

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.08.2016

DATE OF DECISION: 07.09.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.A.Nos.1187 and 1188 of 2008

V.C.Ajeethkumar .. Appellant in both the
Writ Appeals

Vs.

- 1.The Indian Oil Corporation,
rep.by its Chairman and Managing Director,
G9, Ali Yavar Jung Margbandara East,
Mumbai-51.
- 2.The Executive Director,
Indian Oil Corporation Limited,
Indian Oil Bhavan,
Southern Region,
139, Nungambakkam High Road,
Chennai-34.
- 3.The Area Manager,
Indian Oil Corporation Limited,
8/1079, Avinashi Road,
Coimbatore-641 018.
- 4.The Chairman,
Dealer Selection Board,
Reniassance Terrace,
126-E, Thirugnanasambandam Street,
Coimbatore-641 018.

Selvaraj (Deceased)

5.S.Krishnaveni

6.S.Nagadeepa

7.S.Pradeep

.. Respondents in
W.A.No.1187 of 2008

S.Selvaraj (Died)

1.S.Krishnaveni

2.S.Nagadepa

3.S.Pradeep

4.The Commissioner,
Office of the State Commissioner
for the disabled,
Mylapore, Chennai-4.

5.The Director (Marketing),
Indian Oil Corporation,
G-9, Aliavarjung Marg,
Bandhare East, Mumbai-51.

6.The Executive Director,
Indian Oil Corporation Limited,
Southern Region,
139, Nungambakkam High Road,
Chennai-34.

7.The General Manager (TNSO),
Indian Oil Corporation Limited,
Southern Region,
139, Nungambakkam High Road,
Chennai-34.

.. Respondents in
W.A.No.1188 of 2008

Appeals filed under Clause 15 of the Letters Patent, against the orders passed by this Court dated 18.03.2008 in W.P.Nos.10436 of 1999 and 1170 of 2002, respectively.

Petition praying for the issuance of a writ of certiorarified mandamus, (i)to call for the records of the respondents 1 to 4 ending with the order of the fourth respondent dt. .1.1999 in ref.No.DSO/CBE/99 and quash the same and to direct the respondents 1 to 4 to appoint the petitioner herein as LPG Distributor at Avinashi location in coimbatore District.

(ii)to call for the records relating to the order of the 1st Respondent, dt.3.1.2002, made in Claim No.0205/R.D.II-d/2001, as communicated in ROC.NO.0205/R.O.2.3.2000 dt.3.1.2002, quash the same and to direct the 1st respondent to pass order dismissing the complainant preferred by the 5th respondent.

For appellant : Mr.T.V.Ramanujam, Senior Counsel for
Mr.S.Parthasarathy

For respondents: Mr.T.N.Rajagopalan, Spl.GP for
R4 in W.A.No.1188 of 2008

Mr.P.N.Radhakrishnan for
R1 to R4 in W.A.No.1187 of 2008 and
R5 to R7 in W.A.No.1188 of 2008

Mr.R.Krishnamoorthy, Senior Counsel
for Mr.S.Elamurugan for
R5 to R7 in W.A.No.1187 of 2008 and
R1 to R3 in W.A.No.1188 of 2008

JUDGMENT

R.MAHADEVAN, J.

By the unsuccessful litigant in getting the LPG Dealership under the Physically Handicapped Category, these writ appeals have been filed against the order of this Court dated 18.03.2008 made in W.P.Nos.10436 of 1999 and 1170 of 2002 respectively.

2.The facts leading to the filing of the present writ appeals are as under:

(i)Based on the advertisement in a newspaper dated 07.06.1998 inviting applications for the grant of LPG Dealership, one K.Selvaraj and the appellant herein had applied under the Physically Handicapped Category. The said Selvaraj was issued with the Dealership by order dated 08.06.1999 based on the selection list dated 12.01.1999 of the Chairman, Dealer Selection Board, Coimbatore. Since the appellant herein was not granted with the Dealership, he made a representation, dated 23.02.1999, to the respondent-Corporation, as regards his non-selection, and on its non-consideration, the appellant herein filed a writ petition in W.P.No.5665 of 1999, which was disposed of by this Court on 06.04.1999, directing the appellant to approach the concerned authority. Thereafter, the appellant filed the writ petition in W.P.No.10436 of 1999, to quash the order of selection dated 12.01.1999, made in respect of the selection of the said Selvaraj.

(ii)After a lapse of two years, the appellant filed a claim petition before the Commissioner for the Disabled, the fourth respondent in W.A.No.1188 of 2008, under Sections 62 and 63 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("Act" in short), to declare that the person selected was not a physically handicapped person and also for a direction to cancel the Distributorship granted therein. The said claim petition was allowed by order dated 03.01.2002, directing the respondent-Corporation to cancel the Dealership given to the said Selvaraj and to grant the same to the appellant herein. As against the

same, the said Selvaraj filed the writ petition in W.P.No.1170 of 2002. In the mean while, the said Selvaraj (hereinafter referred to as "deceased petitioner"), died on 28.09.2002 and subsequently his legal representatives have been brought on record.

(iii)The appellant had also filed a criminal case in Crime No.751 of 2001 before the Judicial Magistrate, Avinashi, under Sections 420, 466 and 472 of IPC alleging that the deceased petitioner had made a false claim to obtain the Dealership under the Physically Handicapped Category. In the course of investigation, it was found that the deceased petitioner was certified by the hospital authorities as visually handicapped, to the extent of 50%. After completing the investigation, the police authorities also filed a report stating that the deceased petitioner had 50% visual disability.

(iv)Since the issues involved in the writ petitions in W.P.Nos.10436 of 1999 and 1170 of 2002 have arisen out of the same facts and circumstances, this Court took up both the writ petitions together and passed a common order. The learned single Judge considered the materials available on record carefully and held that the impugned order dated 03.01.2002 cannot be sustained in the eye of law. It was held that the declaration of the deceased petitioner to be a visually handicapped person with 50% disability has been made by the Medical Experts who have assessed the disability of the deceased petitioner based on the necessary medical examinations. The Medical Board of the Coimbatore Medical College Hospital has certified that the deceased petitioner was a visually disabled person with 50% disability and Dr.R.Pandurangan, the Professor and Head of Department of Ophthalmology attached to Coimbatore Medical College Hospital had supported its findings in his statement made before the Judicial Magistrate, Avinashi, with regard to Crime No.751 of 2001. Even according to the Medical Report of Sankara Nethralaya Eye Hospital, Chennai, the deceased petitioner has been suffering from visual disability over a fairly long period of time. The Dealer Selection Board consisting of sufficiently qualified persons seems to have followed the guidelines prescribed by the Ministry of Petroleum and Natural Gas, Government of India, during the process of selecting the dealer for LPG Distributorship for Avinashi area. While that being so, it was held by the learned single Judge that it is not open to the Commissioner for the Disabled to nullify the selection of the deceased petitioner as a Dealer, under the Handicapped Person Category, and it is also not open to the Commissioner for the Disabled to direct the Indian Oil Corporation authorities to appoint the appellant herein as a Dealer, circumventing the due procedures which are to be followed for such selection and appointment. It was also observed that the Commissioner had travelled beyond his powers vested in him by the Act, in passing the impugned order dated 03.01.2002.

(v)With the above observations, by the order impugned in these writ appeals, the learned single Judge dismissed the writ petition filed by the appellant herein, as infructuous, and allowed the writ petition filed by the deceased petitioner by setting aside the impugned order therein dated 03.01.2002, but however, leaving the issue of allotment of the Dealership in favour of the deceased petitioner's wife-S.Krishnaveni, open to be agitated before the appropriate forum in the manner known to law.

(vi)Challenging the order passed by this Court in the writ petitions, the present writ appeals have been filed.

3.Amongst many grounds raised in the writ appeals, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the appellant has mainly contended that the learned single Judge ought to have dismissed the writ petition filed by the deceased petitioner and allowed the writ petition filed by the appellant herein, on the ground that they had filed false and fabricated medical certificates from Tiruppur Government Hospital with an aim to illegally obtain the LPG Dealership. It is his further submission that the deceased petitioner was not totally a blind person and that even a person having perfect vision can cheat the medical authorities stating that he could not see properly, to obtain a false certificate. He contended that the Motor Vehicle Inspector does not give license to a person having 50% visual disability and that obtaining a license for driving heavy vehicle with 50% visual disability is not possible. He further contended that the jurisdiction of the Indian Oil Corporation comes under the State Commissioner for the Disabled, Chennai, and therefore, the complaint preferred by the appellant before the Commissioner is maintainable as per the Act. Stating so, the learned senior counsel for the appellant has submitted that these writ appeals have to be allowed.

4.Mr.P.N.Radhakrishnan, learned counsel for the respondent-Indian Oil Corporation has submitted that the Selection Board, which consists of three members headed by a chairman, based on the guidelines and eligibility criteria, issued by the Ministry of Petroleum and Natural Gas, Government of India, issues the order of merit list. After the receipt of the merit list, a field investigation was conducted by the respondent-Corporation, with regard to the candidates who have been selected, in order to verify as to whether they have complied with the eligibility criteria or not, and if the report of the field investigation is found to be in order, the candidate will be given a Letter of Intent, granting sufficient time to provide the required facilities for operating the dealership. If the conditions of the Letter of Intent are complied with by the candidate concerned within the time specified, the candidate will be given the letter of appointment and the Distributorship Agreement would be entered into. Once this is done and the Distributorship

is commissioned, the merit panel is treated as scrapped. Stating so, he submitted that the granting of LPG Dealership to the deceased petitioner made originally, was in accordance with law and that the learned single Judge has correctly reiterated the same.

5.Mr.T.N.Rajagopalan, learned Special Government Pleader appearing for the fourth respondent in W.A.No.1188 of 2008 has submitted that the Commissioner for the Disabled is vested with the powers under Sections 61 and 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, to deal with the complaint made against the deceased petitioner. He further submitted that the Commissioner has power to decide whether the deceased petitioner is a handicapped person or not and he also has the power to direct the authorities concerned to rectify a mistake and to allot the Distributorship to a qualified person. In such circumstances, the contentions raised on behalf of the deceased petitioner are unacceptable and the same has no merit or substance.

6.Mr.R.Krishnamoorthy, learned Senior Counsel appearing for the respondents 5 to 7 in W.A.No.1187 of 2008 / respondents 1 to 3 in W.A.No.1188 of 2008, has submitted that as per the guidelines of the Notification, the candidates claiming under the physically handicapped category, should be handicapped to the extent of a minimum of 40% permanent/partial disability. For obtaining the Dealership under the Physically Handicapped Category, a certificate from the Civil Surgeon/Chief Medical Officer or Superintendent of a Government hospital, as per appendix 'C' to the application form, has to be produced. As per the said norms, the deceased petitioner had submitted a medical certificate in the form prescribed, along with the application. The prescribed form had been duly signed by the Doctor attached to the Government Headquarters Hospital, Tiruppur and duly countersigned by the Chief Medical Officer. Hence, it cannot be said that there was no medical proof produced by the deceased petitioner to obtain the Dealership under the Physically Handicapped Category in the year 1999. Stating so, the learned senior counsel prayed for dismissal of these writ appeals.

7.Heard the learned counsel on either side and perused the materials available on record carefully.

8.The appellant has raised an issue that there was fabrication of medical certificate by the deceased petitioner to illegally obtain the Dealership under the Physically Handicapped Category and that the deceased petitioner is not totally blind and the total disability of the deceased petitioner is only 10% and even assuming that for a person having vision disability at 50%, the Transport Authority would not have given the licence. On the other hand, it was the case of the deceased petitioner that due to diabetes, he had total 60% disability (10% towards

loss of great toe and 50% towards visual disability) and to that effect, there are valid documentary evidence. Even in the year 2001, the deceased petitioner had produced a medical certificate dated 24.05.2001 and also the case summary of Sankara Netharalaya Eye Hospital dated 12.07.2001 before the Commissioner for the Disabled, Chennai to establish that he was a physically handicapped person having 50% visual disability and he had also offered himself for medical examination before a team of Doctors, as directed. Even in the criminal case filed by the appellant, alleging that the deceased petitioner had made a false claim to obtain the dealership under the Physically Handicapped Category, the deceased petitioner appeared before the Medical Board attached to the Coimbatore Medical College Hospital and Dr.R.Pandurangan, the Professor and Head of Department of Ophthalmology, Coimbatore Medical College Hospital, had given a medical certificate dated 13.12.2001, certifying the visual disability at 50%. Further, the police authorities had also filed a report dated 21.12.2001, stating that as per the medical examination by the above medical authorities, the deceased petitioner was found to be with 50% visual disability. Only based on the necessary medical examinations, the medical authorities had assessed the visual disability of the deceased petitioner at 50%. Therefore, it is clear that the deceased petitioner had 50% visual disability apart from 10% disability towards the loss of great toe. Further, in this regard, there is no contra evidence adduced by the appellant. Even assuming that the deceased petitioner had 30% visual disability for the loss of vision in one eye as projected by the appellant, even then the deceased petitioner fulfils the criteria of sustaining the minimum disability of 40%, as he had another 10% disability towards the loss of great toe. Therefore, in view of the evidence produced by the deceased petitioner and in the absence of any contra evidence on the side of the appellant, it cannot be said that the deceased petitioner is not a physically handicapped person and he is not eligible to get the Dealership. Thus, the contentions put forth by the learned senior counsel for the appellant with regard to production of false and fabricated medical certificates by the deceased petitioner, deserve to be rejected.

9. Against the allegation of the appellant that the renewal of driving licence in the year 2000 would go to show that the deceased petitioner was not a physically handicapped person, since for a person having 50% visual disability, the licensing authority would not have renewed the licence, the learned Senior Counsel for the deceased petitioner contended that the deceased petitioner had renewed the driving licence only for the purpose of identity and residential proof and not for actually driving the vehicles. The deceased petitioner had applied for renewal of his driving licence through the proprietor of the Driving School, who deposed before the police authorities that the deceased petitioner's licence had been renewed based on a medical certificate obtained from the authority concerned. Here

also, the appellant did not produce any valid evidence, except merely stating that renewal of the driving licence would disqualify him to get the dealership.

10.It is true that the State Commissioner for the Disabled has got every power to give a finding about the veracity of the physically handicapped person. But, Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, does not confer the powers on him to decide as to whether the deceased petitioner is a physically handicapped person or not. Even assuming that he has got every power to look into the issue, when there are enough materials available to establish that the deceased petitioner had 50% visual disability, including the police report, thereby qualifying for getting the dealership, it is not open for the Commissioner for the Disabled to cancel the selection and further to grant the same to the appellant, by-passing the due procedures to be followed for granting the dealership and hence, ultimately the order passed by the Commissioner for the Disabled is not sustainable in the eye of law, as he had travelled beyond his powers vested in him under the Act. Further, when the Dealer Selection Board, whose order of selection has been challenged before the Commissioner for the Disabled, had not been made a party to the proceedings before him and when there was no opportunity of hearing given to the Dealer Selection Board, the claim petition filed by the appellant itself can be said to be bad for misjoinder of parties and consequently, the order passed thereon also can be termed as not sustainable.

11.For all the above reasons, these writ appeals are liable to be dismissed and accordingly the same are dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Chairman and Managing Director,
Indian Oil Corporation Limited,
G9, Ali Yavar Jung Margbandara East,
Mumbai-51.

2.The Executive Director,
Indian Oil Corporation Limited,
Indian Oil Bhavan,
Southern Region,
139, Nungambakkam High Road,
Chennai-34.

3.The Area Manager,
Indian Oil Corporation Limited,
8/1079, Avinashi Road,
Coimbatore-641 018.

4.The Chairman,
Dealer Selection Board,
Reniassance Terrace,
126-E, Thirugnanasambandam Street,
Coimbatore-641 018.

4.The Commissioner,
Office of the State Commissioner
for the Disabled,
Mylapore, Chennai-4.

5.The Director (Marketing),
Indian Oil Corporation,
G-9, Aliavarjung Marg,
Bandhare East, Mumbai-51.

6.The General Manager (TNSO),
Indian Oil Corporation Limited,
Southern Region,
139, Nungambakkam High Road,
Chennai-34.

+2 cc's to Mr.S.Parthasarathy, advocate,sr.50865,866

+1 cc to Mr.Y.Ramanaiah, advocate,sr.50871

+1 cc to Mr.P.N.Radhakrishnan,advocate,sr.50876

+2 cc's to Mr.Y.Ramanaiah, advocate,sr.51336.

nm(co)
krd 14/9

सत्यमेव जयते

W.A.Nos.1187 and 1188 of 2008

WEB COPY