
(1994) 06 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15230 of 1993

Sham Lal	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 02-06-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1995 P&H 147 : (1995) 109 PLR 38 : (1994) 4 RCR(Civil) 163

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Atul Lakhanpal, for the Appellant; J.N. Kaushal, S.C. Kapoor and Ashok Aggarwal, Sanjay Kaushal, Jaswant Jain, R.K. Handa for C.B.I., N.S. Gill and C.B. Kaushik, for the Respondent

Judgement

1. The Oil Selection Board constituted by the Indian Oil Corporation for the State of Haryana, made a recommendation for the allotment of a Retail Outlet at Panchkula in favour of (i) Babu Ram and (ii) Raj Kuman In pursuance to this recommendation, the Indian Oil Corporation Ltd. issued a letter of Intent in favour of Babu Ram. Civil Writ Petitions Nos. 15230 of 1993 (Sham Lal v. Union of India) and 303 of 1994 (Sat Pal Singh v. Union of India), have been filed to challenge the selection/recommendation made by the Board and the consequential letter of Intent issued by the Corporation. Another petition viz. Civil Writ petition No. 16434 of 1993 has been filed by Raj Kumar whose name had been placed at No. 2 by the Board, with a prayer that the selection of Babu Ram should be quashed and that the Corporation be directed to issue a letter of intent in his favour. The primary contention in all these petitions is that "the marks were manipulated and changed to favour unmerited Babu Ram on extraneous considerations" and that the selection made by the Board is not just and fair. Learned counsel for the parties are agreed that since all the three petitions relate to the same selection, these can be disposed of by a common order. They have referred to the pleadings in Civil Writ Petition No. 15230 of

1993. These may be briefly noticed.

2. On April 29, 1993, the Indian Oil Corporation Ltd. (in short the Corporation), invited applications for the appointment of a Dealer for a Retail Outlet at Panchkula from amongst the candidates belonging to the category of Scheduled Castes. It was inter alia provided that the candidate should have been a resident of Ambala, Kurukshetra or Yamuna Nagar "for a period not less than five years immediately preceding the date of application." The applications on the prescribed form had to be submitted on or before June 14, 1993.

3. In response to this advertisement, the Corporation received 64 applications. On scrutiny, the Divisional Manager found that only 13 applications including that of the petitioner were complete. However, the Board called all the applicants for interview. The petitioner avers that even before the start of the interview on August 24, 1993, it was being alleged that certain rich and wealthy persons "of other castes" were "operating from behind the stage." The candidates were interviewed on August 24 and 25, 1993. The petitioner was interviewed for about five minutes on August 24, 1993. On that date, the petitioner avers that respondent No. 6 "was heard shouting very loudly about the telephonic order of the staff member of the petroleum Ministry for allotting this Petrol Pump to Shri Raj Kumar, respondent No. 8." He alleges that the interview was a farce. The Board had no basis for assessing the candidates regarding their business ability as it did not have the Feasibility Report as required under the provisions of the Manual. It has also been alleged that the marks were not allotted on the day of interview and that "horse trading was encouraged so that the candidates who are supported by other than Scheduled Castes behind the scene could go around the Board for offering unspecified amounts". According to the petitioner, "the marks were awarded later on in absentia and the marks sheet was subjected to change by deleting or adding the marks to favour the undeserving Babu Ram placed at No. 1 in Panel and Shri Raj Kumar at No. 2". As a result, the Board made its recommendation only on September 21, 1993.

4. The petitioner further avers that respondent No. 7 was ineligible. He is a simple Graduate and is employed as a Stenographer. He has no experience of business or saleman-ship". Similarly, allegations have also been made against respondent No. 8 (Mr. Raj Kumar). It has also been alleged that "there is rampant corruption in the Oil Selection Board and that the Retail Outlets are being sold by it are a matter of common knowledge now." Reference in this behalf has been made to a News Item published in the Daily Tribune of November 28, 1993. The petitioner challenges the recommendation made by the Board in favour of respondents Nos. 7 and 8 (Babu Ram and Raj Kumar) and the consequential letter of Intent issued by the Corporation to respondent No. 7. According to the petitioner, the selection made by the Board is violative of the mandatory provisions contained in the Manual as also Article 14 of the Constitution. He prays that the recommendation made by the Board as well as the letter of Intent issued by the Corporation in favour of respondent No. 7, be

quashed.

5. Separate written statements have been filed on behalf of the Corporation, the members of the Oil Selection Board and the persons recommended by it. In the written statement filed on behalf of the Corporation, it has been inter alia averred by way of preliminary objections that the writ petition raises complicated and disputed questions of fact which cannot be gone into by this Court in the present proceedings. It has also been averred that no right of the petitioner has been violated and that the selection made by the Board in accordance with law is not justiciable. On merits, it has been admitted that 64 applications had been received. One of these applications was received after the expiry of the prescribed time limit. The Company had found some deficiency in respect of 53 applications but it had no power to reject any of these. Consequently, the applications were submitted to the Board which had to take the final decision in accordance with the provisions contained in the Manual. Accordingly, the Board took a decision to call "53 applicants for interview" as in its opinion "the applications submitted by these candidates suffered from only formal defects....." It has been further averred that the interview letter issued to one of the applicants viz. Mr. Rajesh Kumar, did not mention the date on which he had to appear before the Board. Consequently, the Board decided to call him for interview on September 21, 1993. The Corporation maintains that the allegations have been "concocted with a mala fide motive, to malign the Oil Selection Board and prejudice the mind of this Hon'ble Court." It has been further averred that "Chairman of the Board at no stage announced that the Petrol Pump was to be allotted to Shri Rajesh (Raj) Kumar, respondent No. 8". It has been admitted that the Feasibility Report as required under para 4.7 of the Manual "had not been sent but this did not debar the Board from holding the interviews and send (ing) the merit Panel in the present case." The allegation that the preparation of the final Panel was delayed on account of any horse trading, has been denied. As the interview process was in fact completed on 21-9-93, it was on this date that "the final merit list was prepared." Accordingly to the Corporation, "no extraneous consideration was allowed to play any part from the beginning to the end at any stage."

6. To a similar effect is the written statement filed on behalf of respondent No. 7. Respondent No. 8 has further averred that the Board had erroneously placed respondent No. 7 at No. 1 in the Panel. He maintains that according to instructions, he should have been preferred to respondent No. 7 because he is an unemployed Graduate while Babu Ram is already employed. He has also averred that he has filed separate writ petition No. 16434 of 1993 to get this error corrected.

7. A separate written statement has been filed by respondent No. 4, the Chairman of the Board. It has been averred that out of 64 applications received by the Company, one application had been received after the last date and was "rightly rejected. Out of the remaining 63 applications, the Company had found

that 13 applications were complete in all respects and in the other 50 applications, one or the other defect/deficiency had been pointed out. In most of the cases, "the fact pointed out was that instead of residence certificate on a prescribed format, domicile certificate had been furnished or Scheduled Caste Certificate as submitted was not on prescribed format or income statement was not attested as required." In exercise of its powers under para 5.4 of the Manual, the Board decided to call "43 applicants for interview as in its considered opinion, though the certificates submitted were not on prescribed format but there was material and substantial compliance." The Board decided to give the candidates one opportunity to produce the requisite residence certificate at the time of interview. Those who were able to produce such certificates, were considered eligible and their merit was adjudged. The allegation that there was telephonic order or instruction from the Petroleum Ministry to allot Petrol Pump to Sh. Raj Kumar, respondent No. 8, has been denied. It has been averred that the allegations have been concocted and are motivated. The respondent states that "all allegations and innuendoes" are totally false and baseless. It has also been averred that "there is no procedure prescribed or instructions in the Manual for handing over the mark sheet or the comparative statement prepared by the Board to the Coordinator." The Board interviewed the candidates on August 24 and 25, 1993, at Karnal and one candidate on September 21, 1993 at Chandigarh. After interview of each candidate, all the three members, respondents Nos. 4, 5 and 6 awarded marks to him/ her in the three columns of the Mark Sheet (Annexure P-6) separately and independently in their Marks Sheets respectively. The second column relating to "Capacity to arrange Finance etc." did not apply as the Outlet for which selection was to be made (fell) in the "reserve category" for which the requisite finances are provided by the Government. According to the respondent, the marks were awarded to candidates only on the basis of merit as adjudged during interview and without any extraneous consideration. It has also been averred that "in the course of interview, there is also a discussion and exchange of views between the members inter se. As a result, if a member deems it fit to modify the award of marks in any case, he is within his right to do so and such a change in the making, by itself, cannot warrant the inference that change was brought about or prompted by an extraneous consideration. In the present case, change or modification of marking in the mark sheet, if any, was made by the answering respondent only on the basis of assessment of merit. Besides such a change or modification was made, if at all, only during the interview and not subsequently and the same was initialled." The respondent also avers that the mark sheet of each member is kept in the office of the Board and is opened "only at the time of the preparation of comparative statement and the letter of recommendation." He avers "that the answering respondent at no stage was aware of or had any information about the award of marks by any other member in his mark sheet before the preparation of comparative statement on 21-9-93." The respondent has made a categorical statement "that the marks awarded were not changed at any time to favour Babu Ram, respondent No. 7 or any other candidate by the

answering respondent." He also avers that he came to know of the marks awarded by other members on September 21, 1993 when the comparative statement was prepared. After completion, it was signed by all the members. On the basis thereof, the merit Panel comprising of two candidates who had obtained the highest marks was prepared. It was signed by all the members and sent to the Corporation for necessary action. The allegation regarding horse trading etc. has been denied. In order to explain the delay in the submission of the Panel, it has been averred that "after completing the interview on August 25, 1993, the comparative statement and Merit Panel were not prepared as Shri Rampat Sidharth, respondent No. 6 was strongly of the view as expressed by him in the Board meeting on 25-8-93 that this outlet being in reserve category and he himself being a Scheduled Caste member on the Board, his opinion about the candidate to be selected should prevail." According to the respondent, he and respondent No. 5 did not subscribe to this view. He goes on to state that "respondent No. 6 was not agreeable to the preparation of the comparative statement and the merit Panel till this dispute was settled, as he wanted to consult the Petroleum Ministry and get instructions issued in support of his view." The dispute had continued till 8-9-93 when the Board was informed at Samalkha that one candidate Shri Rajesh Kumar did not appear for interview on 25-8-93 as the date had not been indicated in the letter of interview. The Board consequently decided to call Shri Rajesh Kumar for interview for 21-9-93. He was interviewed on 21-9-93. On this very date, after his interview the comparative statement and the merit Panel were prepared and other necessary action was taken. By 21-9-93, the respondent No. 6 had reconciled to the view that the selection be made on the basis of merit as adjudged during the interview and the marks awarded by all the three members separately in their respective mark sheets. It has also been averred that he had not colluded with respondent No. 5 in any manner against respondent No. 6 or awarded 100% marks to respondent No. 7. The allegations of corruption against the Board have been denied as being "absolutely false, malicious and motivated." He maintains that respondents Nos. 7 and 8 were included in the merit Panel "exclusively on the basis of marks awarded to them and other candidates only on merit after thorough interrogation in interview. No extraneous consideration, of any kind had any part to play in the finalisation of merit and selection." Accordingly, he maintains that the Writ petition has no merit and should be dismissed. To the same effect is the written statement filed by respondent No. 5.

8. A separate written statement has also been filed by the third member of the Board viz. respondent No. 6. In paragraph 11 of the written statement, he has inter alia averred that respondent No. 7 had been declared ineligible by the Oil Company as he had not furnished the residence certificate as required by the advertisement and the Scheduled Caste certificate in the prescribed format. However, the Chairman and the other member viz. respondents Nos. 4 and 5 "chose to invite him for interview by granting permission to submit the documents at a later stage." He also avers that "some pick and choose was

adopted in deciding to interview ineligible candidates." he has further averred that "it is correct to state that there were some discrepancies in calling Shri Sanjiv Kumar and debaring Shri Ram Kumar from interview although in cases of both of them, the required income statement had not been furnished. The answering respondent had pointed out that if opportunity was being given, both should be allowed." The respondent claims that he had "submitted his marks sheet by awarding marks on the basis of merit of each candidate. Respondent No. 4, however, had pre-judged the issue and seemed to be interested in respondents Nos. 7 and 8. The answering respondent, however, firmly made it clear to respondents Nos. 4 and 5 that it is the merit which should prevail rather than the whims or fancy of any person." He goes on to aver that "it is correct to state that respondents Nos. 4 and 5 did not submit their marks sheets as required. The same seem to have been submitted by them later. It may also be worth-mentioning here that all the candidates were not interviewed from the point of view (of) "Personality", "business ability", "capacity to arrange finances" and "general assumption" etc. Successive attempts by the answering-respondent to test various candidates on these counts were interfered with by respondents Nos. 4 and 5. The interview process had become a mere farce than the reality and there was no occasion to judge the merit of a candidate." He also avers that "perturbed by patent bias and irregularity in the conduct of interview and even in certain earlier cases, the answering-respondent had filed a detailed note to the Ministry of Petroleum & Natural Gas. Also detailed facts were brought to the notice of Ministry of Petroleum & Natural Gas by the answering-respondent regarding irregularities in each individual case." He claims to have "resisted pressure from respondents Nos. 4 and 5 to decide on consideration other than merit." He goes on to aver that "it is also correct to state that respondent No. 7 had not submitted any proof of his extra-curricular activities or social organisation. He was in fact not examined at all regarding experience of business or salesmanship. Identically, it is correct to state that no document of extra-curricular activities was placed on record by respondent No. 8. Interview of respondent No. 8 was also conducted in a cursory manner and the answering-respondent was pre-empted from asking any detailed question from respondents Nos. 7 and 8 to judge effectively their merit." Accordingly, he avers that "recommendation of respondents Nos. 7 and 8 was irregular. Their eligibility or their capability was never gone into by the OSB." On these premises, he has submitted that it is for this court "to decide appropriate course of action."

9. These are the pleadings of the parties.

10. Before proceeding to notice the respective contentions of the learned counsel for the parties, it may be mentioned that the Motion Bench (A. P. Chowdhri and G.C. Garg, JJ.) at the stage of preliminary hearing of the case, had vide its order dated December 9, 1993 directed the Corporation to "produce the record relating to assessing inter se merit of various candidates and adjudging their eligibility whether carried out by the Indian Oil Corporation or by the Oil Selection Board." It had also stayed further action on the letter of Intent allotting the Outlet to

respondent No. 7. Thereafter, Civil Misc. application No. 2885 of 1994 was filed on behalf of the Corporation pointing out that the record relating to the grant of the Agency at Panchkula "along with the record pertaining to five other selections was taken in possession by Inspector PSE (SPE), CBI, Sector 30-A, Chandigarh." A copy of the Receipt Memo was also produced. It was, accordingly, prayed that notice be given to the said Inspector for production of the record. The Motion Bench had directed the issue of notice of the application to the Senior Standing Counsel for Union of India. In pursuance to the Notice given by the Bench, Mr. R.K.. Handa, Advocate, had appeared, on behalf of the C.B. I. and produced the file relating to the Outlet at Panchkula before the Court. On perusal of the record, the Motion Bench had admitted the writ petition to a regular hearing on April 19, 1994. Photo copy of the marks sheet was kept on record and the original record was returned- to Mr. Handa with a direction to produce it at the time of the hearing of the case. The case had come up for hearing on May 19, 1994 before me. Learned counsel for the parties had prayed for permission to see the record. Mr. Handa, learned counsel for the C.B.I, had submitted that the record should not be shown to the learned counsel as the case was still under investigation. After hearing the learned counsel for the parties, I had passed an order on May, 20, 1994, directing that the record be shown to the counsel for the both the parties. Accordingly, the record was shown. The counsel were thereafter permitted to make their submissions. The arguments had concluded on May 20, 1994 and the judgment was reserved.

11. The case on behalf of the petitioner in Civil Writ Petition No. 15230 of 1993 was argued by Mr. Atul Lakhanpal. His arguments were adopted by the counsel for the petitioner in Civil Writ Petition No. 303 of 1994. Learned counsel contended that the selection made by the Board was based on wholly extraneous considerations and not on the respective merits of the various candidates. He further contended that a perusal of the record showed that the marks as initially allotted to different candidates had been varied at a later stage and finalisation of the merit list was delayed on account of the "horse trading". According to the learned counsel, the final recommendation of the Board was prompted by extraneous considerations. He further submitted that respondent No. 7 had no experience relevant for the selection of a Dealer. He had not participated in any extra curricular activities. In spite of this, he was selected while others who possessed the necessary experience, were rejected. According to the learned "counsel, the Board had proceeded to conduct the selection without obtaining any Feasibility Report. The counsel also submitted that the written statements filed by the members of the Board bore intrinsic evidence of the arbitrary nature of selection. On these premises, learned counsel submitted that the selection deserved to be set aside.

12. On the other hand, Mr. S.C. Kapoor, learned Senior counsel for respondents Nos. 2 and 3 contended that this Court had no jurisdiction to go into the merits of the candidates or to interfere with the selection conducted by a duly constituted Board. Learned counsel placed strong reliance on the observations of

their Lordships of the Supreme Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, in support of his contention. He, further submitted that (he Manual issued by the Ministry contained guidelines for official use and any violation thereof did not entitle the petitioner to challenge the selection. To the same effect, were the contention raised by Mr. Ashok Aggarwal, learned Senior Counsel appearing for respondent No. 7. Mr. Jagan Nath Kaushai, learned Senior Counsel appearing for respondents Nos. 4 and 5 viz. the Chairman of the Board and another member, contended that the marks had been awarded to the candidates on the basis of the assessment of their individual merit and that the changes in the marks as borne out from the original record were not an evidence of any "impropriety". According to him, the decision of the members to recommend respondents Nos. 7 and 8 was "unanimous" and that the delay in the submission of the merit list had been satisfactorily explained in the respective affidavits filed by the respondents. Accordingly, it was contended that no. ground for interference with the impugned selction was made out.

13. At the outset, the primary contention relating to the jurisdiction of this Court under Article 226 of the Constitution to meddle with the selection made by a duly constituted Selection Board, may be considered.

14. It is true that this Court does not normally interfere with the selections made by a duly constituted Body. The Rule, in this behalf was reiterated by their Lordships of the Supreme Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, . However, it is equally settled that this Court in the exercise of its extra-ordinary jurisdiction, is bound to "reach injustice wherever it occurs." It is bound to ensure that the rights guaranteed to a citizen by the Constitution and the laws of this land, are not violated. It is the responsibility of this Court to ensure that no action of the State or any of its Instrumentalities is in violation of Article 14 of the Constitution. Whenever, a citizen complains that the action of the State is violative of Article 14 and demonstrates that it is discriminatory or that it is unfair, unreasonable or arbitrary, the court cannot be a helpless and silent spectator. It is bound to intervene. The law in this behalf appears to be settled.

15. Some years back, Justice Sabyasachi Mukerji had observed that "it has to be borne in mind that things are happening in public life which were never even anticipated before. There are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the Courts are bound to take judicial notice." A few years later, in the year 1987, his Lordship warned --"This court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country, along with or even before cleaning the physical atmosphere. The pollution in the values and standards is an equally grave menace as the pollution of environment. Where such situations cry out, the court should not and cannot remain mute and dumb." Consequently, if a citizen approaches the High Court with a complaint that the State has violated Article 14

and demonstrates that the action is unreasonable, arbitrary and unfair, the High Court cannot remain "mute and dumb." Keeping in view the changing situation, the Apex Court has, added a new dimension to the concept of "Equality" contained in Article 14 of the Constitution. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, , the Court held that the concept of Equality "cannot be cribbed, cabined and confined" and that "State action must be based on valid relevant principles applicable to all similarly situated and it must not be guided by any extraneous "or irrelevant considerations, because that would be denial of Equality." In *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, , the Court again observed that the Equality Clause is extended to strike at "arbitrary or capricious actions of the Executive....." Then in the famous *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , the Court held that "Article 14 strikes at arbitrariness in State action and ensures fairness and Equality of treatment." This principle was further reiterated in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and finally consolidated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, in the following words (at p. 499) :--

"It must now be taken to be well settled that what Article 14 strikes at, is arbitrariness because an action that is arbitrary, must necessarily involve negation of Equality. The Doctrine of Classification) which is evolved by the courts is not a paraphrase of Article 14 nor is it the objective and the end of that Article. It is merely a judicial formula for determining whether the Legislative or Executive action in question is arbitrary and therefore constituting denial of Equality..... Wherever, therefore, there is arbitrariness in State action whether it be of the Legislature or of the Executive or of an "Authority" under Article 12, Article 14 immediately springs into action and strikes down such State action."

16. The principle which was initially enunciated in respect of administrative action, was even extended to legislative measures. In the case of *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, , the Court has observed that the validity of administrative action as also of subordinate Legislation is bound to be questioned if it is "ultra vires the Constitution or the governing act or is repugnant to the general principles of the laws of the land or it is so arbitrary or unreasonably that no fair-minded authority could ever have made it" At page 369, their Lordships, have observed as under : --

"Even if it were to be assumed that rules made by virtue of power granted by a provision of the Constitution are of such legislative efficacy and amplitude that they cannot be questioned on grounds ordinarily sufficient to invalidate the generality of statutory instruments, they are nevertheless liable to be struck down if found to be intrinsically arbitrary or based on an irrational classification or other wise repugnant to constitutional principles."

17. Official arbitrariness can be more subversive of the Doctrine of Equality than statutory discrimination. It can be waived in all directions indiscriminately. It is, consequently, the duty of Courts to check it. Accordingly, it is held that normally a writ court shall not examine the proceedings of a selection committee as an appellate authority. However, in a case, where the action is found to be arbitrary, unreasonable or unfair, the Court shall not remain "dumb and mute" and can interfere. Each case has to be examined on its own facts.

18. What is the position in this case? The first contention raised by the learned counsel for the petitioner is that the selection is based on extraneous considerations. Primarily, this contention is based on three factors. Firstly, it has been pointed out that the interviews having concluded on August 25, 1993, the merit list was not finalised for a long time as "horse trading" was going on. Secondly, it has been suggested that even though the selection had to be made from amongst the candidates belonging to the category of "Scheduled Castes", yet the real persons who were pulling the string and going "around the Board" with "unspecified amounts" were members of "other castes". Thirdly, reliance has also been placed on the averments in the affidavit of respondent No. 6 "to show that respondents Nos. 4 and 5 made the selection "on considerations other than merit."

19. After hearing learned counsellor the parties, the question which crosses the mind is:--

Did the Board consider the "Fiscal fitness" or "business acumen" of the candidates? Did the Board consider the merits or was swayed by the "carats"?

However, there must be a thorough probe before this question can be categorically answered. It has been pointed out that the C.B.I. is looking into the matter. Let it do so. After the probe is completed, the law will have its course. For the present, nothing more needs to be said on this aspect of the case.

20. The next contention raised by Mr. Atul Lakhanpal, is that the selection suffers from the vice of arbitrariness. It has been contended that the numerous alterations made by the members in the marks sheets, the delay in the submission of the result of interview and the pleadings of the Parties, clearly show that the selection has not been made on merits and that it is totally arbitrary and unfair. Is it so?

21. The statement of the performance of candidates interviewed by the Board consisting of pages 1 to 27, has been produced by Mr. Handa. At Pages 1 to 6, are the sheets on which marks have been allocated by respondent No. 6. A perusal thereof shows that there are alterations in respect of the marks allotted to the candidates at Sr. Nos. 10 (Smt. Gita Amrohi), 17 (Mr. Raj Mumar, respondent No. 8), 23 (Mr. Sanjiv Kumar Chaudhary), 49 (Mr. Rajesh Punia), 50 (Mr. Dharrhender Kashyap), 52 (Mr. Ra,m Niwas), 57 "(Miss Seerna Chauhan) and 59 (Smt. Pushpa Devi). The original awards appear to have been altered and correction fluid has been applied so as to make it difficult to ascertain the marks

as originally assigned.

22. Then, from pages 7 to 12, is the statement prepared by respondent No. 4. A perusal of this list shows that the marks allocated to the candidates at Sr. Nos. 3 (Mr. Vijay Kumar), 5 (Mr. Rajesh Kumar), 8 (Smt. Usha), 10 (Smt. Gita Amrochi), 11 (Mr. Sunil Kumar), 15 (Smt. Chandcr Kanta), 17 (Mr. Raj Kumar, respondeht No. 8) 23 (Mr. Sanjiv Kumar Chaudhary); 32 (Mr. Ramesh Kumar), 39 (Mr. Rajinder Kumar), 43 (Smt. Sumitra), 44 (Mr. Rabhubri Sarv),"47 (Mr. Babu Ram, respondeht No. 7) and 51 (Mr. Jasbir Singh), have been altered. It further appears that in certain cases, the respondent has altered marks by cutting and the increase or decrease in marks is clearly visible, while in others, the correction fluid has been used. In the case of respondent No. 8 viz. Mr. Raj-Kumar, No. 8, it appears that under the heading "Personality, business ability and Salesmanship", the respondent had initially awarded 8 marks. In the next column relating to "Full time Working Dealer it appears, that 25 marks had been awarded. In the column relating to "General Assessment and Extra curricular activities", the candidate had been initially awarded 15 marks. As a result, his score should have been 48. However, it appears that these marks were later on altered. Digit 2 was added in the first column as a result of which he was shown to have been awarded 28 marks (instead of 8) for Personality etc. out of a total of 30. In the second column relating to "Full time Working Dealer", the marks were changed from 25 to 30 out of 30 (viz. 100%) and for General Assessment etc. the marks were changed from 15 to 18 out of 20. As a result, was shown to have secured 76 marks out of a total of 80 instead of the initial award of 48 marks. Still further, while the alteration of marks relating to different items, has been changed by overwriting etc. in the column relating to the total marks, the correction fluid has been applied. Not only this. Even at the back of the page, the fluid has been applied so that the total marks as initially allotted to the candidate may be made totally indecipherable. The marks have been altered and correction fluid has also been applied in case of the selected candidate (Sr. No. 47, Mr. Babu Ram, respondent No. 7). Probably, he had been initially awarded a total of 68 marks. However, the score has been covered up by applying the correction fluid. The marks allotted to him were changed and he was awarded 74 marks. These are the two candidates who have been finally recommended by the Board.

23. From Pages 13 to 18, is the list prepared by respondent No. 5. He appears to have resisted the temptation to use the fluid. However, besides a minor correction in total, he also appears to have changed allocation of marks in case of the two selected candidates viz. Sr. No. 17, Raj Kumar, respondent No. 8 and Sr. 47, Babu Ram, respondent No. 7. In case of Raj Kumar, it appears that the respondent had awarded 15 marks under each of the three heads with a total of 45. These appear to have been raised to 60. Similarly, in the case of respondent No. 7, there appears to be an alteration in the marks relating to "Full time working Dealer from 18 to 28." However, in the column indicating the total marks, there appears to be no alteration.

24. From pages 19 to 24, is the comparative statement of the performance of Candidates on which the marks allotted by respondents Nos. 4 to 6 have been separately recorded in respect of each candidate and after calculating the same, the average marks as secured by each candidate have been worked out.

25. At page 25, is the document containing the minutes of the Board in the meeting held on September 21, 1993 at Chandigarh. The names of respondents Nos. 7 and 8 (Babu Ram and Raj Kumar) were recommended by the members in order of merit. At Pages 26 and 27 are the two envelopes. The envelope at Page 27 also bears a seal and appears to have been signed by respondent No. 4.

26. It thus, appears that there were numerous alterations in the marks allotted to different candidates. These alterations have been vital. Learned counsel for respondents Nos. 4 and 5, was, however, at pains to contend that alteration in the marks awarded to candidates during the course of interview is inevitable. Normally, minor alterations may be there. However, it seems very difficult to accept the contention that the alterations were as a result of discussion on the facts as established on the record of this case. To illustrate: it appears that respondent No. 4 had awarded only 8 marks out of 30 to Mr. Raj Kumar, respondent No. 8 for "Personality, Business ability and Salesmanship." However, Digit 2 appears to have been added subsequently, with the result that the award was raised from 8 to 28 viz. from 26.6% to 93.3%. Such an alteration does not appear to be normal. Obviously, there is something more than what meets the eye. Still further, even if the marks are changed during the course of interview, there appears to be no reason which may compel the members to use the correction fluid or to hide the extent of alteration. Consequently, it does not appear to be a case where the alteration has taken place as a result of discussion between members of the Board as suggested in the affidavits filed by respondents Nos. 4 and 5. The contention raised on behalf of the respondents, cannot, therefore, be accepted.

27. Besides the position relating to marks sheets, the applications submitted by Babu Ram, respondent No. 7, Sham Lal, the petitioner, Mrs. Gita Amrohi and Raj Kumar, respondent No. 8, are on the file produced by Mr. R. K. Handa from the custody of the C.P.I. A perusal of the application form shows that a candidate is required to give information regarding his qualifications, extra-curricular activities, his present occupation, business/selling experience, if any, and as to whether or not he has any experience of supervision of Personnel. In reply to these queries, respondent No. 7 had mentioned his educational qualification as B.A. He had indicated that he had no professional or any other qualification. He had also stated that he had not participated in any extra-curricular activities. At the time of the submission of the application, he was employed in a Private concern as a permanent Stenographer but had no experience of business/selling or supervision of Personnel. Against the column requiring the candidate to give a brief note on plans to run the dealership, he had stated as under:--

"Yes, I shall resign my job and devote myself whole time working Dealer treating

this business as my main source of income."

This was the total information made available by the said respondent. At the time of interview, respondent No. 4 awarded him 28 marks out of 30 for "Personality, Business ability and Salesmanship." 30 marks out of 30 have also been awarded to him by the said respondent for "Full time working Dealer." Against the column relating to "General Assessment and extra-curricular activities", he has been awarded 18 marks out of 20. One wonders as to what criterion had been followed by the members of the Board for awarding marks under different heads. In spite of the fact that he had no business experience or salesmanship, the candidate had been awarded 93.3% marks by Respondent No. 4. As noticed earlier, he had been initially awarded only 8 marks but these were changed to 28. Even though, he is employed as a permanent Stenographer in a private concern, he has again been awarded 100% marks for being a Full time working Dealer. Even though, he had not participated in any extra-curricular activities, he had been awarded 90% marks under the heading of "General Assessment and Extra-curricular activities." As against this, in case of Mrs. Gita Amrohi who possessed the academic qualifications of M. A, in Hindi and had produced certificates indicating that she was Director, Rotract, had attended NSS camps and had participated in hiking/tracking and also that she was only a house wife and had helped her father in law, in maintaining accounts and selling his products in 1987-88, respondent No. 4 had awarded 12 marks out of 30 viz. 40% for "Personality, Business ability and Salesmanship" and 5 marks out of 30 for Full time Working Dealer viz. 17% and 5 marks out of 20 viz. 25% for General Assessment and Extra-curricular activities. Her score was actually increased to 80 marks by respondent No. 6 but it was reduced by respondent No. 4. These two instances alone make one wonder as to what criterion, yardstick or method had been adopted by the members of the Board to allocate marks under different heads.

28. Learned counsel for the parties had contended that the marks had been allotted by the Board on the assessment of the performance of each candidate. The court cannot substitute its own views for those of the Board.

29. It is true that during interview, the marks are primarily allotted on the consideration of performance of a candidate. However, where different headings have been clearly delineated, the marks allotted by a member under each head must have some rational relationship with the facts established on the record. A person who has no experience, has been given 93% marks while another who did have some experience (howsoever short), has been awarded only 40% marks. Similarly, a person who is working on permanent basis in a private concern, has been awarded 100% marks for being a whole time dealer while another who was not employed anywhere, has been awarded only 16.66% marks. Moreover, the candidate who had not participated in any extra curricular activity had been awarded 90% marks by way of General Assessment and extra-curricular activities while the other who claimed to have participated in some

extra curricular activities, was awarded only 25% marks. If the entire records had been made available, probably, such instances could have been multiplied.

30. There is yet another aspect of the matter. Interviews had taken place on August 24 and 25, 1993. The final merit list was not prepared at that time. The explanation given on behalf of respondents Nos. 4 and 5 is that respondent No. 6 was not agreeable to the preparation of the comparative statement and the merit Panel as he was of the view that since this Outlet had been reserved for members of Scheduled Castes, his opinion should prevail as he is also belonged to that caste. There is nothing on record to support this averment. On being asked, Mr. S. C. Kappor, learned counsel for the Corporation, categorically conceded that no letter indicating that the merit list was not being finalised by respondents Nos. 4 and 5 on account of the attitude of respondent No. 6, existed on the record of the Corporation. Surely, if respondent No. 6 was acting unfairly or was not prepared to allow the merit list to be finalised, nothing stopped the Chairman and the other member from either forwarding their own merit list or from conveying the factual position to the Corporation. They did not do so. Secondly, another explanation given by the two respondents is that on 8th of September 1993, it had been pointed out to them that in a letter addressed to one of the candidates, the date of interview had not been indicated. As a result, the members of the Board decided to call him for interview on September 21, 1993. A perusal of the marks sheets shows that none of the members of the Board had allotted any marks to him. On the contrary, it was indicated that he was ineligible. Normally, the preparation of a merit list should not have been delayed on account of the fact that the candidate who was ineligible had not been interviewed. It seems improbable that the members of the Board would not have even looked at the application form of the candidate, before deciding to call him for interview or delaying the finalisation of the result. However, even if the explanation given by the respondents is accepted, the fact remains that the preparation of the merit list was delayed from August 25 to September 8, 1993. If the merit list could be prepared immediately after the interview of Rajesh Kumar on September 21, 1993, there is no reason as to why it could not have been prepared on August 25, 1993. The delay from August 25, 1993 to September 8, 1993 does cast a cloud on the fairness of the selection.

31. There is yet another aspect. It is not only the petitioners who have pointed an accusing finger at respondents Nos. 4 to 6 but the members of the Board have also blamed each other. Respondents Nos. 4 and 5 allege that the delay in the finalisation of the merit list was on account of the attitude adopted by respondent No. 6. In turn, respondent No. 6 alleges that "pick and choose was adopted in deciding to interview ineligible candidates", "respondent No. 4, however, had pre-judged the issue and seemed interested in respondents Nos. 7 and 8." There was "patent bias and irregularity in the conduct of interview" and that the respondent "resisted pressure from respondents Nos. 4 and 5 to decide on consideration other than merit." What is more, the respondent even admits that he had made a complaint against the "illegal and irregular functioning of the

OSB (Oil Selection Board)". Could this Board have made a fair selection?

32. Taking the totality of circumstances into consideration, it appears difficult to uphold the claim of the respondents that selection was just and fair. The circumstances noticed above cast a dark cloud on the fairness of the selection. In fact, it appears that the allocation as well as alteration of marks were done arbitrarily. Accordingly, the selection cannot be sustained.

33. In view of this conclusion, it does not appear to be necessary to go into the question relating to the violation of the provisions contained in the Manual issued by the Ministry.

34. No other point was urged. Even in Civil Writ Petition No. 303 of 1994, nothing new was pointed out. In fact, learned counsel for the petitioner had adopted the arguments raised in Sham Lal's case viz. Civil Writ Petition No. 15230 of 1993 and the counsel for the respondents had adopted the written Statements filed in this petition.

35. In Civil Writ Petition No. 16434 of 1993, Mr. Nasib Singh Gill, learned counsel for the petitioner, contended that Babu Ram (respondent No. 5 in this case), was ineligible as he had not submitted the residence certificate in the prescribed pro forma. He also contended that even the certificate furnished by him regarding his being a member of the Scheduled Caste, suffered from the same infirmity. Accordingly, he prayed that the candidature of Babu Ram could not have been entertained by the respondents and in view of paragraph 4.10 of the Manual, the Outlet should be directed to be allotted to the petitioner, Raj Kumar (respondent No. 8 in Civil Writ Petition No. 15230 of 1993).

36. Keeping in view my findings regarding the validity of selection, this relief cannot be granted to the petitioner.

37. Accordingly, Civil Writ Petitions Nos. 15230 of 1993 and 303 of 1994 are allowed. The selection made by the Board as also the letter of Intent issued in favour of Babu Ram, are set aside. Civil Writ Petition No. 16434 of 1993 is dismissed. The respondent No. 2 is directed to make a fresh selection. The selection shall be made by a Board with which none of the old members viz. Respondents Nos. 4 to 6 in Civil Writ petition No. 15230 of 1993, shall be associated. In the circumstances of these cases, there will be no order as to costs.

38. Writ petitions allowed.