

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM:

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.1721 of 2012
and
M.P.No.1 of 2012

R.Lalitha

... Appellant/Writ Petitioner

... Vs ...

1. The Territory Manager (Retail) Chennai,
Bharat Petroleum Corporation Limited,
No.35, Vaithiyanatha Street,
Tondairpet, Chennai - 600 081.
2. The Area Marketing Manager,
Bharat Petroleum Corporation Limited,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar West,
Chennai - 600 040.
3. The General Manager (Retail),
South Zone,
Bharat Petroleum Corporation Limited,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar West,
Chennai - 600 040.
4. K.Subasri Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of The Letters Patent,
against the order dated 19.06.2012 passed by this Court in
W.P.No.26353 of 2011.

WP.No 26353 of 2011:filed under Article 226 of the Constitution
of India praying for the issuance of Writ of Certiorarified
Mandamus to Call for the records relating to the impugned mark
sheet dated 31.10.2011 published by the 1st respondent and quash
the same so far it relates to awarding marks to the 4th
respondent towards the heading of residency and non-awarding
marks to the petitioner in respect of the heading namely

capability to provide infrastructure and facility and consequently direct the 1st respondent to award marks to the petitioner under the headings of capability to provide infrastructure and facility and cancel the marks already awarded to the 4th respondent under the headings of residency and award the dealership accordingly to the petitioner

For Appellant : Mr.Dhanaram
for Mr.R.Abdul Mubeen
For RR-1 to 3 : Mr.O.R.Santhanakrishnan
For R-4 : No Appearance

JUDGMENT

(Judgment of the Court was delivered by
RAJIV SHAKDHER, J.)

1. This appeal is directed against the order of the learned Single Judge dated 19.06.2012.

1.1. The appellant before us had assailed the action of the first respondent in a petition filed under Article 226 of the Constitution. The challenge essentially was laid to the mark sheet dated 31.10.2011, published by the first respondent. The petitioner evidently had applied for being allotted a dealership of a Petrol Bunk located at Nagalur and other places. In the course of evaluating the applications, respondent No.4 was declared successful as against the appellant for dealership in Nagalur.

2. To be noted, the dealership at Nagalur was reserved for a woman candidate. The appellant challenged the marks allotted to her. The challenge made rested on two grounds. First, the marks allotted to the appellant under the heading "residency", and second, the failure to award marks to her under the heading "capability to provide infrastructure and facility". Under the first heading i.e., "residency", both the appellant as well as respondent No.4 were granted twenty (20) marks, whereas, under the other heading i.e., "capability to provide infrastructure and facility", while, respondent No.4 was granted 28.35 marks, the appellant was not granted any mark.

2.1. The appellant, in these circumstances, assailed the action of the first respondent.

3. The appellant's contention qua grant of marks to respondent No.4 under the heading "residency" was that she was not a resident of the subject area and that she had procured the

certificate from Tahsildar by shifting to the said area only two days prior to the submission of the application. Insofar as non-grant of marks under the other heading i.e., "capability to provide infrastructure and facility" is concerned, the appellant submitted that she was, wrongly, denied the marks, as the land offered by her to set up the Petrol- Bunk, contrary to the stand taken by the first respondent, was not located on the National or State Highway. The learned Single Judge, after noting these contentions, dismissed the appellant's writ petition on the sole ground that she had not approached the Court with clean hands.

4. This conclusion, the learned Single Judge reached is based on the submission advanced on behalf of respondent No.4, which is that, the appellant had failed to attach a complete copy of the advertisement, whereby, the relevant condition which made the appellant ineligible was not placed before the Court.

4.1. What is obvious is that the ineligibility of the appellant pertains to the location of the land offered by her to set up the petrol-bunk. As per the advertisement, in case of Rural ROs, the qualifying factor for a location to be considered Rural would be that it should not be located on the State Highway or National highway located in the area.

5. In support of his submission that the finding was erroneous, learned counsel for the appellant drew our attention to the Site Plan and contended that the land offered by the appellant abutted on 15 feet wide road which was not a National Highway or a State Highway. It was the learned counsel's contention that the road abutting the land offered by the appellant, in fact, is a village road. Furthermore, the learned counsel submitted that the learned Single Judge, wrongly, came to the conclusion that the appellant had approached the Court with unclean hands, as the complete advertisement was not filed with the writ petition. In this behalf, counsel for the appellant drew our attention to the guidelines filed before the learned Single Judge, which contained the relevant condition. In other words, the contention was that the aspect of ineligibility on account of location of land is, clearly, reflected in the guidelines, and therefore, on contrary to what was noted, there was no intention to conceal the relevant information from the Court.

6. Mr.O.R.Santhanakrishnan, learned counsel appearing for respondents 1 to 3, on the other hand, says that in any event, the appeal has been rendered infructuous as the dealership, in the meanwhile, was allotted to respondent No.4, and that, no purpose would be served in continuing with the appeal.

6.1. When this aspect was put to the learned counsel for the appellant, he conceded that in so far as the present appeal is concerned, proceeding with the same would sub-serve at present little purpose. The only other contention of the

learned counsel for the appellant was that, in view of what had been recorded by the Committee constituted by the respondents that the subject land was located on the State Highway, the appellant would stand debarred from making any application for grant of dealership in future.

6.2. We put this aspect to the learned counsel for the respondents. Learned counsel, candidly, submitted that apart from the analysis of the Committee, which evaluated the applications, he did not have anything else available on record to support to the finding that the land offered by the appellant abutted the State Highway.

7. Having regard to aforesaid submissions, for the moment, this aspect of the matter is left open. In case, the appellant, if so advised, makes fresh application to respondents for award of dealership; the aspect as to whether or not the subject land abuts the State Highway shall be examined afresh. Furthermore, before any decision is taken on this aspect of the matter, notice will be issued to the appellant and she shall be heard in the matter before the concerned authority reaches a conclusion one way or the other.

8. The Writ Appeal is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Jr1/gg

To

1. The Territory Manager (Retail) Chennai,
Bharat Petroleum Corporation Limited,
No.35, Vaithiyanatha Street,
Tondairpet, Chennai - 600 081.

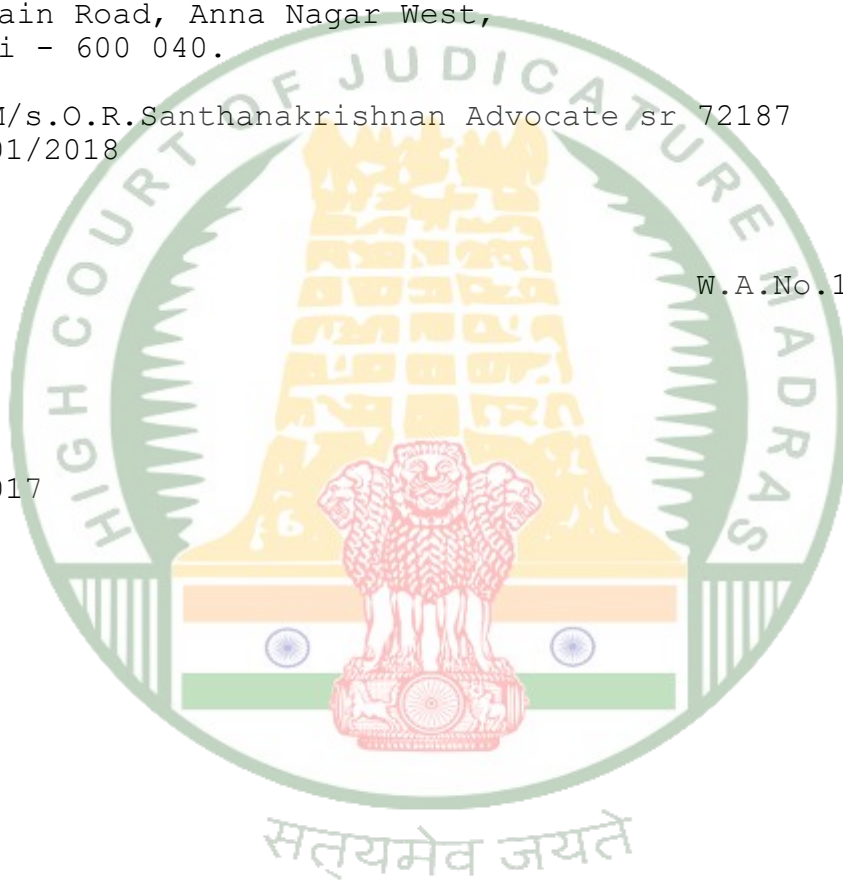
2. The Area Marketing Manager,
Bharat Petroleum Corporation Limited,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar West,
Chennai - 600 040.

3. The General Manager (Retail),
South Zone,
Bharat Petroleum Corporation Limited,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar West,
Chennai - 600 040.

+1 cc to M/s.O.R.Santhanakrishnan Advocate sr 72187
dated 02/01/2018

W.A.No.1721 of 2012

ks(co)
aa13/11/2017



WEB COPY