



ORISSA HIGH COURT : CUTTACK

AFR

O.J.C. No.14605 of 1997

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

* * *

Pratap Chandra Mohanty
Aged about 25 years
Son of Sri Sadhu Charan Mohanty
Village: Saraswatipur
P.O.: Chhanpur, P.S.: Balasore
District: Balasore. ... Petitioner

-VERSUS-

- 1.** Indian Oil Corporation Limited
Represented through
Managing Director
G-9, Ali Yaver Jung Marg
Indian Oil Bhawan, Bandra (East)
Bombay (Mumbai) – 400 051.
- 2.** Executive Director
Indian Oil Corporation Limited
G-9, Ali Yaver Jung Marg
Indian Oil Bhawan, Bandra (East)
Bombay – 400 051.
- 3.** Deputy General Manager (Personnel)
Indian Oil Corporation Limited
Marketing Division, Eastern Region-2
Gariahat Road, (South) Dhakuria
Calcutta – 700 068.



4. The Plant Manager
L.P.G. Bottling Plant
Indian Oil Corporation Limited
At/P.O.: Chhanpur
District: Balasore.

5. Collector & District Magistrate
Balasore, At/P.O.: Balasore
District: Balasore.

... Opposite parties.

Counsel appeared for the parties:

For the Petitioner : Mr. Banshidhar Baug,
Senior Advocate
assisted by
M/s. Gyanaranjan Sahoo,
N.N. Mohapatra and B. Das,
Advocate

For the Opposite party : M/s. Sailesh Chandra Samantaray,
Nos.1 to 4 Naresh Chandra Sahoo,
Sakti Prasad Panda,
Debraj Mohanty, S. Pattnaik,
Pravat Kumar Muduli and
Sudarshan Nanda, Advocates

For the Opposite party : Mr. Kailash Chandra Kar,
No.4 Government Advocate and
Mr. Saswat Das,
Additional Government Advocate

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Dates of Hearing	:	20.03.2026 and 22.05.2026
	::	
Date of Judgment	:	29.05.2026



JUDGMENT

The petitioner filed this writ petition craving for grant of following relief(s):

“Under the facts and circumstances stated above this Hon’ble Court may be graciously pleased to admit this writ application and issue a rule NISI calling upon the opposite parties Nos.1 to 4 to show cause as to why they shall not be directed to appoint the petitioner in the L.P.G. Bottling Plant, Balasore of the Indian Oil Corporation Limited or in any other suitable place he being a land loser;

And if the opposite parties or any one of them fail to show cause or show insufficient cause, make the said Rule absolute.

And pass such other order/orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case;

And for this act of your kindness, the petitioner shall ever pray.”

The facts:

2. The necessary factual matrix as adumbrated by the petitioner in the writ petition is narrated hereunder.

2.1. In the year 1988, the State Government in exercise of its power under the Land Acquisition Act, 1894 acquired a large area of agricultural lands in Village: Bamapda and Chhanpur in the district of Balasore for establishment of



Liquefied Petroleum Gas (“LPG”, for brevity) Bottling Plant by Indian Oil Corporation Limited.

2.2. For the said purpose, an area of Ac.0.075decs. of land of the father of the petitioner in Mouza: Bamapada was acquired by the State Government. Therefore, the grandmother of the petitioner, namely Smt. Suryamani Mohanty, a land loser, lost her agricultural land.

2.3. For the purpose of setting up of the aforesaid LPG Bottling Plant in Mouza: Chhanpur and Bamapada, the opposite party No.1 (Indian Oil Corporation Limited) in pursuance of the Circular of the Ministry of Petroleum and Natural Gas, Government of India *vide* Circular in Letter No.J/25011747/6-GEM, dated 21.02.1986 entered into an agreement with the Collector and District Magistrate, Balasore, opposite party No.5 to the effect that each of the land losers’ families or their nominees would be provided with a suitable job in the Bottling Plant. The said Circular dated 21.02.1986 issued by the Ministry of Petroleum and Natural Gas, Government of India is reproduced hereunder:

*“No.J-25011747/6-GEN.
Government of India
Ministry of Petroleum & Natural Gas
New Delhi, the 21st February, 1986*

To

The Chief Executive of all



*Public Sector Undertakings
and Organisations.*

*Subject: Land Acquisition and Rehabilitation aspects
involved in major projects.*

Sir,

*I am directed to forward herewith a copy of Ministry
of Industry (Department of Public Enterprises) O.M.
No.15/13/84-(C) dated 3rd February, 1986 on the
above subject for compliance.*

*Sd/- (S. Kannappan)
For Under Secretary to
Government of India.*

Copy to: All Officers and Sections.

*Copy of
O.M. No.15/13/84-BPR(C)
dated 3rd February, 1986
received from
Ministry of Industry,
Department of Public Enterprises.*

Subject: As above

*Government have been seriously concerned about
the lack of uniformity in approach in regard to
acquisition of land for projects and alleviation of the
difficulties faced by the dispossessed persons. After
careful consideration of the matter in all its
implications, Government had decided as follows:*

2. Land Acquisition:

- (i) Where land acquisition becomes inevitable, the
selection of site should be done by a Committee*



consisting, among others, also of a representative of the Estate Government. After deciding the district in which the project is to be located, the Committee should indicate to the district administration the extent of land required, as also the basic infrastructural requirements, for suggesting various alternative sites in the district. The site suggested by the district administration may be inspected by the Committee before a final selection is made. While selecting the site every effort should be made to avoid acquisition of valuable agricultural land especially wet land, forest land or ecologically fragile lands. The acquisition of whole villages should also as avoided as far as possible. The primary aim should be the amount of disturbance to human habitations and their way of life. With a view to avoiding acquisition of land for in excess of the requirements, the project authorities in the detailed project report should clearly indicate the minimum quantum of land required for setting up the unit along with details justification, functional distribution etc. and such requirements should be supported with map duly authenticated by the State Governments and their willingness to acquire land for the purpose. The requirement of land for expansion in the foreseeable time horizontal should be taken into account, but at best such additional requirement could be only 25% of the land required in the initial project. The public investment Board, while considering the project, will examine the requirement of land and give its recommendations on the extent of land which it considers to be justified for the Project.



- (ii) *Many of the existing public undertaking have in their possession lands for in excess of their present requirements and also possible expansion in the near future. A survey may be undertaken by the administrative Ministries Departments/ Undertakings to identify such surplus lands. This survey should be completed by Sept. 30, 1986 – After identification, the surplus land could be transferred for the appropriate use by Central Government Departments or for establishment of new public sector undertakings, or for location of ancillary units. Such land could even be considered for transfer to the State Governments for setting up small industrial units or Industrial Estates. In appropriate cases, the surplus land could be released for afforestation. Wherever feasible, construction of housing projects or worker should also be considered on surplus land. If small chunks of land are available, these could be utilised for promoting housing cooperatives of the employees of the public sector undertakings. The transfer of surplus land will, in all cases, have to be decided after taking into consideration the terms and conditions in the original deed of acquisition.*
- (iii) *Government considered it desirable to set up a joint management agency for the planning and provision of common services and amenities to public sector enterprises contiguously located especially for items like townships, water supply, medical and educational facilities etc. The feasibility of establishing services and facilities for the projects to be set up in the same area will be considered by the Department of Expenditure in consultation with the concerned ministries/departments and the Ministry*



of Environment and forest and placed before the Public Investment Board for decision.

- (iv) Before deciding on fresh acquisition of land, the concerned Industrial Infrastructure Development Corporations of the States should be consulted and the availability of acquired land with them ascertained. This will minimise the need for new acquisition with all its consequent problems.*

3. Compensation:

The land acquisition authorities should streamline the procedure for payment of compensation in the light of the provision of the recently amended Land Acquisition Act. It should be ensured that the compensation amount is disbursed to the real beneficiaries within a reasonable time. The Department of Rural Development will separately undertake case studies on the procedure being followed in regard to land acquisition, payment of compensation to affected persons, the time taken to complete the formalities etc. and suggest measures for further improvement in the system. It will be the responsibility of the concerned State Governments to remove any encroachments noticed on land notified under the Land Acquisition Act.

4. Rehabilitation:

- (i) Each Land Acquisition Unit will have small Rehabilitation Cell. This Cell will identify the persons who are to be treated as dispossessed persons following the acquisition of land and forward a list of all such persons to the project authorities. The cost of running this cell will be met by the project authorities, for a limited period (say 2 or 3 years) as*



may be agreed to between the Project Authorities and the State Government.

- (ii) **Rehabilitation assistance will be limited to those whose land or homesteads are acquired provided they are themselves cultivating those lands or residing in the homesteads. Absentee landlords will not be entitled to any rehabilitation assistance.**
- (iii) *Persons whose land holdings have been completely acquired will be given priority in rehabilitation assistance as compared to others whose land has been duly partially acquired. Where homesteads have been acquired, alternative house site should be provided to the displaced persons. These sites should be provided to the displaced persons. These sites should be provided with infrastructural amenities like roads, water supply, sanitation, educational and medical facilities etc. All expenditure thereon will be a charge on the project.*
- (iv) *The project authorities should be directed to examine the list of awardee families eligible for rehabilitation assistance received from the Rehabilitation Cell with reference to their educational attainments and arrange for imparting to them suitable education and training to equip them **to be considered for employment in the project, subject to availability vacancies.** Such education and training should be impart through the existing and available the training institutions of the State and the Central Government. The project authorities may meet the cost of training of the persons who are selected from among the evictee families. If suitable*



disciplined or faculties required for the needs of the public sector undertakings are not available with the existing training institutions, the Project authorities should undertake to fund and start such training courses which will equip candidates for employment in the public sector undertakings. Such training given at the cost of public sector undertakings should not be presumed to be a commitment for ultimate employment in the undertaking concerned. The main idea is to enable some members of the evictee family to qualify themselves for employment and compete for the same along with the other.

- (v) In the context of the urgent necessity of public sector enterprises operating at commercially viable levels and generating adequate internal resources, over meaning has to be guarded against. **Any understanding, formal or informal, in regard to offer of employment to one member of every dispossessed family in the project will stand withdrawn.** However, with a view to encouraging the dispossessed families taking to useful avocations like poultry farming, animal husbandry etc. the project authorities will assist the concerned State Governments in organising and financing such activities. The basic responsibility of initiating such scheme will be that of the State Governments.*
- (vi) The progress of rehabilitation of the dispossessed families will be monitored by the Rehabilitation Cells in the same manner as monitoring of the implementation of the project.*
- (vii) Where the dispossessed persons are tribals, the Ministry of Welfare and Ministry of Tribal*



Environment and Forests should also be associated with the preparation of their rehabilitation schemes.

(viii) The entire cost of rehabilitation covered in the preceding paragraphs should form part of the project cost. The amount which is required exclusively for rehabilitation purposes should form part of project and the financial calculations should take into account these costs while working out the economics of the project. If need be, the amount that is required for meeting the rehabilitation cost may be given by the Government either as grant or as equity depending upon the merits of each case.

5. The undersigned is directed to bring the foregoing decisions of Government which apply equally to public sector enterprises, departmental undertakings and directly executed works of the Central Government to the notice of all Ministers/ Departments of the Government of India and to request that suitable instructions may be issued to all the offices/enterprises under their control to give effect to these decision.

Sd/-

(T.S. Ratnam)

Adviser (Construction)”

2.4. The opposite party No.4, the Plant Manager *vide* Letter No. Indian/BLS/1/88 dated 09.05.1989 requested the Collector and District Magistrate, Balasore to sponsor the names of the land losers, so that steps would be taken for appointment of suitable person from each land loser's family in the LPG Bottling Plant. Pursuant to the



said Letter dated 09.05.1989, the Additional District Magistrate, Balasore *vide* Letter dated 19.05.1989 forwarded the list of names along with necessary particulars of the land losers. Nevertheless, the name of the petitioner, as nominee of his grandmother, was not sponsored.

2.5. The District Employment Officer, Balasore in Letter No.79(3) dated 09.01.1995 requested Smt. Suryamani Mohanty, whose land was acquired, “for submitting the name of one of her relations as nominee for appointment on rehabilitation scheme in the Indian Oil Corporation”. Said Suryamani Mohanty in pursuance of the letter dated 09.01.1995 of the District Employment Officer, Balasore furnished nomination in favour of her grandson (petitioner) and requested the opposite parties including the Collector, Balasore for his appointment under the Rehabilitation Assistance Scheme.

2.6. To ventilate his grievance, the petitioner approached this Court by way of filing writ petition, being O.J.C. No.2156 of 1995, that came to be disposed of with the following order on 09.09.1996:

“1. *Heard learned counsel for parties.*

2. *The grievance so far as present writ petition is concerned does not survive because the petitioner was unsuccessful at the interview at which on the basis of interim order dated, 6.4.1995 passed in*



Misc. Case No.2051 of 1995 he was allowed to appear. **It is stated that though several others who were not successful at the interview have been asked to appear at the interview scheduled to be held on 25.09.1996, petitioner has not been issued any call notice.**

3. **Mr. Sanjit Mohanty, learned counsel appearing for the Indian Oil Corporation Ltd., states that the Collector, Balasore had written to the Corporation for nomination in favour of the petitioner, which was done earlier, was not given effect to.**
4. *It is the case of petitioner that before action was taken by the Collector, Balasore and Letter dated 16.01.1995 was written to the District Employment Officer, Balasore he was not heard in the matter. **Unfortunately on the basis of a request made by Manjulata Mohanty, petitioner's nomination was not to be given effect to.***
5. *No counter affidavit has been filed by the Collector, Balasore. The Corporation may permit the petitioner to appear at the interview subject to determination of the question of eligibility of petitioner to be considered by the Collector, Balasore, within one month from today. Said exercise shall be undertaken after due notice to aforesaid Manjulata Mohanty while considering the question of petitioner's eligibility. **The result so far as interview is concerned shall not be published for one month, i.e., till the Collector intimates the Corporation about the question of eligibility of petitioner.***



The writ application is disposed of accordingly.

Copies of our order be handed over to learned counsel for State and the Corporation for ensuing compliance.

Urgent certified copy of the order on proper application be granted by tomorrow.”

- 2.7. The Collector, Balasore vide Letter No.4/LA, dated 03.01.1997 intimated the Managing Director of the Indian Oil Corporation Limited, Kolkata that:

*“In pursuance of the direction issued by the Hon’ble High Court of Orissa vide Orders passed on 09.09.1996 in O.J.C. No.2156 of 1995, Sri Pratap Chandra Mohanty, the petitioner in the above O.J.C. as well as Smt. Manjulata Mohanty are eligible land loser’s candidates for employment in Indian Oil Corporation Limited **subject to other prescribed conditions for the job**”.*

- 2.8. The opposite party No.3 vide Letter dated 18.09.1996 called upon the petitioner for personal interview on 27.09.1996; relevant portion of the said Letter is reproduced hereunder:

“Sub.: Recruitment for the post of Junior Operator (F); Scale Rs.2234-3504/-

Your name has been sponsored for employment from Employment Exchange for the post of Junior Operator (Field) in this Corporation in the grade of Rs.2,234/- — Rs.3,504/-.

The eligibility norms laid down for the above post are as follows:



Qualification : SSC (X Std.)
Age : 40 years as on 30.04.1996
Experience : Minimum 2 years experience
as Khalasi

If you are fulfilling the above requirements, please call on us at the above address on 27.09.1996 at 10.00 a.m. for test/personal interview. If you do not fulfil any of the above norms, you will not be permitted to attend the test/interview and you may ignore this call letter.

When you come for the test/interview, you should bring with you the original certificates/testimonials in support of your qualification, age, experience together with photocopy of the certificates, testimonials and the enclosed declaration form duly filled and signed by you. You are required to affix one photograph in the space provided on the declaration form.

In case you are employed in a Government Department, Quasi Government or in Public Undertaking, you should bring a certificate issued by your employer giving their no objection to consider you for employment in this Corporation.

Please note that you will not be allowed to appear for the test/interview if you do not bring:-

- (a) Any of the documents mentioned above at the time of test/interview.*
- (b) No objection certificate in case you are employed in Government Department, Quasi Government or Public Undertakings.*



Please also note that you will not be paid Rail/Bus fare in connection with this test/interview.

No request for change in the date of test/interview will be entertained. Please note that we are not in any way responsible nor do we take any liability towards any candidate who does not receive the call letter or other communication in the matter in time due to postal or any other such delays.

This letter is issued as per order passed by Hon'ble High Court, Orissa and other conditions shall also be governed by the above order of the Court.

*Yours truly,
for Indian Oil Corporation Limited
(M.D.)
Sd/-
Deputy General Manager (HR)"*

2.9. The petitioner, having qualified High School Certificate Examination, considering himself to have experience as 'Khalasi', in response to the call Letter dated 18.09.1996, faced the interview on 27.09.1996 which was conducted by the opposite party No.3. The interview being held on 27.09.1996, the Collector, Balasore *vide* Letter dated 03.01.1997 intimated the fact to the opposite party No.3, the result of the interview was not published by the opposite parties.

2.10. The opposite parties also conducted interview in the month of July, 1997 and prepared a panel list of six



other selected persons for their appointment in the LPG Bottling Plant, but name of the present petitioner did not find place either in the list of the persons selected for appointment or in the panel list prepared by the opposite parties for providing appointment in future. Out of the seventeen persons including the present petitioner were considered for appointment in the LPG Bottling Plant of the Indian Oil Corporation Limited, only four persons have been ignored and/or deprived of such appointment as three persons approached this Court earlier seeking direction for their appointment. The petitioner, Trilochan Das and Manjulata Mohanty had approached this Court earlier for direction to the opposite parties for their appointments in the Indian Oil Corporation limited and all these three persons along with one Sukanti Manjari Sethi have been ignored by the opposite parties in providing appointments.

2.11.As per the Rehabilitation Assistance Scheme and the agreement made between opposite party No.1 and the Collector and District Magistrate, Balasore at least one person from each of the land losers' families should be appointed in the LPG Bottling Plant, but the said principle has been given a go-bye. In certain cases, two to three persons belonging to one family have been given appointments, whereas even one person from the land loser's family has not been given appointment.



2.12. With the above factual narration, the writ petitioner sought for a direction to the opposite parties to provide employment in the LPG Bottling Plant of the Indian Oil Corporation Limited at Balasore or in the alternative at any other suitable place.

Response of the opposite party Nos.1 to 4:

3. Refuting the averments and the contentions set out in the writ petition and opposing grant of relief claimed by the petitioner, a counter affidavit dated 18.07.2014 has been filed by the opposite party Nos.1 to 4, wherein categorical stand has been spelt out as follows:

*“03. The petitioner in this writ petition has prayed for a direction for his appointment under the rehabilitation scheme in the LPG Bottling Plant at Balasore or at any other place. **The petitioner has no legally enforceable right to claim appointment.** The prayer being devoid of merit is liable to be dismissed.*

05. *That the averments in para 1 of the writ petition are matters of record and need no reply. However, it is stated that **there is no cause of action for this writ petition as the petitioner was not selected pursuant to interview dated 12.04.1995 and 27.09.1996.***

06. *That the averments made in para 2 of the writ petition are disputed and denied. No illegality or arbitrariness can be attributable to the opposite*



parties 1 to 3 in not giving appointment to the petitioner under the rehabilitation scheme in the LPG Bottling Plant at Balasore. **With regard to the order dated 09.09.1996 of this Hon'ble Court in OJC No.2156 of 1995, it is humbly stated that the Hon'ble Court's order has been duly complied.** He was issued a call letter pursuant to order of this Hon'ble Court as evident from Annexure-3 dated 18.09.1996. This was a one time measure which is over.

07. That the averments made in para 3 of the writ petition needs no reply. It is stated that Indian Oil Corporation is a Government Company within the meaning of Article 617 of the Companies Act. **But there is no cause of action for this writ petition as the petitioner had faced the interview and found unsuitable.**
08. That in reply to the averments made in para 4 of the writ petition it is stated that certain lands were acquired by the statutory authority for establishment of Liquefied Petroleum Gas Bottling Plant of Indian Oil Corporation at Balasore. **The land losers were given due compensation, deposited with the statutory authority.** The rest of the averments that Ac.0.075 dec. of the grandmother of the petitioner who lost her only agriculture land is matter of record, best known to State Authorities.
09. That the averments made in para 5 of the writ petition are **denied that Indian Oil Corporation entered into an agreement with the Collector and the District Magistrate, Balasore, in pursuance to the Circular of the Ministry of Petroleum & Natural Gas No.J/25011747/6-GEN**



dated 21.02.1986 that each land loser family or other nominee will be provided with a suitable job in the bottling plant of the opposite party No.1 as alleged. The petitioner is put to strict proof thereof. That Annexure-1 dated 21.02.1986 speaks for itself and needs no reply.

10. *That the averments made in para 6 of the writ petition are disputed and denied save and except what are matters on record. The relevant part of the Order dated 09.09.1996 under Annexure-2 is quoted hereunder:*

‘The grievance so far as present writ petition is concerned does not survive because the petitioner was unsuccessful at the interview at which on the basis of interim order dated 06.04.1995 passed in Misc. Case No.2051 of 1995 he was allowed to appear.’

It is stated that pursuant to order dated 09.09.1996 of this Hon’ble Court at Annexure-2, the petitioner was called for interview on 27.09.1996 as at Annexure-3.

11. *That the averments made in para 7 of the writ petition are disputed and denied. **The petitioner was issued with call letter dated 18.09.1996, the interview was conducted on 27.09.1996 by the Selection Committee duly constituted by the competent authority as per the policy of the Indian Oil Corporation and the petitioner was unsuccessful, hence not selected.** It is denied that in the interview only three questions are asked which the petitioner answered correctly. The Selection Committee found him unsuitable.*



12. In reply to para 8 of the writ petition it is stated that the Collector's Letter dated 03.01.1997 in no uncertain terms states:

'Sri Pratap Chandra Mohanty, the petitioner in the above O.J.C. as well as Smt. Manjulata Mohanty are eligible land loser's candidates for employment in Indian Oil Corporation Ltd. subject to other prescribed conditions for the job.'

13. That the averments made in para 9 of the writ petition are disputed and denied. It is denied that the petitioner being nominee was eligible for appointment and the result of the interview was not published as per the order of the Hon'ble Court. The petitioner called for interview on 27.09.1996 and was unsuccessful.

Copy of the intimation, Attendance at the interview and result sheet of the interview are filed herewith as Annexure-A/ 4 (Series).

The allegation the interview was held on July, 1997 and 7 persons were appointed, a panel of 6 other selected has been prepared is of no consequence **as he was unsuccessful in the interview dated 27.09.1996.**

It is submitted that the order of the Hon'ble High Court in OJC No.2156 of 1995 is clear and unambiguous. The order dated 09.09.1996 of this Hon'ble Court has been complied with and the petitioner was called for interview and was unsuccessful. The deponent states that the said 7 persons have not been impleaded as parties to give an effective reply.



14. That the averments made in para 10 of the writ petition need no reply save and except what are matter record. **It is humbly stated that the name sponsored by the Collector were called for the interview.**
15. That the allegations made in para 11 of the writ petition are denied. It is denied that out of 17 persons only 4 persons have been ignored and/or deprived of appointment as because out of aforesaid 4 persons, 3 persons approached the Hon'ble Court earlier seeking direction for their appointment as alleged. **The deponent states that the petitioner had appeared for the test/interview on 27.09.1996 and he was not found suitable by the selection Committee.**

It is vehemently denied that persons/candidates who have been able to give illegal gratifications have been considered eligible for appointed. It is also denied that the petitioner was not considered for any appointment since he failed to give the illegal gratification.

16. That the statement made in para 12 of the writ petition are disputed and denied. **It is denied that any agreement was entered between the opposite party No.1 and the Collector and District Magistrate, Balasore, that at least one person from each land loser's family would be appointed in the LPG Bottling Plant.** It is submitted that IOC has adhered to the list as given by the Collector for the purpose of conducting interviews and appointment. The allegation of financial gain is stoutly denied.



17. *That the statement/allegations in para 13 of the writ petition are denied. It is denied that the petitioner has been ignored and/or deprived of getting any appointment because he approached Hon'ble High Court earlier and further could not satisfy the appointing authorities by giving illegal gratification. The petitioner is put to strict proof of the wild allegation.*
18. ***
19. *That the statement in para 15 of the writ petition are denied. It is strongly denied that the petitioner has been deprived of getting such appointment because he approached the Hon'ble Court earlier and further could not satisfy in giving the illegal gratification.*
20. ***
21. *That the prayer for appointment in LPG Bottling Plant being devoid of any merit is liable to be dismissed. **At the cost of repetition it is stated that the petitioner was called for the interview twice on 12.04.1995 and 27.09.1996, his candidature was considered and rejected. Hence no relief is available to be granted after 17 years. The Rehabilitation Assistance is a one time measure which has been over since long. Moreover, petitioner was unsuccessful in the interview.***

Reply of the petitioner to such counter affidavit:

4. A rejoinder affidavit have been sworn to by Pratap Chandra Mohanty (petitioner) on 08.02.2024 disclosing his age to be "about 49 years" (though in the year 1997



he stated to be at the age of about 25 years) has come to be filed with the following assertions:

- “4. That with regard to the averments made in paragraph-6 of the counter affidavit, it is a fact that the petitioner had earlier filed OJC No.2156 of 1995, which was disposed of by this Hon’ble Court on 09.09.1996 vide Annexure-2.
5. That with regard to the averments made in paragraph-7 of the counter affidavit, it is humbly stated that it is false to allege that there is no cause of action for the petitioner to file the present writ petition. **There is no provision for conducting an interview and awarding of any mark.** Further, if any interview is conducted and the petitioner is found unsuitable, as per the scheme under Annexure-1, **the petitioner would have been given adequate training to make him equipped to get the job.**
6. **That with regard to the averments made in paragraph-8 of the counter affidavit, it is humbly stated that Ac.0.075 decimals of land has been acquired, which was recorded in the Record-of-Right in the name of the grandfather and granduncles of the petitioner. Further, some other lands, which were purchased by the grandfather of the petitioner, have also been acquired.** For kind perusal of this Hon’ble Court, a true copy of the Record-of-Right of Khata No.93 of Mouza: Bamapada recorded in the name of Jagannath Mohanty, the grandfather of the present petitioner along with others which is acquired is annexed herewith as Annexure-6 and the voter



identity card of the father of the present petitioner to show that his father-Sadhu Charan Mohanty is the son of Jagannath Mohanty, one of the recorded tenant of Khata No.93 is annexed herewith as Annexure-7.

8. *That with regard to the averments made in paragraphs-11 and 13 of the counter affidavit, it is humbly stated that though the petitioner was called upon for the interview and in the interview, he was only asked his name, the name of the local MLA and MP which he correctly answered, but he has been shown unsuccessful in the interview.*

It is humbly stated that as per the scheme, if one is found unsuitable for the post, he has to be given adequate training to make him equipped for the same.

9. *That the averments made in paragraphs-10 and 12 of the counter affidavit are matter of record and hence need no reply.*
10. *That with regard to the averments made in paragraph-15 of the counter affidavit, it is humbly stated that ineligible persons, who are not the real nominee of the land loser, being not related to by blood, has been given appointment. Further, from one family more than one person have also been given appointment. It is humbly stated that on the direction of this Hon'ble Court in connected W.P.(C) No.12832 of 2008¹, CBI enquiry was conducted with*

¹ Relates to Sri Trilochan Das Vrs. Indian Oil Corporation Limited and others, W.P.(C) No.12832 of 2008. The Indian Oil Corporation approached Division Bench of this Court in writ appeal, being W.A. No.112 of 2016 (*Indian Oil*



regard to the irregularities and illegalities in giving appointment to the land loser's family. The CBI after due enquiry has submitted its report clearly indicating how illegality and irregularity have been made while giving appointment. For kind perusal of the Hon'ble Court a true copy of the enquiry report submitted by the CBI in W.P.(C) No.12832 of 2008 and which has been handed over to the counsel for the petitioner in that case as per the direction of this Hon'ble Court is annexed herewith as Annexure-8.

11. That the other averments are not correct and those are denied specifically. It is humbly stated that the petitioner has approached this Hon'ble Court in right time, but the delay is caused because the case was

Corporation Limited Vrs. Trilochan Das and others), challenging Order dated 10.12.2015 of the learned Single Judge passed in said writ petition directing the CBI to conduct enquiry whether any illegality or irregularity has been committed in giving compassionate appointment *de hors* the Rehabilitation Assistance Scheme. Having taken cognizance of the CBI Report dated 21.12.2017 furnished by the Deputy Superintendent of Police, CBI, ACB, Bhubaneswar, disposed of the said writ appeal with the following Order on 28.11.2022:

- "1. The report dated 21st December, 2017 of the Central Bureau of Investigation (CBI) which was placed in a sealed cover before this Court has been perused. The operative portion of the said report, which is in Para-5.9 reads as under:
'5.9. That, no quid-pro-quo, financial transactions etc. between the said seven ineligible candidates and IOCL Officials or State Government Officials surfaced during the enquiry. Though these seven ineligible candidates, who are not the direct descendants of land losers, were duly nominated by the land losers and later on they were appointed by IOCL contrary to the applicable rules and guidelines of IOCL/Government of India.'
2. In view of the above conclusion of the CBI, the directions issued by the learned Single Judge in the impugned order have worked themselves out. Accordingly, without expressing any view on the appropriateness of the directions issued by the learned Single Judge which were questioned in the present appeal and without any expression of any view by the Court on merits, the present writ appeal is disposed of. The interim order passed earlier stands vacated.
3. A copy of the said report of the CBI be furnished by the Registry both to learned counsel appearing for the Appellants as well as counsel for Respondent No.1. Thereafter the report be again placed in a sealed cover and kept with the Registrar (Judicial)."



not listed, for which the petitioner was never negligent.”

Hearing:

5. This matter came up for hearing quite number of occasions, but the matter being adjourned on one pretext or the other, was finally taken up for hearing on 20.03.2026 and this Court heard arguments advanced by the counsel for the respective parties.

5.1. While the matter was kept reserved for preparation of Judgment, written note of submission dated 30.03.2026 prepared by the learned Advocate for the petitioner has been filed with the endorsement of the learned Advocate for the opposite party Nos.1 to 4 acknowledging receipt of a copy thereof on 06.04.2026.

5.2. As the written note of submission of the petitioner came to be filed after the matter was kept reserved for preparation and pronouncement of Judgment, while dictating this Judgment, it was felt necessary for bringing the matter for further hearing and/or ascertaining from the counsel for the opposite parties if they wished to add anything more.

5.3. The matter being listed on 22.05.2026, upon further hearing from the counsels, the written note of submission has been taken on record.

5.4. The matter stood reserved for preparation of Judgment.



Consideration of submissions of counsel for the respective parties and analysis thereof with respect to CBI Report submitted in the case of Indian Oil Corporation Limited Vrs. Trilochan Das, W.A. No.112 of 2016, disposed of on 28.11.2022:

6. It is submitted by Sri Banshidhar Baug, learned Senior Advocate assisted by Sri Gyanaranjan Sahoo, learned Advocate that irregularities and illegalities emanating from CBI Report dated 21.12.2017 would clinch the issue of depriving the petitioner of employment in the Indian Oil Corporation Limited. It is strenuously urged that seven persons, not being direct descendants of land losers, were given employment/appointment and in the case of *Trilochan Das Vrs. Indian Oil Corporation Limited*, W.P.(C) No.12832 of 2008, direction was issued by learned Single Judge *vide* Order dated 10.12.2015 for conducting enquiry by CBI. Assailing the same the opposite party Nos.1 to 4 approached the Division Bench in the Writ Appeal bearing No.112 of 2016, which came to be disposed of on 28.11.2022. It is admitted in the written note of submission filed by the petitioner that:

*“In pursuance of the direction of this Hon’ble Court dated 06.02.2026 passed in another writ petition, i.e., W.P.(C) No.12832 of 2008 vide Annexure-8 to 34 of the rejoinder affidavit, the CBI has submitted its report in detail disclosing the irregularities and illegalities committed by the opposite parties in giving appointment under the rehabilitation scheme. **The said CBI report has not***



been entertained by the Division Bench of this Hon'ble Court in Writ Appeal No.112 of 2016.

The CBI in its report (Annexure-8 to the rejoinder affidavit) from paragraph 4.10.3 to last has in detail discussed the illegalities committed by the IOCL, the opposite parties in giving appointment to really land losers family."

- 6.1. Careful perusal of the Report of CBI as enclosed with rejoinder affidavit reveals that the same does not relate to the present petitioner. The enquiry does not suggest illegality/irregularity or otherwise pertaining to interview conducted pursuant to Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 on 27.09.1996 *qua* the present petitioner and Smt. Manjulata Mohanty. Therefore, relying on the CBI Report submitted in the context of *Trilochan Das Vrs. Indian Oil Corporation Limited, W.P.(C) No.12832 of 2008* has no bearing to the fact-situation of the present case. The insistence of the learned Senior Counsel for consideration of such CBI Report submitted in the case of *Trilochan Das (supra, which is still sub judice)* is misconceived more particularly so when in the said case the Division Bench of this Court while disposing of the writ appeal directed *"the report be again placed in a sealed cover and kept with the Registrar (Judicial)"*. It is un-understandable as to how the petitioner laid his hands on such Report which is yet kept in sealed cover for consideration by the learned Single Judge in W.P.(C) No.12832 of 2008 and



could assert facts to broaden the horizon of the present writ petition. Whereas the Report of CBI relating to certain other persons in connection with direction of the learned Single Judge in the writ petition filed at the behest of *Trilochan Das (supra)* having been perused by the learned Division Bench, while disposing of the writ appeal against interim order directing the CBI to enquire into the matter *qua* seven appointees, who were alleged to be not direct descendants of the land losers, directed to be placed in sealed cover, it is strange and queer that this petitioner could enclose copy of such Report of the CBI with the rejoinder affidavit by affirming that “*the facts stated above are true to the best of my knowledge*”.

- 6.2. At paragraph 10 the rejoinder affidavit filed by the petitioner on 08.02.2024 enclosing therewith the copy of said Report as Annexure-8 it is disclosed that “*a true copy of the enquiry report submitted by the enquiry report submitted by the CBI in W.P.(C) No.12832 of 2008*” “*has been handed over to the counsel for the petitioner in that case as per direction of this Hon’ble Court*”. It emerges on cursory glance at Order dated 28.11.2022 passed in W.A. No.112 of 2016 that the Division Bench directed furnishing a copy of said CBI Report to the counsel for the petitioner therein, namely, *Trilochan Das*. In the said writ appeal, the name of present petitioner, namely *Pratap Chandra Mohanty*, was not reflected in the array



of parties to the proceeding. A privileged communication could not have been utilised for the purpose of adjudicating a case relating to other person, who was not party to the proceeding. None of the persons who were provided with employed and alleged to be distant relations or not direct descendants of the land losers are impleaded as parties to the present proceeding. This Court further deprecates such affirmation as made by the petitioner, Pratap Chandra Mohanty, in the instant case by way of rejoinder affidavit. The persistent request of Sri Banshidhar Baug, learned Senior Counsel to utilise the said Report of CBI to the detriment of these persons, being untested material, is repelled.

6.3. Another facet of argument canvassed by the learned Senior Advocate proceeded to suggest that there was illegality or irregularity in conduct of the interview by the Selection Committee. The petitioner did not choose to implead the appointees or the authorities against whom he alleges illegality or irregularity in conducting the interview.

6.4. In *Ajay Mishra Vrs. Director General of Ordinance Service M.G.O. Branch (O.S.-8-C) Army Head Quarter, D.H.Q., 2006 (1) Indian Law Reporter Allahabad Series 1 (All)* it has been observed as follows:

“11. It is a settled law where a mala fide is alleged, the authority, who has passed the order, which is said



to be the result of the mala fide exercise of power, has to be impleaded eo nomine. In the absence of such impleadment, the Court neither can look into the plea of mala fide nor can consider the issue raising mala fide.

12. *In State of Bihar Vs. P.P. Sharma, 1992 Supp (1) SCC 222 in para 55 of the judgment, the Apex Court held as under:*

'It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.

13. *In AIR 1996 Supreme Court 326, J.N. Banavalikar Vs. Municipal Corporation of Delhi, in para 21 of the judgment, it has been held as under:*

*'Further in the absence of impleadment of the *** the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.'*

14. *In JT 1996 (8) SC 550, A.I.S.B. Officers Federation and others Vs. Union of India and others, in para 23, the Hon'ble Apex Court has said where a person, who has passed the order and against whom the*



plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court relevant are reproduced as under:

‘The person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit.’

Recently in AIR 2003 Supreme Court 1344, Federation of Railway Officers Association Vs. Union of India it has been held as under:

‘That allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.’
***”

6.5. A Division Bench of this Court in *Jagdamba Polymers Pvt. Ltd. Vrs. State of Odisha*, W.P.(C) No.10555 of 2008, *vide Judgment dated 17.09.2008* held,

“11. There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable



material. (Vide State of U.P. Vrs. Dr. V.N. Prasad, 1995 Suppl (2) SCC 151; Arvind Dattatraya Dhande Vrs. State of Maharashtra, (1997) 6 SCC 169; Utkal University Vrs. Dr. Nrusingha Charan Sarangi, (1999) 2 SCC 193; Kiran Gupta Vrs. State of U.P., (2000) 7 SCC 719; and Netai Bag Vrs. State of W.B., (2000) 8 SCC 262).

13. *In First Land Acquisition Collector Vrs. Nirodhi Prakash Gangoli, (2002) 4 SCC 160; and Jasvinder Singh Vrs. State of J&K, (2003) 2 SCC 132, the Apex Court held that burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under the legal obligation to place specific materials before the Court to substantiate the said allegations.*
14. *More so, it is settled legal proposition that in case allegations of mala fide are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered. (Vide State of Bihar Vrs. P.P. Sharma, I.A.S. Of Delhi, AIR 1996 SC 326; All India State Bank Officers' Federation Vrs. Union of India, (1997) 9 SCC 151; and I.K. Mishra Vrs. Union of India, (1997) 6 SCC 228.)*
15. *In Federation of Rly. Officers' Association Vrs. Union of India, AIR 2003 SC 1344, the Apex Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and his absence such allegations cannot be taken into consideration."*



6.6. In the above context see also *Madhuchhanda Sahoo Vrs. Odisha State Health and Family Welfare Society, Government of Odisha*, 2024 ILR-CUT ONLINE 218; *Ramesh Chandra Behera Vrs. Union of India*, 2023 SCC OnLine Ori 6499.

In the present case, the plea has been raised that unfair treatment has been meted out to the petitioner whereas certain persons, being distant relations or not direct descendants of land losers, have been given employments under the Rehabilitation Assistance Scheme. Such a plea in view of the aforesaid discussions with case laws cannot be examined inasmuch as the petitioner consciously ignored to implead the necessary and proper party. The allegation of *mala fide*, if any, has been raised without giving the details or relevant material. It could also not be substantiated by furnishing the relevant documents. In the absence of any such material such plea cannot be looked into and has to be rejected.

6.7. It is manifest from Order dated 28.11.2022 of the Division Bench passed in W.A. No.112 of 2016 that cognizance of following fact, as unravelled in the said Report of CBI, has been taken:

“That, no quid-pro-quo, financial transactions etc. between the said seven ineligible candidates and IOCL Officials or State Government Officials



surfaced during the enquiry. Though these seven ineligible candidates, who are not the direct descendants of land losers, were duly nominated by the land losers and later on they were appointed by IOCL contrary to the applicable rules and guidelines of IOCL/Government of India.”

6.8. In the above view of the matter, it is, thus, prominent that this case is confined to directions contained in the Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995. Be that be, as the CBI Report as would reveal from Order dated 28.11.2022 passed in W.A. No.112 of 2016 makes it unequivocal that there was “*no quid pro quo, financial transactions etc. between the said seven ineligible candidates and IOCL Officials or State Government Officials surfaced during the enquiry*”.

6.9. Under the above premise it is unsafe to accept the contention of the learned Senior Advocate and proceed to conduct fishing and roving enquiry by considering such CBI Report, which is still in sealed cover tagged to W.P.(C) No.12832 of 2008, filed at the behest of *Trilochan Das*, for considering the factual merit of the present petitioner, who was not found suitable for the post of “Junior Operator (Field)”. Hence, the argument advanced by Sri Banshidhar Baug, learned Senior Advocate on this point is repulsed.

Consideration of other submissions of counsel for the respective parties and analysis thereof vis-a-vis grounds



with reference to written note of submission dated 30.03.2026:

7. Sri Banshidhar Baug, learned Senior Advocate would submit that the Circular in Letter dated 03.02.1986 issued by the Ministry of Industry, Department of Public Enterprise as adopted by the Government of India in the Ministry of Petroleum and Natural Gas *vide* Annexure-1, under the Heading “Rehabilitation” in Clause 4 at sub-clause (ii) lays down that “Rehabilitation Assistance will be limited to those, whose land or homesteads are acquired provided they are themselves cultivating those lands or residing in the homesteads”. Sub-clause (iii) thereof states that “persons whose land holding have been completely acquired will be given priority in rehabilitation assistance as compared to others whose land has been only partially acquired”. Sub-clause (iv) of Clause 4 envisages that the Project Authorities will examine the list of awardee families eligible for availing benefit under the Rehabilitation Assistance Scheme received from the Rehabilitation Cell with reference to their educational attainments and making arrangement for imparting them suitable education and training to equip them to be considered for employment in the Project, subject to availability of the vacancies. Such training would be imparted through the existing and available training institutes of the State and the Central Government” at the cost of the Project Authorities.



- 7.1. It is vehemently contended by the learned Senior Counsel that it is only direct descendants of family members who were qualified to be enlisted/empanelled for appointment. The descendants like son(s) and in absence of whom, son's son and a child legally adopted, would be eligible for enlistment. In the present case, the name of the present petitioner and his grandmother was intimated by the District Collector. The Rehabilitation Cell was to identify one member from each land loser's family and such identified person was advised to get his name registered at the concerned Employment Exchange. The person who was identified was to be provided with training as considered necessary to equip him for the job against which he could be considered for employment.
- 7.2. It is stated that in the present case, the terms of guidelines have been given a go-bye by the opposite parties. The reservation policy was not followed at all. It is asserted that more than one person has been given appointment from one land loser's family and the person not directly related to the land loser's family has been given appointment.
- 7.3. To buttress his argument that person who is either no direct relation or distant relation of the land loser has been given employment as nominees, Sri Banshidhar Baug, learned Senior Advocate stemmed on an Inter-



Office Memo being No.DP/4/10/38, dated 23.04.1987 issued by the Indian Oil Corporation Limited (copy of which is available at the objection-affidavit dated 03.03.2023 filed by the opposite party Nos.1 to 4 on 23.03.2023) and would submit that the subject of land acquisition and rehabilitation aspect has not been appropriately considered by the authorities concerned. Said Inter-Office communication reads as follows:

“Sub.: Preference in employment to those whose land has been acquired.

Government have, from time to time, issued various instructions on the above subject. Reviewing the previous instructions, Ministry of Industry, Bureau of Public Enterprises vide their OM No.15/13/84-BPE (WC) dated 3rd February 1986 (copy of which is already with the Division) had issued fresh instructions on the subject of land acquisition and rehabilitation aspects involved in major projects and conveyed, among other things, the following:

‘In the context of the urgent necessity of public sector enterprises operating at commercially viable levels and generating adequate internal resources, over-manning has to be guarded against. Any understanding, formal or informal, in regard to offer of employment to one member of every dispossessed family in the project will stand withdrawn.’

In view of differing interpretations taken regarding the true intent and purpose of Government clarifications, it has been considered expedient to spell out afresh as to what should be the policy of



the Corporation with regard to those whose land is acquired for a project. The Divisions had offered comments in the matter, based upon which and in supersession of all previous instructions on the above subject, it is commended that the procedure as given below be followed in future:

- (1) Project Recruitment Cell should associate itself with the District Administration of the State concerned whose responsibility is to list out under their signature the land-losers and their family members along with particulars relating to relationship, age and qualifications. Only those family members would qualify to be listed who are the direct descendents (son/s, in the absence of whom son/s'/son/s) and a child already legally adopted will be eligible for enlistment.*

Note: There is no bar to an unmarried daughter being listed.

- (2) Project Recruitment Cell shall identify one member from each land-loser family who in view of his educational background and age, and with training inputs, could be considered for employment as per laid-down job specifications. Such identified persons may be advised to get their names registered at the concerned local employment exchange.*
- (3) Once the process of identification has been completed and the list of persons finalised, no further addition shall be made in the list for any reason whatsoever.*



- (4) *The person so identified be provided training as considered necessary to equip him for the job against which he could be considered for employment. (In this connection, the actual land loser be required to swear an affidavit about the identification of the candidate identified for training and subsequent possible employment depending upon the availability of vacancies and the suitability of the candidates for the same.)*

For the purpose of training of the identified persons, Training Department may organise suitable training programmes preferably through the existing and available training institutions of the State/Central Government.

- (5) *The training as above shall not be presumed to be a commitment for ultimate employment. The main idea of the training is to enable the identified members of the evicted families to qualify themselves for employment and compete for the same along with the others, against regular vacancies. Identified persons as mentioned above will have to fulfil the requirements of the post relating to qualification, age, etc., since it is not the intention to dilute the prescribed requirements.*
- (6) *In accordance with the prescribed Recruitment Procedure, vacancies as and when arising, shall be notified to the concerned employment exchange with the request to sponsor the land-loser candidates along with others. While considering the list sponsored by the employment exchange, those identified persons*



from amongst the land losers as mentioned above will be considered and, all things being equal, preferences shall be given to them. Out of the identified and trained land losers sponsored by employment exchange and found suitable by applying above yardsticks, those who land holdings have been fully acquired shall be given preference in employment vis-a-vis those who land has only been partially acquired for the project.

- (7) If necessary, the State Government concerned be approached so that the employment exchange sponsors the identified land losers as on its live register and the requirement of the Corporation's recruitment procedure regarding compulsory notification to employment exchange, is also fulfilled.*
- (8) Since the identified land losers are to be given suitable training for employment, it may not be necessary to insist on the laid down requirements relating to practical experience for the post against which such identified persons are considered. This relaxation in the matter of practical experience shall be applicable only to the trained identified candidates amongst the land losers.*
- (9) Other procedure for the recruitment shall continue to be followed including the reservations for Scheduled Castes and Scheduled Tribes, Ex-servicemen and Physically Handicapped.*



(M.R. Gera)
Senior Personnel Manager

7.4. It is vociferously submitted by the learned Senior Counsel that success or otherwise in the interview pales into insignificance inasmuch as the opposite parties having not disputed or denied the nomination of the petitioner as one of the family members being grandson of land loser, steps should have been taken to offer training to equip him to be considered for employment in the Project.

8. Sri Sailesh Chandra Samantaray, learned Advocate representing the opposite party Nos.1 to 4 in his reply arguments emphatically placed that the direction contained in Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 having been complied with, and the petitioner being found not qualified for the post of “Junior Operator (Field)” no flaw can be attributed to the opposite parties. Referring to documents at Annexure-A/4 enclosed with the counter affidavit he submitted that Pratap Chandra Mohanty (petitioner) being noticed, attended the interview for the post of “Junior Operator (Field)” along with Smt. Manjulata Mohanty on 27.09.1996. The Selection Committee having analysed “Job Knowledge”, “Expression”, “General Intelligence” and “Personality”, found the petitioner secured 6, 3, 4 and 3 marks respectively (*in toto* 16 marks), whereas



Smt. Manjulata Mohanty could secure 9 marks *in toto*. The result sheet of interview for the post of Junior Operator (Field) conducted on 25-26-27/09/1996 by the Selection Committee comprised of MGRS OPS, Dy. Manager (P)/ ER and Dy. Manager (WEL)/ER revealed that:

“1. Total number of candidates nominated by Employment Exchange	:	138
2. Interview letter issued	:	138
3. Appeared for interview	:	130
4. Qualified	:	40
5. Disqualified in test	:	90”

The result of the petitioner and Smt. Manjulata Mohanty declared on 30.09.1996 specified as follows:

“These two candidates have been listed separately as they have gone to Court, in the capacity of land losers. They have not been found suitable.”

- 8.1. Sri Sailesh Chandra Samantaray, learned Advocate representing the Indian Oil Corporation Limited, would urge that this Court in the case of *Indian Oil Corporation Vrs. Trilochan Das*, W.A. No.112 of 2016, *vide* Order dated 28.11.2022 took note of Report of CBI prepared pursuant to Order dated 10.12.2015 of the learned Single Judge in *Trilochan Das Vrs. Indian Oil Corporation Limited*, W.P.(C) No.12832 of 2008 to the effect that there was no financial irregularity nor was there *quid pro quo* in selecting the candidates for employment under the



Rehabilitation Assistance Scheme *qua* land acquisition. He strenuously argued that the said report is not relevant for the purpose of deciding the disputed fact emanating from the instant claim of the petitioner inasmuch as said Report is confined to enquiry being conducted on the allegation in *Trilochan Das (supra)*.

8.2. Stress being laid he thus submitted that having accepted the direction *vide* Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 filed at the behest of the present petitioner himself, he participated in the interview along with Smt. Manjulata Mohanty. After such participation both of them could not secure qualifying marks and consequently both the candidates were found “not suitable” for the post of “Junior Operator (Field)”. By expanding his argument he would submit that had the petitioner qualified in the interview which is general in nature, for undertaking the technical job, the authorities could have proceeded to impart training in terms of Clause 4 of the Office Memorandum dated 03.02.1986.

8.3. It is hence submitted by Sri Sailesh Chandra Samantaray, learned Advocate that the writ petition being misconceived and the interview being conducted to comply with the order of this Court in earlier round of litigation, the allegations and averments of the petitioner are liable to be dispelled.



9. Such contentions and arguments being canvassed before this Court, it is to be examined whether the petitioner is entitled to appointment in the LPG Bottling Plant, Balasore or any other suitable place as prayed for in the writ petition.

9.1. The writ petitioner has set forth in paragraph 7 of the writ application that he passed High School Certificate Examination and had the experience of *Khalasi*. This Court in Division Bench *vide* Order dated 09.09.1996 observed that the petitioner had not been issued any call notice for the interview and directed in O.J.C. No.2156 of 1995 that the Indian Oil Corporation Limited would “*permit the petitioner to appear at the interview subject to determination of the question of eligibility of petitioner to be considered by the Collector, Balasore, within one month from today*”. Record would reveal that in obedience to such order, the Collector in Letter dated 03.01.1997 sponsored the names of the petitioner as well as Smt. Manjulata Mohanty “eligible land loser’s candidates for employment in Indian Oil Corporation Limited subject to other prescribed conditions for the job” (Annexure-4). The petitioner was called for interview and he faced the interview on 27.09.1996 for the post of “Junior Operator (Field)” and having secured 16 marks, which is much below the qualifying marks, the Selection Committee found him not suitable for the said post.



Since the petitioner could not even secure qualifying marks in the interview, there was no scope for imparting training for the post, *i.e.*, “Junior Operator (Field)”.

9.2. As the petitioner accepting the Order dated 09.09.1996 in O.J.C. No.2156 of 1995 participated in the interview and after result being declared cannot turn round to contend that such procedure was not contemplated in the Office Memorandum dated 03.02.1986 issued by the Ministry of Industry, Department of Public Enterprise as adopted by the Government of India in Ministry of Petroleum and Natural Gas.

9.3. Minute excursion of guiding factors enshrined in said Office Memorandum would transpire that the entitlement for undergoing “training to equip”, as suggested by the petitioner, “to be considered for employment in the project” is “subject to availability of vacancies”. Nonetheless, the petitioner was found “not suitable” for the post of “Junior Operator (Field)” in the interview conducted by the Indian Oil Corporation Limited as per direction of this Court *vide* Order dated 09.09.1996 in O.J.C. No.2156 of 1995.

10. In the present case at paragraph 6 of the writ petition the petitioner has claimed to be “nominee of his grandmother” in the year 1997 and described grandmother as land loser; but in the rejoinder affidavit



filed in the year 2024 he stated that the land was recorded in the name of his grandfather. No clarification has been appended in this regard by the petitioner.

10.1. Learned Senior Counsel placed reliance on a decision of this Court rendered by a learned Single Judge in *Purusottam Padhiary Vrs. The Collector and District Magistrate, Balasore*, 124 (2017) CLT 23 = 2017 SCC OnLine Ori 313². It has been held in the said case by a learned Single Judge as follows:

*“13. Undisputedly, the land measuring Ac.0.14 decimals in plot.734 and Ac.0.13 decimals in plot no. 735 (in total Ac.0.27 decimals) had been acquired by the State Government under the Land Acquisition Act, 1894 for the purpose of establishing LPG Bottling Plant of IOCL at Chhanpur, Balasore. **The name of the petitioner, being a land oustee, was sponsored by opposite party No. 1, the Collector and District Magistrate, Balasore, but could not be given appointment though he was selected by the authority by following due procedure of selection.** Even though father of the petitioner received compensation for acquisition of his land, but on the basis of the discussion held between the authorities of the Government and the IOCL that one of the family members of the land oustee would get appointment at the Bottling Plant of IOCL has not been followed. As such, the genuine claim of the petitioner for compassionate*

² None of the counsel appearing for either party furnished the result in *General Manager, HR, Indian Oil Corporation Limited Vrs. Purusottam Padhiary, W.A. No.165 of 2017* wherein the decision of Single Judge was under challenge.



appointment has not been considered, but opposite party No. 7 has been given appointment. Nothing has been brought on record to show why the petitioner was deprived of getting such appointment, to which he is otherwise entitled to, at par with counterpart land oustee for establishment of Bottling Plant by IOCL.

17. ***Since the petitioner's name was found place in the select list of giving compassionate appointment as a land loser and similarly situated persons having been provided with employment, the petitioner has been deprived of, it clearly violates Article 14 of the Constitution of India.*** *In that view of the matter, this Court is of the considered view that opposite party no. 3 should reconsider the matter for giving compassionate appointment to the petitioner as a land oustee in view of recommendation made by the District Magistrate-cum-Collector, Balasore and Director, Employment, Orissa pursuant to which selection was made and the petitioner's name found place in the list prepared by the IOCL, in any vacancy available befitting his qualification at par with his counterparts as expeditiously as possible, preferably within a period of three months from the date of communication of this order."*

10.2. The fact scenario in the present case is different and distinct. In the present case the Selection Committee in pursuance of Order dated 09.09.1996 in O.J.C. No.2156 of 1995 filed at the behest of the instant petitioner in the interview conducted found him "not suitable" for the post of "Junior Operator (Field)". Therefore, his name



being not in the select list in contrast to the cited case by the learned Senior Counsel referred to above, the petitioner cannot claim parity with the case of *Purusottam Padhiary (supra)*.

10.3. The principle of application of precedents as propounded in *Union of India Vrs. Arulmozhi Iniarasu*, (2011) 7 SCC 397 may be quoted:

“Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid’s theorems nor as provisions of statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases.”

10.4. It is well settled that if some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law. Wrong decision, if at all, in favour of any employee appointed under the Rehabilitation Assistance Scheme does not entitle the petitioner herein to claim the benefit



on the basis of such wrong decision. In *Ekta Shakti Foundation Vrs. Government of NCT of Delhi*, (2006) 10 SCC 337, it has been held that:

“12. It was submitted that in some other cases, a departure has been made. No definite material has been placed in that regard. In any event,

‘Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the [similar] benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.’ [Secy., Jaipur Development Authority Vrs. Daulat Mal Jain, (1997) 1 SCC 35, p. 50, para 24.]

13. In Coromandel Fertilizers Ltd. Vrs. Union of India, 1984 Supp SCC 457 it was held in para 13 that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that the



authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

14. *'If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order [could not] be made the basis of issuing a writ compelling the respondent authority to repeat the illegality [to cause] another unwarranted order. The extraordinary and discretionary power of the High Court [under Article 226] cannot be exercised for such a purpose.'* [Chandigarh Admn. Vrs. Jagjit Singh, (1995) 1 SCC 745, p. 750, para 8.] (emphasis in original) (See Secy., Jaipur Development Authority Vrs. Daulat Mal Jain, (1997) 1 SCC 35, p. 50, para 24., SCC p. 51, para 27.)
15. *'30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in*



favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh Vrs. New Delhi Municipal Committee, (1996) 2 SCC 459 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p. 465, para 9)

‘Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.’

Again in Secy., Jaipur Development Authority Vrs. Daulat Mal Jain, (1997) 1 SCC 35, p. 50, para 24, this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

‘Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to



repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.'

31. *In State of Haryana Vrs. Ram Kumar Mann, (1997) 3 SCC 321 this Court observed:*

'The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision



by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.’ (See State of Bihar Vrs. Kameshwar Prasad Singh, (2000) 9 SCC 94, SCC pp. 111-13, paras 30-31.)”

10.5. As discernible distinction in factual position is perceived between the cited case and the instant case, this Court would wish to refer to a decision of the Hon’ble Supreme Court of India rendered in *Union of India Vrs. Kartick Chandra Mondal*, (2010) 2 SCC 422. Sri Sailesh Chandra Samantaray, learned Advocate for the opposite parties sought to state that even assuming the CBI reported irregularity in providing appointments to certain persons who were not direct descendants, the same being subject matter of consideration in the other case, being *Trilochan Das (supra)*; no parity can be drawn by the petitioner, who was found to be “not suitable” for the post of “Junior Operator (Field)”. Being conscious and with all senses he participated in the interview pursuant to order of this Court in earlier round of litigation set up by the petitioner himself. This Court finds force in such submission of the learned Counsel for the opposite parties. Foundation of such factual observation in the CBI Report is subject to confrontation with the appointed persons and depends upon due process of fact-finding. Report of CBI itself would not automatically take away the rights already vested, unless with



application of mind such contents of the CBI Report is tested after being afforded opportunity to the affected parties. The material collected behind the back of the persons cannot be utilised to their prejudice as doing so would lead to civil and/or evil consequences. It is also true that mere filing of Report before this Court in another's case cannot *ipso facto* unseat the appointees. However, this petitioner being not found suitable for the said post for which he appeared in the interview pursuant to the order of this Court in earlier round of litigation no relief can be granted.

10.6. It is pertinent to have reference to following enunciation of law contained in *Union of India Vrs. Kartick Chandra Mondal*, (2010) 2 SCC 422:

“Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court. However, we intend to refer to a latest decision of this Court on this point in State of Bihar Vrs. Upendra Narayan Singh, (2009) 5 SCC 65, the relevant portion of which is extracted herein below:

‘67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive



concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order. ...'

A reference in this regard may also be made to the earlier decisions of this Court. See also: (1) Faridabad CT Scan Centre Vrs. D.G. Health Services, (1997) 7 SCC 752; (2) South Eastern Coalfields Ltd. Vrs. State of M.P., (2003) 8 SCC 648; and (3) Maharaj Krishan Bhatt Vrs. State of J&K, (2008) 9 SCC 24]."

10.7. Strenuous arguments are advanced by the learned counsel that after participation in the interview by accepting the direction contained in the Order dated 09.09.1996 in its own case, being O.J.C. No.2156 of 1995, the petitioner cannot allege by way of rejoinder affidavit that "there is no provision for conducting an interview and awarding of any mark". To countenance such contention the relevant observation of the Hon'ble Supreme Court of India in *Madan Lal Vrs. State of J&K*, (1995) 3 SCC 486 be referred to:

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up



to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. **Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.** In the case of *Om Prakash Shukla Vrs. Akhilesh Kumar Shukla*, 1986 Supp SCC 285 = AIR 1986 SC 1043 it has been clearly laid down by a Bench of three learned Judges of this Court that **when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.**"

10.8. Glance at Letter dated 18.09.1996 issued by the Indian Oil Corporation Limited addressed to the petitioner (Annexure-3) makes it abundantly manifest that the petitioner was asked to appear before the Selection Committee on 27.09.1996 for "test/personal interview"



for the post of “Junior Operator (Field)” in case he fulfils the following requisite eligibility norms:

“Qualification : SSC (Xth Std.)
Age : 40 years as on 30.04.1996
Experience : Minimum 2 years experience as Khalasi”.

10.9. At paragraph 7 of the writ petition the petitioner asserted to have requisite qualification and without any demur appeared for the test/interview on 27.09.1996. Against this a reply in form of counter affidavit by the opposite party Nos.1 to 4 has come to be filed by candidly stating that “the petitioner was issued with call Letter dated 18.09.1996, the interview was conducted on 27.09.1996 by the Selection Committee duly constituted by the competent authority as per the policy of the Indian Oil Corporation and the petitioner was unsuccessful, hence not selected”.

10.10. In view of legal position as enunciated by the Hon’ble Supreme Court of India as culled out hitherto, it can safely be held that after participating in the test/interview without any objection along with others including Manjulata Mohanty, the petitioner is estopped from questioning that the interview should not have been conducted as there was no provision provided to conduct such test/interview under the Rehabilitation Assistance Scheme, particularly when such interview



was undertaken in compliance with the Order dated 09.09.1996 in O.J.C. No.2156 of 1995.

- 11.** A feeble attempt was made by Sri Banshidhar Baug, the learned Senior Counsel that the Collector, Balasore sponsored the name of the petitioner as “eligible land loser’s candidate for employment in Indian Oil Corporation Limited” *vide* Letter dated 03.01.1997, which confers right in the petitioner for the post of Junior Operator (Field). The fallacy in such argument as advanced by the petitioner can be couched in the fact situation of the matter that the Interview Call Letter dated 18.09.1996 issued by the Indian Oil Corporation Limited constricted the participation with an option “If you are fulfilling the above requirements, please call on us at the above address on 27.09.96 at 10.00 a.m. for test/personal interview. If you do not fulfil any of the above norms, you will not be permitted to attend the test/interview and you may ignore this call letter.” Despite such restrictive participation for the post of Junior Operator (Field), the petitioner appeared and could not achieve the qualifying marks. Even after finding the petitioner not suitable for the said post there was little scope for the petitioner to contend that to equip him, the Indian Oil Corporation Limited ought to have imparted training as per Clause 4 of the Office Memorandum dated 03.02.1986.



11.1. In this regard it is apt to say that it is the Selection Committee who is the competent authority to test whether a person is fit enough for a particular job description and the person to be employed does satisfy the requirement of the employer.

11.2. A Division Bench of this Court in the case of *Roshan Kumar Baral Vrs. State of Odisha, W.P.(C) No.1365 of 2022* vide Judgment dated 30.10.2024 enunciated unambiguously following proposition:

“16. In our considered view, the Supreme Court’s decision in case of Chief Manager, Punjab National Bank Vrs. Anit Kumar Das, (2020) 9 SCR 925 does not help the petitioners’ case wherein it has been held in no uncertain terms that it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. Adding, the Supreme Court held in case of Anit Kumar Das (supra) in paragraph 17.3 (7.3 of SCR) as under:

‘17.3. xxx. A greater latitude is permitted by the courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment as the case may be. The courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing



qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.'

17. *It is noteworthy that in case of Anit Kumar Das (supra), for appointment of peon in Punjab National Bank minimum qualification of 12th Class pass or its equivalent with basic reading/writing knowledge of English was prescribed. The advertisement further prescribed that a candidate should not be a graduate as on 01.01.2016. Suppressing the fact that the respondent in that case was a graduate, he had obtained appointment. Accordingly, though he was declared successful, later his candidature was cancelled and was not allowed to join the Bank. He filed a writ application before this Court, which was allowed by a learned Single Judge of this Court with a direction to allow the respondent to discharge his duties as a peon. A writ appeal was preferred against the decision of the learned Single Judge, which was dismissed. On a challenge made to the said orders of the learned Single Judge and Division Bench of this Court, the Supreme Court made the observations in Anit Kumar Das (supra) as noted*



above and set aside the decisions of this Court in the writ proceeding and the writ appeal.

19. *Further, the Supreme Court in case of Anit Kumar Das (supra) has referred to, with approval, the case of Zahoor Ahmad Rather Vrs. Imtiyaz Ahmad, (2018) 14 SCR 1082. The decision in case of Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596 relied on by the petitioners is clearly distinguishable. The decision in case of Jyoti K.K. (supra) arose from a case where the Kerala Public Service Commission had invited applications to the post of Sub-Engineers (Electrical) in Kerala State Electricity Board. ****

20. *It was in that background that the Supreme Court had held in case of Jyoti K. K. (supra) in paragraphs 7 and 8 as under:*

‘7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same



Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

8. *Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.'*
21. *The decision in case of Jyoti K. K. (supra) came to be considered subsequently by the Supreme Court in case of State of Punjab Vrs. Anita reported in (2015) 2 SCC 170. In that case, the applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years" course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. In case of Anita (supra), the Supreme Court held that none of the respondents of the case possessed the prescribed qualification and an MA, MSc or MCom could not be treated as a "higher qualification".*



Distinguishing the case of Jyoti K. K. (supra), in case of Anita (supra), the Supreme Court held in paragraph 15 as under:

‘15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596, permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder: (SCC p. 598, para 6)

‘6. Rule 10(a)(ii) reads as follows:

‘10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or Standing Orders of Government as equivalent to a qualification specified for a post in the Special Rules and [Ed.: The matter between two asterisks has been emphasised in original as well.]’



A perusal of the Rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorising the appointment of persons with higher qualifications.'

22. *In case of Zahoor Ahmad Rather (supra), the Supreme Court noticing the decisions rendered in Jyoti K.K. (supra) and Anita (supra), held in paragraph 26 as under:*

'26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596 in the subsequent decision in State of Punjab Vrs. Anita, (2015) 2 SCC 170. The decision in Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596 turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial



review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596 turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad Vrs. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather Vrs. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad Vrs. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.'

23. *Reiterating the power of the State as an employer in prescribing qualifications for the post, the Supreme Court in case of Zahoor Ahmad Rather (supra) held in paragraph 27 as under:*

'27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a



qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596 must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. Vrs. Kerala Public Service Commission, (2010) 15 SCC 596 turned.'

24. *In view of the law discussed by the Supreme Court in the aforesaid decisions, it can be easily deduced as under:*

- i. The State, as an employer, while prescribing qualifications for a post may legitimately bear in mind several features including—*
 - (a) the nature of the job,*
 - (b) the aptitudes requisite for the efficient discharge of duties,*



- (c) *the functionality of a qualification and (d) the content of the course of studies which leads up to the acquisition of a qualification;*
- ii. *Further, the State is entrusted with the authority to assess the needs of its public services;*
- iii. *The exigencies of administration fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure;*
- iv. *A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post as the qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment as the case may be;*
- v. *The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications.”*

11.3. At this juncture this Court may take note of the observations of the Hon’ble Supreme Court of India in the case of *Abhay Kumar Patel Vrs. State of Bihar, (2026) 2 SCR 62*:

“31. *The Constitution Bench of this Court in Tej Prakash Vrs. Rajasthan High Court, (2024) 12 SCR 28 gave a nod of approval to the principles as laid down in K. Manjusree Vrs. State of Andhra Pradesh, (2008) 2*



SCR 1025 = (2008) 3 SCC 512 and held that even if the relevant rules permit the competent authority to set benchmarks at different stages of a recruitment process, the same must be done at any time before the relevant stage is reached.

‘52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

53. The decision in K. Manjusree Vrs. State of A.P., (2008) 3 SCC 512 does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate



expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.'

32. *The Constitution Bench in Tej Prakash Pathak (Supra) concluded and answered the reference as follows:*

'Conclusions

65. *We, therefore, answer the reference in the following terms:*

65.1. *Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;*

65.2. *Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;*

65.3. *The decision in K. Manjusree Vrs. State of A.P., (2008) 3 SCC 512 lays down good law and is not in conflict with the decision in State of Haryana Vrs. Subash Chander Marwaha, (1974) 3 SCC 220. State of Haryana Vrs. Subash Chander Marwaha, (1974) 3 SCC 220*



deals with the right to be appointed from the select list whereas K. Manjusree Vrs. State of A.P., (2008) 3 SCC 512 deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;

*65.6. Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list. ' ***"*

11.4. In the present matter it is not the case of the petitioner that the rules of the game were changed after the game had begun. Perusal of the Interview Call Letter dated 18.09.1996 of the Indian Oil Corporation Limited manifests the eligibility criteria for the post with caution that if the petitioner satisfies the same he would offer his



candidature for the post of the Junior Operator (Field). The letter of the Collector also spelt out that “*subject to other prescribed conditions for the job*”. In the interview qualifying marks were fixed by the employer as a requirement for the job description. Being conscious and cautious, the petitioner appeared in the interview/ test conducted during 25-26-27.09.1996 without any demur. After the result being made known to him, he filed this writ petition.

11.5. Sri Sailesh Chandra Samantaray, learned Counsel representing the Indian Oil Corporation Limited sought to rely on *Shankarsan Dash Vrs. Union of India, (1991) 3 SCC 47* to support his submission that no indefeasible right is accrued merely on the basis of the letter of the Collector, Balasore. In the said reported judgment, the following observations are made:

“7. *It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the*



vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana Vrs. Subash Chander Marwaha, (1974) 3 SCC 220 = (1974) 1 SCR 165, Neelima Shangla Vrs. State of Haryana, (1986) 4 SCC 268, or Jatinder Kumar Vrs. State of Punjab, (1985) 1 SCC 122 = (1985) 1 SCR 899.

8. *In State of Haryana Vrs. Subash Chander Marwaha, (1974) 3 SCC 220 = (1974) 1 SCR 165, 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55 per cent marks, were appointed, although under the relevant rules the eligibility condition required only 45 per cent marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55 per cent marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the government to decide how many appointments should be made and although the High Court had appreciated the position correctly, it had "somehow persuaded itself*



*to spell out a right in the candidates because in fact there were 15 vacancies". It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in *Jatinder Kumar Vrs. State of Punjab*, (1985) 1 SCC 122 = (1985) 1 SCR 899, was turned down holding that it was open to the government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of *Neelima Shangla Vrs. State of Haryana*, (1986) 4 SCC 268, was allowed by this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The government accordingly made only 17 appointments and stated before the court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background it was observed that it is, of course, open to the government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious application of mind by the government and the High Court before the number of*



persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant.”

11.6. In *State of Assam Vrs. Arabinda Rabha*, (2025) 7 SCC 705 it has been laid down that:

“59. We are conscious of the line of decisions of this Court and have noted some of them here, which lay down the law that mere empanelment/enlistment does not result in accrual of any indefeasible right in favour of such empanelled/selected candidate as well as the law that the employer may, in its wisdom, either decide to cancel the select list or not carry on the process further resulting in the notified/advertised vacancy/vacancies not being filled up pursuant to the selection process, which has been conducted. What it means is that an empanelled/selected candidate can claim no right of appointment, if the State has cogent and germane grounds for not making the appointment. However, at the same time, it is also the law that the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. *Shankarsan Dash Vrs. Union of India*, (1991) 3 SCC 47 cautions that the State has no licence to act in an arbitrary manner. In *R.S. Mittal Vrs. Union of India*, 1995 Supp (2) SCC 230, a coordinate Bench held that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment and that there has to be a justifiable



reason to decline to appoint a person who is on the select panel. The position in law finds reiteration in a decision of recent origin in Dinesh Kumar Kashyap Vrs. South East Central Railway, (2019) 12 SCC 798, where the majority held that the employer must give cogent reasons for not appointing selected candidates.

60. *Any decision taken not to appoint despite there being vacancies and a valid select list, obviously, is in the nature of a policy decision. It has to be borne in mind that securing public employment is the dream of many, who put their heart and soul to prepare for it. Nowadays, aspirants undertake rigorous study sessions as well as training modules to equip themselves, which also comes at a heavy cost. That apart, since every process of recruitment necessarily involves substantial expenses which are borne from the public exchequer and at the same time the aspirants for the posts (who, as per their own estimation, have performed sufficiently well and therefore stand a good chance of being appointed upon figuring in the select list) cherish fond hopes of a bright and secure future, the law is clear that the policy decision not to carry the process forward must be taken bona fide, there has to be justifiable reason if the process is abandoned midway, and such decision must not suffer from the vice of arbitrariness or the whims of the decision maker. This acts as a check on the employer's power deciding against not making any appointment from the select list despite availability of vacancy/ vacancies on the advertised/notified public post(s). A writ court may, upon reaching the requisite satisfaction, intervene in such manner and make*



such directions as the facts and circumstances warrant. We, therefore, do not find it acceptable that the aspirants, not having an indefeasible or vested right of appointment, do not also have the right to question any decision adverse to their interest affecting achievement of their goals to secure public employment. Whether, and to what extent, any relief should be granted, must depend on the facts of each case.”

11.7.A case to the point, being *Mana Gobinda Subudhi Vrs. Union of India*, W.P.(C) No.547 of 2019, disposed of vide Order dated 22.03.2023, has been cited to demonstrate that by virtue of Order dated 09.09.1996 of this Court in O.J.C. No.2156 of 1995 since the petitioner has participated in the interview and after being declared unsuccessful in such test, by way of filing subsequent writ petition he could not question the desirability of conducting the interview to insist for exercising power of judicial review under Articles 226 and 227 of the Constitution of India. In the said case (*Mana Gobinda Subudhi, supra*) it has been stated as follows:

“6. Having heard learned counsel for the parties and after going through the record, it appears that the petitioner is a land oustee and for acquisition of his land, he has been paid the compensation amount and there is no dispute with regard to the same. **But only question revolves around in this case is that whether one of the family member of the petitioner, is entitled to get appointment or not.** It is the specific case of the opposite parties that



in absence of any scheme or any guideline in regard to give employment to the land oustee, the benefit cannot be admissible to the petitioner. But fact remains, the petitioner had earlier approached this Court by filing OJC No. 3928 of 1997, which was disposed vide order dated 30.11.2000 with the following direction:

‘In the event the name of any of the family members of the petitioner is sponsored by the employment exchange, the Indian Oil Corporation shall consider such case and employ one of the family members of the petitioner, if found suitable for such appointment.’

7. *It is also made clear that in spite of the above order passed by this Court, neither the petitioner nor any of his family member registered his/her name in the employment exchange. Therefore, sponsor of the name of one of the family member of petitioner by the employment exchange did not arise. Apart from the same, even though an advertisement was issued by the Indian Oil Corporation Ltd., neither the petitioner nor his family members applied for. Rather, the petitioner approached this Court again by filing W.P.(C) No. 3099 of 2007, which was disposed of vide order dated 19.03.2014 with the following observation and direction:*

‘No case has been made out for interference. The land of the petitioner was acquired in the year 1994 and compensation was paid for the same. No provision has been brought to our notice which may entitle the petitioner to give employment to his son on preferential basis. If any vacancy is advertised, son of the petitioner is at liberty to offer his



candidature for the said vacancy as observed by this Court earlier. In these circumstances, a writ of mandamus cannot be issued.'

8. *In view of the order passed in W.P.(C) No. 3099 of 2007, whatever right had been accrued in favour of the petitioner, pursuant to the order dated 30.11.2000 passed by the learned Single Judge in OJC No. 3928 of 1997, has been merged with the said order. Thereby, the question of extending the benefit of appointment has been ceased by virtue of the order passed by the Division Bench."*

11.8. Under the above backdrop, it is held that once the petitioner in obedience to Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 appeared in the interview for the post of "Junior Operator (Field)" without any objection or protest, and offered his candidature to be considered along with others, particularly Smt. Manjulata Mohanty, after being declared "not suitable" for the said post he cannot be heard to say that interview/test was not contemplated or warranted in terms of the Office Memorandum dated 03.02.1986 issued by the Ministry of Industry, Department of Public Enterprises as adopted in the Letter dated 21.02.1986 of the Government of India in Ministry of Petroleum and Natural Gas. The Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 has been carried out by not only the Collector, Balasore, but also the Indian Oil Corporation Limited as also the Employment Exchange.



11.9. Participation and acquiescence would not entail the participant to question the selection process. It is fruitful to have regard to the following observations made in *Tajvir Singh Sodhi Vrs. State of Jammu and Kashmir*, (2023) 3 SCR 714:

“13. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

- i) In Manish Kumar Shahi Vrs. State of Bihar, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.*
- ii) In Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational*



Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

‘24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.’

- iii) Similarly, in Ashok Kumar Vrs. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared*



a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90:10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks– 90 and qualifying marks– 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

‘13. The law on the subject has been crystalized in several decisions of this



Court. In Chandra Prakash Tiwari Vrs. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India Vrs. S. Vinodh Kumar (2007) 8 SCC 100, this Court held that:

‘18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar Vrs. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra Vrs. M.P. Public Service Commission, (2006) 12 SCC 724)’.

13.1. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot



allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

13.2. This Court in Sadananda HaloSadananda Halo Vrs. Momtaz Ali Sheikh, (2008) 3 SCR 497 has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fide or arbitrariness in the selection process and therefore the said exception cannot be invoked.”

11.10. Ergo, this Court does not find substance in the contention of Sri Banshidhar Baug, learned Senior Advocate that even after the petitioner is found “not suitable” for the post of Junior Operator (Field), he should have been imparted training to equip himself. The reason is simple that he could not even secure the marks fixed to qualify for the post of “Junior Operator (Field)”.



12. A reference can also be made here to Inter-Office Memo dated 23.04.1987, contents of which have been relied on by Sri Banshidhar Baug, learned Senior Advocate by way of written note of submission. Caption heading of the said Inter-Office Memorandum reflects— *“Preference in employment to those whose land has been acquired”*. Clause 6 of said Inter-Office Memorandum clearly envisages that “out of the identified and trained land losers sponsored by Employment Exchange and found suitable by applying above yardsticks, those whose land holdings have been fully acquired shall be given preference in employment *vis-a-vis* those whose land has only been partially acquired for the project”.

12.1. The use of the word “preference” has significance and the term has been interpreted in *Pravasini Mohanty Vrs. State of Odisha, 2023 SCC OnLine Ori 6483*. It has been observed therein as follows:

*“11. It is next argued that this Court is required to weigh the balance in favour of the appellant by considering the term “preference” as contained in Clause 1(v) of the Guidelines dated 24.11.1997. Valiant attempt has been made on behalf of the appellant to convince that the selection of Pravasini Mohanty to be engaged as AWH in the Mahila Sabha Meeting held on 30.01.2010 was on the basis of the fact that preference in selection was required to be given to “separated” woman candidate in view of Clause 1(v) of the Guidelines referred to above. **Therefore, it***



was posed that there was no necessity to conduct interview/viva voce and even though Pravasini Mohanty appeared, she should have been given preference to Sukanti Nayak, who has stated to have secured highest marks.

11.1. This Court, therefore, ventures to ascertain the purport of the term “preference”.

11.2. In *Sher Singh Vrs. Union of India*, (1984) 1 SCC 107 = AIR 1984 SC 200, the Supreme Court examined the provisions of Section 47(1) of the Motor Vehicles Act, 1939, providing for preference to the State Transport Undertaking by grant of permit and explained the meaning of ‘preference’ as under:

‘The expression ‘preference’ amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other? It signifies that other things being equal, one will have preference over the others. Preference in this context would mean that with things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking.’

11.3. In *Executive Officer Vrs. E. Tirupalu*, (1996) 8 SCC 253 = AIR 1996 SC 1311 = (1996) 3 SCR 904, the Supreme Court held that ***where rules provide for preference to a particular class of candidates, that preference under the Rules cannot be applied irrespective of the merit of candidates, the inmates have to be given appointment. It means that the merit of the candidates being equal, preference would be given to the inmates***



of the class which is to be given preferential right and it certainly does not mean an automatic appointment without considering the cases of other candidates. Therefore, even if the rules provide for preferential right, candidates having such subjects would have preferential right only when they compete with other candidates and are found on equal footings, otherwise not.

11.4. In *Secretary, Andhra Pradesh Public Service Commission Vrs. Y.V.V.R. Srinivasulu*, (2003) 5 SCC 341 = AIR 2003 SC 3961 = AIR 2003 SCW 2851, it has been summarized as follows:

*‘The ‘preference’ envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate of complete precedence. *** It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-a-vis others in the matter of actual selection.’*

11.5. In *State of Uttar Pradesh Vrs. Om Prakash*, (2006) 6 SCC 474 = AIR 2006 SC 3080 = AIR 2006 SCW 4281, the Supreme Court held that, **the word ‘preference’ would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them**



are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-à-vis others in the merit list prepared by the Commission. But 'preference' does not mean en bloc preference irrespective of inter se merit and suitability. In view of the above, it is evident that question of giving preference would arise provided the person claiming preference stands on equal footing with others, otherwise not. Similar view may be found in Abdul Hameed Vrs. Union of India, (2017) 16 SCC 346).

11.6. Similarly, the appellant and the respondent No. 5 got fairness in consideration of their respective merit and the Selection Committee being experts in the field, their decision cannot be lightly brushed aside. In National Institute of Mental Health and Neuro Sciences Vrs. Dr. K. Kalyana Raman, 1992 Supp (2) SCC 481 it has been held as follows:

‘7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. **The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the**



Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has however, referred to the decision of this Court in *Union of India Vrs. Mohan Lal Capoor*, (1973) 2 SCC 836 = (1974) 1 SCR 797. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil Service. The decision in Capoor case, (1973) 2 SCC 836 = (1974) 1 SCR 797 was rendered on September 26, 1973. In June 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil Services. The Capoor case, (1973) 2 SCC 836 = (1974) 1 SCR 797 cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R.S. Dass Vrs. Union of India*, 1986 Supp SCC 617, in which Capoor Case, (1973) 2 SCC 836 = (1974) 1 SCR 797 was also distinguished.



8. *As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary. The High Court however, observed, that Dr. Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of objections dated February 18, 1980 filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr. Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was somewhat extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, to have stated that he did not satisfy the minimum qualifications prescribed for eligibility. According to the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and reassurance as to the related equality and*



justness of an effective consideration of this case. It is true that selection of the petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all, are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr. Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr Kalyana Raman. The fact that he was placed second in the panel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion.'

11.7. It is a settled position of law that when a Selection Committee recommends the selection of a person, the same cannot be presumed to have been done in an erroneous or mechanical manner in the absence of any allegation of favouritism or bias. That a presumption arises as regards the correctness of the decision of a Selection Committee and the party who makes the allegation of bias or favouritism is required to prove the same. Thus, in the absence of mala fides against the members, selection by a Selection Committee cannot be doubted. Reliance can be had on Union of India Vrs. Bikash Kuanar, (2006) 8 SCC 192; Sadananda Halo Vrs.



Momtaz Ali Sheikh, (2008) 4 SCC 619; University of Mysore Vrs. C.D. Govinda Rao, (1964) 4 SCR 575.”

12.2. The Selection Committee compared the performance of other candidates along with that of the petitioner in the interview and found that the marks of the petitioner did not attain the qualifying marks of 40. The result sheet depicts that he secured merely 16 marks, which is much less than the marks as was required to achieve minimum qualifying marks for the job of Junior Operator (Field). Thus, there was no question of imparting training. Such being the position, the petitioner by way of filing new and fresh documents enclosing with the rejoinder affidavit sought to contend that Jagannath Mohanty was the land loser along with others. At this stage he discarded his stand that he was the nominee of Smt. Suryamani Mohanty, grandmother (*vide* paragraph 10 of the writ petition). Minute scrutiny of the document, *i.e.*, Record-of-Right depicts that Ac.0.75decs. of land stands recorded in the names of not only Jagannath Mohanty but also Laxman Mohanty and Chintamani Mohanty. It would, therefore, be fallacious to say that land of Jagannath Mohanty (described as grandfather of the petitioner, whereas the grandmother had nominated the petitioner) was acquired fully. As per Clause 6 of Inter-Office Memorandum dated 23.04.1987, stemming on which the learned Senior Counsel during the course of hearing sought to build up his case,



preference was to be given in employment to the land loser whose land was acquired fully *vis-a-vis* land loser whose land was acquired partially. Since the Record-of-Right showing an area of Ac.0.75decs. stood in the names of three persons, it could not, thus, be said that the land of Jagannath Mohanty (only) was acquired fully. It may be clarified that he may be land loser to the extent of his share in the property is concerned.

12.3. Nevertheless, without entering into such controversy which was never set up in the writ application, this Court on the basis of interpretation of the word “preference”, as discussed above, it is held that the petitioner having not secured minimum qualifying marks in the interview which was conducted in pursuance of Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 he is not entitled to claim for the employment for the post of Junior Operator (Field) under the Rehabilitation Assistance Scheme. It is misconceived approach to say on the part of the petitioner that the petitioner should have been imparted training in terms of the Office Memorandum dated 03.02.1986.

12.4. As the Selection Committee adjudged the petitioner as not suitable for the post of Junior Operator (Field) in the interview and he could not even secure minimum qualifying marks, this Court does not find it apposite to substitute the view expressed by the Selection



Committee. This Court showing deference to the decision of the Selection Committee based on material facts does not feel it appropriate to exercise power of judicial review invoking provisions of Articles 226 and 227 of the Constitution of India.

Conclusion:

- 13.** There is no denial by the petitioner to the assertion of the opposite party Nos. 1 to 4 in counter affidavit that the land losers were given due compensation. Rather in the rejoinder affidavit dated 08.02.2024 a new plea is sought to be set up by introducing the Record-of-Right standing jointly in the names of Jagannath Mohanty, Laxman Mohanty and Chintamani Mohanty. Such factual position was never pleaded in the original writ application filed way back in the year 1997, wherein Smt. Suryamani Mohanty is described as the grandmother of the petitioner and a land loser.
- 14.** The discussions made in the foregoing paragraph without any ambiguity established that the Report of CBI submitted before the Division Bench (while in seisin of the matter against interlocutory order dated 10.12.2015 of learned Single Judge directing for enquiry by the CBI in W.A. No.112 of 2016 wherein the respondent was *Trilochan Das*, but not the instant petitioner) cannot be utilized in the present case for non-



joinder or misjoinder of necessary and/or proper parties. The petitioner has not impleaded them as parties in their individual capacity. Without confrontation of such adverse observations, if any, made in the Report in absence of necessary and proper parties the same cannot enure to the benefit of the petitioner. It is not denial fact that untested material cannot be utilized without putting it to notice of the parties concerned.

- 15.** Another significant observation in the matter would be this, that the petitioner having appeared in the interview responding to the Letter dated 18.09.1996 for the post of “Junior Operator (Field)” issued in compliance of direction of this Court in Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 without any demur or protest, he cannot turn round to say that interview should not at all have been conducted for appraisal of qualifying marks.

15.1. It may be stated that in the context of conflict between the statutory provision and direction of the High Court in a writ proceeding, the order in writ proceeding in earlier round of litigation would prevail. A cue can be taken from the following observation made in *Tata Refractories Ltd. Vrs. STO, (2003) 1 SCC 65*:

“7. It is to be noted that the order of the High Court in the earlier writ petition, namely, OJC No. 1200 of 1995 was made by the High Court in the exercise of



its power under Articles 226 and 227 of the Constitution of India wherein while directing the appellants to deposit the amount quantified therein, the High Court also issued a direction to the respondent State that it should refund the amount with interest at the rate of 18% per annum in the event of the appellants succeeding in the second appeal. This order is definitely not one made under the provisions of the Act. **The respondent State which took benefit of the said order and retained the amount deposited by the appellant, cannot now be permitted to say when it comes to refund the direction issued by the High Court in its order dated 15.03.1995 will not be binding on it and it is only the provisions of the statute that will bind. As noted above, it is not by invoking the provisions of the Act, the deposit was directed to be made by the High Court, hence, any direction made while making an order under Articles 226 and 227, to deposit any sum of money will be governed by the conditions imposed in the order directing such deposit. On the contrary, if any such condition as to the interest had not been made by the High Court while directing the deposit of the amount then it could be said that the refund which may become payable will be governed by the provisions of the State Act. In the instant case, since the very order which directed the deposit itself has directed the refund with 18% interest, we have no doubt in holding the said order as to mean that the refund should be made with interest at the rate of 18% from the date on which the amount was deposited pursuant to the order of the High Court dated 15.03.1995."**



15.2. Having offered his candidature with eyes wide open in compliance of order of this Court in its own case, the petitioner being adjudged not suitable for the post of Junior Operator (Field) cannot stem upon the Inter-Office Memorandum dated 23.04.1987 nor the Office Memorandum dated 03.02.1986 issued by the Ministry of Industry, Department of Public Enterprise as adopted *vide* Letter dated 21.02.1986 issued by the Government of India in Ministry of Petroleum and Natural Gas.

15.3. The fact remains that the petitioner participated in the interview without any protest along with 138 candidates sponsored by Employment Exchange and in obedience of Order dated 09.09.1996 passed in O.J.C. No.2156 of 1995 in the interview conducted on 25-26-27.09.1996. Results of the petitioner and Smt. Manjulata Mohanty were published by the Indian Oil Corporation Limited separately in view of said order of this Court in earlier round of litigation.

15.4. At the cost of repetition it may be pertinent to have reference to the Letter No.4/LA, dated 03.01.1997 of the Collector, Balasore intimating the Managing Director of the Indian Oil Corporation Limited, Kolkata that,

“In pursuance of the direction issued by the Hon’ble High Court of Orissa vide Orders passed on 09.09.1996 in O.J.C. No.2156 of 1995, Sri Pratap Chandra Mohanty, the petitioner in the above O.J.C. as well as Smt. Manjulata



*Mohanty are eligible land loser's candidates for employment in Indian Oil Corporation Limited **subject to other prescribed conditions for the job**".*

15.5. The Letter Ref. P&A/1121/LL/ER, dated 11.09.2000 of Indian Oil Corporation Ltd., Calcutta addressed to the Collector, Balasore is reproduced hereunder for proper comprehension:

"Sub.: Finalisation of the case of land losers.

Dear Sir,

This has reference to your memo No:777/LA, dated 01.07.2000 and noted its content. In this regard we would like to submit as under:

Kindly note that all the letters written by you in connection with the rehabilitation of land losers were replied as and when the same were received and also on number of occasions meeting was held at your office and we made our stand explicitly in this regard. For your kind information we are enclosing herewith two letters bearing Nos.P&A/1121/LL, dated 05.08.1997 and 02.01.1998 which is self-explanatory.

We would also like to submit that the situation has further deteriorated and we have not been given any approval from the Competent Authority for recruitment of any category of workmen at Balasore and Paradip. We have already communicated in the past, the Corporation's policy regarding recruitment and rehabilitation of land losers also.



The problem of recruitment of land losers of Balasore at Paradip and the problem encountered in putting the land losers from outside at Paradip outside have been highlighted to you. We are facing lot of problem in redeployment of workmen in view of the automation at our various plants, terminals and locations. Numbers of employees have applied for VR at the instance of the management in order to eliminate surplus manpower. Hence, it is difficult to recruit any workmen at this juncture.

We hope you will kindly realize our position and appreciate the difficulties in absorbing or going ahead with the recruitment of any workmen at this stage.

Thanking you.

Yours faithfully,

For Indian Oil Corporation Limited (MD)

Sd/- Deputy General Manager (HR), ER.”

15.6. Taking cognizance of said Letter dated 11.09.2000 of the Indian Oil Corporation Limited, a Division Bench of this Court in *Manoranjan Barik Vrs. The Collector and District Magistrate, Balasore and others, W.P.(C) No.18821 of 2008*, disposed of vide Order dated 01.03.2023 observed thus:

“4. A counter affidavit has been filed on behalf of opposite party No.1, paragraph-6 thereof reads as under:

‘6. That the Collector, Balasore, opposite party No.1 has written a several letters to Indian Oil



Corporation, opposite parties No.2, 3 and 4 to absorb the empanelled land oustees and **ultimately the aforesaid opposite parties vide their Letter No.1121 dated 11.09.2000 expressed their inability for providing employment due to re-deployment of workmen in view of automation at their various plants, terminals and locations.** Xerox copy of Letter dated 01.07.2000, dated 12.09.2000 and 05.12.2000 of Collector & District Magistrate, Balasore are annexed and marked as AnnexureA/1 (Series) and Letter No.1121 dated 11.09.2000 of Indian Oil Corporation Ltd., Calcutta is annexed herewith as Annexure-B/1.’

In view of the statement made in paragraph-6 of the counter affidavit, this writ petition stands disposed of.”

15.7.As the petitioner could not secure qualifying marks (i.e., 40 marks, *vide* Annexure-A/4 enclosed with the counter affidavit filed by the opposite party Nos.1 to 4) for the post of “Junior Operator (Field)”, and for the reasons ascribed hitherto with discussions made in the foregoing paragraphs, the prayer(s) in the writ petition “to appoint the petitioner in the LPG Bottling Plant, Balasore of the Indian Oil Corporation Limited or in any other suitable place” cannot be acceded to.

16. Having thus found no infirmity or irregularity in the decision/action of the opposite parties in not providing



employment to the petitioner, the writ petition deserves to be dismissed being devoid of merit. This Court does so.

- 17.** In the result, the writ petition stands disposed of and pending Interlocutory Application(s) shall also be disposed of; but in the circumstances, there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE