

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2018

DELIVERED ON : 23.07.2018

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.367 of 2018

R.Umarani Appellant/3rd Respondent

.. Vs ..

1. R.Sugitha

2. The Deputy General Manager,
Tamil Nadu State LPG Incharge,
Indian Oil Corporation Limited Bhavan,
No.139, Mahatma Gandhi Road,
Nungambakkam,
Madras-600 034.

3. The Senior Manager,
Indian Oil Corporation Limited,
Marketing Division,
Indane Area Office,
Triveni, 2nd Floor,
B-35, Shastri Road,
Thillai Nagar,
Trichy-620 018.

4. M.Sathiyapriya .. Respondents/Respondents 1,2 & 4

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the order of this Court dated 18.01.2018 made in
W.P.No.19953 of 2009.

Prayer in WP.No.19953 of 2009:Writ petition filed under
Article 226 of the constitution of India, seeking to issue
writ of certiorari to call for the records pertaining to the
list of empanelled condidates published on 22.9.2009 on the
file of the 2nd respondent, quash it as illegal, incompetent
and without jurisdiction.

For Appellant : Mr.V.Vijaya Narayanan,
Advocate General
for Mr.V.Krishnakumar

For R-1 : Mr.V.Raghavachari
for Mr.MA.P. Thangavel

For RR-2 & 3 : Mr.P.N.Radhakrishnan

For R-4 : Mr.M.Narayanaswamy

JUDGMENT

(Judgment of the Court was delivered by
RMT. TEEKAA RAMAN,J.,)

Writ Appeal is directed against the order dated 18.01.2018 made in W.P.No.19953 of 2009.

2. The third respondent in the writ petition is the appellant herein. The first respondent herein has filed the above writ petition in W.P.No.19953 of 2009 challenging the second empanelled list dated 22.09.2009 for allotting L.P.G. distributorship in Kallakurichi Taluk, Villupuram District inter alia praying for a writ of certiorari calling for the entire records pertaining to the list of empanelled candidates published on 22.09.2009 on the file of the second respondent therein/Senior Manager, Indian Oil Corporation Limited and quash the same as illegal, incompetent and without jurisdiction.

3. The brief facts leading to the filing of the writ petition are as follows :-

[i] The Indian Oil Corporation Limited [hereinafter referred as 'IOCL'] had notified to appoint distributors for Liquified Petroleum Gas [hereinafter referred as 'LPG'] and on 06.02.2008 called for applications from the candidates. The writ petitioner had applied for the distributorship for Kallakurichi location at Villupuram District, which is reserved only for open women Quota.

[ii] The interview was held on two dates viz., 17.06.2009 and 18.06.2009. After conducting the interview, the list of empanelled candidates (names in order of merit) was notified in the "Notice Board" on 18.06.2009 and through Internet on 19.06.2009.

[iii] The third respondent in the writ petition/appellant herein had sent a representation to the second respondent therein stating that in the first list published on 19.06.2009, insofar as with the 'Capability to provide the Finance' category, no marks were allotted and in fact, she could have been awarded 7 marks for ability of obtaining loan.

[iv] The writ petitioner is the first candidate and obtained highest mark of 89.23 out of 100 marks. The third respondent in the writ petition/appellant herein was the third candidate, likewise the fourth respondent in the writ petition was second candidate as per the merit list of empanelled candidates.

[v] The second respondent in the writ petition had published a second list of empanelled candidates on 22.09.2009, wherein, the third respondent in the writ petition (appellant herein) is the eligible candidate and the highest mark scorer viz., 95.00 marks out of 100.

4. Based upon the interview, the Sub Committee at various levels, after scrutinizing and filtering the application find that the third respondent in the writ petition/appellant herein has scored more marks and accordingly, awarded the dealership to her and it was the subject matter of the writ petition.

5. Before the learned single Judge, on behalf of the first respondent herein, who is the writ petitioner, three points were agitated for setting aside the distributorship given to the appellant viz., (i) that the appellant herein has furnished false information with regard to the service experience, (ii) as per the undertaking required by the candidate, any wrong information or misrepresentation will lead to cancellation of the LPG distributorship and (iii) in the absence of any financial capacity in Clause 14.5 wherein, the appellant herein mentioned as 'Nil', no marks should be awarded.

6. Per contra, the respondent officials of IOCL have filed counter stating that though the appellant herein has mentioned about the experience that she has worked in a TVS Motor Company and gained experience of TVS distributorship, no marks were awarded under the said category and a letter has been given by the Managing Director stating that since the appellant herein was Doctor by profession, she has not paid any remuneration and the said letter is acted upon. With regard to Column No.14.5 relating to financial capacity, wherein, the appellant has said to have been mentioned as 'NIL'. However, along with her application, she enclosed a certificate from the Lakshmi Vilas Bank and the same was also cross checked by the Field Officer and found to be true and genuine. Further, made submission that under the Column No.14.5, the appellant has mentioned about the loan amount as 'nil', since the loan amount has been sanctioned but however, the amount was not disbursed.

7. However, it appears that the learned single Judge has entertained a suspicion on the ground that the appellant herein being a Doctor by profession filed income tax return as a Doctor. The learned single Judge has also entertained a

doubt as to whether the appellant had gained experience from 2000 onwards in supervising capacity under M/s.Shanthi Agencies, and hence, considered it as a misrepresentation on the part of the third respondent and held that declaration to the effect has been decided as misrepresentation.

8. The another point on which the learned single Judge has held against the appellant is that since the letter given by the Lakshmi Vilas Bank with regard to sanction of the loan for construction of stores and other infrastructure, is found to be hand written and therefore, entertained a suspicion and on mere suspicion it has been construed as a false one and set aside the dealership awarded by IOCL to the appellant herein and accordingly, allowed the writ petition.

9. Challenging the correctness of the order passed in W.P.No.19953 of 2009, the third respondent in the writ petition has preferred this writ appeal.

10. Mr.V.Vijaya Narayanan, learned Senior Counsel appearing for the appellant has contended that the learned single Judge is erred in both the counts and failed to see that even in the application form, annexure annexed to the application form, necessary experience certificate has been enclosed therein and merely because the appellant happened to be a Doctor, she cannot be construed as not worked or took training under her husband in the maintenance of TVS Sales and Service in her town and relied upon a decision of the Hon'ble Supreme Court reported in 2012 (12) SCC 106 [Sajeesh Babu K. Vs. N.K.Santhosh and others].

11. Further, working experience without any remuneration has been recognized by law in the decision of the Hon'ble Supreme Court reported in 2014 (104) ALR 102 [Satya Narain Dubey and another Vs. Union of India and others], wherein, it is held that we are unable to agree on this issue inasmuch as except these averments, no material has been brought forth to indicate that while pursuing his course, he did not contribute towards the business either in the morning or late evening hours for his experience and held that the candidate may pursue M.Tech degree course simultaneously and can claim gaining experience and the same cannot be found fault with.

12. Learned Senior Counsel appearing for the appellant placing reliance upon the judgment of the Hon'ble Supreme Court reported in 2012 (12) SCC 106 (cited supra) contended that in a matter of appointment/selection by an Expert Committee/Board 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.

13. Per contra, Mr.V.Raghavachari, learned counsel appearing for the contesting respondent namely, the first respondent, who is the writ petitioner making submission on behalf of the Advocate on record would contend that insofar as the experience certificate issued by the husband of the appellant especially, when the appellant is a Doctor, is a false one and hence, made misrepresentation for entitlement of the dealership. It is further contended that the letter alleged to have been issued by the Lakshmi Vilas Bank with regard to the financial capacity may be inserted subsequently.

14. Mr.M.Narayanaswamy, learned counsel appearing for the fourth respondent would contend that as per the original interview list, the fourth respondent herein stood as a second candidate and hence, in the event of setting aside the order of the learned single Judge, she may be given an opportunity to contest again for the LPG dealership.

15. After hearing both the parties and after going through the records, before advertng to the rival contentions, on our direction, the second respondent/Senior Manager of IOCL has produced the original applications of all the parties concerned and also the Notification thereon. There are brochure for the selection of the indane gas distributor for the year 2007.

16. The issued involved is, the second respondent herein has issued a Notification dated 06.02.2008 calling for applications from the candidates for the purpose of allotting distributorship of LPG and the appellant submitted her application and also participated in the interview and as she was not awarded marks under two heads namely, capacity to provide finance and hence, it appears that as per the Notification and Guidelines, she made a representation to the third respondent on 18.06.2009 regarding the empanelment for interview. Since her grievance was not considered, it appears that she filed the writ petition in W.P.No.13550 of 2009 and pending the said writ petition, the Officer appointed to look into the representation has found that the claim of the appellant is correct and proper and accordingly, awarded seven marks under heading to provide finance capacity. However, no marks was awarded towards experience as it was based on the performance in the interview. It appears that recording the above factual position regarding the appellant's capacity to provide finance, the earlier writ petition was disposed of.

17. The earlier writ petition No.13550 of 2009, which was disposed of on 14.09.2009, wherein, taking note of the seven marks awarded under the category of 'financial capacity', the same was recorded by the learned single Judge, who dealt with the case and directed IOCL, the third respondent therein to publish the list of eligible candidates. In view of the point of dispute that has been raised in the appeal, the counter affidavit filed by the Indian Oil Corporation Limited in

W.P.No.13550 of 2009, assumes significance, Both before the learned single Judge in the present writ petition as well as before us, the crux of the issue is, regarding award of seven marks under the category of financial capacity, which is required to be filled under Column No.14.5 of the application.

18. As stated supra, we have perused the original applications submitted by all the parties viz., the appellant, the first respondent and the 4th respondent herein.

19. At page No.5 of the application form submitted by the appellant herein, in Column No.14.5, it is clearly mentioned as 'Lakshmi Vilas Bank' and date of certificate as '10.03.2008' and amounts of loan as 'nil'. With regard to this, letter from the Bank/financial institution was annexed as 'D' as could be seen from the list of enclosures. On perusal of the said annexure form, it appears that on 10.03.2008 Lakshmi Vilas Bank at Kallakurichi has given the statement showing that "in case a distributorship is allotted to her we will be willing to extend a loan upto 15 Lakhs subject to satisfaction of the terms and conditions stipulated by our bank."

20. We have also gone through the said letter dated 10.03.2008. As pointed out earlier, the very same issue with regard to the truth and genuineness of the said letter and also the statement in Column No.14.5, it appears that after receipt of the application form, before the scrutiny committee, an investigation officer has been deputed by the IOCL for scrutinizing. The appellant's application along with the enclosures from the Lakshmi Vilas Bank dated 10.03.2008 stating that they are willing to extend loan upto Rs.15 lakhs in case distributorship is allotted to the appellant is found to be true and genuine, and based on the field inspection, Investigating Officer has recommended for awarding of marks to the appellant as per Column No.14.5 of the application. Based on the report of the Investigating Officer and the recommendation of the nodal officer, the competent authority has approved to award seven marks in respect of Column No.14.5. The said fact has been duly incorporated by the IOCL in the counter filed in the earlier writ petition in W.P.No.13550 of 2009 at paragraph No.6. The very same contention has been raised before the learned single Judge and however, the learned single Judge appears to have entertained a doubt and held that the Bank letter is not genuine on mere suspicion.

21. In this regard, we after going through the original application submitted by the appellant herein and also found the relevant entries in Column No.14.5 and also after going through the records produced by the second respondent herein/IOCL, which goes to show that before scrutinizing committee calling for the interview of the eligible candidates, there was investigation wherein, a Field Officer

has been deputed to ascertain the truth and genuineness of the various enclosures annexed with the application of each candidates so also for the application of the appellant herein and the Field Officer, who had enquired the same with the local branch of the Lakshmi Vilas Bank, Kallakurichi has submitted a report that the letter is true and genuine and acting upon the Field Officer's report, the scrutinizing committee has acted upon the letter given by Lakshmi Vilas Bank as a corollation of factum of financial capacity, annexed with the application and accordingly, appears to have awarded seven marks under the heading of 'financial capacity' in Column No.14.5. The counter affidavit of the earlier writ petition was filed as early as in the year 2009. In view of the said factual position, we are of the considered view that the above factual position was not looked into by the learned single Judge and not considered the same in the light of the reports of the Field Officer and the Investigation Officer which is done immediately after the submission of the application much before the Scrutiny Committee for awarding of marks and in the Sub Committee for interview assumes significance.

22. In view of the factual position as borne out from the records, we are of the considered view that there is no iota of doubt that the letter given by the Lakshmi Vilas Bank is true and genuine as per the investigation report given by the Field Officer and immediately after submission of the application form before completion of the scrutiny committee cannot be brushed aside on mere suspicion that it is a handwritten letter. In fact, a similar doubt has been entertained and the same has been clarified based upon the Filed Officer's report.

23. When such being the case, we are of the considered opinion that a document which has been verified by the Field Officer at the earliest point of time also corroborates the same with the Column No.14.5 of the application which was now produced before us, we are of the considered view that the letter given by Lakshmi Vilas Bank showing the financial capacity of the appellant cannot be brushed aside on mere suspicion without any clear or cogent document or in the absence of any valid ground.

24. In view of the discussions in the preceding paragraphs, we are of the view that the above said enclosures and the letter given by the Lakshmi Vilas Bank are true and genuine and found to have been issued at the appropriate time and not later as contended by the learned counsel appearing for the first respondent, on any mere surmise. Accordingly, the said contention of the learned counsel appearing for the first respondent/writ petitioner that the letter is not a true and mere on surmise and without any substance cannot be upheld and the finding of the learned single Judge in this regard is not supported by any evidence.

25. The next bone of contention raised by the learned counsel appearing for the appellant is that merely because the appellant is a medical practitioner, she cannot be denied nor her application has been brushed aside, as observed by the learned single Judge on the ground that it is doubtful where she worked and gained experience in the TVS Sales Company and after perusing the document, which is annexed with the application form by a letter dated 10.02.2010, the Proprietor of Shanthi T.V.S. of Kallakurichi wherein, the owner of the Proprietor of the said agency has stated that the appellant herein was assisting his business, however, without any payment. The learned single Judge while upholding the contention of the learned counsel for the first respondent herein that the said application may not be true and entertained a doubt over the genuineness of the said application and held that since the genuineness of the said letter is found to be doubtful and consequently, held that it amounts to false declaration and set aside the LPG dealership awarded to the appellant herein and the finding of the learned single Judge on that score is liable to be vacated and the same is hereby vacated.

26. Before advertng to the rival submission on this score, i.e., the work experience and the marks awarded therein, it is useful to refer the contents in the application form submitted by the appellant. In the brochure attached to the application form in column No.14.5 with regard to the eligibility and professional belonged to technical/law/medical/management degree are eligible.

27. Secondly, the dealership is exclusively for woman category. Thus, merely because the appellant happened to be holding MBBS degree that cannot be a ground to disqualify her, since the very said MBBS degree has been prescribed as one of the educational qualification as noted above.

28. In this regard, the judgment of the Division Bench of the Allahabad High Court reported in (2014) 104 ALR 102 [*Satya Narain Dubey and another Vs. Union of India and others*], wherein, it has been stated that a candidate held that while pursuing an educational course and simultaneously gaining work experience. Learned counsel appearing for the first respondent/writ petitioner would contend that the appellant has filed a false representation and produced a false certificate that she being a MBBS Doctor could not have attended the office of the TVS Sales and Service Agency to learn some training as projected by her along with the application form.

29. Furthermore, it is to be stated that though the first respondent herein made an averment that it may not be possible for the appellant to attend the agency for training, no material has been brought forth to indicate that while the

appellant was pursuing her profession, she did not contribute towards the business in the agency centre either in the morning or in the possible evening hours for her experience.

30. In the decision reported in 2012 (12) SCC 106 [*Sajeesh Babu K. Vs. N.K.Santhosh and others*], wherein, it was held that "work experience is not a necessary requirement to determine the eligibility of candidate to apply for award of dealership. Therefore, even the marks awarded to the appellant under the head of experience are not taking into consideration. The appellant's first possession as empanelled position is not disturbed. Therefore, there is no reason as to why the appellant's empanellment should be cancelled on the account of alleged discrepancy or misrepresentation of facts which are not proved on the basis of any cogent evidence on record."

31. In the instant case, it is the specific stand of the second and third respondent IOCL that no marks have been awarded under the head of work experience. So is their stand in the counter filed in this writ petition as well as in the earlier writ petition.

32. Learned counsel appearing for the first respondent has vehemently argued that the alleged letter given to the appellant recording the works experience is not true and as such, it amounts to misrepresentation which is found to be accepted by the learned single Judge.

33. Perused relevant records. After going through the records and also taking note of the fact that there is no reason as to why, in the absence of any material by the first respondent to indicate that while pursuing her profession, she did not contribute towards attending the agency either in the morning or in the convenient hours in the evening, cannot be brushed aside slightly.

34. Taking into consideration of the ratio laid by the Apex Court, in [*Sajeesh Babu K. Vs. N.K.Santhosh and others*], (cited supra), the fact that simultaneously gaining experience cannot be doubted without clear and cogent evidence. Furthermore, it remains to be stated that on perusal of the impugned order, it reveals that the learned single Judge came to the conclusion solely on the ground of misrepresentation on the part of the appellant being a qualified MBBS. It is not even the case of the first respondent/writ petitioner that the appellant was discharging the duties during the normal working hours of the business concerned of her husband. Suffice to state that there is nothing to suggest which leads to irresistible conclusion that the appellant was not gained any work experience with the Shanthi TVS Agencies and the certificates produced in this regard by her are vague and thus, on the facts and circumstances of the case, the

conclusion arrived at in the impugned order regarding misrepresentation of facts does not appear to be well founded for the reasoning stated in the preceding paragraphs. The second and third respondents and as well as the appellant have categorically stated that it is not disputed before us that the requirement of experience of running or working in an establishment for a fixed period for the purpose of evaluation of experience possessed by the candidate and the same is not the eligibility criteria for such determination for selection also assumes significance. In other words, the candidature of the appellant is not liable to be rejected or cancelled on the ground of her not possessing the requisite experience.

35. In view of the specific stand taken by the official respondents of IOCL that no marks have been granted under the head of 'service experience' and the matter appears to be irrelevant in view of such factual position and when the matter is not germane to the relevant issue/factor to the determination of the award of marks in the process of selection, we are of the considered view that the same cannot be termed as misrepresentation and such a finding arrived at by the learned single Judge without any material whatsoever but only on mere surmise and conjecture and for reasons recorded above, we hold that the said factor does not amount any way stand in the grant of dealership and in this regard, it is to be stated that the marks were awarded by the Selection Committee comprising of three officers for distributorship in question who appeared in the interview in view of strictly in accordance with the guidelines and the parameter. Being so, in the absence of any cogent evidence on records saying that the appellant deliberately misrepresented the fact with the intention to gain undue benefits, it could not be appropriate to reject her candidature on the basis of alleged misrepresentation which was not even proved by any cogent evidence on record.

36. Thus, viewing from any angle, we are unable to uphold both the findings rendered in the above impugned order and both the findings as referred to shall stand vacated and hence, in view of the marks awarded to the appellant for the financial capacity is found to be based upon true and valid documents whose truth and genuineness have been proved by the field inspection report and as discussed in the preceding paragraphs and in view of the marks scored, we find that the award of the dealership is perfectly in order and the same is in accordance with the guidelines laid down for evaluation and which does not call for any interference by judicial Forum and in this view of the matter, we are inclined to interfere with the impugned order passed by the learned single Judge. Accordingly, the impugned order passed by the learned single Judge is liable to be set aside.

37. In the result, the writ appeal is allowed and the order dated 18.01.2018 passed by the learned single Judge in W.P.No.19953 of 2009 is set aside and accordingly, W.P.No.19953 of 2009 is dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy General Manager,
Tamil Nadu State LPG Incharge,
Indian Oil Corporation Limited Bhavan,
No.139, Mahatma Gandhi Road,
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Madras-600 034.

2. The Senior Manager,
Indian Oil Corporation Limited,
Marketing Division,
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+1cc to Mr.M.Narayanaswamy, Advocate SR.No.48762
+3cc to M/s.Ma.P.Thangavel, Advocate SR.No.51713, 49024
+1cc to Mr.P.N.Radhakrishnan, Advocate SR.No.49289
+2cc to MR.S.Raveekumar, Advocate Sr.No.49116

NMI (CO)
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