
(2005) 09 GAU CK 0038
In the Gauhati High Court
Case No : W.A. (C) No"s. 256 and 259 of 2004

Moumita Poddar and Another

APPELLANT

Vs

Indian Oil Corporation and Another

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) 4 GLT 538

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S. Deb, S. Chowdhury, A.K. Bhowmik, M.N. Indu and K. Indu, for the Appellant; D.B. Sengupta, S. Talapatra and B. Baneijee, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—Both these writ petitions are being disposed of by a common judgment since they are directed against the decision of the Respondents-Corporation to allot Retail Dealership Outlet at Ranirbazar, West Tripura to the private Respondent pursuant to the Advertisement dated 19.02.2004 appearing in the local newspapers. To simplify the matter, I propose to deal with W.P. (C) No. 259 of 2004 first.

2. W.P. (C) No. 259 of 2004.

The factual matrix leading to the filing of this writ petition may be briefly noticed at the very outset. The Respondent No. 1 by the advertisement at Annexure-1 invited applications for appointment of dealers for retail outlet dealership POL of IOC (AOD) in the State of Tripura at Ranirbazar and Agartala within the revenue district of West Tripura. The dealership so advertised was opened to women only. The last date of submission of the application form duly filled in was 19.03.2004. In response to the advertisement, the Petitioner submitted her application in the prescribed form for the dealership in respect of Ranirbazar location. It is stated by the Petitioner that both her father-in-law and mother-in-law are the owners of

two different plots of lands measuring 1,63 acres and 1 kani 16 gandas 1 kara 12 dhurs respectively, which fall within Mouja-Bridhyanagar on the periphery of Ranirbazar. According to the Petitioner, the land belonging of her mother-in-law situates at the Assam-Agartala road, National Highway 44 and has a frontage of 51.5 meters. Both her father-in-law and mother-in-law also executed documents expressing their readiness and willingness to allow her to use the said lands for installation of the said retail outlet dealership and to lease out the same to the IOC Ltd. (AOD) on long term basis, if she was offered a letter of intent by the Respondent No. 1. It is further stated by the Petitioner that she annexed all the relevant documents, including the sale deed executed in favour of her by her mother-in-law and father-in-law and the letters executed by them offering their lands on long-term lease, with the application for the said dealership. It is also stated by the Petitioner that she was telephonically informed on 11.06.2004 that the survey team of the Respondent No. 1 would visit the sites offered by the applicants on 12.06.2004 for inspection, but the proposed visit was cancelled. The Petitioner also states that on 12.06.2004 she was again informed that the visit of the survey team would take place on 14.06.2004, but this proposed visit was also cancelled, which was informed to her on 14.06.2004 over telephone. According to the Petitioner, the visit of the site by the survey team is of utmost importance inasmuch as the sites offered by the respective applicants would play an important key role for the purpose of business and would facilitate the authorities to understand the viability of the depot including the accessibility of motor vehicles for using the retail outlet. It is the specific case of the Petitioner that the site offered by her is located on National Highway and is close to a bypass that runs from National Highway 44 and that any site at the mouth of the by-pass would not be a convenient site since that would not be allowed by the traffic system.

3. It is further stated by the Petitioner that she was informed by the Respondent No. 1 to appear before the Selection Committee for interview on 16.06.2004 at 02.00 pm at the address given in the communication. She, accordingly, proceeded to Guwahati where the interview was being held and appeared before the interview Board and submitted all the relevant documents including the copies of the documents, which she had submitted earlier. The Petitioner further states that she came to learn that the Respondent No. 1 has issued the letter of intent in favour of the Respondent No. 2 even before site inspection was made. It is contended by the Petitioner that the Respondent No. 2 has not shown any land of her own nor has she shown any document of purchase of land and that what she has shown was a lease for 49 years in respect of the lands which are not even suitable for location of the retail outlet since about half of the land is a pond and the other half being a rice mill installation. It is further contended by the Petitioner that as per the advertisement, she was given to understand that the persons who are agreeable to give lands on lease would be given preference and that in her case her father-in-law and mother-in-law have given in clear and in unequivocal terms an undertaking that their lands would "be made available for

the retail outlet even on long term lease-hold in favour of the Respondent No. 1 while the Respondent No. 2 has got only a lease hold right in respect of the lands for merely 49 years without any right to sublet thereof. According to the Petitioner, in the absence of any site verification, the Respondent No. 1 ought not to have been issued the letter of intent in favour of the Respondent No. 2. It is, therefore, submitted by the Petitioner that the decision of the Respondent No. 1 in allotting the letter of intent in favour of the Respondent No. 2 is contrary to the norms stipulated in the advertisement and, as such, liable to be quashed.

4. Both the Respondent Nos. 1 and 2 contested the writ petition and filed their respective affidavits-in-oppositions. Since the Respondent No. 2 has fully supported the stand taken by the Respondent No. 1, suffice it to record the case of the Respondent No. 1 as presented in its affidavit-in-opposition. The Respondent No. 1 claims that it was not within its knowledge that the mother-in-law and father-in-law of the Petitioner purchased some landed properties in Mouja-Bridhyanagar and denies that Mouja Bridhyanagar is on the periphery of Ranirbazar or that the whole area is commonly known as Ranirbazar. The Respondent No. 1 also asserts that the Petitioner did not submit any document relating to the properties of her father-in-law and mother-in-law either at the time of submitting her application or at the time of the interview. According to the Respondent No. 1, the two letters of undertakings signed by her father-in-law and mother-in-law respectively did not even bear any date and were apparently manufactured by her subsequently. The Respondent No. 1 further asserts that the Petitioner annexed to the application submitted by her some photocopies of documents, such as Admit Card of Madhyamik Examination of Tripura Board of Secondary Education, a sketch map of the lands without any particulars relating to dag number, Khatian number, Mouja etc., Citizenship Certificate and a writ-up pertaining to the plan for running of retail outlet dealership etc., but not in respect of the lands offered by her. It is also stated by the Respondent No. 1 that no team of the Corporation had visited any site offered by any of the applicants before the interview nor was such requirement stipulated in the advertisement. It is vehemently denied by the said Respondent that such visit of the site by a survey team plays an important role for the purpose of business. It is pointed out by the said Respondent that the lands offered by the Petitioner belongs to her mother-in-law and, that too, situated in a place which was far away from Ranirbazar where the retail outlet dealership was proposed to be set up and that the area of Ranirbazar falls within Mouja-Bridhyanagar and not in Majlishpur Mouja, where situate the lands offered by the Petitioner. It is also pointed out by the said Respondent that the Respondent No. 2 submitted two tenancy agreements, one for 49 years w.e.f. 16.03.2004 and other for 30 years w.e.f. 23.02.2004, along with her application and that both these lands are situated within Mouja-Majlishpur and fall within Ranirbazar area. It is further pointed out by the Respondent that the advertisement clearly stipulates that there was no commitment on the part of the Corporation for taking over the lands from the applicants. It is also stated by the said

Respondent that the Petitioner did not give any particulars of the lands as required in terms of the advertisement for consideration of the Selection Committee even though such particulars are made the essential parts thereof.

5. It is also the case of the Respondent No. 1 that the Corporation has its own policy which prescribes various criteria for the selection of a dealer for the retail outlet and that the Selection Committee was constituted by the competent authority with some senior officials of the Corporation having vast experience in the line, who are treated as experts in the matter. According to the said Respondent, the said Selection Committee carried out the selection process keeping in mind the evaluation criteria prescribed/ formulated by the Corporation in its policy and that there is hardly any scope for the Selection Committee to deviate from the said criteria. According to the policy, continues the said Respondent, the Selection Committee is required to select three candidates in order of merit after treating all the candidates equally and after considering their cases for the purpose. According to the said Respondent, the Petitioner, in the instant case, was duly considered by the Corporation through the said Selection Committee along with other eligible applicants in terms of its own policy and that after the Selection Committee selected three candidates in order of merit, in which the Respondent No. 2 stood first, and was ultimately selected by the Corporation on the basis of such recommendation. It is thus, submitted by the said Respondent that the writ petition has no merit and is liable to be dismissed.

6. In reply to this affidavit-in-opposition, the Petitioner filed her re-joinder affidavit in which she points out that some guidelines have been issued by the Government of India, Ministry of Road Transport and Highways and by the Indian Oil Corporation Ltd. in its Brochure issued from time to time for selection of petrol/diesel retail outlet dealers, which are applicable to the impugned selection process. Relying on this document, the Petitioner submits that site verification prior to interview is a condition precedent without which the authorities cannot have proper evaluation of the candidature of the respective candidates. She further states that in terms of the guideline issued by the Government of India, Ministry of Road Transport and Highways, communicated to the Chief Secretaries/ Secretaries (PWD/Roads) of all State Governments/United Territories, there are certain norms prescribed therein for the access of fuel stations, service stations and rest areas along National Highways and of the minimum distance to be maintained by fuel stations along National Highways. This guideline, according to the Petitioner, manifestly shows that site verification of the proposed location of retail outlet dealership is absolutely essential. Referring to the two tenancy agreements produced by the Respondent No. 2, the Petitioner submits that she is barred from sub-letting the lands in question to any one or authorities and that being so, the Respondent No. 1 should not have selected the Respondent No. 2 for the retail outlet dealership since this is contrary to the condition of the advertisement. According to the Petitioner, this betrays non-application of mind by the Respondent No. 1 while considering the case of the Respondent No. 2. She reiterates that she had submitted all the requisite documents including the

lands offered by her at the time of her interview.

7. Another rejoinder affidavit was filed by the Petitioner on 21.03.2005 wherein she reiterates that the lands of her father-in-law and mother-in-law are on the periphery of Raniibazar Nagar Panchayat and that they are located on the boundary of the said Mouja and is contiguous to Ranirbazar Mouja. She claims that the Respondent No. 1 is adopting double standard inasmuch as the lands, which are offered by the Respondent No. 2, also fall within Majlishpur Mouja. She also claims that she submitted copies of the documents executed by her father-in-law and mother-in-law in the course of interview at Guwahati. She also points out that the tenancy agreement executed in favour of the Respondent No. 2 shows the lands to be within Majlishpur Mouja, under Khatian No. 167, Jote No. 10, measuring 2 kanis 3 gandas 1 kara 1 kranta and 4 and half dhurs and points out that as per the Khatian No. 167 of Majlishpur Mouja, the record of right shows that the recorded Rayat (tenant) therein is one Utpal Roy and not the lessor, who executed the tenancy agreement and further that the measurement of the lands also differ from the measurement given in the tenancy agreement. She also states that no document can be found in the name of the lessor Jawaharlal Das and others pertaining to Khatian No. 167 of Jote No. 10 of Majlishpur Mouja.

8. In reply to this affidavit, the Respondent No. 1 filed another affidavit, wherein it is pointed out that the letter of intent has already been issued on 08.07.2004 in favour of the Respondent No. 2 and that by this time, the Respondent No. 2 has already set up the retail outlet dealership on the lands offered by her by raising boundary walls, setting up of sales counter etc. It is also pointed out therein that the Respondent No. 1 has set up under ground reservoir for storing petrol as well as diesel and also set up five delivery pumps etc. by incurring expenditure of about Rs. 25,00,000/-. All the necessary papers have been obtained from the competent authority for commissioning the retail outlet dealership, thereby rendering this writ petition infructuous. The Respondent No. 1 affirms that the lease agreements dated 16.03.2004 and dated 18.03.2004 produced by the Respondent No. 2 clearly allow her to create sub-tenancy or lease such lands to any person, individual or body corporate in terms of the earlier tenancy agreement dated 16.03.2004. The said Respondent also clarifies that Khatian No. 167 of Mouj a Maj lishpur should be read as K.T. (Kayami Taluk) No. 167 and this position has been clarified by revenue authorities. In the additional affidavit filed by the Respondent No. 2, she points out that she has purchased a substantial portion of leasehold land measuring. 40 acres by two sale deeds dated 15.12.2004. She also points out that the petrol pump has been formerly inaugurated on 12.05.2005 and the sale of petrol started from 12.05.2005. The Respondent No. 2 also discloses therein that the said land purchased by her falls within Maj lishpur Mouj a, but is within Ranirbazar Nagar Panchayat and claims that whether the land is situated within Ranirbazar Nagar Panchayat or at Maj lishpur Mouja or at Bridhyanagar Mouj a was not the definite criteria for selection. What is more important is whether the site is the most

convenient place for setting up such a pump. She also admits that the subsequent agreement, which is a part of the earlier Tenancy Agreement allowing her to sub-let or let out the lands in question, was not submitted with her counter affidavit due to mistake. Another additional affidavit was filed by the Respondent No. 1 along with a number of documents, which are taken on board.

9. Although the facts pleaded by the parties are many, the facts really material for adjudicating the controversy involved in this writ petition are quite few. From the pleadings of the parties, the questions which calls for consideration is whether the Petitioner submitted the document relating to the lands offered by her along with her application for retail outlet dealership and whether there is any stipulation in the advertisement requiring the submission of these documents along with such an application ? The second question, which calls for consideration, is whether inspection of the sites offered by the respective applicants before the interview is absolutely essential? The Petitioner in her writ petition has clearly stated that she had submitted all the requisite documents, more particularly, the copies of sale deeds executed by the vendors in favour of her father-in-law and mother-in-law and their letters declaring their willingness to allow her to use those lands for installation of the retail outlet dealership and to grant the same in favour of IOC Ltd. (AOD) on long term lease. This statement of the Petitioner has been vehemently denied by the Respondents. On going through the application submitted by the Petitioner, the original whereof is placed before me by Mr. D.B. Sengupta, the learned senior counsel for the Respondent No. 1, documents such as Sale Deeds of her mother-in-law and father-in-law and their undertakings were apparently not enclosed therewith. She, however, mentioned, in the appropriate column of the application, the details of the land proposed to be used for installation of the retail outlet dealership indicating the name of her mother-in-law as the owner thereof, the jote number, plot number and the extent of the frontage thereof. According to the senior counsel for the Respondent No. 1, the Petitioner is guilty of suppression/misrepresentation of facts before this Court for claiming in the writ petition that she had submitted such documents when she did not actually did so, and, therefore, the writ petition is liable to be dismissed for this reason alone. True, the Petitioner can be non-suited on the ground of suppression/ misrepresentation of material facts or for making false statements in Court, but, in my considered view, such act of commission or omission on the part of the Petitioner will entail dismissal of her writ petition only if they pertain to material facts. The Advertisement nowhere stipulates the submission of documents relating to the land offered by the Petitioner. What the Advertisement, however, insists is the furnishing by the candidate along with the application, the details of land, which the would make available for the retail outlet dealership vide important Note (a) thereof. Therefore, such act of omission or commission, which does not pertain facts of material nature, cannot be a ground for dismissing the writ petition. The fact that non- submission of such documents is not serious in nature and can be overlooked is abundantly made clear by the calling of the Petitioner for the

interview. If these documents were considered essential enclosures for the application, the Respondent No. 1 should have rejected the application for the omission and should not have called her for the interview. It is the further case of the said Respondent that the Petitioner did not produce the aforesaid documents even at the time of interview. This contention also has no force. A perusal of the selection proceedings shows that the Petitioner was awarded 25 marks out of the full mark of 35 allotted for assessing her capability to provide land infrastructure/ facilities. Now, if the Petitioner had not produced such documents as contended by the Respondent No. 1, then how could the Selection Committee award such marks to her? Under the circumstances, it is difficult to believe the stand taken by the Respondent No. 1 that the Petitioner did not produce the aforesaid documents at the time of her interview.

10. Mr. S. Deb, the learned senior counsel for the Petitioner, invites my attention to the Brochure dated 01.11.2004 issued by the IOC Ltd., which is admittedly the policy guidelines prescribing the criteria for selecting Retail Outlet Dealership, etc. Clause 14 of the Brochure, the applicability whereof to the impugned selection proceedings is not disputed by the Respondents, among others, says that the availability of suitable land for setting up of retail outlet at the advertised location is the essence of the project and that the applicants who readily have suitable site available for setting up Retail Outlet or have a firm commitment from the land owner for purchase/lease of site, considering the location of the land from the point of view of suitability from technical and commercial angle and rates acceptable to IOC, and who is willing to transfer such land on ownership basis or on long term lease to IOC would be given preference. It also makes clear that such land details offered along with the application alone will be considered for these purposes and the applicants will not be given liberty to offer any other lands subsequently. Clause 14.1 deals with the question of suitability of the sites offered by the applicants and provides that the technical/commercial suitability of the lands/sites offered by the applicants against development for any location will be ascertained by the team of IOC officers before the interview for that location based on such parameters as their sale potentials, frontage, the non-requirement to cut earth/rock, absence of LT O/H line, absence of O/H Tel line, absence of trees, proximity to culvert (farther from culvert desirable), type of soil (soft), a availability of power and water, visibility from road, absence of Divider, etc. Clause 17.1 provides that the dealership will be offered to the No. 1 candidate in the merit panel on the basis of their interview after necessary field verification and letter of intent will be issued. From the aforesaid parameters, I find considerable force in the submission of the learned senior counsel for the Petitioner that the visit of the site by the survey team is of paramount importance in the selection of retail outlet dealership. A conjoint reading of the said clauses plainly shows that the Corporation considers the availability of suitable land for setting up the dealership at the advertised location to be the essence of the project. Considering the parameters indicated by the Corporation, to my mind, the suitability of the sites offered by the

applicants can be ascertained only by making site verification. For instance, the existence or otherwise of low tension overhead line or overhead telephone or non-requirement to cut earth/rock, etc. cannot possibly be discovered by the selection Committee sitting at Guwahati and can be detected only on the basis of the report of the Survey/Inspection Team making site verification.

11. It may also be noticed that in the mark sheets of the performance of the applicants, the maximum mark allotted in respect of the capability of the candidates to provide their infrastructures and facilities is 35 marks. There are eight parameters for judging the suitability of the lands offered by the candidates and thus maximum mark has undoubtedly been allotted in this respect, thereby fortifying the submission of the learned senior counsel for the Petitioner that evaluation of the suitability of the offered lands is of vital importance. In the instant case, the Respondents have admitted that no site verification of the lands offered by the any of the applicants was made prior to the date of interview. That being the admitted position, one is at a loss to understand as to how the suitability of such lands has been assessed by the Selection Committee vis-a-vis the parameters laid down in the policy of the Corporation, when no site verifications were undisputedly made by the Selection Survey Team before the interview. The interview was held on 16.06.2004 and short listing of the applicants on merit was also made on the same day. What materials were placed before the Selection Committee to come to the conclusion that there was no LT O/H or O/H Tel. Line, etc. on the sites offered by the applicants are obviously not known. It is not the case of the Respondents either that the Selection Committee itself made the site verification before the interview to ascertain such parameters. The counter-affidavit and the various affidavits filed by the Respondent No. 1 do not offer any explanation on this aspect of the matter. Under the circumstances, the inference is irresistible and the conclusion inescapable that the impugned selection process suffers from the vice of non-application of mind and non-consideration of vital facts or consideration of extraneous matters. These defects in the selection process are substantial in nature and will vitiate the entire selection process.

12. It is next contended by Mr. S. Deb, the learned senior counsel for the Petitioner, that the two Tenancy Agreements dated 16.03.2004 and dated 03.03.2004 submitted by the Respondent No. 2 along with her application for the retail outlet dealership did not permit her to sub-let or create tenancy over the lands offered by her to any person or authority and, therefore, did not fulfill the condition of the Advertisement thereby rendering her ineligible for the selection. The submission of the learned senior counsel is that the Selection Committee has completely and deliberately overlooked major defects of such a magnitude as to vitiate the entire selection process. I have carefully gone through the application filed by the Respondent No. 2 and the enclosures thereof. Clause 4 of the two Tenancy Agreements dated 16.03.2004 and dated 03.03.2004 respectively submitted by the said Respondent will show that the second party therein, i.e., herself will not sub-let the leased out land to any person or party or authorities.

There can be no doubt that these clauses put a clog on her right to sub-let the lands offered by her for installation of the outlet. Clause (b) of Important Note to the Advertisement amply makes clear that preference would be given to applicants who already have land and who are willing to transfer such lands on ownership/ long lease to IOCL(AOD). That being the position, neither of the two Tenancy Agreements can show that the Respondent No. 2 already has a land which she can transfer on ownership/long lease in favour of the IOC Ltd. (AOD). Consequently, she could not be given any preference in terms of the said Clause (b). In this connection, it may be instructive to note the allocation of marks on various parameters (as applicable to individuals) appearing in Clause 16.1 of the Brochure and the same is reproduced thus:

Allocation of marks on various parameters (as applicable to individuals)

Parameter	Subheads	Description	Marks	Evaluation
Land and infrastructure	Suitable land for retail outlet	Having clear title to the land/Registered Sales Deed and willing to give to the company on long term lease or purchase basis	35	Based on leading question and also
	Having agreement to purchase and willing to give to the company on long term lease or purchase	25	verifying the documents submitted	
	Having clear title to the land/Registered Sales Deed and not willing to give to the company but willing to use the same for development of a retail outlet	20		
	Having agreement to purchase and not willing to give to the company but is willing to use the same for development of a retail outlet	15		

13. The portion extracted above abundantly demonstrates that preferential treatment is to be given only to applicants who either have clear title to land or have agreement to purchase. For example, the applicant having clear title to the land by registered Sale Deed or other wise and is willing to give to the company on long term lease or purchase basis is entitled to 35 marks whereas such applicant having title to the land but is not willing to transfer to the company on long lease or purchase basis is entitled to 20 marks. Again, an applicant who has agreement to purchase land and is willing to transfer the same to the company on long term lease or purchase is entitled to 25 marks while the one having such land but not will to transfer is entitled to 15 marks. Clause 14 of the same Brochure further provides that the land details offered along with the application alone will be considered for the purpose of giving preference and the applicant will not be given the opportunity to offer any other land subsequently. As noticed earlier, the lands offered by the Respondent No. 2 in her application are those covered by the two Tenancy Agreements in question and nothing else. Since the said Respondent did not have any agreement to purchase or any clear title over such lands, no preference could be given to her in the selection. Yet, the Selection Committee awarded 25 marks to her in this behalf. She was apparently not entitled to any mark in terms of the parameters laid down in Clause 16.1.

14. It is, however, contended by Mr. D.B. Sengupta, the learned senior counsel for the Respondent No. 1, that in terms of the Tenancy Agreement dated 18.03.2004 (Annexure-10 to the Additional Affidavit), which could not be produced earlier, the Respondent No. 2 did have the right to create Sub-tenancy in favour of any person including the IOCL(AOD) on long term basis. True, this agreement apparently refers to the earlier Tenancy Agreement dated 16.03.2004 and purports to confer additional benefits/ advantages to the Respondent No. 2 allowing her the power to create sub-tenancy in respect of the land offered by her in favour of IOCL (AOD). However, neither the counter- affidavits of the Respondents nor their additional affidavits filed by them prior to 28.05.2005 throw any light on the existence of this document even though it was projected to have been executed as early as 18.03.2004. It should been, if their contention is correct, in the custody of either of the Respondents. No satisfactory explanation is forthcoming from any of them for this mysterious omission. In view of this, I am thus persuaded to believe that Annexure-10 was not in existence at the time of the interview but was subsequently, i.e., long after the filing of this writ petition, manufactured by them to defeat the case of the Petitioner and, conversely, to strengthen the case of the Respondent No. 1. Consequently, reliance cannot be placed upon this document to hold that the Respondent No. 2, at the time of her interview, had any land of her own or land for creating long lease to the IOCL (AOD). Therefore, the Selection Committee has acted arbitrarily and grossly erred in law in placing the Respondent No. 2 as the No. 1 candidate in the merit panel.

15. It is true that the power of writ Courts to review administrative action of the Governmental authority or its instrumentalities like the Respondent No. 1 is not that of an appellate Court. The Respondent No. 1 is admittedly an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligation to discharge. Unless its action is arbitrary or irrational (Wednesbury unreasonableness) or suffers from procedural impropriety or mala fide, it is not open for the Courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of such authorities. But it is also an equally well-settled law that exercise of power, be it legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. If the power has been exercised on a non-consideration or non-application of mind (Emphasis mine) to the relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. To arrive at a decision on reasonableness (i.e. whether the discretion was exercised reasonably), the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must be within the four corners of the law, and not one which no sensible person would have reasonably arrived at, having regard to the above principles, and

must be a bona fide one.

16. In the instant case, I have recorded my findings that in the absence of site verification, which is the sine qua non for proper assessment on the suitability or otherwise of the lands offered by the respective candidates, the Respondent No. 1 and the Selection Committee constituted by it have violated the guidelines contained in the Brochure issued by the IOC Ltd. and have not taken into account the relevant factors for selection of the dealership in question. I have also concluded that no tenancy Agreement was produced by the Respondent No. 2 at the time of her interview evidencing her right to transfer any land to the Respondent No. 1 on long lease. Upon those findings, I have no alternative but to hold that the entire selection process for appointment of the dealership in question stands vitiated on the ground of non-application of mind and arbitrariness. It is, however, contended by Mr. D.B. Sengupta, the learned senior counsel for the Respondent No. 1, that the guidelines contained in the Brochure of the Corporation are merely instructions to be followed, have no force of law and are, therefore, not binding upon the Respondent No. 1. According to him, while every effort was made by the Respondent No. 1 to comply with such guidelines in the selection process of the dealership in question, such guidelines, in the nature of things, having no force of law, any or every infraction thereof cannot have the effect of vitiating the selection process. It is true that administrative instructions or guidelines issued by the executive authorities do not have the force of law like a statute passed by legislatures and deviation from such instructions/guidelines may not have the same effect as violation of a statutory provision. But it must be remembered that these guidelines are not framed only to be ignored or only to be observed in breach. On the contrary, they are framed to ensure fairness, transparency and non-arbitrariness by the executive authorities in their dealing with the public. In a trend-setting judgment, the Apex Court as early as 1979 in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, has exhaustively and authoritatively dealt with the consequence of disregarding by the authorities of the norm or standard formulated by themselves. In the epoch-making judgment, this is what the top Court says:

It is a well-settled rule of administrative law that an executive authority must be rigorously held to standard by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. The defined procedure, even though generous beyond the requirements that bind such agency must be scrupulously observed. Thus rule, though supportable also as emanating from Article 14, does not merely rest on that article. It has an independent existence " apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the Government must be informed with reason and

should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.

The Apex Court further observes:

It must, therefore, be taken to be the law that where the government is dealing with the public, whether by way of giving job or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the government cannot act arbitrarily at its sweet will and, like private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant, and if the government departs from such standards or norm in any particular case or cases, the action of the government would be liable to be struck down, unless it can be shown by the government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

The top Court also held therein:

Now this rule, flowing as it does from Article 14 applies to every State action. If a statutory corporation, body or other authority is an instrumentality or agency of the government it would be an "authority" and therefore "State" within the meaning of that expression in Article 14.

17. From the principles laid down by the Apex Court in the foregoing, it is obvious that departure from the standard or norm laid down by public authorities is not per se forbidden, but if deviation of such norm or standard is made, the onus is upon them to show that such course of action is not arbitrary, or is based on rational principles. No attempt is made by the Respondent No. 1 to show that infraction of the guidelines has been necessitated by valid considerations. Which itself are not irrational or based on valid principles. Mr. S. Talapatra, the learned senior counsel for the Respondent No. 2 triumphantly flashed the additional affidavit of the Respondent No. 2 dated 27.7.2005 like a badge of honour to announce the notorious achievement of the Respondent No. 1 in commissioning the pump outlet on 12.5.2005. Similarly, Mr. D.B. Sengupta, the learned senior counsel for the Respondent No. 1, echoing the statement of the learned senior counsel for the Respondent No. 2, points out that a huge sum of money to the order of Rs. 25,00,000/- has been incurred by the Respondent No. 1 in commissioning the pump outlet and, therefore, the interference of this Court is not called for. These submissions are recorded only to be rejected. If the contentions of the Respondents are accepted, illegal acts of public authorities can never be challenged effectively or quashed by writ Courts upon the mere showing by them of fait accompli. This will amount to perpetuation of illegality. A somewhat similar submission was advanced by the Union of India before the Apex Court in *V. Purushtham Rao v. Union of India* (2001) 10 SCC 305 but the same was repelled by the top Court in the following words:

23. So far as the fifth question is concerned, it is no doubt true that the Appellants have invested considerable amount in the business and have operated it for about eight years but even on equitable considerations, we do not find any equity in favour of the Appellants. The conduct of the Minister in making the discretionary allotments has been found to be atrocious, in the very three Judge Bench decision of this Court and in relation to similar allotments made by the said Minister in favour of 15 persons, who were Respondents in Common Cause case. This Court came to hold that the allotments of the public property had been doled out in an arbitrary and discriminatory manner and the Appellants had been held to be beneficiaries of such arbitrary orders of allotments. The question of granting the allottees relief on an equitable consideration did not arise at all, for the same reasons in a case like this, a sympathetic consideration on the ground of equity would be a case of misplaced sympathy and we refrain from granting any relief on any equitable consideration. In our view, the Appellants do not deserve any equitable consideration.

18. Finally, it is contended by Mr. D.B. Sengupta, the learned senior counsel for the Respondent No. 1, that the Petitioner having taken a chance and having remained unsuccessful, cannot turn around and challenge the method of selection as illegal; she is estopped to question the correctness of the selection. Strong reliance is placed by him upon the decisions of the Apex Court in Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, Om Prakash Shukla v. Akhilesh Kumar Shukla 1986 Supp SCC 285 and Madan Lal and Others Vs. State of Jammu and Kashmir and Others, I have carefully examined these decisions, but the learned senior counsel has overlooked the decision of the three Judge Bench of the Apex Court in Raj Kumar and Others Vs. Shakti Raj and Others, which held that where the procedure of selection suffers from glaring illegalities, the candidate appearing for selection and remaining unsuccessful cannot be barred from questioning the selection; the principles of acquiescence/estoppel are not applicable in such a case. If the contention of the learned senior counsel is accepted, then every unsuccessful bidder in public tender will be held barred by these principles even if the tender process is vitiated by non-application of mind, illegality, irrationality or procedural impropriety thereby sounding the death-knell for judicial review of administrative actions. Therefore, the contention of the learned senior counsel in this behalf has no force and is, accordingly, rejected.

19. W.P. (C) No. 256 of 2004

The Petitioner in this case also submitted her application in the format supplied by the Respondent No. 1 for allotment of the Retail Outlet Dealership at Ranirbazar. Her grievance in this writ petition is also against the failure of the Respondent No. 1 to conduct spot verification of the lands offered by the candidates including her own. The Respondent No. 1 in paragraph 24(b) of its affidavit-in reply has categorically stated that the husband of the Petitioner is a partner of M/s. Biswas and Sons, an existing Retail Outlet Dealer of Petroleum

products, which is carrying on such business at Agartala Town and that she is accordingly not eligible for the dealership in question in terms of Clause-1(c) of the advertisement. The Petitioner thereafter filed her rejoinder affidavit but she never denies therein the aforesaid statement of the Respondent No. 1. Clause 1(e) of the Advertisement concerning the eligibility says that a candidate should not have "close relatives i.e., (i) Spouse, (ii) Unmarried Sons/ Daughters as an LOI holder or dealer/ distributor of MS/HSD/SKO-LDO/LPG of any Oil Company. Since the statement of the Respondent No. 1 that the husband of the Petitioner is a partner of M/s. Biswas and Sons, an existing Retail Outlet Dealer of Petroleum products, carrying on such business at Agartala, is not specifically denied by her, I hold that she is not eligible for allotment of the dealership in question. Consequently, she has no locus standi to file this writ petition. In the result, this writ petition is liable to be dismissed.

20. For the reasons stated in the foregoing, W.P. (C). 259 of 2004 is allowed. The letter of intent No. SM 2/8-482 dated the 8th July, 2004 issued by the Respondent No. 1 and the selection process in connection therewith are hereby quashed. The Respondent No. 1 shall now start the selection process afresh by constituting a Selection Committee, which shall consider the case of the Petitioner and other eligible candidates for allotment of the dealership in question on the basis of the land documents, etc. submitted by them as on 16.06.2004 and in accordance with the Brochure dated 01.11.2004 (or the Brochure/ guidelines applicable) issued by the IOC Ltd. and thereafter makes the selection. It is made clear that the Selection Committee shall not take into account the Tenancy Agreement dated 18.03.2004 (Annexure-10), the Sale Deed bearing No. 1-13161 dated 15.12.2004 and the Sale Deed bearing No. 1.13162 dated 15.12.2004, which obviously came into existence long after the date of interview. Having held that the Respondent No. 2 is not entitled to any mark on land and infrastructure, the Respondent No. 1 is directed to allow the Respondent No. 2 to wind up the Retail Outlet Dealership in question within 30(thirty) days of the receipt of this judgment at her own cost and expenses. W.P. (C) No. 256 of 2004 is hereby dismissed. The parties in the two writ petitions are directed to bear their own costs.