

CASE NO.:
Appeal (civil) 472 of 1998

PETITIONER:
B.R. Chowdhury

RESPONDENT:
Indian Oil Corpn. Ltd. & Ors.

DATE OF JUDGMENT: 15/01/2004

BENCH:
SHIVARAJ V. PATIL & D.M. DHARMADHIKARI.

JUDGMENT:
J U D G M E N T

SHIVARAJ V. PATIL J.

The order dated 17.3.1997 passed by the Division Bench of the High Court affirming the order dated 10.2.1997 passed by a Single Judge of the High Court in C.O. No. 17843 (W) of 1996 is under challenge in this appeal.

Indian Oil Corporation (for short 'the Corporation') invited applications for appointment of a dealer relating to a retail outlet, on 22nd June, 1987. It was open to all but preference was to be given to the unemployed youth. The appellant was given the dealership as an unemployed youth. The appellant was engaged as a Trainee Professional Sales Representative with M/s. Denis Chem Lab Limited from 23.2.1987 to 3.4.1989. He wrote 'NIL' against the relevant column relating to employment. The respondent No. 5 who had also applied for dealership filed objections before the Oil Selection Board stating that the appellant was an employee and as such he was not entitled to the benefit of preferential treatment. The Oil Selection Board prepared a panel of three candidates consisting of the appellant, respondent No. 5 and one another placing the appellant at Sr. No. 1 and the respondent No. 5 at Sr. No. 2. The respondent No. 5 filed writ application No. 19758(W) of 1995 challenging the selection of the appellant. An order was passed on 12.12.1995 in that writ petition directing the authorities of the Corporation to make a fresh consideration. Pursuant to the same, the Deputy General Manager of the Corporation, keeping in mind the finding of the Oil Selection Board, rejected the objection raised by respondent No. 5. The respondent No. 5 filed second Writ Application No.3262 of 1996. By the order dated 27.2.1996, in the said writ application direction was given to consider a certificate produced by the respondent no. 5 showing that the appellant was employed with M/s. Denis Chem Lab Limited. The relevant portion of the said order dated 27.2.1996 reads:

"Be that as it may, the spirit of the order passed by me is quite clear and only on the ground that the said certificate had not been mentioned in my order, the authorities ought not to have

brushed aside the same while considering the matter. Accordingly, I dispose of this writ application with a direction upon the said officer and/or any other officer to be appointed by the Indian Oil Corporation and its authorities to reconsider the matter in the light of the certificate dated 30th October, 1995 and thereafter to pass final orders after giving the parties hearing. It is made clear that running of the retail outlet shall abide by the result of the decision of the said authorities."

Following the said order, the Corporation considered the matter afresh and passed the order dated 11.10.1996 cancelling the dealership given to the appellant. The appellant filed the Writ Petition C.O.No. 17843 (W) of 1996 challenging the validity and correctness of the aforementioned order dated 11.10.1996 passed by the Corporation contending that the said order was perverse as the previous decision of the Corporation as well as the decision of the Oil Selection Board had not been considered; in any event, the respondent No. 5 could not have been appointed as a retail outlet dealer in his place; the appellant did not suppress any fact and even otherwise the alleged suppression could not have made any difference to the decision of the Oil Selection Board as he as a trainee was not an employee. A learned Single Judge, by the order dated 10.2.1997 after considering the rival contentions, concluded that the panel prepared by the Oil Selection Board was no more valid and in the result while upholding the cancellation of the dealership of the appellant, set aside the dealership given to the respondent No. 5. Further the Corporation was directed to take appropriate action in the matter as permissible in law. Aggrieved by this order of the learned Single Judge, the appellant, the respondent No. 5 and the Corporation filed three appeals being Appeal Nos. 445, 508 and 511 of 1997 before the Division Bench of the High Court. The Division Bench of the High Court, by a detailed and considered order dated 17.3.1997 did not find any good reason to interfere with the judgment of the learned Single Judge and dismissed all the three appeals. The appellant who was appellant in M.A.T. 445 of 1997 before Division Bench of the High Court is in appeal before this Court in this appeal.

Learned Senior Counsel for the appellant urged that the cancellation of dealership awarded to the appellant was mechanically cancelled by the Corporation merely on the basis of the report of enquiry made by its officer without application of mind; assuming that there was any irregularity in considering the application of the appellant for grant of dealership, it could not be said to be void. According to him, the appellant during the relevant period was working as a trainee and not as an employee and as such the termination of his dealership on the ground that he gave false information was not at all justified; the Corporation has not shown how cancellation of dealership of the appellant was justified particularly when the appellant had secured more marks in the

interview conducted by the Board.

The learned counsel for the Corporation made submissions supporting the impugned order.

The learned counsel for the respondent no. 5 made submissions supporting the cancellation of dealership of the appellant and added that the reasons recorded by the learned Single Judge as well as the Division Bench of the High Court in upholding the cancellation and dealership of the appellant were fully justified.

We have examined and considered the rival contentions urged on behalf of the parties having due regard to the material placed on record. The learned Single Judge not only upheld the cancellation of the dealership given to the appellant but also set aside the dealership given to the respondent no. 5. Respondent no. 5 came up to this Court in S.L.P.(C) No. 8902/97 questioning the validity of the impugned judgment to the extent he was aggrieved by the dismissal of his appeal MAT No. 508 of 1997. The SLP was dismissed by this Court on 30.4.1997. Before us, the only appeal filed by the appellant is for consideration. In this view, we are not called upon to examine the correctness of the cancellation of dealership given to the respondent no. 5 after the termination of the dealership given to the appellant earlier. In other words, we have to focus our attention and consider only the question as to whether the order of termination of the dealership given to the appellant is right in law and justified.

The facts that are not in dispute are that the Corporation invited application for appointment of a dealer in respect of one of its retail petrol pump on 22.6.1987. In response to the same, several applications were received. Eligible candidates were interviewed. Based on the selection made by the Oil Selection Board, the Corporation issued a letter of intent in favour of the appellant on 9.8.1995. Respondent No. 5 made complaint alleging that the appellant did not fulfill the eligibility criteria. The Oil Selection Board found allegations of the respondent No. 5 incorrect and advised the Corporation not to take notice of his complaint. The respondent no. 5 filed Writ Petition No. 17958 of 1995 challenging the recommendation made in favour of the appellant for appointment as a dealer in respect of retail outlet in the town of Durgapur. The writ petition was disposed of on 12.12.1995 directing the Corporation to consider and dispose of the objection raised by the respondent No. 5 with regard to the grant of dealership to the appellant on the ground indicated not only in his representation dated 12th September, 1995 but also on the grounds raised in the Writ Petition. The Corporation nominated one of its Officers Mr. B.D. Ghosh to consider the matter pursuant to the order made in the aforementioned writ petition. Before the said officer, the respondent No. 5 urged that the appellant was employed with M/s. Denis Chem Lab Limited. Mr. Ghosh did not decide this new contention understanding that the direction given in the writ petition was restricted only to the representation dated 12th September, 1995 given by the respondent No. 5 and

rejected the objections raised by the respondent No. 5 holding that the selection of the appellant was not bad in law. Thereafter on 23rd January, 1996, the Corporation appointed the appellant as the dealer for the retail outlet. Respondent No. 5 filed the second Writ Petition No. 3262 of 1996 challenging the order appointing the appellant as the dealer. The said writ petition was disposed of by a learned Single Judge on 27.2.1996 directing the Corporation to reconsider the matter in the light of the Certificate dated 30th October, 1995 issued by M/s. Denis Chem Lab Limited on which reliance was placed by the respondent no. 5. In the said certificate, it was stated that appellant had worked with M/s. Denis Chem Lab Limited as a Trainee Sales Professional Representative from 23.2.1987 to 3.4.1989 at Gujarat. The Corporation this time nominated one Mr. N.K. Gupta, the Chief Consumer Manager of the Corporation. Mr. Gupta instructed his office to send a letter to M/s. Denis Chem Lab Limited to enquire about the employment of the appellant. M/s. Denis Chem Lab Limited by their reply dated 21.5.1996 confirmed that the appellant had been working in their organization from 23.2.1987 as a Trainee Sales Professional Representative, that his services were confirmed, his provident fund was deducted from the period 1.3.1988 and thereafter on 17.2.1989 he tendered his resignation, which was accepted. On these facts, Mr. Gupta concluded that on the date the appellant applied for the dealership, he was employed at least as a trainee. He also referred to the application of the appellant and particularly column No. 9 relating to the status of present occupation in which it was shown as 'Nil'. Hence, Mr. Gupta held that the appellant was disqualified and the Corporation should take suitable action accordingly. On 11.10.1996, the Corporation terminated the dealership of the appellant pursuant to the report of Mr. Gupta. The appellant challenged the order of termination of his dealership by filing Writ Petition No. 17843 of 1996, which was disposed of by the learned Single Judge upholding the termination of dealership of the appellant. The same was affirmed by the impugned order by the Division Bench of the High Court in the appeal.

The appellant gave an affidavit for securing the dealership. In paragraph 10 of the affidavit, which is reproduced in the impugned order, it is clearly stated that if any information given by the appellant in any application or in any document submitted by him in support of his application for the award of dealership is found to be untrue or incorrect or false, the Corporation would be within its rights to withdraw the letter of intent, terminate the dealership/distributorship (if already awarded) and that he would have no claim whatsoever against Indian Oil Corporation Ltd. for such withdrawal/termination. Further paragraph 56 of the Memorandum of Agreement, as indicated in the impugned order, gave liberty to the Corporation to terminate the agreement on finding that any information given by the dealer in his application for appointment was found to be untrue or incorrect in any material respect.

The offer of appointment dated 8.2.1987 given by M/s. Denis Chem Lab Limited to the appellant reads:

"Mr. Biswadeep Roy Chowdhury
CD/64/2, V.K. Nagar
Durgapur \026 713 210 (W.B.)

Dear Mr. Chowdhury,

Sub: Appointment Offer

We refer to your application for the job of Professional Sales Representative and subsequent interview with us. Management is pleased to inform you that you have been selected for a post. You shall be paid Rs.650/- per month as starting stipend. Stipend shall be increased to Rs. 700/- at the end of six months from the date of joining and Rs. 750/- on completion of one year service. Besides this, you shall be paid Rs. 100/- per month as vehicle maintenance allowance if you are using a two wheeler scooter or motor cycle for your daily field work at Head Quarter. Proof of ownership of vehicle for regular use has to be submitted to this office for our record. Besides this, you shall be paid following working allowance:-

Head Quarter per working day : Rs.22/-

Ex-town / transit per day : Rs.28/-

Outstation : Rs.40/-

You shall be entitled for bus fair for travel within 50 K.M. from the H.Q. For longer distance, you shall be allowed 1st Class Railway Fare. You are required to join training class at Ahmedabad from 23rd February, 1987 for the period of three weeks. You are required to reach Ahmedabad on 22.2.1987. Your stay arrangements have been fixed at Gandhi Ashram Guest House, Opp. Gandhi Ashram, Ashram Road, Sabarmati, Ahmedabad.

Your Headquarter of posting shall be decided at the end of training. Your regular appointment letter shall be issued on successful completion of training. Please sign duplicate copy of this letter in token of your acceptance and return for our record.

Dress for sales training class shall be suite or shirt with necktie and trousers.

We confirm having sent a telegram to you reading as under:-

YOUR APPOINTMENT OFFER POSTED (.)
CONFIRMED TELEGRAPHICALLY ACCEPTANCE AND

JOINING FOR TRAINING STARTING 23RD
FEBRUARY.

In case we do not receive your
confirmation by 14th February, we
shall extend our offer to next candidate
on your selection list.

Thanking you,

Yours faithfully,
For DENIS CHEM LAB LTD."

The reply dated 21.5.1996 given by M/s. Denis Chem Lab Limited to the letter dated 4.4.1996 written by the Corporation confirms that the appellant was working in their organization from 23.2.1987. He was working as a Trainee Sales Profession Representative; his services were confirmed and his provident fund number was GJ/15771/137, certain amount was also collected towards provident fund and he resigned from services on 17.2.1989, which was accepted on 5.4.1989. A combined reading of the offer of appointment and the aforementioned reply of the M/s. Denis Chem Lab Limited clearly shows that the appellant was an employee on the relevant date. Mere use of word trainee cannot be taken to say that he was not an employee particularly so when his services were confirmed later. In the application filed by the appellant for securing dealership, as against column No. 8(c) whether he was temporarily employed, he has filled as 'No'. In column No. 9, as against the present occupation, he has shown as 'Nil'. These statements made by the appellant in column No. 8(c) and column No. 9 amount to suppression of material fact. This apart, nothing prevented the appellant from mentioning in column no. 9 of the application as against the status of employment at least as a trainee. But on the other hand, in column 9 he has shown the status of occupation as 'Nil'. The contention advanced on behalf of the appellant that the status of occupation as shown was bona fide cannot be accepted. In view of para 10 of the affidavit filed by him coupled with the para 56 of the Memorandum, the Corporation was well within its right to terminate the dealership of the appellant. There is no substance in the argument advanced on behalf of the appellant that the Corporation passed the order of termination of the dealership of the appellant mechanically and without application of mind. On the facts found and in view of the findings recorded by Mr. Gupta, it cannot be said that the order passed by the Corporation terminating the dealership of the appellant was mechanical or without application of mind. This Court in *Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan Yadav* [(2003) 3 SCC 437] while dealing with the effect of suppression of material information took a view that the purpose of seeking information cannot be defeated which has bearing on the selection. Added to this, if only the appellant had given correct information about status of his occupation as on the relevant date as rightly held by the learned Single Judge which view was affirmed by the Division Bench of the High Court, possibly the position would have been different. At any rate, the appellant is bound by his own affidavit and the

Memorandum of Agreement mentioned above.

Thus, having regard to all aspects, in our view, the impugned judgment does not call for any interference. Hence, the appeal is dismissed. No costs.

JUDIS