

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.01.2020  
Pronounced on : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.17828 of 2018  
and  
W.M.P.Nos.21133 & 21134 of 2018

S.Elango

.. Petitioner

..Vs..

1.The Executive Director,  
Indian Oil Corporation Limited,  
Southern Region,  
No.139, Indian Oil Bhavan,  
Nungambakkam,  
Chennai-34

2.The Senior Area Manager,  
Indian Oil Corporation,  
Marketing Division: Indane Area Office,  
No.8/1079, Avinashi Road,  
Coimbatore - 18.

3.The Union of India,  
Ministry of Petroleum and Natural Gas,  
New Delhi.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in CBE/IMP:2017-18/IRUMATHUR, on the file of the 2<sup>nd</sup> respondent, dated 04.07.2018 and quash the same.

For Petitioners : Mr.B.Singaravelan,  
Senior Counsel,  
for T.Elumalai

For R1 & R2 : Mr.Mohammed Fayaz Ali,

For R3 : Mr.J.Madanangopal Rao,  
SCGSC

## ORDER

This Writ Petition has been filed in the nature of Writ of Certiorari, to call for the records of the 2<sup>nd</sup> respondent, the Senior Area Manager, Indian Oil Corporation, Coimbatore in file No.CBE/IMP:2017-18/IRUMATHUR dated 04.07.2018 and set aside the same.

2. During the pendency of a Writ Petition, on 29.01.2019, the 3<sup>rd</sup> respondent, namely the Union of India, Ministry of Petroleum and Natural Gas, New Delhi, was suo motu impleaded as the 3<sup>rd</sup> respondent.

3. In the affidavit filed in support of the Writ Petition, S.Elango, the Writ Petitioner, stated that the respondents have called for LPG Distributorship at Irumathur Village, Dharmapuri District, through an Advertisement dated 20.08.2017. The petitioner had submitted his application and claimed that he completed all the requirements. By letter dated 27.03.2018, the respondent had informed that he has been found eligible to get dealership and asked him to appear for personal hearing on 06.04.2018. He was selected for LPG dealership to distribute LPG at Irumathur Village. Since no further action had been taken, the petitioner, who belongs to Scheduled Caste community, complained to the Ministry for the Scheduled Castes and Scheduled Tribes, alleging discrimination by the respondents. Thereafter, he received information that he did not own any land on the date of submitting his application i.e., on 25.09.2017 and hence by letter dated 04.06.2018, he was asked to show suitable land for gowdown and also that he should reside in the same Revenue Division for which the dealership is called for. It is claimed by the petitioner that he had shown the land in which he was planning to built the gowdown. He also claimed that he already had a lease deed in his favour. He further stated that after the ban on registration of documents which was lifted, he had registered the lease deed. It was also claimed that the respondents visited the leased premises for verification on 23.05.2018. He had also filed an earlier writ petition in W.P.No.16951 of 2018, seeking to consider his representation in this regard. Even when the writ petition was pending, the 2<sup>nd</sup> respondent had passed the impugned order dated 04.07.2018 and therefore, he had withdrawn the said writ petition. Questioning the order dated 04.07.2017, this Writ Petition has been filed.

4. The 2<sup>nd</sup> respondent, Senior Area Manager of Indian Oil Corporation, Coimbatore, had filed a counter affidavit. The averments made in the Writ Petition were denied. It was stated that the respondent had published an Advertisement on

20.08.2017, calling for applications for appointment for LPG distributorship at Irumathur Village, Dharmapuri District. The petitioner had applied on 23.09.2017 stating that he is offering lands for establishing showroom and godown, which were either owned by him or held by him on registered lease for a period of 15 years as on the last date of submission of application form namely, 25.09.2017. It is also claimed that the petitioner had stated that if any information is found to be untrue, false and incorrect, he knew he would be disqualified. The petitioner attended the draw of lots on 06.04.2018 and was selected. During the Field Verification of Credentials, it was found that the lands were neither owned by the petitioner nor on lease for a period of 15 years. The lease deed for the land offered for godown was subsequently registered on 10.05.2018. It was rejected since it was registered after the last date of submission of application namely, 25.09.2017. It was stated that the petitioner was not a resident of the advertised location as per the letter dated 14.05.2018 issued by the Zonal Deputy Tahsildar, Pappireddipatti Taluk, Dharmapuri District. The petitioner was thereafter called to produce an alternate land which must have been available on the date of submission of application namely, 25.09.2017 and also a certificate from the Tahsildar stating that he was a resident of the advertised location, i.e., Irumathur Village. The petitioner had given a reply dated 20.06.2018, in which he stated that there was a restraint for registration and hence the lease deed could not be registered. This stand was rejected by the respondent. It was stated that though a certificate was issued by the Village Administrative Officer, the same was also rejected by the respondent. It was claimed that the respondent had sent an e-mail on 07.04.2018, a reminder on 16.04.2018 and a further reminder on 04.05.2018, calling upon the petitioner to deposit Rs.20,000/- towards Field Verification of Credentials. It was only thereafter, did the petitioner deposit the said amount. It was specifically denied that the respondent had discriminated the petitioner on account of the fact that he belongs to Scheduled Caste community. It was stated that since the petitioner was not eligible and did not satisfy with the requirement conditions, the impugned order had been passed.

5. As stated above, this Court had impleaded the 3<sup>rd</sup> respondent as a party to the writ petition. This was pursuant to the fact that the petitioner had filed an additional typed set of papers on 02.11.2018 relying on a Gazette Notification of the 3<sup>rd</sup> respondent dated 02.07.1992, wherein, it was stated that Oil Companies must make provision of land and its development for SC/ST candidates for establishing LPG distributorship.

6. The 3<sup>rd</sup> respondent had filed a counter affidavit, in which it had been stated that a Corpus Fund Scheme was

introduced by the Government of India by Notification dated 02.07.1992. Under the scheme, the Oil Companies were to make provision for land and its development for LPG distributorship for SC/ST candidates. It was aimed to help SC/ST category for LPG distributorship. Under the said scheme, Public Sector Oil Marketing Companies provided land and related infrastructure to the distributors availing the scheme. The recovery of the investment made by the Oil Marketing Companies was through payment of license fee. It was stated that the scheme was amended several times and finally replaced by the Bank Mediated Financial Assistance Scheme by letter No.P/25011/4/2011/MKT dated 24.12.2012, whereby Oil Marketing Companies were to facilitate provision of loan to the distributors by tying up with banks. It is stated that since 2012, only Bank Mediated Financial Assistance is provided. It was also stated that Clause 21 of the advertisement under which the petitioner had applied for distributorship also pertains to Bank Mediated Financial Assistance Scheme. It was therefore stated that land cannot be provided to the petitioner but only financial assistance can be given through bank. It was also stated that after the removal of the Administered Price Mechanism, in the petroleum sector, with effect from 01.04.2002, the selection process of dealer/distributors for retail outlets for both petrol pumps and LPG distributorship are done by the Oil Marketing Companies themselves. It was therefore, stated that the 3<sup>rd</sup> respondent has no direct role in the issues raised in the writ petition.

7. An Additional Counter affidavit was filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. In the said additional counter affidavit, it was stated that on the basis of the statement made in the application of the petitioner that he was offering land standing in the name of his sister under a registered deed dated 25.08.2017 valid for a period of 15 years, the candidature of the petitioner was approved. Thereafter, on scrutiny of documents submitted by the petitioner, it was found, that the document mentioned in the application dated 25.08.2017 was actually registered only on 10.05.2018. It was stated that the petitioner had made false declaration in the application that the document was registered on 25.08.2017. It was stated that the petitioner had therefore violated the terms and conditions by giving a false declaration. It was therefore stated that the writ petition should be dismissed.

8. Heard arguments advanced by Mr.B.Singaravelan, learned Senior Counsel for Mr.T.Elumalai, learned counsel for the petitioner and Mr.Mohammed Fayaz Ali, learned counsel for R1 and R2, and Mr.J.Madhanagopal Rao, SCGSC, for R3.

9. The 1<sup>st</sup> and 2<sup>nd</sup> respondent had published an advertisement dated 20.08.2017 calling for applications for

appointment of LPG Distributorship at Irumathur Village, Dharmapuri District. The petitioner had submitted his application on 23.09.2017. In his application, he had stated that he is offering land towards showroom for LPG distributorship, which land was owned by his sister and for which he had entered into a registered lease deed on 25.08.2017 for a period of 15 years. He also claimed that he was a resident of Irumathur Village. The application forms were scrutinized. The 1<sup>st</sup> and 2<sup>nd</sup> respondent felt that the petitioner had conformed to the requisite requirements. The petitioner was invited to participate in the draw of lots. The draw of lots was held on 06.04.2018. The petitioner emerged successful. He was asked to produce original documents for Field Verification of Credentials. The respondent had initially sent an e-mail dated 07.04.2018, calling upon the petitioner to deposit a sum of Rs.20,000/-. Since the petitioner did not comply with either making the deposit demanded or by producing original documents, the 1<sup>st</sup> and 2<sup>nd</sup> respondent had sent another reminder on 16.04.2018 and a further reminder on 04.05.2018. Finally the petitioner paid the Field Verification of Credentials deposit on 11.05.2018. It was then found that the lease deed dated 25.08.2017 was actually an unregistered lease deed. It was registered only on 10.05.2018. The 1<sup>st</sup> and 2<sup>nd</sup> respondent therefore rejected the said document claiming that on the last date of submission of applications, namely 25.09.2017, the document in question was not registered and the factum of registration was also rejected since, it was registered after the last date of submission of applications. It was also stated that the Zonal Deputy Tahsildar, Pappireddipatti, had issued a letter dated 14.05.2019 stating that the petitioner was not a resident of Irumathur Village. The certificate produced by the Village Administrative Officer was rejected, since it was held that it cannot supersede the certificate of the Zonal Deputy Tahsildar.

10. The petitioner had relied on a Gazette Notification of the 3<sup>rd</sup> respondent namely the Ministry of Petroleum and Natural Gas, Government of India dated 02.07.1992, wherein it had been provided the Oil Companies are to make provision for land and its development for SC/ST candidate for establishing LPG distributorship. In view of these facts, this Court had suo motu impleaded the Ministry of Petroleum and Natural Gas, represented by its Secretary, Government of India, New Delhi, as a 3<sup>rd</sup> respondent. They joined in the proceedings. They were asked to clarify with respect to the Government Gazette Notification. A counter affidavit had been filed on behalf of the 3<sup>rd</sup> respondent and it was stated that the said scheme namely, the Corpus Fund Scheme, which was introduced by the Notification dated 02.07.1992 underwent many amendments and was finally replaced by the Bank Mediated

Financial Assistance Scheme by letter No.P/25011/4/2011/MKT dated 24.12.2012, whereby, the Oil Marketing Companies were to facilitate provision of land to distributors by tying up with banks. As a matter of fact, in Clause 21 of the advertisement, it had been provided that the Oil Marketing Companies was to facilitate the selected candidates belonging to SC/ST category in obtaining loan from scheduled commercial bank for providing the LPG Godown, showroom and LPG cylinder infrastructure. It was stated that if the Banks require any margin money to be invested by the candidate, then the Oil Marketing Companies shall extend financial assistance by way of secured loan. This loan as well as the interest would be recovered @ 20% of distributor's commission.

11. This being the broad facts, the impugned order will now had to be examined. In the impugned order dated 04.07.2018, bearing Reference No.CBE/IMP:2017-18/IRUMATHUR, the candidature of the petitioner had rejected on the following two grounds:

"1.You do not own land in the advertised location as on 25.09.2017 i.e., the last date for submission of application. The lease deed for the land offered for construction of godown at Survey No.80/1, is registered on 10.05.2018, which is much after the last date for submission of application i.e., 25.09.2017. Hence this land cannot be considered. You have also confirmed vide your letter dated 24.05.2018 that you do not have any other land owned/leased by you as on 25.09.2017 for godown. Your submission vide your letter dated 20.06.2018 that there was a ban for registration on unapproved land in Tamil Nadu is not considered as our requirement is that "the applicant should have own land in his/her name by way of ownership/registered lease agreement as on 25.09.2017". सत्यमेव जयते

2.You are not a resident of the advertised location i.e, Irumathur as per certificate dated 14.05.2018 issued by Zonal Deputy Tahsildar, Pappireddipatti Taluk, Dharmapuri District. VAO certificate submitted by you claiming that you are a resident of Irumathur is not considered "as the certificate of Dy.Tahsildar cannot be superseded by VAO certificate".

12. With respect to the 1<sup>st</sup> ground raised above namely, that the land offered for construction of godown at S.No.80/1

was registered on 10.05.2018, after the last date of submission of application namely, 25.09.2017 and consequently, cannot be considered, has to be viewed in juxtaposition with Section 47 of the Registration Act, 1908. Section 47 of the Registration Act, 1908 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]

13. The learned counsel for the respondent had relied on 2019 (4) CTC 523, Deputy General Manager, (L.P.G - Sales), Indian Oil Corporation Ltd., Vs. M.C.Meyyappan @ Manickam. In that case, the applicant had produced a notarized lease deed instead of a Registered lease deed. A notarized lease deed will not give any right to the lessee. In those circumstances, the Division Bench of this Court had held that it was perfectly correct on the part of the respondent, to have rejected the application therein.

14. The learned counsel for the respondents also relied on the Division Bench Judgment of Calcutta High Court in F.M.A.No.2686 of 2015 with CAN.No.7758 of 2015, Indian Oil Corporation Ltd., & ors. Vs. Samir Barman & anr. In that case, the Division Bench considered whether there was strict compliance of the terms and conditions proposed in the guidelines. It was stated when the guidelines stated that there should be a registered lease deed production of unregistered lease deed and registering the same subsequently, would not come to the rescue of the applicant. It was stated that if any other view is taken, then an unregistered document holder whose documents are registered one month or one year or five years or ten years can also claim equity. It was stated that dealership for LPG is a social obligation which has to be complied with by the corporation and the terms and conditions will have to be complied in its letter and spirit. The Division Bench referred to two judgments of the Hon'ble Supreme Court namely, Hamda Ammal Vs. Avadiappa Pathar and 3 others reported in (1991) 1 SCC 715 and Gurbax Singh Vs. Kartar Singh and others reported in (2002) 2 SCC 611, which held that under Section 47 of the Registration Act 1908, the effect of registration would relate back to the date of the document, and stated that a strict interpretation of the requirements under the application form will have to be given.

15. The learned counsel for the respondents also relied on W.A.No.2148 of 2018, Aromal Babu Vs. Hindustan Petroleum Corporation Ltd., and another, again by a Division Bench of the Kerala High Court, in that case, on 04.12.2017, a lease deed had been produced and it was registered on 28.06.2018. It was claimed that it related back to 04.12.2017, and therefore, the application should be accepted. This contention was rejected by the Division Bench, on the ground that, the lease deed was registered only after the demand for payment of Security Deposit, for the purpose of Field Verification and also on the fact that it had been mentioned in the application form that the applicant had a registered lease deed and therefore, a strict interpretation should be given.

16. The learned counsel also relied on (2007) 4 SCC 410, Shiv Kant Yadav V. Indian Oil Corporation and others, stating that if there was any factual misstatement or declaration, then the application can be rejected. The factual misstatement made in that case was with respect to the declaration of income and an enquiry had been made in that regard and only thereafter, the application was rejected, the enquiry was caused owing to the complaints received against the appellants before the Hon'ble Supreme Court.

17. The learned counsel for the petitioner on the other hand relied on (2003) 10 SCC 681, K.Vinod kumar V. S.Palanisamy and Others, wherein it had been stated that the purpose of furnishing the particulars of land in the application is to enable a determination as to whether the specified place would accommodate the godown facilities and distributorship arrangements from a commercial angle. It had been stated that the particulars of such land can be made available even subsequent to the filing of the application. It was stated that the requirement at the stage of making the application was only directory.

18. The learned counsel for the petitioner also relied on a judgment of the Division Bench of this Court, dated 26.06.2019 in W.A.No.637 of 2019, Bharat Petroleum Corporation Limited Vs. Abinaya Kaviarasu, wherein, this Court had, under quite similar circumstances, with respect a lease deed registered on 29.11.2017, though the lease deed was executed on 04.09.2017, by relying on Section 47 of the Registration Act, 1908, held that the factum of registration would relate back to the date of registration, and had rejected the appeal by Bharat petroleum Corporation Limited. Reliance was placed on AIR 1995 SC 73, Thakur Kishan Singh Vs. Arvind Kumar, wherein it was held that a document once registered takes effect from the date of execution only and not from the date of registration.

19. It is seen that in the present case, the petitioner in his application had declared that he had a registered lease deed. As a fact, he did not have a registered lease deed. The lease deed dated 27.08.2017 was unregistered. It was subsequently presented for registration on 10.05.2018. The last date for submission of application was 25.09.2017. The petitioner claimed that it was presented for registration only consequent to the fact that there was a ban in registration of documents imposed by the High Court. That ban had been imposed by a Judgment of a Division Bench of this Court in W.P.No.19566 of 2015 & Batch, which, according to the learned counsel for the respondents would not apply to the facts of this case. In that case, examining the provisions of Section 22 A of the Registration Act 1908, there was a restriction of registration of unapproved layouts and plots.

20. The Hon'ble Division Benches of the Calcutta High Court and Kerala High Court had rejected the pleas that subsequent registration would relate back to the date of document and therefore would not vitiate the application, on the ground that when in the application it had been specifically provided that the applicant should have a registered document, no leverage can be given.

21. On the other hand, the Division Bench of this Court referred above it was specifically stated that since Section 47 of the Registration Act, 1908, provides that the lease would take effect from the date of registration that would have a over riding effect.

22. In this regard, I hold, the requirement that a registered lease deed should be available on the late date of submission of applications and that notwithstanding anything containing under Section 47 of the Registration Act, 1908, production of a registered lease deed subsequent to the last date of submission of application cannot be countenanced since, an application form cannot over ride an Act of the Parliament.

23. The observation of the Hon'ble Supreme Court that the requirements in an application form are only directory and not mandatory projects the correct position. On the date of submission of the application form there was always an element of possibility of rejection and expecting prospective candidates to have registered document and subsequent rejection of a registered document violates Section 47 of the Registration Act, 1908.

24. The primary requirement for the respondents is to examine is whether the land offered for showroom/godown is suitable or not. The rules framed are archaic in nature. The conditions in the rules have come up for interpretation again and again before this Court. The respondents are inviting litigations on this aspect. It is hoped that at some point of time some realization would occur to the respondents to revisit the rules already framed. As a matter of fact, the Government of India have extended facilities to such an extent that they have brought in the assistance of Bank loans to be facilitated for applicants belonging to SC community.

25. I am not able to accept the view that merely because the lease deed was registered subsequently, an application of the applicant should be rejected. With respect to the statement, that on the date of application, the petitioner had a registered document, and that on that ground, of furnishing of false information, the application should be rejected, I hold that this rejection should have been made on the date when application form along with its requisite annexures were scrutinized. The respondents appear to have a very strange policy of accepting applications, inviting the applicants for draw of lots and thereafter rejecting them. The respondents should bring about a policy of carefully scrutinizing each and every document submitted along with the application and reject them then and there. Having accepted the application form and having invited the petitioner herein for draw of lots, I hold that the rejection of the application of the petitioner herein will have to be interfered with by this Court.

26. The Judgment of the Hon'ble Supreme Court in (2007) 4 SCC 410, Shiv Kant Yadav V. Indian Oil Corporation and others, was delivered in totally different circumstances. Complaints have been received from 3<sup>rd</sup> parties as against the selection of the appellant therein. Thereafter, an enquiry was held and only thereafter it was found that the applicant therein had not furnished the correct income and on that basis, the application was rejected. That was the case, where the income of an applicant cannot be verified at the first instance.

27. In the present case, the document submitted along with the application was an unregistered lease deed and when compared with the declaration that the applicant had a registered lease deed, at that stage, the application of the applicant should have been rejected. Having invited the petitioner to participate in the draw of lots, I hold that the respondents have invited this litigation on themselves.

28. Therefore, with respect to the 1<sup>st</sup> ground, I hold that the impugned order will have to be set aside.

29. With respect to the 2<sup>nd</sup> ground, namely that the petitioner was not a resident of the advertised location namely, Irumathur, in view of the certificate of the Zonal Deputy Tahsildar, Pappireddipatti Taluk, Dharmapuri District and contrasting them that the certificate of the Village Administrative Officer, who claimed that the petitioner was a resident of Irumathur, I hold that the issue is entirely an issue of fact and this Court cannot examine that on the basis of the two certificates. During the Field Verification of Credentials, the respondents have to find out where the petitioner actually resides. If he resides in Irumathur Village, he is eligible to get the dealership. But however, the respondents must also keep in mind Article 15(1) of the Constitution of India, that no person can be discriminated on the basis of his place of birth. The petitioner, if he satisfies all other conditions cannot be rejected only on the ground of his place of birth. Again this was a fact which could have been verified at the time of submission of the application form and scrutiny of documents. The respondent had failed to do that. They acted negligently in the first instance. They did not properly verify the documents. They did not scrutinize with magnifying glasses the application form. They permitted the applicant to participate in the draw of lots. Thereafter, they have created reasons to reject the petitioner. I hold that this ground also does not stand the scrutiny of this Court. I hold that both the grounds for rejection of the application form submitted by the petitioner does not withstand the scrutiny of this Court and therefore, both the reasons are rejected.

30. In view of the above reasons, I hold that the Writ Petition has to be allowed and accordingly, the same is allowed. No order as to costs. Consequently, connected Writ Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CS-I)

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W.P.No.17828 of 2018

RR(CO)

SP(28/02/2020)