

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 6441 of 2011

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Binayak Acharya,
Son of Late Sadasiva Acharya,
AT: HIG-150, Kanan Vihar, Phase-I,
Chandrasekharapur, Bhubaneswar,
Dist: Khurda.

... Petitioner

-Versus-

Indian Oil Corporation Ltd. & others
Parties

... Opp.

For Petitioner : M/s C.A.Rao & S.K.Behera

For Opp. Parties : M/s Fox Mandal & Co. Solicitor
through D.Mohanty
R.R.Sahoo & S.N.Patnaik
(For O.P. No.1 and 2)
M/s H.M.Dhal, B.B.Swain &
A.K.Patnaik
(For O.P. No.3)

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgment: 31.08.2012

B.N.MAHAPATRA,J. This writ petition has been filed for quashing of
order dated 07.01.2011 and corrigendum issued vide letter dated 31st
January, 2011 under Annexures-15 and 16 respectively containing the

revised merit list for award of distributorship of L.P.G. by which petitioner has been brought down from serial No.1 to No.2 in the merit list and the Letter of Intent (LOI) dated 17.03.2011 was issued in favour of opposite party No.3-Jitendra Kumar Sahoo.

2. Petitioner's case in a nutshell is that opposite party No.1-M/s Indian Oil Corporation Ltd. (for short 'IOCL') is engaged in business of refining, distributing and selling of petroleum products including 'Indane' brand 'Liquefied Petroleum Gas' (for short, 'LPG') all over the country and abroad. As many as 50 distributorships were proposed at 50 locations in the State of Odisha which includes Bhubaneswar (Baramunda) in the district of Khurda. In order to appoint LPG distributors under various categories among the candidates belonging to different categories applications were invited vide notice dated 17.11.2007. Apart from specifying eligibility criteria for making applications by the applicants of different categories, manner and procedure to make such application to deposit security amount and all other basic requirements for the purpose were stipulated in the notice. The said notice also contains specified format of application. The said notice was displayed in the notice board of opposite party No.2 as well as in its website www.iocl.com. The criteria and conditions stipulated in the notice dated 17.11.2007 were in pursuance of the 'brochure' issued by the IOCL. The present

petitioner, who comes within the category of defence personnel having all other requisite qualifications to be appointed as LPG distributor, submitted his application in respect of Bhubaneswar (Baramunda) location in the district of Khurda, which was specified for defence category. The petitioner had submitted his application in the specified format enclosing all the required documents in support of his eligibility, which were duly scrutinized and thereafter the petitioner was considered suitable to participate in the interview for selection/appointment of LPG distributor. Accordingly, the Area Manager of the IOCL in his letter dated 26.06.2009 asked the petitioner to appear before the Selection Committee for interview scheduled to be held on 21.07.2009 at the Conference Hall, Indane Area Office, Bhubaneswar, Indian Oil Corporation Ltd., (M.D.) 3rd Floor, Alok Bharati Tower, Bhubaneswar. On the date scheduled for interview, out of nine eligible applicants, five participated in the interview before three Member Committee. The interview was conducted smoothly following some oral questions after due verification of original documents and on the same day list of empanelled candidates for IOCL distributorship was published which revealed that the present petitioner stood third, one Bajranglal Yadav stood first and Jitendra Kumar Sahoo (O.P. No.3) stood second.

3. Soon after the publication of results, doubting that low marks were allotted against parameter of educational qualification and keeping in mind the guidelines given in the 'Brochure', the petitioner personally met the General Manager of opposite party No.2-Corporation. After deliberation with reference to 'brochure', the General Manager agreed with the petitioner and directed for investigation. On due verification of certificates pertaining to qualification and experience etc., the marks allotted earlier was revised from 53.2 to 61.2 and the merit list was also corrected accordingly and the petitioner's position came to 1st from 3rd. After declaring petitioner's position in the merit list as rank 'one' single staff Field Investigation Report Committee (for short, 'FIR Committee') again verified documents which were already verified by three member Committee on 11.05.2010. As required by the FIR Committee again petitioner provided required documents on 09.06.2010 like credit worthiness certificate from banker, copy of annual income for financial year 2006-07 and copy of passport size photo. On 26.07.2010, petitioner has also provided documents like valuation of Car report from Government Valuer, valuation report of plot with homestead conversion received from Union Bank of India, total income certificate for financial year 2006-07 by the Chartered Accountant. The FIR Committee again vide letter dated 04.08.2010 asked the petitioner to submit certificate from

his employer indicating the total emoluments paid or income tax return receipt for the financial year 2006-07 as on scrutiny of the supporting materials, documents and Appendix-B of the application for the financial year 2006-07 it was noticed that out of Rs.3,29,166/- salary was shown at Rs.2,66,448/- and Rs.62,688/- was shown from pension which was not matching. As required, the petitioner has provided a letter from the employer, Odisha Power Transmission Corporation Ltd. dated 16.08.2010 indicating income from salary Rs.1,19,330/- for the financial year 2006-07. The said FIR Committee on 03.12.2010 again asked the petitioner to provide income tax return for the financial year 2006-07 in support of income declared under Appendix-B against the gross salary of Rs.2,66,488/- and pension for Rs.62,688/- and supporting documents from employer on differential amount of Rs.1,47,118/- (Rs.2,66,448/- - Rs.1,19,330/-). Further, as per pension payment order issued by the A.G. (A & E) Odisha, the income comes to Rs.2,157/- per month, i.e., Rs.25,884/- per year, but in Appendix-B, the amount was shown as Rs.62,688/-. Therefore, the petitioner vide letter dated 03.12.2010 was asked to submit supporting documents for balance amount of Rs.36,804/-(Rs.62,688/- - Rs.25,884/-) within seven days. In response to the said notice dated 03.12.2010 granting seven days time, the petitioner made request to grant further time till 31.12.2010 as the information sought for

requires collection of the same from Bank, employer and Treasury office etc. The FIR Committee vide letter dated 17.12.2010 refused to grant further extension of time for submission of documents as prayed for and took a decision to prepare final report on the basis of documents available and handed over copy of the order dated 17.12.2010 on spot.

4. On 30.12.2010, the petitioner made a representation after collecting relevant documents from the concerned authorities enclosing (i) statement of pension for Rs.4,47,401/- supplied by the Chief Manager of Pension Branch of SBI, Bapuji Nagar Branch; (ii) revised IT return for Rs.3,29,136/-; (iii) statement of defence pension of Rs.41,244/- received from Main Branch of SBI; (iv) Photocopy of Provident Fund amounting Rs.84,205/- for the financial year 2006-07. In the said representation, it has been stated that inadvertently in support of Appendix-B of application, front pages of documents were attached instead of furnishing full documents and also further stated that he could not show the amount Rs.84,205/- against Provident Fund in Appendix-B (received during financial year 2006-07), as there was no column for Provident Fund in Appendix-B. It was further stated that inadvertently he could not also reflect the amount received from Government of Odisha during financial year 2006-07 recorded in PPO Book carrying Rs.4,27,701/-. Instead of

considering said official documents submitted as stated above in support of Appendix-B and some official payment received for the financial year 2006-07 which were not reflected inadvertently in Appendix-B, either because no such column was available in Appendix-B, or the amount received inadvertently could not be reflected, the opposite party No.2-General Manager of the IOCL revalued the marks ignoring the said official documents revised marks from 61.2 to 59.4 and lowered the petitioner's position to 'second' from 'first'. In the order of merit, vide letter dated 07.01.2011 salary income of Rs.1,19,330/- and Government Pension of Rs.25,884/- (Rs.2,157/- per month), totaling Rs.1,45,214/- was taken. The opposite party-IOCL vide letters dated 27.01.2011 and 31.01.2011 intimated the petitioner that his position stands revised to 'second' in the order of merit of the merit list of empanelled candidates. After receipt of the letter dated 07.01.2011, the petitioner met opposite party No.2-General Manager personally and discussed the matter.

5. The petitioner sought for information under RTI Act on 09.02.2011. As the petitioner was not satisfied with the reply, he submitted Appeal in Form-D on 27.01.2011 and received reply on 22.02.2011 along with enclosure. Again on 11.02.2011, petitioner submitted detailed pension calculation sheet for the year 2006-07 with a request to opposite party-authority to accept the gross salary of

Rs.1,19,390/- and to take into consideration the Odisha State Pension of Rs.4,47,401/- and defence pension Rs.41,244/- totaling Rs.6,08,035/- for revaluation of income parameter. It was followed by another representation dated 21.02.2011 to the General Manager reiterating the said facts stated in the earlier representation dated 11.02.2011.

6. On 14.03.2011, the petitioner filed the present writ petition.

7. Mr.Rao, learned counsel for the petitioner submitted that on 17.03.2011, the petitioner submitted a representation indicating therein about filing of the present writ petition on 14.03.2011 with a request to opposite parties 1 and 2 to keep in abeyance/pending official process of issue of Letter of Intent until further information. Thereafter, on 25.03.2011, petitioner intimated opposite parties 1 and 2 about interim order dated 24.03.2011 passed by this Court directing not to issue any Letter of Intent in favour of opposite party No.3 enclosing copy of the stay order of this Court. However, opposite party No.1 over-reaching this Court's order issued letter No.IAB/133/BBSR (Baramunda) dated 30.03.2011 stating that with approval of the competent authority the Letter of Intent has already been issued on 17.03.2011 in favour of opposite party No.3.

8. It was vehemently argued that from the certificate dated 09.06.2010 issued by the Chartered Accountant it reveals that the statement of defence pension and total pension of State Government supported by Bank pass book were available since 09.06.2010, but opposite party No.2 has not taken into consideration the certificate of the Chartered Accountant along with enclosures. While reevaluating marks under income parameter and revising marks from 61.2 to 59.4, the petitioner's position was brought down from 'first' to 'second' in order of merit vindictively taking advantage of petitioner's inadvertent error. On the total taxable income of Rs.3,29,136/- the tax due has been paid. Since the marks are given 0.1 against Rs.10,000/- and the difference between rank one and two is 1.1 (Rs.1,10,000/-) petitioner apprehends some foul play, because he has a taxable income from regular salary and from pension arrears etc. at Rs.3,36,937/-.

9. Mr. H.M. Dhal, learned counsel for opposite party No.3 reiterating his stand taken in the counter affidavit submitted that the IOCL published a final merit list from which it would appear that opposite party No.3 stood first in the merit list whereas the petitioner was placed in the 3rd position. From the said merit list it would further appear that the total marks secured by the petitioner was 53.20 whereas opposite party No.3 secured 60.10 and therefore opposite party No.3 was placed in the 1st position of the merit list. On the basis

of the documents filed before the FIR Committee, the Committee took the decision. The income declared by the petitioner at Rs.3,29,166/- for the financial year 2006-07 did not tally with the documents submitted by him in support thereof for which the petitioner was asked to furnish the documents in support of the statements made in his application. Despite availing several opportunities he did not file the required documents in support of income declared in the application or reconciled the discrepancy. Therefore, the FIR Committee submitted its final report on the basis of materials available on record. Vide Annexure-16, the total income of the petitioner was assessed at Rs.1,45,214/- for the financial year 2006-07. On the basis of such income of the petitioner, the total mark awarded was 59.40. Since opposite party No.3 was declared first in the merit list, the opposite party-Corporation issued the Letter of Intent in his favour vide letter dated 17.03.2011. After receiving Letter of Intent dated 17.03.2011, opposite party No.3 has proceeded with construction of the LPG godown which is nearing completion. Opposite party No.3 has also invested huge sum of money by constructing the godown and by paying the land rent since 2007 in respect of the plot over which the godown has been construed.

10. Mr.D.Mohanty, learned counsel appearing for the opposite party-Corporation supported the case of opposite party No.3.

11. On the rival contentions raised by the parties, the only question that falls for consideration by this Court is whether opposite parties 1 and 2 are justified in bringing down the petitioner's position in the merit list from 1st to 2nd and issuing Letter of Intent dated 17.03.2011 in favour of opposite party No.3.

12. Undisputedly, the FIR Committee verified the documents in support of Appendix-B of the application and certain other documents as required by the Committee, the petitioner produced required documents like credit worthiness certificate from banker, total income certificate for financial year 2006-07 by Chartered Accountant, valuation of car report from Government Valuer, valuation report of plot with homestead conversion received from Union Bank of India. The FIR Committee vide letters dated 04.08.2010 and 03.12.2010 asked the petitioner to submit certificate from his employer indicating the total emoluments paid or income tax return receipt for the financial year 2006-07. The petitioner made request to grant further time till 31.12.2010 as the information sought for requires collection of the same from Bank, employer and Treasury office etc. The FIR Committee refused to grant further extension of time for submission of documents, took decision to prepare final report on the basis of documents available and handed over copy of the order dated 17.12.2010 on spot. The petitioner on 30.12.2010,

submitted required documents after collecting those from the concerned authorities and intimated the opposite party authorities that inadvertently in support of Appendix-B of application, front pages of documents were attached instead of full documents. It was also further stated that he could not show the amount Rs.84,205/- against Provident Fund in Appendix-B (received during financial year 2006-07), as there was no column for Provident Fund in Appendix-B and inadvertently he could not also reflect the amount received from Government of Odisha during financial year 2006-07 recorded in PPO Book carrying Rs.4,47,701/-. The authorities of the opposite party Corporation did not consider official documents submitted as stated above in support of Appendix-B and some official payment received for the financial year 2006-07 which were not reflected inadvertently in appendix-B, either because no such column was available in Appendix-B, or the amount received inadvertently could not be reflected. Opposite Party No.2-General Manager of the IOCL revalued the marks ignoring the said official documents though the petitioner has submitted the same before taking final decision and revised the marks from 61.2 to 59.4 and lowered the petitioner's position from 'first' to 'second'.

13. As per the guideline, it appears that the valuation has to be made on the basis of information submitted in the application,

income as per income tax return of the last financial year and/or affidavit on income. Awarding 0.1 mark on every unit of Rs.10,000/- or more in multiple of Rs.10,000/- and amounts less than complete unit of Rs.10,000/- is not to be considered for award of marks. This shows that valuation has been made on the basis of information received regarding income either as per income tax return of the last financial year or income declared on affidavit. In the instant case, the affidavit has been filed by the petitioner declaring his income which should have been accepted. Further, nobody challenges the veracity of contents of the affidavit. Moreover, pursuant to the query made by the FIR Committee appointed by the Corporation, the petitioner filed the details of his income which are supported by the bank pass book, Government documents relating to Provident Fund, pension received during the financial year 2006-07 which should have been taken for the purpose of evaluating marks. In the instant case, same has not been done. No valid reason has been assigned by the Corporation for not accepting the reply filed by the petitioner clarifying his total income for the financial year 2006-07. For the reasons stated supra, the contentions urged on behalf of the opposite party no.3, regarding the construction of godown by investing huge money cannot be accepted by this Court and deny the relief to the petitioner for which he is legally entitled to and the same was illegally denied by opposite

party nos.1 and 2.

14. For the reasons stated above, the order dated 07.01.2011 and corrigendum issued vide letter dated 31st January, 2011 under Annexures-15 and 16 respectively containing the revised merit list bringing down the petitioner from serial No. No.1 to serial No.2 of the merit list and Letter of Intent dated 17.03.2011 issued in favour of opposite party No.3-Jitendra Kumar Sahoo are not valid and those are hereby quashed and we further, direct opposite party Nos.1 and 2 to proceed in the matter by issuing the revised select list and award LPG distributorship in favour of the petitioner by issuing Letter of Intent.

15. In the result, the writ petition is allowed, but without any order as to costs.

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B.N.Mahapatra, J.

V. Gopala Gowda, C.J. I agree.

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Chief Justice