

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5174 OF 2016
(ARISING OUT OF SLP(C) NO.13981/2016)

Krishna Devi

Appellant(s)

VERSUS

Indian Oil Corporation Ltd. & Anr.

Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.
2. Having regard to the nature of short controversy involved in this appeal, notice to Respondent No. 1 is not considered necessary. It is more so when the contesting respondent No. 2 is present on caveat.
3. The High court while admitting the appeal of Respondent No. 1 against the final order dated

28.01.2016 passed by the Single Judge in W.P. No. 19906/2013 filed by Respondent No. 2 against the appellant herein and Respondent No. 1 passed the following interim order:-

“The controversy in these Letter Patent Appeals pertains to appointment of Retail Outlet Dealership. The selection committee placed first respondent-writ petitioner at No. 1 and the appellant in the accompanying appeal at No. 2 without even inspecting the land offered by them. After the merit list was circulated on 06.03.2013, the land offered by respondent No. 1 was inspected on 07.05.2013 and found ‘suitable’ on 08.05.2013. Soon thereafter, on 27.05.2013, the inspection committee asked for the ‘demarcation of the land’ in question. The record further reveals that first respondent claims to have taken on lease the land measuring 2 Kanals, 9 Marlas out of total land measuring 22 Kanals 13 Marlas. The land is owned by several co-sharers and one of them has in fact, filed even partition proceedings. The said co-sharer had raised objection against installation of retail outlet on the piece of land offered by respondent No. 1 as without partition, she cannot claim that the prime front portion of the land abutting the main highway, has fallen to the share of her lessors.

The appellant is unable to explain as to how could it make selection or declare the land ‘suitable’ without verifying the record as it was still a joint holding and the affidavits relied upon by respondent No. 1 are not by all the co-sharers.

Similarly, the appointment of appellant in the accompanying appeal as the Retail Outlet Dealer on the basis of her placement at No. 2 in merit list is equally strange. The site where she has statedly installed the outlet is 40 kilometers away from the area, which was advertised for appointment of dealership.

Prime-facie, the merit list appears to have been prepared for the reasons other than the merit.

Admit.

Operation of the order passed by learned Single Judge shall remain stayed. Resultantly, neither respondent No. 1 nor the appellant in the accompanying appeal shall be allowed to operate the retail outlet. Fresh advertisement, if any, by the Corporation, shall be subject to final outcome of these appeals.

4. Feeling aggrieved by the interim order passed by the Division Bench, the appellant has filed this appeal.

5. Brief facts:

The dispute between the appellant and respondent No. 2 relates to allotment of retail dealership of the Petrol Pump of the Indian Oil Corporation Ltd. (respondent No. 1) located between Km stone 94-97 as S.H. 11 as Sonapat as mentioned

in Advertisement (Ann. P1) at item No. 115. Respondent No. 2 questioned the allotment made to the appellant in aforementioned writ petition successfully before the single Judge giving rise to filing of two appeals before the Division Bench. One is filed by the appellant and other by the Indian Oil Corporation Ltd. These appeals were admitted for final hearing, wherein aforementioned interim stay was granted.

6. Without going into more details of the issue which is presently seized of in appeal before the Division Bench in the two pending appeals for its decision on merits, we are of the view that the High Court should not have passed the interim order of the nature which is impugned herein. Instead, in our view, having regard to the factual scenario, it could at best direct the parties to maintain status quo as existed on the date of impugned order, i.e., 25.04.2016 in relation to petrol pump. On perusal of documents filed herein,

we find that the appellant (a widow) has been running the petrol pump in question for more than a year. In this view of the matter, the *prime facie* case, balance of convenience and irreparable loss was more in appellant's favour rather than in favour of respondent No. 2.

7. We accordingly allow the appeal, set aside the stay granted by the Division Bench and instead direct the parties to maintain status quo as existed on the date of the order, i.e., 25.04.2016 in relation to the subject matter of the appeal, i.e., Petrol Pump located between Km stone 94-9 on S H 11 (at S.N. 115) at Sonapat as specified in Ann. P-1 advertisement notice.

8. We request the High court to hear both the appeals, i.e., LPA No. 649 of 2016 (O&M) and LPA No. 650 of 2016 (O&M) expeditiously uninfluenced by our observations as these observations are made only for the purpose of deciding stay but not the merits of the

controversy, which is presently *sub judice* in two appeals before the High Court.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[ASHOK BHUSHAN]

New Delhi,
May 16, 2016.



JUDGMENT