

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.23717 of 2017
and
W.M.P.No.24909 of 2017

V.Parvathy
W/o.S.Balakrishnan

... Petitioner

vs.

- 1.The Chief General Manager,
Indian Oil Corporation Ltd.,
Retail Outlets (MS-HSD),
Regional Office,
Indian Oil Bhavan,
139, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
- 2.The Deputy General Manager(Retail/Sales),
Chennai Divisional Office,
Indian Oil Corporation Ltd.,
No.500, Annasalai, Teynampet,
Chennai - 600 018.
- 3.The Scrutiny Committee,
Chennai Divisional Office,
Indian Oil Corporation Ltd.,
No.500, Annasalai, Teynampet,
Chennai - 600 018.
- 4.The Selection Committee,
Chennai Divisional Office,
Indian Oil Corporation Ltd.,
No.500, Annasalai, Teynampet,
Chennai - 600 018.
- 5.T.G.Srinivasan
S/o.T.G.Gopalakrishnan

6.E.Joshua Livingston
S/o.W.Ezekiel James

..Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with petitioner's grievance/complaint and the order/letter passed by the 2nd respondent dated 24.08.2017 vide Ref.No.TNSO/RS/SP/JRO, Irungattukottai and quash the same and directing the respondents 1 to 4 to cancel the merit panel list dated 5.7.2017 as per guidelines of selection of service provider in view of defective parameters and direct them to select service provider as per the guidelines.

For Petitioner : Ms.Dakshayani Reddy
for Mr.D.Jaganathan

For Respondents : Mr.AL.Somayaji,
Senior Counsel for
Mr.Abdulsaleem, for R1 to R4
Mr.S.Rajasekar, for R5
R6 - Name printed No appearance

O R D E R

The petitioner is aggrieved against the order of the second respondent 24.08.2017, closing the petitioner's complaint made before the Grievance Committee, after finding such complaint as factually incorrect. Consequently, the petitioner seeks for a direction to the respondents 1 to 4 to cancel the merit panel list dated 05.07.2017 and direct those respondents to select service provider as per the guidelines.

2. The Indian Oil Corporation issued an advertisement on 31.01.2017, for the purpose of engaging service providers for various COCO retail outlet in various location in the State of Tamil Nadu. The petitioner, the respondents 5 & 6 and others submitted their respective applications for such appointment in respect of the location at JRO-Irunkattukottai Outlet, Kancheepuram District. After accepting the applications, interview was conducted by the Selection Committee on 05.07.2017. The Selection Committee, after awarding the marks under various categories to the candidates, placed the fifth respondent in first rank, one K.Indrasena in second rank and one T.Jagadeesan in third rank. Thus, the petitioner was not selected. The petitioner made a complaint on 21.07.2017, before the Chief General Manager and the Deputy General Manager, Indian Oil Corporation, Chennai Division, by raising very many grounds. It is the specific case of the petitioner that the fifth respondent has been shown favouritism by the Selection Committee in awarding more marks than what he is entitled to, in respect of certain heads as he happens to be the brother of one T.G.Nagarajan, working as General Manager in the respondent Corporation. It is also the case of the petitioner that the very Selection Committee was not constituted in accordance with

the guidelines. The said complaint was investigated by an Investigating Officer and thereafter, the impugned order was passed by the second respondent, closing the said complaint as factually in correct.

3. The learned counsel for the petitioner, after inviting the attention of this Court to the impugned order, submitted that the same would show, that it is an outcome of another favouritism shown to the fifth respondent. She thus, contended that when the complaint given by the petitioner itself was made only on 21.07.2017, it is stated in the impugned order as if the fifth respondent was investigated on 18.07.2017 itself. Therefore, she contended that the fifth respondent is sought to be protected at all stages, since he happens to be the brother of the said T.G.Nagarajan, (GM-Lubricant) Southern Region in Indian Oil Corporation. She also submitted that the person, who passed the impugned order, is none other than a member of the Selection Committee and therefore, he cannot be a Judge of his own cause, as the petitioner has specifically made allegations against the Selection Committee itself and also about its constitution.

4. Though she raised other points on merits of the matter, this Court, at this stage, is not inclined to go into all those contentions, as the present writ petition can be disposed of, without looking into the rival contentions of the parties on the merits of the selection, as discussed below.

5. Mr.A.L.Somayaji, learned Senior Counsel appearing for the respondents 1 to 4 submitted that there is no bar for any of the relatives of the officials of the Indian Oil Corporation to take part in the selection process and therefore, on that ground, the petitioner cannot raise objection against the selection of the fifth respondent. He further submitted that the Investigating Officer conducted the investigation fairly and submitted a report. Therefore, he submitted that the petitioner cannot find fault with the Officer, who passed the impugned order, as the said order was passed purely based on the report submitted by the Investigating Officer, who is an independent Officer, unconnected with the Selection Committee. The learned Senior Counsel sought to contend further and justify the selection of the fifth respondent, by raising very many points on merits, which this Court, is not inclined to go and give any finding at this stage, as this writ petition can be disposed of, without going into all those aspects, as discussed below.

6. The petitioner is aggrieved against her rejection and selection of the fifth respondent. There is a mechanism provided under Clause 20 of the guidelines framed for all Oil Corporations for selection of service providers for providing Manpower and Services at Company owned Company Operated (COCO)

Retail Outlets for redressal of such grievance. Sub Clause X of the Clause 20 of such guidelines contemplates that an Officer not below the rank of "D" grade will be nominated by the Head of State / Zonal Head / State Head to do the investigation and submit a report and thereafter, a decision on the complaint will be taken by the Head of State / Zonal Head / State Head. Admittedly, the petitioner herein made the said complaint on 21.07.2017, as it is evident in the impugned order itself. However, perusal of the said order would show that as if the fifth respondent was enquired by the Investigating Officer even prior to the date of the complaint i.e. on 18.07.2017. Though it is sought to be contended by the learned Senior Counsel for the respondents 1 to 4 that it may be a typographical mistake, this Court, is not inclined to brush aside the doubt raised by the petitioner, by way of an allegation as though the fifth respondent is being favoured at all stages, since he happens to be the brother of the said Official. If a complaint against the said selection is made and the selected person happens to be a close relative of one of the top officials of the respondent Corporation, it is all the more necessary to conduct the enquiry in a just and fair manner, by appointing an independent Officer as an Investigating Officer to investigate the matter and file a report and thereafter, to pass the order by such Officer, as provided under Clause 20(x). Needless to state that such Investigating Officer must not be a person who is under the control of the said official who is related to the Selectee. The other contention raised by the petitioner that one of the Committee member has passed the impugned order, also cannot be brushed aside, as insignificant. When the petitioner has questioned the very constitution of the Selection Committee, one of its member cannot be a person who could pass order on such complaint to reject the same. Therefore, all these factors will lead to an irresistible conclusion that the impugned order cannot be sustained, on the ground that the same does not appear to have been passed in a just and fair manner, by adopting fair play procedure, especially, when the petitioner complains bias.

7. Therefore, this Court is of the view that the complaint made by the petitioner, has to be investigated by an independent Investigating Officer and thereafter, order has to be passed, based on such report filed by the said Officer, as provided under Clause 20(x). It is made clear that this Court is not expressing any view on the merits of the contentions raised by both parties, in respect of the rejection and selection, as it is for the authority, who is going to pass the order under Clause 20(x), on the basis of the report submitted by an Investigation Officer, on merits and in accordance with law.

8. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is

remitted back to the Executive Director of the Indian Oil Corporation, to appoint an individual Investigating Officer, as provided under Clause 20(x), working in any other Division other than the one, where the fifth respondent's brother by name is functioning. The Executive Director shall appoint the Investigating Officer within a period of two weeks from the date of receipt of a copy of this order. On such appointment, the Investigating Officer shall investigate the matter and file a report within a period of four weeks thereafter. On receipt of such report, the Executive Director shall pass the final order within a period of four weeks thereafter. It is open to both parties namely the petitioner as well as the fifth respondent to place all the relevant materials before the Investigating Officer at the time of an enquiry. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

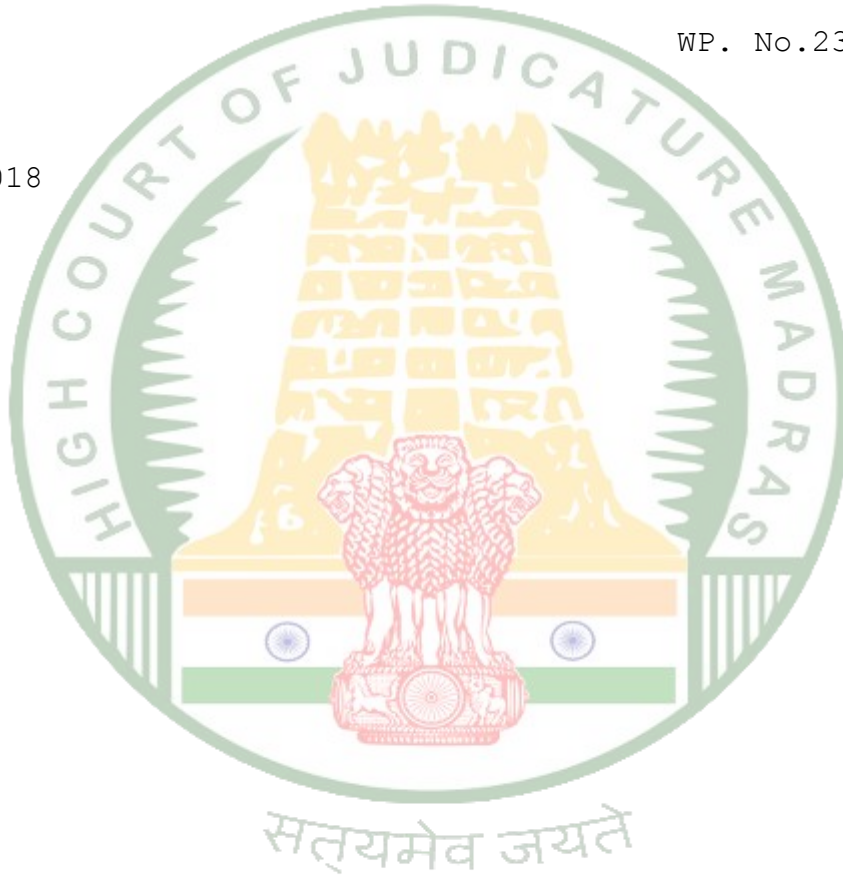
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+2 ccs to M/s.D.Jaganathan Advocate sr 15523 & 15547
+1 cc to M/s.S.Rajasekar Advocate sr 14655
+1 cc to M/s.AAV Partners Advocate sr 15507

WP. No.23717 of 2017

mr(co)
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