

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.06.2019

DATED : 26.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.637 of 2019

And

C.M.P.No.5161 of 2019

Bharat Petroleum Corporation Limited.,
Rep. by its Territory Manager - LPG,
Peelamedu, Coimbatore - 641 004. ... Appellant/Respondent

Vs.

Abinaya Kaviarasu ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against
the Order passed by the learned Single Judge dated 12.12.2018
made in W.P.No.18301 of 2018.

W.P.No.18301 of 2018:-

Writ Petition filed under Article 226 of the constitution of
India, praying for a writ of certiorarified mandamus after
calling for the concerned records from the respondents, quash
the order of the respondent dated 14.06.2018 bearing
CBE:LPG:GUMMANUR:DKV(OBC) as illegal, arbitrary and contrary to
law and consequently direct the respondents to consider the
application for award of LPG Distributorship of the respondent
at Gummanoor, Dharmapuri District under OBC Category and allot
Distributorship.

For Appellant : Mr.Vijayan
for M/s.King and Patridge

For Respondent : Mr.Balan Haridass

J U D G M E N T
(Delivered by C.V.KARTHIKEYAN, J.)

The respondent, Bharat Petroleum Corporation Limited in
W.P.No. 18301 of 2018 has filed the present Writ Appeal
aggrieved by the Order of the learned Single Judge allowing Writ

Petition and granting the relief sought therein by Order dated 12.12.2018.

2. The Writ Petitioner, Abinaya Kaviarasu had applied for LPG Distributorship for Gummanur Panchayat, Palacode Taluk, Dharmapuri District, in OBC category. The said place is categorised as DKV (Durgam Kshetriya Vitrak), which indicates that it is a difficult and special area (Hilly region, Forest Area, Tribal Inhabited Area, Sparsely populated, disturbed area, highlands, left-wing and extremism affected area).

3. The writ petitioner applied for LPG Distributorship on 04.09.2017. It was registered on-line. She was declared as the successful candidate in the draw of lots conducted on 24.11.2017. This was communicated to her on 27.11.2017. She was directed to deposit a sum of Rs.30,000/- and to submit the documents in original for verification. She submitted the documents on 04.12.2017. A field verification was conducted on 06.02.2018. It is the claim of the writ petitioner that she was orally informed that her documents were in order.

4. However by order dated 14.06.2018, her candidature was rejected and the deposit amount of Rs.30,000/- was forfeited. This Order was challenged by filing the said writ petition. The main ground on which her candidature was rejected was that she did not "own" the land for godown on the last date for submission of application and also that the land submitted by her was registered after the last date of submission of application. The other ground of rejection was that she had offered land at SF No. 4/38, Gummaanoor Panchayat, Palacode Taluk, Dharmapuri District and it was contended that the said land was 2.2 kms away from the advertised location of Gummanur Village and that it was in Aithandahalli Village limits.

5. The learned Single Judge had granted the relief sought by observing that there was a subsisting lease agreement which was executed on 04.09.2017 and registered on 29.11.2017. It was therefore observed that once the lease deed was registered, it would date back to the date of execution. With respect to the location of the land, the learned Single Judge observed that the land offered in SF No. 4/38 was in Aithandahalli Village which came within Gummanur Village and consequently held that the rejection on that ground was unsustainable. The findings of the learned Single Judge on both the above aspects are quoted below for ready reference:-

"8. Admittedly, in column 5 of the application form, the petitioner had shown the name of the land owner as Chellappan and her relationship is his daughter-in-law and the

sale deed is dated 15.07.2008. The petitioner had subsequently entered into a registered lease with the owner of the property, namely, her father-in-law on 29.11.2017. The objection of the respondent is that the relationship of the petitioner with the land owner should be within the definition of "family unit" as defined in the brochure. The "family unit" will consist of individual concerned, his or her spouse and their unmarried sons and daughters, and it does not include the "father-in-law".

9.

10. So far as the location of the godown is concerned, the land offered is at Sl.No.4/3B, Gummaanoor Panchayat, Palacode Taluk, Dharmapuri District. The clarification to this effect was also sought for by the petitioner from the Tahsildar, Palacode, who has given a reply on 04.04.2018 stating that the Survey No.4/3B, was sub-divided as 4/3B1 and 4/3B2. The land in Survey No.4/3B2 is in Aithandahalli village coming within the Gummanur Village and that Door NO.2/225 is in Aithandahalli village in Gummanur Panchayat. Therefore, the rejection of the application on the ground that the land is 2.25 kms away from the Gummanur village is unsustainable. It is also stated that the said Aithandahalli village is one of the cluster villages in Gummanur and rejection on the ground that the said land is not in the advertised location also is unsustainable.

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12. The application of the petitioner is now rejected only on the aforesaid grounds, which are, as already, said to be unsustainable. The applicant is also filed the registered lease deed in her name, though after the cut off date, before the field inspection conducted on 06.02.2018. On the date of field verification, the petitioner had valid lease deed, as required by the brochure for the period of fifteen years. Even otherwise, the land offered by the petitioner belongs to her father-in-law, who in normal circumstances, is a family member, though not

within the definition. Therefore, depending upon the facts and circumstances of the case, there can always be some relaxation in the matter of submission of proof and it may not be proper to apply rigid principles, as it is in the domain of procedure. Any infraction in the rule relating to submission of the proof need not necessarily be resulted in rejection of the candidature.

13. As the petitioner has got a valid lease deed, this Court is of the considered view that she is entitled to be included in the list of eligible candidates for award of LPG Distributorship.

14. Accordingly, this writ petition is allowed setting aside the order of the respondent dated 14.06.2018 and the respondent is directed to give the LPG Distributorship, if she is otherwise eligible. No costs. Consequently, connected miscellaneous petitions are closed."

6. Mr. Vijayan, learned counsel for the appellant assailed the Order of the learned Single Judge by stating that the land offered was registered on 29.11.2017 even though the lease deed was executed on 04.09.2017 and since on the date of application, the lease deed had not been registered, there had been a violation of the requirement that a registered lease deed alone will be accepted. The learned counsel also stated that the land offered originally belonged to the father-in-law of the writ petitioner and the writ petitioner, as daughter-in-law would not strictly come within the definition of a family as provided in the rules. The learned counsel stated that the rules governing grant of distributorship should be strictly interpreted and there can be no alternate interpretation given to the said rules.

7. In this connection, the learned counsel relied on an unreported Judgement of a Co-ordinate Bench of this Court in W.A.No. 349 of 2017 Bharat Petroleum Corporation Limited., Vs. S.Raja Rajeswari wherein by Judgement dated 09.11.2017, the Division Bench upheld rejection of the application of the respondent therein, who had a plot measuring 24.68 mts into 35 mts and not 25 mts into 35 mts as required, even though subsequently a conveyance deed of 3 feet of land was produced by the respondent therein. The Division Bench had relied on an earlier unreported Judgement of the Hon'ble Supreme Court in

Civil Appeal Nos. 6928-6929 of 2015 dated 08.09.2015, Bharat Petroleum Corporation Limited., and Others Vs. Swapnil Singh wherein the Hon'ble Supreme Court had held in a fact situation wherein a lease deed had come into existence only on 20.12.2012 and was registered on 21.12.2012, it was held that it was clear that on the date of the application, namely, 13.09.2011, the applicant seeking distributorship did not own the land and consequently, the rejection of grant of distributorship was upheld.

8. The learned counsel also relied on 2007(4) SCC 410 Shiv Kant Yadav Vs. Indian Oil Corporation and Others wherein in a case where the applicant had not correctly disclosed his income was held to have violated his declaration and therefore rejection of his candidature was upheld.

9. Mr. Balan Haridass learned counsel for the respondent/writ petitioner however supported the order of the learned Single Judge and also relied on AIR 2004 SC 5043 Dolly Chhanda Vs. Chairman, JEE and others wherein while examining eligibility for applying for MBBS course and requirement of posting necessary eligibility criteria at the time of application, the Hon'ble Supreme Court had observed as follows:-

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the

rule relating to submission of proof need not necessarily result in rejection of candidature. "

[Emphasis supplied]

10. The learned counsel stated that the writ petitioner had offered as land, a lease hold right granted in her favour by her own father-in-law and the requirement of registration was also satisfied within a few days of the field verification. The learned counsel urged that the order of the learned Single Judge did not require any interference.

11. We have carefully considered the arguments advanced.

12. The writ petitioner had applied for LPG Distributorship in Gummanoor Panchayat, Dharmapuri District, in an area which was categorised as Durgam Kshetriya Vitrak which indicated that the region was a Hilly / Forest Area/ Tribal Inhabited Area/ Sparsely populated/ disturbed area/ highlands/ left-wing and extremism affected area. Naturally, there was an immediate necessity for having a LPG Distributor in the said area. It can be categorised as a priority area. Along with her application, the writ petitioner had offered the land, which originally belonged to her father-in-law Chellappan, who had purchased the land by a registered document on 15.07.2008 and had thereafter executed a lease deed on 04.09.2017 in favour of the writ petitioner. Her application was processed and she was declared as a successful candidate in the draw of lots conducted on 24.11.2017. She also deposited a sum of Rs.30,000/- as directed. She also submitted the original documents. A field verification was also done. She also registered the lease deed on 29.11.2017.

13. Section 47 of the Registration Act which comes under Part-X of the said Act and relates to "of the effects of registration and non registration". It stipulates the time from which a registered documents operates. According to the said provision, a registered document shall operate from the time of its execution and not from the time of its registration. Section 47 of the Registration Act is as follows:-

"47. Time from which registered document operates.-A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

[Emphasis supplied]

14. In AIR 1995 SC 73 Thakur Kishan Singh Vs. Arvind Kumar,

it was held as follows:-

"A document once registered takes effect from the date of execution only and not from the date of registration. A lease deed was executed on 05.12.1949 which was registered on 03.04.1950. The said lease deed takes effect from 05.12.1949."

[Emphasis supplied]

15. A plain reading of the ratio laid down in the above Judgement makes it clear that the rejection by the appellant on the ground that the writ petitioner had not produced a registered lease deed on the date of application cannot be sustained and has to be interfered with.

16. Mr.Vijayan, then advanced an alternate argument stating that the land offered was originally owned by Chellappan, who was the father-in-law of the applicant and as daughter-in-law, the writ petitioner could not have offered the said land for consideration. We are unable to appreciate the said argument for the simple reason that in the guidelines provided by the Bharat Petroleum Corporation Limited, a member of a family unit also included daughter-in-law. Naturally, this would also include the person, who conveyed the lands / leased the land which has to be only a father-in-law or mother-in-law.

17. However, Mr.Vijayan, learned counsel for the writ appellant further insisted that a strict reading of the guidelines should be adopted and there could be no deviation. It was in this connection that he relied on the unreported Judgement of the Hon'ble Supreme Court in Swapnil Singh referred supra. The facts in that case are clearly distinguishable. The applicant therein had submitted the application on 13.11.2011. She mentioned that the date of the document which she relied on was dated 13.09.2011. On facts, it was found that the lease agreement was actually entered into more than one year later on 20.12.2012 and registered on 21.12.2012. Naturally, the declaration that she possessed the said land on 13.09.2011 was obviously a false declaration and it was under those circumstances that the Hon'ble Supreme Court in the said case had upheld rejection.

18. The reliance placed by Mr.Vijayan on the Division Bench Judgement in W.A.No. 349 of 2017, S.Raja Rajeswari referred supra is also misplaced. By an internal communication bearing No.30015/4/2015-MC registered on 21.01.2015 addressed to (1)

The Director (Marketing), IOCL New Delhi; (2) The Director (Marketing), BPCL/HPCL, Mumbai, the Under Secretary to the Government of India had stated as follows:-

"I am directed to say that on perusal of a grievance petition, the Hon'ble Minister (P & NG) has observed as under:-

Applications are being rejected on the ground that the period of lease as on the last date for submission of application, is less than 15 years (In some cases the period is short by a few days only)

The OMCs have been adopting hyper-technical interpretation and have been rejecting such applications, giving rise to needless litigation.

The guidelines of 2014 provide for reckoning the 15 years lease period from the date of advertisement.

2. The Hon'ble Minister (P&NG) has therefore desired that the provision of reckoning 15 years lease period from the date of advertisement may be extended to the following cases provided LOI have not been issued to successful candidates.

i) Where during the course of scrutiny of applications, the candidatures have been rejected on account of period of lease being less than 15 years.

ii) Where at the time of FVC, the candidatures are being or have been rejected because tenure of lease being of less than 15 years.

iii) All court cases relating to the above and pending in different judicial courts should be reviewed and appropriate action in accordance with the above direction to be submitted before the various courts.

3. The OMCs are requested to send a Compliance report by 29.01.2015 positively."

19. It is thus seen that hyper technical interpretation adopted by the Oil Companies have come under criticism by their own Ministry and instructions have been issued to review those case where rejections have been made with respect to minor infractions of the conditions stipulated and appropriate actions are to be submitted in various Courts.

20. In the present case, to reiterate the writ petitioner, as daughter-in-law of the house had produced the land leased to her by her own father-in-law. We are unable to comprehend the submission made at the bar by the learned counsel for the appellant that a daughter-in-law is not a member of a family unit. Moreover, Section 47 of the Registration Act would certainly over ride any stipulation made in the guidelines and a stipulation made in the guidelines cannot also be in contravention with the law upheld by the Constitution. Section 47 very clearly holds that the effect of registration would date back to the date of the document. This position of law has been confirmed in Thakur Kishan Singh referred supra.

21. For all the reasons stated above, we hold that the Writ Appeal has no merits and has to suffer an order of dismissal. In the circumstances, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Territory Manager - LPG,
Bharat Petroleum Corporation Limited.,
Peelamedu, Coimbatore - 641 004.

+1cc to M/s.King and Patridge, Advocate, S.R.No.54137

+1cc to Mr.Balan Haridass, Advocate, S.R.No.52962

W.A.No.637 of 2019
And
C.M.P.No.5161 of 2019

SPD(CO)
CS/30/07/2019