

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24..09..2019

Orders Pronounced on : 21..10..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.11326 of 2010  
and  
M.P.Nos.2 and 3 of 2010

M/s.Foods Fats & Fertilizers Ltd.,  
No.222, I Floor, Fountain Plaza,  
Pantheon Road,  
Egmore,  
Chennai,  
Rep. by its Vice President,  
Mr.Jitendra Goenka

... Petitioner

-Versus-

1. Union of India,  
Rep. by its Secretary,  
Ministry of Petroleum,  
Indian Oil Bhavan,  
No.1, Sri Aurobindo Marg,  
Yusuf Sarai,  
New Delhi 110 016.
2. The Deputy General Manager,  
India Oil Corporation Limited,  
Indian Oil Bhavan,  
No.1, Sri Aurobindo Marg,  
Yusuf Sarai,  
New Delhi 110 016.
3. The Senior Manager,  
Petro Chemical Marketing,  
Corporate Office,  
Indian Oil Corporation Ltd.,  
No.139, Uthamar Gandhi Salai,  
Chennai 600 034.

4.Mr.M.Goutham Chand,

[4th respondent was impleaded as per order dated 12.08.2010  
in M.P.No.4 of 2010 in W.P.No.11326 of 2010]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Ref.No.BD/PC/POYLY/CHENNAI-3 dated 19.05.2010 and to quash the same as illegal, ultra vires, unconstitutional and contrary to the principles of natural justice and against Rule of Law and for a consequential direction to the respondents to consider the application of the petitioner for empanellment towards appointment of DEL CREDERE Associate cum Consignment Stockist (DCA-cum-CS) DEL CREDERE Associate (DCA) favourably by taking into account the Intimation dated 15.03.2010 sent by the Assistant Commissioner (CT), Egmore Assessment Circle, Chennai, as to the receipt of the Rental Agreements filed by the petitioner.

For Petitioner : Mr.R.Shanmugham  
For Respondent(s) : Mr.L.Thirumalaisamy,  
CGSC for R1  
Mr.Anand for R3  
Mr.K.R.Ramesh Kumar  
for R4

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent cancelling the empanelment of the petitioner for appointment of Del Credere Associate-cum-Consignment Stockist (DCA-cum-CS)/Del Credere Associate (DCA) and for a consequential direction for consideration of the petitioner's application for appointment.

2. The facts leading to the filing of the writ petition in brief are as follows:- In response to the advertisement issued by the 2nd respondent in respect of appointment of Del Credere Associate cum Consignment Stockists (DCA-cum-CS)/Del Credere Associate (DCA), the petitioner submitted their application on 13.07.2009. Based on the information furnished by the petitioner for appointment of DCA-cum-CS for Chennai location, the petitioner company has been short listed for interview which was scheduled to be held on 27.11.2009 in Delhi. In the interview, the petitioner company was declared as successful candidate along with two others and it was ranked at No.3 after the conclusion of the State II evaluation process. Thereafter, the respondents conducted field investigation and the officer concerned filed his field investigation report on 31.12.2009.

3. In the mean while, the petitioner company sent an E-mail on 19.02.2010 to the respondents stating that the original lease agreements pertaining to the warehouse premises and the office premises were with the Sale Tax authorities. The petitioner company has been carrying on their business in several premises including the premises at No.222, Pantheon Road, Egmore, Chennai and No.1-A, Arulanandham Street, Santhome, Chennai and the Assistant Commissioner of Commercial Taxes, Egmore Assessment Circle, Chennai has also issued a letter on 15.03.2010 stating that the petitioner company has been carrying on business in the above said premises and the relevant rental agreements have been filed before the Assistant Commissioner of Commercial Taxes, Egmore Assessment Circle, Chennai by the petitioner company.

4. When the true state of affairs stood thus and the petitioner company has been waiting eagerly for the final orders as to their appointment of DCA-cum-CS/DCA for Chennai location, all of a sudden and to their shock and dismay, they received the impugned communication 19.05.2010 cancelling the empanellment of the petitioner. According to the petitioners, if the respondents have any doubt as to whether the petitioner company carrying on their business in the premises in question, they ought to have given an opportunity to the petitioners so as to enable them to put forth their stand. But, the respondents have straightaway chosen to selection of the petitioner for appointment as DEL Credere Associate cum Consignment Stockists at Chennai location which is not only against the rule of law but against the principles of natural justice as well and it is this order which is now under challenge in this writ petition.

5. The 2nd respondent filed his counter affidavit inter alia contending that the respondent corporation ventured into a new business for manufacturing and marketing of polymer through out the country and for the above said purpose an advertisement was made for appointment of Del Credere Associates cum Consignment Stockist (DCA cum CS) on 09.06.2009. So far as the Chennai Region is concerned, they required 3 stockists and 5 candidates including the petitioner company were short listed for interview which was scheduled to be held on 27.11.2009 in Delhi. After the conclusion of the State II evaluation process, the petitioner company was declared as the successful candidate for appointment as stockist for Chennai location. As per the details in the application submitted by the petitioner, the office address was given as No.222, 1st Floor, Fountain Plaza, Pantheon Road, Egmore, Chennai and the address for correspondence was also the same. Along with the application, the petitioner company has submitted a notarized photocopy of the lease agreement dated 03.04.2008 in respect of warehouse premises situated at 1-A, Arulanandam Street, Santhome, Chennai, valid from 01.05.2008 to 30.04.2011 and a notarized photocopy of

the lease agreement dated 10.09.2008 in respect of office space having address No.222, 1st Floor, Fountain Plaza, Pantheon Road, Egmore, Chennai 600 008. In the application, the petitioner company declared that they were in possession of the original lease agreement and they knew very well that in the event they failed to produce even a single original document at the time of interview, they would become ineligible for appointment. Despite the undertaking, the petitioner company did not produce the original lease agreement in respect of both warehouse premises and office premises. On the contrary, the petitioner company sent a letter dated 21.12.2009 enclosing an acknowledgment dated 09.11.2009 issued by the Superintendent of Commercial Tax Department in respect of the above said lease agreements and therefore, they could not produce the original lease agreements.

6. It is further stated that apart from the above, the writ petition filed by the petitioner company in W.P.No.11335 of 2010 against the Assistant Commissioner of Commercial Taxes, Egmore Assessment Circle, Chennai 600 008 and others seeking a direction for the return of the original lease agreements, was dismissed by this court on the ground that petitioner company had filed only copies of the lease agreements and no original lease agreement were produced before the Commercial Taxes Department. Thus, the declaration made by the petitioner company regarding possession of the original lease agreement is false. The original lease agreements were not produced by petitioner company at the time of interview as declared by them in their application. As the petitioner company failed to produce the original lease agreements as undertaken in the application, the respondents had no option except to cancel the selection of the petitioner company on the ground of misrepresentation and no illegality or irregularity can be attached to the same.

7. The learned counsel appearing for the petitioner would submit that even though in the application the petitioner company undertook that they would produce the originals of the lease agreements at the time of interview, they could not produce the same as they were submitted before the Commercial Taxes authorities concerned. Therefore, the failure of the petitioner company cannot be termed as misrepresentation and on that ground the selection cannot be cancelled.

8. The learned counsel would further submit that the impugned order has been passed without issuing any show cause notice and conducting any enquiry whatsoever and thus, the impugned order has been passed in violation of principles of natural justice. Therefore, the impugned order is liable to be set aside.

9. Per contra, the learned counsel appearing for the 2nd respondent would contend that the petitioner company had produced only the notarized photocopy of the lease agreements at the time of interview. As per the terms and conditions, the petitioners should have produced all the original lease agreements at the time of interview itself. Though the petitioner declared that they were in possession of the original lease agreement and would produce the same at the time of interview, they failed to produce the same at the time of interview as undertaken by them. The petitioner company knew very well that their selection would be cancelled, in the event of non production of even a single original document. Even though the petitioner company had stated that the originals were with the Commercial Taxes authorities, the writ petition filed by the petitioner company against the commercial taxes authorities for a mandamus got dismissed by this court on the ground that the original lease agreement were never produced by the petitioner before the commercial tax authorities concerned and they had filed only the copy of the lease agreements. Having taken note of this finding, the respondents held that the petitioner company made a misrepresentation in their application and on that score, the respondents rejected the selection of the petitioner. Thus, according to the learned counsel, no illegality or irregularity can be attached to same and the writ petition is only liable to be dismissed.

10. I have considered the rival submissions carefully.

11. It is an admitted fact that at the time of filing application the petitioner company had only submitted notarized photocopy of the lease agreements. According to the petitioner company at that time the original lease agreements were with the commercial taxes authorities of Egmore Assessment Circle at Chennai. In the application also, the petitioner declared that the original lease agreements were with the commercial taxes department and undertook to produce the originals of the same at the time of interview. In view of petitioner's own undertaking, the petitioner knew that if the original lease agreements are not submitted, the same would entail rejection of their selection and therefore, the selection of the petitioner company for appointment of stockist is liable to be cancelled.

12. From a careful perusal of the records, it could be seen that the original lease agreements were not filed before the commercial tax authorities by the petitioner company and the writ petition filed by the petitioner for the return of the original lease agreements was dismissed by this court. The respondents placed reliance heavily upon the order of this court in W.P.No.11335 of 2010 to reject the selection of the petitioner company. The relevant portion of the order reads as

follows:-

"4. The learned Additional Government Pleader appearing for the respondents on instructions submitted that the petitioner has filed only a copy of the lease agreement/rental agreement and requested to issue branch certificate by paying a sum of Rs.50/- towards branch fees and the original lease agreement/rental agreement was not filed before the third respondent.

5. In view of the said submission made by the learned Additional Government Pleader appearing for the respondents based upon the written instructions dated 08.06.2010, no mandamus can be issued to the respondents to give the original lease agreement / rental agreement to the petitioner. The said submission made by the learned Additional Government Pleader appearing for the respondent is recorded and no further adjudication can be made in this petition since the facts are in dispute."

13. In the above said circumstances, the reason cited by the petitioner that as the original lease agreements were produced before the commercial taxes authorities for scrutiny, they could not produce the same at the time of interview, could only be construed as misrepresentation.

14. That apart, the petitioner company is bound by its own declaration given at the time of application that if they failed to produce the original lease agreements at the time of interview, they would become ineligible for appointment as stockist. The relevant portion of the declaration and the undertaking given by the petitioner company reads as follows:-

" Declaration

I am aware that inter se suitability of candidates will be decided by evaluation of candidates on the document based marks and interview. Evaluation on document based marks will be done based on the information given by me in this application. On verification by the company, if it is found that the information given by me is incorrect/false/misrepresented then my candidature will stand cancelled and I will be declared ineligible for Del Credere Associate (DCA) cum Consignment Stockist (CS)/DCAship. I also confirm that I am in possession of the supporting documents in

original for the information given by me in this application and the same will be carried by me at the time of interview for verification by M/s.Indian Oil Corporation Limited (IOCL). I am also aware that in case I fail to produce even a single original documents (attested copies of which were attached with application form) to IOCL at the time of interview, I will become ineligible.

... ..  
... ..

#### Undertaking

I JITENDRA GOENKA son of SHIV BHAGWAN GOENKA hereby confirm that the information given above is true and correct. Any wrong information / misrepresentation / suppression of facts will make me ineligible for this Del Credere Associate-cum-Consignment Stockists/Del Credere Associate selection."

15. In Shiv Kant Yadav v. Indian Oil Corporation Limited, (2007) 4 SCC 410, the Hon'ble Supreme Court has held that when there was a requirement to disclose the true and correct fact and when the applicant did not do so, the allotment is liable to be cancelled. The relevant paragraphs of the judgement read as follows:-

"14. There was a requirement to disclose the true and correct fact which does not appear to have been done.

15. The undertaking reads as follows:

"That I am fully aware that Indian Oil Corporation (name of the oil company) under its policy will not appoint me as their dealer/distributor, if I am employed. I shall have to resign from the service and produce proof of acceptance of my resignation by my employer to Indian Oil Corporation Ltd. (name of the oil company) before issuance of letter of appointment for the dealership/distributorship.

That if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of SKO/LDO dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false Indian Oil

Corporation (name of the oil company) would be within its rights to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that, I would have no claim, whatsoever, against Indian Oil Corporation (name of the oil company) for such withdrawal/termination."

16. In view of the undertaking that if any factual misstatement or declaration is made that permits cancellation of the allotment. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed with no order as to costs."

16. In B.R.Chowdhury v. Indian Oil Corporation Limited, (2004) 2 SCC 177 the Hon'ble Supreme Court has held as follows:-

"11. .... But on the other hand, in column 9 he has shown the status of occupation as "Nil". The contention advanced on behalf of the appellant that the status of occupation as shown was bona fide, cannot be accepted. In view of paragraph 10 of the affidavit filed by him coupled with paragraph 56 of the memorandum, the Corporation was well within its right to terminate the dealership of the appellant. There is no substance in the argument advanced on behalf of the appellant that the Corporation passed the order of termination of the dealership of the appellant mechanically and without application of mind. On the facts found and in view of the findings recorded by Mr Gupta, it cannot be said that the order passed by the Corporation terminating the dealership of the appellant was mechanical or without application of mind. This Court in Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] while dealing with the effect of suppression of material information took a view that the purpose of seeking information cannot be defeated which has bearing on the selection. Added to this, if only the appellant had given correct information about the status of his occupation as on the relevant date, as rightly held by the learned Single Judge, which view was affirmed by the Division Bench of the High Court, possibly the position would have been different. At any rate, the appellant is bound by

his own affidavit and the memorandum of agreement mentioned above."

17. In the light of the foregoing discussions this court holds that the 2nd respondent was right in cancelling the selection of the petitioner for appointment as stockist on account of the fact that the petitioner did not produce the original lease agreement at the time of interview and thus they violated their own declaration and undertaking incorporated in the application. Therefore, now, it is not open to the petitioner to contend that the impugned order has been passed without any enquiry whatsoever. Thus, no illegality or irregularity is found in the impugned order. There is no merit in the writ petition and the same is only to be dismissed.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected MPs are closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

kmk

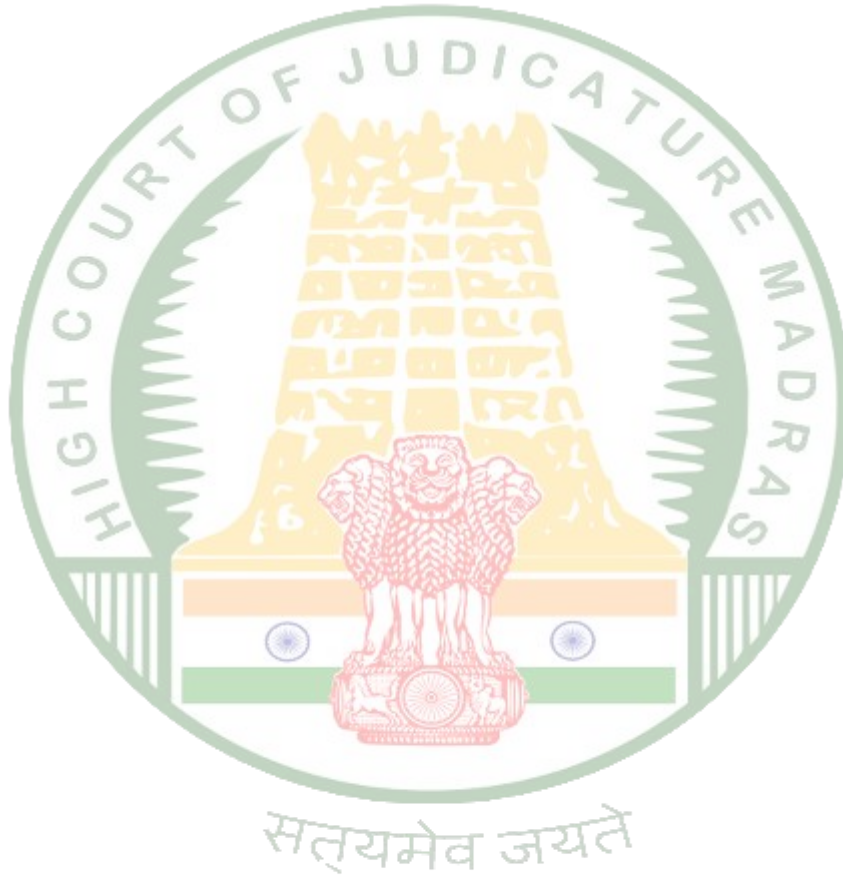
To

1. The Secretary,  
Union of India,  
Ministry of Petroleum,  
Indian Oil Bhavan,  
No.1, Sri Aurobindo Marg,  
Yusuf Sarai,  
New Delhi 110 016.
2. The Deputy General Manager,  
India Oil Corporation Limited,  
Indian Oil Bhavan,  
No.1, Sri Aurobindo Marg,  
Yusuf Sarai,  
New Delhi 110 016.
3. The Senior Manager,  
Petro Chemical Marketing,  
Corporate Office,  
Indian Oil Corporation Ltd.,  
No.139, Uthamar Gandhi Salai,  
Chennai 600 034.

+1 CC to Mr.R.Shanmugham, Advocate sr 87631.  
+1 CC to Mr. Abdul Saleem, Advocate sr 88629.

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NRL (CO)  
SP(03/12/2019)



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