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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2019

Pronounced on : 08.01.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.5737 of 2018

and

W.M.P.No.7078 of 2018

D. Subramanian

.. Petitioner

..Vs..

The Bharat Petroleum Corporation Ltd.,
Chennai LPG Bottling Plant, J1-J6,
SIPCOT Industrial Complex,
New Gummidipoondi,
Tamilnadu - 601 201,

Represented by its Territory Manager, Chennai, .. Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the Respondent herein in reference No.:CHN: LPG: DKV: ELANGUNNI dated 12.02.2018 and quash the same and to consequently direct the respondent to allot the LPG Distributorship to the petitioner.

For Petitioner : Mr.Swarnam J. Rajagopalan

For respondent : Mr.Vijayan
for M/s. King & Partridge

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus calling for the records relating to the order passed by the respondent namely, the Bharat Petroleum Corporation Ltd., in reference No.CHN:LPG:DKV:ELANGUNNI dated 12.02.2018 and quash the same and consequently directing the respondent to allot the LPG Distributorship to the petitioner D.Subramanian S/o.G.Dasarathan, resident of Anthanur, Chengam Taluk, Thiruvannamalai District.

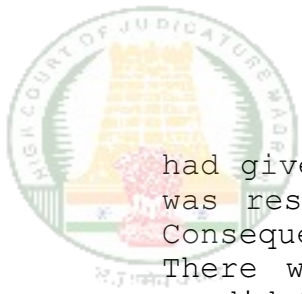
2. It is the case of the petitioner herein that he was an ex-serviceman and worked as a soldier in the Indian Army and had retired and is now receiving pension. The respondent / the Bharat Petroleum Corporation Ltd., had, by advertisement dated



20.08.2017, called for LPG Distributor Selection under ex-servicemen quota for the Village Elangunni, Tiruvannamalai District in the Open Category. The type of dealership was known as DKV (Durgam Kshetriya Vitrak) of which 8% was reserved solely for defense personnel. The petitioner had applied online on 25.09.2017 and had paid a sum of Rs.8,000/- as directed. He claims that he had also spent a substantial sum and had entered into a registered lease deed and had taken an extent of 30 cents on lease towards construction of a godown for the purpose of storing LPG cylinders.

3. It was stated that the lease deed was also registered as Document No.5249/2017 in the Office of the Sub-Registrar, Chengam, Tiruvannamalai District. The petitioner had given his address as No.157, Arasamara Street, Andhanur Village, Pakkiripalayam Post, Chengam Taluk, Tiruvannamalai District. The application was processed and the petitioner was also directed to participate in the draw of lots and it was claimed that he was declared as successful candidate on 28.11.2017 and was also directed to deposit a sum of Rs.40,000/- as deposit for allotment of dealership, which was also deposited by him. It was stated that, he then received a communication dated 12.02.2018 which is impugned before this Court from the respondent stating that his allotment has been rejected for the reason that he has suppressed the fact that he is not residing in Elangunni Gram Panchayat. The petitioner states that he had never claimed that he was actually residing in Elangunni Gram Panchayat and he had never suppressed any information. The respondent had verified his application and therefore had asked him to participate in the draw of lots. The petitioner claimed that though he is not a resident of Elangunni Gram Panchayat, however he is the resident of the concerned sub-division. He also claimed to be a permanent resident in the Taluk and therefore he claimed that he had satisfied the necessary eligibility criteria and was eligible for allotment of LPG dealership. Moreover, he was also an ex-serviceman having served in the Indian Army and further had also invested a substantial sum of money in taking on lease 30 cents of land for construction of godown and had also paid deposit of Rs.40,000/- as directed. Claiming that cancellation of his allotment was erroneous, the petitioner had filed the present writ petition in the nature of Certiorarified Mandamus to call for the records and quash the said order.

4. A counter affidavit had been filed by the respondent stating that applications were to be submitted through online and verification was also done by the system itself. It was stated that there was physical verification of the details provided in the application. It was stated that the petitioner



had given an input 'yes' with respect to the question whether he was residing in the Gram Panchayat of the advertised location. Consequently, he was put in the inter-se priority list No.7. There was another candidate who was also declared as eligible candidate by name A.Anbazhagan. Since there were two candidates, draw of lots was conducted and the petitioner was declared as successful candidate. He was then directed to deposit a sum of Rs.40,000/- which he complied with. Thereafter, the field verification was done and only then, it was found that the petitioner actually was not residing in Elangunni Gram Panchayat and had made a false declaration in his application form.

5. Consequently, in accordance with the terms and conditions provided while filling up such application, the allotment of petitioner was cancelled by order dated 12.02.2018, which is impugned in this writ petition. It was stated that since the information given by the petitioner was in variance with the actual place of his residence, the respondent had every right to cancel the allotment. It was also stated that the other candidate A. Anbazhagan was a resident of the very same Elangunni Gram Panchayat and had also satisfied all other eligibility conditions and also was an ex-serviceman and therefore consequently the cancellation of the allotment was made to the petitioner and the allotment was subsequently granted to the said A. Anbazhagan who also made the requisite deposit and the letter of intent was also issued on 29.06.2018. It was further stated in the counter affidavit that he had also commissioned the LPG dealership on 18.12.2018 and the same is also functioning. It was therefore stated that the writ petition should be dismissed.

6. Heard arguments advanced by Mr.Swarnam J. Rajagopalan, learned counsel for the petitioner and Mr.Vijayan for M/s.King and Partridge, learned counsel for the respondent.

7. The petitioner, as an ex-serviceman, had applied online for LPG Dealership pursuant to the advertisement issued by the respondent for Elangunni Gram Panchayat at Chengam Taluk in Thiruvannamalai District. In this connection, even before examining the rules and conditions thereof, it must be pointed out that one of the conditions precedent was that the candidate who applies, should be a resident of the Gram Panchayat. If there are no candidates who are residents of then Gram Panchayat then, they should at least be residents of the Revenue Sub-Division. If there were more than one candidate who were residing in the Gram Panchayat or in the Revenue Sub-Division then a draw of lots would be done. Eligibility of a candidate about his residence is decided on the basis of the details given



by the candidates himself/herself in the application form. This application form is verified by the system and segregation is made of candidates who are residing in the Gram Panchayat. This segregation is made only on the basis of the declarations given in the application form.

8. Thereafter, if there are more than two candidates as stated above, draw of lots has to be conducted and the successful candidate is directed to deposit the amount requisite for such dealership. On deposit of such amount, a field verification is done. It is only then, for the first time, the particulars of the details as given in the application form are verified. One of the terms and conditions in the application form is that if any wrong detail is provided or if there is misrepresentation or if any false detail is given, then the allotment given would be summarily cancelled. These terms and conditions are accepted by every applicant who also affix their signatures in confirmation of their acceptance. Consequently, at the time of field verification, if it is found that a wrong/false/ misrepresentation of a particular fact is given in the application form, then the applicant has to concede that his allotment is liable to be cancelled. This is all the more to be strictly enforced because if there is another eligible candidate who is waiting in the wings then, that candidate cannot be denied allotment particularly when the successful candidate has given a wrong declaration in his application form.

9. Keeping these guidelines in mind, if the application form of the petitioner herein is examined, it is seen that in his application form he had very clearly stated that his address was No.157, Arasamara street, Anthanur Village, Pakkiripalayam Post, Chengam Taluk, Thiruvannamalai District. The place for which applications were invited was for Elangunni Gram Panchayat. The petitioner was not a resident of Elangunni Gram Panchayat. The petitioner had filed in his typed set of papers a copy of his application form.

10. During the course of hearing the respondent also produced a copy of application form as downloaded from their system. It is pertinent to point out that there are two additional queries in the application form as provided by the respondent which are not found in the application form filed by the petitioner along with the writ petition. These two queries are very vital for determining the fate of this case. They are as follows:

Question No.3 relates to all particulars of applicant and this has sub divisions running from 'a to q'.

(i) Sub division 'a' is the name.



(ii) Sub division 'b' is the father's / Husband name.

(iii) Sub division 'c' is the residence address (Mandatory).

(iv) Sub division 'd' in the application given by the petitioner is Gram Panchayat. Sub division 'd' given in the application form provided by the respondent is whether Gram Panchayat in which applicant resides is the same as the Gram Panchayat of the advertisement location.

(v) Sub division 'e' in the application of the petitioner is of Revenue Sub Division and sub division 'e' in the application provided by the respondents is whether the Sub Division where the applicant's residence is located is the same as the Sub Division of the advertisement location.

(vi) Sub Division 'f' onwards till 'q' are the same in both the application forms. They related to the District, State, Mobile No., Email ID, Aadhaar No., PAN, Indian Citizen, Date of Birth, Marital Status, Name of Spouse, Education and 'q' whether petitioner had been convicted of any criminal offence.

11. For question 3 sub division 'd'; for Gram Panchayat in the application form of the petitioner, the answer is given as Anthanur and for 3 sub division 'e'; for Revenue Sub Division it had been given as Thiruvannamalai. However, in the application forms submitted by the respondent for 3 sub division 'd' the petitioner had given the answer 'yes' which means that he was the resident of the Gram Panchayat of the advertisement location namely, Elangunni. He had also given 'yes' for 3 sub division 'e' which indicates that he was also residing in the same sub division of the advertised location.

12. In a Writ Court, disputed facts can never be adjudicated on the basis of two sets of documents produced by both sides, which vary in a vital information. The Court can never presume that the document produced by one side is true and the document produced by the other side is false. That can be decided only on the basis of evidence. This Court cannot determine the facts as no evidence has let in.

13. However, the inter-se priority list had also been furnished by both the petitioner and respondent. The petitioner had applied for Government Personnel (GP) category under Durgam Kshetriya Vitrak locations. The guidelines as given by the respondent are as follows:

Interse' priority in draw of lots for Durgam Kshetriya Vitrak.

C. Inter se' priority is given in the draw of lots to the eligible applicants for the Durgam Kshetriya Vitrak locations only as per the following order:



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i. Eligible applicants, residing in the concerned Gram Panchayat of the advertised location.
ii. Eligible applicants, residing in the concerned Revenue Sub Division of the advertised location.

iii. Eligible applicants, not residing in the concerned Gram Panchayat or in the concerned Revenue Sub Division of the advertised location.

For Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak the inter se' priority based on residence of candidate in the concerned Gram Panchayat or concerned Revenue Sub Division will not be applicable.

Interse' priority in draw of lots for locations under Government Personnel (GP) categories viz., "GP-SC, GP-ST, GP-OBC and GP-Gen"

Interse' priority are given in the draw of lots to the applicants in case of Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak locations reserved under Government Personnel (GP) categories viz., "GP-SC, GP-ST, GP-OBC and GP-Gen" as per the following order:

i. List 1: Widows / Dependents of Armed Forces (viz., Army, Navy, Air force) or Central Para Military Forces / Central or State Special Forces, those in died while performing their duties.

ii. List 2: Disabled personnel of Armed Forces (viz., Army, Navy, Air force) or Central Para Military Forces / Central or State Special Forces while performing their duties.

iii. List 3: Ex-service man who has served for the Armed Forces.

iv. List 4: Widows/Dependents of personnel of Central/State Governments and Public Sector undertakings who died while performing their duties and such disabled personnel of Central/State Governments and Public Sector undertakings causes attributable to performing of duties.

e. In case there is only one eligible candidate in the Inter se priority list of the higher order as listed above, then that candidate will be considered as single eligible candidate for conducting the FVC. In such cases no Draw among the remaining candidates of the other lists would be required.

f. In case there are two or more eligible candidates in List 1 Draw of Lots will be conducted first from amongst the eligible candidates of



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advertised location in List 1, if any.

g. If there is no eligible candidate in List 1, then draw of lots will be conducted from eligible candidates who fall under List 2, and so on till all four Lists are exhausted for the advertised location."

14. It is the contention of the learned counsel for the petitioner that inter-se priority in draw of lots for Durgam Kshetriya Vitrak is different for inter-se priority in draw of lots for locations under Government personnel category. This contention of the petitioner cannot be accepted. The locations are Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and finally Durgam Kshetriya Vitrak. The definition of these locations have been provided in the guidelines as given by the respondent. Sheheri Vitrak would relate to LPG distributorship located in urban area. As the area denotes, it is for a large area and therefore residence in a particular Gram Panchayat or in the particular Revenue Sub Division cannot be enforced. Rurban Vitrak would relate to LPG Distributorship for rural area for covering all villages falling within 15 Kms from the municipal limits. Again there cannot be a specific insistence that the applicant should reside within a particular Gram Panchayat or within a particular Revenue Sub Division. It would be sufficient if he is a resident in anyone of the 15 villages.

15. Gramin Vitrak would indicate LPG Distributorship located in rural area covering all villages falling within 15 KMS from the boundary limits of the LPG distributorship location. This again cannot restrict an applicant to reside within a particular Gram Panchayat or a particular Revenue Sub Division. He can be a resident of any one of the 15 villages.

16. Durgam Kshetriya Vitrak on the other hand is area / village, specific. It is meant for LPG distributorship in difficult and special areas like hilly regions, Forest areas, Tribal inhabited areas, sparsely populated, disturbed area, islands, Left Wing Extremism (LWE) affected area. Here there must be an insistence that the applicant must reside within the particular Gram Panchayat and if not atleast within the Revenue Sub Division. Therefore if an applicant resides within the particular Gram Panchayat then he could get a preference over the applicant who resides in a Revenue Sub Division.

17. In the instant case, the petitioner had specifically stated that he resides in the same area as the Gram Panchayat of



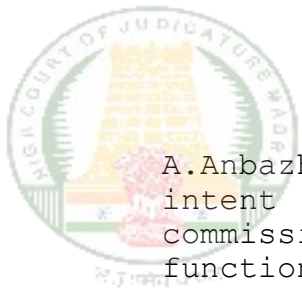
Elangunni. Naturally the computer system therefore short listed his name as a defense personnel and as a resident of the Gram Panchayat. There was also another candidate who had fulfilled the same condition, namely, A. Anbazhagan. Since, there were two candidates, a draw of lots was conducted. The petitioner came out successful in the draw of lots. On field verification, it was found that he was not a resident of the Gram Panchayat of Elangunni but a resident of another neighbouring Gram Panchayat i.e., Anthanur. If this fact had been correctly given by him in his application form then he would not have been placed in competition with A. Anbazhagan who was a resident of Elangunni Village.

18. The petitioner has to fall or to stand on his own declaration. The fact that the said column is not available in the application form submitted by the petitioner cannot come to the rescue of the petitioner. As stated, this Court cannot determine facts particularly when documents are submitted in the form of typed set. The petitioner has not alleged malafidee on the part of the respondent when they produced the application form of the petitioner herein, wherein he had very specifically stated that he was a resident of the Gram Panchayat of Elangunni Village. In the application form among various other covenants and declarations, the first declaration itself is as follows:

"I am aware that eligibility for LPG distributorship will be decided based on the information provided by me in my application. On verification by the Oil Company if it is found that the information provided by me is incorrect/false/misrepresented then my candidature will stand cancelled and I will be declared ineligible for LPG Distributorship."

19. In matters where a selection has to be done on the basis of declarations given in an application form, a strict interpretation of the rule of law has to be applied. There cannot be any empathy or sympathy for a person who does not confirm to the requirements of the application for which he applies.

20. In the present case, there is another ex-serviceman namely, A. Anbazhagan who was resident of Elangunni Gram Panchayat and who was also found to be an actual resident of Elangunni Gram Panchayat. Therefore, the petitioner cannot claim any special consideration on the ground that he is an ex-serviceman because A. Anbazhagan is also an ex-serviceman. The further facts that in the counter affidavit that on field verification, it was found that the details provided by



A.Anbazhagan were true and correct and consequently, letter of intent was also issued on 26.09.2018 and he had also commissioned the LPG distributorship and had commenced functioning from 18.12.2018 are also very significant.

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21. The counter affidavit was dated 20.09.2019 and was presented in open Court on 25.09.2019. Thereafter, there have been several hearing dates. The petitioner had not thought it fit to amend the relief sought in the Writ Petition and to question the grant of allotment to A.Anbazhagan. He had also not made A.Anbazhagan as a party to the Writ Petition. Even if the prayer of the petitioner is considered, the Court cannot grant the relief sought since, the distributorship has already been granted to A.Anbazhagan who is not before this Court and no order can be passed against a party who is not a party in the proceedings in this Court. That would cause great injustice to the said A.Anbazhagan. The petitioner had not come forward with any reason as to why, even after being put on notice that LPG distributorship was granted to A.Anbazhagan, even as early as on 29.06.2018, and the distributorship has also been functioning from 18.12.2018, he had not voluntarily impleaded A.Anbazhagan as a party to the Writ Petition and had not voluntarily amended the relief sought.

22. Consequently, on all these grounds of non-disclosure of correct information relating to the residence in the Gram Panchayat of Elangunni, non-impleading of A.Anbazhagan as a party / respondent and in not seeking a relief to strike down the distributorship already granted to A.Anbazhagan, this Court cannot come to the rescue of the petitioner herein. A further perusal of the guidelines as provided by the petitioner reveals that if there are any complaints or grievances, the respondent had commissioned a Complaint Redressal System and a deposit of Rs.5,000/- have to be paid and a complaint would have to be given. A complaint can also been given against the selected candidate. The petitioner had not taken recourse to any of such alternate remedies.

23. In view of all these facts, I am not inclined to entertain the Writ Petition and therefore the Writ Petition is dismissed. No orders as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



To

The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Chennai LPG Bottling Plant, J1-J6,
SIPCOT Industrial Complex,
New Gummidipoondi,
Chennai.
Tamilnadu - 601 201.

+1 cc to M/s.King & Patridge, Advocate Sr.No.1876

+1 cc to M/s.Swarnam J.Rajagopalan, Advocate Sr.No. 1726

AKM/08.01.2020/10P- 4C /

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