

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

W.P. No. 37232 of 2015

&

M.P. Nos. 1 & 2 of 2015

AVR Balasubramani Sons,
rep. by its Proprietor
Mr.A.V.R. Balasubramani
No.5, Thiruvallur Main Road,
Gandhi Nagar, Pammadukulam,
Chennai - 600 052.

..Petitioner

Vs.

1. ONGC Petro Additions Limited,
1st Floor, Omkara Building,
Near Sai Chowdki,
Manjalpur,
Gujarat, Vadodara - 390 011.
2. India Post,
Tamil Nadu Postal Circle,
O/o. The Chief Postmaster General,
Tamil Nadu Circle,
Chennai 600 002.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to overlook the delay caused by the 2nd respondent due to unforeseen circumstances in delivering the physical copies of the application form and documents and also, consider the petitioner's application in the evaluation process for the appointment of Del Credere Agent at Chennai.

For Petitioner :: Mr.A.V.B. Krishnakanth

For Respondents :: Mr.K. Vijayan for
 M/s. King and Patridge
 for R1
 Mr.A.K. Manoj Kumar
 Central Govt. Counsel
 for R2

O R D E R

The first respondent invited applications for appointment of channel partners for different cities in India for retail sales and storage of its polymer products and the invitation for applications was published in National Newspapers on 17.09.2015 indicating the last date for online registration as 17.10.2015. The last date for receipt of physical forms with documents was fixed as 31.10.2015. Subsequently, the dates were extended on 10.10.2015 fixing the last date for online registration as 31.10.2015 and the last date for receipt of physical forms with documents as 09.11.2015. The petitioner applied online on 30.10.2015. He sent an application through speed post with acknowledgement due on 03.11.2015. Unfortunately, the application along with documents reached the 1st respondent on 14.11.2015, beyond the last date for receipt of physical forms along with documents. Therefore, the application of the petitioner was rejected even without being considered on merits. Seeking a Writ of Mandamus directing the 1st respondent to condone the said delay, said to have been caused at the instance of the 2nd respondent, with a further direction to consider the petitioner's application for evaluation process, the present writ petition has been filed.

2. Learned counsel for the petitioner submitted that for the mistake on the part of the 2nd respondent, the petitioner cannot be made to suffer. The petitioner had applied online within the time prescribed. When that is so, it is to be deemed as if the application has been duly submitted. Therefore, rejection of the petitioner's application on a technical ground, at the hands of the 1st respondent, cannot be allowed to stand.

3. Learned counsel for the 1st respondent submitted that the Information Dossier deals with the selection process. As per the said document, filling up the application online and thereafter, the submission of the application forms along with documents are mandatory. Clause 21 of the Information Dossier states that the application form in a sealed cover, complete in all respects together with all enclosures should reach the registered office of the 1st respondent within the cut-off date. As per clause 22, the application form applied online, if not received by the 1st respondent in sealed cover, complete in all

respects, together with all enclosures within the designated timeline shall not be considered for evaluation purpose of Stage -1 of the Selection Procedure. Further, clause 23 states that the 1st respondent will not be responsible for any delay in receipt of the applications whatsoever, and the same would be rejected without assigning any reason whatsoever. That apart, according to the learned counsel for the 1st respondent, the writ petition is not maintainable on two grounds, the first ground being that the 1st respondent is not an authority under Article 12 of the Constitution of India as ONGC has got only shares in it and secondly, there is lack of territorial jurisdiction. Therefore, he would submit that the writ petition will have to be dismissed.

4. Instead of going into the objections raised on the maintainability of the writ petition, this Court is inclined to go into the merits of the case.

5. Both the petitioner and the 1st respondent are bound by the conditions contained in the Information Dossier. The relevant clauses of the Information Dossier, which deal with the Selection Process are extracted hereunder:

"III. SELECTION PROCESS

1. HOW TO APPLY

1.1 The applicants are required to fill in on-line application form available at the company website www.opalindia.in. For further details, please read the next chapter IV. Instructions - Application Process' very carefully.

...

1.6 Applicants are required to take a print out of the application form and enclose self-attested copies of all relevant documents as mentioned in this document (VI. Annexures). The application with such required documents must be put in a sealed envelope duly superscribed:

APPLICATION FOR DCA/DCA -cum- CS) (write the relevant one) at.....

(Mention City/Location applied for)

And

UA-ID

(Generated after submitting application; on the right hand top corner of the printed Application Form)

1.7 Application forms, enclosures completed in all respects must reach the office address mentioned below on or before 1600 hrs on 31.10.2015...."

...

IV. INSTRUCTIONS - APPLICATION PROCESS

.....

21. Application form in sealed cover, complete in all respects, together with all enclosures, must reach us at the following address, on or before 1600 hrs of 31st October, 2015

Head-Marketing
ONGC Petro Additions Ltd.,
1st Floor, Omkara Building,
Sai Chowkdi, Manjalpur,
Vadodara - 390 011
Gujarat, India,
Ph: +91-265-6192900

22. Application form applied ONLINE but not received by OPaL in sealed cover, complete in all respects, together with all enclosures by the designated timeline SHALL NOT be considered for evaluation purpose of Stage-I of Selection Procedure (Refer Above).

23. OPaL will not be responsible for any delay in receipt of the applications whatsoever, and the same would be rejected without assigning any reason whatsoever..."

6. As rightly submitted by the learned counsel for the 1st respondent, the present situation has been well taken care of in the above extracted clauses of the Information Dossier. As the petitioner is bound by it, though it is unfortunate, it cannot wriggle out of it. To put it differently, even assuming that there was an element of negligence on the part of the 2nd respondent, that would not bind the 1st respondent. There is no violation of any public duty on the part of the 1st respondent and it has merely acted in accordance with the conditions contained in the Information Dossier. Further, it is not, as if, only the petitioner has been affected as it is submitted by the learned counsel for the 1st respondent that there are others, who are similarly placed.

7. Hence, this Court does not find any illegality, mala fide or arbitrariness in the action of the 1st respondent warranting interference, that too, when there is no relationship of agency between the petitioner and the 1st respondent. Accordingly, the writ petition is dismissed. No costs. Connected M.P.s are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

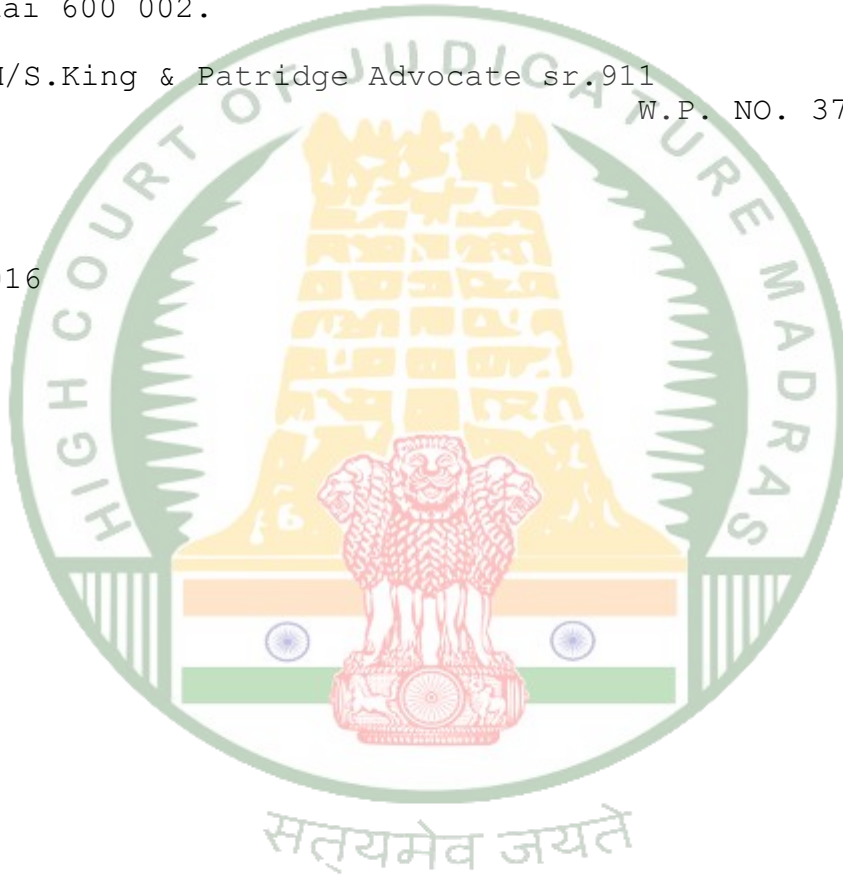
1. ONGC Petro Additions Limited,
1st Floor, Omkara Building,
Near Sai Chowdki,
Manjalpur,
Gujarat, Vadodara - 390 011.

2. India Post,
Tamil Nadu Postal Circle,
O/o. The Chief Postmaster General,
Tamil Nadu Circle,
Chennai 600 002.

+1 cc to M/S.King & Patridge Advocate sr.911

W.P. NO. 37232 of 2015

vsn(co)
aa18/01/2016



WEB COPY