

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2874/2018

V.Renuka Devi

..Appellant / Writ Petitioner

Versus

1 Indian Oil Corporation Ltd.,
rep.by its Senior Area Manager
Indane Area Office, 500,
Anna Salai, Teynampet,
Chennai 600 018.

2 Mr.K.Tamizharasan ... Respondents / Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 20.07.2018 passed in WP.No.10598/2017.

WP.No.10598/2017 :Writ of certiorarified mandamus, calling for
the records of the respondent issued in his proceedings in Ref.
No. CHAO/KPIK/021 dt 15.4.2017 and quash the same as illegal and
consequently direct the respondent to grant the LPG
Distributorship License to the petitioner for Kanchipuram
(Iyangarkulam) as per the advertisement dt 21.9.2013.

For Appellant : Mr.K.Sasindran

For R1 : Mr.Abdul Saleem

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JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal
and is disposed of by this judgment. Mr.Abdul Saleem, learned
counsel appears on behalf of the 1st respondent.

2 The appellant in this writ appeal is the writ petitioner and she applied for Liquid Petroleum Gas [LPG] Distributorship License for Kanchipuram [Iyangarkulam] in terms of the Advertisement dated 21.09.2013 issued by the 1st respondent and the said application for Distributorship came to be rejected vide impugned order of the 1st respondent dated 15.04.2017 on certain grounds and challenging the legality of the same, she filed WP.No.10598/2017. The writ petition, after contest, came to be dismissed on 20.07.2018 and aggrieved by the dismissal of the writ petition, the appellant/writ petitioner came forward to file the present writ appeal.

3 It is the case of the appellant/writ petitioner that she belongs to Scheduled Caste Community and had completed B.E. [C.S.E] Degree course in the year 2008 and she was awaiting for good opportunity to do her own business. The appellant/writ petitioner would further aver that she came across an advertisement issued by the 1st respondent on 21.09.2013 which came to be published in various news dailies, inviting applications for appointment of LPG Distributorship under various categories at different locations in the State of Tamil Nadu and Sl.No.161 of the Notification pertains to Kanchipuram [Iyangarkulam] which was reserved for SC Category. The appellant/writ petitioner having found that she fulfills all the eligible norms and criteria, submitted an application on 22.10.2013, applying for LPG Distributorship for the above said area and along with the said application, enclosed all necessary documents along with Demand Draft for a sum of Rs.500/- towards non-refundable fee for processing the application.

4 The 1st respondent sent a communication on 14.07.2016, informing her that she has been qualified for draw selection of LPG Distributorship and she was asked to be present in person for the draw to be held on 27.07.2016 at their office. The appellant/writ petitioner did appear in person and she was declared as the selected candidate during the draw and accordingly, the 1st respondent has sent a letter dated 02.08.2016, calling upon her to deposit a sum of Rs.25,000/- in their favour within the stipulated time and she has also paid the same.

5 The appellant/writ petitioner would further aver that one of the conditions was that she should have maintained a minimum balance/fund of Rs.2,50,000/- in the Bank Account on the last date of submission of the application on 22.10.2013 and in fact, she had the said sum in her Account in Indian Overseas Bank, Tambaram. But, the 1st respondent did not properly consider the same and they have asked her to furnish another account details and accordingly, it was furnished and however,

it was not considered for the reason that she failed to maintain the minimum balance.

6 The appellant/writ petitioner also furnished the Bank Account details of her husband, which is being maintained in Nellavapalayam Primary Agricultural Cooperative Credit Society Limited and on Field Verification, it was also found by the officials that her husband, in the said Account, did maintain a minimum balance. However, to the shock and surprise of the appellant/writ petitioner, she was issued with the impugned communication dated 15.04.2017 by the 1st respondent, rejecting her application on the following grounds and it is relevant to extract the same:-

'1 As per item No.11 of the application regarding availability of fund, you have shown Rs.2,65,098.78 with Indian Overseas Bank-SB Account No.64320. While verifying the account, only an amount of Rs.15093.78 exists as on the last date of submission of application, i.e, 22.10.2013.

2 Further you have given proof alternate fund in M/s.Pasumbur Primary Agricultural Cooperative Credit Society for Rs.2,35,000/- Account No.179/1 as on 22.10.2013, but on verification, there is no sufficient fund as per Guidelines Selection of Distributorship.

3 Again one more proof for alternate fund produced by you in M/s.Palur Primary Agricultural Cooperative Society [GC2317] for Rs.2,50,000/- in SB Account No.1042 in the name of Sri Vijayakumar as on 25.10.2013, but as per RBI guidelines, Cooperative Societies are not treated as Banks.'

7 The appellant/writ petitioner made a challenge to the said Rejection Order by filing a writ petition in WP.No.10598/2017 and pendency of the writ petition, the 2nd respondent was also awarded the Dealership in respect of the said place, got impleaded and filed his counter statement. The learned Judge, after taking note of the materials placed and also the rival submissions, found that the 2nd respondent was awarded with the dealership by the 1st respondent during June 2017 itself and after spending a huge amount, he has also commenced his operation and taking note of the said development, found that the relief sought for by the appellant/writ petitioner cannot be granted and however, granted liberty to her

to participate in the award of Distributorship in the event of any future notification being issued and in the event of she fulfills the conditions and criteria., her candidature/application may be considered in accordance with law. The writ petitioner, aggrieved by the dismissal of the writ petition, came forward to file the present writ appeal.

8 The learned counsel for the appellant/writ petitioner has drawn the attention of this Court to Clause No.6[vi] of the Brochure on Guidelines for Selection of Regular LPG Distributors and would submit that as per the said condition, applicant shall have a minimum total amount of Rs.15 lakhs for Urban Markets and Rs.10 Lakhs for Urban-Rural and Rural Markets respectively as the closing balance on the last date for submission of application as specified either in the advertisement or corrigendum [if any]. It is further stated in the said condition that the said amount is to be arrived at by adding the amount in the Financial Instruments namely Savings Bank accounts in Bank/Post Office, free and unencumbered Fixed Deposits in Banks, Post Office, Listed Companies, Government Organisation, Public Sector Undertaking of Central and State Government, Kisan Vikas Patra etc and since in the Credit Society, the husband of the appellant/writ petitioner was having the minimum balance, there cannot be any impediment to take into consideration the said aspect and in that event, the appellant/writ petitioner ought to have been awarded the Distributorship for the said area and hence, prays for appropriate orders.

9 Per contra, Mr.Abdul Saleem, learned counsel for the 1st respondent would submit that in the application, the appellant/writ petitioner had mentioned a sum of Rs.2,65,098.78p. as the closing balance in the Indian Overseas Bank SB A/c No.64320 and she was qualified for draw of lots and accordingly, draw of lots was done and she was selected provisionally to the draw of lots of LPG Distributorship. On Field Verification, it was found that in the said account, vide entry date 22.10.2013, a sum of Rs.2,50,000/- was withdrawn and on the last date of the submission of the application, the closing balance was Rs.15,098.78p. only. Insofar as the Account balance maintained by the husband of the appellant/writ petitioner in the Primary Agricultural Cooperative Credit Society, it is the submission of the learned counsel for the 1st respondent that Credit Society cannot be considered as a Bank as per RBI Mandate and therefore, it was not taken into consideration. It is also pointed out by the learned counsel for the 1st respondent that after the impugned order, the 2nd respondent was chosen and a Letter of Indent was issued on

09.06.2017 followed by the appointment of the 2nd respondent as the Distributor for the said area vide communication dated 26.11.2018 and accordingly, he has started functioning as LPG Distributorship and at this juncture, the impugned order cannot may not be set aside and prays for dismissal of the writ appeal.

10 This Court has carefully considered the rival submissions and also perused the materials placed before it.

11 No doubt, a perusal of the condition No.6[vi] of the Guidelines for Selection of Regular LPG Distributors would indicate that while arriving at the closing balance, the amount can be arrived at by adding the amount in the financial instruments, viz., Savings Bank Account in Banks, Post Offices, Listed Companies, Government Organisation, Public Sector Undertakings of Central and State Government etc. Admittedly, the husband of the appellant/writ petitioner had an account in Nellavapalayam Primary Agricultural Cooperative Credit Society and according to the 1st respondent, the Credit Society cannot be construed as neither a Scheduled Bank nor a Non-Scheduled Bank as per RBI Norms.

12 Admittedly, the appellant/writ petitioner, before the closing date, has withdrawn a sum of Rs.2,50,000/- and what was available on the last date of submission of the application was Rs.15098.78p. only. In the considered opinion of the Court, the appellant/writ petitioner has failed to fulfill the relevant norms for award of distributorship and that apart, the right of the third party, viz., the 2nd respondent herein has also been intervened for the reason that after the order of rejection, he has been issued with letter of Indent dated 09.06.2017 followed by the award of Distributorship, vide communication of the 1st respondent dated 26.11.2018. In the considered opinion of the Court, the learned Judge has taken into consideration the relevant factual aspect, had rightly reached the conclusion to dismiss the writ petition.

13 This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent on the face of the record or infirmity or error of jurisdiction in the impugned order passed by the learned Judge in dismissing the writ petition.

19 In the result, the writ appeal is dismissed, confirming the order dated 20.07.2018 made in WP.No.10598/2017.

No costs. However, if the appellant/writ petitioner is so advised and if it is open to her under law, she is always at liberty to avail the Common Law remedy against the 1st respondent before the competent Forum.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

AP

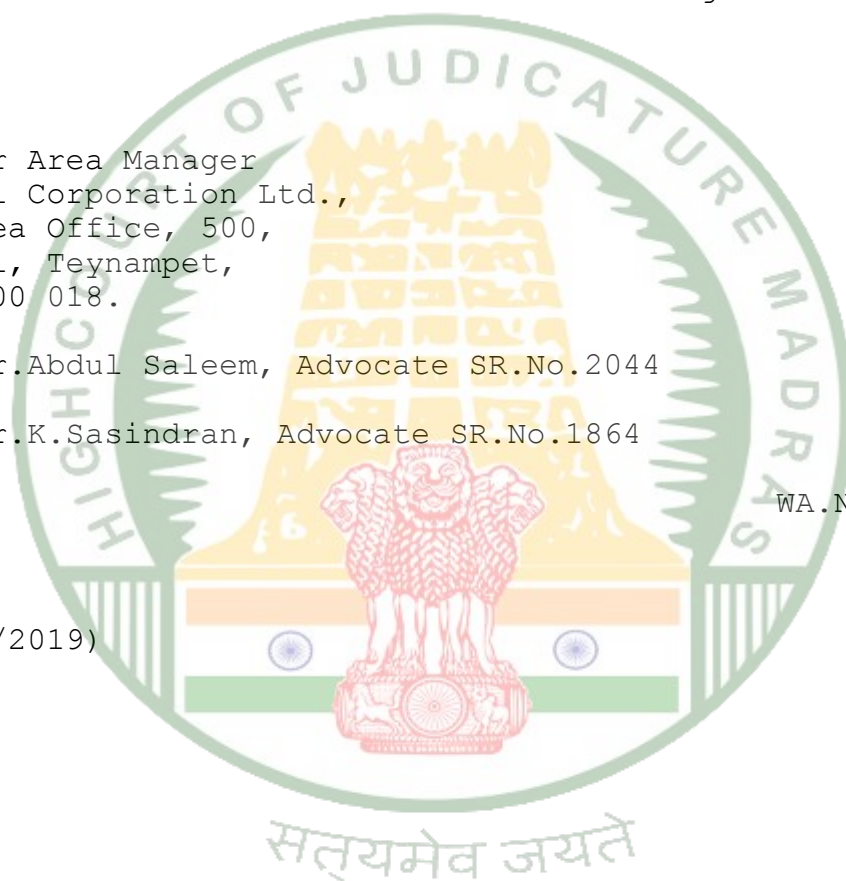
To
The Senior Area Manager
Indian Oil Corporation Ltd.,
Indane Area Office, 500,
Anna Salai, Teynampet,
Chennai 600 018.

+1cc to Mr.Abdul Saleem, Advocate SR.No.2044

+1cc to Mr.K.Sasindran, Advocate SR.No.1864

WA.No.2874/2018

RK (CO)
GMY (19/02/2019)



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