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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

KAILASH CHANDRA DIXIT — Appellant

Vs.

**HINDUSTAN PETROLEUM CORPORATION LTD.AND OTHERS —
Respondent**

(Before : Pradeep Kant, J and S.N.Shukla, J)

Writ Petition No. 3634 of 2006 (M B)

Decided on : 18-03-2008

A. ADMINISTRATIVE LAW — Natural Justice — Audi Alteram Partem — Selection Process — Cancellation of Selection — Retail Outlet Allotment — While a candidate securing the highest marks in a selection process for an oil corporation retail outlet does not acquire an indefeasible right to appointment, if their selection is cancelled based on a complaint, especially from an unsuccessful candidate, the selected candidate must be given an opportunity to respond to the allegations against them — This ensures the sanctity of the selection process and prevents its casual interference based on unsubstantiated complaints — Even if a complaint is found bona fide after inquiry, leading to a cancellation, providing an opportunity to the selected candidate to explain their position is crucial to avoid cancelling a selection based on incorrect facts. (Paras 8, 9, 10, 11, 12)

B. ADMINISTRATIVE LAW — Presumption of Regularity — Selection by Expert Body — When an expert body like a Selection Committee undertakes a selection process, there is a presumption that it has considered all relevant aspects and that the selection is legal and correct, unless proven otherwise — Therefore, before cancelling a selection based on alleged discrepancies, the selected candidate must be informed of the complaint and given an opportunity to address it, particularly regarding the factual basis of the complaint (land

location, measurements) which form part of the selection criteria. (Para 12)

C. SELECTION PROCESS — Cancellation of — Requirement of Hearing — Where a selection (for a retail outlet) is cancelled on the ground that the selected candidate was "wrongly awarded marks" due to a non-conforming land location, and this decision is based on a complaint, the selected candidate must be heard to explain their version before the cancellation — Failure to do so, especially when the candidate claims the basis of cancellation is factually incorrect and they could have explained it, violates principles of natural justice. (Paras 4, 6, 7, 11, 12, 13)

JUDGMENT

1. Heard learned Counsel for the petitioner and Sri K.S. Pawar, learned Counsel for the Corporation.
2. The petitioner was awarded highest mark in the selection of retail outlet of Hindustan Petroleum Corporation Ltd., namely, 60.96% mark where as one Sri Raj KumarAgarwal obtained 58.58% marks.
3. It appears that some complaint was made by Sri Raj KumarAgarwal regarding the alleged incorrect award of marks to the petitioner. The Corporation on receipt, of such complaint, has cancelled the selection and has ordered for fresh interview.
4. The impugned order is dated 8.5.2006, contained in Annexure A1 to the writ petition. The aforesaid order says that under the heading "Capability to provide infrastructure and facilities" the petitioner has wrongly been awarded 35 marks by the selection committee where as he should have been awarded only 'O' mark. The reason for the aforesaid remark is that the land offered by the petitioner is not situated on SH21 which was advertised street, as in between, there lies 24 meters Government land.
5. During the course of argument Sri K.S. Pawar in support of the aforesaid order has submitted that in fact the petitioner's land was not conforming with the requirement of prescribed area nor the measurements which are required for establishment of the retail outlet as advertised, but this ground is not mentioned in the order cancelling the selection.
6. The learned Counsel for the petitioner submits that even the reason given in the order that the land in question is not situated on SH21 is not correct and had an opportunity been given to him he would have explained this to the Corporation.
7. Sri Pawar in response submits that no opportunity was required to be given to the petitioner while cancelling his selection as no enforceable right had accrued in favour of the petitioner merely by getting the highest marks and that on receipt of a complaint, enquiry was made and when it was detected that marks have been wrongly awarded to the

petitioner, selection has been rightly cancelled. Moreover, the case of the petitioner would not be prejudiced as he would also have full opportunity to participate in the inter view and fresh marking would be done accordingly.

8. We have considered the aforesaid arguments and we are of the view that though by getting highest marks and being placed at serial No. 1 in the select list in pursuance of the selection held for the award of retail outlet of Oil Corporation no enforceable right accrues in favour of the petitioner who has been selected, but the fact remains that in case his/her selection, as the case may be, is cancelled on a complaint made by an unsuccessful candidate or may be by a third person, an opportunity should be afforded to such selected candidate so as to meet the allegation/complaint against him.

9. Process of selection should be given due sanctity and should not be allowed to be interfered with or tampered with, casually on mere asking by one or the other person and particularly of the unsuccessful bidder. It is common knowledge that when an applicant fails in getting the outlet, he or she makes effort to have another chance of selection by making a complaint, if such complaint is entertained lightly, the selection process would be greatly prejudiced, damaging the sanctity of process of selection.

10. Where complaints are found bona fide which after inquiry reveal that some discrepancy had occurred in the matter of awarding marks which is to be done as per own scheme/policy of the Corporation, which is made known to the public, selection can be cancelled and fresh inter view may be undertaken of all candidates, who stand qualified, but there may be cases where a complaint either is not genuine or is based on incorrect facts and to avoid such a situation, an opportunity should be afforded to the person selected who may be able to substantiate that there has been no illegality or irregularity in awarding the marks. In such a situation there would be no occasion for cancelling the selection and consequently to hold fresh interview.

11. In the instant case, after receipt of complaint by unsuccessful candidate, the Corporation of its own appears to have looked into the record and took a decision that the land provided by the petitioner is not situated at SH21 and therefore the petitioner should have been awarded 'O' mark instead of 35 marks. The petitioner's version was never asked, nor he was allowed to meet the allegations aforesaid.

12. One cannot miss that selection process consists of making assessment under all the heads, including the assessment of the nature of the land, its location, the area and measurement etc. and unless the inspecting team and the selection committee is satisfied about the fulfilment of the conditions required in the advertisement, it would not select a person, who does not meet the necessary qualifications. There is always a presumption, that where an expert body viz. the Selection Committee has undertaken the selection process, it had considered every aspect of the matter, which is required to be seen and scrutinized. The selection already held has to be presumed as legal and correct unless proved otherwise. It is in these circumstances, it is necessary that before cancelling the

selection the selected candidate ought to be informed about the complaint made and opportunity be afforded to him to answer the complaint. But in the instant case, no such opportunity was afforded to the petitioner to indicate as to whether the land in question lies on the place for which it has been advertised and it also meets other requirements.

13. We, therefore, direct that before making fresh interview of all the candidates, the petitioner may be afforded opportunity of hearing by the concerned authority of the Corporation, namely, respondent No. 4 so as to know his version explanation about the location of land and other conditions which are attached to the land. We, therefore, set aside the order dated 8.5.2006. Subject to aforesaid directions, the petition is disposed of.

14. Since opening of retail outlet by the Corporation is being delayed because of litigation, we direct that the inquiry shall be concluded within a maximum period of three weeks from the date of receipt of a copy of this order and the Corporation shall proceed further as per the outcome of the inquiry.

15. The petition is disposed of finally.