

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 31212 of 2012

ORDER:

The present Writ Petition is filed seeking issuance of writ of mandamus declaring the action of the 2nd respondent in issuing letter vide TDO/RO/Dharmavaram, dated 23.07.2012 without considering the explanation given by the petitioner, as illegal, arbitrary and contrary to the rules and to set aside the same; consequently direct the respondents 1 and 2 to issue letter of intent by reconsidering the candidature of the petitioner for the retail outlet dealership at Dharmavaram on Bathalapalli-Puttaparthi road, Anantapur District.

Pursuant to an advertisement issued by the first respondent inviting applications for establishment of a retail outlet on Bathalapalli-Puttaparthi road at Dharmavaram, Anantapur District under open women category, the petitioner applied for the same along with necessary documents on 18.11.2010, which was received by the respondents on 22.11.2010. The petitioner along with three others submitted the applications with necessary documents. The petitioner was called to appear for interview in the second respondent's office along with original documents. She alone attended the interview on 24.03.2011. On

31.03.2011 the writ petitioner requested the second respondent to look into the process and finalize the allotment of dealership. But, on 06.05.2011, the application of the petitioner for dealership was rejected on the ground that Notarized affidavit of spouse, for the land offered, was not enclosed as required under clause (1)(b) of the advertisement. Aggrieved by the same, the petitioner filed W.P. No.20328 of 2011. This Hon'ble Court set-aside the letter dated 06.05.2011 and directed the respondents to reconsider the case. On 16.01.2012 a show-cause notice was issued to the petitioner asking her to give reasons for the variations in Bank balance as on the date of application i.e., 18.11.2010 and on 22.11.2010 having regard to the declaration made in application showing bank balance as Rs.9,71,381/-. The petitioner claims to have submitted a representation on 16.01.2012 stating that she was having fixed deposits worth Rs.13 lakhs and also the letter issued by the State Bank of India, Dharmavaram, wherein they offered to advance a loan of Rs.25 lakhs in case the Dealership is allotted to her. It is said that without considering the explanation offered, the impugned order came to be passed. Challenging the same, the present Writ Petition came to be filed.

The respondent/Indian Oil Corporation filed its counter denying the averments made in the affidavit. According to them, as per the advertisement dated

23.10.2010, the subject location was advertised as an “A” site retail outlet, where the applicant was required to have ownership of land through a registered title deed. In case, the land offered was owned by the spouse, the petitioner was required to attach an affidavit of the spouse offering the land for retail outlet. It is stated that the same was not enclosed and hence no marks were allotted under the above count. The same was challenged before this Hon’ble Court by way of filing W.P. No.20328 of 2011, which was disposed of directing the Corporation to reconsider the same. Pursuant to the order passed by this Hon’ble Court, the case of the petitioner was reconsidered and a merit panel was released on 23.11.2011. It is further stated in the counter that the application of the petitioner was considered by the Committee and the petitioner alone was empanelled for the outlet. As the petitioner was the only empanelled candidate her name was approved, but the field verification which is done after the allotment, discloses false declaration being made by the petitioner with regard to her bank balance. Hence, it is stated that any false declaration made by the applicant, would make the applicant disentitle from empanelling in view of clause 19.2 of the Brochure for selection of Petrol/Diesel retail outlet dealers. In view of the above, he submits that the Writ Petition is liable to be rejected.

The short question that arises for consideration in the present Writ Petition is “Whether the writ petitioner has made any false declaration while submitting the application seeking allotment of the retail outlet at Dharmavaram?”

A perusal of clause 17.1 of the brochure show that dealership to petrol/diesel outlet will be offered to the No.1 candidate in the merit panel selected on the basis of the interview and after necessary field verification, letter of intent (LOI) will be issued. From the said clause, it is clear that after empanelling a person in the merit list, field verification would be done by the officers of the Corporation and thereafter the letter of intent would be issued. Further, clause 19.2 states that if any information furnished by the applicant is found to be false at any point of time either before or after appointment as a dealer, the allotment will be cancelled forthwith and dealership terminated in case commissioned. The original record which has been placed on record shows that subsequent to the interview, the field investigation was done and the report of the investigating officer was also placed before the Court. A reading of the said report would clearly disclose that in the application form the petitioner submitted that her savings bank pass book showing the balance at Rs.9,71,000/- as on 08.11.2010. Even as per the averments in the affidavit filed along with Writ Petition,

the application dated 18.11.2010 was received by the respondent/corporation on 22.11.2010. The field investigation done by the officers show that the bank balance as on 22.11.2010 is far below the balance shown in the application. A perusal of the Bank balance report, filed by the petitioner herself, would show that though the opening balance as on 18.11.2010 was Rs.9,71,381/- but an amount of Rs.9,25,000/- was withdrawn on the same day, thereby the closing balance as on that date was only Rs.46,381/-. Further, a sum of Rs.10,000/- was deducted from the balance on 22.11.2010, leaving the total balance as on 22.11.2010 at Rs.36,381/-. From the above, it is clear that the declaration made by the petitioner while submitting the application form is incorrect. The affidavit which has been enclosed along with the application form states as under :

“5. That against item No.13 of my application form details of various sources of funds required for setting up and operation of the dealership has been furnished. I undertake that these funds will be made available for the purpose stated above. In case it is found that the same is not made available as and when required, the offer of dealership, at any stage, can be withdrawn and that I will have no claim/damage whatsoever against the Oil Company.

6. I hereby verify that what has been stated above is true to the best of my knowledge and belief and nothing material has been concealed there from. If any information/declaration given by me in my application or in any document submitted by me in support of application for the award of the dealership or in this affidavit shall be found to be untrue or incorrect or false, Indian Oil Corporation Ltd., would be within its rights to withdraw the letter of intent/terminate the dealership (if already appointed) and that I would have no claim,

whatsoever, against Indian Oil Corporation Limited for such withdrawal/termination.”

Issue identical to the case on hand came up for consideration before the Supreme court in **Shivakanta**

Yadav v. Indian Oil Corporation and others^[1], in

which it is held as follows :

"Sh. Shiv Kant Yadav has admitted through affidavit that he has inherited two houses from his father, which is being used for personal use only and as such there is no income in the year 1999-2000 on this account (Annex-c). He has also admitted to be the owner of two shops which are currently not in use and lying vacant. With regard to nine shops, which comes under the joint property, three shops vacant and since the six shops have been given on rent, automatically Sh Shiv Kant Yadav gets one third share of the joint property. However, complainant has produced a letter issued by Nagar Panchayat Jaithra dated 26-03-04 (Annex-H) stating that Sh Shiv Kant Yadav, s/o Veri Singh Yadav has Rs.14,000/- per month towards rental from shops and Rs.3,000/- per month towards rental from house. Thus, the income for the year 1999- 2000 works out to be approximately Rs.68,000/- towards his share from the joint property. Enclosed annexures. The allegation stands proved and the income from house and shops have not been shown in the application."

There was a requirement to disclose the true and correct fact which does not appear to have been done.

The undertaking reads as follows:

"That I am fully aware that Indian Oil Corporation (name of the Oil Company) under its policy will not appoint me as their dealer/distributor, if I am employed. I shall have to resign from the service and produce proof of acceptance of my resignation by my employer to Indian Oil Corporation Ltd. (Name of the Oil Company) before issuance of Letter of Appointment for the dealership/distributorship.

That if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of SKO/LDO dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false Indian Oil Corporation (name of the Oil Company) would be within its rights to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that, I would have no claim, whatsoever, against Indian Oil Corporation (name of the Oil Company) for such withdrawal/termination."

In view of the undertaking if any factual mis- statement or declaration is made, that permits cancellation of the allotment."

Situation on hand is identical to the case referred

to above. As stated above, the petitioner made a mis-statement with regard to her Bank balance as on the date of making application i.e., 18.11.2010. In view of the judgment of the Apex court referred above and having regard to the undertaking given by the petitioner, I see no grounds to grant the relief claimed and as such the Writ Petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs. As a sequel to it, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:25.11.2015

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[\[1\]](#) (2007(4) SCC 410)