

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.3166 OF 2015

ORDER:

This writ petition is filed, seeking to declare the revised merit panel vide reference No.WDO/ADB/Bellampalli dated 27.1.2014 by the 5th respondent, granting 1st rank to the 7th respondent and the decision taken for rejecting the complaint filed by the petitioner against respondent No.7 vide reference No.APSO/RO/21/106/2012-13/21 dated 19.12.2014 by respondent No.2, stating that the contentions raised by the petitioner were not substantiated during the investigation, without issuing any notice at the time of investigation to substantiate his contentions is nothing but arbitrary, illegal, against the principles of natural justice and also contrary to the guidelines issued for selection of petrol/diesel retail outlet dealers dated 2.09.2011 apart from contrary to the material on record and therefore set aside the same and consequently direct the respondents to award dealership to the petitioner for establishing petrol/diesel retail outlet on SH-1, Bellampalli to Asifabad road between 283 & 286 Kilometer stone.

2. It is the case of the petitioner that the 1st respondent Corporation issued a notice for appointment of Retail Outlet Dealers in the erstwhile State of Andhra Pradesh. The advertisement was published in Eenadu daily on 21.10.2011. Selection was to be made in accordance with the norms laid down by the Indian Oil Corporation in its Brochure Booklet dated 2.09.2011 under the caption "Indian Oil Corporation

Limited Brochure Selection of Petrol/Diesel Retail Outlet Dealers.”

It is further stated that in response to the said notification, the petitioner, one Sarababu Baravi Sharma, respondent No.7 and two others, total five candidates have submitted applications in the prescribed proforma, seeking appointment as retail outlet dealer in respect of location SH-1, Bellampalli to Asifabad road between 283 & 286 Kilometer stone within the prescribed time. Interview for the above said location was conducted at Secunderabad Divisional Office on 7.2.2012. Taking into consideration of the eligibility criteria prescribed by the Indian Oil Corporation, marks were awarded to all the five candidates and a merit panel was prepared by respondents Nos.3 and 4 on 19.11.2012. In the merit panel, one Mr.Sarababu Bharavi Sharma was placed at first rank, respondent No.7 was placed at 2nd rank and the petitioner was placed at 3rd rank. The said merit panel was placed on the notice board of Secunderabad Division Office and also Warangal Division Office on 23.11.2012. Immediately within one month i.e., on 10.12.2012, the petitioner made a complaint to respondent No.5 against empanelling of Mr.Sarababu Bharavi Sharma at first rank, respondent No.7 at second rank and requested to cause investigation and enquire with regard to the contentions raised by him and he also sent a reminder dated 17.12.2014.

It is further stated that while the matter stood thus, the petitioner received a letter dated 19.12.2014 from the 3rd respondent, stating that insofar as the complaint made by him

against Mr.Sarababu Bharavi Sharma is substantiated and at the same time insofar as the allegations made against respondent No.7 are negatived, stating that the contentions are not substantiated during the investigation. Aggrieved by the rejection of his complaint and also final recommendation dated 27.1.2014 made by preparing a new/revised merit panel awarding first rank to respondent No.7, the present writ petition has been filed.

3. A counter affidavit has been filed on behalf of respondents 1 to 5, denying the allegations in the writ petition and contended that basing on the complaints of the petitioner, enquiry was conducted as per the procedures of the Corporation and the same were disposed of and informed the said fact to the petitioner and that the petitioner intentionally trying to delay the process and cause loss to the Corporation and therefore prayed to dismiss the writ petition.

4. Respondent No.7 filed a counter affidavit, denying the allegations in the writ petition and conducted that officials of the Corporation considered the complaints of the petitioner dated 10.12.2012 and 17.2.2014 and found that the claim of the petitioner is not substantiated and the order has been passed by the Corporation adverting to each of the objections raised by the petitioner. In the advertisement issued by the Corporation, it was clearly mentioned that the retail outlet should be located on SH-1, Bellampalli to Asifabad between 283 and 286 Km., stone and should be located on either side of the road. The site was inspected by the evaluation committee and subsequently by the

officials of the Corporation and the same is matched with the boundaries in the gift settlement deed. The petitioner was also present at the time of investigation by the officials of the Corporation. The petitioner cannot seek an enquiry in a petition filed under Article 226 of the Constitution of India. There is no prima facie case or balance of convenience in favour of the petitioner and therefore prayed to dismiss the writ petition.

5. The petitioner filed a reply affidavit to the counters filed by the respondents, contending that after publishing the selection list, he submitted a complaint dated 12.10.2012 to the official respondents against one Mr.Sarababu Bharavi Sharma and respondent No.7, who were placed at Sl.Nos.1 and 2 in the first final merit list for allotment of Retail Outlet Dealership in respect of the location "ON SH-1, Bellampalli to Asifabad Road between 283 & 286 Km., stone". Before causing investigation, the Chief Manager of Indian Oil Corporation has informed him over phone and in response to that, he participated in the investigation held against Mr.Sarababu Bharavi Sharma and produced relevant material. Taking into consideration of the material produced by the petitioner, said Mr.Sarababu Bharavi Sharma was found ineligible for granting Retails outlet dealership.

It is further contended that after disqualifying said Sarababu Bharavi Sharma, respondent No.7 who was shown at Sl.No.2 in the first merit list was placed at Sl.No.1 in the revised merit list. Before conducting investigation against respondent No.7, against whom the petitioner filed the complaint, the Officials of Indian Oil Corporation neither informed him with

regard to causing investigation nor afforded any opportunity to substantiate his contentions against respondent No.7. If the respondents issued any notice to the petitioner before causing investigation, he would have produced the relevant material before the authorities and substantiated the allegations made against respondent No.7. There is a protected tenant by name Madar Khan in respect of the entire land in Sy.No.405 in an extent of Ac.9.34 guntas and in order to substantiate his contentions, he filed protected tenancy certificate issued by the Tahsildar and the said land cannot be shown for establishment of the petrol/diesel outlet.

6. Heard.

7. Sri V.Ravi Kiran Rao, learned counsel appearing for the petitioner submits that the official respondents have not followed the guidelines issued by the Indian Oil Corporation Limited for selection of the petrol/diesel retail outlet dealers. When the respondents informed the petitioner at the time of conducting investigation on the complaint made by the petitioner against one Mr.Sarababu Bharavi Shama, but they have not informed the petitioner while conducting investigation on the complaint made by him against respondent No.7. The said action of the respondents is illegal and arbitrary and therefore, the writ petition is liable to be allowed.

8. Sri Dishit Bhattacharjee, learned counsel appearing for respondents 1 to 5 submits that the official respondents have rightly awarded first rank to respondent No.7 and that the High

Court has no jurisdiction to interfere in the administrative decision of Indian Oil Corporation, nor can substitute its decision by acting as an appellate court over such decision in exercise of writ jurisdiction. In support of his contention, he relied on a decision reported in **INDIAN OIL CORPORATION LTD V. T.NATARAJAN**¹ and therefore, the writ petition is liable to be dismissed.

9. Sri O.Manohar Reddy, learned counsel appearing for respondent No.7 submits that the official respondents have awarded first rank to the 7th respondent after conducting due enquiry and by following the guidelines of the Indian Oil Corporation. A composite order is passed after conducting due enquiry and giving opportunity to the petitioner on both the representations together. Hence there is no need for passing separate orders. Therefore, the writ petition is liable to be dismissed.

10. Before dealing with the contentions of either side, it is necessary to go through the guidelines of the Indian Oil Corporation. Clause 14 of the said guidelines issued in the form of a brochure for selection of petrol/diesel retail outlet dealers, reads as follows-

“14. PREFERENCE FOR APPLICANTS OFFERING SUITABLE LAND:-

Availability of suitable land for setting up of Retail Outlet at the advertised location is the essence of the project. Wherever IOC expects the applicant to have/arrange suitable land for the dealership, the same is mentioned against each location in the advertisement. The suitability of land will be assessed by IOC as per norms given in para 15 of Brochure. The land and details offered along with the application alone will be considered for this purpose and applicant will not be given the opportunity to offer any other land subsequently.

¹ (2018) 9 SCC 235

The land offered by the applicant can be in either of following category:

- (a) **Owned Land:** The following will be considered as owned land.
 - (i) Land owned by the applicant exclusively.
 - (ii) Land owned by the “family” members exclusively.
 - (iii) Land owned by the applicant exclusively with “family” members.
 - (iv) Land owned by the applicant along with others provided share of applicant in the land meets IOC requirement.

The land falling in category (ii), (iii) & (iv) will be considered as belonging to the applicant subject to applicant producing the consent on notarized affidavit signed by all other co-owners. The definition of “family unit” will be as per para 6 of Brochure.

In addition to above, for locations to be developed as Dealer Owned site (marked ‘Yes’ in column 6 of advertisement), the land on long term lease (for a minimum period of 19 years 11 months) will also be considered as owned and subject to above conditions. In other words, for locations to be developed as Corporation Owned site (where ‘Yes’ is marked in column 5 of advertisement, leased land will not be considered.”

11. The case runs around the complaint and the alleged inaction of the respondents in not acting upon the complaint of the petitioner as contemplated under the guidelines issued by the Indian Oil Corporation. In this context, clause 18 of the guidelines, which is relevant for the purpose of this case, reads as follows:-

“18. GRIEVANCE COMPLAINT REDRESSAL SYSTEM:

- (A) An aggrieved person may send his/her complaint to IOC at the address of the customer service cell displayed at the nearest retail outlet of IOC. Complaints can also be lodged on the website of IOC. Complaints against dealer selection received after 30 days from the date of declaration of the interview will not be entertained under any circumstances.
 - (i) Anonymous/pseudonymous complaints will not be investigated and will be filed without taking any action on the same
 - (ii) On receipt of a complaint, a letter will be sent by IOC to the complainant through Registered Post, asking him to submit details of allegation with a view to prima facie substantiate the allegations along with supporting documents if any, within 30 days. Response of the

complainant will be examined by IOC and if it is found that the complaint does not have specific and verifiable allegations, the same will be filed. The complainant will be clearly advised that the complaint will be examined by IOC and if it is established that the complaint does not have any substance, the same will be liable for legal action.

(B) When a decision is taken to investigate the complaint, the investigation will be done by a Senior Official of Oil Company and will pass speaking order after giving due opportunity to the complainant etc., copy of the speaking order will be given to all concerned. Thereafter, decision on the complaint will be taken as under:-

- (i) **Complaint not substantiated-** The complaint will be filed and the complainant will be advised accordingly.
- (ii) **Established Complaint:-** Action will be taken as under-
 - (a) In case the selection process for a location is found to be not in accordance with the laid down guidelines, the re-evaluation, based on documents available on record, will be carried out.

Wherever there will be a change of rankings in merit panel, the revised result will be displayed on the notice board/IOC website besides separate communication to all empanelled candidates.

In cases involving error in evaluation process on interview based parameters, affecting the merit panel, re-interview for all the eligible candidates, who have appeared in the interview earlier will be conducted.

- b) In case the dealer selection was done as per the laid down guidelines and the complaint against the first empanelled candidates established, action will be taken to cancel the selection of the 1st empanelled candidate and issuance of LOI to the next candidate in the merit panel. Similar action will be taken in case of established complaint against second empanelled candidate also.
- c) In case of established complaint against all the merit panel candidates, the merit panel will be cancelled and the location will be re-advertised if found feasible by IOC.

12. The learned counsel appearing for the respondents 1 to 5 placed on record the correspondence between the petitioner and respondents. The respondents have short listed four names for the purpose of selection as per the following ranking:-

Sl. No.	Name of applicant	Rank in the Merit Panel
1.	Sarababu Bharavi Sharma	1
2.	Kompelli Raj Kiran	2
3.	Thallapalli Purushotham Goud	3
4	Pulluri Ankanna	4

The petitioner being third candidate in the short listing, filed a complaint dated 11.12.2012 before the respondents, making certain allegations against the candidates at ranks Nos.1 and 2. In pursuance of the said complaint, by proceedings dated 29.10.2013, the screening committee has cancelled the candidature at rank No.1 and the remaining three persons were award ranks at Sl.Nos.1 to 3 respectively.

13. The petitioner once again filed a complaint dated 17.02.2014 subsequent to the revised ranking, making certain allegations against respondent No.7. The official respondents though first time followed procedure as per clause 18 of the guidelines by putting the complainant on notice, caused enquiry and passed orders disqualifying the candidate at rank No.1, but in the second round of complaint, the official respondents have not stated in their counter with regard to the enquiry conducted in pursuance of the second complaint of the petitioner dated 17.02.2014 and whether any notice was served upon the complainant as per clause 18(B) of the guidelines. The respondents have not placed before this Court any material to reject the contention of the petitioner in this regard. The respondents by order dated 19.12.2014 communicated to the petitioner that the complaint against the 7th respondent was found not substantiated. The action of the second respondent in

passing the said order is the one without making any conclusive enquiry and also in gross violation of the doctrine of *audi alteram partem* and the complainant has been deprived of presenting his case before the respondent authorities.

14. In support of the contentions made by the petitioner in his complaint against 7th respondent, he filed the relevant documents obtained from the office of the Tahsildar i.e., protected tenancy certificate, abstract of the protected tenancy, certificate of licenced surveyor, gift settlement deed dated 13.05.2011 to show that 7th respondent has not fulfilled the requirements as contemplated under clause 14 (a) of the guidelines. Upon the weightage of the defective communication dated 19.12.2014, a final recommendation has been prepared by order dated 27.01.2015 (wrongly signed as 27.01.2014), wherein, the 7th respondent has been shown at rank No.1 and the petitioner has been shown at rank No.2. The said order, which is impugned herein do not indicate as to when the investigation has been done in pursuance of the complaint of the petitioner against respondent No.7 and whether any notice has been issued to the complainant as required under clause 18(B) of the guidelines. Thus, the merit list, which is the final recommendation for establishment of the retail outlet of petrol/diesel by the Indian Oil Corporation in favour of 7th respondent, is hit by the principles of natural justice and therefore, the same is liable to be set aside.

15. It is seen from the correspondence that when the respondents have taken ample time of almost four years to complete the entire process and almost five to six months at each stage to fulfill the requirements, nothing prevented them to follow clause 18(B) of the guidelines. The writ petition was filed way back in the year 2015 and after issuing notice before admission on 13.02.2015, the same has come up again on 23.11.2018 before this Court for final disposal. Nothing prevented the official respondents to take steps for issuing notice to the petitioner by causing enquiry and pass orders. The judgment relied upon by the learned counsel for the official respondents (cited supra) is not applicable to the facts of the present case.

16. While holding that the action of the respondents 1 to 5 in issuing final revised list allotting first rank to 7th respondent is the one, which is in gross violation of the principles of natural justice and contrary to clause 18(B) of the guidelines, hence the writ petition is liable to be allowed.

17. Accordingly, the writ petition is allowed, setting aside the final recommendation of respondent No.5.

However, this order shall not preclude the respondents in following the procedure contemplated as per their guidelines.

No order as to costs. As sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 26-12-2018
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