

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.31708 of 2016
and W.M.P.Nos.27524 and 27515 of 2016

V.Gowtham

.. Petitioner

Vs.

1. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Kochi Regional Office,
Seaport-Airport Road,
Irumpnam Post, Kochi 682 309.

2. The Joint Director of Explosives,
Shastri Bhavan,
Haddows Road,
Nungambakkam, Chennai 600 034.

3. R.S.Sowmya

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent herein pertaining to the proceeding of the draw for selection of LPG Distributorship dated 13.07.2016 for Tiruppur (Nallur) Location and consequential selection of the third respondent as illegal and quash the same and consequently direct the first respondent to conduct the fresh lots of draw.

For Petitioner : Mr.K.Rajendraprasad

For Respondent-1: Mr.M.Vijayan

for M//s.King and Patridge

For Respondent-2: Served-No Appearance

For Respondent -3: Mr.N.Manokaran

O R D E R

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent herein pertaining to the proceeding of the draw for selection of LPG Distributorship dated 13.07.2016 for Tiruppur (Nallur) Location and consequential selection of the

third respondent as illegal and quash the same and consequently to direct the first respondent to conduct the fresh lots of draw.

2. It is the case of the petitioner that he had applied for Distributorship of the Liquefied Petroleum Gas Cylinders (in short "LPG") in Ward No.38 (Nallur), Tiruppur Town. The first respondent had called for advertisement for the LPG Distributorship on 21.09.2013. As per the conditions, an applicant has to own or possess a land by means of a lease of not less than 15 years, with an extent of 3 meters by 4.5 meters in the concerned location. This is one of the conditions an applicant has to be complied with.

3. The third respondent, who is one of the applicants seeking distributorship of LPG, has been issued with a Letter of Intent by the first respondent and according to the petitioner, she did not possess the land as prescribed in the terms and conditions of brochure and hence she is not an eligible candidate to be appointed as distributor. The procedure for selection of the applicant is by means of draw of lots from among the eligible applicants. The cut off date for the application was on 22.10.2013.

4. According to the petitioner, he was one among the eligible applicants for the allotment. On 13.07.2016, the draw of lots was scheduled and the same was informed by letter dated 11.07.2016. The third respondent was selected as a distributor for the relevant area by drawing the lots. The contention of the petitioner is that the third respondent did not have any land either owned by her or by way of lease, though Clause 6 (viii) of the brochure specifies that an applicant should own minimum extent of 3 meters by 4.5 meters of land for the show room space for the distributorship. It is alleged that the third respondent had produced a Lease Deed for the land in Survey No.186/1C, Nallur Village, Tiruppur in support of the application. However, it is stated that the said land is not within the Tiruppur City Municipal Corporation or in RVE Nagar, which is situated in Ward No.39. Hence, it is alleged that she was an ineligible candidate even on the date of the application.

5. It is further stated by the petitioner that though the third respondent had a valid lease deed dated 10.10.2013, subsequently she cancelled the same on 28.05.2015. However, she was selected as a distributor on 13.07.2016. On coming to know of the same, the petitioner had submitted his objections on 14.07.2016 and also enclosed a Demand draft for a sum of Rs.1,000/- for lodging a complaint. The said objection was acknowledged by the first respondent, for which, a reply was also sent to the petitioner on 01.08.2016. The petitioner is only challenging the said drawal of lots and selection of the

third respondent as the distributor, when she did not have any valid Lease Deed for the required extent of land as per Clause 6 (viii) of the conditions. However, the petitioner has not challenged the Letter of Intent.

6. It is also assailed by the petitioner that the selection of the third respondent is against the principles laid down by the first respondent-Oil Company and the same is ultra vires. As it is alleged that the third respondent had furnished a false information, the award of Letter of Intent in her favour is bad.

7. The first respondent-Oil Company had filed its counter and submitted that after the advertisement, 54 applicants were shortlisted as eligible candidates and 14 applicants were found ineligible candidates. They had also displayed the names of the eligible and ineligible applicants on the website and also on the notice board of the first respondent. The qualified applicants were also informed about the draw on 29.06.2016 and the same was published on 11.07.2016 in English and Vernacular Dailies. The draw was held on 13.07.2016 and the third respondent was declared as selected candidate. The third respondent had specified the land in Survey No.186/1C, Nallur Village in the application and also got the land for lease for a period of 15 years. The location of the site provided for show room was also as per the application norms. Thereafter, vide representation dated 22.07.2016, the third respondent was permitted to change the location of show room to a new location in S.F.No.252/1A in Nallur Village, Tiruppur District, which was also taken for lease for a period of 15 years. The third respondent had cancelled the lease with regard to the property initially mentioned in the application form and the same was intimated to the first respondent vide her representation dated 22.07.2016 stating that there was an inordinate delay in selection process.

8. It is further stated by the first respondent that in an earlier situation, a similar issue was deliberated at Oil Industry meeting consisting of Hindustan Petroleum Corporation Ltd., Indian Oil Corporation Ltd and Bharat Petroleum Corporation Ltd., and a clarification was issued by the Deputy Secretary LPG, Government of India, Ministry and Petroleum and Natural Gas by Indian Oil Corporation Ltd, vide letter dated 09.06.2016, which is as follows.

"Industry is of the opinion that in all such cases wherein the selected candidates have either sold off the land or have cancelled the lease, an opportunity should be provided to the selected candidate to offer the alternate land and the same should be accepted even if the same is registered

after the date of application. The above is being conveyed to the field for uniform implemented by all the industry members. The above issue was also discussed during the recent meeting held on 27.05.2016."

9. Based on the above said clarification, the request of the third respondent was accepted by the first respondent. Accordingly on 23.07.2016, a letter was sent to the third respondent to provide for alternate land and the third respondent had registered an existing showroom vide Lease Deed dated 27.07.2016. The same was accepted by the first respondent after verification of the eligibility criteria with respect to the dimensions, approach road, suitability of the land and the lease period. It is stated that as the alternate land provided by the third respondent was in conformity with the clauses mentioned in the brochure of allotment, the third respondent was selected and the same was intimated to the petitioner also on 01.08.2016. As there is no infirmity or illegality in the procedure for the allotment of the distributorship, the first respondent prayed for dismissal of the writ.

10. The third respondent, being the successfully selected distributor, had also filed a counter affidavit stating that the selection process had been stalled in view of several litigations pending before this Court by way of Writ Petitions. The said Writ Petitions were disposed of and S.L.P.No.4634 of 2015 etc. were filed before the Hon'ble Supreme Court. The change of land was also duly informed to the first respondent explaining the reasons for the same and the decision was accepted by the first respondent. It is stated that the change of place for showroom intimated by the third respondent was also within the notified area and the first respondent, after verification and also being satisfied with the new location, issued the Letter of Intent dated 02.08.2016. As the drawal of lot was done in a most transparent and fair manner, she prayed for dismissal of the Writ Petition.

11. The only question that has to be decided is as to whether the draw for selection of LPG distributorship dated 13.07.2016 for Tiruppur (Nallur) location and the consequential selection of the third respondent is correct.

12. From the above facts, it is clear that at the time of submitting the application, the third respondent had identified the show room land in S.F.No.186/1C in Nallur Village and had valid lease for 15 years. The third respondent was found to be an eligible candidate for distributorship only after the field verification by the authorities. However, after the third respondent was selected, she had substituted a land in

S.F.No.252/1A in Nallur Village, Tiruppur District, as she had cancelled the earlier lease deed, in view of the enormous delay in selection process.

13. The learned counsel for the petitioner placed his reliance on the decision of the Division Bench of this Court in W.A.No.349 of 2017 dated 09.11.2017 (Bharat Petroleum Corporation Ltd., -Vs- S.Raja Rajeswari) following the judgment in Bharat Petroleum Corporation Ltd., vs. Swapnil Singh, wherein, the Hon'ble Supreme Court has held that when the lease deed came into existence only subsequent to the drawal of the lot, it is not in conformity with the conditions, as the applicant was not in possession of the required land on the date of her application. The Hon'ble Supreme Court allowed the appeal filed by the Petroleum Corporation and set aside the order passed by the Division Bench on the ground that the candidate was not in possession of the required land as on the date on which she made the application.

14. However, in this case, on the date of application, the third respondent had a valid lease of the land with the prescribed dimension. Because of the delay in allotment, it was cancelled by her and immediately, after she was selected, she had taken another substituted land in the same locality of the same dimension in compliance with the conditions. The same was duly intimated to the first respondent Oil-Company. Therefore, it cannot be stated that the third respondent had furnished a false fact.

15. The learned counsel appearing for the third respondent placed his reliance on the decision in K.VINOD KUMAR vs. S.PALANISAMY AND OTHERS [2003 (10) SCC 681] wherein, the Hon'ble Apex Court has observed in paragraphs 8 and 10 as follows:-

"8. So far as the requirement of instruction (g) as stated above is concerned, it does not appear to be mandatory. The purpose of furnishing particulars of land in the application is to enable a determination as to whether the specific place would accommodate the godown facilities and distributorship arrangements from a commercial angle. This requirement is mandatory but satisfying the requirement at the stage of making the application is only directory. The particulars of such land can be made available even subsequent to the filing of the application, and may even be subsequent to the selection. The consequence of failure to make the suitable land available within a period of two months from the date of selection is that the selection of such candidate would be liable to be cancelled.

10. It is clear that in spite of having been selected, the appellant was granted four months' time by the employer Corporation for identifying a suitable plot of land and having the same approved by the employer. If availability or identification of the land would have been a pre-condition to the filing of the application itself, BPCL, by its letter dated January 5, 2001, would not have given the appellant an opportunity for the same, nor would it have allowed him four months' time for the purpose.

16. Reliance was also placed on the decision reported in 2005 (9) SCC 779 (Dolly Chhanda -vs- Chairman, Jee and Others), wherein, in paragraph 8, the Hon'ble Apex Court held as follows :

8. This principle was explained and applied in Charles K. Skaria & Ors. v. Dr. C. Mathew & Ors. 1980 (2) SCC 752. The controversy here related to admission to a post graduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or sub-specialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The Prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to post graduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below :

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different

from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider

perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices".

17. As a general rule, while applying for distributorship, the applicant has to possess the prescribed extent of land at the advertised location or locality as specified in the advertisement and there can be no relaxation in this regard (i.e) in the matter of holding the necessary land, the same has to be established only by producing the necessary lease deed or sale deed in case of the owner. Depending upon the facts of the 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 to the domain of procedure.

18. In the instant case, it is specifically stated by the third respondent that in view of the delay in the selection process, she was forced to cancel the lease deed mentioned in the application form. However, she was able to get another land as per the brochure conditions in the same village, which was also accepted by the first respondent. In fact, the Oil Companies had also deliberated on this issue and it was decided to accept any alternate land that may be offered by a candidate in certain conditions. Therefore, every infraction of the rule relating to submission of proof need not necessarily result in rejection of the candidature.

19. It is not the case of the petitioner that the land provided by the third respondent is not in compliance with the advertisement conditions. Even otherwise also, the third respondent is an eligible candidate. Therefore, this Court is of the view that no interference is called for in the decision making process of the first respondent and interfere with the decision taken by the first respondent in allotting the Letter of Intent to the third respondent.

20. In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Srn

To

1. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Kochi Regional Office,
Seaport-Airport Road,
Irumpnam Post, Kochi 682 309.

2. The Joint Director of Explosives,
Shastri Bhavan,
Haddows Road,
Nungambakkam, Chennai 600 034.

+1cc to Mr.K.Rajendra Prasad, Advocate, S.R.No. 12502
+1cc to Mr.King and Partridge, Advocate, S.R.No. 12777

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and W.M.P.Nos.27524 and 27515 of 2016

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