BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2017

Delivered on : 17.03.2017

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.(MD).Nos.1187 & 1196 of 2014

W.A(MD).No.1187/2014

K.Subbammal .... Appellant

Vs.

1.The Senior Area Manager,
Indane Area Office,
Indian Oil Corporation Ltd.,
No.2, Race Course Road,
Chokkikulam,
Madurai-625 002.

2.The General Manager,
Indian Oil Corporation Ltd.,
Marketing Division,
Southern Region, Indian Oil Bhavan,
139, Mahatma Gandhi Road,
Nungambakkam High Road,
Chennai.

3.The Executive Director,
Indian Oil Corporation Ltd.,
No.G-9, All Yavar Jung Marg,
Bandra (East),
Mumbai-400 051.

4.R.Geethanjali,

5.Mrs.S.Gheetha ..... respondents

W.A.(MD).No.1196 of 2014

1.The Senior Area Manager,
Indian Oil Corporation Ltd., (Indane),
Madurai Divisional Office,
No.2, Race Course Road,
Chokkikulam, Madurai-2.

2.The General Manager,
Indian Oil Corporation Ltd.,
Marketing Division,
Southern Region,
139, Mahatma Gandhi Road,
Nungambakkam High Road, Chennai-34.

3.The Executive Director,
Indian Oil Corporation Ltd.,
No.G-9, All Yavar Jung Marg,
Bandra (East), Mumbai-400 051. .... Appellants

Vs.

1.Mrs.Gheetha
2.R.Geethanjali
3.K.Subbammal .... Respondents

Prayer:- Writ Appeals have been filed under Clause 15 of Letters Patent, against the order dated 29.04.2014 made in W.P.(MD). No.14689 of 2011 passed by the learned Single Judge.

Prayer in WP(MD)No.14689/2011:-
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of order are direction in the nature of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned communication sent by the 2nd respondent under reference number TNL/5/221 dated 14.12.2011 and quash the same and direct the respondents 1 to 3 to allot distributorship in respect of Indane LPG distributorship (U/R) category at Kovilpatti to the petitioner and pass such other or further orders as this Honble Court may deem fit in the circumstances of this case and thus render justice.

Mr.M.Ajmalkhan, Senior Counsel
for Mr.S.T.Sasidharan Tamil Kani for Appellant in W.A.1187/2014
& R3 in W.A.1196/2014

Mrs.Hema Sampath, Senior Counsel
for Mr.K.Muraleedharan, for Appellant in W.A.1196/2014
& RR1 to 3 in W.A.1187/2014

Mr.J.Parekh Kumar for R4 in W.A.1187/14
& for R2 in W.A.1196/2014

Mr.Issac Mohanlal, Senior Counsel
for Mr.A.Robinson, for R5 in W.A.1187/2014
& for R1 in W.A.1196/2014

* * * * *

COMMON ORDER

(Delivered by Justice R.Subbiah)

Both the above writ appeals have been filed against the order dated 29.04.2014 made in W.P.(MD).No.14689 of 2011, wherein and whereby, the learned Single Judge of this Court has allowed the writ petition filed by Mrs.Gheetha (who has been shown as R5 in W.A.(MD).No.1187/2014 and R1 in W.A.(MD).No.1196 of 2014), by quashing the impugned proceedings of the General Manager of the Indian Oil Corporation Ltd., Marketing Division, Southern Region, Chennai, under Ref.No.TNL/5/221, dated 14.12.2011 declaring her as ineligible, and consequently, directing the officials of the Indian Oil Corporation Ltd., (appellants in W.A.(MD).No.1196 of 2014) to allot the Indane LPG distributorship (U/R) category at Kovilpatti to her.

2.The Writ Appeal in W.A.(MD).No.1196 of 2014 has been filed by the The Indian Oil Corporation Ltd. The Writ Appeal in W.A.(MD).No.1187 of 2014 has been filed by the 5th respondent in the writ petition viz., K.Subbammal, who had been selected by the Indian Oil Corporation for the distributorship.

3.Since both the appeals arose out of the same order, they are disposed of by way of this common judgment. For the sake of convenience, the parties will be referred to as per their ranking in the writ petition.

4.The Brief facts which are necessary to dispose of these writ appeals, are as follows_

4-1.The Indian Oil Corporation has called for LPG Distributorship at Kovilpatti (U/R) Category open. Pursuant to the said notification, the writ petitioner Gheetha submitted an application to the 1st respondent, Senior Area Manager, Indane Area office, Indian Oil Corporation, Chokkikulam, Madurai. On the basis of the interview held from 17.06.2009 to 19.06.2009, the writ petitioner Gheetha was empanelled as First in the select list, based on (a) capability to provide infrastructure, (b) Capability to provide Finance, (c) Educational Qualification, (d) Age, (e)Experience, (f) Business ability, (g)Personality, with 98.57 marks. The 5th respondent K.Subbammal was placed as 2nd and the 4th respondent R.Geethanjali was placed as 3rd in the said select list.

4-2.Subsequently, the 4th respondent-Geethanjali, who was placed as 3rd in the list, had filed two writ petitions in W.P.(MD).Nos.5272 & 8324 of 2009, to consider her candidature under the Sub-Head of 'PROFESSIONAL' in the light of her educational qualification in MCA Degree under the category of professional / Technical instead of Sub-Head 'Basic'. The said two writ petitions were dismissed by this Court on 30.11.2009. The writ appeal in W.A.708 of 2009 filed by the said 4th respondent Geethanjali is pending before this Court.

4-3.While so, the 5th respondent Subbammal, who was placed as 2nd in the select list, had filed a writ petition in W.P.(MD).No.12004 of 2009 seeking to quash the proceedings dated 26.08.2009 issued by the Deputy General Manager, Public Information Officer, Marketing Division, Southern Regions, Chennai, with regard to the experience and the income details furnished by the writ petitioner Gheetha to the Indian Oil Corporation Ltd. The said writ petition was disposed of by this court on 28.01.2010, directing the Indian Oil Corporation Ltd to consider the representation of the said Subbammal by giving opportunity to all the parties. Pursuant to the said order dated 28.01.2010, the 1st respondent viz., Senior Area Manager, Indane Area office, Indian Oil Corporation, Chokkikulam, Madurai sent a letter to the writ petitioner Gheetha on 27.08.2010 to explain her financial status and income derived by her husband at the time of her application. The writ petitioner Gheetha sent her reply giving details of the income of her husband, which was duly received by the 1st respondent. On 29.10.2010, the 1st respondent vide his letter Ref.No.TNL/S/210, dated 13.01.2011, informed the writ petitioner that there are some discrepancies in the documents produced by her and requested her to clarify the said discrepancies within a week from the date of receipt of the letter. The writ petitioner sent a detailed reply to the Corporation stating that there are no discrepancies in the statement given by her and produced the documents in respect thereof. Thereafter, the 1st respondent in his letter Ref.No.MAO.288/11, dated 02.05.2011 informed the writ petitioner that she has been declared ineligible for award of LPG distributorship at Kovilpatti on the ground that she failed to produce the documents in respect of the income of her husband. Thereafter, the writ petitioner submitted a representation dated 04.06.2011 to the 2nd respondent requesting to provide the copies of the documents relating to the eligibility against selection criteria of other two candidates viz., Subbammal & Geethanjali. On 20.07.2011, the writ petitioner received a communication from the 2nd respondent giving Field Inspection Report copy relating to her. As far as the Field Inspection Report copy of Subbammal is concerned, it was informed that the information sought for cannot be given as the same is exempted u/s 8(1)H of the RTI Act. Hence, on 18.08.2011, the writ petitioner filed an appeal before the appellate authority viz., Executive Director (TN & P) Indian Oil Corporation Ltd (Marketing Director), and the same was followed by another letter dated 29.09.2011. On 28.11.2011, on the advise of her counsel, the writ petitioner sent a representation to the Grievance Redressal Cell in Chennai. But, by an order dated 14.12.2011, the 2nd respondent viz., General Manager, Indian Oil Corporation Ltd., Marketing Division, Chennai, rejected the writ petitioner's claim. Challenging the said rejection order as well as seeking consequential direction to the official respondents, the writ petitioner filed the writ petition in W.P.(MD).No.14689 of 2011.

5.Before the learned Single Judge, a detailed counter was filed by the Indian Oil Corporation Ltd. After hearing the submissions made by the writ petitioner as well as the learned counsel for the 5th respondent Subbammal, the learned Single Judge by quashing the impugned rejection order dated 14.12.2011, directed the Indian Oil Corporation Ltd to allot the Indane LPG Distributorship (U/R) category at Kovilpatti to the writ petitioner. Aggrieved over the same, the present writ appeals have been filed by the Indian Oil Corporation and the 5th respondent.

6.Mrs.Hema Sampath, learned senior counsel appearing for the Indian Oil Corporation, submitted that the appellate Corporation had advertised in the newspaper on 06.02.2008, along with other oil companies, for appointment of LPG Distributorship in Tamil Nadu. Among the various eligible criteria, one of the criteria is that the applicant should have the capability to provide finance. The writ petitioner applied for distributorship and she declared that her annual income was Rs.38,400/- and that of her spouse was Rs.5,04,000/-. The writ petitioner had also produced a letter/certificate dated 25.02.2008 obtained from one Osborne Essential Oils Company, stating that her spouse was working with the said company, as a Manager, Quality Assurance & Safety, from 15.05.2007 and he is receiving a monthly gross salary of Rs.42,000/-. Based on the said letter/certificate dated 24.02.2008 and also considering other eligible criteria, the writ petitioner Gheetha was awarded 98.57 marks; likewise based on the particulars furnished, the second candidate viz., 5th respondent Subbammal was awarded 97.60 marks and the third candidate viz., 4th respondent Geethanjali was awarded 97.57 marks. The 4th respondent Geethanjali had filed two writ petitions in W.P.(MD). Nos.5272 & 8324 of 2009 challenging the selection, on the ground that her MCA degree should be recognized as a professional degree; and to consider her candidature under the sub-head of 'PROFESSIONAL TECHNIC' instead of sub-head 'BASIC'; but, the said writ petitions were dismissed by this court. Similarly, the 5th respondent Subbammal filed a writ petition in W.P.No.12004/2009 questioning the experience and income of the selected candidate Gheetha. In the said writ petition, this Court gave a direction to the Indian Oil Corporation to carry out a field inspection and to verify the details furnished by the parties. Accordingly, on 06.05.2010, Indian Oil Corporation directed the Field Inspection Committee to specifically verify the aspects in the representations, with specific reference to the para meter 'income', in addition to carrying out all other stipulated requirements of verification of the empanelled candidate Gheetha. The Field Inspection Committee found that the experience and monthly income of Gheetha were correct as per her application. Further, it was stated that when the Officials of the Field Inspection Committee visited the employer of Gheetha's husband, the Administrative Office of the company refused to give details regarding the appointment order or the salary paid to the writ petitioner's husband. The Director of the company over the phone refused to share the information with the outsiders. Hence, the Field Inspection Committee reported that the income of Gheetha's husband could not be verified. The Field Inspection Committee further reported that though in the appointment order given to the husband of the selected candidate Gheetha by his employer M/s. Osborne Essential Oils Company, it has been clearly stated that PF, ESIC, Professional Tax, Income Tax etc were applicable to him, they could not verify the same due to the non-cooperation of the employer of the writ petitioner's husband. Apart from the salary certificate issued by the writ petitioner's husband, the writ petitioner Gheetha had submitted only the statement of the Chartered Accountant and she did not produce any authenticated document. Hence, the Field Inspection Committee reported that the income of the husband of the selected candidate Gheetha need not be considered. On 02.05.2011, the Oil Corporation has sent a letter to the writ petitioner stating that her letter had been put up to the screening committee for review; that the Screening Committee found that her husband's income was not backed by adequate documentary proof. Thus, the learned senior counsel appearing for the IOC submitted that after giving adequate opportunity to the writ petitioner, her candidature was rejected by the impugned order dated 14.12.2011 since she did not clarify and prove her husband's income; under such circumstances, absolutely there is no illegality in rejecting the candidature of the writ petitioner, which is in line with the selection procedure.

7.The learned senior counsel appearing for the Corporation would further submit that when no *mala fide is* alleged against the process of selection, there is no scope for making an interference with the same under Article 226 of the Constitution by this Court in the impugned order passed by the 2nd respondent. For this proposition, the learned senior counsel has also relied upon the decision reported in *(2003) 10 SCC 681 [K.Vinod Kumar Vs. S.Palanisamy and others].*

8.The learned Senior Counsel for the Corporation has also relied upon the decision reported in *2010 Writ LR 897 [The Senior Area Manager, Indian Oil Corporation Limited & another Vs. M.Natesan]* and submitted that it is for the applicant to establish his/her credentials if he/she is interested. If the application is incomplete, insufficient, not justified or documents are not produced in support thereof, the Corporation cannot grant any marks on that score.

9.The learned Senior Counsel for the Corporation has also relied upon the decision reported in *(2005) 4 SCC 456 [Karnataka State Industrial Investment & Development Corpn Ltd Vs. Cavalet India Ltd]* and submitted that in the said case, it was held that the High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The dictum laid down in the said judgment is squarely applicable to the present facts of the case also. In support of her contention, the learned senior counsel has also relied upon by the decision reported in *(2012) 12 SCC 106 [Sajeesh Babu K. Vs. N.K.Santhosh].* Thus, the senior counsel for the Corporation sought for setting aside the impugned order passed by the learned Single Judge.

10.The learned Senior Counsel Mr.M.Ajmalkhan, appearing for the appellant in W.A.(MD).No.1187/2014 viz., 5th respondent Subbammal, has submitted that the writ petitioner does not challenge the original order 02.05.2011 whereby she was declared as ineligible; under such circumstances, the learned Single Judge ought to have dismissed the writ petition on this short ground alone. The learned Senior Counsel would further submit that based on the information furnished by the writ petitioner in her application with regard to her income and her spouse's income, she was awarded five marks under the head 'income'. In this regard, the learned senior counsel has also submitted that in order to prove the income of her spouse, the writ petitioner has produced only a salary certificate issued to her husband by his employer in their letter-head and a certificate from Chartered Accountant. Except these two documents, no other tangible proof was produced by the writ petitioner to substantiate her husband's income. Hence, the Indian Oil Corporation by correctly rejecting the said documents, declared the writ petitioner as ineligible. In this regard, the learned senior counsel would submit that according to the writ petitioner, her husband was earning Rs.5,04,000/- per annum by working as a Manager, Quality Assurance & Safety in M/s.Osborne Essential Oils Company, receiving a monthly gross salary of Rs.42,000/-. Pursuant to the direction given by this Court, Field Inspection Committee of the Indian Oil Corporation conducted field inspection and it was reported by the said Committee that the employer of the writ petitioner's husband refused to furnish his income particulars, therefore the income particulars of the husband of the writ petitioner could not be verified. Though it is the case of the writ petitioner that her husband was not an income tax assessee, in the appointment order given by the employer of her husband viz., Osborne Essential Oils Company it was specifically stated as follows_

'All the legal laws applicable to employees like Provident Fund, ESIC, Profession Tax, Income Tax etc will be applicable to you."

But, contrary to the same, now the writ petitioner has taken a stand that income tax will not be applicable to her husband's income and ESIC, PF are also not applicable to him, which would show that the documents were created and produced by the writ petitioner before the Corporation only to get marks under the head of 'income'.

11.Further, the learned senior counsel Mr.Ajmalkhan, by inviting the attention of this Court to the pay slips issued by the employer of the writ petitioner's husband, attached at page 104 to 107 in the typed set of papers, demonstrated that those pay slips were also found to be forged one, for the simple reason that the days were mentioned in respect of July & October 2006, March 2007 as 30 days, whereas the aforesaid months contain 31 days. Further, the learned senior counsel appearing for the 5th respondent [appellant in W.A.(MD).No.1187 of 2014] would submit that according to the writ petitioner, her husband was earning Rs.5,04,000/- per annum, whereas it is well settled law and mandatory that every citizen having income more than Rs.2.5 lakhs is bound to pay the income tax. The writ petitioner has miserably failed to produce the documents to prove her claim. Therefore, according to the learned senior counsel for the 5th respondent, no infirmity could be found in the order passed by the 2nd respondent in rejecting the claim of the writ petitioner; hence, the learned single judge ought to have dismissed the writ petition. Thus, the learned Senior counsel for the 5th respondent sought for setting aside the order passed by the learned Single Judge.

12.Countering the submissions made by the learned senior counsel for the Corporation as well as the 5th respondent, the learned senior counsel Mr.Isaac Mohanlal appearing for the writ petitioner submitted that initially after extensive selection process, the writ petitioner was placed as 1st in the select list. Thereafter, pursuant to the direction given by this Court in W.P.No.12004/2009 filed by the 5th respondent Subbammal, Field Inspection Committee conducted inspection and the candidature of the writ petitioner was rejected stating that she did not prove the income of her husband. In this regard, the learned senior counsel for the writ petitioner submitted that the husband of the writ petitioner is not an income tax assessee; that as per Clause 14-1 of application for selection of Indane LPG distributorship, the candidate has to attach only notorized affidavit with regard to the income in the last financial year. As per the guideline, there is no need to produce any income tax statement. As per the general instructions to the applicant for making LPG Distributorship application, a certificate from the employer indicating the total emoluments and a certificate from the Chartered Accountant have to be produced. In the instant case, the writ petitioner has furnished the certificate from her husband's employer as well as from the Chartered Accountant with regard to her income, based on which marks were awarded to the writ petitioner. Therefore, now the writ petitioner's claim cannot be rejected on the ground that she did not produce income tax statement of her husband. In this regard, the learned senior counsel appearing for the writ petitioner has also invited the attention of this Court to the order dated 02.05.2011 passed by the 1st respondent declaring the writ petitioner as ineligible and submitted that in the said order, it has been stated that salary slip produced by the writ petitioner with regard to the income of her husband does not contain the statutory deductions towards PF/ESI/TDS. Whereas, the concern viz., Osborne Essential Oils Company, in which the writ petitioner's husband is working, does not come within the purview of ESI Act; therefore, the question of deduction towards PF/ESI/TDS does not arise. But, ignoring all these factual aspects, the respondents-IOC have mechanically rejected the claim of the writ petitioner. Whereas, the learned Single Judge, after meticulously considering all the factual aspects, has allowed the writ petition and directed the Corporation to allot the distributorship to the writ petitioner. Hence, no infirmity could be found in the impugned order passed by the learned Single Judge. Thus, the learned senior counsel for the writ petitioner sought for dismissal of the writ appeals.

13.We have carefully heard the submissions made by the learned counsel appearing for the respective parties and perused the materials available on record as well as the judgments relied upon by the learned counsel on either side.

14.The writ petitioner Gheetha has applied for LGP Indian distributorship, pursuant to the advertisement issued by the Indian Oil Corporation. On the basis of the interview held by the Indian Oil Corporation, she was empanelled as 1st in the select list and the 5th respondent was placed as 2nd and 4th respondent was placed as 3rd in the select list. Apprehending wrong evaluation, 5th respondent Subbammal made a complaint/representation to the Area Office where the interview was held. She has also made a complaint to IOCL on 30.06.2009 regarding her experience and showing the income of the selected candidate Mrs.S.Gheetha and requested for verification of the same once again. Since her request was not considered, she had filed a writ petition in W.P.(MD).No12004 of 2009, in which this Court has directed the Indian Oil Corporation to consider the representation of the 5th respondent Subbammal by giving opportunity to all the parties. Thereafter, Indian Oil Corporation directed the Field Inspection Committee to verify the income particulars furnished by the writ petitioner in the application. According to the writ petitioner, her annual income is Rs.38,400/- and her husband's annual income is Rs.5,04,000/-. It is the case of the writ petitioner that her husband was working as a Manager in Osborne Essential Oils Company from 15.05.2007 and he is receiving gross monthly salary of Rs.42,000/-. In order to prove the income, the writ petitioner has furnished only a notorised affidavit with regard to the income of the last financial year and salary certificate issued by the employer of the writ petitioner's husband and a certificate issued by the Chartered Accountant, based on which she was awarded five marks. Though the Field Inspection Committee found that monthly income of the writ petitioner was correct, they were not in a position to verify the income of her husband since the administrative authorities of the company, in which the writ petitioner's husband is working, refused to give any particulars with regard to the income of the husband of the writ petitioner. Hence, according to the learned senior counsel for the 5th respondent, in the absence of any tangible evidence to prove the income of the writ petitioner's husband, the details furnished by her with regard to the income of her husband cannot be taken into consideration for awarding marks; but, this aspect was not properly considered by the learned Single Judge. Whereas according to the learned senior counsel for the writ petitioner, as per the general instructions to the applicant for submitting LPG Distributorship application, a certificate from the employer indicating the total emoluments and a certificate from the Chartered Accountant are itself sufficient. Hence, these documents have been produced by the writ petitioner, based on which she was placed as 1st in the select list; that under such circumstances, declaring the writ petitioner as ineligible is not legally sustainable'; that considering all these aspects the learned Single Judge has correctly allowed the writ petition.

15.But, from a perusal of the materials on record, We find that at the time of awarding marks, solely believing the particulars furnished by the applicants, the Corporation is awarding marks; it does not mean that the Corporation is not entitled to verify the genuineness of the particulars furnished in the application form. In the instant case, field Inspection Committee made its all efforts to find out the correctness of the information furnished by the writ petitioner with regard to her husband's income; but, the her husband's employer refused to furnish the particulars. Hence, the Field Inspection Committee reported that the income of the writ petitioner's husband could not be verified. Further, the Screening Committee found that the income of the writ petitioner's husband is not backed by adequate proof; therefore, her candidature was rightly rejected since she did not clarify and prove her husband's income. Under such circumstances, We are of the opinion that it is for the applicant to place her credentials in support of her claim made in the application. If the details furnished in the application are not supported by any proof, she cannot expect grant of any mark. The applicant cannot dictate the terms and conditions to the authorities for grant of distributorship.

16.Moreover, it is well settled legal principle that the Court cannot sit as an appellate authority on the decision taken by the concerned authority unless there is allegation of *mala fide* against the authority. In the instant case, absolutely there is no allegation of *mala fide* made by the writ petitioner against the Corporation. Under such circumstances, We do not find any infirmity in the order passed by the authority. In this regard, a useful reference can be made in the decision reported in *(2003) 10 SCC 681 [K.Vinod Kumar Vs. S.Palanisamy]*, wherein it has been held as follows_

> "11.The law is settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision-making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process. The capability of the appellant herein to otherwise perform as an LPG distributor is not in dispute. The High Court was not, therefore, justified in interfering with the decision of the Selection Board and the decision of BPCL to issue the letter of allotment to the appellant herein."

The dictum laid down in the above said decision is squarely applicable to the present facts of the case. In the absence of any allegation of *mala fide* against the authorities, this Court cannot make an interference in the decision taken by the appellant Corporation declaring the writ petitioner as ineligible candidate. Hence, the impugned order passed by the learned Single Judge is liable to be set aside and accordingly, the same is set aside.

In fine, the Writ Appeals are allowed. No costs.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To
1.The Senior Area Manager,
Indian Oil Corporation Ltd., (Indane),
Madurai Divisional Office, No.2, Race Course Road,
Chokkikulam, Madurai-2.
2.The General Manager,
Indian Oil Corporation Ltd.,
Marketing Division, Southern Region,
139, Mahatma Gandhi Road,
Nungambakkam High Road, Chennai-34.
3.The Executive Director, Indian Oil Corporation Ltd.,
No.G-9, All Yavar Jung Marg, Bandra (East), Mumbai-400 051.
+One cc to Mr.ST.Sasidharan Tamilkani, Advocate, SR.No.16429
+One cc to Mr.K.Muralidharan, Advocate, SR.No.15760
+One cc to Mr.A.Robinson, Advocate, SR.No.15698
ssv
RL/7C/11P/SV/MMS/SAR3/24.4.2017

Pre-delivery Judgment in W.A.(MD).Nos.1187 & 1196 of 2014
17.03.2017