

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 24/09/2014

DATED : 21/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25376 of 2007

S.Chitra

... Petitioner

Vs.

1.Government of India,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi - 110 001.

2.The Chairman,
Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
G-9, All Yavar Jung Marg,
Bandra (East),
Mumbai - 400 061.

3.The Deputy General Manager (RS),
Indian Oil Corporation Ltd.,
(Marketing Division), Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai - 600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, Order or direction, in the nature of a Writ, calling for the entire records in Letter No.TNS/R/RO

Dealership/Thammampatti, dated 24.04.2007 on the file of the 3rd respondent herein refusing to consider the claim of the petitioner for allotment of dealership for Petrol/Diesel Retail Outlet at Thammampatti, Salem District and quash the same and consequently direct the respondents herein to consider on merit the claim of the petitioner herein, ranked at S.No.2 in the panel prepared by the 'Dealer Selection Board' for allotment of Petrol/Diesel Retail Out let at Thammampatti in accordance with law without resorting to re-advertisement of the said location.

For Petitioner : Mr.V.R.Raja Sekaran

For Respondents : Mr.Abdul Saleem
M/s.Anand Abdul and
Vinodh Association for R2 and R3
Mr.P.M.Dhamodharan
SCGP for R1
(Additional Government Pleader)

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ORDER

The short facts of the case are as follows:-

The petitioner has submitted that she is a Post Graduate in M.Tech (Chemical Engineering) from I.I.T Madras. She served as Assistant Manager (Production) for a period of six years with HINDUSTAN PHOTO FILMS. She resigned her post in the year of 1992. She submits that on 27.12.1997, the 2nd respondent herein has invited application for awarding Petrol/Diesel

Retail outlet Dealership under open category in Thammampatti, Salem District. She has applied on 11.02.1998 and her application number is 800164. She was called for interview on 25.08.2000. She was one among the three candidates in the panel recommended by the "Dealer Selection Board" hereinafter referred to as 'Dealer Selection Board'. She was ranked at S.No.2 in the panel. The dealership was given to some other applicant who was ranked at S.No.1 in the panel on extraneous consideration. Hence, dealership was not allotted to her.

2. The petitioner has further submitted that Government of India reviewed the allotment of Retail out let dealership done during the period 2000-2002. On 09.08.2002 an order was issued canceling the merit panel numbering 3760 prepared during the period January 2000 to August 2002 by the Dealer Selection Board for allotment of dealership. The dealership awarded for the retail out let at Thammampatti is one among the dealerships cancelled by the order dated 09.08.2002 of the Government of India.

3. The petitioner has further submitted that the validity of en-mass cancellation of the dealership by the order dated 09.08.2002 was challenged before different High Courts. On transfer of all the cases, Supreme Court has held that 413 cases of tainted allotments are required to be scrutinized by an

independent committee to determine the validity of the cancellation order dated 09.08.2002. In respect of other allotments, the Supreme Court was pleased to set aside the order of cancellation dated 09.08.2002. The Supreme Court was pleased to appoint a Committee comprising of Hon'ble Mr.Justice S.C.Agrawal and Hon'ble Mr.Justice P.K.Bahri to examine the 413 cases of tainted allotments and submit a report. Retail out let dealership for Thammampatti allotted to the candidate ranked at S.No.1 is one among the cases of tainted allotment referred to the committee. The petitioner has further submitted that as she was ranked at S.No.2 in the merit panel approved by the Dealer Selection Board for allotment of Retail out let dealership at Thammampatti, the Committee appointed by the Supreme Court issued a notice on 02.06.2003 giving her an opportunity to put forth relevant material/facts if any, so as to assist the committee to scrutinize the allotment made on extraneous considerations. After due enquiry, the Committee has held in its report that the allotment of Retail out let Dealership of IOC at Thammampatti is not made in consonance with guidelines and the same is vitiated. In the judgment reported in (2007) 2 SCC 536 (MUKUND SWARUP MISHRA Vs. UNION OF INDIA) Supreme Court was pleased to accept the report of the Committee and up hold the cancellation of allotment of retail out let dealership of IOC at Thammampatti.

4. The petitioner has further submitted that on 21.03.2007, she has submitted a representation to the 3rd respondent herein to allot the dealership in her favour considering the fact that she was ranked as No.2 in the merit panel. In view of the fact that ranking of another candidate as No.1 in the merit panel over and above her and the consequential allotment of dealership to the said candidate ranked at S.No.1 were found not in order by the scrutiny committee constituted by the Supreme Court, the 2nd and 3rd respondents herein ought to have followed the well established procedure of awarding the dealership to the next candidate in the merit panel. However, the 3rd respondent herein has informed her in his letter dated 24.04.2007 that the merit panel for allotment of Retail out let dealership at Thammampatti would be treated as cancelled.

5. The petitioner has further submitted that as per the procedure that has been followed by the 2nd respondent herein whenever a complaint against the 1st empanelled candidate is established, action has to be taken to cancel the selection of the 1st candidate in the merit panel and Letter of Intent will be issued to the next candidate in the merit panel. The merit panel will be cancelled only on two contingencies viz., (1) When it is found that selection process adopted for a location was not in accordance with the laid down guidelines or 2. In the case of established complaint against all the three

candidates included in the merit panel and there is no other eligible candidate available for consideration. Even when the panel is cancelled for the above mentioned two reasons all the eligible candidates will be re-interviewed based on the records available. The re-advertisement of a location is resorted to only when all the three candidates in the merit panel are found not suitable based on established complaints made subsequent to the selection and no other eligible candidate is available for consideration.

6. The petitioner has further submitted that in the instant case, the allotment of dealership to the candidate ranked at S.No.1 in the merit panel for Thammampatti is held to be invalid by the Supreme Court based on the report of the scrutiny committee. In other words, the selection process adopted for preparation of merit panel is found in order but the ranking of the 1st empanelled candidate is held to be not based on merit. In such event the 2nd respondent herein should have issued Letter of Intent to the petitioner herein, who is next in the panel. There is absolutely no jurisdiction for the respondents 2 and 3 herein to treat the panel cancelled when the petitioner herein ranked as S.No.2 in the merit panel is very much available and willing to take up the dealership. As the stand taken by the respondents 2 and 3 herein is not in consonance with the established procedure that has been followed in the matter of allotment of Petrol/Diesel Retail out let dealership,

she is constrained to approach this Court seeking direction to the respondents herein to consider her application (ranked as S.No.2 in the merit panel) for allotment of dealership.

7. The learned counsel appearing for the petitioner has submitted that the petitioner is a Post-Graduate in M.Tech (Chemical Engineering). She served as Assistant Manager (Production) for a period of six years in Hindustan Photo Films. Subsequently, she had resigned the post. In such circumstances, the second respondent herein had invited applications for allotment of petrol / diesel retail outlet dealership under open category in Thammampatti, Salem District. She had submitted an application for the same and she had attended the interview held on 25.08.2000. The Dealer Selection Board had recommended three candidates including the petitioner and she was ranked at S.No.2 in the panel. But, the dealership was given to other applicant, who was ranked at S.No.1 on extraneous consideration. Under the circumstances, the Central Government of India reviewed the allotment of retail outlet dealership during the period 2000-2002 and passed an order, on 09.08.2002, cancelling the merit panel numbering 3760 prepared during the relevant period by the Dealer Selection Board.

8. Further, the learned counsel has submitted that the said cancellation order was challenged before different High Courts and the same were transferred to the Supreme Court. The Apex Court had held that 413 cases of tainted allotments are required to be scrutinized by an independent committee to determine the validity of the cancellation order, dated 09.08.2002, and set aside the order of cancellation in respect of other allotments. Consequently, the Apex Court had appointed a Committee consisting of two Honourable Judges of Supreme Court to examine the tainted allotments. The candidate, who was ranked at S.No.1, is one among them and as such he is not eligible. The Committee, appointed by the Apex Court, had issued a notice, on 02.06.2003, giving an opportunity to the petitioner to put forth relevant materials and facts, if any, so as to assist the Committee to scrutinize the allotment made on extraneous considerations. After a comprehensive enquiry, the Committee had held that the allotment of petrol / diesel retail outlet dealership of Indian Oil Corporation at Thammampatti is not made in consonance with guidelines. Subsequently, the petitioner made a representation to the third respondent to allot dealership in her favour, since the candidate ranked at S.No.1 was found not eligible as per the report of the Scrutiny Committee. Hence, the learned counsel has prayed to quash the impugned order passed by the third respondent.

9.The learned counsel appearing for the first respondent has submitted that the petitioner is ranked at S.No.2. The respondents have been advised by their head office that the panel for the location would be cancelled. Therefore, the candidates, who are in three numbers, as per the panel cannot be considered. Hence, the learned counsel has prayed for dismissal of the writ petition.

10. The learned counsel appearing for the respondents 2 and 3 has submitted that for the petrol / diesel retail outlet dealership, 46 applications were received and out of them 42 applicants were found to be eligible and they were called for interview before the Dealer Selection Board. After conducting interview, three candidates were selected and the candidate, namely, K.Shanmugam, who was ranked at S.No.1, was selected. The same was published in Indian Express. Further, at the time of enquiry, Shanmugam filled up the answers correctly for the questions and therefore high marks were awarded to him. The other two candidates had not understood the questions put up to them during interview. The petitioner had not disclosed her sources of income, she belongs to a joint family and she had not disclosed the highly valuable movable and immovable properties belonging to her family. Furthermore, she has secured only 65 marks and S.No.1 candidate has

secured 89 marks and therefore, dealership has not been allotted in her favour. For all these reasons, the learned counsel has prayed for dismissal of the writ petition.

11. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, it is seen that the Supreme Court had cancelled the allotment of dealership for petrol / diesel retail outlet at Thammampatti. Therefore, the head office had advised the respondents that the panel for the location would be treated as cancelled. In such circumstances, the writ petition does not generate sufficient force to allow it and the same is liable to be dismissed.

12. In the result, the writ petition fails and it is dismissed. No costs.

21/01/2016

Index : Yes/No.
Internet : Yes/No.

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To:

1. Ministry of Petroleum and Natural Gas,
Government of India,
Shastri Bhavan,
New Delhi - 110 001.
2. The Chairman,
Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
G-9, All Yavar Jung Marg,
Bandra (East),
Mumbai - 400 061.
3. The Deputy General Manager (RS),
Indian Oil Corporation Ltd.,
(Marketing Division), Indian Oil Bhavan,
No.139, Nungambakkam High Road,
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C.S.KARNAN, J.

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