

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04..09..2019

Orders Pronounced on: 23..09..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.20868 of 2010

and M.P.Nos.1 to 3 of 2010

1.M.Habbibullah

2.M.Zeeyaulah

... Petitioners

-Versus-

1.Bharat Petroleum Corporation Ltd.,
Rep. by its General Manager (Retail),
Southern Region, No.1, Ranganathan Gardens,
(Off: 11th Main Road),
Anna Nagar, Chennai 600 040.

2.The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
Attur and Kadaparai Village,
Attur Post, Karur.

3.The Tahsildar,
Hosur Taluk, Krishnagiri District.

4.H.R.Sunitha

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records of the 2nd respondent relating to his proceedings dated 28.08.2010 in KA.TE.NRO.Bagalur and to quash the same.

For Petitioners : Mr.A.R.Karthik Lakshmanan
for Mrs.AL.Ganthimathi

For Respondent(s) : Mr.O.R.Santhanakrishnan for
RR1 and 2

Mr.I.Sathish, AGP for R3

Mr.E.Edwig for R4

ORDER

This writ petition has been filed challenging the order passed by the respondents 1 and 2 cancelling the selection of the petitioners for Petroleum and Diesel Retail Outlet at Bagalur, Hosur Taluk in Krishnagiri District.

2. The case of the petitioners is that the respondents 1 and 2 called for applications for appointment of dealership for petroleum products at various places in the State of Tamil Nadu. Accordingly, he applied for appointment of dealership for Bagalur Village, Hosur Taluk in Krishnagiri District. An interview was conducted on 21.01.2010 wherein the petitioners have submitted all the relevant documents. In the said interview, the petitioners were awarded with 77.88 out of 100 marks while the 4th respondent secured 73.09 marks and another applicant secured 46.30 marks. As the petitioners were the highest mark holder, they were selected for appointment of dealer for retail outlet at Bagalur Village. While so, to the shock and surprise of the petitioners, impugned proceedings has been issued by the 2nd respondent informing the petitioners that their selection has been cancelled on the ground that during field verification of the credentials, it was found that the site occupied by the petitioners is not suitable as there is a canal passing through the site as shown in the Field Measurement Book (FMB) submitted by the petitioner and there is a variation in the information furnished by him in the application regarding the educational qualification and the actual fact.

3. Further, according to the petitioner, he is the owner of the land comprised in S.Nos.245/2B, 245/2C and 245/4 at Bagalur Village measuring in all an extent of 90 cents. Earlier, he was running a Sawmill and offered the place for putting up a petroleum product retail outlet and there is no canal passing through the said site. He has also produced a certificate issued by the Tahsildar concerned and other revenue authorities to show that there is no such canal passing through their land. The respondent corporation based on a Field Measurement Book (FMB) sketch had unilaterally come to the conclusion that a canal is running through the land of the petitioner, which is per se illegal.

4. So far as the Educational qualification is concerned, according to the petitioner, though he had completed the course of Diploma in Computer Technology, there was arrear of one paper at the time of submission of application. Even though he had mentioned in the application that he had completed Diploma in Computer Technology, during the interview, he had informed the verifying officer that he had not passed the course and there was arrear of one paper. He has also produced certificates. On being satisfied with the explanation, the verifying officer had awarded only 10 marks which was provided for matriculation qualification, whereas for Diploma 12% marks have been prescribed. The petitioner had never intended to suppress the fact or to give any false information. Any way, as the

petitioner was awarded only the marks which were prescribed for matriculation qualification, it would no way cause any prejudice to anybody. But, the respondents without considering all those facts, mechanically, cancelled the selection of the petitioner for appointment of dealership. The order has been passed in violation of principles of natural justice. Hence, this writ petition.

5. The 2nd respondent - Territory Manager, Karur Retail Territory of the respondent Corporation filed his counter affidavit inter alia contending that the 1st respondent called for applications for appointment of dealer for retail outlet of the respondent corporation in Tamil Nadu. One such appointment was for retail outlet dealership at Bagalur Village in Hosur Taluk, Krishnagiri District. The petitioner and the 4th respondent have applied for the same. Interview was conducted on 21.01.2010 wherein the petitioner had secured 77.88 marks, while the other two candidates secured 73.09 and 46.33 marks respectively. Since selection was subsequently cancelled on the ground that during filed verification of credentials on 10.02.2010, it was found that the site offered by the petitioner was not suitable as there was a canal passing through the site as shown in FMB sketch submitted by the petitioners. Further it was found that the FMB Sketch maintained by the Village Administrative Officer also showed that the canal was running in the middle of site and hence, the site offered by the petitioner was found not suitable. In the above circumstances, there was no necessity to rely upon the no objection certificate given by the 3rd respondent - Tahsildar. Further, the petitioners have given false information regarding his educational qualification, knowing fully well that any wrong information would entail his disqualification. Therefore, the selection of the petitioners was cancelled on the ground of giving false information as if he completed Diploma, but the field verification proved otherwise that the 1st petitioner has arrears of one paper in Diploma course. Hence there is no illegality in the order passed by the 2nd respondent and the writ petition is liable to be dismissed.

6. The 3rd respondent - Tahsildar, Hosur, filed his counter affidavit inter alia contending that as per the revenue records, Vari (Canal) passes through S.Nos.265/2, 258/3, 252/2, 253, 254/5F, 251, 245/2B, 245/2C, 245/4 and 246 of Bagalur Village and merges with the lake situated in S.No.241 of Bagalur in Hosur Taluk. The land belonging to the petitioner comprised in S.Nos.245/2B, 245/2C and 245/4. The said Vari passes through the land belonging to the petitioner comprised in S.Nos.245/2B, 245/2C and 245/4 has been blocked and it continues to run in Eastern side land covered in S.No.246 measuring 24.2 meters and

merges with lake in S.No.241 with a distance of 100 meters and more.

7. The 4th respondent filed his counter affidavit inter alia contending that he had also applied for appointment of dealer for retail outlet and including him, three candidates were called for interview. The selection committee has stated that appointment of dealership would be finalized only after verification of financial capability certificates and after verifying the feasibility of the land provided by the applicants, asked all the three candidates to wait for some more days enabling them to complete the field verification process. Thereafter, during the field verification, it was found that the petitioners gave false information regarding educational qualification in the application as well as before the interview committee at the time of interview and as per the FMB sketch submitted by the petitioners, there is a canal passing through the site in question. According to the report of the Tahsildar, as per revenue records, the canal is passing through the petitioners' site. Because of the false and incorrect statement given by the petitioner, the 4th respondent was selected and the application of the petitioner got rejected on account of false and incorrect information furnished by them in the application.

8. Since there was a dispute regarding the existence of canal in the land comprised in S.Nos.245/2B, 245/2C and 245/4 of Bagalur Village. This court, by order dated 03.01.2012, appointed an Advocate Commissioner to inspect the property in question along with the Revenue Divisional Officer, Krishnagiri, and file a report regarding the existence of the Vari. Pursuant to the same, the Advocate Commissioner inspected the property along with the Sub Collector, Hossur, inspected the disputed land and filed a report. According to the Advocate Commissioner, as per the Revenue records, the canal starts from S.No.265/2 and continues to flow in S.No.258/3 and further through S.No.252/2, a patta land and S.No.253, a burial ground and near to that there was a percolation pond. The canal further continues to flow through S.No.254/5 and reaches S.No.251 which is a National Highway (NH 207). It further passes through S.No.245/2B, 245/2C and 245/4, reaches S.No.246, which was a Vari poramboke land and it finally ends in S.No.241 which is a Bagalur Lake. All these particulars were taken from the revenue records, village map and FMB sketch. According to the Advocate Commissioner, at the time of his inspection of the property in question, there was no trace of canal in S.No.265/2. But, in S.No.258/3 and 252/2, he found a canal with some deviation as compared to the Village Map and Field Measurement Book given by the Deputy Tahsildar, Bagalur. From S.No.253, the canal got deviated to Northern side

of S.No.254/5F and it continues to run through S.No.254/2F and finally ends in S.No.251 where there was a deviation of 33 meters on the Northern side. as compared to the Village Map and Field Measurement Book. The Vari ends in S.No.251 which is a National Highway. According to the Advocate Commissioner, the Deputy Tahsildar told him that due to rise in the Ground Level for the construction of road, the Vari got totally blocked. While inspection of the property measuring an extent of totaling to 90 cents comprised in S.Nos.245/2B, 245/2C and 245/4, no trace of canal was found. Parties did not file any objection to the Report of the Advocate Commissioner.

9. I have heard the learned counsel for the petitioners and the learned counsel for the respondents 1 and 2; learned Additional Government Pleader for the 3rd respondent and the learned counsel for the 4th respondent and perused the records carefully.

10. It is an admitted fact that the petitioners, 4th respondent and one another applicant were invited for interview for appointment of dealership for retail outlet for Bagalur in Hosur Taluk, Krishnagiri District. It is also an admitted fact that in the interview, the petitioners had secured 77.88 out of 100 marks while the 4th respondent secured 73.09 and another applicable secured 46.30 marks. The petitioners being the highest mark holders in the interview, they were selected for appointment of dealership for Bagalur location. Subsequently, their selection was cancelled on two grounds one was that in the site offered by the petitioners for retail outlet, there was a water canal passing through, therefore, the site was not suitable for retail outlet, the other objection was that they had furnished false information in the application regarding educational qualification.

11. So far as rejection on the ground that there was a canal passing through the site in question as per FMB sketch submitted by the petitioners is concerned, according to the petitioners, there is no canal running through their site. Earlier the petitioners were running a Saw-Mill in the said site and there is no canal running as alleged by the respondents. They have also filed a certificate issued by the Tahsildar to that effect. The Tahsildar, who was impleaded as the 3rd respondent filed his counter affidavit stating that even though in the revenue records, water canal is shown in S.No.265/2, 258/3, 252/2, 253, 254/5F, 251, 245/2B/ 245/2C, 245/4 and 246 of Bagalur Village, water canal has been blocked and the canal continues to run on the Eastern side of the land covered in S.No.246 and merges with the lake in S.No.241.

12. Considering the dispute, this court had appointed an Advocate Commissioner and the Advocate Commissioner, after inspection of the sites in question along with the Sub Collector, filed a report stating that on field there is no water canal running through S.Nos.245/2B, 245/2C and 245/4. The relevant portion of the report of the Advocate Commissioner reads as follows:-

"4. I submit that I inspected about the starting point of "Waarri" the Deputy Tahsildar showed as per record that the "Waarri" starts from the Survey No.265/2 (A hut as shown in the photograph 1 to 3) from there it continues to flow into survey No.258/3 which was an uncultivable land and it further continues through Survey No.252/2 which was Patta land and it further continues through Survey No.253 which is a burial land. Near by to that Burial land there was a percolation pond. From there it continues through survey No.254/5 and reaches survey No.251 which is a National Highway (NH) 207 and further it passes through Survey No.245/2B, 245/2C and 245/4 and it reaches Survey No.246 which was a "Waarri Porampokku" and it finally ends up in Survey No.241 which is a "Bagalur Eri". The above said is as per the records in the Village Map and Field Measurement Book given by the Deputy Tahsildar Mr.Perumal, Magalur Village.

5. I submit that while inspecting the survey No.265/2, there was no trace to show that there was a "Waarri". But, in Survey No.258/3 and 252/2, I found the "Waarri" with some deviations as compared to the records in Village Map and Field Measurement Book given by the Deputy Tahsildar Mr.Perumal, Bagalur Village.

6. I submit that in survey No.253 there was a percolation pond from which the "Waarri" was deviated to the Northern side of the survey No.254/5F as compared to the records in Village Map and Field Measurement Book given by the Deputy Tahsildar.

7. I further submit that the "Waarri" continues through survey No.254/2F and finally ends in survey No.251 which is a National Highway (NH 207). The "Waarri" is actually 33 meters deviated to the North as compared to the Village Map and Field Measurement Book.

8. I submit that the "Waarri" ends in Survey No.251 which is a National Highway (NH 207). The Deputy Tahsildar said that due to the rise in the ground level for the construction of road totally blocked the 'Waarri'.

9. I further submit that the suit property in Survey Nos.245/2B, 245/2C and 245/4 totalling an extent of 90 cent sin Bagalur Village, Hosur Taluk, Krishnagiri District, was inspected along with the Hosur Sub Collector, Mr.Sandeep Nanduri, IAS and the following were noted as detailed below:

- There is no trace of "Waarri" in the suit property
... .."

13. Both the Advocate Commissioner and the 3rd respondent - Tahsildar have stated that though the revenue records show that a canal running through the petitioners' land, as on today, there is no canal existing in the lands offered by the petitioners and it is running through the lands in the other survey numbers and reaches its destination. The Advocate Commissioner's Report was not objected by any parties. In the above circumstances, from the counter affidavit filed by the 3rd respondent and the report of the Advocate Commissioner, it could be easily seen that there is no water canal running through the lands of the petitioner and, therefore, the first ground of rejection cannot stand.

14. Coming to the other ground of rejection for having given false information by the petitioners regarding educational qualification, it is an admitted fact that the petitioners in their application have stated that the 1st petitioner is a Diploma Holder in Computer Technology. According to the petitioners, even though the 1st petitioner had completed the course, on the date of application, there was arrear of one paper. However, during interview, they petitioners had submitted all the relevant records relating to the educational qualification and also brought forth before the interview committee that the 2nd petitioner had not cleared the Diploma in Computer Technology and there was arrear of one paper. Therefore, taking into account the actual fact, the committee had awarded only 10 marks which was prescribed for matriculation qualification and not for the higher qualification of diploma. Therefore, the alleged variance pointed by the respondents would no way cause any prejudice to any candidate.

15. The selection for awarding dealership was based on various eligibility criteria and one of the eligibility criteria

is educational qualification and the applicant should have a minimum qualification of a pass in matriculation. The eligibility of the applicants will be evaluated out of total 100 marks through three tier process, the evaluation of eligibility of the candidates will be carried out by committee based on various broad parameters and separate marks were provided for each category, which reads as follows:-

Evaluation of Applicants:

(i) The eligible applicants will be evaluated out of a total of 100 marks through a 3 tier process comprising the following steps:

- The offered land will be valuated as per laid down parameters by the 'evaluation committee' which will in turn decide the marks in respect of parameter "capability to provide land and infrastructure / facilities", which carries a maximum mark of 35.
- 'Scrutinizing committee' will scrutinize the documents and allocate marks with regard to document based parameters out of a maximum of 56 marks.
- 'Interview committee' will carry out personal interview and award marks out of the remaining maximum 9 marks based on specified parameters and complete the selection process.

(ii) The evaluation of eligible applicants will be carried out by the above committees based on the following broad parameters:

Sr. No.	Parameter	Maximum marks: Individuals (including partnerships)	Maximum Marks: Non-Individual Entities
a	Capability to provide land and infrastructure / facilities	35	35
b	Capability to provide finance	25	25
c	Educational qualifications	15	0
d	Capability to generate business	10	25
e	Age	4	4
f	Experience	4	4

Sr. No.	Parameter	Maximum marks: Individuals (including partnerships)	Maximum Marks: Non-Individual Entities
g	Business ability / acument	5	7
h	Personality	2	0
	Total	100	100

16. So far as educational qualifications is concerned, maximum of 15 marks is provided. The marks prescribed for educational qualification are as follows:-

Educationa l Qualificat ion (Max. 15 marks)	Par a No.	Based on the educational qualification proof provided by the applicant, the following marks will be awarded	Marks	Based on documentar y evidence by furnishing certificat e / mark sheet from Board / University / recognized institutio n as applicable
	(1)	(i) Post Graduation in Management (ii) Diploma in Management from Indian Institute of Management (iii) Graduation in Engineering (iv) Graduation in law (v) Chartered Accountant	15	
	(2)	(i) Post Graduation in any other field not covered in para (1) above (ii) Graduation in any other field not covered in para (1) above (iii) Cost Accountant (iv) Company Secretary (v) Diploma in Engineering	12	
	(3)	Matriculation	10	

17. As per the above, a person having Diploma in Engineering will be awarded 12 marks, whereas for matriculation qualification maximum of 10 marks will be awarded. Now, based

on the marks awarded to the petitioners and other applicants in respect of education qualification, it could be seen that the petitioner was awarded only 10 marks whereas the 4th respondent was awarded 12 marks and the other candidate was awarded 10 marks. According to the petitioners, the interview committee has considered the qualification of the 2nd petitioner only as matriculation, awarded only 10 marks and he was not awarded with marks prescribed for the educational qualification mentioned in his application namely, Diploma in Computer Technology. As the marks were awarded to the petitioners only for matriculation qualification, it would no way alter the rank position between the candidates.

18. The learned counsel for the respondents 1 and 2 would vehemently contend that the petitioners have given false information regarding educational qualification and as per clause 21 of the Terms and Conditions for furnishing false information selection is liable to be cancelled. Further, as per the General Terms and Conditions, any statement made in the application or document submitted by the applicant at any stage found to be incorrect, then, same would make him ineligible for dealership.

19. That apart, the petitioners in their applications have declared that the information given by them were true and the undertaking given by the petitioners permits cancellation of selection for appointment of dealership if any factual misstatement or declaration is found at later stage. According to the learned counsel for the respondents 1 and 2, as the petitioners furnished false information regarding educational qualification, based on their own undertaking, the selection was liable to be cancelled. Now, it is not open to them to challenge the same. In support of his contention, the learned counsel relied on the judgments of the Hon'ble Supreme court in B.R.Chowdhury v. Indian Oil Corporation Ltd, (2004) 2 SCC 177 and Shiv Kant Yadav v. Indian Oil Corporation Ltd, (2007) 4 SCC 410.

20. Clause 21 of the Procedure for Selection of Petrol / Diesel retail Outlet Dealers reads as follows:-

"21. Furnishing of false information / concealing information: If any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer or conceals any information which if declared would have made him/her ineligible for dealership, the

allotment will be cancelled forthwith and dealership terminated, in case commissioned."

21. A careful reading of the above said clause, it could be seen that if any information furnished by the applicant found to be false or concealing any information, which, if declared would have made him ineligible for dealership, the appointment of dealership would be cancelled forthwith. Likewise, General Terms and Conditions at clause 10(j) also stipulates that any statement made in the application or in the document attached or subsequently submitted by the applicant at any stage is found to be incorrect or false or concealed any information which if declared would have made him ineligible for dealership, the application would be liable to be rejected without assigning any reason. Further, according to the undertaken given by the petitioners, if the information certified by the petitioners are found to be incorrect / or any information is found to be suppressed, the same will disqualify him from being considered for the dealership.

22. But the question that has to be decided in this case is whether the information furnished by the petitioners regarding educational qualification would make them ineligible for dealership. Even though the petitioners in their application have stated that the 1st petitioner is a Diploma Holder for which 12 marks have been provided. But, according to the 1st petitioner, during verification of credentials, he had disclosed that he had not passed Diploma in Computer Technology and there was arrear of one paper and produced all the records to that effect. After verification of those document and considering the fact that the 1st petitioner had not passed Diploma, the interview committee awarded 10 marks to the 1st petitioner for having acquired matriculation qualification and after considering the over all marks obtained in the other process of selection, the name of 1st petitioner was considered for awarding dealership. It is needless to point out that the question of ineligibility would come only in the event the respondents awarded 12 marks treating the 1st petitioner as Diploma-Holder and based on that he was selected for appointment of dealership. Had the respondents treated the 1st petitioner as Diploma-Holder and awarded 12 marks then rank of the candidates would have been different and the petitioners would have suffered ineligibility. It is not the case of the respondents that the petitioners did not possess minimum qualification prescribed for selection and had given false information and got selected. The petitioners possessed minimum educational qualification and for that qualification only mark was awarded and they were selected.

23. But, in the instant case, even though the 1st petitioner has wrongly stated in the application as if he is a Diploma-Holder, during verification, he produced the relevant records before the interview committee regarding his educational qualification and the verification officer after considering all those credentials, awarded marks only for matriculation qualification and no mark was awarded for diploma qualification. Mere fact that the 1st petitioner has stated in the application as if he is a Diploma-Holder would not alter the rank between the candidates and the same would not cause any prejudice to the other candidates as the 1st petitioner was awarded marks only for matriculation qualification. In the light of the facts distinguished above, the judgement relied on by the learned counsel for the respondents 1 and 2 would be of no help to the respondents.

24. That apart, the information sought for in the application regarding educational qualification is only for the purpose of evaluating the eligibility of the applicants and also to award marks based on educational qualification. Admittedly, the minimum educational qualification is a pass in matriculation and the 1st petitioner has possessed the requisite minimum qualification on the date of application. He was awarded marks provided for matriculation qualification.

25. So far as the judgement relied on by the learned counsel appearing for the respondents 1 and 2 in *B.R.Chowdhury v. Indian Oil Corporation Limited*, that was a case where the applicant was working as a Trainee in a company whereas in the application, he had given a wrong information as if he was temporarily appointed and in another column meant for employment status, he had mentioned as "Nil". In such circumstances, the Hon'ble Supreme court has held that wrong particulars given by the application amount to suppression of material fact and further held that had the applicant given the correct information about the status of occupation on the relevant date, the position would have been different. The relevant portion of the order of the Hon'ble Supreme Court reads 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."

26. So far as the other judgement relied on by the learned counsel for the petitioner in *Shiv Kant Yadav v. Indian Oil Corporation Limited*, that was a case where the dealership was canceled based on the wrong declaration regarding income. The Hon'ble Supreme Court was therefore pleased to hold that when there was a requirement to disclose the true and correct fact and when the applicant did not do so, allotment is liable to be cancelled.

27. Coming to the facts of the instant case, as already stated supra, though the 1st petitioner in the application has given a wrong information about his educational qualification, at the time of interview, he had disclosed the fact the he only possessed a pass in matriculation and based on such information, he was awarded marks only for matriculation qualification. Therefore, it cannot be said that by giving wrong information, the 1st petitioner gained benefit of marks which altered the rank between the candidates. In the considered opinion of this court, the alleged information would no way make him ineligible for appointment of dealership. In the above circumstances, the above said judgement would also be of no help to the respondents.

28. In view of the foregoing discussions, this court holds that the grounds upon which the selection of the petitioners was cancelled are not sustainable and the impugned order is therefore liable to be set aside. This writ petition succeeds accordingly.

In the result, this writ petition is allowed and the impugned order of the 2nd respondent is set aside. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The General Manager (Retail),
Bharat Petroleum Corporation Ltd.,
Southern Region, No.1, Ranganathan Gardens,
(Off: 11th Main Road),
Anna Nagar, Chennai 600 040.
- 2.The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
Attur and Kadaparai Village,
Attur Post, Karur.
- 3.The Tahsildar,
Hosur Taluk, Krishnagiri District.

+1 cc to M/s.AL.Ganthimathi, Advocate Sr.No. 82109

+1 cc to M/s.O.R.Santhanakrishnan, Advocate Sr.No.81435

AKM/13.11.19/14P-6C /

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Order
in

Writ Petition No.20868 of 2010