

(1995) 02 CAL CK 0022
In the Calcutta High Court
Case No : C.O. No. 11502 (W) of 1988

Siben Kumar Mondal

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and another

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Arbitration Act, 1940 — Section 34
Constitution of India, 1950 — Article 12, 138, 14, 141, 143(1)
Contract Act, 1872 — Section 23
Essential Commodities Act, 1955 — Section 3
Evidence Act, 1872 — Section 115

Citation : AIR 1995 Cal 327 : (1995) 1 ILR (Cal) 323

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : D.K. Kundu and Tulsidas Roy, for the Appellant; Kalyan Bandopadhyay, P.K. Tarafdar, Sanat Kr. Seal, S. Pal and J. Gupta, for the Respondent

Judgement

1. In this application the petitioner has, inter alia, prayed for issuance of a writ of or in the nature of mandamus directing the respondents to show cause as to why the petitioner should not be awarded retail out let dealership at Santipur adjacent to the National Highway 34 in the District of Nadia.

2. The fact of the matter is as follows:

Pursuant to the advertisement issued by the respondent No. 1 on 26-12-1985 inviting application from the intending persons for being appointed as dealer under "C" Category at Santipur in the District of Nadia, the petitioner along with others submitted an application for the dealership. The petitioner was asked to appear before the Oil Selection Board for interview by the respondent No. 1 in terms of letters dated 13th April, 1988 and 1st May, 1988 which he complied with. However, the name of the petitioner was not empanelled by the Board of the said dealer^ ship. The petitioner filed a representation before the Chairman of the respondent No. 1. The petitioner has contended that initially his name was

empanelled but for some reasons the same had been struck off. The petitioner has further contended that on the advice of the Sales Officer of respondents No. 1 he had purchased 50 decimals of land adjacent to the National Highway No. 34. He also contended that at the interview the members of the Oil Selection Board informed him that he would be given the said dealership. The petitioner has further contended that the respondents decided to issue dealership in the name of some person who was not the resident of Santipur in the District of Nadia.

3. The petitioner has filed a supplementary affidavit stating that the respondents Nos. 1 and 2 awarded the dealership in question to Gobinda Gopal Pal. An application for addition of said Gobinda Gopal Pal was filed by the petitioner which was allowed by an order dated 7-2-1988. The petitioner in the aforementioned supplementary affidavit, therefore, inter alia, questioned the legality/ validity of the dealership granted to the aforementioned Gobinda Gopal Pal.

4. The respondents in their affidavit-in-opposition categorically stated that the Oil Selection Board had considered the cases of all applicants in accordance with law and having found that Sri Gobinda Gopal Pal was the Suitable candidate thought it fit to award the said dealership to him. According to the respondents Gobinda Gopal Pal was awarded the dealership by the Oil Selection Board upon scrutinising all the documents in respect whereof it was the final authority.

5. Mr. Dipak Kundu, learned Counsel for the petitioner, however, drew my attention to the statements made in paragraph 6 of the affidavit in-opposition filed by the respondent No. 2 for the purpose of showing that it would appear therefrom that he had been awarded on the following marks:-

Personality, business ability, salesmanship (Max. 30)

Finance and Facilities (Max. 20)

Full time working dealer (Max. 30)

Genl. assessment & extra curricular activities (Max. 20)

Total

Chairman 10

16

7

8

31

Member 10

16

7

8

31

Total marks therefore obtained by the petitioner is as under:

$31 \times 31 = 62 - 2 = 31$ marks. [or $31 + 31 = 62 / 2 = 31$ marks]

6. According to the petitioner the addition of marks awarded to the petitioner under different heads would show that the petitioner should have awarded 41 marks in place of 31 marks-and as the same was evidently a mistake. The petitioner, therefore, contended that the case of the petitioner appears to have been not considered in its proper perspective.

7. Mr. Kundu appearing on behalf of the petitioner further submitted that from the affidavit-in-opposition filed by respondents themselves it would appear that marks have been allotted with regard to the full time working dealership and general assessment and extra curricular activities which are wholly irrelevant and not germane for the purpose of grant of dealership. It was pointed out that in the advertisement issued by the respondents nothing has been stated that the extra curricular activities of the candidates shall also be taken into consideration for the said purpose. The learned Counsel further submitted that the petitioner also could have produced certificates to show his participation in extra curricular activities. Mr. Kundu submitted that although this Court is not concerned with the merits of the decision arrived at by the Oil Selection Board but is concerned only with the decision making process, this Court may in proper cases interfere With such decision if it is held that such a decision had been arrived at without following any norms and/ or if the discretion exercised by the Board is arbitrary.

8. The learned Counsel in support of his aforementioned contention relies on.

Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ; In Re: The Special Courts Bill, 1978, ; Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, ; Y. Srinivasa Rao Vs. J. Veeraiah and Others, ; Gurdeep Singh Vs. State of Jammu and Kashmir and others, ; M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; The Regional Manager and Another Vs. Pawan Kumar Dubey, .

9. The learned Counsel appearing on behalf of the respondents, however, raised a preliminary objection to the effect that as the petitioner has not filed an application for amendment of the writ petition, no relief can be granted to him. It was submitted that in any event the decision of the Oil Selection Board is final and binding on the parties and this Court in exercise of its jurisdiction under Art. 226 of the Constitution of India would not interfere therewith.

10. Reliance in this connection has been placed upon Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc., .

11. It was further submitted that from a perusal of the Writ application it would appear that the writ application had been filed only on the ground of promissory estoppel. It has been contended that even in the supplementary affidavit the points urged before me had not been taken but it was stated therein that the land Where petrol pump was to be situated did not belong to the respondent and the same had been in possession of a Bargadar. In this connection my attention has been drawn to the certified copy of an order passed by a revenue authority. It has been urged that the Oil Selection Board being an impartial party must be held to have adopted a fair procedure inasmuch as they had maintained a result-sheet and also considered other relevant matters including field inspection report etc.

12. In this case the concerned respondents were directed to produce the records, unfortunately, however, only a part record has been produced.

13. It cannot be ascertained from the said records as to what marks were obtained, by the other candidates under different heads.

14. From the affidavit-in-opposition filed by the respondent No. 1 it appears that several factors have taken into consideration for grant of retail outlet dealership in petroleum products. After the submission of applications by the interested persons, "the same are sent to the Oil Selection Board who after scrutinizing the documents fixed an interview of the candidates. Upon interviewing all the eligible candidates a panel of three persons is prepared which is then sent to the respondent No. 1 for conducting field investigation and submission of a report thereof to the Board. The Sales Officer of the respondent No. 1 conducted an enquiry and made verification of the documents and submitted a report to the respondent No. 2 for its review, and whereafter final decision for selecting the eligible candidates is taken.

15. It is further stated in the affidavit-in-opposition:

"I further stay that the selection and appointment to the dealership was awarded loathe candidate selected by Oil Selection Board (E) after due consideration of eligibility criteria and terms and conditions indicated in the advertisement and in accordance with the established policy and procedures of dealership selection."

16. From the records produced before me appears that Sri Gobinda Gopal Pal obtained 58 marks, Sri Animesh Chatterjee obtained 54 marks and Sri Dinesh Chandra Mondal and Sri Nirmal Kumar Mondal together obtained 51 marks each. A panel was, therefore, prepared consisting of the aforementioned four persons. From the record it further appears that one Sri Madhu Sudan Pramanik obtained 47 marks, Sri Prankrishna Debnath obtained 48 marks, Sri, Ranjit Kumar Mondal obtained 48 marks, Sri Niranjan Debnath obtained 47 marks, Sri Amit Kumar Saha obtained 41 marks, Sri Ashis Kumar Dey obtained 42 marks, Sri Prakash Chandra Sarkar and Sri Prosenjit Roy together obtained 45 marks each, Sri Anil Kumar Ghosh obtained 46 marks, Sri Subhas Ranjan Das and Sri Biplab Ranjan Das together obtained 43 marks each.

17. It is, therefore, clear that apart from the empanelled candidates a large number of other candidates had also obtained 41 marks or above.

18. The petitioner in this application has not stated the foundational facts for invoking the doctrine of promissory estoppel, nor the said principle is attracted in this case. It is not, therefore, possible to accept the contentions of the petitioner that the members of the Oil Selection Board had promised that the dealership would be given to him. Keeping in view of the fact that a large number of persons obtained higher marks than the petitioner, it is not possible to accept the contention of the petitioner.

19. In *Bharat Singh and Others Vs. State of Haryana and Others*, the Supreme Court states the law thus (at p. 2186 of AIR):--

"In our opinion, when a point which is ostensibly a point a law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not ascertain the point. In this context it will not be out of place to point out that in this regard that there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

20. It appears that the petitioner had raised, another contention in the supplementary affidavit questioning the eligibility of the respondent No. 6 to be appointed as a retail outlet dealer on the ground that the land possessed by the respondent No. 6 was in possession of a bargadar, Ajit Kumar Ghosh. The said respondent in his affidavit-in-opposition has annexed a copy of the order dated 27-6-1989 passed by judicial Land Revenue Officer, Santipur which is to the following effect-

"Heard Shri Ajit Kumar Ghosh, He stated that he has never cultivated the land in question. The land was being cultivated by. Robi Ghosh his elder brother. He also states that he did not file any petition to R.O.'s Office. He admitted putting his L.T.I. on a few blank papers as directed by one Shri Shiben Mondal, s/o. Manindra Nath Mondal of village Gobindapur. He also admits lodging F.I.R. to P.S. also insisted on by the said Shiben Mondal.

It transpires that Shri Shiben Mondal was one of the unsuccessful applicants for HSD retail outlet at Santipur as advertised by Hindustan Petroleum Company. The appellant was selected for the retail outlet.

Above facts suggest that Ajit Kumar Ghosh was never a cultivator of the suit land. It was concoction by some interested person to foil the chance of the

appellant to start a HSD out let at the suit plot.

I do hereby allow the appeal and direct the R.O. to correct his records-by deleting the name of Amit Kumar Ghosh as "Bargadar" against the suit land."

21. The writ petitioner in his reply has no doubt denied the said fact but this Court while considering the said question cannot ignore the aforementioned finding of a competent court of law.

22. Submission of Mr. Kundu to the effect that the members of the Oil Selection Board while considering the matter have taken into consideration irrelevant matters may now be considered. It appears that marks were allotted under the following heads:

(a) Personality, business ability, salesmanship -- 30 marks.

(b) Finance and Facilities -- 20 marks.

(c) Full time working dealer -- 30 marks; and

(d) General Assessment and extra-curricular activities -- 20 marks.

23. Mr. Kundu submitted that the awarding of marks with regard to the full time working is irrelevant. The contention of the learned Counsel may have some substance but it is not necessary for this Court as at present advised to pronounce any judgment in this case,

24. I decline to consider in this case as to whether "general assessment" of a candidate and "extra auricular activities" are relevant for the purpose of this application or not, as I am of the considered view that in view of the conduct of the petitioner, he is not entitled to any equitable relief from this Court.

25. However, I may state that the power of this Court in terms of Article 226 of the Constitution of India can be exercised even in the matter of grant of a contract or distribution of a largess by a State, if the same come within the parameters of judicial review.

26. It is now a trite law that the authority which is a "State" within the meaning of Art. 12 of the Constitution of India must act fairly and/or reasonably even in such matters. If an action on the part of State while granting Contract is arbitrary, irrational or unfair, the Court may exercise its jurisdiction under Art. 226 of the Constitution of India.

27. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, the Supreme Court observed (at p. 173 of AIR):--

"There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies,. It is trite to say that individuals are not and do

not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts however, high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

28. However, in that case the Supreme Court was considering the question as to whether Regulation 9(b) of the Delhi Road Transport Authority (Provisions of Appointment and Service), Regulation was hit by Art. 14 of the Constitution and Section 23 of the Indian Contract Act or not.

29. In re The Special Courts Bill, 1978 reported in In Re: The Special Courts Bill, 1978, the Supreme Court while considering the reference made to it by the President of India in terms of Art. 143(1) of the Constitution of India relating to constitutionality of the Special Courts Bill, 1978 observed (at p. 517 of AIR):--

"The second infirmity from which the procedural part of the Bill suffers is that by Cl. 7, Special Courts are to be presided over either by a sitting Judge of a High Court or by a person who has held office as Judge of a High Court to be nominated by the Central Government in consultation with the Chief Justice of India. The provision for the appointment of a sitting High Court Judge as a Judge of the Special Court is open to no exception. In so far as the alternate source is concerned, we entertain the highest respect for retired Judges of High Courts and we are anxious that nothing said by us in our judgment should be construed as casting any aspersion on them as a class. Some of them have distinguished themselves as lawyers once again, some as members of administrative tribunals, and many of them are in demand in important walks of life, Unquestionably they occupy a position of honour and respect in society. But one cannot shut one's eyes to the constitutional position that whereas by Art. 217 a sitting Judge of a High Court enjoys security of tenure until he attains a particular age, the retired Judge will hold his office as a Judge of the Special Court during the pleasure of the Government. The pleasure doctrine is subversive of judicial independence."

30. Although the said decision having been rendered in a reference made under Article 138 of the Constitution of India and thus is not a binding precedent within the meaning of Article 141 thereof, the observations of the Supreme Court carry great weight.

31. This Court may not interfere with the selection of a dealer only because the Oil Selection Board* is presided over by a retired High Court Judge. The concept of extent of power of judicial review of this Court in such matters is well known. If a case comes within the parameters of the judicial review as propounded by the Supreme Court from time to time, there cannot be any doubt that this Court in a proper case may exercise its jurisdiction.

32. In *Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import*, the Supreme Court while considering the discretion of a Court which may be exercised u/s 34 of the Arbitration Act observed (at p. 2095 of AIR) :--

"Discretion", said Lord Mansfield in *R. v. Wilkes*, ((1770) 98 ER 327), "when applied to a Court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague, and fanciful, but legal and regular" (see *Craies on Statute Law*, 6th Edn., p. 273)."

33. No exception can be taken to the aforementioned proposition of law.

34. In *Y. Srinivasa Rao Vs. J. Veeraiah and Others*, the Apex Court held (at p. 930 of AIR):-

"The impugned appointment was made by the authority after holding an interview and it is the case of the appellant that the Revenue Division Officer merely enquired from him about his bio data without putting any further question by which the merits could have been judged. On that sole basis the shop was allotted to the respondent. Considering the criteria, as mentioned in the advertisement, the Collector accepted the claim of the appellant, pointing out that the appellant, was a better candidate from every angle. The High Court has quashed his judgment by condemning it as perverse but without indicating any reason for such a view."

It further observed (at p, 931 of AIR) :--

"So far the interview fixed as the sole criterion in the present case according to the impugned judgment is concerned, the same in absence of a guideline leaves the matter to the whims of the individual officer holding the interview. The exercise of such unbridled power, will be clearly violative of Article 14. The policy referred to by the State Counsel as contained in one of the Government orders and relied upon before us in support of the impugned judgment, therefore, must hold to be unconstitutional:"

35. The said decision, however, has no application to the facts of the present case inasmuch as noticed hereinbefore the Oil Selection Board has not only taken into consideration the marks obtained by the candidates at the interview but also various other considerations including the field reports, their financial position and" other relevant factor

36. However, as indicated hereinbefore, the Oil Selection Board took into consideration at least some irrelevant factors.

37. In *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, the Supreme Court while considering the matter relating to the reservation of seats for admission to MBBS course held (at pp. 2639-40 of AIR):-

" When this selection was challenged before the High Court, the High Court understood the contention of the appellant to amount to a plea that the mountaineering, by itself, was not an activity eligible to be recognised as a

sporting activity. That was not the -real question. The question was not that "mountaineering" -- had it been in the original list of approved sports -- was not eligible to be called a legitimate sporting activity. The real question was rather that such a sport not having been included in the list of approved sports at the cut-off date when the applications were invited and on the basis, of which candidates responded could not later "be introduced to provide eligibility retrospectively to a single candidate. That "mountaineering" could be such a sport, was not disputed, but what was urged was that after the list of sports for purposes of eligibility under the sports category had been determined and after the selections were made, only in order to accommodate respondent No. 6 a new sporting activity was included and respondent No. 6 chosen on that basis. It is also pointed out that "mountaineering" was included as an approved sporting activity for that year alone and that it was promptly deleted in the subsequent year. The appellant's contention was that the authorities had clearly acted on the basis: "show me the man, I will show you the rule" ".

38. It is true as noticed hereinbefore, that in absence of any stipulation in the advertisement, taking into consideration extra curricular activities of the candidate was not correct. The same was wholly irrelevant for the purpose of selection of a candidate for giving retail outlet dealership.

39. However as would be noted herein- after the petitioner cannot succeed in this writ application only on the aforementioned question.

40. In M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, the Supreme Court while considering the economic policy of fixation of price of levy sugar observed (Paras 51 and 52) : --

"a repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith, or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness.

The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principle's of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

41. No exception can be taken to the aforementioned proposition of law.

42. In Rohtas Industries Vs. S.D. Agarwal and Others, the Supreme Court while considering the power of the Central Government under the provisions of Companies Act to investigate into affairs of the Company observed (at p. 716 of AIR) :--

"As long back as 1891 the House of Lords was called upon to consider the scope of some of the provisions of the Licensing Act 1872 which gave discretion to the Magistrates in granting certain licenses. The question for decision was as to the

nature of the discretion granted. Lord Halsbury L.C. speaking for the House Observed in *Susannah Sharp v. Wake-field*, (1891) AC 173 :

"discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's case*"/ according to law, and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular."

43. The Apex Court further cited with approval the decision of House of Lords in *Padfield v. Minister of Agriculture Fisheries and Food* reported in (1968) 1 All ER 694.

44. The Supreme Court further held *Rohtas Industries Vs. S.D. Agarwal and Others*,

"In *Roncarelli v. Duplessis*, (1959) SCR(Can LR) 121 while dealing with the, discretionary power of the Quebec Liquor Commission to cancel a liquor licence this is what Ran, J. observed:

"A decision to deny or cancel such a privilege lies within the "discretion" of the Commission: but that means that decision is to be based upon a weighing of considerations pertinent to the object of the administration.

In public regulation of this sort there" is no such thing as absolute and untrammelled "discretion" that is that auction can be taken on any ground or for any reason that can be suggested to mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however, capricious or irrelevant, regardless of the nature or purpose of the statute, Fraud and corruption in the Commission may; be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a-statute is intended to operate; and ,any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair ? The ordinary language, of the legislature cannot be so distorted". In particular we would like to emphasize, tine observation that "there is always a perspective within which a statute is intended to operate"."

45. However, the instant matter stands absolutely on a different footing. The petitioner as has been noticed hereinbefore, has filed writ application on wrong premises.

46. He may be permitted to urge a hew point in its supplementary affidavit and/ or in reply to the affidavit-in-opposition, if such point becomes available from the affidavit-in-opposition itself.

47. However, in this case, as noticed hereinbefore, the petitioner had set up a

person as a Bargadar against the respondent No. 6. a revenue officer has categorically held that the Bargadar filed an application claiming himself to be Bargadar at the instance of the petitioner. The petitioner, therefore, has not approached this Court with clean hands and thus is disentitled to invoke the equity jurisdiction of this Court.

48. Moreover, the petitioner took part in the interview with full knowledge and thus the petitioner is estopped from questioning the efficacy and/or mode thereof.

49. In *Munindra Kumar and others Vs. Rajiv Govil and others*, the Supreme Court, inter alia, held (at p. 3611 of AIR) ;--

"The next question which arises for consideration is as to what direction would be just and proper in the circumstances of this case. We do not agree with the High Court to quash the entire selection made by the Board for the post of Assistant Engineers (civil). It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations. The appellants have joined the post on 28th December, 1989 and after completing the training are discharging their duties at different places. It has been submitted on their behalf that some of them had left their earlier jobs and have also become overage. Thus we do not consider it proper in the interest of justice to set aside the selections of the appellants."

50. The aforementioned decision of the Supreme Court applies to the fact of the present case also. In this view of the "matter it is not possible to apply the ratio of the decision cited by Mr. Kundu.

51. In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, the Supreme Court while considering the case of reservation observed (at p. 1769 of AIR):--

"It is the rule deducible from the application of law to the facts and circumstances of a case which continues its ratio decidendi and not some conclusion based upon/acts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

52. Moreover, as indicated hereinbefore, the respondent No. 6 had been awarded 58 marks. Even assuming respondent No. 6 had, been awarded 20 marks under heading-of "Extra curricular Activities", the marks obtained by the- said respondent would be 38 if the said marks are not taken into consideration, whereas deducting 8 marks obtained by the petitioner under the same head, the total marks obtained by him would be 33 marks only.

53. In Tata Cellular Vs. Union of India, the Supreme Court upon taking into consideration a large number of decisions laid down the following principles:

1. whether a decision making authority exceeded its powers?
2. committed an error of law
3. committed a breach of the rules of natural justice
4. reached a decision which no reasonable Tribunal would have reached or
5. abused its powers.

54. It is now well known that the fact of the matter must disclose a public law element in between the parties -in order to enable the Court to exercise its power of judicial review.

55. Reference in this connection may be made to G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, .

56. Moreover, the respondent No. 6 in his affidavit-in-opposition categorically stated that after grant of the said dealership in his favour he has not only obtained licenses from various authorities, he has also invested a huge sum. Moreover the selection was made in the year 1988. The writ application for one-reason or the other could not be disposed of for about 6 years. If at this juncture that the dealership of the respondent No. 6 is cancelled he will suffer an irreparable injury. Equity, therefore, is in favour of respondent No. 6.

57. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, the Supreme Court while considering that the case of the writ petitioner therein was not considered and an illegality had been committed by the International Airport Authority in granting contract of 2nd class contractor refused to exercise its discretionary jurisdiction.

58. It is now well known that this Court does not exercise its jurisdiction only because it is lawful to do so.

59. Keeping in view of the conduct of the petitioner as also the facts and circumstances of this case, in my opinion, it is not a fit case in which this Court exercises Extraordinary Constitutional Writ Jurisdiction in favour of the petitioner.

60. This application is, therefore, dismissed. There will be no order as to costs.

61. Application dismissed.