BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8032 of 2020
and
W.M.P.(MD)Nos.7465 and 7467 of 2020

M.Arun Kumar ... Petitioner

Vs.

1. The General Manager,
The Indian Oil Corporation Ltd.,
(Regional Office), Chennai,
Indian Oil Bhavan,
Nungambakkam,
Chennai – 600 034.

2. The Divisional Manager,
The Indian Oil Corporation Ltd.,
Madurai Divisional Office,
No.2 Race Course Road,
Chokkilulam, Madurai – 625 002. ... Respondents

Prayer: 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 the impugned order passed by the 2nd respondent vide Ref.15447854825273, dated 17.01.2020, quash the same, and further direct the 2nd respondent to process forthwith the petitioner's application in Ref.15447854825273, dated 14.12.2018 for award of petroleum Retail outlet dealership at Melakrishnanputhoor to Puthoor on SH 179, Kanyakumari District under Group-I (Dealer Owned sites).

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel,
For M/s.Isaac Chambers.

For Respondents : Mr.Muralidharan

O R D E R

Heard the learned senior counsel appearing for the writ petitioner and the learned standing counsel appearing for the respondents/Indian Oil Corporation.

2.The respondents/corporation issued tender notification dated 25.11.2018 inviting applications from eligible candidates for appointment of retail outlet dealers at various locations in the State of Tamilnadu and Union Territory of Pondicherry. The case on hand pertains to the location at Melakrishnanputhoor, Kanyakumari District. The petitioner submitted his application dated 14.12.2018 in response to the said notification. The petitioner wanted his case to be considered under what is known as Group-I category. The respondents conducted a local inspection on 23.12.2019. Thereafter, the impugned order dated 17.01.2020 was issued and the petitioner was informed that his candidature under Group-I was found ineligible and that he would be considered for selection along with Group-III applicants as per the guidelines. This communication is put to challenge in this writ petition.

3.The respondents have filed a detailed counter affidavit. The learned standing counsel reiterated all the contentions set out therein. The eligibility criteria for individual applicants had been set out in clause 4 of the brochure. Clause 4 (v) is relevant to the case on hand. It reads as follows:-

> ***''(v) Land (Applicable to all categories):***
> *The applicants would be classified into three groups as mentioned below based on theland offered or land not offered by them in the application form:-*
> *Group 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership / long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.*
> *Group 2: Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.*
> *Group 3: Applicants who have not offered land in the application.*
> *Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant get selected under Group 1 & 2.*
> *In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group 1 & Group 2 along with applicants under Group 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location / stretch, within a period of 3 months from the date of issuance of intimation letter to them throughSMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected.*
> *The other conditions with respect to offering of land are as under:-*

a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application.

b) If the offered land is on Long term lease, then the Lease agreement should have a provision to sub-lease the land wherever the locations are advertised under Corpus Fund Scheme (CFS), Other Corporation Owned Sites ("A"/ "CC" sites).

In case it is observed that the lease agreement for the land offered by the selected applicant does not have a provision to sub-lease the land, in such cases the selected applicant would be provided 21 days' time from the date of intimation through SMS/e-mail to make suitable amendment / addendum to the lease agreement and submit the same to the concerned OMC.

c) For Dealer owned sites ("B"/"DC" sites), the applicant should ensure that the land arranged by the applicant is either registered in the applicant's name or leased in favour of the applicant for a minimum period of 19 years and 11 months (as advertised by respective oil company), before issuance of LOA as per the conditions of LOI.

d) The applicant(s) under Group-1 should have documents to establish ownership of land offered for the Dealership ***as on date of application,*** *such as:-*

- *Khasra / Khatauni or any equivalent revenue document or certificate from revenue official confirming status of the ownership of the land*
- *Registered Sale deed/Registered Gift deed.*
- *Registered Lease deed for a minimum period of 19 years and 11 months (as advertised by respective oil company) .*
- *Any other type of ownership / transfer deed document*
- *Lease agreement or firm allotment letter issued by Government / Semi Government bodies*

e) The land owned by the family member(s) will also be considered as belonging to the applicant (Group-1) subject to producing the consent letter in the form of affidavit ***(Appendix III A)*** *from the concerned family member(s).*

For this purpose family members would comprise of:-

(i) Self

(ii) Spouse

(iii) Father/Mother including Step Father/Step Mother

(iv) Brother/Sister/Step Brother/Step Sister

(v) Son/Daughter/Step Son/Step Daughter

(vi) Son-in-law / Daughter-in-law
(vii) Parents-in-law
(viii) Grand Parents (both maternal & paternal)
*f) For Group 2 applicants, the "firm offer" of land will include land offer from third party based on Agreement to purchase/long term lease (as per terms and conditions of the OMCs). Offer letter should be in the form of an Affidavit **(Appendix III A)** along with documents, mentioned in Clause (d) above, to establish the ownership of land offered for the Dealership.*
g) In case offer letter is from Power of Attorney holder (Registered), Offer letter should be in the form of an Affidavit along with copy of POA and along with documents, mentioned in Clause (d) above, to establish the ownership of land offered for the Dealership.
*h) The eligibility of applicant with regard to the Land (Group 1 or Group 2) will be decided by Oil Company with reference to a confirmatory letter from an advocate **(Appendix III B)** to be arranged by the applicant.*
*i) In case the applicant or family member(s) own the land jointly with third person, the consent letter in the form of an Affidavit **(Appendix III A)** or Power Of Attorney (Registered) clearly authorizing the applicant for such use of land from third person is also required.*
j) Various situations of ownership for defining owned / firm offer are as under:-

S. No	**Situation of ownership**	**Share of applicant in land**	**Additional documents required**	**Evaluation as**
	Group 1			
1	Self	Full	Nil	Owned
2	Self with members of family or owned exclusively by family members	Part/Nil	Consent letter in the form of affidavit from members of family – **Appendix III A**	ned

3.	Self with other owners Family members with other owner (s) Self with family members & other owners	Part Nil Part	**If the share of the applicant and/or family memebrs is more than equal to land required by the company.** Consent letter on stamp paper or an affidavit or Power of Attorney froma ll Co-owner(s) should be provided **– Appendix-XII A.**	Owned
4	Land owned by Government/ Semi-Government bodies	Full	Allotment Letter from the Government / Semi-Government bodies in the name of Self with specific mention for use of petrol pump	Owned
	Group 2			
5	Land owned by third party in part or full	Part/Nil	Consent letter in the form of affidavit / Power of Attorney from other owner(s) – **Appendix III A**	Firm Offer

k) Each applicant will have to declare, in the application form, the category under which offered land falls. Supporting the above, confirmatory letter from an advocate ***(Appendix III B)*** *giving details of the current ownership, documents relied upon and the category under which the land falls (Group 1 or Group 2), as on date of application, is also to be furnished as and when advised. The Group under which the applicant's land falls, would be determined based on the declaration given in the application and confirmatory letter from the advocate regarding the same.*

l) It should be the responsibility of the applicant to ensure that as on date of application:-

i. Offered land is of required dimension and abutting the Road boundary, after leaving Right of Way (ROW) line of

the road.
ii. The offered land is also not notified for acquisition.
iii. Land owner is in Possession of the land from the beginning / edge of ROW line.
iv. There is no other land including Govt. land between ROW and offered plot.

*Note : **In case it is found at later stage that the offered plot is not meeting any of the above conditions then in such case the offered land would be rejected and candidate will be given opportunity along with applicants under Group 3 by intimation through SMS/e-mail.***

m) Verification of the supporting documents submitted by the selected candidate, post selection, will be carried out at the time of Scrutiny / Field Verification of Credentials (FVC).

Note 1:
a. "Own' means having ownership by way of Registered Sale deed, Registered Gift deed, etc. or title of the property or registered long lease (as per individual OMC norms) in the name of applicant / family member/s as defined in 4 (v)-e above.
b. If an applicant offers more than one land then, a confirmation in writing will be obtained by Land Evaluation Committee (LEC) from the applicant with regard to the plot of land to be considered for evaluation.
c. The same piece of land cannot be offered by more than one applicant for a particular RO location against an advertisement. In case more than one application is received offering the same piece of land all such applications would be rejected and allotment, if made, would be liable for cancellation.
d. The selected candidate has to make available the offered land duly developed up to the road level by cutting/filling (as applicable), with good earth/ murrum, layerwise compacted as per standard engineering practices to the satisfaction of the concerned OMC. The selected candidate is also required to provide retaining wall and compound wall of min. height 1.5 meters, designed as per site conditions as per approval of OMC.
e. There is no commitment by the Oil Company for taking the offered land from the applicant. If an applicant, after selection, is unable to provide the land indicated in the application within a period of 2 months (for Group

1) and 4 months (for Group 2) from the date of Letter of Intent (LOI), Oil Company will have the right to cancel / withdraw the LOI issued in favour of the selected candidate for allotment of dealership.

Note 2

In case of locations where the applicant has not offered the land in the application ***(Group 3)*** *or if the offered land of all applicants* ***under Group 1 & Group 2*** *got rejected due to not meeting the laid down criteria, then all such applicants shall be given an opportunity to offer land or alternate land (as the case may be) in the advertised location/stretch provided the applicant meet all other eligibility criteria.*

A communication through SMS/e-mail would be sent to these applicants to offer land/ alternate land within a period of 3 months from the date of offer letter. On receipt of advice to offer land from OMCs the applicant should submit land offer online and indicate the category under which the land falls (Group 1 or Group 2) on the basis of the confirmatory letter from an advocate ***(Appendix III B).*** *Upon selection, the selected candidate would be required to submit all the relevant documents pertaining to the land offered along with consent letter in the form of affidavit* ***(Appendix III A)*** *and/or Power of Attorney (Registered), if applicable, along with confirmatory letter from an advocate* ***(Appendix III B).*** *The applicants would be classified into two groups i.e. Group 1 & Group 2 based on the land offered by them. In case the applicant(s) fail to offer alternate land within the specified period, the offer would be withdrawn and application rejected under intimation to the applicant(s) through SMS/e-mail.*

Only one opportunity would be given to the applicant, either for offering land (if applicant has not offered any land along with application form) or for offering alternate land (if the land offered by the applicant is found to be not meeting the laid down criteria during Scrutiny/land evaluation/ rejection of land after selection, for applicants who have offered land along with the application).

Note 3 : Opportunity to offer alternate land after FVC/issuance of LOI

There may be a situation, where the land offered by the candidate in the application (including land/alternate land offered by Group 3/Group 1 & Group 2 applicants) *meets all the specifications as laid down in the advertisement and on the basis of which LOI has been issued or proposed to be issued and the LOI holder or the selected candidate to whom LOI is proposed to be issued would like to offer an alternate land, due to whatsoever reason, such land may be considered by OMC subject to the alternate land meeting all specifications and is within the advertised location/stretch. In case applicant is selected and LOI has not been issued then on receipt of application from the selected candidate offering alternate land, Land evaluation of the alternate land will be done and if the land is found suitable, then LOI will be issued mentioning the change in offered land. In case alternate land is offered after issuance of LOI, a letter would be issued indicating acceptance of the alternate land offered, after Land evaluation (on land being found suitable) and this would be treated as addendum to LOI. In case the alternate land offered by the selected candidate/LOI holder is accepted by the OMC and LOI/addendum to LOI is issued to the candidate, the alternate land accepted by OMC would be treated as final and no further changes shall be accepted (including the original site offered). In case the alternate land offered by the selected candidate is found not meeting the laid down criteria, the selected candidate would be intimated on the same (through LOI) and LOI would be issued to the selected candidate referring to the originally offered land. In case the alternate land offered by the LOI holder is found not meeting the laid down criteria, the LOI holder would be intimated on the same through addendum to LOI. In such case, the time period to make available the land (original site offered along with the application) would remain valid as mentioned in the LOI from the date of issuance of letter (addendum to LOI) intimating rejection of alternate land. This opportunity would be available to the LOI holder up to 90 days from the issuance of LOI. The above mentioned opportunity can be availed by the selected candidate (after clearing FVC) / LOI holder only once.*

Note 4 :

i. In case the selected candidate (after clearing FVC) avails the opportunity to offer alternate land before issuance of LOI, the opportunity will not be available to the candidate post issuance of LOI.

ii. One time opportunity to offer alternate land also will be available in case of failure of rental negotiation. However, in this case, LOI holder can offer alternate land within 90 days of failed negotiation.

Further, this opportunity will not be available to the LOI holder in case he/she has availed the opportunity before issuance of LOI/post issuance of LOI.
iii. Opportunity for offering alternate land after selection (post FVC) / issuance of LOI would also be given to those applicants who may have availed such an opportunity earlier (Prior to FVC).
iv. In case after selection, if it is observed that the offered land is co-owned by multiple persons and the selected candidate did not provide consent of all the co-owners, the selected candidate would be given 21 days' time to get consent of all the co-owners for the offered land failing which the selection of the candidate will get rejected and the candidate will get opportunity along with Group 3 applicants.
v. In case after selection, if it is observed that the offered land does not contain sublease as required by OMC (for CFS / CC sites) the selected candidate would be given 21 days' time to make suitable amendment / addendum to the lease agreement failing which the selection of the candidate will get rejected and the candidate will get opportunity along with Group 3 applicants.''

4.The learned standing counsel pointed out that the dimensions of land required was 30m/30m. The petitioner herein has claimed that he fulfills the eligibility criteria by placing reliance on two documents. The first document is the one dated 26.11.2018 entered into between him and one S.Velappan Pillai. It is an agreement of sale. The said sale agreement fructified into a sale deed on 15.11.2019. The second document relied on by the petitioner is a lease agreement dated 10.12.2018. It is between the petitioner and his own father. The learned standing counsel would contend that the sale agreement by itself will not meet the requirements set out in the notification. Likewise the lease agreement dated 10.12.2018 also by itself will not meet the eligibility requirements. Only if the subsequent sale deed dated 15.11.2019 is taken into account, the petitioner will be able to fulfill the eligibility requirements.

5.The core argument of the learned standing counsel is that the material date would be the last date for submission of application. In this case, the last date was 24.12.2018. Therefore, the position that obtained as on 24.12.2018 alone would be the governing consideration and that this Court should ignore all the subsequent developments. In this regard, he places reliance on the order dated 03.06.2019 made in W.A.(MD)Nos.540 and 541 of 2019 (P.Kumaran V. The Manager L.P.G. (s), Indian Oil Corporation Ltd.,).

6.I carefully considered the rival contentions and went through the materials on record. One cannot dispute that the position that obtained as on 24.12.2018 alone will have to be taken into account and that one will have to ignore subsequent accrual of rights. But this Court will have to carefully see what is intended by the terms set out in the notification. The learned senior counsel appearing for the petitioner would point out that what was required for qualification was possession or an extent of land having dimensions of not less than 30 m/30 m. In this case, the petitioner had stated in his application that he is in possession of 931.04 sq. m. of land in Survey No.770/1 in Melakrishnanputhoor village.

7.Of course, as rightly conceded by the learned senior counsel for the petitioner, the application contains a factual error. The applicant had made it appear as if the documents from which he is deriving his rights are dated 14.12.2018.

8.In fact, the petitioner is basing his entire case on the strength of two documents namely., the sale agreement dated 26.11.2018 and the lease agreement dated 10.12.2018. The sale agreement dated 26.11.2018 was between the petitioner and one S.Velappan Pillai. The subject matter of the sale agreement is situated in Survey No.770/1. The dimensions of the land are 30 m./10 m. In the said sale agreement, it has been mentioned that the vendor namely., S.Velappan Pillai had received 92% of the sale consideration. The vender/Velappan Pillai had also stated that he had handed over the land in question to the writ petitioner/Arul Kumar. The parties had agreed that after receipt of the balance amount, the sale deed can be registered.

9.The other document is the lease deed dated 10.12.2018. It is only between the petitioner and his own father. It is also in respect of the very same survey number namely., S.No.770/1. The petitioner has enclosed a rough sketch and the learned senior counsel would confirm that the land that is the subject matter of the sale agreement dated 26.11.2018 and the one that is the subject matter or the lease deed dated 10.12.2018 are comprised in one and the very same survey number and that they are contiguous.

10.The order impugned in the writ petition states that the petitioner had not been found eligible under Group-I category as he was not in possession of the required land as on the date of application.

11.It is obvious that the reason set out the in the impugned order is erroneous. The last date of application was 24.12.2018. By then, both these documents namely., sale agreement dated 26.11.2018 and the lease agreement dated 10.12.2018 had been executed in favour of the petitioner. The petitioner was very much in possession of required land as on the date of application. Therefore, I have no hesitation to reject the reason set out in the impugned order as erroneous. But then, the learned standing counsel would want me to go by the terms of the brochure. I am of the view that the terms of the brochure cannot be interpreted as if they are statutory provisions. A reading of clause 4(v) of the brochure as a whole leads to the conclusion that the applicant should be having the required land available with him as on the date of the application. That is why, the learned senior counsel appearing for the petitioner would lay much stress on clause 4(v)(c). It states that for the dealer owned sites, the applicant should ensure that the land arranged by him is either registered in his name or leased in his favor before issuance of letter of appointment as per the conditions of letter of intent. The various terms set out in the brochure cannot be read as separate components. They are to be integrally read and understood.

12.The learned Standing counsel specifically took me to sub-clause (d) in particular. The expression "as on date of application" has been set out in bold letters. The said clause contains various categories of documents. One such category is "any other type of ownership / transfer deed document". In this case, the petitioner places reliance on the sale agreement dated 26.11.2018. By this document, there has been a transfer of possession from the said Velappan Pillai to the petitioner herein.

13.It is not in dispute that when the inspection took place, the parameters were fully satisfied even according to the respondent/corporation. The only dispute which the respondent raises is that this happened subsequent to the date of application and that it did not obtain on the date of application.

14.As I already noted, a reading of the impugned communication, one can come to the safe conclusion that the authorities were under the erroneous impression that the petitioner was not in possession of the required land on the date of application. The materials enclosed by the petitioner would more than substantiate that the petitioner was very much in possession of the required land well before the last date of application. The brochure obviously permits a lease arrangement also. In this case, the possession of the petitioner was in a kind of intermediate category. It was slightly less than full ownership but it was definitely above the lease category. The petitioner had paid 92% of the sale consideration and he had also taken physical possession in full. Subsequently, the said agreement had also blossomed into full fledged ownership.

15.Since the petitioner's category was at an intermediate level that is above that of lessee but below that of full fledged owner, I am of the view that the respondents ought to consider the petitioner as fulfilling the eligibility criteria set out in their brochure. In this view of the matter, the order impugned in the writ petition is quashed. The writ petition is allowed. The respondents are directed to consider the petitioner as if he falls under Group-I category. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. The General Manager,
   The Indian Oil Corporation Ltd.,
   (Regional Office), Chennai,
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   Nungambakkam, Chennai - 600 034.

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   The Indian Oil Corporation Ltd.,
   Madurai Divisional Office,
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+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-14547 [F] dated 20/08/2020)

W.P.(MD)No.8032 of 2020
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NS(CO)
TR(25.08.2020) 12P 4C