

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-02-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 2206 of 2013

Dr. A. Sofia

... Petitioner

Versus

1. Hindustan Petroleum Corporation Limited
Registered Office at
17, Jamshedji Tata Road
Mumbai - 400 020
rep. by its Authorised Officer

2. Hindustan Petroleum Corporation Limited
Rep. by Senior Regional Manager
18/3, Big Bazaar Street
Coimbatore - 641 001

3. Parimalam

... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to the letter in Ref:CBRO/KVN/RET dated 28.12.2012 and quash the same and consequently direct the respondents 1 and 2 to award the dealership of retail outlet to the petitioner to be located in the property situate in Re-Survey No.486/3, Athani Village, Bhavani Taluk, Erode District.

For Petitioner : Mr. Ar.L. Sundaresan,
Senior Advocate
for Mr. P. Valliappan

For Respondent : Mr. O.R. Santhanakrishnan
for R1 and R2
No appearance for R3

ORDER

The petitioner has come forward with this writ petition questioning the correctness of the order dated 28.12.2012 of the second respondent, whereby and by which, the second respondent awarded the petroleum outlet dealership in favour of the third respondent.

2. According to the petitioner, she is the owner of the land measuring 8816 square feet (0.09.5 Hectare) situate in Resurvey No.486/3, Athani Village, Bhavani Taluk by virtue of a registered sale deed dated 26.02.2007 executed in her favour by one S. Venkatachalabathy. After purchase, the petitioner also mutated the revenue records and obtained natham patta in her favour. On 16.09.2011 the respondents 1 and 2 effected an advertisement in newspapers calling upon applications for award of retail outlet dealership between Bhavani Kalkatti to Athani on SAB Road under open category. As the petitioner fulfils all the criteria prescribed in the said notification, she submitted an application. Similarly, the third respondent also submitted an application for award of such dealership. According to the petitioners several applications received by the respondents 1 and 2 were rejected except the applications of the petitioner and the third respondent. Therefore, on 30.03.2012, respondents 1 and 2 called her for an interview in which the petitioner secured 92.59 whereas the third respondent obtained only 81.68 marks. Therefore, the petitioner legitimately expected that she would be awarded the dealership in her favour. While so, the petitioner was shocked to receive the impugned order dated 28.12.2012 passed by the second respondent whereby the second respondent cancelled the entire selection process and decided to proceed afresh purportedly on the basis of a letter dated 09.04.2012 of the third respondent stating that the property shown by the petitioner is under litigation, however, the copy of the letter was not furnished to the petitioner. The respondents 1 and 2 did not issue any notice to the petitioner before cancelling the selection process and it was only on the basis of a letter said to have been written by the third respondent. Therefore, the impugned order is vitiated for non-compliance of the principles of natural justice.

3. As regards the alleged litigation, the petitioner would submit that her vendor Venkatachalabathy in partnership with one Kuppusamy has been carrying on business in the name of M/s. Mahalakshmi Enterprises running a petrol bunk with Indian Oil Corporation. Pursuant to the death of Kuppusamy, the partnership firm was re-constituted and V. Parvatha Rajakumari, Wife of Venkatachalabathy has been inducted as a new partner. Even during the life time of Kuppusamy, a suit in O.S. No. 581 and 625 of 1999 were filed before the District Munsif Court, Bhavani and on the death of Kuppusamy, his wife and daughter Karthikeyani were impleaded as parties. The dispute ultimately got settled by entering into a compromise between the legal heirs of Kuppusamy and petitioner's vendor namely Venkatachalabathy and therefore the suit was dismissed on 20.12.2000. However, at the instance of Karthikeyan, the suit was re-litigated by filing O.S. No. 544 of 2004 on the ground that at the time of compromise, she was a minor. The said suit in O.S. No. 544 of 2004 was dismissed which was confirmed in A.S. No. 9 of 2007 on the file of Fast Track Court, Bhavani.

Therefore, the property purchased by the petitioner is having a clear title and the earlier litigation do not exist. In fact, the petitioner's vendor Venkatachalabathy has filed WP No. 14351 of 2009 before this Court against Indian Oil Corporation allegedly on the ground that he has violated the terms and conditions of the contract and it was dismissed on 23.04.2010. In any event, the property purchased by the petitioner is free from any encumbrance and therefore, merely on the basis of the letter given by the third respondent, the respondents are not justified in cancelling the entire selection process.

4. The learned counsel for the petitioner reiterated the contents contained in the affidavit filed in support of the writ petition and stated that after conducting an interview on 20.03.2012 in which the petitioner has secured higher marks than the third respondent, the second respondent is not justified in cancelling the selection process purportedly on the basis of a complaint given by the unselected candidate, being the third respondent. In any event, before cancelling the selection process, the petitioner ought to have been put on notice and the impugned order is violative of principles of natural justice.

5. On the other hand, the learned Standing counsel appearing for the respondents vehemently opposed the writ petition by contending that the second respondent, in compliance with due process of law, has resorted to proceed further and the second respondent is justified in doing so. The learned standing counsel for the respondents also invited the attention of this Court the additional counter affidavit filed by the first respondent, wherein it is stated as follows:-

"2. I am placing the subsequent events that have happened after the Counter affidavit was filed before this Hon'ble Court.

3. I state that the selection for the location of RHS from Bhavani Kaikatty to Attani on SAB Road in Erode District has been cancelled and ordered for re-selection. Government of India, Ministry of Petroleum and Natural Gas issued notification dated 23.06.2014 wherein Oil Marketing Companies were directed to cancel all cases of ROs/Allotments in the cases where interviews (including of Original or Reschedule or arising out of established complaints) are pending as on the date of issue of this letter. OMC's are advised that all such locations may be taken afresh as per Extant Policy under the new system of "Draw of Lots" by undertaking fresh process of location. In view of the stay obtained by the petitioner in MP No. 1 of 2013 in WP No. 2206 of 2013, the location in question was dropped from the Roaster since the location was found to be unviable due to considerable delay and further opening of new outlets.

6. In the light of the above averments made in the additional counter affidavit that subsequent to the filing of the writ petition, the Government of India has issued a notification dated 23.06.2014 to award retail outlet dealership by draw of lots and the fact that the location in quesiton was dropped by the respondents from the purview of awarding contract, the relief sought for by the petitioner does not survives for consideration.

7. Accordingly, the writ petition is dismissed as infructuous. No costs. Consequently, MP No. 1 of 2013

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Authorised Officer
Hindustan Petroleum Corporation Limited
Registered Office at
17, Jamshedji Tata Road
Mumbai - 400 020
2. The Senior Regional Manager
Hindustan Petroleum Corporation Limited
18/3, Big Bazaar Street
Coimbatore - 641 001

+1cc to Mr.P. Valliappan, Advocate, S.R.No.12859

W.P No. 2206 of 2013

MSM(CO)
CA(22/03/2016)

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