

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.01.2015	27.01.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.28155 of 2012 &

M.P.Nos. 1 to 3 of 2012

D.Kavitha

... Petitioner

Vs

1.The Deputy General Manager,LPG Sales,
Tamil Nadu Sales Office
Indian Oil Corporation
No.139, Nungambakkam High Road
Chennai 600 034.

2.The Chief Area Manager
Marketing Division
Indian Oil Corporation
No.500, Anna Salai,
Teynampet, Chennai 18.

3.A.Kavitha

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records relating to the impugned order dated 14.8.2012 Ref.CHAO:105/RGGL V3/ATH-VIL/03 and passed by the second respondent and the consequential order dated4.10.2012 Ref.TNL/S/221 passed by the first respondent and quash the same and consequently direct the respondent authorities not to grant LPG dealership to 3rd respondent or any other person who does not permanently reside in Authur or Villiampakkam, Chengleput Taluk, Kancheepuram District and consider the petitioner for grant of LPG dealership.

(prayer amended as per order made in M.P.No.1 of 2014 in W.P.No.28155 of 2012 dated 21.01.2015)

For petitioner .. Mr.S.Thangasivam

For Respondents .. ***Mr.V.Anandha Natarajan**-R1 & R2
for M/s Anand Abdul and
Vinodh Associates

Mr.N.Subramani - R3

O R D E R

The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the order passed by the second respondent dated 14.8.2012, and the consequential order passed by the first respondent dated 4.10.2012 holding that the petitioner does not satisfy the eligibility condition for award of LPG dealership under the R.G.G.L.V. Scheme at Athur/ Villiyambakkam, Kancheepuram District and to direct the respondents not to grant LPG dealership to the third respondent or any other person who does not reside in Athur/ Villiyambakkam and grant the dealership to the petitioner.

2.The respondent Corporation issued an advertisement on 28.12.2011, inviting Applications for grant LPG Dealership under R.G.G.L.V. Scheme for various areas in the State of Tamilnadu. The petitioner and the third respondent were applicants for the dealership to be located at Athur/Villyambakkam. The petitioner submitted her application dated 30.1.2012, along with enclosures. On scrutiny of the application, it was found that the petitioner was ineligible and the second respondent by communication dated 25.5.2012, informed the petitioner that she is ineligible, since (i) fixed deposit furnished by her commences after the date of advertisement, and the petitioner does not have the minimum fund of Rupees two lakhs (ii) the dimension of the land for godown does not meet the requirement and it is in the name of the petitioner's spouse (iii) lease land in the name of the petitioner cannot be considered.

2.1 In the said communication the petitioner was informed if she does not comply with the above three deficiencies by 20.6.2012, her applications will be treated as ineligible. The petitioner by letter dated 15.6.2012, enclosed the photostat copy of the Bank Account in Indian Bank, Athur Branch in respect of her husband and photostat copy of the settlement deed executed by her mother-in-law. The second respondent, by communication dated 14.8.2012, informed the petitioner that she has not been found to be eligible for the dealership as (i) she does not have minimum fund of Rs.2 lakhs in Fixed Deposit/Savings Bank Account as on the date of advertisement/ application and (ii) godown land offered by the petitioner does not meet the minimum requirement of 20m x 24m.

2.2 The petitioner submitted a representation on 20.09.2012, to the second respondent stating that on the date of application i.e. 30.01.2012, she has a fixed deposit dated 28.01.2012, in her name which is much prior to the date of application and that the measurement of the plot of land is 21.95m x 62.4m, can be verified from the sale deed. Copy of the fixed deposit receipt and copy of the land document were enclosed.

2.3 On receipt of the representation, the first respondent by communication dated 4.10.2012, informed the petitioner that as per the advertisement, released on 28.12.2011, the applicant should have Rs.2 lakhs in the Savings Bank Account as on the date of application or in fixed deposit as on the date of advertisement, or in sum total of the same on the respective prescribed date. In this regard attention of the petitioner was invited to clause 10.3 of the application. It was further informed that the fixed deposit was made on 28.1.2012, which is after the date of advertisement dated 28.12.2011.

2.4 Therefore, the petitioner was informed that she has not fulfilled the eligible criteria of having minimum of Rs. 2 lakhs as mentioned in the advertisement owing to which her application was not considered for further selection process. The communications dated 14.8.2012, and 4.10.2012, are impugned in this writ petition.

3.The learned counsel for the petitioner submitted that the reasons assigned in the impugned communication is factually incorrect and totally untenable. The petitioner having furnished proof to show that she had Rs.3 lakhs in fixed deposit, on the date of application and she having furnished copy of the fixed deposit receipt the second respondent erroneously rejected the petitioner's application and the impugned orders are illegal.

4.It is further submitted that the second respondent by communication dated 25.5.2012, granted time for rectifying the deficiencies, till 20.6.2012 and if the said date is taken into consideration then the petitioner is deemed to have fulfilled the deficiencies pointed out since the fixed deposit is dated 28.1.2012, and the petitioner produced copy of the settlement deed dated 12.6.2012, executed by her mother-in-law and without considering the same, the respondent erroneously rejected the application.

5.Apart from the above contention, it is submitted that the third respondent is ineligible, to participate in the selection process since the third respondent does not reside within the place notified and she resides at Thimavaram, which does not fall within the notified area, Athur or Villiyambakkam, it is a different area. In this regard, the petitioner relied upon the notification giving the list of villages and hamlets, within Kattangulathur Panchayat Union, Kancheepuram District. On the above grounds, the petitioner

seeks for quashing the impugned orders, and also to reject the candidature of the third respondent.

6.The learned counsel appearing for the respondent corporation submitted that as per the selection broacher, a candidate has to satisfy several conditions to qualify for selection by draw of lots. It is submitted that there are three criteria, which are primary among the other criteria for qualifying to be eligible for being considered, for grant of the dealership viz. (i) the applicant should be a resident of the advertised location (ii) the applicant should own land measuring minimum 20m x 24m in his name as on the date of application and (iii) the applicant should have a minimum of Rs.2 lakhs which could include self and a family members and family unit being defined to mean, father, mother, unmarried sisters and brothers. The funds in fixed deposit should be as on the date of advertisement as per clause 10.3 of the application and 10.3 of the general instructions in the advertisement the dated 28.12.2011 In the case of Saving Bank Account balance as on date of application should be as stated in clause 10.2 of the application and 10.2 of the general instructions in the advertisement. It is submitted that on scrutiny of the petitioner's application and the enclosures thereof, it was found that the petitioner failed to fulfil the following criteria viz. (a) fixed deposit commences after the date of advertisement, (b) dimension of the land does not meet the specifications, (c) the lease land offered in the name of the petitioner cannot be considered.

7.Having found the petitioner to be ineligible, vide letter dated 25.5.2012, petitioner was granted time to prove her eligibility by adducing documents on or before 20.6.2012. Referring to clause 10.2 of the advertisement, it is submitted that the amount should be available in the Savings Bank of Account on the date of application in the name of the applicant and the members of family Unit. In so far as the petitioner's application neither she nor her husband, had a sum of Rs.2 lakhs in their Savings Account as on the date of application i.e. on 30.1.2012. As from the records produced by the petitioner it is seen that the petitioner had Rs.17,353/-in her account and her husband had Rs.1,475/- in his account. It is further submitted that as far as the amount kept in the fixed deposit, in terms of clause 10.3 of the application, the fixed deposit should be available as on the date of advertisement in the name of the applicant and members of the family Unit. It is submitted that in the present case, the advertisement was made on 28.12.2011 but the fixed deposit in the name of the petitioner was made only on 28.1.2012 and hence the petitioner cannot be considered eligible. Further, by referring to clause 9 of the advertisement dated 28.2.2011, it is submitted that the land with the minimum specifications of 20m x 24m was required to be produced by a candidate to consider him/her for selection and such land should either be owned by the applicant or it should belong to any member of

the family unit. The petitioner had furnished details of two properties, one standing in the name of the petitioner which was a leasehold property and the other in the name of her husband. The land which stood in the name of the petitioner's husband was registered in his name on 24.1.2012, though registered before the date of the application the dimensions was less than the minimum requirement as it measured, only 28m x 30m as against the minimum requirement of 20m x 24m as per clause 9 of the advertisement. The property offered by the petitioner was settled by her mother-in-law, but it was not on the date of application. In terms of clause 9 of the general instructions the land offered should be owned by the candidate as on the date of application, and therefore, the petitioner was found to be not eligible.

8. In order to afford an opportunity of time was granted to produce any other document on or before 20.6.2012, and such document should show that the land was owned or taken on lease by the petitioner and the document should necessarily show that the petitioner had a valid right over the property on the date of application. That the time granted till 20.6.2012, is not for furnishing the document which was subsequently executed. Therefore, the settlement deed executed by the petitioner's mother-in-law dated 12.6.2012, having been executed after the date of application i.e. 30.1.2012, cannot be considered. Therefore, the document produced by the petitioner was rejected.

9. It is further submitted that the third respondent was found eligible and on verification of the documents produced, the third respondent was found to be a permanent resident of the advertised location and she had produced certificate from the Tahsildar, Chengalpattu, to establish that she is residing in the advertised location. That apart, the third respondent also produced residence certificate issued by the Tahsildar, stating that she resides in the advertised location. Further, the third respondent also produced certificate from the Village Administrative Officer to certify that the third respondent is a permanent resident of the advertised location.

10. The learned counsel for the respondent Corporation circulated the entire original file relating to the selection of the third respondent to justify the stand taken by them.

11. The learned counsel appearing for the third respondent by relying upon the counter affidavit submitted that she has been selected after through scrutiny of her application and after the respondent Corporation found that the third respondent was fully eligible to be selected. Further it is submitted that the petitioner having failed to fulfil the mandatory conditions, was rightly found to be ineligible.

12. Heard Mr.S.Thanga Sivan, learned counsel appearing for the petitioner and Mr.Anandha Natarajan, for M/s Anand Abdul and Vinod, learned counsel appearing for the respondents 1 & 2 and Mr.N.Subramani counsel for third respondent and perused the materials placed on record.

13. The issue which falls for consideration is whether the petitioner had satisfied clause 10.2 and clause 10.3 of the application which deals with the financial condition of the petitioner/applicant. Clause 10.2 stipulates that the amount should be available in the Savings Bank Account as on the date of application in the name of the applicant and members of the family unit. 'Family unit' of a married applicant has been defined to consist of self, applicant's spouse and unmarried son(s)/ daughter(s) and family unit of a unmarried applicant shall consists of self, applicant's parents and applicant's unmarried brother(s)/sister(s) for the purpose of the entire application. In case of family member consent letter from the family member was required to be produced. The minimum amount required is Rs.2 lakhs. Clause 10.3. of the application states that Fixed Deposit /NSC/Shares/MF etc., as on the date of the advertisement in the name of the applicant and members of the family unit are required to be furnished.

14. On a perusal of the application filed by the petitioner it is seen that the funds available in the Savings Bank Account of the petitioner as well as her husband on the date of application was only Rs.18,828/-. Therefore, the petitioner did not fulfil the conditions since the required funds were not available on the date of application. So far as the Fixed Deposit, the same is required to be as on the date of advertisement i.e. 28.12.2011. Admittedly, the Fixed Deposit produced by the petitioner was dated 28.1.2012, much after the date of advertisement. Therefore, the petitioner failed to fulfil the requirement with regard the Fixed Deposit as on the date of advertisement.

15. The next requirement is with regard to the minimum extent of land required as per the advertisement which was stipulated as 20m x 24m. The land offered by the petitioner which stood in the name of the petitioner's husband did not meet the stipulated minimum dimensions. Therefore, the respondent Corporation were justified in not considering the said land. So far as the land which was settled in favour of the petitioner, by her mother-in-law, by settlement dated 12.6.2012, did not satisfy clause 9 of the general instructions which stipulates that the land should be owned by the applicant as on the date of application and admittedly the settlement deed having been executed much after the date of application, does not satisfy the requirement. Therefore, the stand taken by the respondent holding that the petitioner was not eligible was perfectly valid.

16.The learned counsel for the petitioner argued that the second respondent by communication dated 25.5.2012, granted time to the petitioner till 20.6.2012 to rectify the defects and the settlement deed executed in favour of the petition dated 12.6.2012, was much prior to the cut off date fixed by the second respondent and therefore, the petitioner should have been declared eligible. This submission lacks merits, since the second respondent is not empowered to amend or alter the conditions stipulated in the advertisement or in the application. The communication dated 25.5.2012, is with a view to afford an opportunity to enable the petitioner to produce proof to show that they fulfilled the conditions as stipulated in the advertisement/general instructions and in the application. The communication does not give a fresh cause of action for the petitioner to produce new set of documents created after the communication dated 25.5.2012. Any document or proof produced should necessarily satisfy the condition in the advertisement/general instructions/application. Therefore, the production of the settlement deed executed much after the date of application and relying on the fixed deposit receipt which was admittedly made much after the advertisement does not in any manner improve the case of the petitioner. Therefore, the decision of the respondent corporation holding that the petitioner was not eligible is perfectly valid.

17.Having held so, the question that would fall for consideration is whether the petitioner has locus standi to challenge the selection of the third respondent. Be that as it may, since the learned counsel for the petitioner advanced arguments, contending that the third respondent is not a resident of the advertised location, this Court directed the learned counsel for the respondent Corporation, to produce the original file to establish the correctness of their decision in selecting the third respondent and as to whether she is a resident of the advertised location.

18.On perusal of the original file, it is seen that the revenue officials viz. the Tahsildar, Chengalpattu Taluk, the Village Administrative Officer of Athur B-Block, Chengalpattu Taluk, have certified that the third respondent resides within the advertised location. The third respondent has also produced residence certificate to the effect that she resides within the advertised location. Hence, the contentions raised by the petitioner stating that the third respondent does not reside within the advertised location, is found to be factually incorrect.

19.It is a settled legal principle that the scope of judicial review with regard to the decisions taken in administrative matters is confined only to the decision making process and not the decision itself. It has been demonstrated by the respondent Corporation that the petitioner has failed to fulfil the mandatory eligibility criteria and in such circumstances, the question of interfering with

the decision taken by the respondent Corporation does not arise. The Hon'ble Division Bench of the Court in the case of V.CHANDRAN v. OIL SELECTION BOARD AND OTHERS, [1995 (2) MLJ 458], held that the process of appreciating and weighing the various factors, materials, and rival merits, is the function of the Oil Selection Board, which is having the necessary expertise and experience to perform its duty properly and there cannot be any re-appreciation or re-appraisal of relevant material factor, relative qualifications and evaluation of comparative merits of the candidates in a proceeding under Article 226 of the Constitution of India.

20. In the affidavit filed in support of the writ petition, the petitioner has stated that the impugned orders have been passed by the respondent Corporation with the mala fide intention of granting dealership to the third respondent, who is totally ineligible. The plea regarding mala fide is vague and unsubstantiated and the same is rejected. Therefore, the question of interfering with the selection of third respondent on this ground also does not arise. For all the above reasons, the petitioner has not made out any grounds for granting the relief sought for.

In the result, the Writ Petition fails and is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar
Dated: 2.2.15

True Copy

Sub Assistant Registrar

***Amended as per order of this Court
dt. 27.2.15 and made herein**

Sd/-
Assistant Registrar
Dated: 12.3.15

True Copy

Sub Assistant Registrar

To

1. The Deputy General Manager, LPG Sales,
Tamil Nadu Sales Office,
Indian Oil Corporation
No. 139, Nungambakkam High Road
Chennai 600 034.

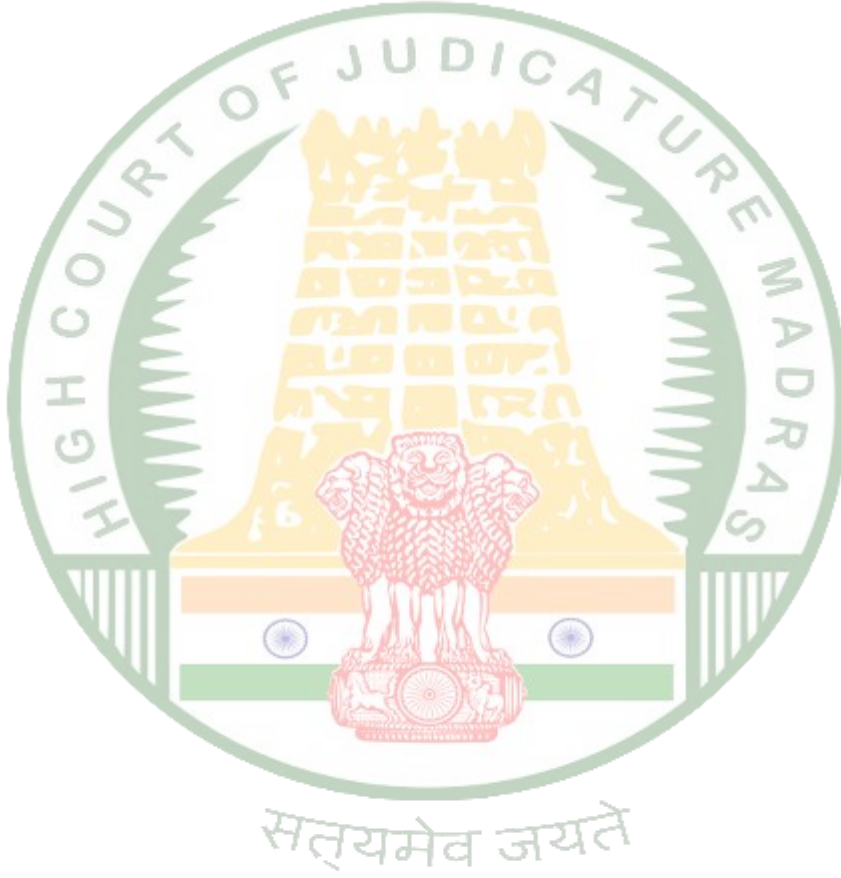
2. The Chief Area Manager
Marketing Division
Indian Oil Corporation
No. 500, Anna Salai, Teynampet, Chennai 18.

***To be substituted to the
order already despatched on
17.2.15**

+1 cc to Mr.N.Subramani, Advocate,SR.4641
+1 cc to Mr.S.Thankasivan, Advocate,SR.4065
+1 cc to M/s.Anand, Abdul & Vinodh, Advocates,SR.4050.

ts(co)
krd 6/2
krd 19/3

Pre-delivery O r d e r in
W.P. No.28155 of 2012



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