

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.18301 of 2018
and W.M.P.Nos.21614 and 21615 of 2018

Abinaya Kaviarasu

.. Petitioner

Vs.

Bharat Petroleum Corporation Limited
(A Government of India Enterprise)
Rep. by its Territory Manager-LPG,
Peelamedu,
Coimbatore 641 004.

.. Respondent

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus after calling for the concerned records from the respondent, quash the order of the respondent dated 14.06.2018 bearing CBE:LPG:GUMMANUR:DKV(OBC) as illegal, arbitrary and contrary to law and consequently direct the respondents to consider the application for award of LPG Distributorship of the respondent at Gummanoor, Dharmapuri District under OBC Category and allot distributorship.

* * *

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.M.Vijayan
for M/s.King and Patridge

सत्यमेव जयते
O R D E R

The prayer of the petitioner is to quash the order of the respondent dated 14.06.2018 and consequently direct the respondent to consider her application for award of LPG Distributorship at Gummanoor, Dharmapuri District under OBC Category.

2. The petitioner had applied for LPG Distributorship for Gummanoor Panchayat, Palacode Taluk, Dharmapuri District under the OBC Category. It is stated that the place is categorised as DKV (Durgam Kshetriya Vitrak), which concerns the LPG Distributorship in difficult and

special areas (Hilly regions, Forest Area, Tribal Inhabited Area, Sparsely populated, disturbed area, highlands, left-wing extremism affected area). The application was made on-line on 04.09.2017 and the last date for submitting the same was on 25.09.2017. The eligible candidates will be subjected to a draw of lots and the draw will be conducted in the presence of available candidates and invited guests and thereafter, the list of eligible applicants for the location will be selected. The successful candidates will be selected from the eligible candidates on random basis and thereafter, the application serial number and the name of the successful candidate will be declared for LPG Distributorship.

3. The petitioner's application was registered on-line and she was declared as successful candidate in the draw of lots conducted on 24.11.2017, which was communicated to her on 27.11.2017. She was directed to deposit a sum of Rs.30,000/- and to submit the documents indicated in the communication in original for verification, which included the land documents. Accordingly, the documents were submitted on 04.12.2017 and there was a Field Verification on 06.02.2018 and all the original documents were submitted to the respondent for verification. It was also orally informed to the petitioner that the records were in order.

4. While so, the impugned order dated 14.06.2018 was issued rejecting her application on the ground that the land for the godown has not been leased out to her by registered lease deed as on the date of the advertisement and that the said site is at Goolianur to Chadanur Main Road, Gummanoor Panchayat, which is 2.2 kms away from the advertised location. The said rejection order is under challenge.

5. The impugned order is passed only based on two criteria, namely, (i) the site offered by the petitioner is not in the village advertised ; and (ii) there is no registered lease deed in favour of the petitioner as on the date of advertisement.

6. In the counter affidavit, the respondent had stated that the last date for submission of the application was on 25.09.2017. In the application form with respect to the land, the petitioner had referred to a sale deed dated 15.07.2008, which is standing in the name of one Sellappan, who is the father-in-law of the petitioner. On the date of application, there was no registered lease deed in her favour, as admittedly, the lease deed was registered on 29.11.2017, which is after the cut off the date. It is stated that as per the guidelines the petitioner cannot

treat her father-in-law's property as her property. Secondly, the land offered by the petitioner is not in Gummanur Village.

7. In so far as the first point is concerned, whether the petitioner would be eligible to participate in the draw, when she has offered the land belonging to her father-in-law and the registered lease deed was executed only after the cut off date, the brochure on unified guidelines for selection of LPG Distributors has to be referred. In the said brochure, "ownership" or "own" for godown/showroom for Durgam Kshetriya Vitrak distributorship means having (a) ownership title of the property ; or (b) registered lease deed having minimum 15 years of valid lease period commencing on any date from the date of advertisement up to the last date of submission of the application as specified either in the advertisement or in the corrigendum, if any. Therefore, it is argued by the learned counsel for the respondent that the applicant should have ownership as defined under the term "own" in her name or member of "family unit".

8. Admittedly, in column 5 of the application form, the petitioner had shown the name of the land owner as Chellappan and her relationship is his daughter-in-law and the sale deed is dated 15.07.2008. The petitioner had subsequently entered into a registered lease with the owner of the property, namely, her father-in-law on 29.11.2017. The objection of the respondent is that the relationship of the petitioner with the land owner should be within the definition of "family unit" as defined in the brochure. The "family unit" will consist of individual concerned, his or her spouse and their unmarried sons and daughters, and it does not include the "father-in-law".

9. It is argued by the petitioner that even on the date of field verification of credentials, the documents and other requirements were in order so far as the petitioner was concerned. The respondent insisted the petitioner to produce a valid lease deed for fifteen years on the date of the advertisement only to ensure that the location is not changed frequently from place to place putting the consumers in difficulty. In fact, it is stated that on the date of the application, there was a subsisting lease agreement, but only the lease deed has not been executed on 04.09.2017. However, it was registered on 29.11.2017 and once the lease deed is registered, it will date back to the date of registration. Therefore, it should be deemed that the petitioner had a valid registered lease deed on the date of the application.

10. So far as the location of the godown is concerned, the land offered is at Sl.No.4/3B, Gummaanoor Panchayat, Palacode Taluk, Dharmapuri District. The clarification to this effect was also sought for by the petitioner from the Tahsildar, Palacode, who has given a reply on 04.04.2018 stating that the Survey No.4/3B, was sub-divided as 4/3B1 and 4/3B2. The land in Survey No.4/3B2 is in Aithandahalli village coming within the Gummanur Village and that Door NO.2/225 is in Aithandahalli village in Gummanur Panchayat. Therefore, the rejection of the application on the ground that the land is 2.25 kms away from the Gummanur village is unsustainable. It is also stated that the said Aithandahalli village is one of the cluster villages in Gummanur and rejection on the ground that the said land is not in the advertised location also is unsustainable.

11. The general rule is that while applying for the distributorship, the person must possess the land supported by documents as proof of the eligibility criteria on the last date fixed for such purposes is either in the brochure or in the application form, as the case may be. Normally, there cannot be any relaxation in this regard, that is, relaxing any of the conditions prescribed in the brochure. However, in this case, it is only for inclusion of the petitioner in the draw that was conducted for the qualified applicants. As stated earlier, the list of eligible applicants selected for the draw from whom the lot shall be conducted will be displayed on the screen along with serial number and name of the applicant.

12. The application of the petitioner is now rejected only on the aforesaid grounds, which are, as already, said to be unsustainable. The applicant is also filed the registered lease deed in her name, though after the cut off date, before the field inspection conducted on 06.02.2018. On the date of field verification, the petitioner had valid lease deed, as required by the brochure for the period of fifteen years. Even otherwise, the land offered by the petitioner belongs to her father-in-law, who in normal circumstances, is a family member, though not within the definition. Therefore, depending upon the facts and circumstances of the case, there can always be some relaxation in the matter of submission of proof and it may not be proper to apply rigid principles, as it is in the domain of procedure. Any infraction in the rule relating to submission of the proof need not necessarily be resulted in rejection of the candidature.

13. As the petitioner has got a valid lease deed, this Court is of the considered view that she is entitled to be included in the list of eligible candidates for award of LPG Distributorship.

14. Accordingly, this writ petition is allowed setting aside the order of the respondent dated 14.06.2018 and the respondent is directed to give the LPG Distributorship, if she is otherwise eligible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

gg
To

The Territory Manager-LPG,
Bharat Petroleum Corporation Limited,
(A Government of India Enterprise),
Peelamedu,
Coimbatore 641 004.

+1cc to Mr.Balan Haridas , Advocate SR.No. 85789

+1cc to M/s.King and Patridge , Advocate SR.No. 86408

W.P.No.18301 of 2018

ASK(08/01/2019)

सत्यमेव जयते

WEB COPY