such plea is stated to have been taken while sending reply to the show cause issued to the petitioner in that case, whereas in the present case the facts stand corroborated from the perusal of the impugned resolution dated 28th January, 2000 that secret ballot has been demanded but the same was brushed aside by the alleged brutal majority. As observed above despite the majority the rule does not provide the ballot by showing of hands.

(17) In view of the above observation, I am of the considered opinion that the impugned resolution dated 28th January, 2000, copy Annexure P2, has not been legally passed and is, therefore, not sustainable and resultantly, the notification dated 29th May, 2000, is not sustainable. Thus, the petition is allowed, the impugned resolution dated 28th January, 2000 allegedly passed by the council by tossing of hands is quashed and the notification dated 29th, May, 2000 published by the government is also quashed. The resultant effect is that election of respondent No. 5 Smt. Sukhdarshan Kaur as President of Nagar Council is also set aside. The Petitioner shall stay as President of Nagar Council till removed in accordance with law. No costs.

R.N.R.

Before G.S. Singhvi, A.C.J. & Bakhshish Kaur, J

NARDEEP KUMAR MAHESHWARI—*Petitioner*

versus

INDIAN OIL CORPORATION & OTHERS—*Respondents*

C.W.P. No. 6133 OF 2001
1st March, 2002

Constitution of India, 1950—Arts. 14 & 226—Selection of respondent 4 as distributer of LPG—Allegations of arbitrariness, bias & mala fides *against the Dealer Selection Board—Power of the High Court of judicial review—Ambit & scope—High Court has jurisdiction to examine whether the recommendations made by the Board are tainted by arbitrariness, or vitiated by* mala fides, *bias or prejudice.*

Held that Article 226 of the Constitution does not contain any express bar to the maintainability of the writ petition on the ground that the petitioner has got an alternative remedy. The rule that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner is only one of the several rules of self-imposed restraint evolved by the superior Courts for exercise of writ jurisdiction. However, the availability of alternative remedy has never been treated as an absolute bar to the entertaining of writ petition and in appropriate cases, the Courts have exercised writ jurisdiction for grant of relief to the aggrieved parties despite the availability of alternative remedy.

(Para 12)

Further held, that the plea of respondent No. 4 that by having taken part in the interview, the petitioner will be deemed to have waived his right to challenge the recommendations made by the Board is also meritless and deserves to be rejected because it has neither been pleaded by him nor any evidence has been produced before the Court to show that the petitioner had prior knowledge or even an inkling about the composition of the Board and pre-determination of its Chairman and /or Members to select respondent No. 4 and yet he had taken part in the interview. Therefore, it cannot be said that he had acquiesced in the arbitrary and biased selection of the said respondent or waived his right to challenge the selection of respondent No. 4.

(Para 15)

Further held, that a bare scrutiny of the marks awarded by the Chairman under various headings shows that the assessment made by him is totally arbitrary, capricious and whimsical. The marks awarded by the Chairman under the various headings leaves no manner of doubt that the Chairman of the Board had managed the selection of respondent No. 4 by arbitrarily awarding unusually high marks to him and at the same time, awarding low marks to the petitioner. Even a casual reading of the comparative statement of the educational qualifications, income, experience, infrastructural facilities and financial position of the two candidates shows that the petitioner was far better placed than respondent No. 4. Notwithstanding this, the Chairman awarded unusually high marks to respondent No. 4

under the said headings. Therefore, selection of respondent No. 4 for award of distributorship is tainted by arbitrariness, bias and is violative of Art. 14 of the Constitution and the same is liable to be quashed.

(Paras 26 & 30)

Shri Sumeet Mahajan, Advocate, *for the petitioner*

Shri Ashish Kapoor, Advocate, *for respondent No. 3*

Shri Anil Malhotra, Advocate, *for respondent No. 4*

JUDGMENT

G.S. Singhvi, ACJ

(1) Whether the selection of respondent no. 4-Vinod Kumar Trehan for appointment as Distributer of L.P.G. for Ludhiana-B, Civil Lines, Ludhiana is tainted by arbitrariness, *mala fides* and is violative of Article 14 of the Constitution of India and whether the petitioner is entitled to be appointed as Distributor in place of respondent No. 4 are the questions which arise for determination in this petition filed under Article 226 of the Constitution of India ?

(2) For the purpose of deciding the aforementioned questions, we may briefly notice the facts.

(3) In pursuance of advertisement dated 24th December, 1997 issued by Indian Oil Corporation (for short, the Corporation) for appointment as Distributer of L.P.G. in the open category for Ludhiana-B, Civil Lines, Ludhiana, the petitioner, respondent no. 4 and others submitted applications alongwith required documents. However, no selection was made in pursuance of the said advertisement. After about 2½ years, the Corporation got published fresh advertisement inviting applications for appointment of Distributor for the same area with a stipulation that the applications already received in pursuance of advertisement dated 24th December, 1997 would be kept alive but the candidates will have to re-submit the application form. Accordingly, the petitioner and respondent No. 4 submitted fresh applications. They and other candidates were interviewed by the Dealer Selection Board, Chandigarh, Punjab-II (for short, 'the Board') on 17th April, 2001. The name of respondent no. 4 was placed at No. 1 and that of the petitioner was placed at No. 2 in the select list prepared by the Board.

(4) The petitioner has questioned the selection of respondent No. 4 mainly on the ground that the recommendations made by the Board are vitiated by arbitrariness, bias and *mala fides*. He has averred that the interviews held by the Board were farce because the selection of respondent No. 4 had been pre-determined. To substantiate this, he has made the following averments in paragraphs 12 to 15 of the writ petition :—

> "12. That the documents of the candidates were examined by the officials of the respondent Corporation and the said process consumed a lot of time. The interview was started at about 10.30 A.M. Respondent No. 4 was the first candidte to be interviewed. His interview lasted for about 5 minutes and after coming out of the interview room he started proclaiming that he is the selected candidate. He, in fact, started discouraging the other candidates saying that he is the selected candidate and why are the other candidates waiting for the interview. They are wasting their time as he is the selected candidate. He also proclaimed that he would definitely be given the distributorship.
>
> 13. That the aforesaid proclamation of respondent No. 4 came as a shock to the petitioner as he being the most qualified person (MBA from Guru Nanak Dev University) in first division, was the best choice amongst all the candidates. There were many candidates at the interview venue who were also saying and confirming what respondent No. 4 was saying and that according to their source and information, the interview is mere farce and the respondent No. 4 has already been assured his selection. The candidates at the interview were saying that respondent No. 4 has been selected on account of his close proximity with the political party in power at the Centre.
>
> 14. That it is pertinent to mention here that one of the candidates Shri Devinder Kumar Jaggi who also appeared in the interview on the said date sent fax messages to the Dealer Selection Board (Punjab-II),

Chandigarh Shri Suresh Gangwal, Minister of State, Ministry of Petroleum, New Delhi. The Daily Tribune, Chandigarh and the Punjab Kesari, Jalandhar at about 1.31 P.M. to 1.46 P.M. In the said fax communication, it was specifically alleged that the interview is a mere formality and that the Dealer Selection Board (Punjab-II) has already selected M. Vinod Kumar Trehan as Gas Allottee. Copy of representation dated 17th April, 2001 sent through fax to the aforesaid person is annexed with this petition as Annexure P. 5.

The fax message was sent from the PCO owned by Indu Dhamija (telephone No. 646143) situated at Booth No. 316, Sector 35-D Market, Chandigarh. The said PCO also issued receipts showing payment for the aforesaid fax copies of which are collectively annexed with this petition as Annexure P. 6.

15. That Shri Devinder Kumar Jaggi who has sent the fax message (Annexure P.5) to the various authorities mentioned above has also sworn an affidavit stating that he was the author of the aforesaid representation sent by fax between 1.31 PM to 1.46 PM. The said affidavit is annexed with this petition as Annexure P.7."

(5) He has also given the details of his qualifications, financial position/background and availablitiy of infrastructural facilities vis-a-vis respondent No. 4 and has averred that if the criteria laid down by the government for selection of dealer/distributor had been fairly applied, the latter could not have been selected and placed at No. 1 in the merit list.

(6) Respondent Nos. 1 and 2 have not filed written statement to controvert the averments contained in the writ petition, but the remaining respondents have filed separate written statements to contest the plea of the petitioner.

(7) In the written statement filed on behalf of respondent No. 3, an objection has been raised to the maintainability of the writ petition on the ground that the petitioner has failed to avail the alternative remedy available to him under Clause 3.15 of the Manual

for Selection of Dealers and Distributors. Reliance has also been placed on the judgments of the Supreme Court in ***D.A. Slounke*** versus ***B.S. Mahajan (1),*** of Calcutta High Court in ***Chinmoy Sarkar*** versus ***Md. Shaniat Hossain (2),*** and order dated 12th November, 1990 passed by this Court in C.W.P. No. 59 of 1988 *Harnam Singh* versus *Oil Selection Board and others* and it has been averred that the Court cannot make a detailed probe into the methodology adopted by the Board for determining the comparative merit of the applications. On merits, it has been averred that all the candidates were interviewed and assessed as per the criteria laid down by the Government of India, Ministry of Petroleum and final selection was made on the basis of aggregate marks awarded by the Chairman and two members. The receipt of fax message sent by Shri Devinder Kumar Jaggi has been admitted, but it has been denied that selection of respondent No. 4 had been pre-determined.

(8) In his written statement, respondent No. 4 has relied on the orders passed in C.W.P. No. 6338 of 1994—*Harinder Singh* versus *Hindustan Pertoleum Corporation Limited and others* (decided on 14th December, 1994); C.W.P. No. 2880 of 1994—*Baltej Singh Sidhu* versus *Union of India and others* (decided on 22nd November, 1994); C.W.P. No. 5767 of 1996—*Satish Kumar Dhingra* versus *Indian Oil Corporation Limited and others* (decided on 27th May, 1996); C.W.P. No. 5183 of 1995—*Mewa Singh* versus *Chairman, Oil Selection Board and others* (decided on 5th February, 1996); C.W.P. No. 3065 of 1996—*Gurinder Singh and another* versus *Oil Selection board and others* (decided on 7th May, 1996); C.W.P. No. 16079 of 1997—*Jaswinder Singh Mann* versus *Hindustan Petroleum Corporation Limited and others* (decided on 25th October, 1997); C.W.P. No. 11325 of 1997—*Hemant Kumar Sareen* versus *President, Oil Selection Board and others* (decided on 7th September, 1999); C.W.P. No. 3976 of 1999—*Anju Dhuria* versus *India Oil Corporation and others* (decided on 17th July, 2000) and ***A.S. Mankotia*** versus ***Union of India and others (3),*** and has averred that the High Court cannot sit in appeal over the recommendations made by the Board. He has also raised the objection of alternative remedy and has further pleaded that the petitioner is estopped from questioning his selection because he has

(1) AIR 1990 SC 434
(2) AIR 1990 Calcutta 412
(3) 1990 (1) P.L.R. 635

taken part in the procedure of selection because he has taken part in the procedure of selection adopted by the Board. On merits, respondent No. 4 has averred that the selection has been made strictly in accordance with the guidelines and the criteria laid down by the Ministry of Petroleum. He has further averred that after receiving Letter of Intent dated 4th may, 2001, he had taken L.P.G. Storage Godown on Jalandhar Bye-pass Road, Ludiana at a monthly rent of Rs. 3,500 and has started operation by spending huge amount and, therefore, his selection may not be invalidated at this belated stage.

(9) The petitioner has filed replications to the written statements of respondent Nos. 3 and 4 and reiterated the allegation that the selection of respondent No. 4 had been pre-determined and that the assessment made by the Board was tainted by arbitrariness.

(10) Shri Sumeet Mahajan argued that the selection of respondent No. 4 should be declared illegal and quashed because the assessment of comparative merit of the applicants made by the Board not only lacked objectivity, but was also wholly arbitrary and tained with *mala fides*. He referred to the qualifications of the petitioner, his financial capacity and ability to provide infrastructure necessary for establishing the godown etc. vis-a-vis those of respondent No. 4 and argued that if the Board had objectively assessed their merit, the latter could not have been selected and placed at No. 1.

(11) Shri Ashish Kapoor and Shri Anil Malhotra, argued that the writ petition should be dismissed because the petitioner has failed to avail the alternative remedy available to him under Clause 3.15 of the Manual for Selection of Dealers and Distributors. They further argued that the High Court cannot go into the niceties of the selection and re-evaluate the comparative merit of the candidates and invalidate the selection simply because it feels that the petitioner was more meritorious. Shri Malhotra further argued that the petitioner should be non-suited because he had taken part in the process of interview without raising any objection that the Chairman and/or Members of the Board were biased in favour of respondent No. 4. In the end, he submitted that even if the Court comes to the conclusion that the selection of respondent No. 4 is not consistent with the doctrine of fairness and Article 14 of the Constitution, his appointment as a Distributor may not be quashed because he has already spent huge

amount for establishing the infrastructure for supply of L.P.G. Learned counsel submitted that time gap of more than seven months between the issuance of Letter of Intet and hearing of the case should by itself be treated sufficient to deny relief to the petitioner.

(12) We shall first deal with the preliminary objections raised by respondent Nos. 3 and 4. their first plea is that the writ petition should be dismissed because the petitioner has failed to avail the alternative remedy by making a representation to the Board. In our opinion, there is no mert in the objection taken by the respondents. Article 226 of the Constitution does not contain any express bar to the maintainability of the writ petition on the ground that the petitioner has got an alternative remedy. The rule that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner is only one of the several rules of self-imposed restraint evolved by the superior Courts for exercise of writ jurisdiction. However, the availability of alternative remedy has never been treated as an absolute bar to the entertaining of writ petition and in appropriate cases, the Courts have exercised writ jurisdiction for grant of relief to the aggrieved parties despite the availability of alternative remedy. In ***M/s Baburam Prakash Chandra Maheshwari*** versus ***Antarim Zila Parishad Maheshwari (4),*** the Supreme Court examined this issue and laid down the following proposition :—

> "When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But, it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of plicy, and discretion

(4) AIR 1969 SC 556

rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

(13) In ***Ram and Shyam Company*** versus ***State of Haryana and others (5),*** their Lordships of the Supreme Court over-ruled the objection of alternative remedy and held as under :—

"Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the Court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits."

(14) In the present case, the selection of respondent No. 4 has been challenged on the ground of arbitrariness, *mala fides* and violation of Article 14 of the Constitution and, as will be seen hereinater, the petitioner has been able to substantiate his plea. Therefore, we do not consider it proper to non-suit him on the ground of his failure to avail remedy by making a representation to the Board.

(15) The plea of respondent No. 4 that by having taken part in the interview, the petitioner will be deemed to have waived his right to challenge the recommendations made by the Board is also meritless and deserves to be rejected because it has neither been pleaded by him nor any evidence has been produced before the Court to show

(5) AIR 1985 SC 1147

that the petitioner had prior knowledge or even an inkling about the composition of the Board and pre-determination of its Chairman and/or Members to select respondent No. 4 and yet he had taken part in the interview. Therefore, it cannot be said that he had acquiesced in the arbitrary and biased selection of the said respondent or waived his right to challenge the selection of respondent No. 4. In ***Manak Lal*** versus ***Dr. Prem Chand (6),*** the Supreme Court held that the waiver cannot always and in every case be inferred from mere failure of the party to take objection unless it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. Similarly, in ***Motilal Padampat Sugar Mills*** versus ***State of U.P. (7),*** the Supreme Court held as under :—

> "Waiver means abandonment of a right and it may be either expressed or implied from conduct but its basic requirement is that it must be an intentional act with knowledge. There can be no waiver unless the person who is said to have waived his fully informed as to his right and with full knowledge of such right, he intentionally abandons it.:

(16) We may now consider the petitioner's challenge to the selection of respondent No. 4. However, before dealing with the grounds of challenge, we deem it proper to notice the ambit and scope of the Court's power of judicial review in such matters. In ***S.G. Jaisinghani*** versus ***Union of India (8),*** the Supreme Court considered the scope of power of judicial review in the cases involving challenge to the administrative action on the ground of arbitrary exercise of power. Ramaswamy J., one of the members of the Bench, indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice by making the following observations :—

> "In this context it is important to emphsize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law

(6) AIR 1957 SC 425
(7) AIR 1979 SC 621
(8) AIR 1967 SC 1427

from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—"Law of the Constitution"—Tenth Edn., Introduction CX). "Law has reached its finest moments", stated Douglas, J. in United States versus Wunderlick (1951-342 US 98; 96 Law Ed. 113), "When it has freed man from the unlimited discretion of some ruler..... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Descretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1770—98 ER 327), "means sound discretion guided by law. It must be governed by rule, not humour; it must not be arbitrary, vague and fanciful."

(17) In ***Kumari Shrilekha Vidyarthi*** versus ***State of U.P. and others (9),*** the Supreme Court quashed the circular issued by the Government of Uttar Pradesh for terminating the services of District Government Counsel. Some of the observations made in that judgment, which have bearing on the decision of this case, read as under :—

"It can no longer be doubted at this point of time that Art. 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See Ramana Dayaram Shetty versus The International Airport Authority of India (1979) 3 SCR 1014 : (AIR 1979 SC 1628) and Kasturi Lal Lakshmi Raddy versus State of Jammu and Kashmir (1980) 3 SCR 1338 : (AIR 1980 SC 1992). In Col. A.S. Sangwan versus Union of India, 1980 (Supra) SCC 559 : (AIR 1981 SC 1545), while the discretion to change the

(9) AIR 1991 SC 537

policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Art. 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Art. 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose."

(18) In ***Tata Cellular*** versus ***Union of India (10),*** a three-Judges Bench of the Supreme Court reviewed various judicial precedents on the subject and deduced many principles including the following :—

"The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quashi-administrative sphere.

(10) JT 1994 (4) SC 532

However, the decision must not only be tested by the application of Wedenesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides."

(19) In ***Union of India and another*** versus ***G. Ganayutham (11),*** a two-Judges Bench of the Supreme Court again reviewed the case law on the subject and held as under :—

"To judge the validity of any administrative order or statutory disoretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

The position in our country, in administrative law, where no fundamental freedom as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.

(11) JT 1997 (7) SC 572

> The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority." (Underlining is ours)

(20) In *D.A. Solunke* versus *B.S. Mahajan (supra),* the Supreme Court considered the issue in the backdrop of the fact that selection of the appellant was challenged by the unsuccessful candidate on the ground of bias and prejudice. While reversing the order of the High Court which had set aside the appointment of the appellant, the Supreme Court held as under :—

> "It is not the function of the Court to hear appeals over the decisions of the selection Committees and to scrutinize the relative merits of the candidates. Wether a candidate is fit for a particular post or not has to be decded by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. *The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee* or *its procedure vitiating the selection, or proved mala fides affecting the selection etc.* It is not disputed that in the instant case, the University had constituted the Committee in due compliance with the relevant Statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant materials before it. Therefore, setting aside the selection on the ground of the so-called comparative merits of the candidates, as assessed by the Court while sitting in appeal over selection so made would not be permissible."

(21) In *Chinmoy Sarkar* versus *Md. Shaniat Hossain (supra),* a Division Bench of Calcutta High Court, while dealing with challenge to the selection made by Oil Selection Board, held as under :—

> "True, the Hindustan Petroleum Corporation and the Board are amenable to the writ jurisdiction since they are

"State" within the meaning of Article 12 and also "authority" or "person" within the meaning of Article 226 and what is involved is the selection for retail dealership of petroleum products which are items or articles of monopoly business carried on by a wholly-owned Government Company. However, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to the well-known limitations. If the selection is vitiated by an arbitrary or irrational exercise of power or by mala fides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant factor including eligibility, the Writ Court would and should, on proof of the relevant facts, grant an appropriate relief. However, it is not for the Writ Court to delve deep into the records of the Board or the rival claims on appreciation afresh of the materials on such record and, on the basis of such reapprisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a Writ. It cannot be over-looked in this connection that the Board, which is vested with the function of selection, is an independent entity. It is a high level body consisting of a retired High Court Judge and a retired Civil Servant. Ordinarily, there would be minimal scope for alleging mala fides against such a body although it can conceivably be alleged and proved in a given case that the selection made by it is otherwise vitiated."

(Underlining is ours)

(22) The principles which can be deduced from the aforementioned decisions are :—

(1) In exercise of its jurisdiction under Article 226 of the Constitution of India, the High Court cannot sit in appeal over the recommendations made by the Selection Board/Committee and it cannot re-assess/re-evaluate the comparative merit of the candidates.

(2) The recommendations made by the Selection Board/ Committee cannot be quashed merely because there is possibility of adopting a better method of evaluating the comparative merit of the candidates.

(3) However, the Court is entitled to examine whether the recommendations made by the Selection Board/ Committee are tained by arbitrariness or vitiated by mala fides, bias or prejudice. The Court can also examine whether the recommendations made by the Selection Board/Committee are based on irrelevant and extraneous considerations and if it is found that the selection is vitiated by arbitrariness or irrationality or mala fides, then the Court can give appropriate relief.

(4) If the administrative decision is found to be wholly irrational or defying logic or prudence of a reasonable person, the Court will be entitled to exercise its power of judicial review to invalidate such decision.

(23) In the light of the above principles, we shall now deal with the issue whether the selection of respondent No. 4 is vitiated due to arbitrariness or mala fides. For this purpose, it will be useful to notice the extracts of the norms prescribed by the Ministry of Petroleum, Government of India for evaluating the suitability of the candidates and making the recommendations. The same read as under :—

"MATTERS RELATED TO THE DEALER SELECTION BOARDS

(REF. MOP's Letter No. P-19011/56/95-IOC Dated April 1, 1997 and October 20, 1997 and P-19011/5/94-IOC(pt) dated June 9, 1997 and October 31, 1997).

1. On receipt of scrutinised application forms from Oil Cos., the Chairman, DSB. will check 10% of the applications on random basis to satisfy about the scrutiny of applications done by the Oil Co.

2. Each Board shall endeavour to conduct interview for a minimum period of 15 days per month.

3. Efforts will be made by each Board/Oil Industry to finalise selection for at least 15 locations in a month.

4. As far as possible, the Board will fix interviews continuously for 5 days at a particular location for selection for locations in an around that district only.

5. If an applicant for a dealership/distributorship, happens to be a relative of any of the Members including the Chairman of the Board, the concerned Member will disclose the relationship and also, as a measure of propriety and fair play, dissociate himself from the interview etc. for that dealership/distributorship.

6. **Norms for evaluating the candidates:**

The DSB will Judge the *inter se* suitability of the candidates on the following basis:

(a)	Personality, Business ability and Salesmanship.	30 Marks
(b)	Capability to arrange finances	70 Marks
(c)	Educational Qualification and general level of intelligence.	20 Marks
(d)	Capability to provide infrastructure facilities (land godown, showroom etc.)	15 Marks
(e)	General assessment	15 Marks
	Total	100 Marks

7. Finalisation of panel :

(a) After completion of the interviews the Board shall not adjourn till such time the merit panel is finalised.

(b) Immediately after completion of the interviews, Chairman, DSB will inform the names of the three candidates in alphabetical order to Non Member Secretary who will arrange to display the same on the notice board in the following manner (Appendix-P).

"On the basis of the interviews held by the Dealer Selection Board, for the location_____District_____on

(date)_____(RO/LPG/SKO-LDO), the following candidate have been short-listed (names in alphabetical order).

1. _____

2. _____

3. _____

(c) The DSB shall recommend to the Oil Companies a panel of maximum three names for a particlar dealership/distributorship immediately after interviews are over. The merit panel will be finalised, signed and handed over by the DSB in a sealed envelope to the Non-Member-Secretary or the officer deputed by him within 24 hours.

(d) In case, after the FIR the first empanelled candidate is not found suitable for any specific reason, concerned Oil Co. will refer the matter to the Chairman who will take a decision for issue of LOI to the next empanelled candidate. If none of the empanelled candidates are found fit as a result of the FIR or found unwilling for any reason, the location may be re-advertised for a fresh selection.

(e) Immediately after interview, a list of empanelled candidates in alphabetical order (not in order of merit) shall be displayed on the notice Board."

(24) A perusal of the above reproduced paragraphs of the norms laid down by the government shows that the suitabliity of the candidates is to be assessed objectively by awarding marks under various headings and the final panel is to be prepared on the basis of the aggregate marks awarded by the Chairman and the Members of the Selection Board.

(25) The record produced by Shri Ashish Kapoor shows that the Chairman and Members of the Board had awarded separate marks to all the candidates including the petitioner and respondent No. 4,. For the purpose of determining whether the selection made by

the Board is tained by arbitrariness and/or prejudice, it is sufficient to notice the marks awarded to the petitioner and respondent No. 4. These are as under :—

	"Personality Business Ability & Salesmanship (40 Marks)	Capability to Arrange Finances (30 marks)	Educational qualification & General Level of Intelligence (40 marks)	Capability to provide infrastructure and Facilities (land, goadown, showroom etc.) (70 marks)	General Assessment (20 marks)	Total Marks (200 marks)
Chairman						
Petitioner :	20	10	30	10	10	80
Respondent No. 4	30	25	30	60	15	160
	(Out of 20)	(Out of 15)	(Out of 20)	(Out of 35)	(Out of 10)	(Out of 100)
Member						
(Sh. V.P. Popali)						
Petitioner:	14	11	15	25	6	71
Respondent No. 4	10	9	12	22	6	59
Member						
(Sh. M.L. Toora)						
Petitioner:	16	13	17	27	7	80
Respondent No. 4	11	11	12	23	6	63

Aggregate

	Chairman	Member 1	Member 2	Total	Average	Remarks
Petitioner :	80	80	71	231	57.75	Second
Respondent No. 4	160	63	59	282	70.5	First

The comparative features of the academic qualifications, experience, financial position and availability of infrastructre etc., as are reflected in the applications submitted by the petitioner and respondent No. 4 in 1998 and 2000 are as under:—

Petitioner	Respondent No. 4
Academic and professional qualifications	
B.Com., M.B.A.	B.A.
Gross Income	
	Rs. 59687
Rs. 72000 P.A. (Salary & Commission)	
(Application dated 22nd July, 1998)	
Experience:	
After doing M.B.A., he worked as Commercial Executive with M/s Arihant Industries Ltd., Ludhiana and from October, 1996, he was working with M/s Fashion Flasher India Pvt. Ltd., Delhi.	Doing job at shop dealing in sale of sarees & job work of printing on, woollen shawls. (Application of 1998)
Presently working as Deputy Manager and looking after sales in Punjab and parts of Haryana.	Working in the firm owned by father (Application of 2000).
Infrastructural facilities.	
Own godown space at Plot No. C-4 Textile Colony, Industrial Area-A and showroom 10 feet x 20 feet or 20 feet x	Proper site will be selected once dealership is allotted, (Application of 1998)

20 feet ready & owned at shop No. 2 & 3, 215/1, Bharat Nagar, Ludhiana.	Yes I can arrange for construction of a godown and show room (Application of 2000).
Financial Position	
Rs. 33000 in the bank account and fixed deposit of Rs. 35800 Shares of Rs. 2 lacs. Other source of income—(i) 1/ 3rd share in H.U.F. property valued at Rs. 100 lacs. (ii) A loan of Rs. 5 lacs from father-in-law and (iii) Rs. 15 lacs as share in cash on sale of common H.U.F. property. (Application of 1998) Rs. 35000 bank account and Rs. 3,10,800 fixed deposit (Application of 2000).	Rs. 20890.62 in the bank account (Application of 1998) Rs. 10033 in bank account and advanced Rs. 4 lacs as loan (Application of 2000).

(26) A bare scrutiny of the marks awarded by the Chairman under various headings shows that the assesment made by him is totally arbitrary, capricious and whimsical. The maks awarded by the Chairman under the headings "capability to arrange finances, educational qualification and general level of intelligence, capability to provide infrastructure and facilities" leaves no manner of doubt that the Chairman of the Board had managed the selection of respondent No. 4 by arbitrarily awarding unusually high marks to him and at the same time, awarding low marks to the petitioner. Even a casual reading of the afore-mentioned comparative statement of the educational qualifications, income, experience, infrastructural facilities and financial position of the two candidates shows that the petitioner was far better placed than respondent No. 4. Under the heading "infrastructural facilities", the petitioner had ready with him space for godown and showrooms. As against this, respondent No. 4 had none. The only thing which he mentioned in the applications was that if selected, he could arrange the same. The financial position of the petitioner was far more sound than that of respondent No. 4. Notwithstanding this, the Chairman awarded unsually high marks to respondent No. 4 under the said headings.

27. During the course of arguments, we asked Shri Ashish Kapoor to explain the award of very high marks by the Chairman to respondent No. 4 ignoring the better educational qualifications, income, experience, infrastructural facilities and financial position of the petitioner, but he could not given any explanation.

(28) What is most surprising is that the Chairman awarded 25 marks to respondent No. 4 as against 10 awarded to the petitioner under the heading "Capacity to arrange finances" ignoring the fact that the latter's position was far more sound than the former and he had a substantial financial back-up as compared to respondent No. 4. Under the heading education qualification and General level of Intelligence, the Chairman awarded 30 marks to respondent No. 4 despite the fact that he has passed only B.A. with 3rd division and awarded similar marks to the petitioner, who possesses qualifications of B.Com. and M.B.A. Similarly, under the heading "personality, business ability and salesmanship", he awarded 30 out of 40 marks to respondent No. 4 and only 20 to the petitioner ignoring the fact that the latter had experience of having worked under the two industrial units and the former was only doing the job of selling saries in the firm owned by his father. Some one may try to explain this discrepancy by saying that the Chairman might have awarded higher marks under heading of "Educational Qualification" because at the time of interview, he found respondent No. 4 better than the petitioner. However, no explanation could possibly be given as to how the Chairman could award astonishing high marks to respondent No. 4 under "capability to provide infrastructure and facilities (land, godwon showroom etc.)".He awarded 60 marks to respondent No. 4 despite the fact that he did not produce any evidence about the availability of land, showroom, godown and at the same time, awarded only 10 marks to the petitioner ignoring the fact that he had godown space at an identified site i.e. Plot No. C-4, Textile Colony, Industrial Area-A, Ludhiana and showroom at 215/1, Bharat Nagar, Ludhiana and had also annexed site maps of the land earmarked for godown site as well as showroom site. The award of marks under this heading decisively tilted the balance in favour of respondent No. 4 despite the fact that other two Members had awarded higher marks to the petitioner under almost all the headings.

(29) If the award of unusually high marks by the Chairman to respondent No. 4 under various headings and award of far less marks to the petitioner under the corresponding headings is considered in the background of the fact that one of the candidates, namely, Shri Devinder Kumar Jaggi had complained about the pre-determined selection of respondent No. 4 even before the second session of interview had commenced, there remains no doubt that the selection of respondent

No. 4 had been pre-determined by the Chairman of the Board who successfully manipulated the same by awarding very high marks to him under the various headings and astonishingly high marks under the heading "capability to provide infrastructure and facilities (land, godown, showroom etc.) notwithstanding the fact that up to the date of interview, he had none and at the same time awarding very low marks to the petitioner.

(30) In view of the above discussion, we hold that selection of respondent No.4 for award of distributorship is tainted by arbitrariness, bias and is violative of Article 14 of the Constitution and the same is liable to be quashed.

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

(32) For the reasons mentioned above, the writ petition is allowed. The selection of respondent No. 4 is declared illegal and quashed with a direction to respondent Nos. 1 to 3 to award distributorship to the petitioner. This shall be done within a period of two months from the date of receipt of certified copy of this order.

S.C.K.

Before G.S. Singhvi & Bakhshish Kaur, JJ

MOHAN LAL —*Petitioner*

versus

REGIONAL PROVIDENT FUND COMMISSIONER & ANOTHER—*Respondents*

C.W.P. No. 8907 of 2000