

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.08.2019

DATED: 03.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Cont.P.No. 116 of 2019

M.Hariharan .. Petitioner/Petitioner

Vs.

Gopakumar Balakrishnan
The Chief Regional Manager
LPG Regional Officer
Kochi Regional Office
Hindustan Petroleum Corporation Ltd.,
kochi - 682 309. .. Respondent/1st Respondent

PRAYER: This Contempt Petition is filed under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for disobedience of the Orders of this Court made in W.P.No. 11267 of 2018 dated 16.05.2018.

For Petitioner : Mr. A.E.Ravi Chandran
For Respondent : Mr. Vijayan
for M/s. King and Partridge

ORDER

The writ petitioner M.Hariharan in W.P.No. 11267 of 2018 has filed the present Contempt Petition complaining willful disobedience of the Order of this Court dated 16.05.2018 passed in W.P.No. 11267 of 2018 and to take

such further action against the respondents for such willful disobedience.

2. W.P.No. 11267 of 2018 had come up for consideration before this Court on 16.05.2018. The said Writ Petition had been filed in the nature of certiorarified mandamus calling for the records relating to the applicants selected for appointment of LPG Distributorship by the first respondent, namely, Chief Regional Manager, LPG Regional Office, Kochi, Hindustan Petroleum Corporation Ltd., and also against the second respondent Kanagaraj with a relief to set aside the appointment of the second respondent Kanagaraj as a Distributor and direct the first respondent to conduct a fresh draw with eligible candidates.

3. At the time of admission, the Writ Petition had been disposed of with the following observation:-

"2. The first respondent is directed to pass orders on the complaint dated 12.04.2018 till orders have passed, the first respondent cannot proceed further. If order is passed and the petitioner is again aggrieved, liberty is given to the petitioner to move this

Court once again. If there is redraw, the first respondent may ensure that only the eligible candidates may participate in the proceedings."

4. Thereafter, the writ petitioner had preferred the present Contempt Petition. According to him, in violation of the directions of this Court, applications were called for appointment of Distributors for LPG Distribution and selection was also made. However, one selected person, Mrs.R.Thulasi was not eligible as she did not satisfy the requirement of either having ownership of the required land area or having lease deed for 15 years in Velliangadu Village for godown and show room.

5. To determine the facts, this Court had directed notice to the first respondent.

6. In response to the notice, Mr.Gopakumar Balakrishnan, Deputy General Manager of the first respondent had filed an affidavit. The relevant portion of the affidavit is extracted below:-

"13. The averments in paragraph 7 is denied and I submit that as per the Unified Guidelines for Selection

of Distributorship, the eligibility of a candidate to participate in the draw of lots is determined on the basis of the information provided in the application submitted by the candidate. Hence, all applicants who have submitted their application properly with all the information required as per the Brochure will be eligible to participate in the draw of lots and as such, submission of the documents and verification of the documents is not a pre-requisite for making a candidate eligible for the draw. This was informed to the petitioner during the meeting held at the HPCL, Kochi LPG RO on the 28.03.2018 and vide letter KLRO/GBK/LPG dated 28.03.2018. This was again advised to the petitioner vide letter dated 17.04.2018. The Acceptance /Rejection of any eligible candidate can be done only on the basis of Field verification of Credentials based on the documents, which is clearly mentioned in the brochure on Unified Guidelines for Selection of LPG Distributors (version 1.4). It is stated that the claim of the petitioner that he alone is eligible is not correct. I reiterate that no complaint was

raised by the petitioner during the draw. It is also stated that no complaint dated 12.04.2018 has been received from the petitioner."

7. To this affidavit, a rejoinder had been filed by the contempt petitioner and it was again reiterated that Mrs.R.Thulasi, who had been selected in the redraw held on 26.10.2018 did not satisfy the requirements and consequently her selection was illegal. Since specific allegation had been made with respect to the selection of a particular candidate, a further affidavit to clarify this aspect was called upon to be filed on behalf of the first respondent.

8. In the said further affidavit, the deponent Mr.Gopakumar Balakrishnan had stated as follows:-

"5. In the present case, the draw of lots was conducted on 26.10.2018 in which Mrs.Thulasi was selected and the field verification of credentials was completed in terms of paragraph 19 of the selection guidelines. The letter of intent was issued to the said Mrs. Thulasi on 12.11.2018.

6. I submit that Mr.Rajan also submitted an application and was one of the eligible candidates for the draw of lots in terms of selection guidelines. There was no occasion to verify his application with documents since he was not selected in the draw of lots and that the selected candidate Mrs.Thulasi had become successful in the field verification of credentials."

9. An additional rejoinder was then filed by the petitioner, once again reiterating the fact that Mrs.Thulasi did not satisfy the requirements of having ownership of land or a lease deed for 15 years to facilitate the godown and showroom. It was further specifically stated as follows:-

"(ii) The said R.Thulasi and her husband Rajan, both have independently participated (SI. No.5 and 6 in the List of Applicants), by showing the same property and the same is violative of the Condition No.5 specified in the Application for appointment of LPG Distributor and this attracts disqualification straight away. This is very apparent and in spite of the same, the said R.Thulasi was selected

and appointment order was issued on 08.04.2019, that too during the pendency of the above contempt petition."

10. In view of the specific allegation which had been reiterated, a further affidavit was directed to be filed on behalf of the first respondent. In the said affidavit filed by R.Anbuchejian, Deputy General Manager, LPG at Kochi LPG Regional Office of Hindustan Petroleum Corporation Ltd., at Kochi, who replaced Mr.Gopakumar Balakrishnan, it had been stated as follows:-

"5. I submit that, on careful examination of the said reply letters of Mr.Rajan and Mrs.Thulasi in the light of the documents submitted and submissions during the personal hearing, the following are the important points raised by them:-

A. *Mrs.Thulasi had made a rental agreement dated 15.09.2017 registered as Document No. 5994 in Sub Register Office, Mettupalayam with one Mrs.Prema for the shop room at the land comprised under at S.F.No. 225/1 and the same was offered as the site for showroom in her application.*

B. *There are around 4 shops owned*

by Mrs.P.Prema which are constructed on her land comprised under S.F.No. 225/1.

C. Mr.Thulasi had entered into another unregistered lease agreement dated 15.09.2017 with Mrs.P.Prema for the space adjacent to the space already leased by her for her godown as aforesaid from land comprised under S.F.No. 225/1. The said unregistered lease was cancelled on 29.10.2018 by Mrs.Thulasi as she was selected in the draw of lots. Copies of the unregistered lease deed and the cancellation deed were submitted for our consideration.

D. A plot of land admeasuring 15 cents comprised under S.F.No. 684/1B was taken on lease by Mrs.Thulasi from Mr.N.Nagaraj, vide Lease Deed registered as Document No. 5475/2017 in Sub Registrar Office, Mettupalayam and the same was offered for Godown in her application.

E. Total extent of the land owned by Mr.N.Nagaraj which is comprised under S.F.No. 684/1B is 3.16 Acres.

F. Mrs.Thulasi had also leased another 15 cents of land on adjacently

lying on the eastern side of the land already leased by her for her godown as aforesaid from Mr.N.Nagaraj by an unregistered Lease Deed dated 06.09.2017. This piece of land was taken by her on behalf of Mr.Rajan who is her husband and the same was offered for Godown in the application that was submitted by Mr.Rajan.

G. The unregistered lease entered with Mr.N.Nagaraj has been cancelled on 29.10.2018 on account of the issues that had cropped up with him. Copies of the said unregistered lease deed and the cancellation deeds are not provided for our consideration until now. On enquiry, we are informed that both the lease deed and the cancellation deeds were returned to Mr.N.Nagaraj due to the issues.

H. All the four pieces of land (two for showroom and two for godown) were leased in the name of Mrs.Thulasi as the Brouchure on Unified Guidelines for Selection of LPG Distributorship permits offering of land belonging to/leased out to the members of the family unit and a such husband can use wife's land and vice-versa for showroom and godown.

I. A suit is filed by Mr.N.Nagaraj

(owner of godown land) as O.S.No. 80 of 2019 before the District Munsiff cum Judicial Magistrate's Court at Mettupalayam seeking for permanent injunction against Mrs.Thulasi and Mr. Rajan with respect to the property at S.F.No.684/1B allegedly with an intention to coerce them into entering into a partnership with respect to the Distributorship. Application for interim relief in the said suit filed as I.A.No. 2 of 2019 is also dismissed by the Hon'ble District Munsiff cum Judicial Magistrate's Court at Mettupalayam."

11. Heard arguments advanced by Mr.A.E.Ravichandran, learned counsel for the petitioner and Mr.Vijayan for M/s. King and Patridge, learned counsel for the first respondent.

12. Mr.A.E.Ravichandran was insistent on the aspect that the first respondent, who had been directed to select only eligible candidate for Distributorship had violated the orders of this Court and in this connection, a specific instance of one R.Thualsi having been granted Distributorship had been cited. It is the contention of the learned counsel that both R.Thulasi and her husband Rajan had applied for Distributorship and they had both shown the same land, and therefore both should have been

disqualified. However, R.Thulasi, had been selected and this, according to the learned counsel was in violation of the orders of this Court.

13. However, Mr.Vijayan, learned counsel for the first respondent seriously disputed the said contentions. According to him, both Thulasi and Rajan had applied for Distributorship but had offered separate portions of larger piece of land in their application forms. The learned counsel stated that an enquiry is ongoing regarding grant of Distributorship to R.Thulasi.

14. I have carefully considered the arguments advanced.

15. To establish that an order of the Court had been violated, willful disobedience of the order must be established. In the present case, the Writ Petition had been disposed of at the admission stage itself. Notice had not been issued to the first respondent. A general direction was issued to the first respondent to select as Distributors only eligible candidates. If the petitioner had a grievance, over the selection of a particular candidate, then a remedy should always be sought in the presence of the said candidate. Here neither R.Thulasi nor

her husband Rajan are parties. It is a fundamental principle that no person can be condemned unheard.

16. At any rate, the first respondent should also have had constructive notice of the order passed by this Court in the Writ Petition. As stated above, the order was passed at the admission stage itself prior to issuing notice to the first respondent. There is also an internal mechanism in the first respondent to question selection of eligible candidates and the petitioner can take recourse to the same. If he had taken recourse to the same, then he can not pursue parallel proceedings particularly proceedings in the nature of contempt of Court. The affidavits filed on behalf of the first respondent have been extracted in detail to show that they have taken every effort to answer the allegations raised with respect to R.Thulasi. It is also seen that the selection of candidates is made by draw of lots. Consequently, there cannot be any definiteness that a particular candidate, would be selected. It is only after the draw of lots that the satisfaction of eligibility criteria at the site level of the candidates would be more deeply examined.

17. In **(2001) 3 SCC 748 [Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others]**, the Hon'ble Supreme

Court had held as follows:-

"13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide **Murray & Co. v. Ashok Kr. Newatia & Anr.: 2000 (2) SCC 367**) this is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of the this Court in *Murray's case* (supra) in which one of us (Banerjee, J.) was party needs to be noticed.

"The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the

people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general."

14. The other aspect of the matter ought also to be noticed at this juncture viz., the burden and standard of proof. The common English phrase he who asserts must prove has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the standard of proof, be it noted that a proceeding under the extra-ordinary

jurisdiction of the Court in terms of the provisions of the Contempt of Court Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. The observations of **Lord Denning in Re Bramblevale (1969 3 All ER 1062)** lend support to the aforesaid. Lord Denning in Re Bramblevale stated:

"A contempt of court is an offence of a criminal character. A man may be sent to prison for it,. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt.""

18. The dictum enunciated is that the power under the contempt of Court Act shall have to be used cautiously and sparingly. In the present case, I find no reason to hold that there had been disobedience of the Orders of this Court much less wilfull disobedience of the order of the Court. As stated earlier, the order of the Court was passed at the stage of admission of the Writ Petition and prior to issue of notice to the first respondent.

19. For these reasons, I find no reason to accede to the contentions of the learned counsel for the petitioner and accordingly, the Contempt Petition is dismissed. No order as to costs.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

vsg

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Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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