

**(2016) 05 AHC CK 0001**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 6760 of 2014.

Kumud Vishwakarma

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 13-05-2016

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2016) 5 ADJ 618

**Hon'ble Judges :** V.K. Shukla; Umesh Chandra Srivastava, JJ.

**Bench :** Division Bench

**Advocate :** Mahendra Singh, Keshari Nath Tripathi and M.D. Singh Sekhar, Advocates, for the Appellant; A.S.G.I., Nitin Chandra Mishra, S.C., Sanjiv Singh, Seema Singh and V.K. Singh, Advocates, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

V.K. Shukla, J.(Oral) - Kumud Vishwakarma is before this Court seeking quashing of the order dated 16.12.2013 passed by General Manager, Indian Oil Corporation Ltd. Gomti Nagar, Lucknow, wherein complaint preferred on behalf of petitioner has been rejected and further prayer has been made for issuing writ in the nature of mandamus commanding and directing the Authority concerned, not to give letter of intent to respondent no. 5 Priyanka Jaiswal or pass any other suitable order.

2. The factual matrix of the case in brief are that Indian Oil Corporation Ltd. (I.O.C.L.) is a Company registered under the Companies Act and is a Government of India enterprise. The Indian Oil Corporation, in its turn, has proceeded to advertise in a leading newspaper Dainik Jagran on 26.10.2011 inviting application form of various location throughout the length and width for award of dealership for running its retail outlets. Petitioner has also proceeded to submit her application form for award of dealership for Naval Pur Chauraha situated between Salempur to Bhagalpur Road, SH-I, District Deoria. The said dealership is reserved for general women category candidate. Petitioner submits

that after completing all the requisite formalities, she was called for interview on 12th April, 2013 and the merit in question has been disclosed and therein select list has been finalised wherein Smt. Priyanka Jaiswal has been shown at serial no. 1, Smt. Pushpa has been shown at serial no. 2 and Smt. Kumud Vishwakarma has been shown at serial no. 3. Petitioner submits that she made a complaint before the Indian Oil Corporation Ltd. and there were other candidates, who have also filed complaint before the Indian Oil Corporation and the Indian Oil Corporation, in its turn, has proceeded to non-suit the claim of incumbents by mentioning that final merit panel of subject location has been prepared as "corpus fund" location i.e. these marks under the head capability to arrange finance were excluded while finalising the merit panel. Based on the above facts and findings, view has been taken by the Indian Oil Corporation that the contention of the complainant was irrelevant as the marks under the head capability to arrange were excluded while finalising the merit panel.

3. On the presentation of the writ petition in question, this Court on 7th February, 2014 proceeded to pass following order:

"Heard Sri Keshari Nath Tripathi, Senior Counsel, appeared for the petitioner and Sri Sanjeev Singh, learned advocate, appeared on behalf of respondents no. 2, 3 and 4.

The A.S.G.I. has accepted notice for respondent no. 1.

Issue notice to the respondent no. 5 returnable at an early date.

This matter had been taken up yesterday and we had called upon the learned counsel to assist the Court as to whether the respondent no. 5 was entitled to receive the benefits of allotment in spite of the fact that the land offered by her, was found to be unsuitable and also as to whether she would fall within the same category, as one of the candidates namely Smt. Suman Sinha, who had applied under Corpus Fund Scheme.

We have heard Sri Sanjeev Singh, who has tried to assert that in order to determine the priority as per Clause 9(b), the marks secured by other women under the parameter of capability of infrastructure and finance, has to be excluded and, consequently, the same was excluded for the purpose of such consideration where after the respondent no. 5 appears to be entitled for award of dealership.

He has further invited the attention of the Court to the relevant remarks (tippani) under Clause 1-Ka of the advertisement to contend that even if the land was not available with the respondent no. 5 yet according to the said instructions as advertised two months further time can be granted to such a candidate to provide alternate land. He, therefore, submits that the writ petition is premature and this exercise has to be undertaken at the time of the issuance of letter of intent. He, therefore, contends that neither the respondent no. 5 is ineligible nor any challenge can be raised so as to question of correctness of the decision dated

16.12.2013.

Sri K.N. Tripathi, learned counsel for the petitioner, submits that as per the provisions under the brochure itself, Clause 14 categorically provides that availability of suitable land for setting up of a Retail Outlet is the essence of the project. He, therefore, submits that in the absence of any suitable land, the candidature of respondent no. 5 does not deserve to be considered. He has invited the attention of the Court to the recital in the impugned order which indicates that the Land Evaluation Committee had found the land offered by the respondent no. 5 to be unsuitable.

At this juncture, Sri Sanjeev Singh has invited the attention of the Court that the land further offered by respondent no. 5 was under the joint ownership with one Shiv Raj and in such circumstances a subsequent withdrawal of consent will not in any way take away the rights of the respondent no. 5 to offer an alternative land which has to be done in view of the arguments advanced herein above for the purpose of providing the land as per remarks 1-Ka.

Prima facie we are not able to agree with the submission of Sri Singh inasmuch as the requirement of a priority being given amongst candidates, who are equal is contemplated in order to provide benefit to such a candidate who applies under the Corpus Fund Facilities for women.

The respondent no. 5, admittedly, has not applied under the said category and it was one Smt. Suman Sinha alone who had applied for the same. In order to construe the provisions of Clause 9 (b) read with remarks 1-Ka, it is clear that the same has to be read in favour of the of a candidate who had applied under the scheme and not in favour of a candidate who has not applied in the Corpus Fund Scheme.

In the instant case, the respondent no. 5 is being projected as a candidate entitled to the benefit in spite of that she had not applied under the Corpus Fund Scheme.

Consequently, until further orders of this Court, we hereby provide that no letter of intent shall be issued to the respondent no. 5 during the pendency of the writ petition.

Respondents may file counter affidavit within three weeks. Rejoinder affidavit, if any, may be filed within a week thereafter.

List thereafter."

4. Counter Affidavit has been filed, in the present case, and therein a precise stand has been taken that the order passed by General Manager, Indian Oil Corporation Ltd. dated 16.12.2013 is strictly in line with policy guidelines with respect to retail outlet dealership selection and entire selection has been made in fair, transparent and reasonable manner and Smt. Suman Sinha has submitted her application under scheme of corpus fund facility meant for widow candidate

and in view of this, the candidature of every candidate has been considered on the parameters that has been fixed and accordingly, no interference is required to be made in the present case.

5. Counter Affidavit filed on behalf of Priyanka Jaiswal, is also on the same lines mentioning therein that action has been taken strictly in consonance with paragraph 9 (b) of the Brochure and as per the paragraph 7 of the advertisement.

6. To this Counter Affidavit, Rejoinder Affidavit has been filed and thereafter present Writ Petition in question has been taken up for final hearing and disposal with the consent of parties.

7. Shri H.N. Singh, Senior Advocate assisted by Shri Mahendra Singh, Advocate submitted that, in the present case, the Indian Oil Corporation has acted contrary to the guidelines as has been prescribed in the matter of petrol/diesel retail/outlet dealership and the incumbent who has been sought to be selected, though her merit status is lower as compared to the petitioner but by misreading and misapplication of provision of Clause 9 (b) undue favour has been extended to her and in view of this, writ petition in question deserves to be allowed.

8. Shri Sanjeev Singh, learned Counsel representing Indian Oil Corporation as well as Shri Nitin Chandra Mishra, Advocate appearing for the selected candidate, on the other hand, contended that once one of the candidate has proceeded to apply for consideration of her candidature under the corpus fund category, then the candidature of each and every candidate was to be considered ignoring the marks secured by other women candidate under the two parameters namely "Capability to provide infrastructure and facilities" and "Capability to provide finance" and on the said parameters Priyanka Jaiswal, on merit, has been selected and as such, there is no infirmity in the order dated 16.12.2013.

9. In order to appreciate the respective arguments that have been so advanced, the relevant extract of the brochure dealing with selection of dealership of Petrol/ Diesel Retail Outlet Dealers dated 01.03.2012 is being looked into. Clause 1 of the said Brochure deals with Identification of locations. Clause 2 of the said Brochure deals with Mode of selection of dealers. Clause 3 of the said Brochure deals with Reservation for Retail Outlet (RO) Dealerships. Clause 3.1 of the said Brochure deals with the Percentage reservation, State wise, for various categories and Clause 3.2 of the said Brochure deals with Reservation for women that provides 33% of the dealerships in each category will be reserved for Women. Clause 4 of the said Brochure deals with Eligibility Criteria. Clause 8 of the said Brochure deals with Scheme of Financial Assistance to SC/ST category dealerships under "Corpus Fund" Scheme. Clause 9 of the said Brochure deals with corpus fund facilities for women. Clause 13 of the said Brochure deals with Interview. Clause 13.1.1 of the said Brochure deals with Norms for Evaluating the candidates. Clause 14 deals with preference for applicants offering suitable land. Relevant clauses i.e. Clauses 8, 9, 13.1.1. and 14 of the said Brochure are being quoted below:

"8. Scheme of Financial Assistance To SC/ST Category Dealerships Under "Corpus Fund" Scheme:

Financial assistance will be given to persons belonging to Scheduled Castes and Scheduled Tribes on award of dealerships by IOC as under:

(a) In respect of locations reserved for SC/ST categories, IOC will make available a Retail outlets ready with all basic facilities at its own cost. Therefore the applicants belonging to SC/ST categories applying against locations covered under "Corpus Fund Scheme" are not expected to offer land and infrastructure/ facilities and finance.

(b) IOC will also provide adequate working capital loan for a full operation cycle of the operation of the dealerships. Both the working capital as well as 11% annual interest thereon will be recovered in 100 equal monthly instalments commencing from 13th month of commissioning of the Dealership.

(c) The allottees will have to pay a Licence Fee to IOC as applicable from time to time.

(9) Corpus Fund Facilities For Women

(a) War widows will be eligible for the facilities as mentioned under para 8 above.

(b) Subject to the application and request, widows and unmarried women above 40 years of age, without earning parents, for locations reserved for women will not be judged under the head "capability to provide infrastructure and facilities" and "capability to provide finance". These applicants will be required to indicate in the application form itself whether, they will like to avail the Corpus Fund Facilities. In case, this is not indicated in the application form, it will be construed that such applicants would like to get evaluated in line with other applicants i.e. they should also be assessed under the heads "Capability to provide infrastructure and facilities" and "capability to provide finance". For determining the priority to be given to such candidates over other women candidates, the marks secured by other women under these two parameters will be excluded from the total marks secured by them.

(c) On their application and subject to satisfaction of IOC, unmarried women above 40 years of age without earning parents and, widows, selected for dealership in all categories including those which are not reserved for women will be entitled to financial assistance under the Corpus Fund as mentioned under Para 8 above.

13.1.1. Norms for Evaluating the Candidates:

(I) The eligible applicants will be evaluated out of a total of 100 marks through a 3 tier process comprising the following steps:

The offered land will be evaluated as per laid down parameters by the "Land evaluation committee" which will in turn decide the marks in respect of

parameter "Capability to provide land and infrastructure/facilities" which carries a maximum mark of 35.

"Level-1 Committee" will scrutinise the documents and allocate marks with regard to documents based parameters out of a maximum of 56 marks (for individuals)/53 (for non individuals).

"Interview committee" will carry out personal interview and award marks out of the remaining maximum 9 marks (for individuals)/12 (for non individuals) based on specified parameters and complete the selection process.

(ii) The evaluation of eligible applicants will be carried out based on the following broad parameters:

Sr No. Parameter Maximum Marks : individuals including partnership Maximum Marks : Non individuals Entities

a. Capability to provide land and infrastructure/facilities 35 35

b. Capability to provide finance 25 25

c. Education qualification 15 0

d. Capability to generate business 10 25

e. Age 4 4

f. Experience 4 4

g. Business ability/Acumen 5 7

h. Personality 2 0

Total 100 100

\* Not applicable for cases where the prospective dealer is not required to offer/ arrange land and Finance.

Allocation of marks on various parameter

Parameter Sub Heads Description Max Marks Evaluation

Capability to provide Land and infrastructure/facilities ( Max. 35 marks applicable to individual and non-individual) Suitable land for retail outlet "A" site

Having clear title to land "own land"/Regd. Sale deed as on date of application.

"B" site

Having clear title to land "own land"/Regd. Sale deed/having land on long lease (regd) for a minimum period of 19 years 11 months as on date of application. 35

35 Based on verifying the documents submitted and evaluation of committee as explained in Pt.. 14 and 15 below

"A" site

Having "firm offer" of land for purchase

"B" site

Having "firm offer" of land for purchase/long lease 25

25

Capability to provide Finance( Max. 25 marks applicable to individual and non - individual) Financially sound Ready availability of Finance (20 marks)

Liquid cash in the form of bank balance, Fixed deposits, shares of listed companies etc. 12 Based on verifying the documents submitted valuation report duly certified by Govt Approved Valuers in support of assets is necessary.

Fixed and movable assets includes own land buildings, shops, house, vehicles, etc. 4

Income includes agricultural income, business income interest, rent royalty, etc. Duly supported by documentary evidence. 4

Parameter Sub heads Description Max Marks Evaluation

Note:-

1. Marks will be awarded in proportion to Capability/Availability of funds as compared to requirement (as indicated in advertisement)

2. The finance owned by the family unit will also be considered as belonging to the applicant subject to applicant providing a consent letter from the concerned member from the family unit on notarised affidavit. The family unit is already defined in para 6 above . With regard to source of funds declared by the applicant in the application form, it is necessary that the same would be made available for the RO development purpose as and when required. The applicant should submit an affidavit(Appendix A or A1) in this regard. In case the candidate fails to make available the funds committed at the time when it is actually required or could not substantiate during the interview/at a later date. The candidature/dealership is liable to be cancelled.

3. Cash jewellery and instruments where the ownership cannot be established will not be considered as "Liquid Cash" or Assets.

Credit worthiness Letter ensuring credit:Bank/Financial institution/individuals/ party's letter ensuring credit/credit worthiness certificate from scheduled Bank/ Financial institutions. 5 Credit worthiness certificate(Appendix-A2) from scheduled Bank/Financial institutions and/or expressing willingness to extend loan if required.

Educational Qualification (Max. 15 marks-in case of individual) 1 Based on the educational qualification proof provided by the applicant the following marks will

be awarded to

(i) Individual

(a) Post Graduation in management

(b) Diploma in management from Indian Institute of Management

(c) Graduation in Engineering

(d) Graduation in Law

(e) Chartered Accountant 15 Based on documentary evidence by furnishing certificate/mark sheet from Board/University Examination as applicable.

2 (a) Post Graduation in any other field not covered in Para (1) above

(b) Graduation in any other field not covered in Para (1) above

(c) Cost Accountant

(d) Company Secretary

(e) Diploma in Engineering 12 -do-

3 Matriculation

(ii) Non - individual candidates will not be evaluated for education parameter 10

0 -do-

Age (Max. 4 marks-for individual and Non-individual Completed in years as on date of application

Marks will be awarded on the following basis : (i) for Individual Max Marks Evaluation

Based on documentary evidence (Matriculation or Secondary school leaving certificate, Passport, PAN Card, Identity card issued by Election Commission or an Affidavit

Based on documentary evidence

21 years and more but less than 26 years 2

26 years and more but less than 46 years 4

(Completed no in years of existence as on date of application 46 years and more but less than 56 years 2 2

56 years and more but less than or equal to 65 years

(ii) For non-individual

Less than 3 years

More than 3 years but less than 5 years

More than 5 years 1

0

2

4

Capability to generate business ( Max. 10 marks-for individual and 25 for non-individual) Tapping of sales volume from family/firm business Assessments on tie up with prospective customers(Based on Affidavit in Appendix-A3 produced with the application). Tie up of 3rd or higher volume of the quantity indicated in the advertisement will qualify for full marks and proportionate for lower volume.-

(i) For Individuals

(ii) For Non-Individuals

Based on the project report for realising sales potential submitted by the applicant.

(i) For Individuals

(ii) For Non-Individuals

5

12

3

8 Production of documents and based on the volume of tied up quantity as per Affidavit from prospective customers.

Based on the evaluation of the project report

Project Report

Assessment by interview committee Overall judgement of candidate's ability to generate business including future plans for growth.

(i) For Individuals

(ii) For Non-Individuals

2

5 As per the assessment of selection committee based on leading questions during interview

Parameter Sub heads Description Max Marks Evaluation

Note: Sales potential as estimated by Oil Companies will be indicated in the advertisement against each location. The candidate, while applying, will have to submit an affidavit (Appendix - A3) from the prospective customers, in support

of his claim with regard to his ability to tap the sales potential from the prospective customers. It will be clearly indicated in the affidavit (Appendix - A3) that such prospective customers has not given similar consent to any other applicant for the concerned location. The indicative parameters in this regard are as under:

Tied up volume with transporters/Taxi/Rickshaw Operators/Transporters/Transport Association/private cars/agricultural equipment/mining/earth moving equipment/Own vehicles/equipments/machinery, tie up with industries regarding requirements or power generation etc. In case the affidavit is not factual or not substantiated during interview/at later date, the candidature/dealership is liable to be cancelled.

Experience (Max. 4 marks for individual and non - individuals Business experience

(i) For individual 4 Based on furnishing of documentary evidence to establish relevant experience. Full marks for experience of 1 years and proportionately for experience of less than 1 year.

In case of individual, experience of Retail trade of petroleum products will include experience of having worked as Manager in a Retail Outlet or COCO Contractor.

Retail trade of Petroleum products

Related petroleum trade/transport/automobiles 3

Hospitality/Service industry/FMCG 2

Others

(i) For Non-Individual

Petroleum

automobiles/Transport Service Any sector other than mentioned above 1

4

2

1

Business Ability/acumen (Max. 5 Marks for individual and Max. 7 marks for non individuals) Assessment by interview Committee (a) Marks will be awarded based on project report/leading questions with regard to earlier handling of business as well as response to specific situation related queries as under:

- Management of people
- Management of finance/ infrastructure
- Trade related

For individual

For No-Individual

(b) Based on proven ability/acumen as in earlier/existing business

For individual

For No-Individual

3

4

2

3

Personality (Max. 2 marks for For individual and 0 for No-Individuals)  
Assessment of the committee on the following parameters:-

(i) For individual

Communication/articulation skills

Polite, presentable and well mannered

Enthusiasm/energetic/medical history

Self confidence/convincing power

(ii) For No-Individual

Non individual candidates will not be evaluated for parameter personality

2

0

Assessment based on the observation and leading questions.

Grand Total 100

#### 14. Preference for Applicants Offering Suitable Land

Availability of suitable land for setting up of KSK retail outlet at the advertised location is the essence of the project. Wherever IOC expects the applicant to have arrange suitable land for the dealership, the same is mentioned against each location in the advertisement. The suitability of land will be assessed by IOC as per norms given in para 15 of Brochure. The land and details offered along with the application alone will be considered for this purpose and applicant will not be given the opportunity to offer any other land subsequently. The land offered by the applicant can be in either of following category:

(a) Owned land:

The following will be considered as owned land:

- (i) Land owned by the applicant exclusively
- (ii) Land owned by the "family" members exclusively
- (iii) Land owned by the applicant exclusively with "family" members
- (iv) Land owned by the applicant along with others provided share of applicant in the land meets IOC's requirement.

The land falling in category (ii), (iii) and (iv) will be considered as belonging to the applicant subject to applicant producing the consent on notarized affidavit signed by all other co-owners. The definition of "Family Unit" will be as per para 6 of Brochure.

In addition to above, for locations to be developed as Dealer Owned site (marked "Yes" in column 6 of advertisement) the land on long terms lease (for a minimum period of 19 yrs 11 months) will also be considered as owned land subject to above conditions. In other words, for locations to be developed as Corporation Owned site (where "Yes" is marked in column 5 of the advertisement), leased land will not be considered.

(b) Firm Offer of land:

In addition to land covered under para (a) above, applicants also have the option to offer land with firm offer of land from land owner/s. Such offer from land owner/s should be in the form of notarized affidavit giving details of land, Khasra/ Khatauni no., name of village/location, ownership details etc.

NOTE:

(i) However, if an applicant, after selection on the above basis, is unable to provide the land indicated in the application within a period of TWO months from the date of Letter of Intent (LOI), IOCL will have the right to cancel the allotment of dealership made to the applicant. The suitability of the Land will be decided by IOCL. In this case IOC will provide all fixed facilities at its cost at the site so taken from the applicant on purchase/long term lease basis. However, there is no commitment from IOCL for taking the offered Land from the applicant.

(ii) Wherever IOC has advertised that it also expects the applicant to provide suitable land at the advertised location to IOC on sale/long lease, their willingness to transfer such land to IOC should be clearly indicated in the application under Para 12(f). Considering the location of the land from the point of view of suitability from technical and commercial angle and rates applicable to IOC, applicants willing to transfer the land on ownership/long term lease to IOC would be considered. However, there is no commitment from IOC for taking the offered Land from the applicant.

(iii) Documents For Offered Land

The applicant should furnish at least one of the following document (in support of ownership) which should have been issued/revalidated on or after the date of

advertisement: (i) Khasra/Khatauni or any equivalent revenue document of Certificate of the land. Or (ii) Registered sale deed/Registered lease deed or any other type of ownership transfer deed/document in favour of applicant.

(iv) Copy of the lease agreement or allotment letter issued by Government/Semi-Government/Autonomous bodies like DDA, NOIDA, HUDA etc. will be considered for ownership of land offered.

(v) In addition to documents in para (iii) and (iv) above, following additional documents are also required, as applicable.

SN. Situation of Ownership Share of applicant's Land Documents required (ownership/Revenue record) Evaluation as

1. Self Full Nil Owned land
2. Exclusively by the "Family" members Nil Notarized affidavit by all owners in favour of applicant Owned land
3. Self exclusively with "Family" members Part Notarized affidavit by all co-owners in favour of applicant Owned land
4. Self with Others Share of applicant more than IOC requirement Notarized affidavit with demarcation of land (portion of land to be given for dealership by the applicant) Owned land
5. Self with Others Share of applicant more than IOC requirement Notarized affidavit without demarcation of land (portion of land to be given for dealership by the applicant) Firm Offer
6. Self with Others Share of applicant more than IOC requirement Notarized affidavit Firm Offer
7. Others Nil Notarized affidavit Firm Offer
8. Where the land falling is Owned land category as described in above category at Sr. No. from 1 to 4 is not sufficient for development of retail outlet and land is category 5 to 7 is also offered to meet IOC's requirement Nil or Part Document as applicable for category at Sr. No. 1 to 4 and Document as applicable for category at Sr. No. 5 to 7. Firm Offer

(v) Land document will be sent to District Magistrate/District Collector for verification of title for ownership of land before considering land for evaluation."

10. The factual situation that is so emerging, in the present case, is that accepted position is that petitioner has been one of the candidate, who also proceeded to apply for grant of retail outlet along with five others. Smt. Suman Sinha, one of the six candidates, proceeded to make an application and requested therein for providing her infrastructure facilities as well as finance under Corpus Fund Scheme. Candidature of all the candidates have been dealt with as follows:

Display Mark sheet

Type of dealership Retail Outlet Site

Do : Gorakhpur

Location : Within 23 km from Nawalpur Chauraha Towards Bhagalpur on  
Salempur to Bhagalpur Road (SH-I)

Deoria

Cat

:State

OP(W) Uttar Pradesh

Date of Advertisement: 20.10.2011

Date of Interview : 12.4.2013

S. No. Name of Candidate Capability to provide infrastructure and facility  
Capability to arrange Finance Education Qualification Capability to generate  
business Age Experience

Marks Liquid cash in scheduled bank in the form of FD Letter Ensuing loan/credit  
worthiness certificate Tied up volume Project Report Over-all Assessment

Max Total marks 25 Total marks 15 Total marks 10 Max Max

Shri/Smt/Ms 35 20 5 15 5 3 2 4 4

1. Smt. Anita Devi 24.5 5.19 5 12 5 0 1.08 4 4

2. Smt. Kumud Vishwakarma 23.75 16 5 12 5 2 1 4 4

3. Priyanka Jaiswal 0 16.91 5 12 5 2.5 1.33 2 4

4. Smt. Pushpa Sharma 0 16 5 12 5 2 1.17 4 4

5. Smt. Sheetal Srivastava

6. Smt. Suman Sinha N/A 0 5 10 5 0 1.08 4 3.33

Business Acumen Personality Total Marks Total marks out of 40 excluding land  
and finance Merit Panel

Max Max 100 40

5 2 100 40

3 1.08 N/A 30.16

2.5 1 N/A 31.5 Third

4.17 1.58 N/A 32.58 First

3.17 1.05 N/A 32.42 Second

N/A

3 1.47 N/A 27.58

\* Total marks evaluated out of 40 marks only(excluding land and finance) as candidate at SI no 6 has applied for corpus fund facility.

Sd/- illegible Sd/- illegible Sd/- illegible

12/04/13 12/04/13 12/04/13

Member 1 Member 2 Member 3

11. A bare perusal of the display of mark sheet would go to show that Priyanka Jaiswal and Smt. Pushpa Sharma, both have been awarded "0" marks in reference of providing infrastructure facility and as far as petitioner is concerned, she has been awarded "23.75" marks and in reference of capability to arrange finance; Priyanka Jaiswal has been awarded "16.91" marks and Smt. Pushpa Sharma has been awarded "16" marks and petitioner has been awarded "16" marks and it is reflected from the said display of mark sheet that total marks have been evaluated out of 40 marks (excluding land and finance), as candidate at SI No.6 has applied for corpus fund facility.

12. Issue is as to whether the provision of Clause 9 (b) has rightly been read and understood or it has been totally misapplied in the facts of the case.

13. Clause 9 (b) is meant for the benefit of an applicant who has applied as a widow or unmarried women above 40 years of age, without earning parents and in case she intends to have infrastructure facilities and finance facilities, she is required to indicate in the application form itself as to whether she will like to avail the Corpus Fund Facilities and in case it is not indicated in the application form, it will be construed that such applicants would like to get evaluated in the line with other applicants i.e. they should also be assessed under the heads "capability to provide infrastructure and facilities" and "capability to provide finance". A further mention has been made that for determining the priority to be given to such candidates over other women candidate, the marks secured by other women under these two parameters will be excluded from the total marks secured by them. This particular provision has been subjected to challenge in the case of Smt. Rakhi Thareja v. Union of India, Civil Misc. Writ Petition No.12281 of 2010 on the ground of being discriminatory and this Court has negated such arguments advanced by mentioning that said provision providing classification amongst women is neither arbitrary nor discriminatory.

14. Clause 9(b) is a special provision in favour of widow and unmarried woman above 40 years of age without earning parents, who are applicant and are seeking help for Corpus Fund Facilities. In such a situation for determining the priority to be given to such candidate over other women candidates, the marks secured by other women under these two parameters will be excluded. Provision

in question is thus clear in its intent i.e. to extend priority to such candidate over other woman candidate. Priority has been defined in Merriam Webster dictionary as follows: "Something that is more important than other things and that needs to be done, or dealt with first". In Cambridge Dictionary "priority" has been defined as "something that is very important and must be dealt with before other things." Under the scheme of things provided for in reference of widow and unmarried woman above 40 years of age without earning parents who seeks Corpus Fund, their claim has to be determined first over other women candidates, who have not applied for corpus fund facility. The marks secured by other women under the two parameters i.e. "capability to provide infrastructure and facilities" and "capability to provide finance" will be excluded from the total marks secured by them for the purpose of evaluation at the point of time when candidature of such a women is to be considered, who has applied under corpus fund facility. Once exercise is taken on the said parameter on priority basis and women candidate seeking corpus fund facility is selected then as per Clause 9(c), she would be entitled for the benefit of "Corpus Fund Scheme". Visualise a situation when she is not able to make place for herself, then does it mean that the candidature of other women, who have not even applied for in the said category would be ipso facto considered in the corpus fund facility.

15. Indian Oil Corporation is taking stand that they would be ipso facto considered in corpus fund facility and in the said direction much emphasis has been made on the fact that there cannot be two scales for selection and accordingly, on the formula prescribed under Clause 9(b) whosoever stands on merit after excluding the two parameters, "capability to provide land and infrastructure facilities and capability to arrange finance" is to be offered dealership. Indian Oil Corporation is labouring under a totally wrong impression and misconception as benefit of Clause 9(b) would be accorded to such incumbent, who has applied for corpus fund facility as evaluation of her marks on priority basis would be done qua other women candidate by excluding the marks secured under the above mentioned two parameters i.e. "capability to provide land and infrastructure facilities/and capability to arrange finance and in case said widow and unmarried woman fails to make place for herself on merit on priority consideration, then qua other candidates marks under other parameters have to be included as terms and conditions are clear that selection is to be made on the scale of 100 marks. In case any other view is taken, then the very purpose and object of Clause 9 (b) would be defeated, inasmuch as, it will have the effect of diluting merit without in any way promoting the objective of extending benefit to widow and women of more than 40 years of age without earning parents. The case in hand is a glaring example of misuse of said provision as chart in question clearly reflects that if the two parameters of Priyanka Jaiswal are not excluded, then she will not at all be in a position for gaining first rank in the merit list whereas for land and infrastructure she has been awarded zero. In view of this, as the object of Clause 9 (b) has been misread and misconstrued and has been taken out of context and Smt. Suman

Sinha has failed to make place for herself as per priority under Clause 9 (b), then interse merit has to be examined as is provided for under Clause 13.1.1. as location in question was reserved for general women category. Parameter for judging candidature of widow and unmarried woman above 40 years without earning parents seeking Corpus Fund is different and once said category of women fails to make place for herself, then the comparative merit of other women candidate who have not applied as widow or unmarried woman above 40 years and have not claimed benefit of corpus fund, their respective claim would be examined on the basis of interse merit as is provided under Clause 13.1.1. Such a construction will suppress the mischief of defeating merit in the garb of misinterpretation of Rules and would be purposive one i.e. to uphold selection based on merit, on the criteria prescribed as Clause 9 (b) has to be read in favour of candidate who had applied for consideration of her candidature under Corpus Fund Scheme and not in favour of candidate who has not even applied under Corpus Fund Scheme. Coupled with this Clause 14 provides for preference when there is suitable land at the advertised location and same has been described as essence of the project. Suitability of land is to be assessed by Indian Oil Corporation as per norms given in paragraph 15 of the Brochure. The land and details offered along with the application alone has to be considered for the said purpose. Here selected candidate had offered land and the said land on evaluation by Land Evaluation Committee had found the same to be unsuitable. Here what could not have been achieved directly, the same has been sought to be achieved indirectly by unnecessarily applying Clause 9(b) in reference of candidate who even had not applied in Corpus Fund Scheme.

16. Consequently, the letter of intent issued in favour of Priyanka Jaiswal is not at all subscribed by us and same is quashed and set aside. The Indian Oil Corporation is directed to take decision afresh in accordance with law, preferably within two months from the date of production of certified copy of this order.

17. With these observations, writ petition is allowed.