

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

Judgment Reserved On 08.04.2019	Judgment Pronounced On 22.04.2019
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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.1277 of 2019
and
C.M.P.No.8698 of 2019

The Deputy General Manager (LPG-Sales),
Indian Oil Corporation Ltd.,
Indane Chennai Area Office,
No.500, Anna Salai, Teynampet,
Chennai-600 018.

.. Appellant/Respondent

-vs-

M.C.Meyyappan @ Manickam,
S/o.M.Chockalingam.

.. Respondent/Petitioner

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 21.03.2019 made in Writ Petition No.19360 of 2018 on the file of this Court, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in Ref. No.IOC 4112078027042018 dated 24.07.2018 and quash the same and consequentially direct the respondent to accept the petitioners lease deed and Rectification Deed dated 23.04.2018 & 06.07.2018 respectively.

For Appellant : Mr.M.S.Krishnan, Senior Counsel
assisted by
Mr.Mohammed Fayaz Ali

For Respondent : Mr.L.Chandrakumar, for
Mr.P.Krishnan

JUDGMENT

T.S.Sivagnanam, J.

This appeal, by the Indian Oil Corporation Limited, is directed against the order dated 21.03.2019 in Writ Petition No.19360 of 2018 filed by the respondent herein.

2.The prayer sought for in the writ petition was to quash the proceedings of the appellant dated 24.07.2018, and for a direction to accept the respondent/petitioner's Lease Deed dated 23.04.2018, and Rectification Deed dated 06.07.2018, for the purpose of award of LPG Distributorship to the respondent/petitioner.

3.The controversy involved in this writ appeal lies in a very narrow compass. The respondent applied for grant of LPG Distributorship at Pammal, Kancheepuram District, by application dated 27.04.2018. The respondent was informed, vide letter dated 04.06.2018, that he has been qualified for online computerized draw of lots for selection of LPG Distributorship at the subject location and he was requested to be personally present for the draw to be held on 13.06.2018 at 14:15 hours. By letter dated 14.06.2018, the respondent was informed that he has been declared as a successful candidate in the draw of lots conducted on 13.06.2018, and was requested to produce documents and other records as mentioned in the said communication, pursuant to which, the respondent is stated to have submitted all the requisite documents. By communication dated 28.06.2018, the appellant informed the respondent that upon field verification of the information submitted by him in his application, the following variance was observed:-

"The lease agreement for showroom is not in line with Unified Guidelines for Selection of LPG Distributorship - June' 17. As per the registered Doc no 2645 of 2018 the lease period have been executed for 11 (eleven) months. As per Unified Guidelines for Selection of LPG Distributorship - June' 17, the registered lease should be valid for minimum period of 15 years from the date of advertisement."

The respondent was requested to offer an alternate land for the showroom as specified in the advertisement dated 28.03.2018. The respondent was given time till 06.07.2018 to offer the alternate land failing which, his application will be rejected and the amount of Rs.50,000/- deposited with the appellant will be forfeited in terms of the Brochure on Unified Guidelines for Selection of LPG Distributors Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriay Vitrak June - 2017

(hereinafter referred to as "the brochure"). The respondent submitted a representation dated 06.07.2018 stating that the lease deed dated 23.04.2018, which was furnished by him along with the application, was intended to be a fifteen years lease but, due to oversight, it had been typed as eleven months, instead of fifteen years and for rectification of the same, a document has been submitted and the matter is pending registration before the Sub Registrar, Pammal, and requested for two weeks' time.

4.The respondent approached this Court and filed a writ petition in W.P.No.17110 of 2018 praying for a direction upon the Sub Registrar, Pammal, to register the rectification deed dated 05.07.2018 and consequently, direct the appellant, who was the 3rd respondent in the writ petition to extend the period to submit the lease deed. On 09.07.2018, the writ petition was disposed of by directing the respondent to submit the rectification deed dated 05.07.2018 to the appellant herein and on receipt of the same, the appellant was directed to consider the claim of the respondent within a specified time on merits, on the ground that the respondent has succeeded in the draw of lots. The rectification deed though mentioned as 05.07.2018, in the photostat copy of the document filed in the typed set of papers, the date is 06.07.2018 registered as Document No.4709 of 2018 on 06.07.2018. After the writ petition was disposed of, the respondent submitted a representation dated 19.07.2018 enclosing relevant documents as well as the lease deed dated 23.04.2018, rectification deed dated 06.07.2018 and a copy of the order in W.P.No.17110 of 2018. The appellant by communication dated 24.07.2018 declined to accept the rectification deed by referring to the brochure which states that as on the date of the notification and until the last date of submission of applications, the candidates should own or have a deed evidencing lease for a period of fifteen years in the advertised location and admittedly, the respondent produced a deed only for a period of eleven months.

5.Considering the stand taken by the respondent that it was an inadvertent error, the appellant stated that the guidelines have to be strictly adhered to and if any leverage or consideration is extended to the respondent, other applicants who have complied with the guidelines will be seriously prejudiced. Further, the respondent was informed that the guidelines are put in place and are followed scrupulously in order to maintain transparency and fair play during the selection process. Thus, the lease deed dated 23.04.2018 and the rectification deed dated 04.07.2018 were held not to conform to the guidelines/brochure. This communication dated 24.07.2018 was impugned in the writ petition.

6.The learned Single Bench allowed the writ petition primarily on two grounds. Firstly, on the ground that in the earlier writ petition, viz., W.P.No.17110 of 2018, the Court held that there will not be any impediment for the appellant herein (3rd respondent therein) to accept the rectification deed dated 05.07.2018 and when there was such a direction, the respondent could not have passed the impugned communication.

7.The learned Writ Court while interpreting the word "accept", held that it does not only mean "receive" and the appellant was not entitled to reject the same. Secondly, the learned Writ Court held that pursuant to the rectification deed, the lease is for fifteen years and such rectification should be reckoned as per the date of the original lease. With this reasoning, direction was issued to the appellant to take into consideration the lease deed dated 23.04.2018 and the rectification deed dated 06.07.2018 and pass appropriate orders on the subject matter Distributorship to the respondent within a time frame. Thus, we are called upon to decide as to whether the order and direction issued in the writ petition to accept the rectification deed was right and whether the stand taken by the appellant was justified or not. The second aspect is as to whether the rectification deed dated 06.07.2018 should be accepted by the appellant on the ground that the rectification will date back to the date of the original lease deed dated 23.04.2018.

8.We have heard Mr.M.S.Krishnan, learned Senior Counsel assisted by Mr.Mohammed Fayas Ali, learned counsel for the appellant; and Mr.L.Chandrakumar, learned Senior Counsel assisted by Mr.P.Krishnan, learned counsel for the respondent.

9.Before we venture into the factual thicket, we need to take note of the legal position as to how and in what manner the clauses in the guidelines/brochure are to be interpreted. In this regard, we are guided by the recent decision of the Hon'ble Supreme Court in the case of Bharat Petroleum Corporation Ltd. & Ors. (BPCL) vs. Swapnil Singh [Civil Appeal Nos.6928-6929 of 2015, dated 08.09.2015]. In the said case BPCL invited application for selection of regular LPG Distributorship by a brochure issued in April, 2011. Eligibility criterion for individual applicants is mentioned in paragraph 7(vi) of the brochure requires the applicant to own a plot of land of adequate size within 15 kilometres from the municipal/town/village limits of the location offered in the same State for construction of godown for storage of 8000 kg of LPG in cylinders or ready LPG cylinder storage godown as on the date of application. In paragraph 7 of the brochure, the term "own" was defined to mean having ownership title of the property or registered lease agreement for minimum fifteen years in the

name of the applicant/family member as defined in multiple distributorship norm of eligibility criteria. The respondent therein submitted an application dated 13.09.2011 and in column no.9 of the application, the date of registration of the deed was mentioned as 13.09.2011. The application was processed and draw of lots were held in which, the respondent therein was found to be successful. Thereafter, in February, 2013, a field verification was done to verify as to whether the respondent therein actually was the owner of the land or a lease holder as required by the brochure. During the process of field verification, it came to the knowledge of BPCL that the respondent therein had entered into the lease agreement on 20.12.2012, for a period of fifteen years and the lease agreement was registered only on 21.12.2012, in other words, the respondent therein did not have a registered lease deed on the date of application, i.e., 13.09.2011. In view of the same, BPCL cancelled the allotment. Aggrieved over which, writ petition was filed before the Calcutta High Court which was dismissed by the learned Single Bench, as against which, the respondent therein filed appeal before the Division Bench which allowed the appeal. Challenging the said judgment, BPCL filed appeal before the Hon'ble Supreme Court which was allowed by order dated 08.09.2015 and the operative portion of the order reads as follows:-

"We have gone through the records of the case along with the assistance of learned counsel for the parties and we find that the brochure read with the application form is absolutely clear in the sense that the applicant must be the owner of the specified area of land or must have a registered lease deed of the specified area of land on the date of application. The admitted position (which is also clear from the counter affidavit filed by the respondent in this Court) is that on 13th September, 2011 when the application for allotment was made, the respondent was neither the owner of any land or had any registered sale deed/lease deed in her name. In fact, the lease deed came into existence only on 20th December, 2012 and that was registered on 21st December, 2012. clearly, on the date of the application, the respondent was not eligible in terms of the brochure and the application form.

The Calcutta High court has proceeded on the basis of a notarized lease agreement which appears to have been produced by the respondent before the High court. A photocopy of the notarized lease agreement has been shown to us and that document is dated 13th September, 2011. Learned counsel for the respondent has relied upon this document to

contend that the respondent was eligible as on 13th September, 2011 in terms of the notarized lease agreement.

We are unable to accept this contention of learned counsel for the respondent. The brochure and the application form clearly require the applicant to have a registered lease deed in her name. What is shown to us is a notarized document and admittedly this document, even though it may have been in existence, was formalised into a lease agreement only on 20th December, 2012 and that was registered on 21st December, 2012. the notarized document, therefore, does not advance the case of the respondent any further. Therefore, it is quite clear that the respondent was not eligible on the date of application, i.e., 13th September, 2011.

Under the circumstances, we allow these appeals and set aside the order passed by the Division Bench of the Calcutta High Court."

10. The legal principle culled out from the above decision is that the dates fixed in the brochure/guidelines were sacrosanct and producing a notarized lease deed instead of a registered lease deed, does not meet the eligibility criteria. This decision is required to be borne in mind to understand the importance of the various terms and conditions mentioned in the brochure/guidelines. The respondent has accepted the conditions and applied for grant of LPG Distributorship and he cannot risile from the conditions/stipulations contained therein. Undoubtedly, in the matter of award of contracts/dealerships/distributorships, the Court can examine as to whether there is any error in the decision-making process and cannot substitute the decision taken, unless it is established that the decision was vitiated on account of fraud, mis-statement or for any other mala fide reasons.

11. Chapter 9 of the guidelines deals with 'eligibility criteria'. Under the said chapter, Clause (o) deals with 'eligibility criteria for provision of land for showroom/read built showroom'. In sub-Clause (i) of Clause (o), one of the conditions is that the applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of fifteen years from the date of advertisement. Thus, a lease deed will be considered, if it is a registered lease deed commencing on any date prior to the date of the advertisement provided the lease is valid for a minimum period of fifteen years from the date of advertisement.

12.Clause 9.1.2 deals with 'opportunity to offer land for godown and / or showroom'. The said condition states that in case if the offered land for godown and / or offered land for showroom by the selected candidate which is shown in the application is not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/ application at the verification (FVC) stage, then the selected candidate can offer an alternate land. This offer is conditional because, such alternate land should be owned by the applicant/member of the Family Unit/Parents, Grandparents, Brother/Sister, Son/Daughter, Son-in-law / Daughter-in-law (all inclusive definition) of the applicant or the spouse in the case of married applicant as on the last date for submission of applications as specified either in the advertisement or corrigendum if any. Therefore, the reliance placed by the respondent on clause 9.1.2 will not be of any assistance to them because, the said clause permits the selected candidate to offer an alternate land which is owned by the applicant or the member of the family as described therein. That apart, the ownership of the said land by the applicant or the member of the family should be on the last date for submission of the application as specified in the advertisement. Therefore, an applicant, whose land which was offered for showroom and found not meeting the eligibility conditions, cannot substitute the said land by a land owned by a third party other than owned by the persons mentioned in Clause 9.1.2.

13.The respondent is deemed to be fully aware of all the terms and conditions. Despite that being the position, while submitting his application in column no.5, he had given the date of lease deed as 23.04.2018 along with the document number. Column 5 of the application clearly states that the land should be owned or leased for minimum fifteen years. Having submitted the application fully knowing well that the mandatory condition is fifteen years lease, the applicant could not have filed a document with eleven months lease period to state that it satisfies the requirement in column 5 of the application. Therefore, the appellant was right in stating that the respondent had filed an incorrect declaration and in terms of clause 6 of the application, the application is liable to be rejected, as it is in violation of the solemn declaration given by the applicant.

14.The learned Single Bench held that the directions issued in W.P.No.17110 of 2018 binds the appellant and it is a positive direction. However, we do not agree with the said finding with the following reasons. The prayer in the writ petition was directed against the Sub Registrar, Pammal, to register the

rectification deed. The prayer against the appellant who was the 3rd respondent in the writ petition, was only to extend the period for submission of the rectification deed after registration process is completed. Thus, no relief was sought for against the appellant to accept the rectification deed and grant LPG Distributorship to the respondent. This writ petition had been filed much prior to the registration of the rectification deed. In fact, the respondent came to Court alleging that the Sub Registrar, Pammal, was not registering the rectification deed and delaying the matter, therefore, he should be directed to do so. Thus, the learned Writ Court could have granted relief only to that extent and anything beyond the same has to be considered as only the observations of the Court and no positive direction can be read into those observations.

15. In paragraph 4 of the order dated 09.07.2018, the Court held that it finds no impediment to direct the appellant (3rd respondent) to accept the rectification deed dated 05.07.2018. The learned Single Bench has interpreted the word "accept" to mean that the appellant is not entitled to reject the respondent's application. However, on a reading of paragraph 5 of the said order dated 09.07.2018, a clear picture emerges that the Court permitted the respondent to file the rectification deed before the appellant and on receipt of the same, the appellant to consider the claim on merits.

16. Thus, for the above reasons, we hold that the scope of the earlier writ petition in W.P.No.17110 of 2018 was entirely different and the Court never intended to issue any positive direction to the appellant to accept the rectification deed and consequently, grant LPG Distributorship. The Court having directed a decision to be taken by the appellant on merits, it goes without saying that the appellant is entitled to take a stand as mentioned in the communication dated 24.07.2017, which was impugned in the writ petition. Therefore, the finding rendered by the learned Writ Court in the impugned order requires to be set aside.

17. By placing reliance on the decision of the Hon'ble Supreme Court in *Ittiamam And Others vs. Cherichi Alias Padmini* reported in (2010) 8 SCC 612, it was argued by Mr.L.Chandrakumar, learned Senior Counsel that the date of rectification would date back to the date of the original lease deed. In the said case, one of the arguments was that title to the described property operates from the date of execution and not from the date of registration of document and in the facts of the said case, the Court interpreted Section 47 of the

Registration Act, 1908 and held that sale deed having been registered on 08.05.1967, the title reverts back to the date of execution of the sale deed on 02.05.1967 under Section 47 of the Registration Act. This decision can have no application to the facts of this case, as the respondent was bound by the terms and conditions mentioned in the brochure/guidelines/advertisement/application.

18.As rightly pointed out by Mr.M.S.Krishnan, learned Senior Counsel, the respondent was fully aware that the lease deed requires to be registered and if that is the factual position, we cannot accept the plea of the respondent that by inadvertence, he had placed a registered lease deed of eleven months duration. An argument was advanced by Mr.L.Chandrakumar, learned Senior Counsel by referring to Clause 14 of the registered lease deed dated 23.04.2018. We find that this Clause can in no manner advance the case of the respondent, as it states that the lease agreement may be renewed for a further period of 5 to 15 years on such terms and conditions which both the parties may mutually agree whereas, Clause 2 of the lease deed clearly states that the period of lease is eleven months commencing from 17.04.2018. The lease agreement has been drafted by an Advocate. Admittedly, an eleven month lease is not compulsorily registered, yet the respondent registered the document. Therefore, we reject the plea of the respondent that due to inadvertence, they had registered an eleven-month lease. In view of the said finding, it has to be held that the respondent had violated the solemn declaration given by him in column 6 of the application dated 27.04.2018.

19.For all the above reasons, the order and direction issued by the learned Writ Court calls for interference.

20.In the result, the writ appeal is allowed, the order passed in the writ petition is set aside and consequently, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

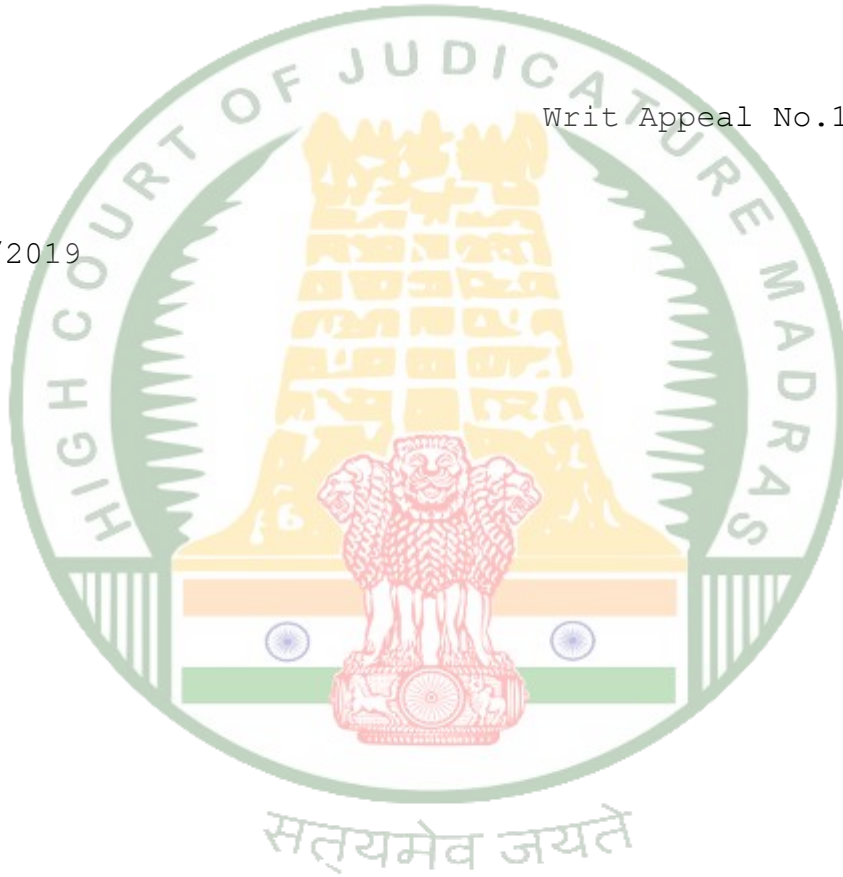
To

The Deputy General Manager (LPG-Sales),
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+lcc to Mr.Mohamed Fayaz Ali, Advocate Sr.38706
+lcc to Mr.P.Krishnan, Advocate Sr.38956

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