IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7295 of 2020

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M/S Gauri Shankar Indane Service Kuchaikote, District- Gopalganj through its Proprietor Ravi Pandey, Male-32, years, S/o Late Gauri Shankar Pandey, R/o Flat No. 201, Sindhu Nilay Apartment, Yaduvansh Path, Nageshwar Colony, P.S.- Buddha Colony, District- Patna.

... ... Petitioner/s

Versus

1. Indian Oil Corporation Ltd. Through Executive Director (ED), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001.
2. The General Manager I/c. (LPG) Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001.
3. The Dy. General Manager (LPG) Area Office, Patna under Bihar State Office, Indian Oil Corporation Ltd., Sahi Bhawan, Exhibition Road, Patna.
4. Mr. Udai Kumar Son of Not Known General Manager I/c. (LPG), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001.
5. Mr. Arun Prasad Son of Sri R.N. Prasad The then Chief Area Manager, LPG, Patna Area Office, at present General Manager, I/c. LPG, UPSO-1, Lucknow, Resident of 402, Maa Sharde Complex, East Boring Canal Road, P.S. Budha Colony, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.S. Lohit, Advocate
	:	Mr. Vivek Prasad, Advocate
	:	Mr. Ranjan Kumar Srivastava
For the Respondent/s/ IOCL	:	Mr. Anil Kr. Jha, Sr. Advocate
	:	Mr. Sanat Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 15-01-2021

The present writ petition has been filed for quashing the order dated 03.06.2020, passed by the General Manager (L.P.G.), Bihar State Office, Indane Oil Corporation Limited, whereby and whereunder the representation of the petitioner

dated 23.05.2020 has been rejected.

Facts of the Case

2. The brief facts of the case, according to the petitioner, are that the proprietor of the petitioner firm is Sri Ravi Pandey and his deceased father namely Late Gauri Shankar Pandey had applied for Indane distributorship at Kuchaikote, District-Gopalganj, Bihar under the freedom fighter category and upon being declared successful, the Letter of Intent was issued in favour of the father of Sri Ravi Pandey on 30.10.2008, however unfortunately, he died on 31.10.2008. Thereafter, Sri Ravi Pandey is stated to have applied, vide application dated 17.02.2009, for transfer of his late father's Distributorship, whereupon the respondents had called Sri Ravi Pandey for interview, which was conducted on 26.02.2009. It is stated that the respondent-Corporation had also held field verification and after finding Sri Ravi Pandey to be fully eligible for being granted L.P.G. Distributorship, the Letter of Intent was issued in his favour vide letter dated 08.04.2009. The proprietor of the petitioner firm is stated to have constructed a godown and invested a sum of Rs. 30 lacs approximately for smooth running of the dealership in question. Subsequently, an agreement was executed on 07.09.2009 in between the proprietor of the

petitioner firm and the respondent-Corporation for 05 years. A theft is stated to have taken place in the office of the petitioner firm, during the course whereof, the proprietor of the petitioner firm is stated to have lost documents including bank pass-book, leading to filing of an F.I.R. bearing Kuchaikote PS Case no. 6 of 2011 dated 13.01.2011.

3. The further case of the petitioner is that the respondent-Corporation being satisfied with the performance of the petitioner's Distributorship as also upon verification of the requisite documents/ papers submitted by Sri Ravi Pandey for the purposes of renewal of his Distributorship, had renewed the petitioner's Distributorship and a fresh agreement/ renewal agreement dated 25.10.2016 was executed in between Sri Ravi Pandey and the respondent-Corporation. While the petitioner's Distributorship was running smoothly, in order to harass him, his erstwhile employee namely Rajesh Pandey had filed a false complaint dated 16.10.2018, regarding the petitioner having not complied with the mandatory guidelines for the purposes of grant of Distributorship in question. The respondent-Corporation had then issued a show cause notice dated 29.08.2019 to the petitioner herein for the purposes of seeking its reply regarding termination of the Distributorship in question

on the ground that fabricated Bank statement and false educational certificates have been submitted by the proprietor of the petitioner firm and his father for the purposes of grant of the Distributorship in question. In the said show cause, it was alleged that though the proprietor of the petitioner firm in his application dated 17.02.2009 had mentioned that he had a balance of Rs. 20,40,000/- in his Savings Bank Account no. 014111 with Siwan Central Co-operative Bank Limited, Siwan, however upon confirmation from the said Bank, the balance in the said account has been found to be a meagre sum of Rs. 2,40,000/- as on 14.02.2009. In the said show cause notice dated 29.08.2019, it was also stated that the aforesaid Bank has also confirmed that the certificates dated 14.02.2009 and 09.03.2009 submitted by the proprietor of the petitioner firm in support of his financial status to the extent that he was having a balance of Rs. 20,40,000/- as on 14.02.2009 in his Bank Account as also the pass-book provided by him along with his application, had not been issued by the said office of the Bank in question. The petitioner is stated to have filed his show-cause reply, whereafter the respondent-Corporation by a detailed order dated 30.12.2019 had terminated the Distributorship of the petitioner situated at Kuchaikote, in violation of Clause no. 11 of the Distributorship

Selection Guidelines dated 29.06.2007 and Clause no. 27(1) of the Distributorship Agreement dated 25.10.2016, relevant paragraphs whereof is reproduced herein below :-

> *"In view of the above, your distributorship M/s Gauri Shankar Indane Service, Kuchaikote is hereby terminated with immediate effect in violation of clause no. 11 of the distributorship selection guidelines dtd 29.06.2007 & clause no. 27 (1) of the distributorship agreement dtd 25.10.2016 signed between you and the Corporation."*

4. The petitioner had challenged the aforesaid order of termination dated 30.12.2019 by filing a writ petition bearing C.W.J.C. no. 559 of 2020, however the same has stood dismissed by a Judgment dated 22.05.2020, passed by a co-ordinate Bench of this Court, relevant paragraphs whereof are reproduced herein below :-

> *"5. What is now being questioned and doubted is whether the information provided by the petitioner regarding the amount of money parked in his bank account was incorrect, rendering the licence of the petitioner liable to be Patna High Court cancelled and the contract agreement to be rescinded as a consequence thereof.*
>
> *6. As has already been noted by this Court, the arguments for and against the parties are only to*

the extent that the information regarding the financial strength of the petitioner at the relevant time was verified by the officers of the respondent/Corporation, who found the assertion of the petitioner to be correct and that the petitioner has been able to run the agency without any complaint whatsoever for two consecutive terms. The contra arguments are that running an agency without any complaint is not relevant, when a decision is required to be taken on finding that the very grant of licence at the relevant time was flawed because such licence was granted on an information which was not correct.

7. Perused the records.

8. The field verification report appears to have been submitted without physically verifying the amount parked in the bank account of the petitioner. It further appears that the certificate issued by the Co-operative Bank Patna High Court that the petitioner has rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in his account is also not without doubt as the Bank has now certified that such a certificate was never issued by the Bank. The amount available in the Bank account of the petitioner at the relevant time was only rupees Two Lacs Forty Thousand (Rs. 2,40,000/-)

9. Great efforts have been undertaken by the

learned Senior Counsel for the petitioner to impress upon this Court that in the absence of an opportunity to the petitioner to question the two officers of the Corporation who had conducted the field verification and in the absence of the concerned Bank as a party/respondent in the present writ petition, it would not be advisable to accept the statement of the respondent/Corporation that the letter issued by the Bank disclosing rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in the bank account of the petitioner is not correct and that such certificate had never been issued. It was urged that once such information [petitioner having rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in his bank account] was found to be correct and the respondent/ Corporation had every wherewithals to test its correctness and such factual position was never countered, it cannot now be questioned as being incorrect statement having been made deliberately for bagging the contract.

10. As noted earlier, the argument of the respondent/Corporation is that fraud vitiates everything and, therefore, the decision of the Corporation ought not to be tinkered with.

11. In support of the aforesaid contentions, learned counsel for the petitioner has drawn the attention of this Court to a judgment of the

Supreme Court in Sajeesh Babu K. Vs. N.K. Santhosh & Ors.; (2012) 12 SCC 106, wherein it has been held that in matters of appointment/selection by an Expert Committee/Board, consisting of qualified persons in a particular field, normally, the Courts should be slow to interfere with the opinions by the experts, unless there is an allegation of mala fides against the experts who were part of the selection committee. In the aforesaid case, the appellant was selected as a licensee of LPG Distributorship on the basis of other qualifications including experience as he had disclosed that while studying for M.Tech., he had worked as a Marketing Manager and an Insurance Consultant and had relied upon such experience. The High Court of Kerala found it to be totally unacceptable that the appellant could have gained such experience while studying for M.Tech. The licence of the appellant therein was, therefore, cancelled and such decision of the learned Single Judge of the High Court was affirmed by the Division Bench. It was in that context that the Supreme Court had opined that when an expert body had accepted the correctness of the certificate of experience of the appellant therein, the High Court ought not to have doubted the same.

12. The issue at hand does not get resolved by the dictum of the Supreme Court that normally in

matters of opinion rendered by an expert body, there should be minimal interference by the Courts of law. The field officers of the respondent/Corporation are no experts, but were only assigned with the task of verifying factual aspects regarding the candidature of the petitioner. Any opinion of the field officers or any certificate of the Bank cannot be said to be an "expert's opinion".

18. With respect to the principle of natural justice in conducting the proceedings, the submissions urged on behalf of the petitioner is that in the absence of any opportunity to the petitioner to cross-examine the two officers of the respondent/ Corporation who had submitted the verification report, the decision/order could not be sustained, is not acceptable. The report is in the positive and it is only because of such report that the petitioner was chosen as a licensee. However, the foundation of the report being ultimately found to be incorrect, the decision of the respondent/Corporation cannot be questioned. The petitioner has not been able to deny categorically or assert positively that the allegation of lesser amount in the bank account at the relevant time is incorrect or that the petitioner had rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in his bank account on the day the application form was filled by him.

19. Now the question arises whether the aforesaid incorrect information, viz., the petitioner having the said amount in his bank account at the relevant time can be said to be an instance of fraud. "Fraud" is a conduct, either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. It is also well settled that negligence is not fraud and can only be treated as one of the incidence/evidence of fraud.

20. The application form of the petitioner has been brought on record, which indicates that in Column 14.2 thereof, the petitioner has disclosed that on the day of making the application form, he had rupees Twenty Lacs Forty Thousand (Rs. 20,40,000/-) in the Central Cooperative Bank, Siwan in his bank account No. 014111 and rupees Sixty Thousand (Rs. 60,000/-) in State Bank of India, Gardanibagh Branch, in his account No. 20011249138. In view of such categorical assertion of the financial strength and such statement having been found to be incorrect on the reckonable date, it would be nothing less than making a false statement by the petitioner. Whether the licence was obtained on such statement or on other factors may not be required to be gone into as a wrong statement with respect to a very material particular fact amounts to

fraud. No Court would unnecessarily find fraud unless it is distinctly pleaded and proved. However, if once it is proved, it vitiates the decision and the Court has no option but to sustain an order doing away with or setting-aside such decision.

21. That the petitioner has been able to run his agency successfully and that in the past, there were no infrastructural deficiency, would not cure the defect of a wrong averment in an application form. Whether the respondent/Corporation has found such wrong statement having been made by the petitioner on the complaint of one of its employees or of its own is not a question which is relevant. Once the issue was raised, it was only the petitioner who could have categorically denied such assertion or proved that his statement in the application form was correct at the relevant time. Not having done so and only nitpicking on the issue of not having been given an opportunity of cross-examining the two officers of the Corporation who had furnished a positive field verification report, the petitioner has done no good to his cause.

22. From the letter of termination dated 30th December, 2019, it would appear that a show-cause notice was issued to the petitioner for two allegations; one being the submission of fabricated bank statement to show his financial

stability and the other, submission of false educational certificate. After perusing the show-cause reply of the petitioner, the respondent/Corporation was of the view that the petitioner had only rupees Two Lacs Forty Thousand (Rs. 2,40,000/-) balance in his bank account which too was withdrawn on 07.04.2009. The allegation with respect to submission of false educational certificate could not be substantiated and, therefore, it was not taken into account. The letter of termination further indicates that Clause 11 of the Selection Guidelines of 29.06.2007 is applicable to the case of the petitioner as fresh evaluation of the proposal of the petitioner was done as per the applicable reconstituted policy. Clause 11 of the 2007 Guidelines clearly stipulate that the evaluation of the parameters would be done on the basis of information given in the application. On verification, if it is found that the information given in the application is incorrect/false/misrepresented, then the applicant's candidature will stand cancelled and he will not be eligible for distributorship.

23. With the aforesaid position of facts, it would be difficult for this Court to interfere with the decision/order of the respondent/Corporation of terminating the contract with the petitioner; notwithstanding that the petitioner has successfully run the agency for so many years.

Any consideration over any other extraneous fact would amount to perpetuating a position where a false statement would be given a premium.

24. For the aforesaid reasons, this writ petition is dismissed."

5. It is a matter of record that in the earlier round of litigation i.e. in C.W.J.C. no. 559 of 2020, a co-ordinate Bench of this Court, by the afore-said Judgment dated 22.05.2020, had however, given liberty to the petitioner to approach the concerned authority again and seek renewal of the contract on sympathetic considerations, relevant paragraph Nos. 25 and 26 of the same are being reproduced herein below:-

"25. However, this Court is of the view that in case no fresh contract for such dealership has been entered into by the respondent/Corporation with any third party uptill-now, it would be open for the petitioner to approach the concerned authority again and seek a renewal of the contract on sympathetical considerations, keeping in mind that the petitioner has carried on the obligation of a licensee with due diligence for about a decade by now and for one mistake, he ought not to be thrown out of the distributorship.

26. Should such a request be made by the petitioner within a reasonable period of time, it is

only expected that the same shall be considered by the respondent/ Indian Oil Corporation, if permissible under the Rules."

6. The petitioner is said to have then filed a representation, in terms of the aforesaid Judgment dated 22.05.2020, passed in C.W.J.C. no. 559 of 2020, before the respondent-Corporation, however the same has been rejected by the impugned order dated 03.06.2020.

Contentions of the Ld. Counsel for the petitioner

7. At the outset, the learned counsel for the petitioner Sri Y.S. Lohit has submitted that he is not for a moment canvassing regarding the termination of the petitioner's Distributorship vide order dated 30.12.2019 inasmuch as firstly, the challenge to the said order of termination, made by the petitioner by filing a writ petition bearing C.W.J.C. no. 559 of 2020, has been rendered unsuccessful and has failed since the said writ petition has stood dismissed by a co-ordinate Bench of this Court by a Judgment dated 22.05.2020 and moreover, the petitioner has sought for a review of the said Judgment dated 22.05.2020, by filing a review petition bearing Civil Review no. 79 of 2020, thus, the learned counsel for the petitioner has submitted that what is being sought to be challenged before this Court is the impugned

order dated 03.06.2020, which has been passed on the representation of the petitioner dated 23.05.2020, filed in view of the liberty granted by a co-ordinate Bench of this Court vide judgment dated 22.05.2020, passed in C.W.J.C. no. 559 of 2020. The learned counsel for the petitioner has submitted that the first issue under consideration in the said order dated 03.06.2020 is regarding the contention of the petitioner that he has carried out his obligation as a licensee for about 10 years with due diligence, to which the respondent-Corporation has replied that three major penalties dated 07.04.2015, 06.11.2015 and 09.01.2016 have been imposed on the petitioner's Distributorship in the last 10 years for various irregularities observed during inspection. In this regard, the learned counsel for the petitioner has submitted that as far as third major penalty dated 09.01.2016 is concerned, the same has been withdrawn by the respondent-Corporation vide letter dated 24.02.2016. As regards first and second major penalties dated 07.04.2015 and 06.11.2015, it has been submitted that the same have been challenged before this Court in two writ petitions bearing C.W.J.C. no. 14935 of 2015 and C.W.J.C. no. 14506 of 2015 and the said two writ petitions are still pending adjudication.

As regards the reply of the respondent-Corporation, in the

impugned order dated 03.06.2020, to the effect that on 23.10.2017 a complaint relating to submission of fabricated Bank statement was received by ER, Vigilance, which on investigation has been found to be substantiated leading to termination of Distributorship on 30.12.2019, it has been submitted that the said complaint dated 23.10.2017 has already stood closed since the allegations levelled by the complainant have not been found to be substantiated, as is apparent from the letter of the respondent-Corporation dated 09.02.2018.

8. Now coming to point no. 2 i.e. the contention of the proprietor of the petitioner firm to the effect that the Hon'ble High Court has provided him an opportunity to make a request for renewal of the contract of his Distributorship, the respondent-Corporation has stated in reply thereof, in the impugned order dated 03.06.2020, that the Hon'ble High Court has also observed in its Judgment dated 22.05.2020 that the representation of the petitioner has to be considered by the Corporation, if permissible under the Rules and since the Distributorship of the petitioner was terminated on 30.12.2019 for violating the terms and conditions of the Distributorship Agreement, which has already been upheld by the Hon'ble Patna High Court vide judgment dated 22.05.2020 and there is no rule

of the Corporation which permits renewal of a terminated Distributorship Agreement on account of violation of the Agreement's terms and conditions, renewal of the petitioner's terminated Distributorship Agreement on sympathetic grounds is not permissible. The learned counsel for the petitioner, on this issue, has referred to Policy Circular no. SL/1601/2007, issued by the Indian Oil Corporation, L.P.G. Department, HO dated 03.12.2007, regarding policy guidelines for Resitement, change of location at L.O.I. stage and renewal of L.P.G. Distributorship. The learned counsel for the petitioner has referred to Guideline no. 4 which reads as under:-

> ***"4.0 GUIDELINES FOR REVIVAL****:*
>
> *4.1 Revival of distributorship shall not be allowed in the following cases :*
>
> *4.1.1 Distributorships terminated on account of malpractices/ irregularities/ breach of Distributorship Agreement/ Violation of MDG. This will not however come in the way of consideration of decision on appeals, which may be made by the terminated dealership under the provision of MDG.*
>
> *4.2 In cases other than 4.1 above (for reasons beyond the control of the distributor), depending on the merit of the case, revival with*

the same constitution at the same location may be permitted with the approval of Board of Directors.

4.3 The distributor may meet the eligibility criteria for selection of new distributor which are in vogue at the time of revival.

4.4 The distributor will be required to deposit the security amount payable to new distributorships.

4.5 Distributorships inoperative from a date prior to 01.04.2002 will not be considered for revival.

4.6 Distributorships remaining inoperative for a period of more than 03 years will not be revived."

The learned counsel for the petitioner has thus submitted that it is wrong on the part of the respondent-Corporation to have stated in the impugned order dated 03.06.2020 that there is no rule in the Corporation which permits renewal of a terminated Distributorship on sympathetic grounds, inasmuch as the aforesaid guidelines provide for renewal of Distributorship of the Distributors meeting the eligibility criteria for selection of a new Distributor, which are in vogue at the time of renewal. It is further submitted that the exceptions mentioned under

guideline no. 4.1.1 do not cover the case of the petitioner, in as much as his Distributorship was neither terminated on account of malpractices nor due to irregularities nor due to breach of Distributorship Agreement/ violation of M.D.G. It is further submitted that there has been no breach in the Distributorship Agreement, inasmuch as the petitioner has been granted Distributorship only after complying with the guidelines issued by the respondent-Corporation for selection of Indane (L.P.G.) Distributors, vide letter dated 29.06.2007, annexed to the present writ petition as Annexure-2. It is also submitted that the ground on which the Dealership has been terminated stands falsified by the letter of the respondent-Corporation dated 09.02.2018, as aforesaid.

9. Now, coming to point no. 6, wherein the petitioner has contended that his track record has been excellent for the past 10 years and one of the Guidelines also prescribes that the renewal of contract should be done on the basis of the performance of the Distributor and in reply thereof, the respondent-Corporation has stated in the impugned order dated 03.06.2020 that renewal of existing Distributorship agreement between the Distributor and the Corporation is based on satisfactory performance of the Distributorship until the

Distributor breaches any of the terms and conditions of the agreement, however in the present case, the agreement between M/s Gauri Shankar Indane Services and the respondent-Oil Corporation dated 25.10.2016 was terminated on account of violation of the terms of the Distributorship Agreement, hence the terminated Distributorship cannot be renewed on sympathetic grounds, the learned counsel for the petitioner has submitted that Guideline no. 4 of the Policy Circular no. SL/1601/2007 dated 03.12.2007 definitely permits revival of Distributorship.

10. As far as the point no. 9 and 10 are concerned, the learned counsel for the petitioner has submitted that the same are matter of records and the reply of the respondent-Corporation in the impugned letter dated 03.06.2020 does not require any refutation.

11. Thus, in nutshell, the learned counsel for the petitioner has submitted that in view of the fact that there has been no malpractices/ irregularities on the part of the petitioners' Distributorship nor there has been any breach of agreement by the petitioner herein and the complaint against the petitioner has stood closed by the respondent-Corporation by the aforesaid

letter dated 09.02.2018, the petitioner's Distributorship can definitely be renewed/revived in terms of Guideline no. 4 of the Policy Circular no. SL/1601/2007 dated 03.12.2007.

12. The learned counsel for the petitioner has relied on various judgments, citations whereof along with the relevant paragraphs are being enumerated herein below:-

(I). (2007) 7 SCC 689, Commr., Karnataka Housing Board v. C. Muddaiah, *paragraph Nos. 32 and 33 whereof are reproduced herein below :-*

> ***"32.*** *We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the*

Board, therefore, has no force and must be rejected.

33. *The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his*

own wrong. It would perpetrate injustice rather than doing justice to the person wronged."

(II). (2008) 7 SCC 788, Atma Linga Reddy v. Union of India, *paragraph Nos. 59 and 60 whereof are reproduced herein below:-*

> ***"59.*** *Before parting with the matter, however, we are constrained to make one observation at this stage. The State of Andhra Pradesh has filed its counter-affidavit in this matter on 31-1-2006. Before that date, the Tribunal had already been constituted under the chairmanship of the Hon'ble Mr Justice Brijesh Kumar, retired Judge of this Court. The said fact has been duly mentioned in the affidavit-in-reply. Interim Application No. 8 of 2006 (for interim relief) and Interim Application No. 28 of 2006 (for clarification) were of course subsequent development to the filing of the affidavit. But both the applications had been disposed of on 15-11-2006 and on 27-4-2007 respectively. The present writ petition was heard by us in April 2008 i.e. after substantial period of disposal of both the applications.*
>
> ***60.*** *We have heard learned counsel for the State of Andhra Pradesh. No reference whatsoever was made on behalf of the State either to the interim applications or to the orders passed*

thereon. The contesting respondents referred to those applications and the orders of the Tribunal. Respondent 3 is "State" and a public authority. This Court, therefore, obviously expects from such authority to place all the facts before this Court so as to enable the Court to consider them and to take an appropriate decision in accordance with law. In our considered opinion, the third respondent, State of Andhra Pradesh, in fairness, ought to have placed all facts subsequent to filing of the counter-affidavit when the matter was heard by this Court. The State, however, failed to do so. But since on other grounds also, we are of the view that the present petition under Article 32 of the Constitution is not maintainable and is liable to be dismissed, no further action is called for."

(III). (2010) 10 SCC 141, Alka Gupta v. Narender Kumar Gupta, *paragraph Nos. 20 to 24 whereof are reproduced herein below:-*

"20. *Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication of his claim. The plea must be clearly established, more particularly where the bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put*

forth his contentions against the same. In this case, there was no plea of constructive res judicata, nor had the appellant-plaintiff an opportunity to meet the case based on such plea.

21. *Res judicata means "a thing adjudicated", that is, an issue that is finally settled by judicial decision. The Code deals with res judicata in Section 11, relevant portion of which is extracted below (excluding Explanations I to VIII):*

> *"11. Res judicata.—No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."*

22. *Section 11 of the Code, on an analysis requires the following essential requirements to be fulfilled, to apply the bar of res judicata to any suit or issue:*

> *(i) The matter must be directly and substantially in issue in the former suit and in the later suit.*
>
> *(ii) The prior suit should be between the same*

parties or persons claiming under them.

(iii) Parties should have litigated under the same title in the earlier suit.

(iv) The matter in issue in the subsequent suit must have been heard and finally decided in the first suit.

(v) The court trying the former suit must have been competent to try the particular issue in question.

23. *To define and clarify the principle contained in Section 11 of the Code, eight Explanations have been provided. Explanation I states that the expression "former suit" refers to a suit which had been decided prior to the suit in question whether or not it was instituted prior thereto.*

Explanation II states that the competence of a court shall be determined irrespective of whether any provisions as to a right of appeal from the decision of such court. Explanation III states that the matter directly and substantially in issue in the former suit, must have been alleged by one party or either denied or admitted expressly or impliedly by the other party. Explanation IV provides that:

"Explanation IV.—Any matter which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to

have been a matter directly and substantially in issue in such suit."

The principle of constructive res judicata emerges from Explanation IV when read with Explanation III both of which explain the concept of "matter directly and substantially in issue".

24. *Explanation III clarifies that a matter is directly and substantially in issue, when it is alleged by one party and denied or admitted (expressly or impliedly) by the other. Explanation IV provides that where any matter which might and ought to have been made a ground of defence or attack in the former suit, even if it was not actually set up as a ground of attack or defence, shall be deemed and regarded as having been constructively in issue directly and substantially in the earlier suit. Therefore, even though a particular ground of defence or attack was not actually taken in the earlier suit, if it was capable of being taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata. Constructive res judicata deals with grounds of attack and defence which ought to have been raised, but not raised, whereas Order 2 Rule 2 of the Code relates to reliefs which ought to have been claimed on the same cause of action but not*

claimed."

(IV). 1985 Supp SCC 432, B. Prabhakar Rao v. State of A.P., *paragraph No. 12 whereof is reproduced herein below:-*

> ***"12.*** *Before referring to the submissions of the parties on the principal question of discrimination and arbitrariness, it is necessary to ascertain the exact factual situation in regard to certain other matters, besides those to which we have already referred. First, in regard to the question whether the vacancies arising consequent on the application of the reduced age of superannuation have been filled and and if filled, whether they have been filled on a regular or temporary basis? In Writ Petition 3170 of 1985, a Deputy Secretary to the Government of Andhra Pradesh speaking for the Government of Andhra Pradesh, swore to a counter-affidavit in May 1985 in which he stated that:*
>
> > *"I state with respect to para 8, that it is not correct to state that only few vacancies have been filled on temporary basis on the specific condition of review and revision on the basis of outcome of the judgment in the writ petitions filed by the employees due to the retirement at the age of 55 years pending in this Hon'ble Court. It is submitted that it is*

wholly untrue to say that few vacancies have been filled up. Consequent on the reduction in the age of superannuation the Government took every step to see that most of the vacancies have been filled up in accordance with rules on regular basis. It is only in few cases, temporary promotions have been effected pending writ petitions. It is submitted that Annexure I to this counter-affidavit gives particulars regarding the vacancies that arose due to the reduction in the age of retirement on February 28, 1983 and the vacancies filled up and the vacancies existing. There are very few vacancies in the lower echelons. I also submit that the existing few vacancies are due to administrative delay, or vacancies that arose latter after originally filling the vacancies."

In Writ Petitions 5447-5546 of 1985, there was a complete volte-face and the very same Deputy Secretary speaking again for the Govern- ment of Andhra Pradesh said:

"Insofar as the first point is concerned in none of the cases there were regular promotions. All the promotions were officiating/ temporary/ad hoc which would be clear from orders of promotion, some of which have been produced by the petitioners themselves. The promotions were either

subject to the result of the writ petitions then pending in this Honourable Court challenging reduction of retirement age from 58 to 55 years, Or some other proceedings relating to inter se seniority pending either in this Honourable Court or in the High Court or in the Administrative Tribunal,Or because of the pendency of finalisation of seniority lists and consequent review of promotions under the States Reorganisation Act. Further the writ petitions questioning the reduction of age of retirement from 58 to 55 in GOMs No. 36, dated February 8, 1983 were heard and judgment was reserved on July 27, 1983. Since the judgment was reserved, the judgment was expected at any moment. Hence the Government were making only officiating/temporary promotions under Rule 37. Under the circumstances it was not possible to make regular appointments/promotions. Therefore, the petitioners were rightly reverted in accordance with the directions of the Honourable Court dated May 6, 1985 and May 7, 1985. There was no question of either giving them any notice or hearing before the orders of the reversion are passed, as in terms of Rule 37(dd), they could be reverted without any notice or hearing.

Persons holding the posts under Rule 10 have no right to the posts and the appointments/promotions were purely temporary/ad hoc.

Hence, I state that the petitioners continue to be ad hoc promotees under Rule 37 and not regular employees as claimed by them."

and:

"Admittedly, the petitioners were promoted under Rule 37 consequent to the vacancies which arose due to the retirement of several persons at the age of 55 years.

The Government never intended to appoint them on regular basis pending writs and judgment before the Supreme Court. In case the promotions were effected regularly legal complications will set in in the event of the judgment of the Supreme Court going against the State Government deliberately made Rule 37 promotions so that in the event of the judgment going adversely against the State Government, there may not be any difficulty in reverting Rule 37 promotees and reinducting the employees affecting by GOMs. No. 36 dated February 8, 1983. Fortunately, the judgment of the Supreme Court comes in favour of the State

Government."

It is amazing that the same Deputy Secretary to the Government, representing the same Government, should have sworn to two such contradictory affidavits. It reveals a total sense of irresponsibility and an utter disregard for veracity. It shows that the deponent had signed the affidavits without even reading them or that he signed them to suit the defence to the particular writ petition without any regard for truth. In either case, it is reprehensible and totally unworthy of the spokesman of a Government and most unflattering to the Government on whose behalf he spoke. We would have contemplated severe action against the deponent, had we not the feeling that the responsibility for his statements lies with undisclosed higher echelons and we need not make a scapegoat of him. In fact, in a case like this involving the entire body of government servants in Andhra Pradesh, we would have expected the Chief Secretary or a Principal Secretary to file the counter. But they have chosen to keep themselves back."

(V). (2005) 6 SCC 776, Punjab SEB Ltd. v. Zora Singh, *paragraph No. 40 whereof is reproduced herein below :-*

> ***"40.*** *Furthermore, there cannot be any doubt whatsoever that even if an order is found to be not vitiated by reason of malice on fact but still can be held to be invalid if the same has been passed for unauthorised purposes, as it would amount to malice in law.****"***

(VI). (2003) 11 SCC 584, Ashwani Kumar Singh v. U.P. Public Service Commission, *paragraph No. 12 whereof is reproduced herein below:-*

> ***"12.*** *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.****"***

(VII). (1993) 4SCC 10, Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-Education) Higher Secondary School, *paragraph No. 10 whereof is reproduced herein below :-*

> ***"10.*** *Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice. In Russell v. Duke of Norfolk [(1949) 1 All ER 109 (CA)] Tucker, L.J. observed:*
>
> > *"... There are, in my view, no words which are of universal application to every kind of*

inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

It has been observed by this Court in Union of India v. P.K. Roy [(1968) 2 SCR 186 : AIR 1968 SC 850 : (1970) 1 LLJ 633] :"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

Similar view was also expressed in A.K. Kraipak case [(1969) 2 SCC 262 : (1970) 1 SCR 457] . This Court observed: (SCC pp. 272-73, para 20)

"... What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed

for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

Prof. Wade in his Administrative Law has succinctly summarised the principle of natural justice to the following effect:

"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: not as to their scope and extent. Everything depends on the subject-matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

One of the cardinal principles of natural justice

is nemo debet esse judex in propria causa (no ***10.*** *Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice. In Russell v. Duke of Norfolk [(1949) 1 All ER 109 (CA)] Tucker, L.J. observed: "... There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."*

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complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

One of the cardinal principles of natural justice is nemo debet esse judex in propria causa (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in Secretary to Government, Transport Department v. Munuswamy Mudaliar [1988 Supp SCC 651] that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in State of U.P. v. Mohd. Nooh [1958 SCR 595 : AIR 1958 SC 86] . In the said case, a departmental inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. This Court

quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in Secretary to Government, Transport Department v. Munuswamy Mudaliar [1988 Supp SCC 651] that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in State of U.P. v. Mohd. Nooh [1958 SCR 595 : AIR 1958 SC 86] . In the said case, a departmental inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated."

(VIII). (1995) 3 SCC 757, Dhananjay Sharma v. State of Haryana, *paragraph No. 38 whereof is reproduced herein below:-*

"38. *Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or*

undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In Chandra Shashi v. Anil Kumar Verma [(1995) 1 SCC 421 : 1995 SCC (Cri) 239] the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (SCC pp. 423-

24, paras 1 and 2)

> *"The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.*
>
> *Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."*

(IX). (2007) 14 SCC 108, Deepa Gourang Murdeshwar Katre v. V.A.V. College of Arts, *paragraph Nos. 33 and 34 whereof are reproduced herein below:-*

> ***"33.*** *It is well settled by a catena of decisions of this Court that if a case of fraud or*

misrepresentation of such a dimension is discovered that the very basis of the order passed by a court of law is affected, the court can recall its order. The power to recall an order founded upon fraud and misrepresentation is an inherent power of the court.

34. *The present case is one such instance where the High Court has been misled by incorrect representations made by the University at the time of hearing of the writ petition and the review petition. The question was whether the post occupied by the appellant was entitled to be dereserved as for six years no Backward Class candidate was available."*

(X). (2002) 6 SCC 308, State of Bihar v. Radha Krishna Jha (Dr), *paragraph Nos. 8 to 10 whereof are reproduced herein below:-*

"8. *The learned counsel appearing for the State of Bihar has also tried to submit that the decision of the Supreme Court relied upon by the learned Single Judge in the first writ petition No. 387 of 1995 pertained to Technical Institute of West Bengal and that case has no application to the present case. But we find that the matter was examined and the learned Single Judge in writ petition CWJC No. 387 of 1995 had categorically held that the Division Bench*

decision of the Patna High Court in the case of Sindeshwari Prasad Singh [CWJC No. 522 of 1979, decided on 2-7-1980 (Pat) (DB)] and that of the Supreme Court applied to the case in hand and a direction was issued to decide the representation in the light of those decisions. So for as the decision in CWJC No. 387 of 1995 is concerned, it does not appear to have been challenged and therefore had attained finality. We find force in the submission made on behalf of the Lab Assistants that in case the State wanted to take a stand that the decisions of the Supreme Court and that of the Patna High Court in the case of Sindeshwari Prasad Singh [CWJC No. 522 of 1979, decided on 2-7-1980 (Pat) (DB)] did not apply to the facts of the present case, they could not say so by means of an administrative order passed on their representation in the teeth of the judicial finding in the judgment of the learned Single Judge dated 7-9-1995 in CWJC No. 387 of 1995 that the said two decisions had full application to the present case. But the only way open to the State was to challenge the abovesaid order before an appropriate forum. We also find that the contempt petition filed by the Lab Assistants also seems to have been decided taking a view that the order passed by the State Government on the representation was not in keeping with the direction issued by the learned Single Judge in

the first writ petition. That order also does not seem to have been challenged. Another opportunity provided to the State to decide the representation culminated in repetition of the same exercise in rejecting the representation without following the two judgments in the light of which representation was directed to be decided. The plea raised by the State of Bihar on the basis of the judgment in CWJC No. 9485 of 1995 decided on 13-8-1996 [CWJC No. 9485 of 1996, dated 13-8-1996 (Pat)] saying that Lab Assistants could not be upgraded as Demonstrators will make no difference so far as the present case is concerned. As a matter of fact, the latter decision dated 13-8-1996 should have followed the earlier decision dated 7-9-1995 which on the other hand was distinguished saying that the Government had to take a decision in the matter. In case the earlier case namely CWJC No. 387 of 1995 decided on 7-9-1995 stood distinguished, it would not be open to the State to argue that it would come in the way of implementing the order passed by the High Court dated 7-9-1995 in CWJC No. 387 of 1995. The latter order does not in any manner affect the finality of the order passed on 7-9-1995. The State was thus left with no option but to decide the representation following the two decisions referred to in the order dated 7-9-

1995.

9. *So far as the question of the abolition of the post of "Demonstrator" is concerned, admittedly no counter-affidavit had been filed on behalf of the State bringing this fact to the notice of the Court deciding CWJC No. 387 of 1995.*

10. *That judgment was allowed to have attained finality. It was only in reply to the contempt proceedings initiated by the Lab Assistants that the notification of 1975 was pressed into service to say that only those Lab Assistants who were appointed prior to 1-1-1973 alone could be designated as Demonstrators and not those appointed thereafter whose services were to be terminated. On behalf of the Lab Assistants, it has been vehemently urged that even after issuance of the order of 1975, a number of Lab Assistants had been redesignated as Demonstrators in different years. Some documents are on the record to indicate such redesignations in the years 1981, 1983 and in 1988 with certain conditions about non-admissibility of emoluments. On the basis of these specific orders redesignating Lab Assistants as Demonstrators, it is submitted that the order of 1975 was never acted upon and in different colleges Lab Assistants were designated as Demonstrators. It is also submitted that there is nothing to indicate that in pursuance of the*

aforesaid order of 1975, services of anyone may have ever been terminated. The State could not deny the aforesaid facts, however, the stand is that the orders issued from time to time designating Lab Assistants as Demonstrators were wrongly issued. But, surprisingly, it is to be found that no step was ever taken to set the wrong right except at a very late stage. Same orders are now said to have been issued which according to the other side have not been implemented. Learned Single Judge in the second writ petition namely CWJC No. 2176 of 1996 (R) has noticed that in CWJC No. 522 of 1979 (R) a similar question had arisen and ultimately an order was passed for redesignating Laboratory Assistants as Demonstrators in the scale of pay as per UGC norms. The case related to graduate Laboratory Assistants of Muzaffarpur Institute of Technology and the case was duly contested on behalf of the State Government. It could not be indicated on behalf of the State as to what material difference it would make by reason of the fact that in the case in hand they are Lab Assistants/Lab Instructors etc. under Ranchi University and not in the labs of Technical Institutes. Both are governed by the norms of UGC. It would have been only appropriate if all these pleas had been raised, if at all, including one about abolition of posts of Demonstrators in Writ Petition No. 387 of 1995

*as they involve disputed facts as to whether order of 1975 was ever acted upon or not etc. That was not done nor was any appeal preferred. Presently dispute is confined to compliance with the order passed in Writ Petition No. 387 of 1995 and thereafter in contempt proceedings.**"***

(XI). (1989) 4 SCC 187, Supreme Court Employees' Welfare Assn. v. Union of India, *paragraph No. 106 whereof, is reproduced herein below:-*

"106. *An act is ultra vires either because the authority has acted in excess of its power in the narrow sense, or because it has abused its 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: see the principle stated by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v.Wednesbury Corporation [(1947) 2 All ER 680, 685] . Power is exercised in bad faith where its repository is motivated by personal animosity towards those who are directly affected by its exercise. Power is no less abused even when it is exercised in good faith, but for an unauthorised purpose or on irrelevant grounds, etc. As stated by Lord Macnaghten inWestminster Corporation v. London and North Western Railway Co.[1905 AC 426, 430] :*

"It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not, in the first."

This principle was restated by this Court in Barium Chemicals Ltd. v. Company Law Board [AIR 1967 SC 295 at 323] :

"Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

(XII). A.I.R. 2020 SC 3050, Benedict Denis Kinny vs

Tulip Brian Miranda, *paragraph No. 20 whereof, is reproduced herein below:-*

> *"20. We need to first notice the nature and extent of the jurisdiction of the High Court under* Article 226 *of the Constitution of India. The power of judicial review vested in the High Courts under* Article 226 *and this Court under* Article 32 *of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under* Article 226 *is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within meaning of* Article 12 *of the Constitution. The judicial review is designed to prevent cases of abuse of power or neglect of a duty by the public authority. The jurisdiction under* Article 226 *is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of* Article 226 *is very wide and can be used to remedy injustice wherever it is found. The High Court and Supreme Court are the Constitutional Courts,*

which have been conferred right of judicial review to protect the fundamental and other rights of the citizens. Halsbury's Laws of England, Fifth Edition, Volume 24 dealing with the nature of the jurisdiction of superior and inferior courts stated that no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so. In paragraph 619, Halsbury's Laws of England States:-

> *"The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of*

claims, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular claim.""

13. Last but not the least, the learned counsel for the petitioner has submitted that the issue regarding the fairness of selection process and award of L.P.G. distributorship by the respondent-Corporation to Late Gauri Shanker Pandey has also been set at rest, inasmuch a writ petition bearing C.W.J.C. no. 1190 of 2009, which was filed by one Vishwanath Tiwary, challenging the selection process emanating out of an advertisement dated 17.10.2017 inviting applications from eligible candidates under the Freedom Fighter category leading to issuance of L.O.I. to the deceased father of the proprietor of the petitioner firm, has also stood dismissed long back by an order dated 25.03.2010 passed by a co-ordinate Bench of this Court, wherein it has been noted that upon due investigation, 18 marks were added to the marks already awarded to Sri Gauri Shankar Pandey which had resulted in him being placed at No. 1 in the merit list and the final decision of the respondent-Corporation does not warrant any interference. Thus it is submitted that the respondent-Corporation could not have raised the issue regarding the fulfilment of the eligibility criteria by the

petitioner again.

Contentions of the Ld. Sr. Counsel for the respondents

14. *Per contra*, the learned Senior counsel appearing for the respondent-Oil Corporation has submitted that the petitioner had earlier filed a writ petition challenging the order of termination of Distributorship Agreement dated 30.12.2019, however the same has stood dismissed by a judgment dated 22.05.2020 and the Hon'ble High Court in the said judgment has observed as follows:-

> *"any consideration over any other extraneous fact would amount to perpetuating a position where a false statement would be given premium."*

Thus it is submitted that there is no question of entertaining the request of the petitioner for restoration of his terminated Distributorship Agreement. It is further submitted that the representation of the petitioner dated 23.05.2020 has been duly considered by the respondent no. 2 and has been rejected by a detailed, reasoned and a self-speaking order dated 03.06.2020, wherein it has been clearly recorded that the Vigilance Cell of the respondent-Corporation had received a complaint that the petitioner had secured his selection and

appointment on the basis of fabricated Bank documents, which had stood substantiated leading to termination of the agreement in question and the said order of termination passed by the respondent-Corporation has also been upheld by the Hon'ble High Court. It is further submitted that there is no provision to renew such terminated contracts. The learned counsel for the respondent-Corporation has further submitted that in order to extend opportunity and help the Freedom Fighters, applications had been solicited from the Freedom Fighters for allotment of L.P.G. Distributorship, in pursuance whereof the father of Sri Ravi Pandey had applied and was selected, whereafter Letter of Intent dated 30.10.2008 was issued to him, however he died on the very next day i.e. on 31.10.2008. The proprietor of the petitioner's Distributorship had then sought for a re-consideration by way of substitution of the name of the deceased with that of his legal heirs and the same was allowed in terms of Clause 2.3 of the Re-constitution Policy of the year 2008. It is also submitted that the proprietor of the petitioner firm had in fact filed an application dated 17.02.2009 for re-consideration of the Distributorship in question, in which he had mentioned his educational qualification and financial capability under Para 14.2 and had stated that he was having a sum of Rs. 20,40,000/-

in his Bank Account no. 014111, being maintained at the Central Co-operative Bank, Siwan. A fresh merit penal dated 26.02.2009 was then published in which the petitioner had stood first since he had got maximum marks under the financial capability criteria. During field verification, the petitioner is stated to have produced a copy of pass-book and certificates dated 14.02.2009 and 09.03.2009, purportedly issued by the Branch Manager of the Bank to the effect that the petitioner was having a balance of Rs. 20,40,000/- in his account in the Central Co-operative Bank, Siwan on the date of application and the said balance had been maintained till the date of interview and on the basis of these documents, the Officers conducting field verification had submitted a report recommending for issuance of Letter of Intent to the proprietor of the petitioner firm.

15. The learned counsel for the respondent-Corporation has further submitted that a complaint was received to the effect that the proprietor of the petitioner firm Sri Ravi Pandey had procured the distributorship on the basis of forged documents i.e fabricated bank details and false educational certificates. At first the complaint was closed on the basis of the FVC report, however a similar complaint was then received by the Vigilance department of the IOCL, whereafter investigation was made and

letters were written to the Bank to confirm as to whether the statements, Bank's Passbook and Bank's certificates dated 14.02.2009 and 09.03.2009, produced by Sri. Ravi Pandey at the time of FVC showing a balance of Rs. 20,40,000/- in the bank account no. 014111, kept at the Central Cooperative Bank, Siwan are correct or not and as to whether the Bank's documents/certificates produced by Sri Ravi Pandey have been issued by the Bank or not. The IOCL had then confronted Sri Ravi Pandey but he could not produce the original passbook and instead stated that the same was stolen in year 2011. It is stated that the Bank had then informed the respondent-Corporation that the balance in the afore-said account was to the tune of Rs. 2,40,000/- as on 14.02.2009, the certificates dated 14.02.2009 and 09.03.2009 and the passbook provided by Sri. Ravi Pandey at the time of selection had not been issued by the Bank, which clearly shows that Sri Ravi Pandey had secured his selection on the basis of forged documents in as much as he could have been awarded only 2.4 marks for a balance of Rs. 2,40,000/- in his Bank account whereas minimum balance of a sum of Rs. 18,00,000/- was required to get full marks i.e 18 marks. It is submitted that as far as complaint regarding Sri. Ravi Pandey having produced false educational certificates is

concerned, the same was not substantiated. Consequently, it was found that the Sri Ravi Pandey, proprietor of the petitioner firm, had made false statement in his application dated 17.02.2009, had produced false certificates and bank details to ensure his selection, hence had violated the terms of selection as contained in clause 11 of the Distributorship Selection Guidelines dated 29.06.2007 as well as had committed breach of clause no. 27 (1) of the distributorship agreement dt. 25.10.2016. Clause 11 of the Distributorship Selection Guidelines dated 29.06.2007 stipulates that if upon verification it is found that the information given in application is incorrect/false/ misrepresented then the applicant's candidature will stand cancelled. Further, clause 27(1) of the distributorship agreement dated 25.10.2016, signed between the proprietor of the petitioner firm and the IOCL reads as follows:-

> *"Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this agreement forthwith upon or at anytime after the happening of any of the following events namely:-*
>
> *(1) If any information given by the distributor in his application for appointment as a distributor shall be found to be untrue or incorrect in any*

material particular."

Thus, a detailed show-cause notice dated 29.08.2019 was served upon the petitioner and the petitioner was called upon to submit a reply/explanation along with supporting documents by 16.09.2019, as to why his distributorship be not terminated for violating clause 11 of the selection guidelines dated 29.06.2007 and clause 27 (1) of the distributorship agreement dated 25.10.2016. The petitioner had then challenged the said notice dated 29.08.2019 before this Hon'ble court by filing a writ petition bearing CWJC No. 18839 of 2019, however the same was dismissed by a co-ordinate Bench of this Court by an order dated 16.09.2019. Then the petitioner had appeared before the concerned authority and submitted his reply, whereafter the General Manager, LPG, BSO had thoroughly considered the reply of the petitioner as also the points raised by him at the time of hearing and had passed a detailed, reasoned and a speaking order dated 30.12.2019, whereby and whereunder, the distributorship agreement of the petitioner firm was terminated. The said order dated 30.12.2009 was challenged by the petitioner firm by filing a writ petition bearing CWJC No. 559 of 2020 and a plea was taken that documents were not provided by the IOCL, hence the said order dated 30.12.2009 is bad. The

respondent-Corporation, in its supplementary counter affidavit, filed in the said writ proceedings, had annexed the documents with a list thereof and its receiving showing that the petitioner was given the documents he had demanded save and except the opinion of Mr. Kishpotta. After considering the pleadings and arguments of parties, a co-ordinate Bench of this Hon'ble court had dismissed the aforesaid writ petition bearing CWJC No. 559 of 2020, by a Judgment dated 22.05.2020, however granting liberty to the petitioner to represent before the respondent-Corporation for renewal of the contract on sympathetic considerations, if the rules permit. It is stated that, thereafter the petitioner had represented before the competent authority and the said representation has been duly considered and rejected by a reasoned order dated 30.12.2009. It is also submitted that the petitioner has got no right to be reinstated as a distributor since there are no rules/guidelines, which provide for renewal of agreement in cases of termination of agreement on account of violation of terms of selection and agreement.

16. The learned counsel for the respondent-Corporation has also submitted that all the points raised by the petitioner in his reply to the show cause notice dated 29.08.2019, have been considered and a detailed, reasoned and a speaking order dated

30.12.2019 has been passed, whereby and whereunder the Distributorship Agreement of the petitioner has been terminated and the same has also been upheld by a judgment dated 22.05.2020, passed by a co-ordinate Bench of this Court in C.W.J.C. no. 559 of 2020, thus the challenge of the petitioner to the order of termination has also failed. It is further submitted that this Court in the earlier round of litigation had granted liberty to the petitioner to file a representation before the respondent Corporation and seek renewal of the contract on sympathetic considerations, however the Hon'ble Court had specifically stated therein that the same should be considered by the respondent-Corporation, if permissible under the Rules and since there is no rule for restoration of the terminated Distributorship Agreement on sympathetic considerations, there is no error in the impugned order dated 03.06.2020 and the present writ petition is fit to be dismissed, specially in view of the fact that even if Clause 4.0 of the aforesaid Guidelines of the respondent-Corporation dated 03.12.2007 are taken into consideration, the case of the petitioner would be hit by Clause 4.1 thereof, resulting in his case falling under the exception Clause.

Determination

17. I have heard the learned counsel for the parties and perused the materials on record as also gone through the judgments cited and relied upon by the learned counsel for the petitioner. This Court finds that initially the Distributorship in question was granted in favour of Late Gauri Shanker Pandey vide Letter of Intent dated 30.10.2008, however unfortunately, he died on the very next date i.e. on 31.10.2008, whereafter the proprietor of the petitioner herein had submitted his application dated 17.02.2009 under the Re-Constitution Policy of the respondent-Corporation, whereupon L.O.I. was issued in favour of the proprietor of the petitioner firm vide letter dated 08.04.2009 and an agreement was executed in between the petitioner and the respondent-Corporation on 07.09.2009. It is a matter of record that the said agreement was further renewed for a period of 05 years and a renewal agreement was executed on 25.10.2016. It appears that subsequently, a complaint was filed against the petitioner *inter-alia* alleging therein that the proprietor of the petitioner firm had furnished false certificates and Bank details along with his application dated 17.02.2009. It also appears that a complaint was also received by the Vigilance Department of the respondent-Corporation, whereupon

investigation was made and letter was written to the Bank in question to confirm as to whether the statements in the Bank's pass-book and the certificates dated 14.02.2009 and 09.03.2009, purportedly issued by the said Bank at the time of field verification showing a balance of Rs. 20,40,000/- in the Bank Account no. 014111 of the proprietor of the petitioner firm, kept with the Central Co-operative Bank, Siwan, is correct or not and in response thereof, the said Bank confirmed that in the said account there was a balance of only Rs. 2,40,000/- as on 14.02.2009 and moreover, the certificates dated 14.02.2009 and 09.03.2009 as also the pass-book provided by the proprietor of the petitioner firm at the time of selection, had not been issued by the said Bank. Thus, it transpired that the proprietor of the petitioner firm had submitted forged documents and made wrong and false statement in his application, with regard to his financial status, with the aim and object of securing maximum marks of 18 whereas he was entitled only for 2.4 marks. In such view of the matter, the respondent-Corporation had issued a show cause notice dated 29.08.2019 to the proprietor of the petitioner firm and after considering his reply, had terminated the Distributorship Agreement of the petitioner vide order dated 30.12.2019 on account of violation of the terms of selection by

the petitioner as contained in Clause 11 of the Distributorship Selection Guidelines dated 29.06.2007, which provides that in case, any information given in the application for selection is found incorrect/ false or there has been a mis-representation then the candidature of the applicant shall stand cancelled, as well as in violation of Clause 27 (1) of the Distributorship agreement dated 25.10.2016, which stipulates that the Corporation is at liberty in its entire discretion to terminate the agreement, in case any information given by the Distributor in his application is found to be untrue, hence since the proprietor of the petitioner firm had furnished incorrect and false information regarding his financial status, the Distributorship Agreement in question was terminated on account of breach of the terms and conditions of the Distributorship Agreement. The said order of termination dated 30.12.2019 was challenged by the petitioner in C.W.J.C. No. 559 of 2020, however the said writ petition was dismissed by the aforesaid Judgment dated 22.05.2020, passed by a co-ordinate Bench of this Court, however liberty was granted to the petitioner to file a representation before the respondent-Corporation for renewal of the contract on sympathetic consideration, however the respondent-Corporation was directed to consider the same, if

permissible under the Rules. The petitioner is stated to have filed a representation dated 23.05.2020, however the same has been rejected by the respondent Corporation by the impugned order dated 03.06.2020, which has been challenged in the present proceedings.

18. Taking up the first issue regarding imposition of three penalties on the petitioner's Distributorship, as has been stated at Sl. No. 1 of the chart in the impugned order dated 03.06.2020, this Court finds that though the third major penalty has been withdrawn, nonetheless the first two major penalties dated 07.04.2015 and 06.11.2015 still stand as on date, since the same have though been challenged in various writ petitions, as referred to hereinabove, however the same have not been quashed till date. Thus, this Court does not find any infirmity in the reply of the respondent-Corporation to the contention raised by the petitioner at serial no. 1 of the impugned order dated 03.06.2020 since the first and second major penalties have not been interfered with / quashed till date.

19. As far as the reply of the respondent-Corporation in the impugned order dated 03.06.2020 to the effect that complaint dated 23.10.2017 regarding submission of fabricated Bank

statement by the petitioner was received by the Vigilance Department of the respondent-Corporation which on investigation has been found to be substantiated, leading to termination of Distributorship on 30.12.2019, is concerned, this Court finds that the said issue has already stood determined by a co-ordinate Bench of this Court by a Judgment dated 22.05.2020 passed in C.W.J.C. No. 559 of 2020 whereby and whereunder the order of termination of Distributorship dated 30.12.2019 has been found to be legal and valid. In fact, the allegation of the proprietor of the petitioner firm having submitted fabricated Bank documents in support of his financial status has also been found, upon investigation, to be true. As far as the contention of the learned counsel for the petitioner to the effect that the said complaint received by the Vigilance had stood closed which is apparent from the letter of the respondent-Corporation dated 09.02.2018, is concerned, this Court finds that the complaint received by the Vigilance is dated 23.10.2017, however the subject referred to in the afore-said letter of the respondent-Corporation dated 09.02.2018 is with regard to the complaint dated 23.01.2018 and moreover the said letter dated 09.02.2018 would not have any bearing on the present case, inasmuch as a co-ordinate Bench of this Court vide judgment dated

22.05.2020, passed in the case of the petitioner itself, has already come to a conclusion that fabricated Bank statement had been submitted by the petitioner and lastly, the said letter dated 09.02.2018 refers to field verification conducted in the month of March 2009, which admittedly was done on the basis of fabricated Bank statement and forged certificates submitted by the proprietor of the petitioner firm along with his application dated 17.02.2009, however subsequently, upon a detailed inquiry made and response sought from the Bank in question, it has transpired that the respondent-Bank had never issued the pass-book submitted by the proprietor of the petitioner firm or the certificates dated 14.02.2009 and 09.03.2009 as also has certified that the balance amount in the account of the proprietor of the petitioner firm as on 14.02.2009 was only a sum of Rs. 2,40,000/- and the said amount had continued to be available in the Bank account of the proprietor of the petitioner firm till the date of interview, however the claim of the proprietor of the petitioner firm that a sum of Rs. 20,40,000/- was available in his Bank account, is not correct. In any view of the matter, since this aspect of the matter has already stood adjudicated and the order of termination dated 30.12.2019 has also been upheld by a co-ordinate Bench of this Court by an order dated 22.05.2020,

passed in C.W.J.C. no. 559 of 2020, now it is too late in the day for the petitioner to raise such issues in the present writ petition and the petitioner cannot be permitted to circumvent the process of law as also it cannot be permitted to assail the order of termination dated 30.12.2019, in the garb of the present writ petition.

20. The next issue which has been raised by the learned counsel for the petitioner is that the respondent-Corporation in the impugned order dated 03.06.2020, at serial no. 2 of the chart, has wrongly stated that there is no rule in the Corporation which allows renewal of terminated Distributorship on sympathetic grounds. This Court finds that the reliance of the learned counsel for the petitioner on Clause 4 of the Guidelines dated 03.12.2007, which provides for revival of the Distributorship subject to the Distributor meeting the eligibility criteria for selection as a new Distributor, is of no help to the petitioner, inasmuch as the case of the petitioner falls under the exception Clause i.e. Clause 4.1 which reads as follows:-

> "4.1 Revival of distributorship shall not be allowed in the following cases :
>
> *4.1.1 Distributorships terminated on account of malpractices/ irregularities/ breach of Distributorship Agreement/ Violation of MDG.*

This will not however come in the way of consideration of decision on appeals, which may be made by the terminated dealership under the provision of MDG."

This Court finds that since the petitioner's Distributorship has stood terminated vide order dated 30.12.2019 on the ground of breach of terms and conditions of Distributorship Agreement, which has also been upheld by the Hon'ble Patna High Court vide Judgment dated 22.05.2020, passed in C.W.J.C. no. 559 of 2020, Clause-4.2 to Clause 4.1 of the Circular No. SL/1601/2007, issued by the Indian Oil Corporation, L.P.G. Department, HO, dated 03.12.2007 shall not be applicable in the case of the petitioner herein, hence admittedly there is no rule of the respondent-Corporation which permits renewal of a terminated Distributorship on sympathetic grounds, especially in cases where Distributorship has been terminated on account of malpractices/ irregularities/ breach of Distributorship Agreement/ Violation of MDG. Thus, this Court is of the considered view that the case of the petitioner has been rightly rejected by the impugned order dated 03.06.2020, passed by the General Manager (L.P.G.), Bihar State Office, Indian Oil Corporation Limited.

21. Now coming to the reply of the respondent-Corporation furnished in the impugned order dated 03.06.2020 at serial no. 6 of the chart, the same is also akin to serial no. 2 of the impugned order dated 03.06.2020, hence is not being discussed herein separately.

22. Finally, coming to the last contention of the learned counsel for the petitioner to the effect that since the challenge to the selection of the father of the petitioner as a L.P.G. Distributor has already failed on account of dismissal of the writ petition bearing C.W.J.C. no. 1190 of 2009 by an order dated 25.03.2010 passed by a coordinate Bench of this Court, the matter could not have been re-opened, this Court is of the view that the said issue being raised by the petitioner is not *germane* for the purposes of adjudication of the present writ petition, inasmuch as the cardinal/fundamental issue in the present writ petition is as to whether any rule exists, as far as the respondent-Corporation is concerned, which permits revival or renewal of the terminated Distributorship on sympathetic grounds and the said issue has already been answered in the negative i.e against the petitioner herein, by this Court, hereinabove in the preceding paragraphs. It is needless to state that the afore-said issue being now raised by the petitioner could have been an issue for

consideration in the earlier round of litigation emanating out of C.W.J.C. No. 559 of 2020, which has already stood dismissed vide Judgment dated 22.05.2020, passed by a co-ordinate Bench of this Court, whereafter the petitioner has also preferred a petition for review of the said judgment dated 22.05.2020, bearing Civil Review no. 79 of 2020. Thus, the afore-said argument advanced by the learned counsel for the petitioner is held to be mis-conceived.

23. Now, coming to the judgments referred to by the learned counsel for the petitioner, as far as the judgement rendered by the Hon'ble Apex Court in the case of ***Commr., Karnataka Housing Board v. C. Muddaiah*** *(supra)* is concerned, the same has got no relevance in the facts and circumstances of the present case, inasmuch the directions issued by the Hon'ble Patna High Court in its judgment dated 22.05.2020 has fully been complied with by the respondent-Corporation. As far as the judgment rendered by the Hon'ble Apex Court in the case of ***Atma Linga Reddy*** *(supra)* is concerned, the same has also got no relevance in the facts and circumstances of the present case, inasmuch as this Court finds that the respondent-Corporation has placed all the facts before this Court, as far as the *lis* involved in the present case is concerned. The judgment referred

to by the learned counsel for the petitioner, rendered by the Hon'ble Apex Court in the case of ***Alka Gupta*** *(supra),* on the issue of *res judicata i*s also of no significance, inasmuch as the issue of *res judicata* has not been argued by either of the parties. As far as the judgment rendered by the Hon'ble Apex Court in the case of ***B. Prabhakar Rao*** *(supra)* is concerned, reliance of the petitioner on the same is also misconceived, inasmuch nothing has been brought to the notice of this Court which would show that the respondent-Corporation has filed contradictory affidavits. Now coming to the judgments rendered by the Hon'ble Apex Court in the cases of ***Punjab SEB Ltd. v. Zora Singh*** *(supra)* and ***Ashwani Kumar Singh*** *(supra),* this Court finds that the same are of no pertinence in the facts and circumstances of the present case in as much as the principles determined in the said cases have not been argued by the Ld. Counsel for the petitioner in the instant proceedings. The judgments, referred to by the learned counsel for the petitioner, rendered by the Hon'ble Apex Court in the cases of ***Rattan Lal Sharma*** *(supra),* ***Dhananjay Sharma*** *(supra)* and ***Deepa Gourang Murdeshwar Katre*** *(supra),* are also of no use to the petitioner, inasmuch as neither any issue of bias nor any issue of forgery / misrepresentation on the part of the respondent-

Corporation has been canvassed during the course of arguments advanced by the learned counsel for the petitioner. The judgment referred to by the learned counsel for the petitioner, rendered by the Hon'ble Apex Court in the cases of ***Radha Krishna Jha (Dr)*** *(supra)*, ***Supreme Court Employees' Welfare Assn.*** *(supra)* and ***Benedict Denis Kinny*** *(supra)* are also of no relevance in the facts and circumstances of the present case, inasmuch such issues have neither been pleaded nor raised at the time of hearing of the present case.

24. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove in the preceding paragraphs, this Court finds that there is no infirmity or illegality in the impugned order dated 03.06.2020 passed by the General Manager (L.P.G.), Bihar State Office, Indian Oil Corporation Limited, hence requires no interference. Consequently, the present writ petition stands dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	08.01.2021
Uploading Date	15.01.2021
Transmission Date	NA