

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WA.No. 1445 of 2015 () IN WP(C).4452/2015

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AGAINST THE ORDER/JUDGMENT IN WP(C) 4452/2015 of HIGH COURT OF KERALA
DATED 1.6.2015**

APPELLANT(S)/PETITIONER:

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RAMIYA BABU, AGED 25 YEARS,
W/O. ANWAR SADHIQUE, CHERACHAM KANDIYIL HOUSE,
UNNIKULAM VILLAGE, KOZHIKODE - 673 574.**

BY ADV. SRI.NIRMAL. S

RESPONDENT(S)/RESPONDENT:

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- 1. INDIAN OIL CORPORATION LIMITED.,
REPRESENTED BY MANAGER (LPG SALES), TRICHUR AREA,
INDANE AREA OFFICE, IIND FLOOR, P.M.K.TOWERS,
NEAR CIVIL STATION, KOZHIKODE - 673 020.**
 - 2. INDIAN OIL CORPORATION LIMITED,
REPRESENTED BY ITS GENERAL MANAGER (KERALA),
PANAMPILLY NAGAR, PANAMPILLY AVENUE, COCHIN - 682 036.**
 - 3. INDIAN OIL CORPORATION LIMITED,
REPRESENTED BY ITS EXECUTIVE DIRECTOR,
REGISTERED OFFICE, INDIAN OIL BHAVAN, G-9
ALI YAVAR JUNG MARG, BANDRA EAST, MUMBAI - 400 051.**
 - 4. SUBIN VARGHESE,
S/O.C.M. VARGHESE, CHAKKALAYIL HOUSE, KANNOTH P.O.
KODENCHERY, KOZHIKODE- 673 580.**

R1 TO R3 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURRYAN THOMAS

R4 BY SRI.B.ASHOK SHENOY

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

W.A.No.1445 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This writ appeal is against a judgment of the learned single Judge whereby challenge to the selection of the 4th respondent for award of an LPG distributorship was repelled.
- 2.Heard the learned counsel for the appellant, the learned standing counsel for the Indian Oil Corporation and the learned counsel for the 4th respondent.
- 3.Exhibit P7 is the bunch of regulations which control the grant of dealership. It specifically spells out the processes which the applications will undergo and the process of selection would be carried out in terms of the guidelines therein. It also defines the requirement of IOC. Among other things, the regulations provide for the methodology whereby the short

listed candidates are put to a draw of lots by the officers of IOC in the presence of invited public. The person who succeeds in the draw of lots would then be required to deposit amounts in terms of Clause 9.15. On deposit of such amount, Field Verification of Credentials would be carried out as prescribed in Clause 10 and if the field verification results in confirmation of the details given by the candidate, then the said person will be treated as one selected and Letter of Intent would be given to that person. If the field verification shows that the information given in the application is at variance with the original documents or it affects the eligibility of the candidate, then the discrepancy would be pointed out and if there is false/incorrect/mis-represented information, the Field Verification of Credentials will be forfeited and Letter of Intent would not be issued. In the event of the Letter of Intent not being issued to the person whose credentials had been so verified and rejected, there would be a re-draw for selection from among the remaining eligible applicants.

4. Another aspect of the regulation, as is relevant for the purpose

of this case, is the prescription in Clause 6.1(viii), which requires that the applicant should own a suitable shop of minimum size of 3 metres by 4.5 metres in dimension or a plot of land for construction of showroom of minimum size of 3 metres by 4.5 metres as further elaborated in the said clause as regards location, the date of availability etc.

5.The learned counsel for the appellant argued that the requirement is that the applicant should have a plot of land and a shop room which have a suitable approach road. Emphasis given is on the requirement to have suitable approach road for access being provided to the public at large and also to the requirement that the building should be in a plot of land and that the plot of land and the building should be available. While we are clear in our mind that access as pointed out is required, it is not necessary that the person should have the plot and the building. The clause is clear that what is required is the shop or a plot on which a shop can be put up. This contextual consideration comes up in the wake of the fact that the successful candidate offered a shop room in

the 1st floor of what appears to be a mini shopping complex, going by Exhibit P12. It has a flight of stairs which would facilitate the movement of people to the 1st floor. The provision for a suitable approach road, as envisaged under the said clause, can be only envisioned as one which would enable the public to come to the place where the shop is situated or the plot in which the shop stands. This is because, in the common course of human conduct, nobody expects an approach road to go straight away to the 1st floor of a building. What is to be available is the requirement for people to access the shop room which would be the showroom subject to IOC's satisfaction in this regard. Once that has been entered, it would not be a matter for judicial review, particularly when the matter relates to realm of contracts and commerce, though not totally divorced from the basic requirements in terms of statutory laws governing supply of petroleum products. No infraction of any statutory provision in relation to petroleum laws is pointed out as regards the shop room in question. Under such circumstances, the challenge can only get trimmed down to what can be said as one which could be sought to be

reviewed if the decision making process is demonstrated to be capricious and perverse resulting in arbitrariness infracting Article 14 of the Constitution of India. We see no such ground available in the writ petition as against the allotment made.

In the result, this writ appeal is dismissed.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

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