

favouritism coupled with large scale illegalities, irregularities, I do not deem it appropriate to go into this issue in detail.

(35) In the present case, as discussed above, various aspects of selection starting from issue of advertisement in violation of provisions of the 1995 Act and the 1965 Rules, the receipt of applications (incomplete, after the last date fixed for receipt thereof), appointment of ineligible candidates (qualification wise, age wise), selection of large number of candidates in excess of the advertised vacancies, clearly show that there is sufficient material on record to hold that entire selection process was far from fair. No illegality has been committed by the respondents while terminating the services of all the candidates, who were appointed in the process. Once in the cases of number of selected and appointed candidates, illegalities, irregularities, and reasons for favouritisms are available, the only possible conclusion is to set aside the entire process of selection.

(36) Accordingly, I do not find any merit in these petitions and the same are dismissed.

R.N.R.

Before Satish Kumar Mittal & K.C. Puri, JJ.

SEWA RAM—*Petitioners*

versus

BHARAT PETROLEUM CORPORATION LTD. & OTHERS—
Respondents

C.W.P. No. 14143 of 2006

15th November, 2007

Constitution of India, 1950—Art. 14 & 226—Petitioner recommended for allotment of LPG distributorship by Dealer Selection Board at Sr. No. 1 on merit panel—On inquiry Corporation finding petitioner involved in 3 criminal cases and that in a criminal case charge was framed against petitioner u/s 452/323 IPC—Eligibility conditions—Candidate should not have been convicted of any criminal offence involving moral turpitude/economic offence—

Candidate not required to disclose pendency of criminal case against him in application form—Petitioner not convicted in any criminal case—No concealment of material facts—Neither offence u/s 323 IPC nor Section 452 IPC can be said to be offence of moral turpitude—Corporation also failing to follow procedure provided in guidelines/policy issued in the year 2000—Corporation itself is not competent to take decision & cancel recommendation without getting such order from Dealer Selection Board—Corporation violated principles of natural justice as no opportunity of hearing provided to petitioner before taking decision cancelling recommendation—No delay in challenging allotment—Plea that respondent No. 3 invested substantial amount on installing LPG distributorship cannot be accepted—Acceptance of such pleas would amount to Court's approval to an illegal, arbitrary & unconstitutional act of Corporation—Petition allowed, allotment of LPG distributorship to respondent No. 3 quashed while directing Corporation to make allotment as per recommendation made by Dealer Selection Board.

Held, that the petitioner was recommended for allotment of the LPG distributorship in question by the Dealer Selection Board at Serial No. 1 on the merit panel. The said recommendation has not been accepted and the petitioner has been denied the distributorship in question on the ground that during the inquiry made by the respondent Corporation on the complaint received against him, it was found that in a criminal case charge was framed against the petitioner on 26th February 2001 under section 452/323 IPC, which according to the respondent Corporation was an offence of moral turpitude, and the said fact was not disclosed by the petitioner in his application form. There was no eligibility condition that on the date of application, if a charge was framed against a candidate in a criminal case involving moral turpitude/economic offences, he will not be eligible for the dealership/distributorship. The only condition was that on the date of application and consideration, a candidate should not have been convicted of any criminal offence involving moral turpitude/economic offences. In the application form, the petitioner was only asked to disclose whether he has been convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle). If yes, then supply the detail of said case. Since on the date of application, the petitioner was not

convicted in any criminal case and he gave an affidavit to this effect. Therefore, it cannot be taken that the petitioner has concealed the material facts while filling up the application form. As per clause 1.3.2 of the guidelines/policy of 2000, the allotment/recommendation is liable to be cancelled, if a person has suppressed the information regarding his conviction for any criminal offence involving moral turpitude. The allotment/recommendation cannot be cancelled on the ground that in a pending criminal case, the charge was framed against the candidate for an offence involving moral turpitude, as there was no such requirement in eligibility criteria.

(Para 21)

Further held, that on the basis of the inquiry report, the respondent Corporation itself is not competent to take the decision and cancel the recommendation of the petitioner for allotment of the LPG distributorship without getting such order from the Dealer Selection Board. It is also undisputed that before taking the decision cancelling the recommendation of the petitioner for allotment of the distributorship in question, no opportunity of hearing was provided to him. Merely because the petitioner was associated in the inquiry, it cannot be taken that the said association is sufficient opportunity. After the conclusion of the inquiry, no notice was given to the petitioner providing him an opportunity of hearing, why his recommendation be not cancelled. Thus, the respondent Corporation has also violated the principle of natural justice.

(Para 26)

Further held, that the submission that the Court should not quash the allotment of the distributorship in question to respondent No. 3, because he has invested substantial amount on installing the LPG distributorship cannot be accepted because acceptance of such an argument would amount to Court's approval to an illegal, arbitrary and unconstitutional act of the respondent Corporation. The respondent Corporation has acted illegally and arbitrarily and violated Article 14 of the Constitution of India while cancelling the recommendation made by the Dealer Selection Board for allotment of the LPG distributorship to the petitioner and allotting the said distributorship to respondent No. 3, who was second empanelled candidate.

(Paras 29 & 30)

V.K. Jain, Senior Advocate, with Sushil Jain, Advocate, *for the petitioner.*

Haripal Verma, Advocate, *for respondents No. 1 and 2.*

Raman Sharma, Advocate, *for respondent No. 3.*

SATISH KUMAR MITTAL, J

The question involved in this writ petition is : Whether the allotment of LPG distributorship for Ballabgarh to respondent No. 3, who was at No. 2 in the merit panel prepared by the Dealer Selection Board, by ignoring the petitioner, who was at No. 1 in the merit panel, on the ground that he was not qualified and eligible for allotment of the LPG distributorship, because on the date of application, a criminal case involving moral turpitude was pending against him, in which charge was framed, is illegal, arbitrary, violative of Article 14 of the Constitution of India and contrary to the advertisement and the policy decision/guideline framed by the Government of India, Ministry of Petroleum and Natural Gas for selection of LPG Distributors ?

(2) For the purpose of deciding the aforementioned question, the following facts are to be noticed :—

(3) In the year 2002, Bharat Petroleum Corporation Limited—respondent No. 1 (hereinafter referred to as ‘the respondent Corporation’) invited applications from the general public for appointment of the LPG distributorship under ‘open category’ for different areas, including the area of Ballabhgarh. In this regard, an advertisement was published in the daily ‘The Tribune’ on 23rd March, 2002, copy of which has been annexed as Annexure P-1. In this advertisement, various eligibility conditions were mentioned for the candidates, who wanted to apply for the aforesaid distributorships. Among various conditions, there was a condition at No. 6, which provides that the candidates convicted for any criminal offence involving moral turpitude/economic offences (other than Freedom Struggle), are not eligible to apply. The application for appointment of the aforesaid distributorship was to be submitted on the prescribed form, which was available on payment at the office of the respondent Corporation. The petitioner, who is permanent resident of Ballbhgarh, obtained an application form bearing No. 1931 from the office of the respondent Corporation. Along with the said form, a brochure was also supplied, which prescribed

the eligibility criteria for selection of dealers/distributors of 'Open category'. Clause 10 of the brochure provides that the candidates convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle) would not be eligible for dealership/distributorship and if such a person is allotted the dealership/distributorship by suppression of information, it will be cancelled. In the prescribed application form, there was a column No. 20, which relates to the information as to whether the applicant has been convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle). If yes, then supply the detail of said case. If no, then an affidavit in accordance with Appendix 'A' be attached.

(4) On 2nd May, 2002, after reading the complete contents of the advertisement published in 'The Tribune' and the guidelines, prescribed in the above said brochure, the petitioner submitted the application form, duly filled up in all respects, for appointment of LPG distributorship for Ballabgarh. On the date of application, the petitioner was not convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle). Therefore, along with the application form, the petitioner submitted the requisite affidavit stating that he was never convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle). It is pertinent to mention here that the applicant for appointment of the said distributorship was not required to give the details of the criminal case, pending against him.

(5) The respondent Corporation, after scrutinizing the application forms, submitted by several candidates, called more than 60 candidates for interview. The petitioner was also found fully eligible and called for interview *vide* a letter dated 1st November, 2003. The interview was to be held on 25th November, 2003 at the Conference Room, Hotel Shyama International, Delhi. The interviews were conducted on 25th November, 2003 and 26th November, 2003 by the Dealer Selection Board consisting of a retired High Court Judge as Chairman and two Members. Finally, result of the interview conducted by the Dealer Selection Board was declared on 26th November, 2003. The Board found the petitioner to be most suitable candidate and recommended a panel of three names for allotment of the LPG distributorship for Ballabgarh showing the petitioner at serial No. 1 and respondent No. 3 at serial No. 2.

(6) After receipt of the merit panel, the respondent Corporation completed the Field Investigation Report of the petitioner. Certain documents were demanded from the petitioner, which were supplied by him. When the process for allotment of the distributorship in question was going on, the respondent Corporation received a complaint against the petitioner, in which it was alleged that on the date of his selection, the petitioner was involved in three criminal cases i.e. FIR No. 565 dated 14th December, 1999 registered at Police Station Sector 7 Faridabad under Sections 452, 323, 506 and 34 IPC; FIR No. 436, dated 9th July, 2001 registered at Police Station Ballabgarh under Sections 147, 148, 353, 186, 341 and 506 IPC, for threatening the Government Officers during the course of discharge of their public duty and FIR No. 244 dated 14th October, 2003 registered at Police Station Parliament Street, New Delhi, under Sections 406 and 420 IPC for non-refund of loan, out of which in one case i.e. FIR No. 565 dated 14th December, 1999, charge was also framed against the petitioner under Section 452/323 IPC, therefore, he was not eligible/qualified for allotment of the distributorship in question.

(7) On the aforesaid complaint, an enquiry was conducted by Senior Manager of the respondent Corporation, in which it was found that in FIR No. 565, dated 14th December, 1999 on 26th February, 2001 charge was framed against the petitioner by the court of Judicial Magistrate Ist Class, Faridabad, for the offence under Sections 452/323 IPC. By taking said offence as an offence of moral turpitude, the respondent Corporation decided not to allot the LPG distributorship to the petitioner as he was not eligible for the same and he was not a fit person to be selected and appointed as LPG distributor. Consequently, the respondent Corporation decided to allot the distributorship in question to respondent No. 3, who was at serial No. 2 in the merit panel. In view of the said decision, the letter of intent was issued to respondent No. 3 on 15th May, 2004 and finally, an agreement for allotment of LPG distributorship for Ballabgarh was executed with respondent No. 3 on 30th September, 2004.

(8) Before execution of the aforesaid agreement, the petitioner filed CWP No. 9454 of 2004 for prohibiting the respondent Corporation to allot the distributorship to any other person, except the petitioner, who was found more suitable by the Dealer Selection Board and was kept at serial

No. 1 in the merit panel. During the pendency of the said petition, when the respondent Corporation allotted the LPG distributorship to respondent No. 3, the petitioner filed an application for amendment of the said writ petition, challenging the allotment of the distributorship to respondent No. 3. When the said application came up for hearing, on 16th March, 2006, instead of allowing the amendment the petition, this Court permitted the petitioner to withdraw the petition with permission to file fresh one on the same cause of action. Immediately thereafter, the present writ petition was filed by the petitioner on 4th September, 2006.

(9) In the petition, the petitioner pleaded that the respondent Corporation has illegally and arbitrarily denied the distributorship to him and has allotted the same to respondent No. 3, who was at Serial No. 2 in the merit panel, on the ground that during the enquiry, it revealed that a criminal case i.e. FIR No. 565 dated 14th December, 1999 registered at Police station Sector 7 Faridabad under Sections 452, 323, 506 and 34 IPC was pending against the petitioner, in which charge was framed against him on 26th February, 2001 under Sections 452/323 IPC, which according to the respondent Corporation was an offence of moral turpitude, and the said fact was not disclosed by the petitioner in his application form. The petitioner further pleaded that in the advertisement issued by the respondent Corporation for the appointment of the said distributorship, there was no condition that an applicant, who has been charge-sheeted in a criminal case involving moral turpitude, though not convicted at the relevant time, will also be ineligible for allotment of distributorship in question. Even in the guidelines issued by the respondent Corporation along with the application form, there was clause No. 10, which also does not stipulate the said condition of framing of charge for the offence involving moral turpitude. It has been further averred that in the guidelines, which were framed by the Government of India for selection of the LPG distributors, issued *vide* notification dated 9th October, 2000, no such condition was existing and the only condition was that a candidate, who is convicted by a court of law for any criminal offence involving moral turpitude/economic offences (other than freedom struggle) will not be eligible for distributorship. There was no condition either in the said guidelines, advertisement, brochure attached with the application form or in the application form itself, that a candidate against whom charge has been framed by the court for a criminal offence, involving

moral turpitude, will also be ineligible to apply. It is further stated in the petition that the candidature of the petitioner has been ignored by the respondent Corporation for allotment of the LPG distributorship in question, while allotting the same to respondent No. 3, who was at Serial No. 2 in the merit panel prepared by the Dealer Selection Board, even without issuing any show cause notice and providing an opportunity of hearing to the petitioner, despite the fact that he was declared successful and kept at serial No. 1 in the merit panel for allotment of the said distributorship. It is also stated that allotment of the distributorship in question cannot be cancelled by the respondent Corporation in an arbitrary manner on the ground of pendency of criminal cases, without referring the matter to the Dealer Selection Board. It is pleaded that while denying the distributorship to the petitioner, the respondent Corporation did not follow the procedure prescribed under the guidelines issued by the Government of India, *vide* notification dated 9th October, 2000.

(10) Separate written statements have been filed by respondents No.1 and 2 and respondent No. 3. In the written statement filed on behalf of respondents No. 1 and 2, it has been averred that the petitioner has concealed the material facts with regard to the advertisement. It has been stated that the advertisement for the LPG distributorship in question was published in two newspapers. The petitioner has not annexed copy of the advertisement published in "Nav Bharat Times" dated 23rd March, 2002, in which it was specifically stated that candidate convicted/being tried for any criminal offence involving moral turpitude/economic offences and against whom charge has been framed by the court would not be eligible for distributorship. It is further stated that 18th July, 1998, for allotment of the LPG distributorship for Ballabgarh, an advertisement was published in "The Tribune" in English and "Dainik Tribune" in Hindi. In that advertisement also, it was specifically stated that the applicant should not have been convicted or there should be no charge sheet pending for offence involving moral turpitude/economic offences and the candidates against whom charges have been framed were not eligible for the distributorship. It has been further stated that no selection was made in view of the advertisement issued in the year 1998 and in the year 2002, fresh applications were invited for allotment of the same distributorship. In the fresh advertisement issued in the year 2002, there was a condition at Serial No. 13 that the applicants,

who had applied earlier had to again submit applications while referring the earlier applications. The earlier applicants need not to deposit fresh application fee with the fresh applications. The date of eligibility of the applicants would continue to be the date when the earlier applications were called for. In view of the fresh advertisement, petitioner along with several other persons applied for allotment of the LPG distributorship and finally three candidates were short listed/empanelled by the Dealer Selection Board. Petitioner was kept at Serial No. 1 and respondent No. 3 was kept at Serial No. 2. It is stated that when the process of allotment of distributorship was going on, several complaints were received against the petitioner, in which it was disclosed that three criminal cases were pending against him, out of which in one case i.e. FIR No. 565 dated 14th December 1999 registered at Police Station Sector 7 Faridabad, even charge was framed under Sections 452/323 IPC. It has been stated that in view of the fact that in the aforesaid case, charge was framed against the petitioner by the court of law, he was not found eligible for allotment of LPG distributorship, therefore, allotment of LPG distributorship was made to the second empanelled candidate i.e. respondent No. 3. It has also been pleaded that the petitioner has filed this petition at a belated stage. The letter of intent was issued to respondent No. 3 on 15th May, 2004, whereas the present petition was filed on 28th August 2006, therefore, it is liable to be dismissed on that account. It has been further averred that on receipt of the complaint against the petitioner about the pendency of the aforesaid criminal cases, Senior General Manager of the respondent Corporation was appointed to enquire into the matter, who conducted the enquiry after hearing the petitioner. It has been stated that during the course of enquiry, the petitioner has not disputed the fact that on 26th February, 2001, charge under Section 452/323 IPC was framed against him by the court of Judicial Magistrate 1st Class, Faridabad. However, he submitted that the said offence was not an offence of moral turpitude. It has also been stated that mere selection does not give any right to the petitioner and when on the date of advertisement, the petitioner was not eligible for allotment of the LPG distributorship in question on account of pendency of criminal case, in which charge was also framed against him for the offence involving moral turpitude, no legal right of the petitioner has been infringed and the respondent Corporation has rightly granted distributorship in question to respondent No. 3, who was at Serial No. 2 in the merit panel.

(11) Respondent No. 3 further pleaded that he has already invested a huge amount for the commission of the LPG distributorship and for the last more than 3 years, he is running the distributorship in question, therefore, at this stage, it will be unequitable to accept the claim of the petitioner and set aside the order of allotment of the distributorship in question to respondent No. 3 on the petition filed by the petitioner after a long delay.

(12) Counsel for the petitioner as well as the respondents argued the case on the points, which they have taken in their pleadings and have referred to the guidelines issued by the Government of India for selection of the LPG distributorship from time to time and the advertisement issued for the allotment of the distributorship in question including few judgments in support of their respective case.

(13) After hearing the arguments and going through the various advertisements, the documents referred to and the judgments cited by both the parties and for the reasons given hereinafter, we are of the opinion that this petition deserves to be allowed and the allotment of the LPG distributorship to respondent No. 3 is liable to be quashed, as the petitioner has been illegally and arbitrarily denied the LPG distributorship in question, who is entitled for the same being selected by the Dealer Selection Board at Serial No. 1 in the merit panel.

(14) From time to time, the Government of India, Ministry of Petroleum and Natural Gas, has been taking the policy decisions and issuing guidelines for selection of retail outlet dealers/LPG distributorship/SKO-LDO Dealers. On 9th October, 2000, the Government of India issued the circular No. P-39012/1/1999-IOC in supersession of the earlier communications, the guidelines for selection of dealers/distributors of oil marketing companies, including circular No. P-19011/56/95-IOC dated 1st April, 1997. These guidelines were issued to provide transparent, uniform, fair and faster procedure for selection of suitable candidates as dealers/distributors. Section 1 of this circular/guidelines provides eligibility criteria for dealers/distributors. Clause 1.1 of these guidelines defines various terms contained in the guidelines. Sub clause (ii) defines 'Conviction' which means 'conviction of a person for any criminal offence involving moral turpitude/economic offences (other than freedom struggle).' Clause 1.2 deals with eligibility for dealerships/distributorships. Clause 1.3 provides for

disqualification. According to sub clause (vi), a candidate will be disqualified if he/she is convicted by court of law. Clause 1.3.2 defines conviction. It provides as under :—

“Candidates convicted for any criminal offence involving moral turpitude/economic offences (other than freedom struggle) would not be eligible for dealerships/distributorship and if such a person is allotted the dealership/distributorship by suppression of information, it will be cancelled.”

Section 2 of this policy/guidelines deals with reservation. We are not concerned with that. Section 3 deals with constitution of Dealer Selection Boards, advertisements, scrutiny of applications, interviews time schedule etc. Clause 3.1 provides for advertisement for the allotment of the dealership/distributorship. Clause 3.1.1 provides that the advertisement shall be made in two newspapers, one English daily and one Regional Vernacular daily, having maximum circulation in the District (s) in which the dealership/distributorship is located. Clause 3.2 provides for Application Fee. Clause 3.2.1 provides that the applications form can be obtained in person or by making a written request through Registered Post remitting Rs. 500 (non-refundable) by crossed Account Payee Demand draft drawn on any Scheduled Bank or Postal Order in favor of Oil Company concerned towards application fee. Clause 3.2.2 (which will be relevant for adjudication of one of the points raised by the respondents) provides for exception for the application fee and this clause read as under :—

“In those cases where applications had been invited earlier but interviews could not be held or where interviews were held but merit panels were not displayed, fresh applications may be called for in such cases by the respective oil marketing companies. The applicants who had applied earlier may be required to submit applications on the fresh forms which the Xerox copies of the receipt of money paid earlier. The earlier applicants should not be asked to deposit fresh application fee. The date of eligibility for the applicants who had applied earlier, would continue to be the date when the earlier applications were called for, while for the new applicants, date of eligibility would be the same as indicated in the fresh advertisement calling for

applications. This may be clarified in each advertisement calling for fresh applications. These instructions may be brought to the notice of all concerned in your organisation for strict compliance.” (Emphasis added).

Clause 3.4 provides for security of applications. Clause 3.5 provides for constitution of Dealer Selection Boards. Clause 3.9 provides for interviews. Clause 3.10 provides for norms for evaluating the candidates. Clause 3.11.3 provides that the Dealer Selection Board shall recommended to the Oil Companies a penal of maximum three names for a particular dealership/distributorship immediately after the interviews are over for allotment of the dealership/distributorship. Clause 3.12.1 provides that after receipt of merit panel, the Executive Director/General Manager of the zone of the oil company will get the Field Inspection Report completed within 10 days and issue the Letter of Intent within 15 days of the receipt of the merit panel from Dealer Selection Board. Clause 3.12.2 (which is also relevent for the adjudication of the controversy) provides that in case after the Field Investigation Report the first empanelled candidates is not found suitable for any specific reason, concerned oil company will refer the matter to the Chairman who will take decision for issue of Letter of Intent to the next empanelled candidate. If none of the empanelled candidates are found fit as a result of the Field Investigation Report or found unwilling for any reason, the location may be readvertised for a fresh selection. Clause 3.15.1 provides that all the complaints against selection of dealerships/distributorship received by the oil companies will be referred to the concerned Chairman of the Dealer Selection Board. Clause 3.15.2 provides that the coordinator will place all such complaints/grievances before the Chairman of the Board for his direction/decision. The decision of the Chairman will be conveyed by the Coordinator to the concerned oil company for further inquiry/compliance. Clause 3.15.3 further provides that in the event of an inquiry to be conducted against the empanelled candidate (s), an officer not below the rank of General Manager of the concerned oil company will nominate 2 officers not below the rank of Chief Manager for inquiry who will submit their report within 30 days from the date of constitution of such inquiry. The Oil Company, thereafter, will forward the inquiry report to the Dealer

Selection Board. The Chairman no consultation with Members of Dealer Selection Board will examine the report with reference to the complaint and convey his directions/order for compliance by the oil company.

(15) In accordance with the aforesaid guidelines, on 23rd March, 2002, the respondent Corporation issued advertisement for appointment of the LPG distributorship for various locations, including for Ballabgarh, in two newspapers i.e. 'The Tribune' (English) and 'Nav Bharat Times' (Hindi). Undisputedly, in the advertisement, published in 'The Tribune' in the eligibility conditions, it was mentioned that the candidates convicted for any criminal offence involving moral turpitude/economic offences (other than Freedom Struggle), are not eligible to apply. In the said advertisement, it was not at all mentioned that the candidates against whom charge has been framed by the court of law for a criminal offence involving moral turpitude shall also not be eligible to apply. It is also admitted position that in the advertisement issued in the Hindi newspaper i.e. 'Nav Bharat Times', it was mentioned that the candidates convicted for any criminal offence involving criminal turpitude/economic offences and those against whom charge has been framed by the court (other than freedom struggle) are not eligible to apply.

(16) It is the case of respondent Corporation that there was an inadvertant mistake in the advertisement published in 'The Tribune' and the words regarding the framing of charge for the criminal offence of moral turpitude could not be got incorporated in the said advertisement by mistake. However, during the course of arguments, it has not been disputed that in the brochure supplied along with application form to the candidates, who applied against the aforesaid advertisement, the eligibility criteria was given. Clause 10 of the brochure provides that the candidates convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle) would not be eligible for dealership/distributorship and if such a person is allotted the dealership/distributorship by suppression of information, it will be cancelled. In this document also, it was not provided that a candidate against whom charge has been framed by the court for any criminal offence involving moral turpitude shall also be ineligible to apply.

(17) Learned counsel for the respondents could not explain how this clause of framing of charge against a convict for any criminal offence

involving moral turpitude as ineligibility has not been mentioned in the brochure. We have also perused the application forms submitted by the candidates. These forms were supplied by the respondent Corporation to the candidates. In the application form, out of several columns, there is a column at serial No. 20, which seeks information from the applicant as to whether the applicant has been convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle). If yes, then supply the detail of said case. If no, then an affidavit in accordance with Appendix 'A' be attached. In this column, no information was sought from a candidate whether a charge has been framed by the court against him for any criminal offence involving moral turpitude/economic offences. Learned counsel for the respondents also could not explain that if that was the mandatory condition for determining the eligibility of a candidate, then why that information was not sought in the application form, which was published and supplied by the respondent Corporation to various candidates. It is mentioned here that in the application form, there was no clause asking the applicants to give information regarding pendency of any criminal case pending against him/her, in which neither any charge was framed nor he/she was convicted.

(18) However, during the course of arguments, learned counsel for the respondents have taken the stand that initially, the advertisement for allotment of the LPG distributorship in question was issued on 18th July, 1998 in 'The Tribune' and 'Dainik Tribune'. In those advertisements, it was specifically mentioned that a candidate convicted of any criminal offence involving criminal turpitude/economic offences and those against whom charge has been framed by the court (other than freedom struggle) are not eligible to apply. It is argued that in the year 1998, the guidelines/policy of 1997 were applicable and clause 2.9.9 of those guidelines provided that candidates convicted for any criminal offence involving moral turpitude/economic offences and those against whom charge has been framed by the Court in such criminal proceedings would not be eligible for dealership/distributorship and if such a person is allotted the dealership/distributorship by suppression of information, it will be cancelled.' It is further argued that in the advertisement issued in the year 2002, it was specifically mentioned that those, who had applied in pursuance of the advertisement in the year 1998 are also eligible and can also apply again, but the eligibility for them

will be applicable on the date of earlier application. In view of the said clause, it is argued that eligibility criteria for all the candidates will have to be taken the same, as was prevalent in the year 1998 and mentioned in those advertisements.

(19) The aforesaid contention of learned counsel for the respondents cannot be accepted. Admittedly, in supersession of the earlier guidelines/policy, the Government of India has issued the new guidelines/policy in the year 2000. In those guidelines, it has been specifically observed that “In supersession of earlier communications, the guidelines for selection of dealers/distributors of oil marketing companies from the date of issue of this OM, will be as under.” Under the new guidelines/policy, the eligibility criteria has been modified and the definition of ‘conviction’ has been changed. The conviction has been categorically defined in sub clause 1.1 (ii), that conviction means conviction of a person for any criminal offence involving moral turpitude/economic offences (other than freedom struggle). Under the ‘Disqualification’ clause, it has been provided that a candidate will be disqualified if he/she is convicted for any criminal offence involving moral turpitude/economic offences (other than freedom struggle) and if such a person is allotted the dealership/distributorship by suppression of information, it will be cancelled. Under the new guidelines/policy, a candidate against whom a criminal case involving moral turpitude was pending, in which charge was framed was eligible for the allotment of dealership/distributorship. Similarly, in the advertisements, application form and the brochure issued by the respondent Corporation itself, there was no clause to that effect. In view of these facts, it cannot be accepted that there was an inadvertent mistake in the advertisement published in ‘The Tribune’. Rather, it appears that the mistake was in the advertisement published in ‘Nav Bharat Times’, which appears to have been published on the basis of the old guidelines of 1997.

(20) In the guidelines/policy of the year 2000, clause 3.2.2 provides exceptions for depositing application fee, in case in pursuance of the earlier advertisement, the selection was not made. This clause (as quoted earlier in this judgment) provides that where the applications had been invited earlier but interviews could not be held or where interviews were held but merit panels were not displayed, fresh applications may be called for in such cases by the respective oil marketing companies. The applicants who had

applied earlier may be required to submit applications on the fresh forms, though they need not to deposit the fresh application fee. It is specifically made clear that date of eligibility of the applicants, who had applied earlier would continue to be the date when the earlier applications were called for, while for the new applicants, date of eligibility would be the same as indicated in the fresh advertisement calling for applications. As far as the petitioner is concerned, he has applied for the first time against the advertisement published in the year 2002. Only for those applicants, who had applied earlier in the year 1998, the conditions of eligibility in the said advertisement are applicable. In this clause, it has been specifically mentioned that this fact may be clarified in each advertisement calling for fresh applications and these instructions may be brought to the notice of all concerned for strict compliance. In pursuance of this clause, in the advertisements in the year 2002, it is mentioned that the applicants, who had applied earlier in the year 1998, have to apply again, but they need not to pay the application fee. However, their eligibility will be governed in view of their earlier applications. Therefore, the contention of the respondents that for the allotment of the distributorship in question in view of the advertisement issued in the year 2002, the eligibility criteria as was fixed in the year 1998 is to be taken into consideration, cannot be accepted.

(21) In the instant case, undisputedly, the petitioner was recommended for allotment of the LPG distributorship in question by the Dealer Selection Board at Serial No. 1 on the merit panel. The said recommendation has not been accepted and the petitioner has been denied the distributorship in question on the ground that during the inquiry made by the respondent Corporation on the complaint received against him, it was found that in a criminal case charge was framed against the petitioner on 26th February, 2001 under Section 452/323 IPC, which according to the respondent Corporation was an offence of moral turpitude, and the said fact was not disclosed by the petitioner in his application form. As per the detailed discussion made above, there was no eligibility condition that on the date of application, if a charge was framed against a candidate in a criminal case involving moral turpitude/economic offences, he will not be eligible for the dealership/distributorship. The only condition was that on the date of application and consideration, a candidate should not have been convicted of any criminal offence involving moral turpitude/economic

offences. In the application form, the petitioner was only asked to disclose whether he has been convicted for any criminal offence involving moral turpitude and/or economic offences (other than freedom struggle). If yes, then supply the detail of said case. Since on the date of application, the petitioner was not convicted in any criminal case and he gave an affidavit to this effect. Therefore, it cannot be taken that the petitioner has concealed the material facts while filling up the application form. As per clause 1.3.2 of the guidelines/policy of 2000, the allotment/recommendation is liable to be cancelled, if a person has suppressed the information regarding his conviction for any criminal offence involving moral turpitude. The allotment/recommendation cannot be cancelled on the ground that in a pending criminal case, the charge was framed against the candidate for an offence involving moral turpitude, as there was no such requirement in eligibility criteria.

(22) Learned counsel for the respondents Corporation has also raised an argument that the recommendation for allotment of the LPG distributorship in question to the petitioner was not accepted by the respondent Corporation not only on the ground that in a criminal case i.e. FIR No. 565 dated 14th December, 1999 registered at Police Station Sector 7 Faridabad, charge under Section 452/323 IPC was framed against him, but in view of the fact that during inquiry, it was found that the petitioner was involved in three criminal cases. Therefore, keeping in view the pendency of three criminal cases against him, he was not found suitable for allotment of the LPG distributorship in question.

(23) To repel the submission made by learned counsel for the respondents Corporation, learned counsel for the petitioner argued that merely because three criminal cases were pending against the petitioner, the recommendation made by the Dealer Selection Board in his favour for allotment of the distributorship in question cannot be ignored or cancelled, as all the three cases were of minor offences not involving moral turpitude. These cases were falsely lodged against the petitioner. He submits that in the application form, there was no column where a candidate was required to give details of all the pending criminal cases against him. Since there was no such column, the petitioner did not disclose the pendency of criminal cases at that time and in no circumstance, it can be taken that the petitioner has concealed the material information, while applying for the LPG

distributorship. Learned counsel for the petitioner further submits that out of three criminal cases, in one case, the petitioner has already been acquitted. He also argued that while cancelling the recommendation of the petitioner and while allotting the LPG distributorship in question to respondent No. 3, who was at Serial No. 2 in the merit panel prepared by the Dealer Selection Board, the respondent Corporation has not only acted illegally and arbitrarily, but has also not followed the procedure prescribed in the guidelines/policy issued by the Government of India in the year 2000.

(24) The contention raised by learned counsel for the petitioner appears to be correct. Undisputedly, in the application form, a candidate was not required to disclose the pendency of criminal case against him. He was only required to give the detail of a case, in which he was convicted. Therefore, there was no occasion for the petitioner to give details of two cases pending against him (third case being registered subsequently). Therefore, it cannot be taken that the petitioner has concealed material information from the respondent Corporation. Secondly, two criminal cases, which were pending against the petitioner i.e. FIR No. 565 dated 14th December, 1999 registered at Police Station, Sector 7, Faridabad under Sections 452, 323 506 and 34 IPC and FIR No. 436, dated 9th July, 2001 registered at Police Station Ballabgarh under Sections 147, 148, 353, 186, 341 and 506 IPC do not pertain to the offence involving moral turpitude/economic offences. FIR No. 565 was registered for some minor altercation with the neighbourers of the petitioner. Neither the offence under Section 323 IPC nor Section 452 IPC can be said to be offence of moral turpitude. In the judgment of the Madhya Pradesh High Court in **Arun Dixit V/ Chairman & Managing Director, Bharat Petroleum Corporation Limited & others**, cited by learned counsel for the respondents, in which a candidate was convicted under Sections 294, 341 and 323 IPC, only offence under Section 294 IPC was held to be an offence of moral turpitude and in view of the said conviction, it was held that the said candidate was not eligible for allotment of the LPG distributorship. Therefore, the said case is not applicable to the facts of the present case.

(25) As far as second FIR bearing No. 436, which was registered on 9th July, 2001, is concerned, it was registered when the petitioner along with his party workers was raising voice against the ruling party and the Electricity Board for not supplying the adequate electricity to the residents

of the area. The said FIR, though pending at that time, was also not for the offence involving moral turpitude. Therefore, in our opinion the respondent Corporation is not justified in not accepting the recommendation made by the Dealer Selection Board to give appointment to the petitioner who was at Serial No. 1 in the merit panel, on the ground that during the inquiry, it was found that 3 criminal cases were pending against the petitioner.

(26) In the guidelines/policy issued in the year 2000, it has been provided that if the respondent Corporation received complaint against the selection of the dealership/distributorship, same will be referred to the Chairman of the Dealer Selection Board, who will take a decision on the same, whether to inquire into the said complaint or not. Clause 3.15.3 provides that in the event of an inquiry to be conducted against the empanelled candidate(s), the concerned oil company will nominate 2 officers not below the rank of Chief Manager for inquiry who will submit inquiry report within 30 days. Thereafter, the oil company will forward the inquiry report to the Dealer Selection Board and the Chairman of the Board, in consultation with members of the Dealer Selection Board, will examine the report with reference to the complaint and take a decision, which will be communicated to the oil company. From the reply filed by the respondents, it appears that the said procedure has not been followed in the instant case. In the reply, it has been stated that when the recommendation for allotment of the LPG distributorship to the petitioner was pending before the respondent Corporation, several complaints were received against the petitioner alleging therein that he was involved in several criminal cases. Thereupon, the matter was inquired into. During the course of inquiry, it was found that many criminal cases are pending against the petitioner and even in one case, charge has been framed against him. In the reply, it has not been stated that when the complaints were received by the respondent Corporation, the same were sent to the Chairman of the Dealer Selection Board, who ordered to inquire into the matter. It has also not been stated that after completion of the inquiry, the inquiry report was submitted to the Chairman, Dealer Selection Board, who in consultation with members of the Dealer Selection Board, has taken the decision not to allot the LPG distributorship in question to the petitioner and the same should be allotted to respondent No. 3, who was second empanelled candidate. In our opinion, on the basis of the inquiry report, the respondent Corporation itself is not competent to

take the decision and cancel the recommendation of the petitioner for allotment of the LPG distributorship without getting such order from the Dealer Selection Board. It is also undisputed that before taking the decision cancelling the recommendation of the petitioner for allotment of the distributorship in question, no opportunity of hearing was provided to him. Merely because the petitioner was associated in the inquiry. It cannot be taken that the said association is sufficient opportunity. After the conclusion of the inquiry, no notice was given to the petitioner, providing him an opportunity of hearing, why his recommendation be not cancelled. Thus, in our opinion, the respondent Corporation has also violated the principle of natural justice.

(27) We do not find any force in the contention of learned counsel for the respondents that the petitioner is not entitled for any opportunity of hearing before cancelling his recommendation or making allotment of the LPG distributorship in question to respondent No. 3, as his no vested right was infringed. The judgment cited by learned counsel for respondent No. 3 in **Dr. J. Shashidhara Prasad versus Governor of Karnataka & others (1)**, is not applicable to the facts and circumstances of the present case.

(28) The submissions made by learned counsel for the respondents that the petitioner has filed this petition challenging the allotment of the LPG distributorship at a belated stage cannot be accepted. Initially, CWP No. 9454 of 2004 was filed by the petitioner for prohibiting the respondent Corporation to allot the distributorship to any other persons, except the petitioner, who was found more suitable by the Dealer Selection Board and was kept at serial No. 1 in the merit panel. During the pendency of the said petition, when the respondent Corporation allotted the LPG distributorship to respondent No. 3, the petitioner filed an application for amendment of the said writ petition, challenging the allotment of the distributorship to respondent No. 3. When the said application came up for hearing, on 16th March, 2006, instead of allowing the amendment of the petition, this Court permitted the petitioner to withdraw the petition with permission to file fresh one on the same cause of action. Immediately

(1) AIR 1999 S.C. 849

thereafter, the present writ petition was filed by the petitioner on 4th September, 2006. In view of these facts, it cannot be said that the present petition suffers from dealy and latches.

(29) The submission made by learned counsel for respondent No. 3 that in the present case, the court should not quash the allotment of the distributorship in question to respondent No. 3, because he has invested substantial amount on installing the LPG distributorship. In our opinion, such contention cannot be accepted, because acceptance of such an argument would amount to Court's approval to an illegal, arbitrary and unconstitutional act of the respondent Corporation. Similar submission was dealt with by this Court in CWP No. 6133 of 2001, titled **Navdeep Kumar Maheswari versus Indian Oil Corporation and others**, decided on March 01, 2002, while observing as under :—

“The submission of Shri Malhotra that the Court may not quash the allotment of distributorship because his client had spent substantial amount merits rejection because acceptance of such an argument would amount to Court's approval an unconstitutional, patently illegal, arbitrary and biased decision of the Board. This would also shake the public confidence in the system of administration of justice.”

(30) In view of the above, we have come to the conclusion that the respondent Corporation has acted illegally and arbitrarily and violated Article 14 of the Constitution of India, while cancelling the recommendation made by the Dealer Selection Board for allotment of the LPG distributorship to the petitioner and allotting the said distributorship to respondent No. 3, who was second empanelled candidate.

(31) Consequently, this writ petition is allowed, the allotment of LPG distributorship for Ballabgarh to respondent No. 3 is quashed and respondent No. 1 is directed to make allotment of the LPG distributorship for Ballabgarh as per the recommendation made by the Dealer Selection Board.