



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.1587 of 2016
and
C.M.P.(MD).No.11864 of 2016

- 1.The General Manager [LPG],
Tamil Nadu State Office,
Indian Oil Corporation Ltd.,
Marketing Division, No.139, Mahatma Gandhi Road,
Chennai 600 034.
- 2.The Senior Area Manager,
Indane Area Office,
Indian Oil Corporation Limited,
No.2, Race Course Road, Chokkikulam,
Madurai 2. : Appellants
- Vs.
- S.M.Sheikh Fareeth : Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 21.10.2016 made in W.P.(MD).No.2444 of 2011, on the file of this Court.

Prayer in WP(MD). 2444/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed in REF:MAO/539/10 dated 16/02/2011 on the file of the 2nd respondent and quash the same and further direct the respondents to give letter of intent to the petitioner for distributorship under the (Rajiv Gandhi Grama LPG Vidarag)RGGLV scheme for Idaykakottai, Oddanchatram Taluk, Dindigul District.

For Appellants : Mr.K.Muraleedharan
For Respondent : Mr.D.Venkatesh

Reserved on 09.02.2017

Pronounced on 24.02.2017

JUDGMENT

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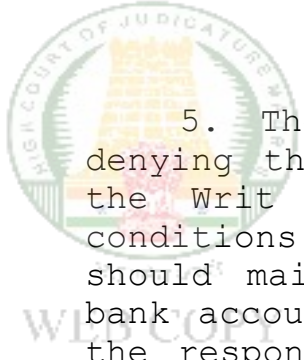
This Writ Appeal has been filed as against the order dated

21.10.2016 made in W.P.(MD).No.2444 of 2011.

2. The case of the respondent/Writ Petitioner before the learned Single Judge is that on 31.03.2010, in Tamil Daily Dinakaran & Dina Thanthi, advertisement was made on behalf of the Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited, inviting applications from eligible persons for the distributorship under the scheme of "Rajiv Gandhi Grama LPG Vidarag", shortly, "RGGLV" for various places in the State of Tamil Nadu. The respondent herein made a request to grant distributorship, vide application dated 30.04.2010. Since the respondent fulfilled all the required conditions, he was invited along with ten other persons to participate in the selection process held on 05.10.2010 in the office of the District Collector, Dindigul. The respondent was selected and the second appellant herein had informed him that after the completion of field verification by his officials, Letter of Intent will be issued to him. However, at the time of oral verification, the respondent was orally informed by the officials that he failed to meet the requirement as mentioned in clause Nos.10.2 and 10.3 of the application.

3. He was further informed that the respondent did not have the minimum balance amount of Rs.2,00,000/- in his savings bank account, as on the date of submission of application. The respondent, on 25.11.2010, submitted a representation to the first appellant explaining the position that he was maintaining a sum of Rs.4,00,000/- in his savings bank account, while submitting his application and that the said amount was transferred by the Manager of the Bank concerned to the credit of his fixed deposit account, on his own, without the knowledge of the respondent. In this regard, the Manager of the Bank had also addressed a letter to the second appellant stating that the amount was transferred by the Bank Manager on his own to meet out their fixed deposit target. However, the first appellant had forwarded a reply to the respondent dated 31.01.2011, stating that on enquiry, it revealed that in the application submitted by him for distributorship, it has been declared that he was maintaining a sum of Rs.4,00,118.83 in his savings bank account and had produced statement of account till 29.04.010 only and on 29.04.2010, there was a debit to the tune of Rs.4,00,020/-, which was transferred to the fixed deposit account. Accordingly, on the instructions issued by the first appellant, the second appellant rejected the application submitted by the respondent herein, by order dated 16.02.2011.

4. Aggrieved over the order dated 16.02.2011, the respondent filed W.P.(MD).No.2444 of 2011 seeking to quash the same and for a direction to the appellants to give Letter of Intent to him for distributorship under the scheme of "Rajiv Gandhi Grama LPG Vidarag", for Idayakottai, Odddanchatram Taluk, Dindigul District.



5. The second appellant herein filed a counter affidavit denying the averments made in the affidavit filed in support of the Writ Petition. According to him, as per the terms and conditions for the selection of distributorship, the respondent should maintain minimum amount of Rs.2,00,000/- in his savings bank account. However, on the date of submission of application, the respondent herein had only a sum of Rs.43.68 in his savings bank account, as against Rs.4,00,118.83 and therefore, the marks awarded to him stood revised from 50 to 0 and consequently, the total marks awarded to him also stood revised from 92 to 42 and on account of the same, the respondent was found ineligible. Thus, the learned counsel for the appellants sought for dismissal of the Writ Petition.

6. The respondent filed a rejoinder affidavit asserting his earlier contentions that even though he had mentioned in the application that he was having a sum of Rs.4,00,000/- in his savings bank account, the said amount was transferred by the Manager of the Bank concerned to the credit of his fixed deposit account, on his own, without the knowledge of the respondent. In this connection, the Manager of the Bank had also addressed a letter to the second appellant stating that the amount was transferred by the Bank Manager on his own to meet out their fixed deposit target.

7. The learned Single Judge of this Court, having considered all the above, by order dated 21.10.2016, while allowing the Writ Petition and setting aside the order dated 16.02.2011, directed the second appellant herein to grant RGGLV distributorship to the respondent within a period of twelve weeks from the date of receipt of a copy of the order. Questioning the correctness of the said order, the appellants have come forward with the present Writ Appeal.

8. It is the submission of the learned Standing Counsel for the appellants that as per the terms and conditions mentioned in the advertisement, on the date of filing of application, the respondent should have maintained minimum amount of Rs.2,00,000/- in his savings bank account. However, the respondent was having a sum of Rs.43.68 and therefore, the marks awarded to him stood revised from 50 to 0 and consequently, the total marks awarded to him also stood revised from 92 to 42. Since the respondent has not given correct particulars in his application, the impugned order dated 16.02.2011, was rightly passed, rejecting the claim made by the respondent, as the respondent was found ineligible, since he was not maintaining minimum amount of Rs.2,00,000/- in his savings bank account on the date of submitting the application. Thus, he is not entitled for the relief sought for. However, the learned Single Judge has come to the conclusion that the respondent was having a sum of Rs.4,00,000/- in his fixed deposit, as on the date of submitting the application and allowed the Writ Petition and



granted the relief as prayed for by him. Hence, the order passed by the learned Single Judge is liable to be set aside.

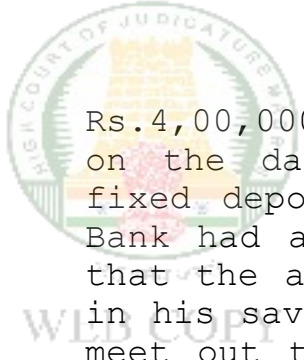
9. By way of reply, the learned counsel for the respondent, by inviting the attention of this Court to the advertisement dated 31.03.2010, submitted that in the advertisement itself, it has been stated that the applicants should maintain a sum of Rs.2,00,000/-, either in the Fixed Deposit or in the form of Kishan Vikas Bond or National Security Certificate. The said clause does not say that the persons should maintain a sum of Rs.2,00,000/- only in his savings bank account and thus, the order passed by the learned Single Judge does not warrant any interference at the hands of this Court.

10. By way of reply, the learned Standing Counsel for the appellants, referring to the counter affidavit filed by the first appellant, submitted that a clarification has been issued subsequently, stating that an applicant, who applies for distributorship, should maintain a sum of Rs.2,00,000/- only in his savings bank account alone. Since the respondent did not have a sum of Rs.2,00,000/- in his savings bank account, he is not eligible for the relief sought for in the Writ Petition.

11. The learned Standing Counsel for the appellants, in support of his contentions, made reliance on the Judgments of the Hon'ble Supreme Court in **Shiv Kani Yadav Vs. IOC**, reported in **2007 (3) MLJ 841 (SC)**, wherein it has been held that if any factual mis-statement or declaration is made, it permits cancellation of allotment. He has also produced yet another Judgment of this Court in **V.Chandran Vs. Oil Selection Board**, reported in **1995 (II) MLJ 458**, wherein it has been held that the process of appreciating and weighing various factors, materials and rival merits is the function of the respondent Board, which is having the necessary expertise and experience to perform its duties properly and therefore, there cannot be any re-appreciation or re-appraisal of relevant material factors, relative qualifications and evaluation of the comparative merits of the candidates in a Writ Proceedings under Article 226 of the Constitution of India.

12. We have considered the above submissions and keeping in mind the said submissions made on either side, we have carefully gone through the materials available on record.

13. Admittedly, by virtue of the advertisement, for the selection of distributorship, the respondent should maintain minimum amount of Rs.2,00,000/- in his savings bank account, as on the date of submission of the application. It is the assertive submission of the learned counsel for the respondent that on 25.11.2010, the respondent submitted a representation to the first appellant explaining the situation under which a sum of



Rs.4,00,000/- , which he was having in his savings bank account, on the date of submitting the application, was transferred to fixed deposit by the Bank Manager. In fact, the Manager of the Bank had also addressed a letter to the second appellant stating that the amount of Rs.4,00,000/-, which the respondent was having in his saving bank account, was transferred by him, on his own to meet out their fixed deposit target. The above averments made in the rejoinder affidavit were not disputed by the appellants, whereas it has been admitted that the amount had been transferred to the fixed deposit account in the same bank.

14. Moreover, as per the advertisement dated 31.03.2010, it has been stated that the applicants should maintain a sum of Rs.2,00,000/-, either in the Fixed Deposit or in the form of Kishan Vikas Bond or National Security Certificate. The said clause does not say that the applicants should maintain a sum of Rs.2,00,000/- only in his savings bank account. Even though a counter affidavit has been filed by the second appellant herein, by giving clarification that on the date of submission of application, the respondent should maintain a sum of Rs.2,00,000/- only in his savings bank account, we do not find any such clarification issued prior to the filing of the counter by the appellants Corporation. Thus, in our considered view, the learned Single Judge, considering all the above aspects, has rightly set aside the order passed by the second appellant herein. Therefore, the Judgments relied upon by the learned Standing Counsel for the appellants are not applicable to the facts of the present case.

15. In view of the foregoing discussions, in our considered view, the Writ Appeal is liable to be dismissed. Accordingly, the Writ Appeal is dismissed. The order dated 21.10.2016 made in W.P. (MD).No.2444 of 2011, is confirmed. The appellants are directed to implement the order passed by the learned Single Judge within a period of four weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar

To

1.The General Manager [LPG],
Tamil Nadu State Office,
Indian Oil Corporation Ltd.,
Marketing Division, No.139, Mahatma Gandhi Road,
Chennai 600 034.



2.The Senior Area Manager,
Indane Area Office,
Indian Oil Corporation Limited,
No.2, Race Course Road, Chokkikulam, Madurai 2.

WEB COPY

+1cc to Mr.K.Muraleedharan, Advocate sR.No.10985
+1cc to Mr.D.Venkatesh, Advocate SR.No.10747

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JUDGMENT MADE IN
W.A. [MD] .No.1587 of 2016
24.02.2017