

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 06.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.A.Nos.537 of 2016, 325, 547 and 548 OF 2013, 669 TO 672 OF 2013

W.A.No.537/2016:

S.Gopu

... Appellant

Versus

- 1.The Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Sastri Bhavan,
New Delhi 110 011.
- 2.The Chairman,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Karimbhoy Road,
Ballard Estate,
Mumbai 400 001.
- 3.The Regional LPG Manager (South),
M/s.Bharath Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
Off.11th Main Road,
Anna Nagar,
Chennai 600 040.
- 4.The Territory Manager,
M/s.Bharath Petroleum Corporation Ltd.,
LPG Filling Plant,
Peelamedu,
Coimbatore 641 004.
- 5.The Director/Marketing,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Karimbhoy Road,
Ballard Estate,
Mumbai 400 001.

...Respondents

Prayer:- Writ appeal filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.18054 of 2012 dated 28.11.2012.

Prayer in W.P.No.18054 of 2012:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the 5th respondent pertaining to the circular Dir (M) LPG.CON dated 14.3.2012 and quash the same and consequently direct the respondents 2 to 5 to validate the earlier selection process and regularize and confirm the petitioner's appointment as LPG distributor for BHARAT PETROLEUM CORPORATION LTD for Coimbatore (Race Course/Sungam) area.

For Appellant :- Mr.D.Saikumaran

For Respondents :- Ms.Nithila Vani for R1
Mr.O.R.Sa for R2 to R5

W.A.No.325/2013:

K.Meera Pangayar Selvi ... Appellant/ Petitioner

Versus

1.The Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Sastri Bhavan,
New Delhi 110 011.

2.The Chairman,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Currimbhoy Road,
Ballard Estate,
Mumbai 400 001.

3.The Regional LPG Manager (South),
M/s.Bharath Petroleum Corporation Ltd.,
Regional Office, No.1, Ranganathan Gardens,
Off.11th Main Road,
Anna Nagar,
Chennai 600 040.

4.The Territory Manager (LPG),
M/s.Bharath Petroleum Corporation Ltd.,
LPG Filling Plant,
Peelamedu,
Coimbatore 641 004.

...Respondents/ Respondents

Prayer:- Writ appeal filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.13976 of 2012 dated 28.11.2012.

Prayer in W.P.No.13976 of 2012:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 4th Respondent in CBE:LPG:KODUVAI (OP) dated 18.04.2012 and quash the same and consequently direct the Respondents to issue the letter of intent to the Petitioner for LPG distributorship for Koduvai location, Tiruppur District in consonance with the Final Mark Sheet issued on 05.11.2011.

For Appellant :- Mr.Vijay Narayan
Senior Counsel
for Mr.T.Gowthaman

For Respondents :- Ms.Nithila Vani for R1
Mr.O.R.Santhanakrishnan for R2 to R4

W.A.Nos.547 and 548/2013:

S.Karthik ...Appellant in both WAs

vs

- 1.The Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Sastri Bhavan,
New Delhi 110 011.
- 2.The Chairman,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Currimbhoy Road,
Ballard Estate,
Mumbai 400 001.
- 3.The Regional LPG Manager (South),
M/s.Bharath Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
Off.11th Main Road,
Anna Nagar,
Chennai 600 040.
- 4.The Territory Manager,
M/s.Bharath Petroleum Corporation Ltd.,
LPG Filling Plant,
Peelamedu,
Coimbatore 641 004. ...1 to 4 Respondents in
W.A.No.547 and 548/13

5.The Director-Marketing,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Karimbhoy Road,
Ballard Estate,
Mumbai 400 001. ...R5 in W.A.547/13

6.S.Gopu ...6th Respondent in
W.A.547/13 and 5th
Respondent in W.A.548/13

7.Kailesh Raja Chelladurai
...7th Respondent in
W.A.547/13 and 6th Respondent in
W.A.548/13

Prayer:- Writ appeals filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.Nos.10261 and 3404 of 2012 respectively dated 28.11.2012.

Prayer in W.P.No.10261 of 2012: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 5th respondent pertaining to the circular Director (Marketing) LPG.CON date 14.03.2012 quash the same and direct respondents 2 to 5 to select a Domestic LPG Distributor for Bharath Petroleum Corporation Ltd. for Coimbatore (Race Course/Sangam) by conducting a fresh interview for the persons who had applied pursuant to their advertisement dated 15.06.2010 on the guidelines which were applicable on that date.

Prayer in W.P.No.3404 of 2012: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of respondents 2 to 4 relating to the final mark sheet dated 03.11.2011 and 04.11.2011 for candidates for Domestic LPG Distributorship for the Bharat Petroleum Corporation Ltd. for Coimbatore (Race Course/Sungam) issued by the 4th respondent, quash the same and direct respondents 2 to 4 to conduct a fresh-interview based on the advertisement dated 15.06.2010 Published in Dinakaran with a specified time and award dealership to the most eligible person as per the guidelines.

For Appellant :- Mrs.Hema Sampath
Senior Counsel
for M/s.R.Meenal

For Respondents :- Ms.Nithila Vani for R1
Mr.O.R.Santhanakrishnan for R2 to R5 and R2 to R4
Mr.D.Saikumaran for R6
No appearance
for R7 and R6 in W.A.547/13

W.A.Nos.669 and 670 of 2013:

- 1.The Chairman,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Currimbhoy Road,
Ballard Estate,
Mumbai 400 001.
 - 2.The Regional LPG Manager (South),
M/s.Bharath Petroleum Corporation Ltd.,
Regional Office,
No.1, Ranganathan Gardens,
Off.11th Main Road,
Anna Nagar,
Chennai 600 040.
 - 3.The Territory Manager (LPG),
M/s.Bharath Petroleum Corporation Ltd.,
LPG Filling Plant,
Peelamedu,
Coimbatore 641 004.
 - 4.The Director-Marketing,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Currimbhoy Road,
Ballard Estate,
Mumbai 400 001.
- ...Appellants in both WAs

vs

- 1.S.Karthik
- 2.The Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Sastri Bhavan,
New Delhi 110 011.

3.S.Gopu

4.Kailesh Raja Chelladurai ...Respondents in W.A.669/13

1.S.Gopu

- 2.The Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Sastri Bhavan,
New Delhi 110 011. ...Respondents
in WA 670/2013

Prayer:Writ appeals filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.Nos.10261, 18054 of 2012 respectively dated 28.11.2012.

Prayer in W.P.No.10261 of 2012:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 5th respondent pertaining to the circular Director (Marketing) LPG.CON date 14.03.2012 quash the same and direct respondents 2 to 5 to select a Domestic LPG Distributor for Bharath Petroleum Corporation Ltd. for Coimbatore (Race Course/Sangam) by conducting a fresh interview for the persons who had applied pursuant to their advertisement dated 15.06.2010 on the guidelines which were applicable on that date.

Prayer in W.P.No.18054 of 2012:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the 5th respondent pertaining to the circular Dir (M) LPG.CON dated 14.3.2012 and quash the same and consequently direct the respondents 2 to 5 to validate the earlier selection process and regularize and confirm the petitioner's appointment as LPG distributor for BHARAT PETROLEUM CORPORATION LTD for Coimbatore (Race Course/Sungam) area.

For Appellants :- Mr.O.R.Santhanakrishnan
in both appeals

For Respondents :- Mr.Mrs. Hema Sampath SC for Mrs.
R. Meenal for R1
in WA 669/2013 Ms.Nithila Vani for R2
Mr.D.Saikumar for R3
No appearance for R4

For Respondents :- Mr.D.Saikumaran for R1
in WA 670/2013 Ms.Nithila Vani for R2

W.As.671 and 672/2013:

1. M/s.Bharath Petroleum Corporation Ltd.,
Rep. by its Chairman,
Bharath Bhavan,
4 and 6, Currimbhoy Road,
Ballard Estate,
Mumbai 400 001.
- 2.The Regional LPG Manager (South),
M/s.Bharath Petroleum Corporation Ltd.,
Regional Office,
No.1, Ranganathan Gardens,
Off.11th Main Road,
Anna Nagar,
Chennai 600 040.

3.The Territory Manager (LPG),
M/s.Bharath Petroleum Corporation Ltd.,
LPG Filling Plant,
Peelamedu,
Coimbatore 641 004. ...Appellants in both WAS

vs

1.K.Meera Pangayar Selvi

2.The Government of India rep. by
The Secretary,
Ministry of Petroleum & Natural Gas,
Shastri Bhavan, New Delhi 110 011.
...Respondents in W.A.671/2013

1.S.Karthik

2.The Secretary to Govt. Of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhavan, New Delhi 110 011.

3.S.Gopu

4.Kailesh Raja Chelladurai ...Respondents
in W.A.672/2013

Prayer:Writ appeals filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.Nos.13976 and 3404 of 2012 respectively dated 28.11.2012.

Prayer in W.P.No.13976 of 2012:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 4th Respondent in CBE:LPG:KODUVAI (OP) dated 18.04.2012 and quash the same and consequently direct the Respondents to issue the letter of intent to the Petitioner for LPG distributorship for Koduvai location, Tiruppur District in consonance with the Final Mark Sheet issued on 05.11.2011.

Prayer in W.P.No.3404 of 2012:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of respondents 2 to 4 relating to the final mark sheet dated 03.11.2011 and 04.11.2011 for candidates for Domestic LPG Distributorship for the Bharat Petroleum Corporation Ltd. for Coimbatore (Race Course/Sungam) issued by the 4th respondent, quash the same and direct respondents 2 to 4 to conduct a fresh-interview based on the advertisement dated 15.06.2010 Published in Dinakaran with a specified time and award dealership to the most eligible person as per the guidelines.

For Appellants :- Mr.O.R.Santhanakrishnan
in both appeals

For Respondents :- Mr. Vijayanarayanan SC for
in WA 671/201 for T.Gowthaman R1
Ms.Nithila Vani for R2

For Respondents :- Mrs. Hema Sampath for R1
in WA 672/2013 Senior Counsel for
M/s.R. Meenal
Ms.Nithila Vani for R2
Mr.D.Saikumaran for R3
No appearance for R4

COMMON JUDGMENT

(Judgment of the Court was delivered by K.RAVICHANDRABAABU,J.)

All these 8 writ appeals are arising out of a common order passed by the learned Single Judge in W.P.Nos.3404, 10261, 13976 and 18054 of 2012. Out of these 8 appeals, four are filed by the respective writ petitioners, while the remaining four are filed by the respondents/Bharat Petroleum Corporation Limited.

2.The common issue involved in these cases is in respect of awarding LPG distributorship, by the Bharat Petroleum Corporation Limited at two places viz., Race Course road/Sungam, Coimbatore District and Koduvai, Tiruppur District. The petitioner in W.P.No.3404 of 2012 challenged the final marksheet prepared by the Interview Committee in respect of LPG Distributorship at Race Course/Sungam in Coimbatore District and consequently, for a direction to the respondents to conduct a fresh interview based on the advertisement dated 15.06.2010 published in daily newspaper.

3.The very same petitioner filed the subsequent writ petition in W.P.No.10261 of 2012 challenging the circular dated 14.03.2012 issued by the Director (Marketing) and consequently for a direction to the respondents to conduct fresh interview for the persons who had applied already in pursuant to the advertisement dated 15.06.2010 based on the guidelines which were applicable as on that date.

4.W.P.No.18054 of 2012 was filed challenging the very same circular dated 14.03.2012 issued by the Director (Marketing) and consequently, for a direction to the respondents to validate the earlier selection process and regularise and confirm the petitioner's appointment as LPG Distributor for Coimbatore (Race Course/ Sungam) area.

5.W.P.No.13976 of 2012 was filed challenging a similar circular issued on 18.04.2012 in respect of Koduvai location, Tiruppur District and consequently, for a direction to the respondents to issue the letter of indent to the petitioner for LPG Distributorship for the said location in consonance with the final marksheet issued on 05.11.2011.

6.The learned Single Judge by a common order, while dismissing all the writ petitions, however, directed the respondents therein to consider the case of the petitioners while re-advertising for the above said two locations, by specifically observing that the petitioners need not be directed to make any fresh application except indicating their willingness to be considered for the said selection. The learned Judge further observed that the procedure to be followed while making such selection cannot be on the basis of the new guidelines viz., draw of lots but on the basis of the guidelines which were available at the time of issuing old notification.

7.Aggrieved against the dismissal of the writ petitions, four writ appeals are filed by the respective writ petitioners. The Bharat petroleum Corporation Limited also filed the other four writ appeals aggrieved against the above said observations and directions made by the learned Single Judge while dismissing the writ petitions.

8.Before considering the merits of the writ appeals and the rival submissions made by the parties, it is better to take note of factual aspects of the matter. Those facts are as follows:

a) The Bharat Petroleum Corporation Limited (BPCL) called for applications for appointment of LPG Distributors on 15.06.2010 in respect of various locations in Tamilnadu and Puducherry, out of which we are concerned in these writ appeals only in respect of two locations viz., Race Course/Sungam at Coimbatore District and Koduvai, Tiruppur District. Pursuant to issuance of such advertisement, several persons applied and they were called for interview. Based upon the marks given in the interview under different categories, the final mark sheets were published on 03.11.2011, 04.11.2011 and 05.11.2011. Those mark sheets published were made available in the website and therefore, every candidate was put to notice and thus they are aware of the result of the interview. In the said final mark sheet, the writ petitioner in W.P.No.13976 of 2012 viz., K.Meera Pangayar Selvi was placed as empaneled candidate I in respect of Koduvai location, whereas the other writ petitioner in W.P.No.18054 of 2012 viz., S.Gopu was empaneled as Candidate I in respect of Race Course/Sungam location. In otherwords, as per the selection made by the interview committee, these two writ petitioners were empaneled as Candidate No.I in respect of their respective locations based upon the marks obtained by them in the interview. Other two candidates were empaneled as candidate II and III as well.

b) Complaining that irregularity was committed in awarding the marks to those selected persons, more specifically by alleging that more marks were given to those persons under certain categories than the maximum marks prescribed therein, the writ petitioner in W.P.Nos.3404 of 2012 and 10261 of 2012 viz., S.Karthik filed a complaint before the authorities concerned. Based upon the said complaint, the Director (Marketing) of the BPCL issued two communications dated 14.03.2012 and 18.04.2012, independently in respect of those two locations, thereby canceling the interview and selection for those two locations and ordering fresh selection by re-advertisement under extant guidelines. In otherwords, through the

abovesaid communications, the BPCL apart from canceling the interview and selection which were made as per 2010 guideline, proceeded to make a fresh selection by following the new guidelines which came into force from 01.04.2011.

c) Thus, the above four writ petitions were filed by the respective writ petitioners as stated supra. The learned Judge dismissed all the writ petitions mainly on the reason that the petitioners, having not been issued with any letter of indent, cannot have any enforceable right challenging the cancellation of selection, especially, in the absence of any malafide against the respondents. Though the learned Judge was pleased to dismiss the writ petitions on the ground of locus standi, has however made certain observations and directions as narrated supra.

9. We have heard the learned Senior counsels Mr. Vijayanarayanan, Mrs. Hema Sampath and the learned counsel Mr. D. Saikumaran, appearing for the respective appellants and Mr. O. R. Santhanakrishnan, learned counsel appearing for the BPCL, which is also the appellant in other four writ appeals.

10. Insofar as the writ appeals filed by the writ petitioners are concerned, it is their common contention that dismissal of the writ petitions on the ground of locus standi is erroneous since every writ petitioner has a vested right to challenge the impugned proceedings in their respective writ petitions.

11. It is the specific contention of the learned Senior counsel Mrs. Hema Sampath, who appeared for the appellant in W.A. Nos. 547 and 548 of 2013 that only based on the complaint issued by this appellant viz., S. Karthik, the impugned cancellation order came to be issued and therefore, he is certainly an interested person to file the writ petitions. It is her further contention that though this appellant is partly in support of the impugned communication in so far as canceling the interview is concerned, he is not supporting the rest of the said communication ordering re-advertisement and conducting new selection process as per 2011 guideline. In other words, what is sought for by this appellant is that the selection process commenced earlier should be continued from the stage of conducting a fresh interview by following the 2010 guideline.

12. On the other hand, it is the contention of the learned Senior Counsel Mr. Vijayanarayanan who appeared for one of the empaneled candidate I that no irregularities were committed in awarding the marks as complained by the other writ petitioner S. Karthik, warranting cancellation of the entire selection process. It is his contention that there was no mistake committed in awarding the marks in each category either by giving more marks than the maximum marks or otherwise and on the other hand, only a technical/clerical mistake was committed while transcribing/tabulating the marks in the computer under each head by wrongly shifting the marks already awarded from the relevant category to another inadvertently. Therefore, it is contended that in the absence of any material irregularity committed

by the Interview Committee in awarding the marks, mere technical/clerical error committed while tabulating the marks in the computer under each category as stated supra, cannot be a reason to cancel the interview and the selection as a whole, since the respective empaneled candidates No.I in the respective sites, have spent lot of money in procuring the site and preparing the same for establishing the LPG distributorship.

13.Mr.Vijayanarayanan, learned Senior counsel appearing for the appellant in W.A.No.325 of 2013 in support of his submission relied on the following decisions:

- i)1995 Supp (2) SCC 230, R.S.Mital vs Union of India;
- ii)A decision of the Apex Court dated 10.07.2012 in Civil Appeal No.5055 of 2012, Asha vs B.D.Sharma University of Health Sciences;

14.Mr.D.Saikumaran, the learned counsel for the appellant in W.A.No.537 of 2016 adopted the submissions made by the learned Senior counsel Mr.Vijayanarayanan.

15.The contention of the BPCL as the appellant in the remaining four writ appeals is to the effect that when the irregularity was noticed by the competent authority in respect of awarding the marks, he has every right to exercise his powers to cancel the interview and selection and go for fresh process of selection under the new guidelines. Thus, it is contended by the BPCL that unless and until the petitioners reach the final stage of issuing letter of indent, they cannot question the cancellation as no vested right has accrued to them.

16.The learned counsel appearing for the BPCL in support of his submission relied on the following decisions:

- (i) (1994) 6 SCC 151, State of M.P. vs Raghuveer Singh Yadav;
- ii)(2012) 13 SCC 260, Indian Oil Corporation Limited vs Ashok Shankarlal Gwalani;
- iii)(2012) 12 SCC 106, Sajeesh Babu K. vs N.K.Santhosh;
- iv)(2013) 7 SCC 1, Arun Kumar Agrawal vs Union of India;

17.We have heard the learned counsels appearing on either side, perused the materials placed before this court and given careful consideration to the entire facts and circumstances of the case.

18.The point for consideration in all these appeals is as to whether the action of the Bharath Petroleum Corporation Limited in canceling the interview and going for fresh selection under the new guidelines is justified and as to whether the common order passed by the learned Single Judge in dismissing all the writ petitions challenging such action, could be sustained.

19.Insofar as the writ appeals filed by the Bharath Petroleum Corporation Limited are concerned, the additional point for consideration is as to whether the learned Single Judge is justified in directing the Corporation to follow the procedure which were available at the time of old notification while re-advertising for those two locations.

20. We have already discussed the facts, circumstances, the contentions of the respective parties and the reasoning given by the learned Single Judge for dismissing the writ petitions and therefore, in order to avoid multiplicity, we are not reiterating the same once again hereunder except to certain extent of stating the same wherever so required.

21. On 15.06.2010 the Bharath Petroleum Corporation invited applications from the eligible persons for appointing them as LPG Distributors at various locations in the State of Tamilnadu and Puducherry and we are concerned in this matter only in respect of two locations as stated supra. Accordingly, several persons including the writ petitioners have applied for the respective locations. The writ petitioners S.Karthik and S.Gopu applied for distributorship at Coimbatore (Race course/Sungam). The other writ petitioner K.Meera Pangayar Selvi applied for distributorship at location Koduvai, Tiruppur District.

22. It is not in dispute that in pursuant to such advertisement and after receipt of applications from various applicants including these writ petitioners, interview was conducted by the Interview Committee on 03.11.2011 and 04.11.2011 in respect of Coimbatore (Race course/Sungam) location and on 05.11.2011 in respect of location at Koduvai, Tiruppur District. It is also not in dispute that the Interview Committee awarded marks to all the applicants under two broad categories viz., i) capability in respect of the godown and showroom and ii) capability to provide finance which has four different sub headings viz., SB/FDs, Credit Worthiness, Fixed/other assets and other sources of income. Consequent upon awarding the marks in the interview, the final marksheet was prepared, published and made available in the official website of the BPCL showing the respective marks obtained by the individual candidates under those categories. Based on the total marks obtained by the respective candidates out of the maximum marks, three candidates were empaneled as No.I, II, III. Thus, the writ petitioner K.Meera Pangayarselvi was empaneled as candidate I in respect of location Koduvai, Tiruppur District and other writ petitioner S.Gopu was empaneled as candidate I in respect of location Coimbatore Race Course/Sungam, Coimbatore District. The other writ petitioner viz., S.Karthik who was empaneled as Candidate III in respect of Coimbatore (Race course/Sungam) location, made a complaint to the concerned authorities of the BPCL complaining that irregularities were committed in awarding the marks to the respective candidates in the interview. Therefore, he sought for conducting a fresh interview. The only allegation made by him is that the Interview Committee has awarded more marks for the empaneled candidate I, over and above the maximum marks provided in respect of certain categories. Based on the said complaint, the impugned orders in respect of both locations came to be passed canceling the interview and selection and also for making fresh selection under the extant guidelines.

23.For better appreciation of the facts, the final mark sheet in respect of both locations and the relevant portion of the impugned order of cancellation of interview and selection are extracted hereunder:

COIMBATORE LPG TERRITORY, PEELAMEDU, COIMBATORE

FINAL MARK SHEET

STATEMENT OF PERFORMANCE OF CANDIDATES INTERVIEWED ON 03.11.2011 and 4.11.2011 AT TERRITORY OFFICE

INTERVIEW FOR DOMESTIC LPG DISTRIBUTORSHIP AT LOCATION COIMBATORE (RACE COURSE/SUNGAM) DISTRICT - COIMBATORE, STATE: TAMIL NADU

CATEGORY - OPEN

CONDUCTED BY

CHAIRMAN	Manoj.K
MEMBER 1	Madhavan. D
MEMBER II	Ravindranath. K

Empanelled Candidate I:	S.Gopu
Empanelled Candidate II:	Kailesh Raja Chelladurai
Empanelled Candidate III:	Shanmugam Karthik

सत्यमेव जयते

WEB COPY

S. No.	Name of Candidate	Max Marks	Capability to		Capability to provide finance				Edu Marks	Age Marks	Experience	Business acumen/ability	Personality	Total Marks
			Go down	Show room	SB/FDs	Credit worthiness	Fixed/Others assets	Other sources of Income						
			25	10	18	7	5	5	15	4	4	5	2	100
1	P.Dhanalakshmi		25	5	3.6	18	7	5	10	4	0.00	2.50	1.33	81.43
2	H.Bakkiam		25	5	3.2	16.1	0	5	12	2	0.00	2.00	1.00	71.30
3	M.Thanuja		25	5	3.6	3.1	0	0	10	4	0.00	2.00	1.17	53.87
4	G.Muthuvel		25	5	5	0.2	7	5	10	2	1.33	2.33	1.17	64.03
5	Udayakumar Rajendran		25	10	1.5	12	0	5	15	2	1.67	2.83	1.67	76.67
6	C.R.Gowrimanothar		25	5	5	18	7	5	15	2	1.33	2.17	1.50	87.00
7	S.Gopu		25	10	5	18	7	5	15	4	3.67	4.00	2.00	98.67
8	Shanmugam Karthik		25	10	5	18	7	5	15	4	3.00	3.67	1.83	97.50
9	Ganesan Karian		25	10	5	18	7	5	15	2	2.67	3.83	2.00	95.50
10	P.Jaiprakash		25	10	5	18	7	5	12	4	3.00	3.67	2.00	94.67
11	R.Dharmaraj		10	5	2.5	0	0	0	12	4	2.00	3.33	2.00	40.83
12	Ashwini Anand	ABSENT												
13	M.Madhan Kumar		18	7	5	18	7	5	15	4	1.83	2.17	1.33	84.33
14	Deenadayalan		18	5	5	18	7	5	15	2	0.17	1.67	1.00	77.84
15	K.B.Padnabhan	ABSENT												
16	Navaneetha Krishnan		25	5	5	18	7	5	12	4	1.17	1.50	1.17	84.84
17	D.R.Manjula		25	10	5	18	7	5	15	4	0.83	1.50	1.00	92.33

COIMBATORE LPG TERRITORY, PEELAMEDU, COIMBATORE**FINAL MARK SHEET**

STATEMENT OF PERFORMANCE OF CANDIDATED INTERVIEWED ON 05.11.2011 AT
TERRITORY OFFICE

INTERVIEW FOR DOMESTIC LPG DISTRIBUTORSHIP AT LOCATION - KODUVAI,
DISTRICT - TIRUPPUR, STATE: TAMIL NADU

CATEGORY - OPEN

CONDUCTED BY

CHAIRMAN	Manoj .K
MEMBER 1	Madhavan. D
MEMBER II	Ravindranath. K

Empanelled Candidate I:	K.Meera Pangayar Selvi
Empanelled Candidate II:	S.Selvakumaran
Empanelled Candidate III:	Sivakumar.K

			Capabil ity to		Capability to provide finance									
S. No .	Name of Candidate		God own n	Sho w room	SB/ FDs	Cred it worth hi ness	Fix ed/ Oth er ass ets	Oth er sou rce s of Inc ome	Edu Mar ks	Ag e Mar ks	Experi ence	Busi ness acum en/ abil ity	Perso nalit y	Total Marks
		Max · Mar ks	25	10	18	7	5	5	15	4	4	5	2	100
1	Palanisamy M.V.		25	10	5	18	7	5	10	4	2.00	2.33	1.50	89.83
2	S.Ravi Kumar		25	10	5	18	7	5	15	4	2.83	2.83	1.50	96.16
3	A.Senthilkumar K.		10	5	1.5	18	7	5	12	4	1.17	2.33	1.50	67.50
4	Sivakumar K.		25	10	5	18	7	5	15	4	3.33	3.50	1.50	97.33
5	B.Aanoor Elango		ABSENT											
6	S.Rajesh Kumar		25	10	5	18	7	5	15	4	0.00	3.50	2.00	94.50
7	K.Meera Pangayar Selvi		25	10	5	18	7	5	15	4	3.50	4.00	2.00	98.50
8	K.Vellingirl		10	5	5	7.4	7	5	12	2	2.00	3.00	1.50	59.90

			Capabil ity to	Capability to provide finance										
9	Boopathy.E.		25	10	5	18	7	5	15	4	2.00	3.00	1.50	95.50
10	D.Rakkiappasamy		25	10	5	14.6	7	0	10	4	0.00	2.50	1.50	79.60
11	N.Muthukumar		25	10	3.8	18	7	5	15	4	2.50	2.50	1.50	94.30
12	Malliga		25	10	5	18	7	5	15	4	1.67	2.00	1.33	94.00
13	Elamparuthi Natarajan		25	10	4.7	18	7	5	12	2	1.50	2.33	1.50	89.03
14	Ramasamy Eswaramoorthy		25	10	5	0	7	5	15	4	1.33	2.33	1.17	75.83
15	K.S.Chinnaswamy		25	10	5	18	7	5	15	4	1.33	2.50	1.33	94.16
16	Dhanarajasekhar.V		25	10	5	18	7	5	15	4	2.17	3.00	1.50	95.67
17	Saritha.P		25	10	5	18	7	5	12	4	1.50	2.17	1.50	91.17

"Gist is as under:

It is observed from the report that there has been an error done by the Committee in transcribing the marks to all the applicants and hence the marks awarded are more than the maximum marks allotted under that parameter in respect of location "Race Course/Sungam" for which interviews were held on 3.11.11 & 4.11.11. Similar type of error has been committed for another location "Koduvai" as well for which interviews were held on 5.11.11 by the same interview committee.

Since this type of error has happened in all the cases in both locations, the Committee should have been more careful and responsible before finalization of the results.

These types of errors are not covered under the present policy guidelines of Distributor selection.

Since they are not covered under any Policy Guidelines, it is recommended that the interview be cancelled for both the locations namely: "Race Course Road" and "Koduvai".

24. Perusal of the above final marksheets no doubt would show as if marks were awarded in respect of two categories viz., Credit Worthiness and Fixed/other assets, over and above the maximum marks prescribed to such categories. However, on analysis of the actual state of affairs, as admitted by the respondent corporation itself in its counter affidavit, we find that no material irregularity amounting to an illegality was committed in awarding the marks in respect of such categories and on the other hand, it was only by way of typographical/clerical error, the relevant marks already awarded were shifted from the concerned category to another erroneously while tabulating the same in the computer for the purpose of releasing the

final marksheet in the website. In fact, when we compare the marks of the empaneled candidate I S.Gopu with that of the complainant viz., Karthik who were shown as Serial Nos.7 and 8, we find that even in respect of the said complainant Karthik, such erroneous shifting of the marks from one heading to another had taken place.

25.Let us elaborate it further. In the final marksheet S.Gopu was shown to have obtained 18 marks under the category Credit worthiness out of the maximum marks 7. Likewise, he was shown to have obtained 7 marks towards Fixed/other assets category as against the maximum marks of 5. The same thing had happened in the case of the complainant viz., Karthik also as if he had obtained 18 marks and 7 marks respectively in respect of the abovesaid categories as against the maximum marks of 7 and 5 respectively. The same mistake was committed in respect of the other location viz., Koduvai, Tiruppur District. However, insofar as the category viz. S.B/FDs is concerned, these candidates were shown to have obtained 5 marks each as against maximum 18. Therefore, it is evident that the empaneled candidate I in respect of each location, alone was not shown to have obtained over and above the maximum marks in respect of those two categories and also it had happened in respect of several other candidates as well. Therefore, it is crystal clear that the typographical/clerical mistake crept in while tabulating the marks has resulted in showing erroneously as though more marks were given in respect of those two categories than the maximum marks, while in fact, it is not so. On the other hand, when we see the maximum marks in respect of the head S.B/FDs, it is shown as 18 and therefore, such shifting erroneously happened due to clerical mistakes in respect of those three categories cannot be said as the one going to the root of the matter when such erroneous shifting is admitted by the respondents themselves in their counter affidavit, the relevant portion of the same is extracted hereunder:

"I state that while transcribing the L1 marks the columns got shifted as follows:-

S.B/FDs marks allotted therein had gone into the head "Credit Worthiness".

Likewise marks allotted under "Credit Worthiness" has gone into the head "Fixed and other assets".

Equally marks allotted under Fixed and other assets had gone into other sources of Income" and the marks allotted under :Other Source of Income" had gone to SB/FDs"

A representation was made by the petitioner herein by letter dated 04.02.2012 which was received by respondents 3 and 4.

In as much as the grievance of the petitioner is not limited to a specific individual, the representation had to be looked into at the larger interest of all candidates who appeared for the interview and hence could not be disposed off within a stipulated time.

A compliant was lodged by Sr.S.Karthik about the award of LPG distributorship of Bharat Petroleum Corporation Ltd. at Race Course Road, Sungam on the ground of

irregularities in the Interview Committee by the Selection Committee on the ground without application of mind and without taking into consideration the existing norms more marks were awarded for credit worthiness/fixed assets as against 7 marks and 5 marks respectively. Therefore S.Karthik applied for cancellation of interview conducted by the Committee.

The complaint of S.Karthik was enquired by the Committee of two Chief Managers. The Committee came to the conclusion that there has been an error done by the Interview Committee in transcribing the marks to all the applicants and hence the marks awarded are more than the maximum marks allotted under parameters Credit Worthiness and Fixed/other assets in respect of the subject location "Koduvai" for which interviews were held on 05.11.2011. Said Investigation Report was considered by Regional LPG Manager and it was observed that similar error has been done for another location 'Race Course/Sungam' by the said Interview committee. Committee should have been more careful and responsible before finalization of results. Recommendation was made to cancel the interview for both the locations as this type of error was not covered in present Policy guidelines of distributor selection."

26.From the above contention of the Corporation, the admitted position is very clear that there was no irregularity or illegality committed by the Committee in awarding the marks over and above the maximum marks to the respective candidates as alleged by the complainant and on the other hand, the actual marks awarded to respective candidates were well within the maximum marks limit and however they were wrongly entered in the tabular column under different head by shifting the marks from one heading to another, due to clerical/typographical mistake. Even the impugned order passed by the Corporation canceling the interview and selection also does not say any other ground except to state that the Committee has awarded the marks more than the maximum marks. When the Corporation itself has come forward to explain the real position and actual state of affairs by filing their counter affidavit on behalf of all the respondents representing the Corporation, we do not have any difficulty in holding that such clerical mistake cannot be construed as an irregularity tantamounting to an illegality warranting cancellation of the interview and the selection in toto. When such mistake in tabulating the marks wrongly under different categories being the clerical error, we are of the view that the respondent Corporation is not justified in canceling the interview and the selection.

27.No doubt, the Corporation is entitled to cancel the interview and also the selection, if it finds some irregularity which goes to the root of the matter has been committed in awarding the marks. In otherwords, if it is the case of the Corporation that the Committee has awarded over and above the maximum marks illegally to favour a particular candidate, certainly it is nothing but an illegality which

goes to the root of the matter. But the factual aspects of the present case are totally different. As we have already pointed out that awarding of the marks by the Committee was well within the maximum marks and however, while tabulating the same in the computer, the mistake has crept in, such mistake of wrong tabulation cannot be construed as the one falling within the category of irregularity which goes to the root of the matter warranting cancellation of the interview itself.

28. Not that every irregularity has to be considered as an illegality, unless such irregularity is a non-curable one. In other words, if such irregularity can be cured without affecting the basis of the process and the root of the matter, it would not fall within the category of illegality. Needless to say that an irregularity which goes to the root of the matter and resulted against the entire procedure becomes an illegality. The facts of the present case would reveal that the irregularity committed is undoubtedly a curable one viz., by placing the marks already awarded by the Committee correctly at the appropriate column in the final marksheet without affecting the interest of any of the candidates who participated in the interview, since admittedly shifting of marks from one column to another had mistakenly taken place in respect of such candidates. When such being the position, the so called irregularity in this case having not fallen under the category of total illegality, the respondent corporation is not justified in canceling the interview and the consequential selection.

29. Insofar as the locus standi of the writ petitioners to maintain the writ petition is concerned, we are not able to agree with the view of the learned Single Judge that they are not entitled to challenge the impugned order on the reason that they were not issued with any letter of indent. When the fact remains that these petitioners have participated in the interview and were given their respective marks and also issued with final marksheet by publishing the same in the website and that the fault which has crept in tabulating the marks in the final marksheet was not due to any fault or misrepresentation or fraud played upon by any of them, we are of the view that such omission or mistake committed by the respondents or their subordinates or employees, the respective candidates who have reached upto the stage of getting themselves empaneled, cannot be penalised by canceling their selection. Therefore, when their status in the empanelment having been made known to them, with such status, they can maintain the writ petition as aggrieved persons if such right accrued to them resulting out of such empanelment thereby entitling them to go to the next stage, is sought to be taken away by the impugned proceedings. Therefore, we find that the writ petitions filed by the writ petitioners are maintainable.

30. The learned Senior counsel Mr. Vijayanarayanan relied on **1995 Sup (2) SCC 230, R.S. Mital vs Union of India**, in support of his submission towards the locus standi of the writ petitioner. At paragraph No.10, the Apex Court has observed as follows:

"10. It is no doubt correct that a person on the

select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

31. The decision of the Supreme Court made in Civil Appeal No. 5055 of 2012 dated 10.07.2012 is relied on to contend that for no fault of the empaneled candidate I, he/she cannot be made to suffer by passing the impugned order. At paragraph Nos. 21 and 22, the Apex Court has observed as follows:

"21. It is not necessary for the appellant to plead and prove mala fides, misconduct or favouritism and nepotism on the part of the parties concerned. Failure to do the same could be an error, intentional or otherwise, but in either event, we see no reason why the appellant should be made to suffer despite being a candidate of higher merit."

32. Per contra, the learned counsel for the Corporation relied on **1994 (6) SCC 151, State of M.P. vs Raguvver Singh Yadav**, to contend that Corporation is entitled to conduct the selection with changed rules. Perusal of the decision would show that facts of the case is totally different wherein the rules were amended and qualification for appointment was changed before conducting the interview. Therefore, the Apex Court pointed out that no vested right has been accrued on the candidates. Thus, the above decision is not helping the case of the Corporation in any manner.

33 a) **2012 (13) SCC 260, Indian Oil Corporation Ltd., vs Ashok Shankarlal Gwalani**, is relied on by the Corporation to contend that if an irregularity is detected in the matter of selection or preparation of panel, it is desirable to have fresh selection. Perusal of the facts and circumstances of that case before the Apex Court would show that in an investigation conducted by the Company therein in respect of the allegations made regarding the irregularities in the selection process, it was found among other things that the respondent therein and another person had not been

marked correctly as regards their financial capability and both had failed to provide the attested documents as has been required under the advertisement. Therefore, the Apex court found that such irregularity warrants cancellation of selection and that fresh selection need to be made. The facts of the present case, as discussed supra, are totally different and distinguishable when it is the admitted case of the corporation that the mistake had crept in only due to the shifting of the column in the marksheet. Thus the above decision is also not helping the corporation in any manner.

b) Likewise, the other decision reported in **2012(12) SCC 106, Sajeesh Babu K. vs N.K.Santhosh and others**, is relied on to contend that the court should be slow in interfering with the opinions expressed by the Experts in respect of selection process. In the above case, it was pointed out that the challenge made against the appointments of both the appellants therein was on the ground that they were not qualified for the post of Readers in Sericulture. Based on the contention made against such appointment, the High Court in the writ appeal set aside the appointments and left open the matter for fresh selection. When the said order of the Division Bench was put to challenge, the Apex Court has pointed out that in a matter of appointment by an Expert Committee, the Court should be slow to interfere with the opinions expressed by the Experts, unless there is any allegation of malafides against the experts who has constituted the Selection Committee. When such being the factual circumstances of the case, we are of the view that the said decision is also not applicable to the present facts and circumstances of the case. On the very same contention, the learned counsel for the Corporation also relied on **2013(7) SCC 1, Arun Kumar Agrawal vs Union of India**, which also we find as not applicable to the present facts and circumstances of the case.

34. Considering the above stated facts and circumstances, we are of the firm view that cancellation of the interview and empanelment of candidates viz., the writ petitioners K.Meera Pangaiyar Selvi and S.Gopu as Empaneled Candidate I in their respective location cannot be sustained. Therefore, the learned Judge is not justified in dismissing the writ petitions filed by these candidates. Accordingly, the writ appeals in W.A.Nos.325 of 2013 and 537 of 2016 are liable to be allowed by directing the respondent Corporation to proceed further from the stage of publication of final marksheet and go ahead with the appointment in accordance with the procedure as contemplated under the guidelines which was in existence on the date of issuance of the notification.

35. Since we hold that the interview conducted is proper and does not warrant cancellation, we find that the writ petitions filed by Karthik are not having any merits and consequently, the writ appeals filed by him in W.A.Nos.547 and 548 of 2013 are liable to be dismissed.

36. Since we find that the interview conducted is valid and cannot be cancelled and direct the corporation to go ahead with the selection process further from the stage of publication of final marksheet and make appointment in accordance with old guidelines as

existed at the time of issuance of the notification, the writ appeals filed by the Corporation in W.A.Nos.669 to 672 of 2013 are liable to be dismissed, as we are of the view that the Corporation is not entitled to impose new guidelines at the middle of the selection in the place of the old one which was in existence at the time of issuance of the notification.

37.For all these reasons, W.A.Nos.325 of 2013 and 537 of 2016 are allowed and the respondents are directed to proceed further from the stage of publication of final marksheet and make appointments of dealership in accordance with the procedure as contemplated under the guidelines which was in existence on the date of issuance of the notification. Such exercise shall be done by the respondent Corporation within a period of four weeks from the date of receipt of a copy of this order. Consequently, W.A.Nos.547 and 548 of 2013, 669 to 672 of 2013 are dismissed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vri

To

- 1.The Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Sastri Bhavan,
New Delhi 110 011.
- 2.The Chairman,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Karimbhoy Road,
Ballard Estate,
Mumbai 400 001.
- 3.The Regional LPG Manager (South),
M/s.Bharath Petroleum Corporation Ltd.,
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Off.11th Main Road,
Anna Nagar,
Chennai 600 040.
- 4.The Territory Manager,
M/s.Bharath Petroleum Corporation Ltd.,
LPG Filling Plant,
Peelamedu,
Coimbatore 641 004.

5.The Director/Marketing,
M/s.Bharath Petroleum Corporation Ltd.,
Bharath Bhavan,
4 and 6, Karimbhoy Road,
Ballard Estate,
Mumbai 400 001.

1 cc to Mr.D.Saikumaran, Advocate SR NO 30642[05/07/16]
2 ccs to Mr.O.R.Santhanakrishnan, Advocate SR NO 30283[05/07/16]
1 ccc to Mr.R. Meenal, Advocate, Sr. 30161[05/07/16]
1 ccc to Mr.R. Meenal, Advocate, Sr. 30162
2 ccs to Mr.T. Gowthaman, Advocate, Sr. 30295

W.A.Nos.537/16, 325, 547 and 548 OF 2013,
669 TO 672 OF 2013

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