

(2008) 11 GAU CK 0019

In the Gauhati High Court

Case No : W.A. No's. 194 and 312 of 2005

Ms. Shahida Rahman Brabhuyan

APPELLANT

Vs

Smt. Kunti Medhi and Others

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 6
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 1 GLD 33 : (2009) 2 GLT 859

Hon'ble Judges : Anima Hazarika, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : K.N. Choudhury and Y.S. Mannan, in W.A. No. 194/2005, H. Rahman, D.C. Chakraborty, Giash Uddin, M.J. Quadir, I. Deka, Jarifa Wahid and Jesmee Huda, in W.A. No. 312/2005, for the Appellant; A.M. Mazumdar S.S. Dey, M. Nath and R. Chakraborty for Respondent 1 in W.A. Nos. 194 and 312/2005, H. Rahman, D.C. Chakraborty, Giash Uddin, M.J. Quadir, I. Deka, Jarifa Wahid and Jesmee Huda, in W.A. No. 194/2005 and K.N. Choudhury and Y.S. Mannan, for Respondent 2 in W.A. No. 312/2005, for the Respondent

Final Decision : Allowed

Judgement

Anima Hazarika, J.—Heard Mr. K.N. Choudhury, learned senior counsel for the Appellant assisted by Mr. Y.S. Manna, Advocate for the Appellant in WA No. 194/2005, Mr. H. Rahman, Advocate for the Appellants in WA No. 312/2005. Also heard Mr. A.M. Mazumdar, learned senior counsel for the Respondent No. 1/writ Petitioner assisted by Mr. M. Nath, Advocate appearing for the private Respondent/writ Petitioner in both the appeals.

2. Both these appeals are taken up together for disposal since the appeals are directed against the judgment and order dated 7.2.2005 passed by the learned Single Judge in WP(C) No. 6063/2003 by which the writ petition was allowed and the impugned Letter of Intent (hereinafter to be referred to as LOI) dated 18.7.2003 issued in favour of the writ Appellant in WA No. 194/2005 along with the communication dated 18.7.2003 were set aside and quashed. It was further

directed by the learned Single Judge that the LOI in respect of retail outlet dealership in question for which the writ Petitioner's husband was selected" as the first nominee shall be issued/transferred in favour of the writ Petitioner after observing all necessary formalities.

3. The facts of the case in brief, is that, on 30.12.1997, an advertisement was issued by the Hindustan Petroleum Corporation Ltd. (hereinafter to be referred to as "HPCL") inviting applications for allotment of retail dealership under open category at Doboka in the district of Nagaon as well as in two other places under open/S.T. category. In pursuant to the said advertisement, the husband of the writ Petitioner submitted his application for the dealership at Doboka. However, the said advertisement was not acted upon by the Respondents and a fresh advertisement was again issued on 11.9.2000. In the said advertisement the following requirements were indicated under the heading "Important Note":

(a) The applicant should furnish along with application details of land which he/she may make available for the dealership,

(b) Considering the location of the land from the point of view of commercial angle, Appellants willing to transfer the land on ownership/long lease to the Oil Company at the rate acceptable to the Oil Company would be given preference,

(c) If an applicant, after selection is unable to provide indicated by him/her earlier within a period of 2 (two) months, the allotment of the dealership made to him/her would be cancelled.

Under Clause (e) of paragraph 2 of the advertisement under Eligibility Criteria it has been prescribed that the gross family income of the applicant for the financial year of 1999- 2000 should not be more than Rs. 2,00,000/- (Rupees two lakhs).

4. Pursuant to the said advertisement, the husband of the writ Petitioner Siba Kanta Medhi submitted his application a fresh praying for allotment of dealership at Doboka. Thereafter, Sri Siba Kanta Medhi was asked to appear before the Dealer Selection Board (hereinafter to be referred to as "DSB") on 21.6.2001 for interview. Accordingly, Sri Siba Kanta Medhi appeared before the DSB for interview along with other applicants on the said date for allotment of dealership at Doboko. On consideration of the relative merits of the three contenders who appeared in the interview on 21.6.2001, the DSB selected and short listed the candidates on merit and in the said merit list the name of Siba Kanta Medhi appeared in serial No. 1 while Smt. Sahida Rahman Barbhuyan (Writ Appellant in WA No. 194/2005) and one Sri Biswajit Bora were placed at Serial Nos. 2 and 3 of the said merit list respectively.

5. It has been stated in the writ petition that in compliance of the conditions mentioned under the column "Important Note", Sri Siba Kanta Medhi had already entered into an agreement with one Md. Rejaul Karim Choudhury for taking his land on long term lease of 99 years to use the same for retail outlet in

the event of his selection by the DSB. Subsequently, on being selected at serial No. 1 of the merit list, Sri Siba Kanta Medhi executed a Deed of Lease with Md. R.K. Choudhury on 5.7.2001 whereby a plot of land measuring 5 Bighas, 4 Kathas and 4 Lechas was taken over by Sri Siba Kanta for the purpose of retail outlet. The said lease deed was executed on consideration of payment of Rs. 4,000/- monthly w.e.f. the month of August, 2001 and accordingly a monthly rent @ Rs. 4,000/- is being paid to Md. R.K. Choudhury regularly till date.

6. In the 3rd and 4th week of July, 2002 one Field Officer, Sri Abhijit Bhattacharjee was deputed by the HPCL for verification of the above-mentioned land taken on lease by Sri Siba Kanta Medhi. Accordingly, after conducting the field verification, the said Field Officer asked Sri Siba Kanta Medhi to develop the land and make it ready for installation of retail outlet dealership.

7. When the matter was rested at that stage and the husband of the Petitioner Sri Siba Kanta Medhi was waiting for issuance of formal LOI in his favour from HPCL, some controversy arose by a decision of the Central Government whereby allotment of all new dealership was proposed to be cancelled. The said decision of the Govt. of India was challenged in the Apex Court and various High Courts including this Court and eventually the controversy was resolved by the Apex Court whereby the decision by the Central Government was set aside and quashed.

8. When the entire controversy was resolved and the husband of the writ Petitioner Sri Siba Kanta Medhi, after investing huge amount of money for setting up of the retail outlet dealership on being selected for the same, was waiting for issuance of the LOI in his favour, he expired on 18.2.2003 leaving the writ Petitioner as his sole legal heir. Thereafter, on 2.6.2003, the writ Petitioner submitted a representation to the HPCL authorities for issuance of LOI in her favour on account of the death of her husband. When she was waiting for the reply from the Respondents, she received a Caveat Application from 2nd empanelled candidate Smt. Sahida Rahman Barbhuyan (Respondent No. 4 in W.P./Appellant in WA194/2005) and could come to know that said Smti Sahida Rahman Barbhuyan had been issued the LOI by the HPCL authorities vide Reference No. SM/RET/NEW/RO-DAB/LOI dated 18.7.2003 for retail outlet dealership at Doboka on the death of the 1st empanelled candidate Late Siba Kanta Medhi. Simultaneously, the writ Petitioner also received a letter dated 18.7.2003 from the HPCL informing her that since no LOI was issued in the name of her husband, there was no question of transferring the same in the name of the writ Petitioner and accordingly, her request contained in the representation dated 2.6.2003 was not considered. After receiving the said letter and the Caveat Application the writ Petitioner submitted another application to the HPCL on 26.7.2003 for furnishing her a copy of the LOI dated 18.7.2003 issued in favour of Smt. Sahida Rahman Barbhuyan. However, no such copy of LOI was furnished to the writ Petitioner. It was under these circumstances the writ petition being W.P.(C) No. 6063/2003 was filed by Smt. Kunti Medhi, wife of Late Siba Kanta

Medhi challenging the issuance of LOI in favour of Smt. Sahida Rahman Barbhuyan and praying for further direction to the HPCL authorities to grant the dealership of the retail outlet at Doboka in her favour.

9. It has been stated in the said writ petition that Smt. Sahida Rahman Barbhuyan in whose favour the LOI has been issued is not qualified to be granted the dealership due to nonfulfillment of the eligibility criteria as prescribed in the advertisement dated 11.9.2000 since at the time of filing of the application, i.e. on 31.10.2000 she was a student studying at Doboka Higher Secondary School. Even on the date of filing of the writ petition she was a student of the Degree class and she did not have any known source of income and was entirely dependent on her father Md. Abdur Rah, man Barbhuyan. Hence, income of father and other members of Smt. Sahida Rahman Barbhuyan should be treated as income of Smt. Sahida Rahman Barbhuyan. As per the terms of Clause 2(e) of the advertisement the applicant should not have a gross family income of more than Rs. 2,00,000/- (Rupees two lakhs) in the financial year 1999-2000. In the instant case, the father of Smt. Sahida Rahman Barbhuyan being the Principal of Hazi Anfar Ali College, Doboka was drawing the gross salary of Rs. 2,81,730/- (Rupees two lakhs eighty one thousand seven hundred and thirty) p.a. which exceeds the limit prescribed in the advertisement under Clause 2(e), i.e. gross annual income should not be more than Rs. 2,00,000/- (Rupees two lakhs). Further, the father of Smt. Sahida Rahman Barbhuyan is also the proprietor of M/s River Valley Stone Crusher set up as an industry at village Nahargaon in the district of Nagaon, the annual income of which is more than Rs. 4,00,000/- (Rupees four lakhs), inasmuch as, he is also the owner of a public carrier, Tata Truck bearing Registration No. ASU 5616, besides income from agricultural land which is more than Rs. 5 lakhs for the financial year 1999-2000. Hence, in view of the facts stated above Smt. Sahida Rahman Barbhuyan whose income is much above the stipulated limit of Rs. 2,00,000/- (Rupees two lakhs) as per Clause 2(e) of the advertisement, she is prima facie not qualified/entitled to be offered or settled with the retail outlet dealership in question. The writ Petitioner further stated that on being selected by the authority, the husband of the Petitioner was to be appointed as a dealer but for delay in issuing LOI by the HPCL for reasons which cannot be attributed to any of the lapses of either the writ Petitioner or her husband. Hence, the Petitioner cannot be penalised for no fault of her own and right accrued to her being legal heir of her husband cannot be taken away in the manner as is sought to be done by the HPCL.

10. The writ Appellant Smt. Sahida Rahman Barbhuyan submitted her detailed affidavit-in-opposition countering the averments made in the writ petition. According to her, on the date of submission of the application for allotment of retail outlet dealership in question in her favour she was 22 years, 9 months and 20 days. As such, she has fulfilled the eligibility criteria on the date of application as mentioned in the advertisement (Annexure-I). So far her family income for the financial year 1999-2000 is concerned, her family income inclusive of her mother and father comes to Rs. 1,90,000/- (Rupees one lakh and ninety

thousand) for which she has submitted her declaration as well as certificate issued by the Circle Officer, Doboka Revenue Circle which belied the statement of the writ Petitioner that the gross family income of the writ Appellant is more than Rs. 2,00,000/- (Rupees two lakhs). Her father has also given her undertaking that if selected by the authorities, he will give full support to her including financial loan, land and other infrastructural requirements. Thereafter, on conclusion of the interview of the candidates conducted by the DSB, she was placed in 2nd position of the merit list and the husband of the writ Petitioner was placed in the 1st position of the merit list.

11. It has been further stated in the said affidavit-in-opposition by the writ Appellant, Smt. Sahida Rahman Barbhuyan that in the meantime, the Central Government cancelled all the new allotment of petroleum product dealership including retail outlet of LPG dealership which were issued from the year 2000 onwards. Accordingly, the Respondent No. 1 did not issue any LOI to the selected candidates. However, the said decision of the Central Government having been challenged before various High Courts as well as before the Supreme Court, the Supreme Court after hearing the parties set aside the decision of the Central Government. It was only thereafter the process of allotment of dealership at Doboka Town was taken up by the Respondent No. 1(HPCL). However, when the HPCL was going to allot the above-mentioned dealership at Doboka Town, it had come to the knowledge of the HPCL that the husband of the Petitioner who was placed at Serial No. 1 of the merit list had expired on 18.2.2003. Since the husband of the writ Petitioner died prior to the issuance of the LOI, the LOI was issued to the second empanelled candidate of the merit list, i.e. Smt. Sahida Rahman Barbhuyan, vide letter dated 18.7.2003 issued by" the HPCL authorities.

12. The case of the writ Appellant Smt. Sahida Rahman Barbhuyan is that since the HPCL has issued LOI to the Appellant as per its procedure and in accordance with the merit list, the writ Petitioner has got no right to challenge the same as she was neither a candidate interviewed by the DSB nor she was selected in the merit list prepared for the purpose of allotment of Dealer ship of retail outlet of petroleum products. Therefore, the writ Petitioner has no subsisting rights to demand LOI in her favour. If the prayer made by the writ Petitioner is allowed, it will amount to reconstitution of dealership even before issuance of LOI and signing of agreements between the parties which is not permissible under the Guidelines issued by the Govt. of India, Ministry of Petroleum and Natural Gas. As per Govt. of India"s circular dated 15.1.1999 reconstitution of dealership is not allowed before three years from the date of commissioning. In the instant case, the LOI was not issued in favour of the husband of the Petitioner. Further, the issuance of LOI does not construe as an offer of dealership and in the LOI certain conditions are mentioned and after fulfilling of those conditions to the satisfaction of the HPCL authorities, the formal agreement for dealership is signed between the parties and only thereafter the retail outlet is commissioned.

13. Regarding Lease Deed as mentioned in the writ petition, the writ Appellant,

Smt. Sahida Rahman Barbhuyan stated in her affidavit that the said lease deed is not a registered document and under the law no lease deed for 99 years is valid unless the same is duly registered. As per the advertisement, a candidate is required to provide land for the dealership only after selection and after receipt of LOI. In the instant case, since no LOI was issued in favour of the Petitioner's husband, the question of taking lease of land prior to receipt of the LOI did not arise. On the other hand, the writ Appellant, Smt. Sahida Rahman Barbhuyan received the LOI from the HPCL issued on 18.7.2003 and she had already procured the land which was offered to the HPCL and HPCL has already proposed to inspect the said land. Further, she has also applied for NOC to the Gaon Panchayat and the Revenue authorities which are required for opening the retail outlet dealership of petroleum product.

14. The learned Single Judge after hearing the learned Counsel appearing for the parties and upon perusal of the record produced on behalf of HPCL authorities passed the impugned judgment and order on 7.2.2005 allowing the writ petition thereby setting aside the LOI dated 18.7.2003 issued in favour of the writ Appellant/Respondent No. 4 in writ petition and further directed that the LOI in respect of retail outlet dealership in question for which the writ Petitioner's husband was selected as the first nominee shall now be issued/transferred in favour of the writ Petitioner after observing all necessary formalities which is under challenge in the instant writ appeal.

15. Mr. K.N. Choudhury, learned senior counsel appearing for the writ Appellant in WA No. 194/2005 submits that as per the Guidelines contained in the Circular dated 29.5.1997 issued by the Govt. of India, Ministry of Petroleum, LOI can be transferred to the next of kin of deceased LOI holder. According to Mr. Choudhury, the above Guidelines for transfer of LOI to the next of kin of deceased LOI holder would be applicable when the LOI is issued in the name of the empanelled candidate. Therefore, the circular dated 29.5.1997 recognizes the rights of next of kin of the empanelled candidate in whose favour the LOI is issued. In the instant case, on 28.4.2003 the Ministry of Petroleum directed the HPCL to issue the LOI in favour of Siba Kanta Medhi, i.e. the husband of the writ Petitioner. However, before issuance of the said LOI, Siba Kanta Medhi expired on 18.2.2003. Since no LOI was issued in favour of the empanelled Late Siba Kanta Medhi, the same cannot be transferred to the writ Petitioner who is not even selected by the DSB.

16. Mr. K.N. Choudhury, learned senior counsel would further urge that claim of the Respondent No. 1/Writ Petitioner does not fall on any of the conditions as mentioned in the circular dated 29.5.1997, inasmuch as, the husband of the writ Petitioner ought to have sought legal redresses within the time frame as prescribed for, i.e. immediately after conclusion of the investigation as well as for issuance of LOI as per the relevant circulars. Further, Mr. Choudhury has relied on the decision of the Apex Court reported in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, wherein it has been held that a party

claiming fundamental rights must move the Court before other rights come into existence. In the instant case, the right of the writ Appellant has already accrued before the right of the writ Petitioner came into existence. Hence, on this ground no relief could be granted to the writ Petitioner.

17. Learned Counsel for the Appellant thus contended that the learned Single Judge without recording any findings as to whether the writ Petitioner fulfills the conditions Laid down in the circular dated 29.5.1997 for transfer of LOI in her favour allowed the writ petition thereby directing the authorities to issue/transfer the LOI in favour of the writ Petitioner, which is not permissible under the Guidelines issued by the Government of India, Ministry of Petroleum and Gas, as such the impugned judgment is not sustainable in law and liable to be set aside and quashed.

18. Mr. A.M. Mazumdar, learned senior counsel for the writ Petitioner/Respondent No. 1 herein at the very outset brought to the notice of the Court the following facts:

30.12.1997 An advertisement was issued by the HPCL for Retail Outlet Dealership at Doboka Town under open category. Husband of the Petitioner Sibakanta Medhi applied for the dealership.

11.9.2000 Another advertisement issued by the HPCL. Criteria-Income of the candidates should not be more than Rs. 2 lakhs. Petitioner's husband Siba Kanta Medhi applied again. HPCL asked Siba Kanta Medhi to appear before Selection Board.

21.6.2001 Siba Kanta Medhi was placed in SI. No. 1 of the Merit List. Smt. Sahida Rahman Barbhuyan was placed in SI. No. 2 of the said list.

5.7.2001 Lease Deed Agreement signed by Siba Kanta Medhi for 99 years for taking land on lease for which monthly Rent of Rs. 4000/- was fixed and being paid.

12.7.2001 One complaint was lodged by a private organization i.e. Doboka Anchalik Youth Parishad which was not an Applicant for the dealership.

3rd and 4th week One Field Officer, Sri Ab- of July, 2001 hijit Bhattacharjee deputed by Respondent Oil Company inspected and verified the above land of Siba Kanta Medhi and asked him to improve the said land. The husband of the Petitioner Siba Kanta Medhi spent huge amount of money after being selected.

2.2.2002 Investigation was done by the concerned authority dismissing the above private complaint and report was submitted to the higher authorities on 11.2.2002.

18.2.2003 Siba Kanta Medhi, husband of the writ Petitioner expired.

28.4.2003 Petroleum Ministry gave a direction to the HPCL to issue LOI to the

husband of the writ Petitioner. 2.6.2003 The writ Petitioner who is the wife of Late Siba Kanta Medhi submitted representation to the HPCL authority to issue Letter of Intent (LOI) in her favour. 18.7.2003 The HPCL authority informed the writ Petitioner that since LOI was not issued to her husband, no question arises to transfer LOI in her name and on the same day Letter of Intent (LOI) was issued in favour of the writ Appellant Smt. Shahida Rahman Barbhuyan. 26.7.2003 Writ Petitioner filed Application to Respondent No. 3 to furnish her a copy of above-mentioned LOI dated 18.7.2003 issued to the writ Appellant of WA No. 194/2005 without any result.

19. Referring to the above facts, Mr. Mazumdar has submitted that the Ministry of Petroleum and Natural Gas, Government of India issued a Guidelines in the name of "Citizens Charter" (a charter of rights) informing the customers about their rights, services offered by the OIL Companies, PROCEDURE FOR SELECTION OF DEALERS AND DISTRIBUTORS etc., terms of which are binding on both the parties and as per Clause 7.5 of the Guideline which deals with sequence of procedures followed in the selection of dealership/distributorships, the LOI should be issued within 15 days from the date the empanelled list is forwarded to the OIL Companies by the DSB for necessary action. There is no provision of withholding or delaying the issue of the LOI to the eligible empanelled candidate, i.e. SI. No. 1 of the merit list under any circumstances.

In the instant case, on 21.6.2001, Siba Kanta Medhi, husband of the writ Petitioner was selected as first empanelled candidate. As per the above Guidelines the HPCL authorities ought to have issued LOI to Siba Kanta Medhi within 15 days from the date when the DSB sent the above-mentioned empanelled lists to the HPCL authorities. However, inspite of receiving the said empanelled list, no LOI was issued to Siba Kanta Medhi by the HPCL authority on the ground that a complaint was lodged by one Doboka Anchalik Youth Parishad, a fictitious body to the HPCL authority on 12.7.2001 which was ultimately found to be false by the investigating authority on 2.2.2002. Assuming but not conceding that such fictitious complaint could be entertained by the authorities, there was no reason for non-issuance of the LOI within 15 days (as per Clause 7.5 of the Charter) from 2.2.2002, i.e. the date on which the complaint was found to be false thereby exonerating the writ Petitioner's husband from the allegation made against him. However, due to the reason best known to the authority it was directed to be issued only on 28.4.2003 by the Petroleum Ministry, i.e. after more than 1 year 2 months and 26 days from the date on which the complaint was found to be false by the Investigating Agency. However, in the meanwhile, Siba Kanta Medhi, husband of the writ Petitioner who was placed at SI. No. 1 of the merit list had expired on 18.2.2003.

20. Mr. Mazumdar has vehemently urged that the issue of the LOI was delayed illegally, without any authority of law and on account of mala fide reason, i.e., lodging of a false complaint by some fictitious body, viz. one Doboka Anchalik Youth Parishad who was not even an applicant for allotment of dealership

pursuant to the advertisement dated 11.9.2000. The above-mentioned Guidelines also do not provide filing of any complaint at this stage, i.e. after Late Siba Kanta Medhi was already empanelled at SI. No. 1 of the merit list on 21.6.2001 which was already sent by the DSB to the HPCL authority followed by submission of Field Investigation Report (FIR) by the Field Investigation Officer in favour of Late Siba Kanta Medhi during his life time. Hence, on this ground of lodging of the complaint, the HPCL authority could not make it an excuse in delaying the issuance of the LOI in favour of Late Siba Kanta Medhi.

21. Refuting the submissions made by Mr. K.N. Choudhury, learned Counsel for the Appellant that delay in issuance of the LOI in favour of Siba Kanta Medhi was caused due to challenge of the Government of India's decision to cancel all allotments of Petrol Pumps/Gas Dealership in the Supreme Court as well as in various High Courts, which was disposed of by the Supreme Court on 20.12.2002 (reported in Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., Mr. Mazumdar submitted that the HPCL authorities in Paragraph 5 of their affidavit stated that process of issuance of LOI in the name of Siba Kanta Medhi was temporarily suspended due to written complaint lodged by Doboka Anchalik Youth Parishad on 12.7.2001 against selection of Siba Kanta Medhi and not due to the reasons as submitted by Mr. K.N. Choudhury, the learned Counsel for the Appellant in WA No. 194/2005. Hence, the same may not be relied upon by this Court.

22. Regarding the Guidelines dated 29.5.1997 issued by the Government of India, Ministry of Petroleum and Natural Gas wherein a detailed provision has been made for transfer of LOI to the next of kin of deceased LOI holders, Mr. Mazumdar, learned senior counsel would submit that no person or authority can take advantage of its own laches/negligence to take away the vested rights of a person. Had the Respondents acted by following the Guidelines set out in the Citizens Charter issued by the Government of India, Ministry of Petroleum and Natural Gas, Late Siba Kanta Medhi, husband of the writ Petitioner would not have been deprived of his right regarding issuance of LOI in his favour during his lifetime. Since the reasons for laches/negligence on the part of the HPCL authorities as mentioned above, cannot be in any way attributed to Late Siba Kanta Medhi, for issuance of LOI in his favour within the stipulated period, he (Late Siba Kanta Medhi) must be considered or must be deemed to be LOI holder at least w.e.f. 17.2.2002, i.e. within 15 days from the date when the complaint was found to be false, i.e. 2.2.2002.

23. Mr. Mazumdar has further submitted that Clause 4.10(b) extracted from Dealer Selection Manual which deals with verification of empanelled candidates provides that Field Inspection Report (FIR) should be completed within 10 days from the receipt of the merit panel. In Clause (d) it is provided that "verification of the facts stated in the affidavit filed by the candidates will normally be not undertaken unless a specific complaint is received". Again in Clause (e) it is provided that the FIR will be conducted initially for No. 1 candidate in the merit

panel and if the candidate is found to be eligible the LOI will be issued to him. Again in Clause 4.11 which deals with Letter of Intent, it is provided that LOI will be issued within 15 days of the receipt of the merit panel from DSB after necessary FIR. It is an admitted fact that the FIR was completed in the 3rd and 4th week of July 2001, about 7 months before the fictitious complaint was found to be false, i.e. on 2.2.2002. Thus, since the authorities had no reason or excuse for non-issuance of the LOI at least within 15 days from 2.2.2002, Late Siba Kanta Medhi must be held to be LOI holder w.e.f. 17.2.2002 during his life time. In view of the above-mentioned fact, the writ Petitioner is very much entitled for issuance/transfer of LOI in her favour. However, it appears that the authorities, without considering the aforesaid fact that Late Medhi was infact a LOI holder or in the eye of law must be deemed to be a LOI holder, had mechanically issued the LOI to the writ Appellant, Smt. Shahida Rahman Brabhuyan without holding any FIR which has been discussed elaborately by the learned Single Judge.

24. Mr. Mazumdar would urge that the investment made by the husband of the writ Petitioner (Respondent No. 1 herein) while taking the concerned suitable land on lease for the dealership as well as payment of Rs. 4,000/- (Rupees four thousand) being made as monthly rent to the original owner of the land Rejaul Karim Choudhury w.e.f. the month of August, 2001 by the husband of the writ Petitioner and thereafter by herself has not been denied by the Writ Appellant in her affidavit. So far the specific averments made by the writ Petitioner against the Writ Appellant that she was a student at the time of submission of the application on 31.1.2000 and was entirely dependent on her father's annual income has not been denied by the HPCL authorities. While dealing with the aforesaid allegation it has been stated by the said HPCL authorities in para 9 of the affidavit that the DSB looked into the eligibility of the candidates and when the Board selected the Writ Appellant as second qualified candidate, the HPCL authorities have no alternative but to accept her as second qualified candidate. The said statement clearly reflects that so far the recommendation of the Writ Appellant is concerned, the HPCL authorities stated that the DSB is the competent authority to look into the eligibility of the candidates. However, so far the case of the writ Petitioner's husband is concerned, a different parameter and yardstick has been adopted by the Respondents. These facts also have been extensively dealt with by the learned Single Judge.

25. The learned Counsel for the writ Petitioner also brought to the notice of this Court the following provision Laid down in Order XXII, Rule 6 of the Code of Civil Procedure,-

Notwithstanding anything contained in the forgoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

According to Mr. Mazumdar, the entire process of selection of candidates upto the point of issuance of LOI have been completed by the HPCL authorities and mere non-issuance of the paper in the form of LOI will not take away the right to which the writ Petitioner was, otherwise, eligible under the law. In the instant case, grant of dealership or LOI pertains to the domain of contract for supply of product of the Respondent HPCL and does not relate to personal service which could have been rendered only by the deceased and nobody else. As such, the deeming principle of a suit not being abated even after the death of the party will apply in the instant case. In support of his submission, Mr. Mazumdar has referred to and relied upon the decision of the Apex Court in N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others,

26. Regarding severe injustice caused to the husband of the writ Petitioner as well as to the writ Petitioner, Mr. Mazumdar has relied upon the following decisions of the Apex Court reported in:

(a) Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another,

(b) Roshan Deen Vs. Preeti Lal,

(c) Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another,

In Dwarka Nath (supra), the Apex Court held as follows:

4. ...every High Court shall have power through out the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found....

In Roshan Deen (supra), the Apex Court held as follows:

12. ...time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it....

In Comptroller and Auditor General of India (supra), the Hon'ble Apex Court observed as follows:

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy

decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

27. We have given our thoughtful consideration to the extensive argument advanced by the learned Counsel for the parties. So also the materials on record. We are of the view that the main issues arise for determination in these cases are, whether the action of the HPCL authorities are justified in not issuing the LOI to the first empanelled candidate during his life time AS per the Guidelines issued by the Government of India, Ministry of Petroleum and Natural Gas and thereafter, on his death the said LOI was issued to the second empanelled candidate and in view of the facts as stated above whether the writ Petitioner/ Respondent No. 1 herein is entitled to any relief?

28. The facts pleaded and established would reveal that Siba Kanta Medhi, husband of the writ Petitioner was selected on 21.6.2001 by the DSB and placed in serial No. 1 of the merit list. However, he was not issued LOI within the stipulated period of 15 days from the date the DSB sent the empanelled list to the authorities as per Guidelines issued by the Ministry of Petroleum and Natural Gas due to a complaint lodged by one Doboka Anchalik Youth Parishad on 12.7.2001 which was not even a candidate in the aforesaid selection process of dealership. On completion of the necessary investigation into the above-mentioned complaint on 2.2.2002 the Investigating Officer submitted his report to the higher authorities on 11.2.2002 thereby exonerating the husband of the writ Petitioner from the allegations made in the complaint. Even after submission of the inquiry report on 11.2.2002 the HPCL authorities did not take any prompt action in issuing the LOI in favour of Siba Kanta Medhi in compliance with the Guidelines made for the purpose. It was after about 14 months from the date of submission of enquiry report, the Petroleum Ministry directed the HPCL authorities on 28.4.2003 to issue the LOI in the name of Siba Kanta Medhi, the husband of the writ Petitioner, informing the fact of expiry of her husband, the writ Petitioner submitted an application before the authority on 2.6.2003 with a further prayer to transfer the LOI in her favour. It is pertinent to note that Siba Kanta Medhi expired on 18.2.2003, i.e. after 1 (one) year and 7 (seven) days from the date of submission of the enquiry report, i.e. on 11.2.2002. These delays as mentioned above have not been explained by the HPCL authorities in any manner. Only in paragraph 5 of the affidavit-in-op-position filed by the HPCL

in the writ petition it has been stated that "the process of issuance of LOI for Doboka Retail Outlet in the name of Sri Sibakanta Medhi (since deceased) was temporarily suspended due to written complaint lodged by Doboka Anchalik Youth Parishad, Doboka on 12.7.2001 against the selection of Siba Kanta Medhi and the matter was reported to the Anti Adulteration Cell (AAC) as per Policy Guidelines". Even in paragraph 14 of the said affidavit-in-opposition it has been stated by the HPCL authorities that the issuance of LOI was kept in abeyance till decision of the Anti Adulteration Cell. On perusal of the aforesaid statement we find that the HPCL authorities have tried to explain the delay from the date of lodging of the complaint, i.e. from 12.7.2001 till a decision is rendered by the Anti Adulteration Cell, i.e. on 11.2.2002 and no explanation was given for the remaining period of about 1 (one) year, i.e. w.e.f. the date of submission of the decision of the Anti Adulteration Cell on 11.2.2002 till the death of Siba Kanta Medhi on 18.2.2003 or for about 14 (fourteen) months till Petroleum Ministry issued its direction on 28.4.2003. The submission of Mr. K.N. Choudhury, learned senior counsel appearing for writ Appellant in W.A. No. 194/2005 that the delay caused due to pendency of the cases in the Apex Court and in favour High Courts is not supported by the statements made in the affidavit of the HPCL and accordingly, we are not inclined to accept the submission of Mr. K.N. Choudhury. The record also reveal that the application dated 2.6.2003 submitted by the writ Petitioner, was rejected on 18.7.2003 and on the same day LOI was issued in favour of writ Appellant Smt. Sahida Rahman Barbhuyan.

29. So far the Guidelines/policy decision issued by the Ministry of Petroleum and Natural Gas regarding selection process is concerned, it has been stated in paragraph 10 of the affidavit-in-opposition filed by the HPCL that "As per Guidelines issued by the Ministry of Petroleum and Natural Gas, Govt. of India, a LOI may be transferred to the next kin deceased LOI holder, but in case of Late S.K. Medhi, husband of the Petitioner, no LOI was issued to him and hence as per Govt. policy LOI has to be issued in the name of second empanelled candidate Smt. Shahida Rahman Barbhuyan". Again in paragraph 13 of the said affidavit it has been stated that "the answering Respondents are to follow the decisions of the Dealer Selection Board and also the Guidelines issued by the Ministry of Petroleum and Natural Gas, Govt. of India and the Respondents have no scope of their own choice in selecting, appointing or rejecting any distributorship/dealership or issuance of LOI thereto". The aforesaid statements reflect that in the matter of selection/appointment of dealership, the Guidelines issued by the Ministry of Petroleum and Natural Gas is very much applicable and is being followed by the HPCL authorities. In the instant case, we find that the HPCL authorities have followed the Guidelines without any delay by referring a complaint dated 12.7.2001 to the investigating authority. However, when the investigating authority submitted its report on 11.2.2002 exonerating the husband of the writ Petitioner, no follow up action was taken by the said HPCL authorities to issue the LOI in favour of the husband of the writ Petitioner in spite of the fact that the Guidelines issued by the Ministry of Petroleum and Natural

Gas clearly provides for issuance of LOI in favour of the eligible candidate within 15 (fifteen) days from the date the DSB sends the empanelled list to the concerned Oil Companies. Hence, we are of the opinion that the HPCL authorities have applied different yardstick in following the above-mentioned Guidelines and they have followed the same wherever it suits them, as in the instant case. On perusal of the judgment passed by the learned Single Judge, we find that he has made elaborate discussions in this regard and held as follows:

...creates doubt on the genuineness of the dealings made by the HPCL in the entire episode, more so when the matter relating to issuance of LOI to the Petitioner's husband was delayed by more than 2 years on the basis of so-called complaint allegedly lodged by an organization through unidentified signatories.

30. So far the letter/circular dated 29.5.1997 is concerned, the learned Single Judge at paragraphs 39 and 40 held as follows:

39. The interpretation of the aforesaid letter dated 29.5.1997 as has been projected by the Respondent so as to defeat the just claim of the Petitioner cannot be allowed. The whole basis of the idea behind the issuance of the letter dated 29.5.1997 is to benefit the next kin of the deceased LOI holder. As per the said letter, the LOI may be transferred to the next kin of the deceased LOI holder if he/she made substantial investment towards the acquisition of land etc. In the instant case there is no dispute that the Petitioner's husband made substantial investment towards acquiring the land for installation of dealership. The only difference is in respect of the actual issuance of LOI. As per the aforementioned letter dated 27.11.2001, the issuance of LOI and not the LOI itself was withheld in view of the so-called complaint lodged by the Doboka Anchalik Youth Parishad. The said course of action was adopted by the Respondents without any verification of the complaint. They gave uncalled for importance to the complaint, the signatories of which did not disclose their identification. Even after completion of the investigation by way of furnishing the report giving clearance to the case of the Petitioner's husband, the matter kept pending and delayed for 14 months but for which the present situation would not have emerged.

40. It is in the above backdrop the application of the aforesaid letter dated 29.5.1997 to the case of the Petitioner will have to be Judged. Same will have to be Judged coupled with the duty enjoined on the official Respondents towards issuance of LOI. After creating the kind of situation as in the instant case by the official Respondents by their sheer inaction, they cannot be allowed to fall back on the strict and restrictive interpretation of the said letter dated 29.5.1997 as has been projected by them.

31. In this context the learned Single Judge has also rightly applied the ratio Laid down by the Apex Court in the cases of Dwaraka Nath (supra), Roshan Deen (supra) and Comptroller and Auditor General of India (supra) referred to by Mr. Mazumdar, learned senior counsel appearing for the writ Petitioner.

32. We have also carefully gone through the decision in Tilokchand Motichand

(supra) cited by Mr. Choudhury, learned Counsel appearing for the Appellant in W.A. No. 194/2005. In Tilokchand (supra), the Apex Court has held that a party claiming fundamental rights must move the Court before other rights come into existence. In our considered opinion, the case cited in Tilokchand (supra) will not be applicable in the context of the facts and circumstances of the present case, inasmuch as, it is apparent on the face of the records that on 28.4.2003, a final decision to issue LOI in favour of Siba Kanta Medhi, the husband of the writ Petitioner was in fact taken by the Petroleum Ministry. This final decision for grant of LOI definitely created a vested right on the husband of the writ Petitioner which cannot be withheld or denied to the writ Petitioner being the legal heir of Late Siba Kanta Medhi for no fault of her own. It is also not disputed that the policy Guidelines dated 29.5.1997 framed by the Government of India, Ministry of Petroleum and Natural Gas permit transfer of an LOI to the legal heir subject to the fulfillment of necessary eligibility criteria by such legal heir which is quoted herein below:

(ii) If any of the eventualities, the LOI for the dealership/distributorship in question may be transferred to the legal heir of LOI dealer on request subject to the following conditions:

(a) The legal heir meets the eligibility criteria relating to nationality, age, educational qualification, income and multiple dealership norms. Age and educational will not apply to widows and minors.

(b) The legal heir enjoys a good character and no criminal proceeding is pending against him and is capable of running the dealership/distributorship at the given location.

(c) In case the legal heir is a minor, the transfer of LOI may be permitted through a legal guardian in favour of the legal heir in consultation with the company. After such a legal heir becomes a major the role of legal guardian will be over, and the company will transfer the LOI to such legal heir subject to his fulfilling the conditions mentioned at (a) and (b) above.

(d) Such transfer of LOI to the legal heir will be subject to the outcome of the Court cases presently pending in the Delhi High Court or any other Court.

(e) The Petitioner will have to submit necessary documents/affidavits in support of his/her request.

33. We have also given due consideration to the submission of Mr. K.N. Choudhury, learned senior counsel that the writ Petitioner did not fulfill the above-mentioned eligibility criteria for transfer of LOI in her favour and that the learned Single Judge while passing the impugned judgment dated 7.3.2005 also did not take into consideration the aforesaid facts. After having carefully gone through the above-mentioned eligibility criteria of a LOI transferee and the materials available on record, we are of the view that the judgment dated 7.2.2005 passed by the learned Single Judge in WP(C) No. 6063/2003 need not be interfered

with. Accordingly, both the Appeals stand dismissed.

34. Regarding the direction to the HPCL authorities by the learned Single Judge to issue/transfer necessary LOI to the writ Petitioner is modified to the extent that such LOI shall be issued/transfer to the writ Petitioner, Smt. Kunti Medhi on verification of the eligibility criteria as prescribed in the above-mentioned Notification dated 29.5.1997. The entire exercise shall be completed within a period of 2 (two) months from today.

35. No order as to costs.