
(2006) 09 AHC CK 0172

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 73025 of 2005

Sangita Yadav

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Citation : (2006) 09 AHC CK 0172

Hon'ble Judges : B.S.Chauhan, J and Dilip Gupta, J

Final Decision : Dismissed

Judgement

1. This writ petition has been filed for quashing the order dated 282005 passed by the Senior Divisional Retail Sales Manager of the Indian Oil Corporation Ltd. by which he has cancelled the merit panel prepared by the Selection Committee on 21102003 for retail outlet at Etawah City, Category Open (W), Marketing Plan 199698.

2. The respondent authorities invited applications for allotment of retail outlet dealership of Indian Oil Corporation at various places including the city of Etawah. Large number of persons applied for the same and after scrutinizing the applications, interview was held on 20th and 21st October, 2003. A panel of three candidates was prepared wherein the petitioner was placed at serial No. 1. However, as no Letter of Intent was issued in favour of the petitioner, she filed a writ petition before this Court for issuing a direction to the respondents to execute the contract in her favour. The said writ petition has been dismissed by us today as having become infructuous as subsequently, the said panel was cancelled by the impugned order dated 0282005. The said order is based on the order dated 2812004 issued by the Head Office.

3. Shri S.S. Upadhyaya, learned Counsel appearing for the petitioner contended that once the panel had been prepared, it could not have been cancelled without giving any opportunity of hearing to the petitioner and that, in any event, it could have been cancelled only for good and valid reasons. He further submitted that for dealership at Jhansi, a different treatment was given and the selection was

not cancelled even though the panel had been prepared by the same Selection Committee.

4. On the contrary, Shri Prakash Padia, learned Counsel appearing for the Indian Oil Corporation submitted that immediately after the panel was prepared, large number of complaints were received; one Member of the Selection Committee was found indulging in indecent activities in a hotel with two girls and a criminal prosecution had been lodged against him; on the complaint of people at large including the applicants of some other places, an Inquiry Committee was set up to find out as to whether the panel prepared by the Selection Committee of which Shri Ajai Pal Singh Gulia was a Member, stood vitiated. The Committee investigated the matter and submitted the report to the effect that the panel was not prepared fairly as the said Shri Gulia had favoured certain candidates including the present petitioner. There was, therefore, no option left with the Corporation but to cancel the said panel. For the dealership at Jhansi, a different stand had been taken for the reason that it was exclusively reserved for the exservicemen and as there was only one applicant, there was no possibility of any favouritism, nepotism or corruption.

5. We have considered the rival submissions advanced on behalf of the parties and have perused the material available on record.

6. Pursuant to the advertisement issued by the Corporation for award of retail outlet, interview was held on 20th and 21st October, 2003 at Lucknow for two locations, i.e. Tehroli at District Jhansi under defence category and at Etawah under open (W) Category. For Khair, District Aligarh, the interview was held at Hotel Mansingh Palace, Agra between 28th to 30th October, 2003. The interview Committee for all the aforesaid locations consisted of Sri A.N. Khapre, Sri Izharul Islam and Sri A.P.S. Gulia. After the interview for location Khair was over on 30/10/2003, allegations were made against Sri A.P.S. Gulia that he was found involved in illicit activities and a First Information Report to this effect was also lodged on 30/10/2003. One Manveer Singh also made a complaint before the Corporation regarding the activities of the said Sri Gulia and with the complaint he also enclosed newspaper report.

7. This resulted in the setting up of an enquiry committee by the Corporation for all the three aforesaid locations. The Committee was to consist of Sri V.K. Bhandari and Sri V.J. Chhiber, very Senior Officers of the Corporation. The said enquiry committee submitted separate reports for Khair and for Etawah. In respect of location Khair, for which the interview was held between 28th October and 30th October, 2003 at Hotel Mansingh Palace at Agra where one member of the Committee was found in the Hotel Room with two girls, the Enquiry Committee submitted its report on 11/11/2003. In respect of location at Etawah for which the interview was held at Lucknow on 20th and 21st October, 2003, the Enquiry Committee very meticulously after mentioning the methodology adopted for carrying out the investigation and after pointing out the salient features of the statement of Sri A.N. Khapre and Sri I. Islam who were the other two

members of the Committee, recorded the following findings in its report dated 15112003:

(a) Formation/declaration of committee was done much in advance contrary to HO policy guidelines in this regard. Committee was formed and announced on 17102003 for interviews to be conducted from 20/21102003.

(a) On scrutinizing the marksheet and available documents, marks given to three empanelled candidate were analysed and details of the same are as follows:

EMPANELLED CANDIDATE, MARKS GIVEN BY, TOTAL, AVERAGE

Shri APS Gulia, CCSM, RSO

Shri I. Islam, SPM, SWMP BP

Shri AN Khapre, SLM (O), RSO

Ms. Sangeeta Yadav, (1st) 77 64 62, 203, 67.666

Ms. Deepali, (2nd) 64 71 59, 194, 64.666

Ms. Saroj, (3rd) 61 59 58, 178, 59.333

(a) Empanelled candidate No. 1 Ms. Sangeeta Yadav: Shri APS Gulia, CCSM, RSO has awarded 11 marks out of 15 against capability to arrange finances where as Shri I. Islam, SPMSWMP BP has awarded only 4 marks and the third member Shri A.N. Khapre, SLM (O), RSO has awarded NIL. The wide variation of allocation of marks amongst three Selection Committee Members was further analyzed by us and we find that except 3 Nos. of affidavit amounting to Rs. 8.0 lacks submitted by the candidate on panel No. 1 for arranging loan from the known persons, no solid documentary evidence i.e. cash in hand/bank in the name of the applicant, fixed deposits or other bank balances is available on record. However, by way of affidavit she has informed that she has movable/immovable property of Rs. 9.5 lacs of her husband.

(b) Empanelled candidate No. 2. Ms. Deepali: Shri APS Gulia, CCSM RSO has awarded 6 marks out of 15 against capability to arrange finances, the other member Shri I. Islam, SPM, SWMP BP has awarded only 3 marks whereas Shri A.N. Khapre SLM (O), RSO has awarded NIL. There is no specific affidavit submitted by the candidate except the usual undertaking on affidavit that she will arrange finance, which is a part of application.

(c) Empanelled candidate No. 3. Ms. Saroj: Shri APS Gulia, CCSM RSO has awarded 6 marks out of 15 against capability to arrange finances, the other member Shri I. Islam, SPM SWMP BP has awarded only 3 marks whereas Shri A.N. Khapre, SLM (O), RSO has awarded 5 marks only.

There is wide variation in marks under 'Capability to arrange Finance' among three Selection Committee Members in respect of first empanelled candidate, i.e. NIL marks by Shri A.N. Khapre, SLM (O), RSO, 4 marks by Shri I. Islam, SPM,

SWMP BP and 11 marks by Shri APS Gulia, CCSM, RSO based on affidavits for which ED (RS) may take a view (application forms alongwith supporting documents are enclosed as AnnexureE, F, G).

8. The report of the Committee was accepted and the order dated 2812004 was issued for cancelling the panel prepared by the Selection Committee and fresh selection was ordered. Accordingly, the communication dated 2nd August, 2005 was sent to the petitioner intimating her that the panel prepared by the Selection Committee on 21st October, 2003 had been cancelled and it was further mentioned that a decision had been taken to conduct a fresh interview.

9. The issue that arises for our consideration is whether the Corporation could cancel the panel on the basis of the Enquiry Report, and if so then what would be the scope of the power of the Court to review such a decision. The other issues that would arise are whether the candidates whose names appear in the panel acquire an indefeasible right for issuance of the Letter of Intent and whether opportunity is required to be given to them before cancelling the panel.

10. In order to appreciate the first issue, we consider it appropriate to take guidance from the observations made in the following decisions.

11. In *Krishna Yadav v. State of Haryana*, AIR 1994 SC 2166, the Hon'ble Supreme Court observed as follows:

?It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trust. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating in view of the destruction of records it was helpless. It should have helped itself. Law is not that powerless.

In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as ?Fraud unravels everything?. To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors.?

12. In *B. Ramanjini & Ors. v. State of Andhra Pradesh & Ors.*, 2002(2) LBESR 274 (SC) : AIR 2002 SC 2023, the Supreme Court enlightened what approach the Courts should adopt while dealing with matters relating to cancellation of examination and after referring to *Bihar School Education Board* (supra) observed:

?The facts revealed above disclose not only that there was scope for mass copying and mass copying did take place in addition to leakage of question papers which was brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs. 2,000/each. These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centres.....Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear in the conduct of the examination, a fair procedure has to be adopted.....In such matters wide latitude should be shown to the Government and the Courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The Courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other.?

13. In Delhi Development Authority & Anr. v. M/s. UEE Electricals Engg. (P) Ltd. & Anr., AIR 2004 SC 2100, the Hon'ble Supreme Court while describing the grounds on which administrative action is subject to control by judicial review observed:

?Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal illwill is not to be established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order.?

14. A Division Bench of this Court in the case of Union of India & Ors. v. Akchhay Kumar Singh & Ors., 2000 LAB I.C. 735, considered these aspects and observed:

?In a matter like the one on hand, the competent authority, in our opinion, does not decide a lis between the complainant on one hand and candidates seeking appointment on the other so as to be obliged to hold an enquiry in consonance with the rules of natural justice. Its decision is not to be judged from judicial or even quasijudicial standards and since exercise of power to scrap recruitment is not regulated by objectively determinable factors, even ?reasonable suspicion? as to the process of recruitment being vitiated by malpractices or corrupt means would suffice. Surrounding circumstances e.g. the necessity to scrap the recruitment for preservation of public faith in the recruitment process will also do. The competent authority, in our opinion, is not required to hold a formal enquiry in tune with the principles of natural justice and ascertain the truth or

otherwise of the complaints as to mal practice in the recruitment process as condition precedent to cancelling the recruitment process. All that is expected of the competent authority in such a situation is that it would act in 'good faith' and take a 'bona fide' decision whether to scrap or not to scrap the recruitment. The decision should not be influenced by any extraneous consideration and whenever its decision is found to have been influenced by 'bad faith' or extraneous consideration the Court will intervene, for no power is absolute and rather all powers are conferred subject to an implied duty that they be exercised reasonably and in good faith. An authority failing to comply with this obligation, it may be observed, acts unlawfully or ultra vires. The judicial scrutiny by the High Court under Article 226 of the Constitution of India, on a matter like the one on hand, is to be made on the anvil of 'good faith' 'bona fide' and absence of 'mala fide'. The impugned decision to scrap the recruitment in our opinion, does not appear to be tainted with 'mala fide', 'bad faith' or 'extraneous consideration'. Notings on the original file produced before us would show that the matter was examined and decision to scrap the recruitment was taken after due deliberation. Such decision, in our opinion is not open to challenge under Article 226 of the Constitution of India on the ground that there was no material to substantiate the allegations of malpractice.?

15. The Supreme Court upheld the aforesaid Division Bench judgment of this Court in, Union of India & Ors. v. Tarun Kumar Singh & Ors., AIR 2001 SC 2196, and observed as follows:

?The question for consideration is whether the learned single Judge of Allahabad High Court was justified in interfering with an order of cancellation passed by the competent authority and direct that the process of selection should be completed. Needless to mention that subsequent to the order of cancellation, in view of the allegation of malpractice, the departmental authorities has held an enquiry into the matter and the result of that enquiry was revealed gross irregularities and illegalities as referred to in the judgment of the Division Bench of Allahabad High Court. Consequently the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by Court of Law.?

16. In People's Union for Civil Liberties & Anr. v. Union of India & Ors., 2004(1) LBESR 826 (SC) : AIR 2004 SC 456, while dealing with the same issue, the Hon'ble Supreme Court observed as under:

?The jurisdiction of this Court in such matter is very limited. The Court will not normally exercise its power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fide, dishonesty or corrupt practice. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the Legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder.?

17. In *State of N.C.T. of Delhi & Anr. v. Sanjeev alias Bittoo*, (2005) 5 SCC 181, the Hon"ble Supreme Court observed:

One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality" and the third "procedural impropriety".....The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality, and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.?

18. In *Ekta Shakti Foundation v. Government of NCT of Delhi*, 2006(3) LBESR 589 (SC) : 2006 AIR SCW 3601, the Supreme Court observed as follows:

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J & K*,. AIR 1989 SC 1899, *Shri Sitaram Sugar Co. v. Union of India*, AIR 1990 SC 1277. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another Is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company v. City of Chicago*, (1912) 57 L Ed 730. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned.

Mere errors of Government are not subject to our judicial review. [See: State of Orissa & Ors. v. Gopinath Dash & Ors., 2006(1) LBESR 162 (SC) : (2005) 13 SCC 495].?

19. It must, therefore, be kept in mind, in view of the principles enunciated in the aforementioned decisions, that for allotment of retail outlets, a fair procedure has to be adopted and a fair process is one that gives every applicant an equal opportunity of being selected as a successful applicant and that in such matters wide latitude is required to be given to the Authority and the Courts should not unduly interfere with the decision taken by the Authority which is in possession of the necessary information and material upon which it takes the action. He who seeks to invalidate or nullify an order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers and it is not necessary that mala fide in the sense of improper motive should be established only by direct evidence, but it must be discernible from the impugned order or must be shown from the established surrounding factors which preceded the order. Even if there is 'reasonable suspicion' that the process of selection was vitiated by mal practice or corrupt means, the same would suffice for the cancellation and such a decision should not be interfered with by Courts. The surrounding circumstances can be taken into consideration including the necessity to scrap the process for preservation of public faith in the system. All that is expected from the Authority is that in such a situation it should act in 'good faith' and take a 'bona fide' decision. The order can be set aside if it is based on extraneous grounds or there are no grounds at all for passing it or the grounds are such that no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made. This apart, even when some defect is found in the decisionmaking process, the Court must exercise its discretionary power under Article 226 of the Constitution with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference that the Court should intervene.

20. In the present case, the Enquiry Committee consisting of two senior officers of the Corporation have in their report given detailed reasons that prompted the Corporation to cancel the recommendation made by the Selection Committee. The Enquiry Committee noticed that the declaration of the names of the members of the Committee had been done much in advance contrary to the Head Office policy guidelines. The Committee also meticulously scrutinized the marksheet and the available documents in respect of three empanelled candidates, i.e. Sangeeta Yadav, Ms. Deepali and Ms. Saroj. It noticed the wide variation of allocation of marks by the three Selection Committee Members and found that Ms. Sangeeta Yadav had been awarded 11 marks out of 15 against capability to arrange finances by Shri A.P.S. Gulia while the other two members had awarded her only 4 marks and zero marks. It noticed that there was no solid documentary evidence submitted by Ms. Sangeeta Yadav of cash in hand/bank in the name of the applicant, fixed deposits or other bank balances and it is only by

way of an affidavit that she had informed that she had movable and immovable properties of Rs. 9.50 lacs of her husband. It, therefore, made its recommendation to the Corporation. It cannot, therefore, be said that there was no material before the Corporation for coming to the conclusion that the selection was vitiated. There was sufficient material before the Corporation to form an opinion that the process of selection was vitiated and such a decision should not be interfered with by the Courts as there is nothing on the record to indicate that the decision was not taken in "good faith" or that there was an abuse by the authority of its powers. We cannot also possibly hold that the decision taken by the Committee of two Senior Officers of the Corporation was such a decision that no one could have reasonably arrived at nor can we hold that the order was passed on extraneous grounds or no grounds existed at all for passing the orders and indeed, nothing has been pointed out by the learned Counsel for the petitioner which can persuade us to take a contrary view.

21. We, therefore, find no substance in the submission advanced by learned Counsel for the petitioner that the Corporation committed an error in cancelling a penal prepared by the Selection Committee.

22. We shall deal now with the next submission regarding the rights of the candidates on the panel for issuance of the Letter of Intent.

23. The contention as to whether a person whose name is merely included in the select list but has not been issued an appointment letter can claim a right for issue of an appointment letter was examined by the Supreme Court in the case of Union of India & Ors. v. Tarun Kumar Singh (supra) and it was observed that an individual applicant for any particular post does not get a right to be enforced by a mandamus unless and until he is selected in the process of selection and gets the letter of appointment.

The Supreme Court observed as follows:

"That apart, an individual applicant for any particular post does not get a right to be enforced by a mandamus unless and until he is selected in the process of selection" and gets the letter of appointment. In the case in hand, much before the so-called list of selection was approved by the Railway Board, the order of cancellation had emanated on the basis of the complaint received from so many quarters. In view of the subsequent findings of the enquiry committee which has gone into the matter, we have no hesitation in coming to the conclusion that the learned single Judge of Allahabad High Court was wholly in error in issuing the direction in question and, therefore, the Division Bench of Allahabad High Court was fully justified in interfering with the said order of learned single Judge of Allahabad High Court."

24. Following the aforesaid decision of the Supreme Court a Division Bench of this Court in the case of Ramesh Chandra Singh & Ors. v. Amar Nath Singh & Ors. (supra) held as follows:

?Thus the respondent writ petitioners do not acquire an indefeasible right to be appointed merely because their names appeared in the select list. The only question which is to be seen as to whether the Railway authorities have acted in a fair manner in cancelling the recruitment or not, or it acted in arbitrary manner. The reasons for cancelling the recruitment as found by the scrutiny committee has already been mentioned above. From perusal of the said reasons, it leaves no manner of doubt that the recruitment committee had acted arbitrarily in making selection by giving a go bye to all the Rules and procedure and when asked to rectify the irregularities, declined to do so.

In view of the foregoing discussions, it is held that the respondent writ petitioners had no legal right for a mandamus to maintain present petition as their names had only appeared in the select list and appointment letters had not been issued to them.?

25. The Supreme Court in *Shankarsan Dash v. Union of India*, JT 1991 (2) SC 380, also made observations in this regard and they are as follows:

?Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies, or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.?

26. In this connection, it would be useful to quote a passage from the decision rendered by the Supreme Court in *Union Territory of Chandigarh v. Dilbagh Singh & Ors.*, (1993) 1 SCC 154, wherein the Supreme Court observed:

?A candidate who finds a place in the select list as a candidate selected for appointment to a civil post does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. He could be aggrieved by his nonappointment only when the administration does so either arbitrarily or for no bona fide reasons. Hence such candidate even if he has a legitimate expectation of being appointed due to his name finding a place in the select list of candidates cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh administration accepted the complaints and cancelled the select list, it cannot be said to have acted either arbitrarily or without bona fide and valid reasons.?

27. In the case of the *State of Haryana v. Subash Chandear Marwaha & Ors.*,

(1974) 3 SCC 220, the Supreme Court observed:

?The existence of vacancies does not give a legal right to candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the Rules in this respect.?

28. The Supreme Court in the case of Ludhiana Central Co operative Bank Ltd. v. Amrik Singh & Ors., 2003(2) LBESR 863 (SC) : JT 2003 (7) SC 228, observed as follows:

?The conclusion that the functioning of the then Managing Director of the appellant Bank is neither appreciable nor the so called selections can be given any credence of real/proper selections or can be said to have been made in accordance with law, becomes irresistible. The whole process appear to have been not only perfunctory but really a farce of selection vitiated by award of indiscriminate marks to boost up candidates of choice and unreasonably put down others in utter disregard and derogation of the binding guidelines.

Even otherwise it is wellsettled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing.?

29. In Union of India v. Kali Das Batil, 2006(1) LBESR 553(SC) : 2006 AIR SCW 227, the Supreme Court observed:

?The Jharkhand High Court also rightly pointed out that mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non existing right.?

30. The aforementioned discussions clearly hold that the candidates who are placed in the panel prepared by the Selection cannot claim as a matter of right that Letter of Intent has to be issued and if the Selection process itself is found to be vitiated the authorities would be justified in cancelling the panel and the empanelled candidates cannot maintain the writ petition for issuance of the Letter of Intent.

31. In view of the proposition of law laid down in the aforesaid decisions, it has to be held that the petitioner did not acquire any indefeasible right to claim by a writ of mandamus a letter of intent in her favour.

32. Learned Counsel for the petitioner also contended that the Corporation could not have cancelled the panel prepared by the Selection Committee without

hearing those candidates who had been placed on the panel.

33. It cannot be doubted that the principles of natural justice cannot be put into a straitjacket formula and that its application will depend upon the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in *K.L. Tripathi v. State Bank of India & Ors.*, AIR 1984 SC 273; *N.K. Prasad v. Government of India & Ors.*, (2004) 6 SCC 299; *State of Punjab v. Jagir Singh*, (2004) 8 SCC 129; *Karnataka SRTC v. S.G. Kotturappa*, (2005) 3 SCC 409 and in *Viveka Nand Sethi v. Chairman, J&K Bank Ltd.*, 2005(2) LBESR 752 (SC) : (2005) 5 SCC 337.

34. In *Biswa Ranjan Sahoo & Ors. v. Sushanta Kumar Dinda & Ors.*, AIR 1996 SC 2552, the Hon''ble Supreme Court had the occasion to examine whether principles of natural justice were required to be followed in a matter where because of mass scale malpractice in the selection process, the selection was cancelled and in this context it was observed:

?A perusal thereof would indicate the enormity of mal practices in the selection process. The question, therefore, is: whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr. Santosh Hegde, learned senior Counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily a notice is required to be issued and opportunity be given. In a case like mass malpractice as noted by the Tribunal, as extracted hereinbefore, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment.?

35. In *Union of India & Ors. v. O. Chakradhar*, 2002(1) LBESR 827 (SC) : AIR 2002 SC 1119, the Hon''ble Supreme Court considered the question whether it was necessary to issue individual showcause notices to each selected person when the entire selection was cancelled because of widespread and all pervasive irregularities affecting the result of selection and it was observed:

?All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answersheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice

versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are, therefore, of the view that it is not one of these cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some.?

36. In the case of S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by L.Rs. & Ors., AIR 1994 SC 853, the Hon"ble Supreme Court refused to interfere on the ground of breach of principles of natural justice by observing:

?The Court of law are meant for imparting justice between the parties. One who comes to the Court, must come with cleanhands. We are constrained to say that more often than not, process of the Court is being abused. Propertygrabbers, tax evaders, bankloandodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation?.

37. Following the aforesaid decision of the Supreme Court, this Court in the case of Bharat & Ors. v. Nagarpalika, Azamgarh & Ors., (1994)2 UPLBEC 745, observed:

?Learned Counsel for the appellants also submitted that no opportunity of hearing was given to the appellants before passing the impugned orders. We have seriously considered this aspect of the matter too and, in our opinion, where the benefit accrued to the person complaining breach of the principles of natural justice is the result of fraud, unfairness, arbitrariness or misconduct at the source of such benefit, the principles of natural justice cannot be invoked.....In our opinion, the facts and circumstances of the present case also do not give a different picture. The appellants are in fact beneficiaries of the selection process which has already been held to be unfair and nonexistent. In the circumstances, they are not entitled to any relief on the ground of violation of the principles of natural justice which cannot be pressed in service without there being equity on the side of the appellants.?

38. As seen above, the principles of natural justice cannot be put into a straitjacket formula and its application depends upon the facts and circumstances of each case. It is for the Court to decide whether the observance of this rule was

necessary for a just decision on the facts of the case and unnatural expansion without reference to the administrative realities and other factors of a given case would be injudicious. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered because of denial of reasonable opportunity, the Court will decline to be "punctilious or fanatical as if the rules of natural justice were sacred scriptures". Where those who have conducted the selection have rendered it wholly unacceptable, the guilt of those who have been selected is not to be considered and what has to be seen is whether such selection can be acted upon. In such cases individual notice to each individual is not required to be issued to seek his explanation with regard to the all pervasive illegalities and irregularities committed by those who have conducted the selection.

39. In the present case, the Authority has not charged any particular candidate of having resorted to any unfair practice but has decided to cancel the panel because of the numerous defects which had been pointed out in the report. In such circumstances it was not necessary for the Authority to give an opportunity to each of the candidates before cancelling the panel and it cannot be said that the petitioner has suffered because of denial of notice. We are, therefore, of the firm opinion that the petitioner and such other candidates whose names appear in the panel prepared by the Selection Committee are in fact, the beneficiaries of the selection process which has been held to be vitiated. In such circumstances they are not entitled to any relief on the ground of violation of the principle of natural justice.

40. In the end, learned Counsel for the petitioner contended that discrimination was practiced by the Corporation inasmuch as the recommendation made by the Selection Committee for Jhansi location was not cancelled even though the same Selection Committee had made the recommendation. The respondents in the counteraffidavit have given detailed reasons for accepting the recommendation made by the Selection Committee for Jhansi. It has been stated that for the defence category at location Tehroli, District Jhansi, only two persons were called for interview but before the interview only one candidate Lt. Col. Ajit Singh appeared and he was found suitable. Thus, as there was only one candidate for the defence category, the Corporation accepted the recommendation of the panel and issued the Letter of Intent. The reason given by the Corporation appears to be reasonable and, therefore, even this contention of the learned Counsel for the petitioner cannot be accepted.

41. We, therefore, do not find force in any of the contentions raised by learned Counsel for the petitioner. The petition is devoid of any merit and is accordingly dismissed.