IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

WA.No.2608/2018
&
CMP.No.21272/2018

R.Virouthamballe ..Appellant / Writ Petitioner

Vs

Indian Oil Corporation
represented by its
Chief Area Manager, Trichy Area Office
Marketing Division, Indane Area Office,
''Triveni'' II Floor, B-35, Shastri Road
Thillai Nagar, Trichy 620 018. ..Respondent

Prayer:- Writ Appeal filed under clause 15 of the Letters Patent, 1865, to set aside the order dated 18.07.2018 in WP.No.34083/2017.

Writ of Certiorarified Mandamus Calling for the records which relates to the impugned order dated 08.11.2017 passed by the Respondent bearing letter Ref. No. TRAO/Puducherry (Kirumam) passed by the respondent and quash the same and consequently direct the Respondent to award of the regular LPG distributorship at Puducherry (Kirumambakkam) under OBC category on Application SL.No. TRAO/IMP/Pudukiru/21 to the petitioner.



For Appellant : Mr.Saravanan for
Mr.T.Sai Krishnan

For Respondent : Mr.Mohammed Fayaz Ali

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.Mohammed Fayaz Ali, learned counsel accepts notice on behalf of the respondent.

2 The appellant is the writ petitioner and she filed WP.No.34083/2017, praying for issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned order dated 08.11.2017 passed by the sole respondent and to quash the same with a consequential direction, directing the said Entity to award regular LPG Distributorship at Puducherry [Kirumambakkam] under Other Backward Class category based on the application submitted by her.

3 The writ petition, after contest, came to be dismissed on 18.07.2018 and aggrieved by the same, the appellant / writ petitioner has preferred the present appeal.

4 A perusal of the materials would disclose among other things that the appellant / writ petitioner had applied for the said Dealership in terms of the advertisement dated 21.09.2013 and as per t the Guidelines prescribed, she has to maintain in her Bank Account, with a balance of not less than Rs.10 lakhs for Urban-Rural and Rural Markets as on the last date for submission of the application and according to her, she had fulfilled the said criteria. In the draw conducted, she was successful and was selected for awarding new LPG Distributorship for the location at Puducherry at Kirumambakkam under OBC category. The appellant / writ petitioner was issued with a communication dated 13.10.2017 by the respondent, directing her to provide an alternate funds in the form of Financial Instruments in her name or family members of the 'family unit' on or before 22.10.2017 for the reason that in the application, she has disclosed that a sum of Rs.10,49,160/- as the balance in her account. However, at the time of considering the application, the balance amount found in her account was a sum of Rs.726/- only and therefore, the respondent sent such a communication.

5 However, to the shock and surprise of the appellant / writ petitioner, vide impugned order dated 08.11.2017, the respondent had cancelled her Distributorship on the ground that as on the last date for submission of the application on 22.11.2013, she had maintained only a sum of Rs.726/- as her closing balance in her Account and since the said fund is not sufficient to proceed as per the applicable selection guidelines and therefore, a fair decision has been taken to cancel the Dealership and challenging the legality of the said

communication, she has filed the writ petition.

6 Notices were ordered and the Chief Area Manager has filed the counter affidavit on behalf of the respondent and took a stand that despite the communication as to the provision of the alternate funds, the appellant / writ petitioner has failed to provide alternate funds on or before 22.10.2017 and therefore, the impugned order came to be passed rightly and it cannot be interfered with. It is the further stand of the respondent that the appellant / writ petitioner is also guilty of misrepresentation by stating that she had a sum of Rs.10,49,610/- and whereas, the balance in her account was only Rs.726/- and as such, she is not entitled to any equitable relief also and prayed for dismissal of the writ petition.

7 The learned Judge after considering the averments made in the writ petition as well as the counter affidavit and upon perusal of the materials, found that a sum of Rs.10 Lakhs deposited on 18.10.2013 - the date of submission of the application, was withdrawn on 19.10.2013 and yet another sum of Rs.5 Lakhs was also withdrawn on that date and therefore, the entire sum of Rs.10,08,000/- has been withdrawn within a period of one day from the date of deposit and therefore, on the last date, i.e., on 22.11.2013, the account of the appellant / writ petitioner was left with the balance of Rs.726/- and therefore, observed that the modus operandi of the appellant / writ petitioner in order to maintain the eligibility, is not in accordance with the terms and conditions stipulated in the Guidelines.

8 The learned Single Judge also found that the conditions stipulated in the Guidelines are to be strictly followed and since the said conditions have not been adhered to by the appellant / writ petitioner, she is not entitled to any relief and citing the said reasons, has dismissed the writ petition vide impugned order dated 18.07.2018 and challenging the legality of the same, the present writ appeal is filed.

9 The learned counsel for the appellant has invited the attention of this Court to the materials placed and would submit that as per the communication of the respondent dated 13.10.2017, the appellant / writ petitioner was instructed to provide alternate funds and without granting her sufficient opportunity, the respondent has passed



the impugned order on 08.11.2017 and the said act on their part, is nothing but an arbitrary exercise of power and even now, the appellant / writ petitioner is willing to provide the alternate funds by way of LIC Policies, Bonds etc., and therefore, her request may be sympathetically considered.

10 Per contra, the learned Standing counsel appearing for the respondent has drawn the attention of this Court to

Paragraph No.6.1[vi] and would submit that the applicants have to maintain a minimum total amount of Rs.15 Lakhs for Urban Markets and Rs.10 Lakhs fro Urban-Rural and Rural Markets respectively as the closing balance on the last date for submission of the application as specified in the Advertisement or Corrigendum, if any and admittedly, on the last date of application, the appellant / writ petitioner had the balance of only Rs.726/- and as rightly pointed out by the learned Single Judge in Paragraph No.6 of the impugned order, having deposited a sum of Rs.10,08,000/-, the appellant / writ petitioner has withdrawn the same immediately and therefore, a fair decision has been taken to cancel the Dealership and it cannot be found fault with.

11 This Court has carefully considered the rival submissions and also perused the materials placed before it.

12 The petitioner, being an applicant, for award of LPG Distributorship, is expected to strictly adhere to the Guidelines for Selection of Regular LPG Distributorship and it is relevant to extract paragraph 6.1 [vi] of the said Guidelines:-

> ''6.Eligibility Criteria for Individual Applicants:-
>
> 6.1 Common Eligibility Criteria for all Categories applying as individual:-
>
> .......
>
> [vi] Have minimum total amount of Rs.15 Lakhs for Urban Markets and Rs.10 lakhs for Urban-Rural and Rural Markets respectively as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum [if any]. This amount is to be arrived at by adding amount in Savings Bank Accounts in Scheduled Bank/Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies / Government Organisation / Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, NSC Bonds, Shares of Listed Companies, Listed Mutual Funds, ULIP, PPF, Surrender value of Life Insurance Policies in the name of Applicant or family members of the 'Family Unit' of the applicant as defined above. In case of locations reserved under SC/ST category, minimum total amount of Rs.5 lakhs for Urban Markets and Rs.2.5 Lakhs for Urban-Rural and Rural Markets respectively should be available as the closing balance on the last date for submission of application as specified

in the advertisement or corrigendum [if any].''

13 The respondent, in the communication dated 13.10.2017 has invited the attention of the appellant / writ petitioner by pointing out that she had offered Rs.10,49,610/- while considering her application as per the Selection Guidelines ; however, it was found that she had a balance of only Rs.726/- as the closing balance as on the last date for submission of the application on 22.11.2013 and an opportunity was also provided to her to provide alternate funds on or before 22.10.2017. Admittedly, the appellant / writ petitioner has failed to avail such a benevolence shown by the respondent and now, though fit to make an offer that she is willing to provide alternate funds in the form of LIC Policies, Bonds etc. The appellant / writ petitioner is strictly expected to follow and adhere the guidelines and admittedly, she has violated Clause 6.1 [vi] of the said Guidelines and despite a fair opportunity was afforded to her by the respondent to make good the deficit, she has failed to avail such an opportunity.

14 This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot re-write or alter the terms of the Guidelines. In the considered opinion of the Court, the learned Single Judge, on appreciation of the factual position, has rightly reached the conclusion to dismiss the writ petition. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the learned Judge and finds no merit in the writ appeal.

15 In the result, the writ appeal is dismissed confirming the impugned order dated 18.07.2018 made in WP.No.34083/2017. No costs. Consequently, the connected miscellaneous petition is also dismissed.

ap

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Chief Area Manager,
Indian Oil Corporation
Trichy Area Office
Marketing Division, Indane Area Office,
''Triveni'' II Floor, B-35, Shastri Road
Thillai Nagar, Trichy 620 018.

+1cc to M/s.Mohammed Fayaz Ali, Advocate, S.R.No.86922
+1cc to Mr.T.Saikrishan, Advocate, S.R.No.87614



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