

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.01.2020

Pronounced on :14.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.4005 of 2019
and
W.M.P.No.4460 of 2019

P.Gnanavel ... Petitioner
...Vs...

1.The Senior Area Manager,
Indian Oil Corporation Ltd.,
Indane Area Office,
No.8/1079, Avinashi Road,
Coimbatore - 641 108.

2.Union of India
Rep.by its Secretary,
Ministry of Petroleum and Natural Gas,
Shastribhawan,
New Delhi.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing to call for the records pertaining to the impugned proceedings of the 1st respondent vide reference CBE-AO-IMP 2013-14 CBE/KVP/2 dated 27.12.2018 by the 1st respondent quash the same and direct the respondent to process the award of the distributorship to the petitioner as per the proceeding CBE-AO-IMP 2013-14:FVC dated 01.03.2014 to issue the letter of intent to the petitioner.

For Petitioner :Mr.V.Manohar

For R1 : Mr. Mohammed Fayaz Ali

For R2 : Mr.B.L.Jayakandan

ORDER

This Writ Petition has been filed in the nature of Writ of Certiorarified Mandamus, questioning the impugned proceedings of the 1st respondent namely, the Senior Area Manager, Indian Oil Corporation Limited, Coimbatore, dated 27.12.2018 and set aside the same and direct the said respondent to process the application of the petitioner dated 01.03.2014 and issue letter of intent to the petitioner.

2. The 2nd respondent namely, the Secretary, Ministry of Petroleum and Natural Gas, Union of India, New Delhi had issued a Notification on 21.09.2013 inviting applications for LPG distributorship for Kaveripattinam, Krishnagiri District under notified Open and Government Public Sector Personnel i.e., Open (GP) classification. The petitioner had applied for the same. He was the only applicant. Consequently, there was no draw of lots. The petitioner was called upon to pay a sum of Rs.25,000/- by letter dated 01.03.2014, for Field Verification of Credentials. The field verification was carried out and completed on 14.04.2014. It was found that the showroom offered by the petitioner did not come within the advertised location of Kaveripattinam. He was therefore, given an option of giving an alternate site. However, he stated that, he did not have any alternate land by letter dated 21.04.2014. Thereafter, since various matters relating to allotment of distributorship were pending before the Madras High Court, both in the Principal Bench and Madurai Bench and also before the Supreme Court, the respondents addressed a letter dated 04.09.2015 to the petitioner stating that there would be a delay in processing the selection of distributorship. Finally, the Honourable Supreme Court, had granted the Oil Companies permission to proceed with the selection of distributorship by order dated 09.05.2016.

3. The petitioner had originally offered land for showroom in Mittahalli Village, Kaveripattinam. The respondents were of the opinion that the showroom was not within Kaveripattinam Town Panchayat. Therefore, the application of the petitioner was rejected. The petitioner then filed W.P.No.37039 of 2016 and by order dated 08.08.2016, the writ petition was disposed of with liberty to the petitioner to produce documents for an alternate site and the respondents were also directed to consider the same. The petitioner during the personal hearing on 22.11.2018, produced an unregistered lease deed dated 10.10.2013 and a registered lease deed dated 22.08.2016. The unregistered lease deed was rejected, since on till the last date of application, the lease deed was not registered. The registered lease deed was

rejected because, it was registered after the last date of application. It is under these circumstances, that an order dated 27.12.2018 came to be passed by the respondent rejecting the application of the petitioner. This order has been challenged by the writ petitioner in the present writ petition.

4. The respondents have filed a counter and they have stated that one of the primary condition for acceptance of any application is that the land offered for showroom must be within the area for which the LPG distributorship is to be granted.

5. In the instant case, the LPG distributorship was to be granted for Kaveripattinam Town limit. The petitioner had applied and had offered a land in Mittahalli Village, Kaveripattinam. On field verification, it was found that the said land was not found within Kaveripattinam Town Panchayat limits. Thereafter, the petitioner filed W.P.No.37039 of 2016. This Court directed the respondents must consider the alternate land which the petitioner claimed he could offer and that the petitioner should produce requisite documents for the same. Accordingly, a personal hearing was afforded on 22.11.2018. The petitioner had produced an unregistered lease deed dated 10.10.2013. This document has been rejected in the impugned order, since it was unregistered as on the last date of application. The petitioner also produced a registered lease deed dated 22.08.2016. This was also rejected, since the document was registered after the last date of application. The respondents therefore, justified the impugned order.

6. Heard arguments advanced by Mr.V.Manohar, learned counsel for the petitioner and Mr.Mohammed Fayaz Ali, learned counsel for R1 and Mr.B.L.Jayakandan, learned counsel for R2.

7. A notification was issued on 21.09.2013, by the respondent, inviting applications for LPG distributorship for various locations in Tamil Nadu. Among the locations, one was at Kaveripattinam where in Krishnagiri District. This was classified as notified Open and Government Public Sector Personnel i.e., Open (GP) classification. The petitioner had applied for the same on 10.10.2013. The copy of the application has been enclosed along with the writ petition. The petitioner had originally offered a land in Mittahalli Village. The petitioner was the only applicant under the said category for LPG distributorship at Kaveripattinam. Since he was the single applicant, he was selected for LPG distributorship and a letter bearing No.CBE:AO:IMP:2013-14:FVC dated 01.03.2014, was issued to him. He was called upon to pay a sum of Rs.25,000/-, which is 10% of the security deposit towards the fee for Field

Verification of Credentials. Field verification was carried out and completed by the Field Verification Credentials Committee on 14.04.2014. In their report, the Committee stated that the showroom offered by the petitioner did not fall within the advertised location of Kaveripattinam. Therefore, the petitioner's application was rejected. The petitioner then filed W.P.No.37039 of 2016 challenging the order of the 1st respondent dated 08.08.2016, rejecting his application. A learned Single Judge of this Court had disposed of the writ petition with the following directions:

"3.However, when the matter is taken up for hearing, the learned counsel appearing for the respondents submitted that the respondents would consider the claim of the petitioner on merits, if the petitioner produces the required documents to the effect that his show room is falling within the territorial limits of Kaveripattinam.

4.Considering the facts and circumstances of the case, this Court without going into the merits of the case, directs the respondents to consider the claim of the petitioner and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner as well as any other interested parties, within a period of six weeks from the date of receipt of a copy of this order. The petitioner is at liberty to produce the required documents, to substantiate his claim, to the respondents at the time of enquiry.

5.With the above direction, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

8. Thereafter, the petitioner sent a representation dated 25.10.2018, offering the very same property at Mittahalli Village, and another property for which he had a registered lease deed dated 22.08.2016. He was afforded a personal hearing on 22.11.2018. He produced two documents namely, (i) copy of an unregistered lease agreement dated 10.10.2013 and (ii) copy of a registered lease agreement dated 22.08.2016. By the impugned order dated 27.12.2018, the petitioner's application was again

rejected on the ground that on the last date of submission of application namely 22.10.2013, the first document dated 10.10.2013 was unregistered and the second document dated 22.08.2016 had been registered later to 22.10.2013. The two documents dated 10.10.2013 and 22.08.2016 have been produced before this Court.

9. The unregistered lease deed dated 10.10.2013 is a lease agreement executed by Ganga W/o. Sivanantham in favour of the petitioner, P.Gnanavel. It was specifically stated that P.Gnanavel had sought the property mentioned in the lease deed to be taken on lease for the purpose of LPG gas showroom. The terms of the lease provided that an advance amount of Rs.5,000/- was paid and monthly rent was Rs.750/-. It was stated that the lease was for 20 years i.e., from 10.10.2013 to 09.10.2033. The schedule of the property was in Kaveripattinam Town, Panneerselvam street in S.No.47, R.S.No.47/2B, present sub-division No.47/2B2 measuring 22 ½ x 13 feet, admeasuring totally 292 ½ sq.ft in which there is a shop measuring 17 ½ x 11 feet including the passage for access.

10. The registered lease deed dated 22.08.2016, which had been registered as Document No.2326 of 2016, in the office of the Sub-Registrar, Kaveripattinam also relates to the very same property. The schedule is the same, the lessor is the same, the lessee is the same. In the covenants, there is a reference to the earlier lease deed dated 10.10.2013, and to the advance amount of Rs.5,000/-, and the rent of Rs.750/-. The only difference is that the rent had been increased to 1,000/-. The period of lease was from 10.10.2013 to 09.10.2033. In the impugned order, the respondents have not given any finding whether this land which is now offered comes within the requirements for a showroom in Kaveripattinam Town. They have rejected the same only because the lease deed dated 10.10.2013 was unregistered and the lease deed 22.08.2016 was registered subsequent to the last date of the submission of the application.

11. Section 47 of the Registration Act comes under Part-X of the said Act and relates to "of the effects of registration and non registration". It stipulates the time from which a registered documents operates. According to the said provision, a registered document shall operate from the time of its execution and not from the time of its registration. Section 47 of the Registration Act is as follows:-

"47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not

from the time of its registration.”
[Emphasis supplied]

12. In the present case, learned counsel for the respondents stated that Section 47 of the Registration Act would not come to the rescue of the petitioner, since the unregistered lease deed dated 10.10.2013 was not presented for registration on 22.08.2016 and a fresh lease deed prepared and executed on 22.08.2016 had been presented for execution and hence the date of commencement of operation of the lease would be only 22.08.2016, and that date was subsequent to the last date of submission of application. I agree with the said contention. But the respondents must also agree that they had also shifted the goal post till the date when the Hon'ble Supreme Court granted them permission to consider applications for dealership. Till the date of that order, namely, 09.05.2016, a nebulous situation prevailed and the respondents must also realize the predicament of the petitioner. He had taken a shop on lease on 10.10.2013. There was a long period of nearly 3 years when the issues were pending adjudication before the Courts. Thereafter, when the Hon'ble Supreme Court had finally cleared the deck, the petitioner had reaffirmed the existing lease by presenting for registration a lease deed. Registering a document, three years after its execution, will necessarily call for explanations and with bonafide belief, the petitioner had presented a new document, with the same schedule for registration. The narrow mindedness of the respondents in rejecting the said document does not stand the scrutiny of this Court.

13. The respondent have not even considered the fact that the registered lease deed is for the very same property for which, the document dated 10.10.2013 had also been entered into. They have gone on a very narrow premises that if the very same document dated 10.10.2013 had been presented for registration on 22.08.2016, they would have accepted the same, but since the petitioner had presented for registration a newly prepared lease deed albeit with the same conditions, with the same lessor with respect to the same property they can reject the same. This reasoning of the respondents cannot be accepted. The respondents gain nothing by rejecting applications. In response to the advertisement issued by the respondents, the petitioner was the only applicant. There were no other applicants. The land now offered has not even been examined by the respondents. In the personal hearing, they should have also even if they are rejecting the lease deed merely because of non-registration / registration, determined whether the land offered was within Kaveripattinam Town limits and whether the lessor had actually handed over possession on 10.10.2013. They should have

taken the extra step of examining the lessor. At any rate, the respondents should be concerned only about the location of the showroom. The registration on 22.08.2016 is an affirmation of an existing lease, though as a fact, the unregistered lease deed was not presented for registration, but a fresh lease deed on the very same terms had been once again prepared between the parties and presented for registration.

14. Retrograde bureaucratic approach to reject applications actually reflects misuse of authority and has to be condemned by the Court. The respondents must also realize that an applicant seeking LPG distributorship can never commit himself to a registered document prior to submission of the application since there is always a possibility of rejection during the draw of lots and the applicant not being invited for further participation. That there would not be draw of lots will be evident only after the last date of submission of applications. The respondent must also realize that distributorship is offered to eligible candidates in furtherance of business opportunities. It has to be a win/win situation. The distributors serve the public and ultimately, the respondent Oil Company also benefit from the same. Rejecting applications on narrow grounds, when the registered lease deed dated 22.08.2016 refers to the unregistered lease deed also and again confirms that the existing lease is being affirmed by registration cannot be appreciated by this Court.

15. I hold there was no subjective satisfaction based on the facts of the case on the part of the Senior Area Manager, who had passed the impugned order. Had the said official read the two lease deeds, it would have been prima facie evident that the registered document actually refers to the earlier lease and that the lease had actually commenced on 10.10.2013.

16. Reliance had been placed on by the learned counsel for the respondent on an unreported judgment dated 03.06.2019 in W.A.(MD) Nos.540 and 541 of 2019, P.Kumaran V. The Manager L.P.G.(s). The Division Bench in that case had stated that subsequent to the application, if there is an acquisition of alternate land, then the respondents are within the rules to reject the same. In the present case, there has been no fresh acquisition of alternate land. The registration was only a confirmation of a lease already entered into. Therefore, I hold that the said judgment would not apply to the facts of this case.

17. In view of the reasons stated above, the impugned order is set aside and the respondents are directed to consider the

application of the petitioner and the land offered by the petitioner and if it satisfies the conditions required, proceed to offer LPG distributorship to the petitioner. The entire exercise must be completed on or before 31.03.2020.

18. With the above observations, the Writ Petition is allowed. No order as to costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

smv

To,

1.The Senior Area Manager,
Indian Oil Corporation Ltd.,
Indane Area Office,
No.8/1079, Avinashi Road,
Coimbatore - 641 108.

2.The Secretary
Union of India
Ministry of Petroleum and Natural Gas,
Shastribhawan,
New Delhi.

+1 cc to Mr.V.Manohar Advocate sr12765

+1 cc to Mr.Mohammed Fayaz Ali Advocate sr12740

W.P.No.4005 of 2019

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