated. Not even a word is stated by the Deputy General Manager of the respondent Corporation in the said letter as to what was the complaint against the selection of candidate for Retail Outlet at Palanpur location and what are the findings arrived at by the respondents after carrying out the investigation in the complaint. Mr. Naik, therefore, submitted that the apprehension expressed by the petitioner in her letter dated 12.03.2010 has come true that to favour someone, process of selection was cancelled by the respondents without there being any legal, valid and lawful basis for the same. He has, therefore, submitted that the action of the respondent Corporation is highly arbitrary, unreasonable and capricious and is also violative of the provisions of Article 14 of the Constitution of India. He has, therefore, submitted that the petition deserves to be admitted and the respondent Corporation is required to be restrained by an interim order of this Court from undertaking fresh selection process for grant of Retail Outlet Dealership at Palanpur.

9. Mr. M.R. Bhatt, learned Senior Advocate appearing for the respondents has submitted that in order to maintain complete transparency in the selection procedure, the respondents have acted strictly in consonance with the terms and conditions of the public notice. As per Clause 10(1) of advertisement, this was only an application and not an offer of Dealership. As per Clause 10(n), grievance having been received within the time frame and upon investigation being carried out, it was thought fit to cancel the selection for the Palanpur selection. Since no malafides have been alleged and proved, the Court should not entertain this petition. He has further submitted that as per Clause 10(n), after the final interview, the merit panel is to be displayed. Grievance of the complainant, if any, can be submitted within a time frame of 30 days from the date of display of merit panel. In the instant case, the merit panel was displayed on 17.12.2009. The candidate at Sr. No. 2 of the merit panel gave complaint dated 24.12.2009 which was followed by another complaint dated 04.01.2010. In the said

complaints, grievance was made that for the parameter of Project Report, zero marks were given despite the fact that the Project Report was submitted along with his application. As the complaint was received within the time permissible, as per the procedure, the same was investigated by an Officer nominated by the Gujarat State office. The Investigating Officer gave a report stating that due to inadvertence, in respect of this location, despite Project Report having been filled by various candidates, zero marks were given. This incorrect allotment of zero marks was due to erroneous reading of Clause 10 of the public notice. Based upon the investigation report, the Executive Director of the Gujarat State Office formed an opinion that awarding of zero marks was prejudicial to all the candidates who had submitted the Project Reports along with their applications. In this view of the matter, to give opportunity to all the candidates, the impugned decision has been taken which is not only in the interest of candidates but also to substantiate transparency element in the selection process.

10. By enumerating the sequence of events, Mr. Bhatt has further submitted that after receipt of the applications by due date, the same were scrutinized and eligible and ineligible applications were segregated as per procedure. Selection process by way of nomination of Level 1/Level 2 Committees are governed by Policy Circular dated 10.01.2005. Level 1 Committee awards marks to eligible applicants based on documents submitted along with the applications. There is no involvement/presence of applicants during the selection process undertaken by Level 1 Committee. Level 2 Committee personally interviews the candidates and declares the merit panel based on marks awarded by Level 1 Committee and marks secured during interview. Merit panel and merit secured by each candidate under various parameters are displayed at the venue of the interview on the same day of conclusion of personal interviews. Out of the total eligible marks of 40, for SC/ST category Dealership selection, 31 marks are for Level 1 Committee and balance 9 marks are for Level 2 Committee. The minimum marks required for selection is 50% of total eligible marks. Out of the total 6 locations advertised under ADO, after completion of Level 1 markings, interviews were held for 5 locations during the period from 14 to 19.12.2009 at the Ahmedabad Divisional Office. For all the five locations, Level 1 committee was the same. Similarly, the nominated Level 2 Committee conducted interviews for all the five locations and declared the merit panel along with marks. For the location of Palanpur, the personal interviews were held on 16 & 17.12.2009 and the merit panel and marks were declared on 17.12.2009. As per merit panel for the location, the petitioner stood at Sr. No.1. As per the procedure, with the approval of the Competent Authority, field investigation report for the No.1 candidate in the merit panel was carried out. In the meantime, the respondent received complaint/representation from the respondent No.2 candidate in the merit panel on 24.12.2009 and 04.01.2010. As per the procedure, complaints/representations were investigated by a Senior Officer nominated by Competent Authority.

11. Mr. Bhatt further submitted that the nominated Officer investigated the

complaint/representation and submitted his report on 20.01.2010 and after considering the same, vide approval dated 22.01.2010, Executive Director, Gujarat State Office approved the cancellation of the entire selection process and merit panel for the location Palanpur and to conduct re-interview for the location. The petitioner has been informed of management decision vide letter dated 15.03.2010. Mr. Bhatt, therefore, submitted that the complaint of the second empanelled candidate having been received within the time frame and upon the same being investigated, a decision has been arrived at that the marks given to the second empanelled candidate were not proper. He has further submitted that the selection process was carried out by entire selection Committees, for 15 location in Gujarat. The petitioner has failed to point out any specific rule not being complied with by any of the members of the Selection Committee. Only with regard to subject location, when the correct facts were brought to the notice and upon investigation, having been found to be correct, the impugned decision has been rendered. He has, therefore, submitted that the petition is devoid of any merit and, therefore, deserves to be dismissed with costs.

12. In support of his submissions, Mr. Bhatt has relied on the decision of the Hon'ble Supreme Court in the case of Jagdish Mandal v. State of Orissa and Ors. (2007) 14 SCC 517 wherein it is held that when the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. The Court further held that before interfering in tender or contractual matters in exercise of power of judicial review, the Court should pose to itself the following questions:

1. Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the Court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

2. Whether the public interest is affected.

13. Mr. Bhatt further relied on the decision of the Hon'ble Supreme Court in the case of Siemens Public Communication Networks Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, wherein while reiterating the above principles, the Court held that the Courts will not exercise power of judicial review and interfere

even if it is accepted for the sake of argument that there is a procedural lacuna.

14. Based on the above factual scenario as well as the settled legal position, Mr. Bhatt has submitted that the petition deserves to be dismissed.

15. Since in the affidavit-in-reply and subsequent thereto, new documents were produced on record, Mr. Naik has taken the Court through the rejoinder along with certain further submissions based on those new documents. He has submitted that there is no dispute about the fact that after the interview, merit panel is to be displayed and complaint, if any, against the same shall be submitted within a time frame of 30 days from the date of display of merit panel. He, however, submitted that subsequent to this, the process adopted by the respondents is not in accordance with the policy. The Investigating Officer has not carried out the investigation in accordance with the policy framed by the respondent Corporation. The Investigating Officer has come to the conclusion that the Selection Committee has wrongly given zero marks against the Project Report to the candidates who have not signed their Project Reports as it is not compulsory to sign the Project Reports while submitting the same. While observing this, the Investigating Officer has not looked into and considered the Policy framed by the respondent Corporation which is applicable to all over the country in its proper perspective. The Policy Circular clearly provides that any document submitted by the applicant without signing the same shall not be considered by the Selection Committee Level 1 and if it is to be evaluated and the marks are to be assigned, zero marks would be assigned to the said document. The said Policy is applicable all over India and the same is followed in the selection of 15 sites advertised by the Gujarat office of the respondent Corporation for which interviews were held by the same Committee and even evaluation was done by the same Committee. In all the 15 sites, Selection Committee has considered the same standard and assigned zero marks against the Project Reports to the candidates who have not signed the Project Reports. He has cited certain instances for at least 4 sites which clearly show that wherever the candidates have not signed the Project Reports, they are assigned zero marks against the marks to be allotted to the Project Reports. He has, therefore, submitted that Gujarat State Office of the respondent Corporation cannot interpret the said policy in a manner to oblige one of the applicants who had not stood at Sr. No.1 in the selection. He has also invited the attention of the Court to Clause 10(e) of the Selection of Petrol/Diesel Retail Outlet Dealership framed by respondent Corporation which clearly provides that "Originals of the affidavits and self-attested copies of the other supporting documents should be submitted along with the complete application form, duly signed." He has, therefore, submitted that all the documents which are submitted along with the application are required to be signed by the candidates and if any document is not signed by the candidate, the same shall not be considered by the Selection Committee and, if any marks are to be given against the said document, the same will be zero marks as per the Policy contained in the Circular dated 10.10.2005.

16. Mr. Naik has further submitted that since the question is of interpretation of policy, the same has to be referred to the head office of the respondent Corporation and not any Officer of the Gujarat State office of the Corporation can decide the same, when the Policy is followed all over India by different Selection Committees appointed by the respondent Corporation. He has further submitted that the officer of the Gujarat State office nominated by the Corporation to investigate the complaint is only a show made by the Gujarat State office of the Corporation to scrap the selection for Palanpur site only to oblige the candidate at Sr. No.2 for selecting him in fresh interview. He has, therefore, submitted that the inquiry and the decision to carry out fresh selection is arbitrary, unreasonable, capricious and in colourable exercise of power and contrary to the policy framed by the Corporation. He has, therefore, submitted that the decision to hold fresh selection is required to be quashed and set aside and the petitioner may be awarded Retail outlet at Palanpur location forthwith.

17. In support of his submissions, Mr. Naik relied on the decision of the Apex Court in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, wherein it is held that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law.

18. Mr. Naik further relied on the decision of the Hon''ble Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, which is the basic decision laying down the law on awarding of tenders, contracts etc. and the exercise of the discretion by the authorities.

19. Mr. Naik lastly relied on the decision of the Hon''ble Supreme Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, wherein it is held that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution of India. Therefore, once the State or an instrumentality of the State is a party, it has obligation in law to act fairly, justly and reasonably to a contract which is the requirement of Article 14 of the Constitution.

20. Based on the above judgments and factual position, Mr. Naik has submitted that the petition may be entertained and interim protection may be granted or alternatively it should be allowed with a direction to the respondent Corporation to allot the Retail Outlet at Palanpur to the petitioner forthwith.

21. Having heard learned advocates appearing for the parties and having considered their rival submissions in light of the provisions contained in the advertisement inviting applications for awarding Retail Outlet Dealership for various places including Palanpur and also in light of the Policy Circular No.90-10/2005 in respect of evaluation for dealer selection and also in light of the decided case law on the subject, the Court is of the view that the moot question before the Court is to decide as to whether the awarding of zero marks for the Project Report when it is not signed by the candidate is justified and on complaint being made by the aggrieved party, to cancel the select list is in violation of the Policy framed by the respondent Corporation. Before addressing these two questions, it is necessary to take into consideration the other provisions of the advertisement as well as the Policy Circular No.90-10/2005. Clause 10(1) of advertisement makes it clear that this was merely an application and not an offer of Dealership. Once the selection list having been prepared, it is to be displayed. However, this final select list would not confer any right on the candidate so selected as the aggrieved party shall have right to make complaint against such final selection list within 30 days from the date of display of such selection list. When such a complaint is made by the aggrieved party within the period of 30 days, it is required to be investigated as per the procedure laid down and if the grievance raised in the complaint is found to be justified, such a final list may be cancelled and fresh selection list is required to be prepared. Thus, simply because petitioner stood at Sr. No.1 in the selection list, this fact by itself does not confer any right on the petitioner as the candidate at Sr. No.2 has raised a complaint within the period of 30 days from the date of display of the selection list and he has raised the grievance that he has been wrongly awarded zero mark for the Project Report. The whole question, therefore, depends upon the issue as to whether awarding of zero mark to the candidate at Sr. No.2 and others who have not signed the Project Report is justified. In support of the original decision of the respondent authorities of awarding zero mark to the candidates for the Project Report submitted by them, without affixing their signature on such Project Report, reliance is placed by the petitioner on Clause 10(e) of the selection of Petrol/Diesel Retail Outlet Dealers framed by the respondent Corporation which clearly indicates that the originals of the affidavits and self-attested copies of the other supporting documents should be submitted along with complete application form, duly signed. The prima facie reading of this Clause would normally make any one to believe that all the documents which are submitted along with the application are required to be signed by the candidates and if any document is not signed by the candidate, the same shall not be considered by the Selection Committee and if any marks are to be given against the said document, the same will be zero marks as per the Policy contained in Circular No.90-10/2005 dated 10.10.2005. However, before accepting this interpretation, two issues arise for Court's determination. Firstly, what is the interpretation put forward by the Investigating Officer and accepted by the respondent Corporation and whether such an interpretation is correct in the eye of law. The Investigating Officer in his report dated 22.01.2010 has taken the

view that as per Clause 10 of the advertisement, all documents/certificates are to be self-attested and copies thereof are to be attached with the application. In the gujarati version of the advertisement, for document, the word used is "Dastavej", which in common parlance means documents/papers issued by/ authenticated by Government or some other authorities. Since the Project Report is prepared by the applicant himself, he may not have considered this as a document or "Dastavej". The Investigating Officer further observed that nowhere in the advertisement, it is clearly stated that all papers attached with the application are to be signed by the applicant. Since the complainant who stood at Sr. No.2 in the selection list has included Project Report in the duly signed application form, the check list of documents to be submitted, giving page numbers, it will be unfair to ignore the Project Report. Considering all these aspects of the matter, the Investigating Officer took the view that the Project Report should have been considered and marks should have been awarded. He has, therefore, recommended that the decision of the Level 1 Committee of awarding zero mark to the Project Report which was not signed by the candidate would amount to unfair practice and hence, the merit panel is required to be cancelled and fresh interview process of Palanpur location is required to be again undertaken. This recommendation of the Investigating Officer was approved by the Executive Director of Gujarat State Office and accordingly, decision to conduct fresh interview for Palanpur location was taken.

22. Clause 4 of the Policy Circular No.90-10/2005 deals with basis for marking. It states that Level Committee 1 will scrutinize the applications and award marks to the candidates in respect of the parameters, which are based on documents. The details are as under:

Parameter Max. Marks Evaluation Capability to provide land and infrastructures/ facilities. 35 Based on documents Capability to provide finance. 25 Based on documents Educational Qualification 15 Based on documents Age 04 Based on documents Capability to generate business Tie up with prospective customer. Project Report for realizing sales potential. 05 03 Production of documents and affidavit from prospective customers. Project Report Experience Retail trade of petroleum products. Other/related petroleum trade/transport/automobiles. Hospitality/Service industry/FMCG Others 04 04 03 02 01

Based on furnishing of documentary evidence to establish the relevant service of minimum 1 year. Total 91 23. In the above Chart, against all columns, except the column of Project Report, parameters are to be judged and evaluation is to be made on the basis of the documents produced. Only against Project Report for releasing sales potential, evaluation is to be made only on the basis of the Project Report. Clause 5 further makes it clear that the above marks will have to be awarded on the basis of attested copies, documents submitted along with the application as original documents are to be brought by the candidates at the time of interview. All the documents enclosed with the application will be serially numbered and signed by each Level 1 Committee Member. Clause 11 further

makes it clear that the original documents brought by the applicants are to be seen by the Officer deputed by the Divisional Office and verified with the attested copies submitted by them. In cases where there is a discrepancy in the attested copy as compared to the original documents, such candidates will be declared ineligible. Various clauses of the Policy Circular give separate identification to the Project Report and it is something different from the document. This would, therefore, lead to believe that when the Project Report is submitted as it is, it may not be required to be signed and if such a Project report is not signed, the same shall not be considered as furnishing of an unsigned document. The reasonable belief of the candidate when he has submitted an unsigned Project Report that this being not a document, meaning thereby not a copy of the original document, it is not required to be signed and when the Investigating Officer took the view that it is not justified to ignore such Project Report, which is not signed, the Court should not interfere in such decision.

24. It is also necessary to deal with one more contention raised by the petitioner challenging the cancellation of select list on the ground that such a procedure is adopted only with regard to Palanpur location whereas in other locations also, zero marks are awarded for the Project Reports when they are submitted by the candidates without affixing their signature and despite this fact, no such action was taken by the respondent Corporation in respect of those areas.

25. There is no much substance in this argument as the complaints are made within stipulated time only in respect of Palanpur location. The respondents, on their own, will not initiate any inquiry and cancel the select list. As per the guidelines, only when some complaints are received within the stipulated period and on inquiry, if it is found that the complainant is justified in making such complaints, then only, inquiry is made and after investigation, appropriate decision is taken. Thus, even if zero marks are allotted to the Project Reports in other locations, there is nothing wrong if those selection lists were not cancelled by the respondent Corporation.

26. Even if it is assumed that the Project Report is also a document and it is to be signed and since the said document is not signed by any particular candidate, whether the respondent Corporation is justified in awarding zero marks for such Project Report. The Clauses in the Policy Circular are to be divided into two parts, some of the clauses are substantive clauses whereas some of the clauses are procedural clauses. When a particular paper or document is not signed with the bonafide belief that it is not required to be signed and on that basis, if the said document is not considered, the respondent authorities cannot be held to be justified in taking decision as it is mainly a procedural irregularity and simply on that basis, zero mark should not have been awarded who have submitted such Project Report. It should have been evaluated on its own merit subject to further clarification from the candidate at the time of oral interview. The Courts have also time and again made such distinction and in a given case, appropriate directions are issued. In Jagdish Mandal (Supra), the Apex Court in a very

categorical term held that if the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Here in the present case, it is a bonafide decision of the respondent authorities, based on the investigation report and approved by the Executive Director of Gujarat State Office of the respondent Corporation. At the most, it can be said to be a procedural aberration or may amount to error in reassessment on investigation by the Investigating Officer or it may cause some prejudice to the petitioner. Despite this, the Court should not exercise its power of judicial review in such matter and interfere in the decision taken by the respondent authorities for cancellation of the selection list and conducting re-interview for Palanpur location. There is no basis for accepting the allegation that the whole exercise was undertaken only with a view to favour the candidate at Sr. No.2.

27. The entire procedure undertaken by the respondent Corporation is transparent and proper accountability is fixed at every stage. Even after canceling the selection list, the Retail Outlet is not awarded to the candidate at Sr. No. 2. Fresh interview is ordered to be held and by adopting this course, only direction issued was to examine the Project Report and award appropriate marks and thereafter consider the same on merits. No prejudice would be caused to any one. The petitioner has also a chance to again prove herself and only after fresh interview, whosoever gets the highest number of marks, will get the award of Retail Outlet for Palanpur location. The whole idea is to get the best out of the lot and one should not be declared best only on the basis of default by someone if it is not a default of very substantive nature.

28. In view of the above discussion, the Court is of the view that there is no substance or merit in the challenge of the petitioner against cancellation of the selection list and conducting fresh interview for Retail Outlet for Palanpur location. Even the decisions relied upon by the petitioner are not of any assistance to the petitioner as the Court has not found any arbitrariness or any malafide exercise of power in the decision making process of the respondent authorities. The petition is, therefore, dismissed. Notice discharged without any order as to costs.