

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 33433 of 2016
and
W.M.P. NoS.28869 and 28870 of 2016

S. Raja Rajeswari

.. Petitioner

Versus

Bharat Petroleum Corporation Limited
a Government of India Enterprise
rep. by its Territory Manager (LPG)
Post Box NO.1644, Peelamedu
Coimbatore - 641 004

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order of the respondent made on 9.9.2016.in Ref.CBE.LPG.Saravanampatty and quash the same and consequently direct the respondent to grant LPG dealership at Saravanampatty area, Coimbatore to the petitioner herein.

For Petitioner :Mr.M.Venkatachalapathy, Senior Advocate
for Mr. M. Sriram

For Respondents: Mr.Vijayan for M/s. King & Patridge

ORDER

The petitioner has come forward with this writ petition challenging the order dated 09.09.2016 of the respondent rejecting her application for award of LPG dealership in her favour inter alia forfeiting the deposit amount of Rs.50,000/- paid by her for having violated the terms and conditions of the guidelines relating to selection of candidates issued by the respondent.

2. The learned Senior counsel for the petitioner would contend that the petitioner has submitted her application on 19.10.2013 for grant of dealership in her favour. By letter dated 14.06.2016 the respondent informed that she was eligible to participate in the draw. Thereafter, by a communication

dated 05.07.2016 of the respondent, the petitioner was informed that she was selected for award of LPG dealership at Saravanampatty area. According to the learned Senior counsel for the petitioner, the land measuring an extent of 32 cents in Survey No. 20/2 part of Vilankuruchi Village was shown as the proposed place for construction of a godown, as per the terms and conditions of the grant of LPG dealership. According to the learned Senior counsel for the petitioner, land measuring 101 cents was originally owned by father-in-law of the petitioner and by two registered settlement deeds dated 30.10.2012, her father-in-law settled 32 cents of land in favour of petitioner's husband and remaining 69 cents in favour of sister-in-law of the petitioner namely J. Selva Sangeetha. Thus, by virtue of the settlement deeds dated 30.10.2012, petitioner's husband became the absolute owner of the land in question measuring 32 cents. However, at the time of submitting the application, an error crept in indicating the extent of land as 84 feet, instead it was indicated as 81 feet. According to the learned Senior counsel for the petitioner, the three feet land is a common pathway which is being enjoyed by the petitioner's husband as well as her neighbour, being her sister-in-law. In order to comply with the terms and conditions of the guidelines issued by the respondent, on her request, the petitioner's sister-in-law executed a notarized undertaking settling the 3 feet in favour of the husband of the petitioner. Subsequently, in order to ensure that the petitioner's husband assert an exclusive right and title over the said 3 feet land, the petitioner's sister-in-law executed an absolute settlement deed in favour of the petitioner's husband on 27.07.2016 confirming and ratifying the notarized undertaking given by her. In this regard, the respondent sent a letter dated 21.07.2016 for which the petitioner sent a reply on 28.07.2016 bringing to the notice of the respondent the conveyance of the three feet land in favour of her husband by means of a registered settlement deed on 27.07.2016. In spite of the same, the respondent rejected the application on the ground that at the time of submission of the application for award of LPG dealership, the petitioner was not the owner of the three feet land. Further, it was stated that the undertaking letter given by the petitioner's sister-in-law was not a registered instrument and it will not confer any title to her husband. In other words, the respondent rejected the application of the petitioner as if the petitioner has suppressed material particulars relating to ownership of the land in favour of her husband.

3. The learned Senior counsel for the petitioner brought to the notice of this Court a circular dated 09.06.2016 issued by the General Manager of Indian Oil Corporation Limited wherein it was stated that in cases wherein the selected candidates have either sold the land or have cancelled the lease, an opportunity should be provided to the selected candidate to offer the

alternative land and the same should be accepted even if it is registered after the date of application. By relying on the above Circular of the Indian Oil Corporation Limited, it is contended by the learned Senior counsel for the petitioner that as on the date of submission of the application, the petitioner's husband was the owner of the land in question and therefore, the impugned order of rejection passed by the respondent is legally not sustainable.

4. The learned counsel for the respondent would contend that after intimating the petitioner on 05.07.2016 that she was selected for award of LPG dealership, a field verification was done and it was noticed that as per the registered document, the husband of the petitioner was owner of the land measuring 24.68 meters X 50.90 meters as against the required 25 meters X 30 meters. The petitioner was therefore called upon to provide alternate land as a condition precedent for grant of dealership in her favour. However, the petitioner produced a notarized copy of the undertaking given by her sister-in-law conveying 3 feet X 167 feet in favour of her husband. Since the said document was unregistered, it will not convey any right or title on the husband of the petitioner and therefore, as on the date of submission of the application, the petitioner has furnished incorrect particulars regarding the ownership of the land in question by her husband. Therefore, the respondent is justified in cancelling the agreement. The learned counsel for the respondent also relied on the Judgment of the Honourable Supreme Court passed on 08.09.2015 in Civil Appeal Nos. 6928 and 6929 of 2015 in the case of (Bharat Petroleum Corporation Limited and others vs. Swapnil Singh). The said judgment arise out of the order passed by the Calcutta High Court wherein it was held that the notarized lease agreement produced by the applicant would be sufficient to hold the applicant is eligible for award of dealership in her favour. The said decision of the Calcutta High Court was reversed by the Honourable Supreme Court by allowing the appeal of the Corporation holding that the said document came into existence subsequent to filing of the application. By placing reliance on the said decision, the learned counsel for the respondent would contend that the notarized undertaking given by the sister-in-law of the petitioner in favour of her husband came into existence after the submission of the application for award of LPG dealership and therefore it will not confer any right, interest or title to the husband of the petitioner. It is also further stated that the Circular dated 09.06.2016 issued by the Indian Oil Corporation Limited will not bind the respondent/corporation in any manner and the respondent need not follow such circular for entertaining the application submitted by the petitioner for award of LPG dealership in her favour. As on the date of submission of application, a lesser extent of land was shown by the petitioner as against the required extent of land.

Therefore, the subsequent registered settlement deed executed in favour of the husband of the petitioner by her sister-in-law will not cure the defect. In any event, as on the date of application, the husband of the petitioner was not the owner of the entire extent of land in question and therefore the respondent is justified in rejecting the application submitted by the petitioner. The learned counsel for the respondent therefore prayed for dismissal of the writ petition.

5. I heard the learned Senior counsel for the petitioner and the learned standing counsel for the respondent/corporation. As on the date when the petitioner submitted the application seeking grant of LPG dealership in her favour, the petitioner's husband was the owner of the land in question barring 3 feet of land. According to the petitioner, her sister-in-law, being a neighbour, is the owner of the said land besides that the land was used only as a common pathway. When the petitioner realised the mistake in so far as to the ownership of the 3 feet of the land, she obtained a notarized undertaking from her sister-in-law undertaking to convey the 3 feet of land in favour of her husband. Subsequently, a settlement deed was also executed and registered on 27.07.2016 conveying the 3 feet of land in favour of the husband of the petitioner. At any rate, as on the date of submission of the application, the husband of the petitioner was the owner of the land in question barring 3 feet and therefore it cannot be said that the husband of the petitioner was not the owner of the land in question as on the date of submission of the application or the petitioner has suppressed the ownership of the land in the application submitted by her.

6. As regards the decision of the Honourable Supreme Court relied on by the learned counsel for the respondent, the Honourable Supreme Court found that as on the date of submission of the application namely 13.09.2011 for award of dealership, only a notarized document was produced by the respondent therein to show her ownership over the land. However, the respondent therein obtained a registered lease agreement in her favour only on 20.12.2012 and it was noticed during the course of inspection by the officials of the Corporation. In such circumstances, it was held by the Honourable Supreme Court that the respondent therein has not produced documents to prove her ownership over the land in question as on the date of submission of her application. The said judgment of the Honourable Supreme Court, therefore, cannot be made applicable to the facts of the present case on hand. In the present case, as on the date of application, the petitioner has produced settlement deed in favour of her husband to prove the ownership in respect of 3 feet of land. Subsequently, in order to cure the defect, the petitioner has also obtained a registered settlement deed executed by her sister-in-law in favour of her husband to avoid any further complication in getting the LPG dealership awarded

in her favour. Therefore, it cannot be said that the husband of the petitioner was not the owner of the land in question as on the date of submission of the application by the petitioner. In such view of the matter, I am of the view that the impugned order of the respondent is not legally sustainable and it is liable to be set aside.

7. As regards the Circular dated 09.06.2016 issued by the General Manager of Indian Oil Corporation Limited which was relied on by the learned Senior counsel for the petitioner, it was issued by the Indian Oil Corporation with a good intention. As per the circular, where the selected candidates have either sold the land or have cancelled the lease between the date of submission of the application and award of the contract, an opportunity must be given to the candidate to rectify such defects which had taken place in the interregnum. According to the learned counsel for the respondent/corporation, they are not following the said Circular issued by Indian Oil Corporation while awarding LPG dealership. In the present case, the husband was the petitioner was the owner of the land which was offered by the petitioner for getting the LPG dealership in her favour barring 3 feet. Even at the time of submission of such application, the sister-in-law of the petitioner has given an undertaking to convey the 3 feet of land in favour of the petitioner and subsequently, a registered settlement deed was also executed in favour of the petitioner. Therefore, this Court is not expressing any opinion as to the applicability of the said Circular dated 09.06.2016 in this case.

8. In the result, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
सुत्रासिंह नरगते
Assistant Registrar (CS-VI)

//True Copy//

Sub-Assistant Registrar

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To

The Territory Manager (LPG)
Bharat Petroleum Corporation Limited
a Government of India Enterprise
Post Box NO.1644, Peelamedu
Coimbatore - 641 004

+1 CC to M/s. M. Sriram, sr 7153
+1 CC to King & Patridge, sr 7098

WP No. 33433 of 2016

AD(CO)
sp/21/2



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