



WEB COPY

WP(MD)No.16394 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.04.2019

Pronounced on : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.16394 of 2018

and

WMP(MD)Nos.14557 to 14559 of 2018

Indira

... Petitioner

Vs.

1.Bharat Petroleum Corporation Ltd.,
Having its registered Office at
Bharat Bhavan,
4&6, Currmbhoy Road,
Ballard Estate, Mumbai - 400 001.

2.The Regional Manager LPG, South,
Bharat Petroleum Corporation Ltd.,
Chennai.

3.The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Madurai Bye Pass Road,
Tuticorin - 628 008.

4.S.Sangeetha

... Respondents

(R4 is impleaded vide court order
dated 02.04.2019 in WMP(MD)No.14955 of 2018)

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned made in LPG.SR.6TCN.DSB.Madurai passed by the 2nd respondent dated 20.06.2018 confirming the order of the 3rd respondent in TCN.LPG.DSB.Madurai, open with (W) dated 22.11.2017, quash the same and consequently direct the respondents to approve the application dated 14.07.2010 of the petitioner for distribution of LPG in Madurai City in Serial No.101 BPC (OPW).

For Petitioner : Mr.G.Ethirajulu

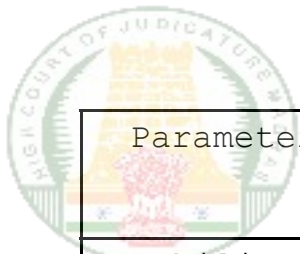
For Respondents : Mr.Nadesh Raja for R1 to R3

**ORDER**

The writ petitioner applied in response to the notification issued by Bharat Petroleum Corporation Limited on 15.06.2010 calling for applications for appointing LPG distributors. The writ petitioner was selected as she was awarded the highest marks. On a field verification, the respondent came to the conclusion that there were deviations from the details given by the writ petitioner in her application form. Accordingly, her candidature was rejected vide communication dated 29.06.2012. Challenging the same, the writ petitioner filed WP(MD)No.9292 of 2012. But, the writ petition suffered a dismissal on 18.01.2013. The petitioner filed WA(MD)No.153 of 2013. The Hon'ble Division Bench of this Court by order dated 11.09.2017 remanded the matter to the file of the third respondent. The third respondent by order dated 22.11.2017 rejected the case of the petitioner. Challenging the same, the petitioner filed an appeal before the second respondent. The petitioner also filed WP(MD)No.1433 of 2018 for directing the second respondent to expedite the disposal of the petitioner's appeal. Pursuant to the order passed by this Court in the said writ petition, the second respondent proceeded to consider the appeal of the petitioner, but then, confirmed the order of the third respondent. They are under challenge in this writ petition.

2.Heard the learned counsel on either side. The corporation had filed a detailed counter affidavit. In the counter affidavit, the stand taken in the impugned order is reiterated. It is seen that the petitioner's case came to be rejected by the corporation principally for three reasons. The petitioner had shown a land as available for construction of godown to store LPG cylinders. The corporation in the impugned order had stated that the said land is not a exclusive property of the petitioner and that it jointly belongs to the petitioner and her co-sister Sangeetha, the fourth respondent herein. On this ground, 25 marks originally awarded in favour of the petitioner was cancelled. Clause 14.2 of the brochure reads as follows :

14.2.Allocation of marks on various parameters based on the information / statements given in the application :



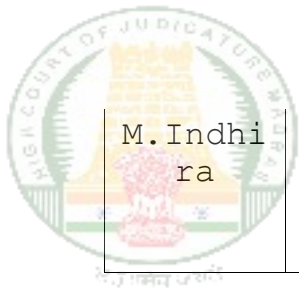
Parameter	Sub Head	Description	Max Marks	Evaluation
Capability to provide Infrastructure and facilities (as on the date of application) for both individuals and non-individuals	Suitable land for LPG storage godown / godown	Owns @ - having clear title - registered sales - Lease / Gift Deed, Mutation etc. of the suitable land/godown	25	Based on the information / statement given in the application
		Or Firm offer @@ Having agreement to purchase / lease suitable land / godown	18	Based on the information / statement given in the application
		Or Can arrange	10	Based on the information / statement given in the application

3.The petitioner had enclosed the sale deed dated 28.11.2007 standing in her name and that of the fourth respondent herein namely Sangeetha. The total extent of land covered by the sale deed comes to 90 cents. As per the requirement of the corporation, the extent of land for putting up the godown will have to measure 17 cents of land. In this case, the petitioner is having a clear title over 45 cents of land. In fact, at page number 32 of the typed set of papers, the petitioner had enclosed the No Objection Letter from the said Sangeetha. The said Sangeetha had in fact given her No Objection for the petitioner herein to deal with the scheduled property in any manner. The applicant in her application had stated as follows :

Do you have a suitable land at or within 15 km from the advertised location for LPG godown or LPG godown readily available Owned/Leased (15 yrs minimum) in your own name or in name any member of your 'Family Unit'	Yes	No
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If Yes to 13 A1, Provide the following details and notarised affidavit as per Annexure - C

Name(s) of the owner of Land / leaseholders	Relationship with applicant	Date of registration of sale deed/gift /lease/date of mutation	Address of the location of the land for LPG Godown	Khasra No/ Survey No	Dimensions *		Distance of land from advt location (in km)
					Length in metre	Breadth in metre	



M.Indhi ra	Self	19.05.200 8	Manthiku lam, Natham Road	60/3- 3A	63.6 m	40 m	12 km
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It appears that the corporation has refused to accept this only on the ground that the consent of Sangeetha, the fourth respondent herein has not been given in C-Form along with the application.

4.The learned counsel appearing for the petitioner would submit that the question of giving consent in C-Form will arise only if the land is owned by the family members. The expression "family unit", in case of a married person, shall consist of individual concerned, his/her spouse and their unmarried son(s)/daughter(s). In this case, Sangeetha is the co-sister. Therefore, she will not fall within the expression "family unit". Be that as it may, when the applicant has in her application stated that she has a clear title to put up a godown as per the norms stipulated in the notification, the only thing that the corporation should see that the writ petitioner can really do it. Even when the lands are jointly owned, possession and enjoyment on ground can be exclusive and personal. In this case, Sangeetha had given her consent also in favour of the petitioner. There would not arise any impediment for putting up a godown in the land mentioned in the petitioner's application. Therefore, I am of the view that the corporation erred in cancelling the 25 marks awarded in favour of the petitioner.

5.The second ground of rejection is that the fixed deposit standing in the name of the petitioner reflected the position that obtained on the date of application and not on the date of advertisement. The learned counsel appearing for the petitioner drew my attention to Clause 14.2. It is clearly mentioned that the amount in saving accounts in Bank should be as on date of application. In fact, this is conceded by the corporation themselves in their counter affidavit. It cannot be in dispute that the petitioner is entitled to 18 marks under this head.

6.The other ground on which the petitioner was denied marks was that the assets/property of the family as on the date of advertisement was not in the name of the husband of the applicant but that it was a joint family property. It is not in dispute that the petitioner's husband Manimaran had four brothers. There was a family arrangement among them on 10.01.2006. As a result, the petitioner's husband was allotted 1550 ½ sq.ft of land and their value would come to Rs.42,50,000/-. This was rejected by the corporation only on the ground that it was not a registered document. The petitioner's counsel would correctly contend that "family arrangement" did not require registration as per the statutory position then obtaining. Section 17 of the Registration



Act classifies the documents into those that are compulsorily registrable and those which are not compulsorily registrable. When the statute itself did not require a document to be compulsorily registrable, it is not proper on the part of the corporation to insist that unless the document in question had been registered, they will not look into it. In the brochure, there is no insistence of compulsory registration of even a document of family arrangement.

7.The learned Standing Counsel appearing for the corporation would place reliance on the judgment of the Hon'ble Supreme Court reported in **(2007) 3 MLJ 841 (SC) (Shiv kant Yadav vs. Indian Oil Corporation and others)** and the decision of the Division Bench of this Court reported in **2012 (5) CTC 577 (Indian Oil Corporation Ltd vs. J.Ranjith)**. The proposition laid down in the decision of the Hon'ble Supreme Court is that non disclosure of the true and correct facts in the application for dealership would lead to cancellation of allotment itself. There can be no quarrel with this proposition. In this case, the petitioner's contention is that she fulfilled the norms set out in the brochure and that it is not a case of false or misdeclaration. Therefore, I am of the view that the aforesaid decision has no application to the case on hand.

8.The Hon'ble Division Bench of this Court in the aforesaid decision held that the norms laid down in the brochure are binding on not only on the applicant but also the corporation. Again, this proposition is beyond cavil. The case of the petitioner is that she is fulfilling all the norms set out in the brochure. I have already held that the three reasons assigned in the impugned order of rejection are not sustainable in law. The corporation appears to have adopted a technical and narrow approach. Now what is to be seen is whether on the date of advertisement/application, the writ petitioner fulfilled the norms stipulated by the corporation. In this case, I am satisfied that the writ petitioner has more than satisfied the norms stipulated by the corporation. The petitioner was ranked first and had been selected. If the corporation had gone ahead, there would have been no impediment for setting up the godown or for the successful running of the dealership of the petitioner. I fail to understand as to why the corporation should have stretched the letter of law to throw out the petitioner.

9.The learned counsel appearing for the petitioner would state that totally three persons were selected and that the other two persons have since left the field and are no longer interested in pursuing the matter. That leaves the field to the petitioner alone. The petitioner is the lone candidate in the field and she was awarded highest marks. This Court has found that the petitioner has satisfied the norms set out in the brochure. I fail to understand as to why the dealership in question could not



be granted to the petitioner herein. In this view of the matter, the order impugned in this writ petition is quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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TO

- 1.Bharat Petroleum Corporation Ltd.,
Having its registered Office at
Bharat Bhavan,
4&6, Currmbhoy Road,
Ballard Estate, Mumbai - 400 001.
- 2.The Regional Manager LPG, South,
Bharat Petroleum Corporation Ltd.,
Chennai.
- 3.The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Madurai Bye Pass Road,
Tuticorin - 628 008.

+1CC TO MR.G.EHTIRAJULU, Advocate Sr. No.78696
+1CC TO MR.S.NATESH RAJA, Advocate Sr. No. 78494

Order made in
WP (MD) No.16394 of 2018
and

WMP (MD) Nos.14557 to 14559 of 2018
29.07.2019

TNSR (CO)

TR (22.08.2019) 6P 6C