

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.04.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.04.2017	24.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD) No.539 of 2011
and
M.P.(MD) Nos.2 & 3 of 2011

S.Karuppiah

... Appellant

-vs-

1.The Indian Oil Corporation Ltd.,
rep.by its Senior Area Manager
No.2, Rawce Course Road
Chokkikulam, Madurai-2

2.Shanmugapriya

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 02.02.2011 made in W.P.(MD) No.6254 of 2010, on the file of this Court.

Prayer in WP(MD). 6254/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other order or direction in the nature of Writ, calling for the records pertaining to the impugned order of the 1st respondent dated 19/04/2010 and quash the same and consequently directing the 1st respondent to allot distributorship to the petitioner in the light of the documents filed by the petitioner for the Liquid Petroleum Gas Distributorship at sankarankoil and to pass such further or other orders as may be deemed fit and proper.

For Appellant : Mr.G.Thalamutharasu

For Respondents : Mr.K.Muralidharan for R1

Mr.S.Palanivelayutham for R2

**J U D G M E N T****T.S.SIVAGNANAM, J.,**

WEB COPY

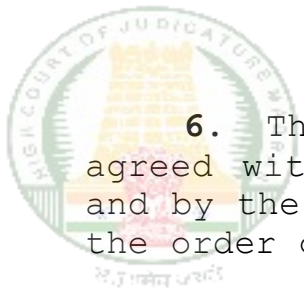
This writ appeal has been preferred by the appellant / writ petitioner challenging the order, dated 02.02.2011, made in W.P. (MD) No.6254 of 2010.

2. The writ petition, in W.P.(MD) No.6254 of 2010, was filed by the appellant / writ petitioner praying for issuance of a writ of certiorarified mandamus to quash the order, dated 19.04.2010, passed by the first respondent / first respondent and to direct the first respondent / first respondent to allot distributorship to him in the light of the documents filed by him for LPG Dealership at Sankarankovil.

3. By the said order, dated 19.04.2010, the appellant's application for allotment of LPG Dealership was rejected on four grounds, namely, his spouse has already been allotted LPG Dealership and he cannot be a multiple dealer. The plea raised by the appellant that the marriage between them was dissolved by a customary divorce was refused to be accepted as on the date of application, there was no divorce valid in the eye of law as granted by any Court. The third ground being relating to the annual income of the appellant, though he claimed to have an annual income of Rs.5,10,000/-, no income returns were filed and fourthly, the experience certificate produced by the appellant was found to be unacceptable. Thus, by referring to Clause 19(g) & (h) of the General Conditions in the advertisement, the appellant was informed that the documents furnished along with the application cannot be accepted and therefore, he was declared ineligible for the award of LPG Dealership at Sankarankovil.

4. Among the candidates, who applied for the said Dealership, the appellant was ranked No.2 in the merit list. The candidate, who was ranked No.1 was found to be ineligible and since by the order, dated 19.04.2010, the appellant was declared ineligible, the dealership has been granted in favour of the second respondent, who was ranked No.3 in the merit list.

5. The respondent - Oil Corporation resisted the writ petition stating that the divorce pleaded by the appellant was only for the purpose of securing dealership and the appellant cannot be a multiple dealer. Further, it was contended that the competent authority has taken a proper decision in this matter and the Writ Court cannot review the decision as if acting as an Appellate Authority.



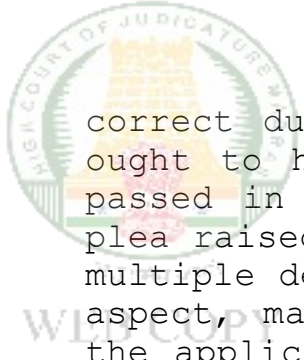
6. The learned Single Judge, who considered the matter, agreed with the stand taken by the respondent - Oil Corporation and by the impugned order dismissed the writ petition. As against the order of dismissal, the appellant is before this Court.

7. Mr.G.Thalamutharasu, learned counsel appearing for the appellant / writ petitioner contended that in response to the advertisement, dated 06.02.2008, issued by the first respondent / first respondent, the appellant submitted his application for LPG Dealership on 10.03.2008 for the location at Sankarankovil in Tirunelveli District. The appellant was called for interview before the Selection Committee on 27.08.2009 and the documents relating to his educational qualification, experience, annual income and deed of customary divorce were verified and found to be correct and the appellant was empaneled as No.2 candidate in the merit list. The candidate empaneled as No.1 was disqualified during field investigation. Therefore, the field investigation was done in respect of the appellant and after conducting field investigation, the Field Investigation Officer reported that the information given in the appellant's application have been verified and found correct and recommended for issuing Letter of Intent (LOI). Therefore, the appellant has been selected in accordance with the guidelines.

8. The learned counsel for the appellant referred to the selection guidelines issued by the Ministry of Petroleum and stated that once the field verification is completed and the information given in the application are found to be correct and there is no complaint or court case, Letter of Intent has to be issued.

9. Further, the learned counsel for the appellant submitted that only after receiving a reply under the Right to Information Act, vide letter, dated 21.06.2010, enclosing the legal opinion given by the Standing Counsel for the respondent - Oil Corporation, dated 03.03.2010, the appellant's wife approached the Civil Court for getting a decree of divorce and accordingly, filed a suit in O.S.No.116 of 2010, on the file of the learned District Munsif-cum-Judicial Magistrate, Tiruchendur and the said suit was decreed on 20.10.2010 and a copy of the Judgment was produced before the Writ Court at the time of hearing of the case, but it was not considered by the Writ Court.

10. Further, it is submitted that the first respondent / first respondent is not competent to pass any orders on the customary divorce and he has strangely raised anomalous concept of multiple dealership norms in the order, dated 19.04.2010, on the ground that the appellant's spouse was a dealer of IOCL. Further, it is submitted that customary divorces are not granted by Courts of law and the information furnished having been found to be



correct during the course of field investigation, the dealership ought to have been given to the appellant. Further, the decree passed in the suit, in O.S.No.116 of 2010, is an answer to the plea raised by the respondent - Oil Corporation with regard to the multiple dealership norms. Further, with regard to the experience aspect, marks will be awarded based on the information given in the application and on answers to leading questions in connection with experience claimed during interview. The Committee found that the appellant's experience is true based on his performance in the interview and if such is the situation, dealership ought to have been given to the appellant.

11. With regard to the annual income of the appellant, it is submitted that the appellant is not an income tax assessee, but he has produced V.A.O.Certificate and Tahsildar Certificate and self-declaration and these are all sufficient proof of income. Therefore, it is submitted that the decision taken by the respondent - Oil Corporation declaring the appellant ineligible for LPG Dealership is wholly erroneous.

12. The learned counsel for the appellant has placed reliance upon the decision of the Honourable Supreme Court in **Sajeesh Babu K. v. N.K.Santhosh**, reported in (2012) 12 SCC 106 and **K.Vinod Kumar v. S.Palanisamy and others**, reported in (2003) 10 SCC 681.

13. We have heard the learned counsels for the respondents on the above submissions.

14. The short issue, which falls for consideration is as to whether the decision of the respondent - Oil Corporation disqualifying the appellant on the grounds mentioned therein is proper and justified.

15. Before we proceed to consider the said question, it is relevant to point out that the appellant is a practicing advocate enrolled before the Bar Council of Tamil Nadu on 28.04.2006. If such is a situation, it is rather doubtful as to whether during the period when the appellant was an enrolled member of the Tamil Nadu Bar Council, he could take up any employment elsewhere, though according to the appellant, it was honorary. Nevertheless, the appellant seeks to rely upon the employment certificate given by those persons, who had employed him. Thus, without permission of the Tamil Nadu Bar Council, the appellant could not have accepted the job, though according to him, he was working without any remuneration. This is the first hurdle for the appellant to be considered for allotment of LPG Dealership.

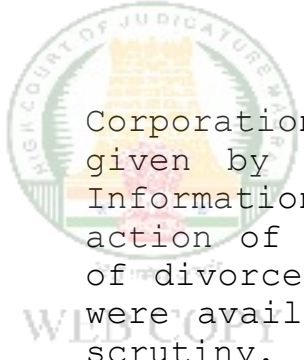
16. It is an admitted fact that the appellant's spouse is also a dealer of LPG in a different location. As per the norms prescribed, there cannot be multiple dealership within the same

<https://hcservices.ecourts.gov.in/hcservices/>



family. The appellant claims to have divorced his wife on 10.12.2006. The respondent - Oil Corporation issued a notification published in the Tamil and English Dailies, on 06.02.2008, calling for applications for allotment of LPG dealership in different locations. On 10.03.2008, the appellant had filed his application for such allotment. Thus, on the date when the appellant filed his application for allotment, he claimed to be a divorcee based on a customary divorce, which had occurred on 10.12.2006. However, after submitting application after about ten days on 20.03.2008, the appellant registered a document purported to confirm the customary divorce. From the dates and events, it is evidently clear that this modus was adopted by the appellant only to get over the disqualification under the multiple dealership norms. Therefore, the learned Single Judge was perfectly justified in holding that the plea raised by the appellant is absolutely untenable.

17. Before this Court, the appellant seeks to rely on the O.S.No.116 of 2010, in which a decree was passed by the Civil Court on 20.10.2010. Admittedly, this decree cannot be taken into consideration as this document was not filed along with the application. The explanation given by the appellant is that only after he came to know about the legal opinion given by the Standing Counsel of the respondent - Oil Corporation, the suit was filed. Curiously enough the suit was not filed by the appellant but his wife. The plea raised by the appellant has to be outrightly rejected, firstly on the ground that an opinion given by a counsel to his client is purely a document relatable to the said client and that can hardly be a starting point for filing a suit. It is noteworthy to mention that the suit was filed by the appellant's spouse Subbuthai for declaration that the appellant is not her husband. In the plaint, the appellant's spouse has stated about the customary divorce on 10.12.2006 and the registration of the divorce on 20.03.2008. However, her case is that in spite of the said customary divorce, the appellant was referring to her as his spouse. The appellant, in his written statement, after referring to the customary divorce, curiously sought for dismissal of the suit. Thus, it is clear that the suit, which has been filed by the appellant's spouse itself is for a collateral purpose and no reasonable person, who is said to have divorced his spouse, would approach the Court and file a suit for declaration that the spouse should not refer her as his wife and the suit having been filed by the appellant's spouse, the reference made by the appellant to the information secured by him under the R.T.I.Act, dated 21.06.2010, to be the reason for filing the suit is a self-serving statement rather a false statement to be rejected. We make such an observation because the plaintiff in the suit is not the petitioner. Therefore, if the cause of action for filing the suit is based on the information secured by him under the R.T.I.Act, dated 21.06.2010, then the petitioner should have been the plaintiff. Thus, the so-called customary divorce was rightly disbelieved by the respondent - Oil



Corporation. Therefore, the appellant cannot rely upon the reply given by the respondent - Oil Corporation under the Right to Information Act, vide letter, dated 21.06.2010, to justify the action of his spouse approaching the Civil Court to get a decree of divorce. What is required to be seen is the documents, which were available on the date when the application was taken up for scrutiny. Even in the verification report, the officials have clearly mentioned that the document of customary divorce needs to be scrutinized by their Legal Department. Therefore, no final opinion was expressed by the Field Investigation Team and they had doubted the effect of such a document of customary divorce. Hence, the plea raised by the appellant that based on the field investigation report, Letter of Intent should be issued to him is a plea to be rejected.

18. With regard to the income criteria, though the appellant pleaded that his annual income was Rs.5,10,000/-, he did not produce any income tax returns or certificate from the Chartered Accountant. The Tahsildar and the Village Administrative Officer cannot certify on this aspect, but only can assess a person, if he is below the poverty line. Therefore, those certificates are of little avail.

19. As mentioned above, the appellant enrolled as an Advocate before the Bar Council of Tamil Nadu on 28.04.2006 and claims to be employed as Supervisor in M/s.Priya Agencies, Dealers in Bharat Petroleum Corporation Limited at Sankarankovil, for the period from 01.06.2006 till 31.07.2007 and during the relevant time, he was a full time legal practitioner and he could not have been employed elsewhere without the permission of the Bar Council of Tamil Nadu, though he claims it was without remuneration. Even if it is so, the appellant should have been obtained permission and establish that his employment in the said agency will not be detrimental to practice his profession.

20. As held by the Honourable Supreme Court in the case of **Sajeesh Babu**, in the matter of appointment / selection by an Expert Committee consisting of qualified persons in the particular field, normally, the courts should be slow to interfere with the opinions expressed by the experts unless there is any allegation of *mala fides* against the experts, who had constituted the Selection Committee. In the instant case, there is no such allegation of *mala fide* against the Selection Committee or the officials of the respondent - Oil Corporation.

21. Thus, for all the above reasons, we are of the view that the appellant has not made out any case for interference with the order passed by the Writ Court.

<https://hcservices.ecourts.gov.in/hcservices/>

22. In the result, the writ appeal fails and it is dismissed.



WEB COPY

7

No costs.
closed.

Consequently, connected miscellaneous petitions are

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

Copy To:

The Senior Area Manager,
Indian Oil Corporation Ltd.,
No.2, Rawce Course Road
Chokkikulam, Madurai-2.

+1 CC to M/s. S.PALANI VELAYUTHAM, Advocate, SR No. 53725

+1 CC to M/s.K.MURALEEDHARAN, Advocate, SR No. 53571

+1 CC to M/s.G.THALAIMUTHARASU, Advocate, SR No. 54132

KRK

PSM/SV/04.05.2017/7P/5C

JUDGMENT

IN

W.A. (MD) No.539 of 2011

and

M.P. (MD) Nos.2 & 3 of 2011

24.04.2017