

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37383 of 2016

K.Gowthaman

.. Petitioner

Vs.

The Senior Area Manager,
Indian Oil Corporation,
Indane Area Office,
8/1079, Avinasi Road,
Coimbatore - 18.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned orders made in (i) Ref.CBE:AO:IMP 2013-14:CBE:MDP:031, dated 13.09.2016 and (ii) Ref.CBE:AO:IMP 2013-14:CBE:MDP:031, dated 20.10.2016 passed by the respondent, quash the same and consequently direct the respondent to issue a Letter of Intent by appointing the petitioner as his LPG Distributor for the location in Sl.No.240 at Mudalipalayam, Tiruppur District under Open Category as per his selection made in the drawal of lot held on 03.08.2016.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.Mohammed Fiyaz Ali

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O R D E R

The petitioner has come up with the above Writ Petition seeking to quash the impugned orders dated 13.09.2016 and 20.10.2016 passed by the respondent and for a consequential direction to the respondent to issue a Letter of Intent by appointing him as LPG Distributor for the location in Sl.No.240 at Mudalipalayam, Tiruppur District under Open Category as per his selection made in the drawal of lot held on 03.08.2016.

2. According to the petitioner, pursuant to the Advertisement jointly issued by the respondent/IOC and two other Oil Companies, viz. Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL) in the Dailies, viz. The Hindu and Daily Thanthi on 21.09.2013, inviting applications

from interested persons for appointment of dealers in 296 locations, he submitted his application dated 22.10.2013 for LPG Distributorship at Mudalipalayam (Sl.No.240) under 'Open Category' and the same was duly received by the respondent as per the communication dated 10.11.2013. However, the selection process was stalled in view of the litigations backed by the existing dealers. Finally, this Court dismissed the Writ Petitions, whereupon, the aggrieved parties filed S.L.P.No.4634 of 2015, etc. and the Apex Court, by an order dated 09.05.2016, held as under:

"Having given our thoughtful consideration to the controversy, we are of the view that the above interim order passed in cases filed by the private parties needs to be vacated/ordered accordingly. In place of the aforesaid interim order, we consider it just and appropriate to direct, that allotments made during the pendency of the petitions shall be subject to the final outcome of this bunch of cases. In the above view of the matter, it would be imperative for the oil Companies to incorporate the above expressed condition while making the allotments."

3. Pursuant to the above order, the respondent fixed a date for drawal of lot on 03.08.2016. All the eligible applicants were informed about the date of drawal of lot by way of communication dated 22.07.2016. Accordingly, the petitioner participated along with 49 other applicants in the drawal of lot held on 03.08.2016, in which, he was declared as selected as per the proceedings of the draw for selection of LPG Distributorship issued by the respondents. After his selection on 03.08.2016, the petitioner was asked to deposit a sum of Rs.50,000/-, to enable the respondent verify the Field Verification Credentials (FVC). Accordingly, the petitioner deposited the said sum on 04.08.2016. Before conducting the field verification, the respondent instructed the petitioner to prove his financial capacity as per Clause 6.1 (vi) of the Brochure on Guidelines for selection. Accordingly, the petitioner proved his financial capacity by producing his Bank Pass Book showing that he had Rs.15 lakhs in his Account.

4. After the FVC, the respondent instructed the petitioner to produce some records to prove the availability of Rs.15 lakhs as on the date of his application, i.e. on 22.10.2013 either in the name of his parents or close relatives. Accordingly, the petitioner produced the Bank statements of his maternal grandfather, K.N.Padmanabhan, to prove the financial source as on the date of his application. However, the respondent rejected the

petitioner's application on the ground that his grand-father does not come under the purview of "Family Unit" and passed the impugned order dated 13.09.2016, which reads as under:

"in view of the above [Clause 9.1(v)], as you do not have required fund in your name/Family Unit as on last date of application, your application could not be considered and the amount of Rs.50,000/- deposited by you with the Corporation stands forfeited in line with Clause 11(h) and 11(i) of the Advertisement."

5. Soon after the receipt of the said impugned order, the respondent rejected the petitioner's plea by another impugned order dated 20.10.2016. It is the case of the petitioner that 'Grand-father' is the centre figure in any family and 'family' in its broader sense, includes persons who are not connected by blood depending upon the context in which it is used. Hence, challenging both the impugned orders, the petitioner is before this Court.

6. In the counter affidavit filed by the respondent, it is stated that the petitioner applied for LPG Distributorship of Mudalipalayam location under 'open category' and as per clause No.6.1 (vi) of the Guidelines, the petitioner ought to have a sum of Rs.15 lakhs as minimum total balance as on 22.10.2013, which is the last date of submission of application and submit the proof of such minimum balance along with the application. The petitioner had stated in his application that he had a balance of Rs.15,06,000/-. The subsequent selection process was stalled due to the interim order of this Court and the same stood vacated by an order dated 09.05.2016 of the Apex Court. Thereafter, the petitioner was selected under the draw of lots process held on 03.08.2016 and subsequent to the selection of the petitioner under draw of lots, he deposited a sum of Rs.50,000/- as provided under clause 9.14 of the guidelines in order to proceed for verification of the original documents to be submitted by the petitioner in order to ascertain the information provided in the application.

7. During the verification of documents submitted by the petitioner, the respondent found that the petitioner had given false information in the application stating that he had a minimum balance of Rs.15,06,000/-, whereas, the minimum balance in his Account as on 22.10.2013 was only Rs.1060.42, as could be seen from his Bank Pass Book. As the petitioner submitted false information in his application, he failed to qualify for appointment as LPG Distributor. Thereafter, the petitioner submitted the Bank statement of his grandfather, P.N.Padmanabhan, which was not considered by the respondent, as

'grandfather' does not fall within the definition of a 'Family Unit', as provided under clause 6.1 (v) of the Guidelines.

8. Learned counsel for the petitioner submitted that the petitioner made an application to the respondent seeking LPG Distributorship on 21.09.2013 and the respondent took three years time to complete the process of selection and therefore, they cannot expect one to maintain the same financial position forever. According to him, on the date of Field Verification Credentials, the petitioner had enough funds in his own Bank Account, but, the same was not taken note of by the respondent. Further, his grand-father had a sum of Rs.15 lakhs in his Bank Account at the time of field verification, which was also not taken note of by the respondent.

9. According to the learned counsel, the word 'family' has to be given a wider meaning so as to include the grand-father and the respondent cannot have different meaning for the word 'family' to exclude the grand-father. It is his contention that the respondent is not legally correct in forfeiting the entire deposit amount by finding fault on the petitioner, particularly after permitting him to participate in the drawal of lot. Hence, he sought interference of the impugned orders passed by the respondent.

10. To substantiate his stand as regards the word 'family', learned counsel for the petitioner has relied on the following decisions of the Supreme Court:

(i) C.Krishna Prasad vs. C.I.T., Bangalore, (1975) 1 SCC 160

"6. Section 4 of the Act provides for the charging of income tax on the total income of every person subject to the conditions prescribed in that section. "Person" has been defined in Section 2(31) of the Act and includes, inter alia, an individual and a Hindu undivided family. The inherent fallacy of the case set up on behalf of the assessee-appellant, in our opinion, is that according to him a single individual can constitute a Hindu undivided family and be assessed as such. "Family" connotes a group of people related by blood or marriage. According to Shorter Oxford English Dictionary, 3rd Edn. the word "family" means the group consisting of parents and their children, whether living together or not; in wider sense, all those who are nearly connected by blood or affinity; a person's children regarded collectively; those descended or

claiming descent from a common ancestor; a house, kindred, lineage; a race; a people or group of peoples. According to Aristotle (Politics I), it is the characteristic of man that he alone has any sense of good and evil, or just and unjust, and the association of living beings who have this sense make a family and a State. It would follow from the above that the word "Family" always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual, a lonely wayfarer till perchance he or she finds a mate. A family consisting of a single individual is a contradiction in terms. Section 2(31) of the Act treats a Hindu undivided family as an entity distinct and different from an individual and it would, in our opinion, be wrong not to keep that difference in view."

(ii) Charles K. Skaria and others vs. Dr. C. Mathew and others, (1980) 2 SCC 752

"21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: Has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.

22. The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment the submission on 2% for outsiders) that if the diploma scores were added, the applicants, by the measure of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time.

Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.

23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the

actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks."

11. As regards the eligibility qualification to be possessed by a candidate on the last date for the purpose of applying for any course of study or for the purpose of availing benefit of reservation or weightage, learned counsel for the petitioner has relied on the following decisions of the Apex Court:

(i) K.V.Muthu vs. Angamuthu Ammal, (1997) 2 SCC 53

"8. The learned counsel for the appellant has contended that "family" has to be given the meaning which is commonly understood by an ordinary man and, therefore, "family" would include only natural sons and not "foster son". The learned counsel for the respondent, on the contrary, contends that since the definition of "family" as set out in the Act is an artificial definition, its natural or common meaning cannot be adopted. "Family", it is contended, is a word of great flexibility and has to be interpreted in the context of the Act with the result that not only those who are related by blood or marriage, but others also would be included in it.

14. In its ordinary and primary sense, the term "family" signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense, "family" would include only parents and their children. It may include even grandchildren and all the persons of the same blood living together. In its broader sense, it may include persons who are not connected by blood depending upon the context in which the word is used.

15. There is a consensus among the High Courts in India that the word "family" is a word of great flexibility and is capable of different meanings.

16. In *Ram Pershad Singh v. Mukand Lal* [AIR 1952 Punj 189 : 6 DLR Punj 251] nephews who were brought up by the landlord and were set up in business by him and were also married by him, were held to be members of the family. The Calcutta High Court in *Puspalata Debi v. Dinesh Chandra Das* [85 Cal LJ 74] , in *Syed Shah Maidal Islam v. Commr. of Wakfs* [AIR 1943 Cal 635 : 47 CWN 315] and again in *Sukumar Guha v. Naresh Chandra Ghosh* [AIR 1968 Cal 49] ; the Madras High Court in *Asha Bibi v. Nabissa Sahib* [AIR 1957 Mad 583] ; the Bombay High Court in *Ramubai v. Jiyaram Sharma* [AIR 1964 Bom 96 : 65 Bom LR 647] ; the Delhi High Court in *Govind Dassv. Kuldip Singh* [AIR 1971 Del 151 : 1970 Ren CR 511] and again in *Abdul Hamid v. Nur Mohd.* [AIR 1976 Del 328 : ILR (1976) 2 Del 250] have all held that the word "family" is a flexible word and it may, in certain circumstances, specially in the context in which it is used, may include persons who are not directly related by blood."

(ii) *Dolly Chhanda vs. Chairman, JEE and others*, (2005) 9 SCC 779

"8. This principle was explained and applied in *Charles K. Skaria v. Dr. C. Mathew* [(1980) 2 SCC 752 : 1980 SCC (L&S) 305] . The controversy here related to admission to a postgraduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate

possessed a diploma in the relevant subject or subspecialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to postgraduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below: (SCC pp. 762 & 763)

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an

independent factor. ... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds,

not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices."

12. In reply, learned counsel appearing for the respondent contended that the petitioner is required to be aware of the guidelines contained in the Brochure while applying for the Distributorship and having given false information in his application with regard to the minimum balance, he cannot now feign ignorance of the said condition. According to the learned counsel, if there is suppression of material information, the candidature of a person can be rejected at the threshold. He submitted that in the impugned order dated 13.09.2016, reference has been made to Clause 9.1(v) of the Guidelines, however, it is only a typographical error.

13. According to the learned counsel for the respondent, grand-father does not come within the purview of 'Family Unit', as defined under clause 6.1(v) of the Guidelines and that the petitioner being an unmarried person, his family unit consists of his parents and his unmarried brothers and sisters only. In support of his contention that rejection of the petitioner's candidature is valid in view of false declaration, learned counsel has relied on a decision in the case of Shiv Kant Yadav vs. Indian Oil Corporation, (2007) 4 SCC 410, relevant portion of which, reads as under:

"12. In Kendriya Vidyalaya case [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] it was noted as follows: (SCC pp. 443-45, paras 11-12)

"....

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a

criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

14. Learned counsel for the respondent further submitted

that several applications were received for LPG Distributorship and believing the disclosure in the application to be correct, verification process takes place and only at the time of verification, the truth will be elicited and in this case, the petitioner has given wrong disclosure of the minimum balance available in his Bank Account. Furthermore, the delay of three years in processing the dealership is not the fault of the respondent and it is due to the pendency of litigation before this Court and the Supreme Court. The dealership applications could be processed only after the orders of the Apex Court and though the petitioner was selected in the draw of lots, his candidature was rejected only on the grounds that he did not have a minimum balance of Rs.15 lakhs in his Bank Account on the last date of submission of application and that he had stated that his grand-father had a minimum balance of Rs.15 lakhs, while the term 'family' is exclusive of 'grandfather', as per the Guidelines.

15. Heard the learned counsel on either side and perused the material documents available on record.

16. It is not in dispute that the petitioner made an application for LPG Distributorship and got selected in the draw of lots. It is also not in dispute that the respondent/IOC could not proceed with the allotment of LPG Distributorship on account of the interim order granted by this Court and that the selection process began only after the order of the Apex Court.

17. The only stand taken by the respondent/IOC to reject the petitioner's application is that the petitioner had furnished false information as regards availability of minimum balance in his Bank Account, when clause 6.1 (vi) of the Guidelines prescribes to have a minimum balance of Rs.15 lakhs on the last date of the application. Though the petitioner took a stand that his maternal grandfather had a minimum balance of Rs.15 lakhs in his Account and also furnished the Bank statement of his grandfather at the time of field verification, the same was not accepted by the respondent for the reason that grandfather does not come within the purview of the 'family'.

18. It is the case of the respondent that had the petitioner not mentioned any amount towards the column 'minimum balance', his case would have been directed to be considered. Admittedly, the petitioner did not have Rs.15 lakhs either in his Account or in the account of anyone of his family members under the family unit. Instead, the minimum balance available in his Account at the time of field verification is only Rs.1060/-. The object of requiring information in the application form and Field verification thereafter is to ascertain the antecedents of the candidate to judge his

suitability for LPG Distributorship.

19. Further, the decisions relied on by the counsel for the petitioner do not strengthen his case, as the petitioner failed to satisfy the requisite condition prescribed for allotment of LPG Distributorship. Furthermore, in the decisions relied on by the counsel for the petitioner, Courts have not considered the term "family" as per the "family unit" mentioned in the Guidelines. At this juncture, it is worth referring to the observation made by the Hon'ble Apex Court in the case of Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, which is reiterated hereunder:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

20. I find much force in the contention of the counsel for the respondent, which is supported by the decision rendered in Shiv Kant Yadav's case (cited supra). Thus, when the condition requisite for holding LPG Distributorship is not satisfied by the petitioner, this Court finds no error in the impugned orders passed by the respondent/IOC.

Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.No.32031 of 2016 is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

(aeb)

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To:

The Senior Area Manager,
Indian Oil Corporation,
Indane Area Office,
8/1079, Avinasi Road,
Coimbatore - 18.

+ 1 cc to M/s. Mohammed Fiyaz Ali, Advocate Sr.70362
+ 1 cc to Mr. N. Manokaran, Advocate Sr.69654

W.P.No.37383 of 2016

RSY(CO)
EU(27/11/2017)



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