



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2020

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.33476 and 33992 of 2012
and M.P.Nos.1 and 2 of 2012

E.R.Vimala .. Petitioner in both WPs.

Vs.

1. The Executive Director,
Indian Oil Corporation Ltd.,
Tamilnadu State Head Office,
139, Nungambakkam High Road,
Chennai-600 034.

2. The Senior Area Manager
(Marketing Division),
Indian Oil Corporation Ltd.,
Indane Area Office,
No.8/1079, Avinashi Road,
Coimbatore-641 018.

.. Respondents in both WPs

Prayer in W.P.No.33476/2012 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent notice dated 30.11.2012, vide Reference No.CBE-DSC-RGGLV-2009-10, and quash the entire proceedings thereon and also direct the respondents herein to provide an opportunity to the petitioner to fulfill the guidelines specified in the notification dated 28.12.2011, for selection of LPG Distributorship under RGGLV Scheme for Nallampalli under open category.

Prayer in W.P.No.33992/2012 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the second respondent dated 26.11.2012, vide Reference No.CBE-DSC-RGGLV-2009-10/NLM, and quash the entire proceedings thereon.



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For Petitioner in : Mr.M.Udhayakumar
both W.Ps

For Respondents : Mr.Abdul Saleem for
in both W.Ps M/s.Anand, Abdul & Vinodh

C O M M O N O R D E R

The petitioner laid challenge to the order and notice of the second respondent dated 26.11.2012 and 30.11.2012 in Reference No.CBE-DSC-RGGLV-2009-10 in these writ petitions. In W.P.No.33476 of 2012, she also sought for a direction to the respondents to provide an opportunity to the petitioner to fulfill the guidelines specified in the notification dated 28.12.2011, for selection of LPG Distributorship under RGGLV Scheme for Nallampalli under open category.

2. The case of the petitioner is that when the second respondent issued advertisement for selection of LPG Distributor under the Rajiv Gandhi Gramin LPG Vitrak Scheme (in short, "RGGLV") on 28.12.2011, she submitted her application dated 30.01.2012 for the same for the Nallampalli area and she was also declared selected on 17.08.2012. However, after the field verification conducted by the officials of the respondents on 03.09.2012, she was found ineligible on the premise that the land offered by her for the purpose of construction of godown has no approach road and also not suitable for housing the same. The petitioner was served with a letter dated 26.11.2012 to that effect. Subsequently, the second respondent issued another notice on 30.11.2012 to conduct re-draw on 21.12.2012. Impugning the said order and notice, the petitioner filed these petitions.

3. Refuting the contentions of the petitioner, the respondents filed a counter-affidavit narrating the procedures to be followed in allotment of distributorship and the lapses on the part of the petitioner and thus, seeking dismissal of these writ petitions.

4. Learned counsel for the petitioner submitted that the petitioner was not given the copy of the field verification report and without even affording an opportunity of hearing to put forth her position, the second respondent unilaterally rejected her application. It is submitted that the ownership and availability of the entire stretch of land specified in the application of the petitioner, as put forth by the petitioner, was not at all appreciated by the respondents. The learned counsel also submitted that though the petitioner submitted a representation on 06.12.2012 seeking to afford an opportunity of hearing, the second respondent hurriedly issued the impugned



notice to re-draw the LPG Distributorship and the same is liable to be set aside.

5. Reiterating the stand of the respondents in the counter, the learned counsel for the respondents contended that the petitioner should fulfill all the mandatory conditions stipulated for distributorship on the cut off date, i.e., on the date of the submission of the application and no one would be allowed to fulfill /meet anyone of the conditions at a later date and there cannot be any extension of time.

6. Heard the submissions of the learned counsel on either side and perused the materials available on record.

7. It is to be stated that column No.9 of the application captioned "Details of land for construction of LPG godown and showroom" reads as follows :

"The land should be suitable, in contiguous plot, freely accessible through all weather motorable approach road ; The land should be free from live overhead power transmission / telephone lines, Pipelines / Canals / Drainage / Nullahs / Public Roads should not pass through the plot. The land should be in advertised location. Dimension of the land should be minimum 20 metre X 24 metre."

8. In the same column, it was asked that "do you own a suitable land at advertised location for LPG godown & showroom?" with answers Yes / No. The petitioner opted for the answer "YES". In the very same column, "own" is defined in the following manner :

"Own means having clear ownership title of the property in the name of applicant / family member of the 'Family Unit'. 'Family Unit' of a married applicant, shall consist of self, applicant's spouse and unmarried son(s)/daughter(s) and 'Family Unit' of a unmarried Applicant, shall consist of self, applicant's parents and applicant's unmarried brother (s)/sister(s) for the purpose of this entire application. In case of family member, consent letter from the family member will be required."

9. The petitioner stated therein that her husband owns land in Survey No.34/2 with the dimension 40 metres in length and 50 metres in breadth and the dimension of the plot that will be used for housing the proposed godown was "57 cents", out of the total land owned by her.

10. However, the Field verification report placed before this Court unequivocally states that the dimension of the site



offered by the petitioner for godown in S.No.34/2 is : East Side - 16.4M, West - 10.8M, North - 150.6M and South-151.2M and there is no approach road for the site shown by the petitioner. It is also stated therein that the godown site has to be approached after crossing S.No.34/3, which is in the name of the petitioner's father-in-law and hence, the site was not suitable. The lease agreement for S.No.34/2 and 34/4 was entered into only on 11.09.2012, that too, without any time period and thus, on the date of application, no approach road was in existence. The learned counsel for the respondents, relying on para 6.1.vii of the selection guidelines, submitted that the condition qua the land requirement was to avoid unnecessary delay in commissioning of distributorship. But the petitioner failed to fulfill the said conditions and thereby caused delay in the selection of distributorship and the respondents rightly issued notice to re-draw the dealership.

11. It is also contended by the learned counsel for the respondents that the representation of the petitioner dated 06.12.2012 was rejected on 14.12.2012 itself. It is further contended that the Corporation cannot permit the selected candidate to go for alternative land in violation of its own conditions and no new or additional documents would be accepted by the respondents after the last date. The petitioner in the application itself made all the declarations stating that she fulfilled all the eligibility criteria and also agreed that if it is found that the information given by her is incorrect/false/misrepresentation, then her candidature will stand cancelled and she will be declared ineligible for RGGLV. Having accepted the conditions and declared so, it is the duty of the petitioner to prove her stand, at the time of physical verification. However, in the reply dated 06.12.2012 sent to the letter dated 26.11.2012 declaring her ineligible on the ground that the land offered by her for construction of godown was not suitable due to land dimension, which was lesser than the one specified in the application and also lacks approach road, the petitioner has not claimed that the land offered by her was suitable in all aspects with approach road. She merely sought an opportunity, by considering her requests. In the absence of any other material, the said stand of the petitioner itself makes it crystal clear that on the date of application, she failed to possess the specified land required for housing the godown, in the manner declared by her.

12. The learned counsel for the petitioner relied upon a report in Licence No.359/2019/F1, dated 29.01.2020 obtained from one Er.M.D.Rajendrakumar, M/s.Maruthi Builders and Contractors, a licenced building surveyor, to contend that the proposed land meets the requirements and thus, it is suitable for housing the godown. However, a perusal of the documents relied on by the



learned counsel for the respondents would go to show that the petitioner on 03.09.2012 signed in the plan showing the proposed site for L.P. Gas Godown in S.F.No.34/2 at Nallampalli Village, wherein, it was clearly mentioned that to reach the proposed site, the land in S.No.34/3 has to be crossed and admittedly, the said land did not belong to the petitioner within the meaning of 'family unit'. Hence, the said report does not help the cause of the petitioner.

13. The learned counsel for the respondents relied on the judgment of a Division Bench of this Court in Indian Oil Corporation Ltd. V. J.Ranjith, 2012 (5) CTC 577, wherein, the Division Bench set aside the order of the learned Single Judge of this Court quashing the order passed by the Corporation rejecting the request of the respondent therein seeking permission to substitute another land in the place of the one mentioned in the application. In the said case, though the respondent was issued with the Letter of Intent, the Corporation rejected his request to substitute the land stating that after the selection, the Corporation would not be in a position to permit him to change the site.

14. The Division Bench in the said decision relied upon the judgment of the Hon'ble Apex Court in Monika Gupta V. Union of India, 2010 (5) Scale 643 and held that the Supreme Court in the said decision considered the clause regarding capability of the candidate to provide infrastructure and the mandatory condition that in case, after selection, the candidate is unable to make available the land indicated in the application for construction of LPG Godown, it would result in cancelling the distributorship. Ultimately, it was held by the Division Bench in the following manner :

"22. When the selection is made on the basis of a prescribed procedure made known to the candidates sufficiently earlier it is not open to the Corporation to make a deviation at a later point of time.

....

30. We are called upon to test the legality and correctness of the decision taken by a Public Sector Oil Corporation on the basis of the selection criteria and guidelines governing the field. The Corporation was not expected to flout the selection norms indicated in the Notification. The norms are applicable equally to the Corporation and the Applicants. The Courts cannot direct the State or its instrumentalities to violate their own regulations. The Respondent is not a layman. He is a qualified medical practitioner and he has made the Application after reading the Notification. He has given a declaration that in case he is not in a position to



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construct the godown on the site mentioned in the Application, his candidate could be rejected and in case the selection is made, the Letter of Intent could be withdrawn. Having accepted such a condition and made an Application, it is not open to the Respondent to make a complaint that the Corporation erred or illegality in the order passed by the Corporation. The mandatory condition incorporated in the Notification was not taken note of by the learned Single Judge. Therefore, we are constrained to set aside the order passed by the learned Single Judge. ..."

15. From the perusal of the above judgments, it is clear that even after the issuance of the Letter of Intent, if the applicant fails to fulfill the pre-conditions mandated by the Corporation, he/she cannot seek any deviation at a later point in time. In the instant case, no such interest accrued on the petitioner and even at the time of field verification, she was declared ineligible and she had not even questioned the said letter before any forum.

16. It is also relevant to state that there is no quarrel with the pre-conditions stipulated by the respondents in the application. In this regard, a Division Bench of this Court in R.Kalaivani V. Chairman, Indian Oil Corporation, 2010 1 MLJ 742, held as follows :

"11. As rightly contended by the learned counsel for the respondent, the appellant/writ petitioner applied for Dealership of Indane Gas based on advertisement inviting applications, which is the rule of selection. Appellant/Writ Petitioner knows fully well that the marks will be awarded for experience on the basis of interview and not on the basis of mere production of certificate. The appellant/writ petitioner also taken part in the selection by appearing in the interview without any demur. Having failed to get selected she has now chosen to challenge the mode of selection particularly the award of marks under the heading 'Experience'. The said conduct of the petitioner is clearly against the Principles of Estoppel."

17. In the said decision, the Division Bench also referred to the judgment of the Apex Court in G.N.Nayak v. Goa University, AIR 2002 SC 790, wherein, the question considered was as to whether a candidate, who applied pursuant to the notification and after taking part in the interview without protest, can be permitted to contend that the eligibility criteria were wrongly framed and it was held that such candidate is not entitled to challenge the mode of selection after



participating in the interview merely because he was not selected.

18. The Hon'ble Apex Court in K.A.Nagamani v. Indian Airlines, (2009) 5 SCC 515, held as follows :

"54. The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

55. In Madan Lal v. State of J&K, (1995) 3 SCC 486 this Court observed :

"9. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.

Referency may also be made to the decision of this Court in Chandra Prakash Tiwari V. Shakuntala Shukla, (2002) 6 SCC 127."

19. The petroleum products are highly inflammable and highly dangerous liquid, which cannot be allowed to be dealt with lightly without taking preventive and precautionary measures for its storage. The erection and storage of the petroleum products must be undertaken according to law or relevant rules. The transportation, loading and unloainding of the same must also be done with similar precautions. Therefore, the court would not fold its hands to give directions to the authorities to relax the rules to suit the convenience of an applicant like the petitioner.

20. It is trite to state that in matters like this the officials of the Corporations know their requirements quite well and they are entitled to fix the yardsticks, which suit their needs and the same would be implemented by the officials of the inspection committees and other officials and hence, it is not possible for this Court to take a different view.



21. In the upshot, these writ petitions are liable to be dismissed as devoid of merits and accordingly, the same are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Executive Director,
Indian Oil Corporation Ltd.,
Tamilnadu State Head Office,
139, Nungambakkam High Road,
Chennai-600 034.
2. The Senior Area Manager
(Marketing Division),
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W.P.Nos.33476 and 33992 of 2012

AK(CO)
GMY(13/07/2020)