

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2618 OF 2020

Jayant S/o Shahuraj Sonawane,
Age – 48 years, Occu. Agril & Business,
R/o. Sonawane Bungalow,
Near Kamdar Petrol Pump,
Main Road, Latur

... Petitioner

VERSUS

1. Indian Oil Corporation Ltd.,
Registered Office Indian Oil Bhavan,
G-9 All Yavarjung Marg,
Bandra (E), Mumbai – 51
2. The Deputy General Manager,
Indian Oil Corporation Ltd.,
Pune Divisional Office,
2nd Floor, BNSL Telephone Exchange
Building Near GST Office,
Airport Road, Yerwada, Pune – 411 006.

... Respondents

...

Mr Anil M. Gaikwad, Advocate for petitioner
Mr A.P. Bhandari, Advocate for respondents

...

**CORAM : DIPANKAR DATTA, CJ
AND
S.S. SHINDE, J.**

DATE : AUGUST 27, 2021

PC [Dipankar Datta, CJ.]:

1. Aggrieved by the communication dated 27th November, 2019 issued by the Indian Oil Corporation Ltd. (hereafter "IOCL"), the petitioner has invoked the writ jurisdiction of this Court. By the impugned communication, the petitioner was informed of his ineligibility to be selected for award of retail outlet dealership, at village Balsur, taluka Omerga in the district of Osmanabad under open

category, advertised on 25th November, 2018. The ground of ineligibility, as evident from the impugned communication, is that as on 24th December, 2018, i.e., the last date for submission of applications in furtherance of the advertisement dated 25th November, 2018 issued by IOCL, the lease deed for the land proposed by the petitioner for the outlet had not been registered. The registration, according to the parties, was effected not before 29th June, 2019.

2. Appearing in support of the writ petition, Mr. Gaikwad, learned advocate submitted that although the lease deed was registered on 29th June, 2019, an agreement between the lessor and the lessee (the petitioner) for lease of the subject land was notarized on 20th December, 2018 and that such notarized lease agreement, submitted along with the application for dealership, ought to have been treated as sufficient compliance of the terms of the advertisement. It was next submitted, in the alternative, that having regard to the provisions of section 47 of the Registration Act, 1908 (hereafter "the Act of 1908"), the date of the registration must relate back to 20th December, 2018. Based on these contentions, Mr. Gaikwad prays for quashing of the communication dated 27th November, 2019 together with directions on the IOCL to declare the petitioner as eligible and to take further steps for award of the retail outlet dealership in favour of the petitioner having regard to the petitioner emerging successful at the draw of lots earlier conducted.

3. *Per contra*, Mr. Bhandari, learned advocate for the respondents, contends that in terms of the advertisement dated 25th November, 2018 read with the brochure published by IOCL for selection of dealers for regular and rural retail outlets dated 24th November, 2018, the petitioner was rightly declared ineligible. He refers to clause (a) under "Note 1" appearing under the caption "**Land (Applicable to all categories)**" (bold in original). Clause (a) defining "own" reads as follows :-

"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."

(emphasis supplied)

Having regard to such definition, Mr. Bhandari contends that what the IOCL required was a registered long lease and not a notarized agreement; thus, the petitioner did not qualify as owner of the proposed land for the retail outlet.

4. Our attention was drawn by Mr. Bhandari to the unreported decision of the Supreme Court dated 8th September, 2015 rendered in Civil Appeal Nos. 6928-6929 of 2015 (**Bharat Petroleum Corporation Ltd. and others Vs. Swapnil Singh**). He contends that in similar circumstances, as the present case, a Division Bench of the Calcutta High Court had proceeded on the basis of a notarized lease agreement dated 13th September, 2011 and had accepted the contention of the applicant that he was eligible as on that date

although the lease deed was registered on 21st December, 2012. Our pointed attention was drawn to the passage in the said decision reading as follows: -

“We are unable to accept this contention of learned counsel for the respondent. The brochure and the application form clearly require the applicant to have a registered lease deed in her name. What is shown to us is a notarized document and admittedly this document, even though it may have been in existence, was formalised into a lease agreement only on 20th December, 2012 and that was registered on 21st December, 2012. The notarized document, therefore, does not advance the case of the respondent any further. Therefore, it is quite clear that the respondent was not eligible on the date of application, i.e., 13th September, 2011.”

According to Mr. Bhandari, the decision in **Swapnil Singh** (supra) provides a complete answer to the claim raised in this writ petition and following such a binding decision, the writ petition ought to be dismissed.

5. Mr. Bhandari also invites our attention to an unreported decision dated 15th March, 2018 rendered by a co-ordinate Bench of this Court in Writ Petition no. 2019 of 2018 (**Anilkumar Harinarayan Ghuge Vs. Indian Oil Corporation Ltd. through its Area Manager and another**). There, the co-ordinate Bench in similar fact situation, dismissed the writ petition summarily relying on the decision in **Swapnil Singh** (supra).

6. In his rejoinder argument, Mr. Gaikwad contended that while deciding **Swapnil Singh** (supra), the Supreme Court had not considered section 47 of the 1908 Act and, therefore, we ought to

decide the claim raised in this writ petition without being influenced by such decision.

7. The parties have been heard, the materials on record perused and the provisions of law and the authorities cited considered.

8. Before we decide the contentious issue as to whether the petitioner was rightly declared ineligible, it would be appropriate to note certain relevant decisions of the Supreme Court having a bearing on such issue.

9. In its decision reported in **(1990) 3 SCC 655 (Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society Vs. M. Tripura Sundari Devi)**, the Supreme Court laid down the law as follows:

“6. ... when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. ... ”

10. Although the aforesaid decision was rendered concerning an appointment following public advertisement, there is no reason as to why the principle may not be applicable in the present case which also concerns selection and award of distributorship following public advertisement. It cannot be overemphasized that no selection and

consequent appointment or award of dealership pursuant to a public advertisement can be made in disregard of the qualifications mentioned in the advertisement; if the qualifications are disregarded, it would amount to arbitrariness attracting scrutiny of the Court on the anvil of Article 14 of the Constitution.

11. In its decision reported in **(1997) 4 SCC 18 (Ashok Kumar Sharma Vs. Chandrasekhar)**, law has been laid down in the following terms: -

“6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable”

12. The aforesaid decision is, therefore, an authority for the proposition that qualifications of candidates have to be judged as on the last date for receiving applications, if no other date for adjudging such eligibility is laid down in the advertisement. The crucial date in

the present case is 24th December, 2018 and, therefore, the petitioner's credentials were required to be judged bearing such date in mind. We would revert to this aspect of the matter a little later.

13. The Supreme Court in its decision reported in **AIR 2002 SC 1598 (Director of Settlements, A.P. Vs. M.R. Apparao)** while dealing with Article 141 of the Constitution and its binding effect on all Courts within the territory of India noted precedents and made the following important observations: -

"7. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See AIR 1970 SC 1002 and AIR 1973 SC 794). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. [See 1984 (2) SCC 402 and 1984 (2) SCC 324]. "

14. The contention of Mr. Gaikwad that section 47 of the 1908 Act was not considered by the Supreme Court while deciding **Swapnil Singh** (supra), is, therefore, of no relevance. The law laid down by the Supreme Court, which is binding under Article 141 of the Constitution, cannot be ignored on the ground that the Supreme Court did not consider certain aspects or that its notice was not invited to a relevant provision of law.

15. It would appear that the decision in **Swapnil Singh** (supra) arose from the judgment of a Division Bench of the Calcutta High Court. The Division Bench had reversed the decision of the single

Judge who had dismissed the writ petition. The way Mr. Gaikwad seeks us to interpret section 47 of the 1908 Act would result in resurrection of the view of the Division Bench of the Calcutta High Court which has since been reversed by the Supreme Court. This course of action, unfortunately for the petitioner, is not open to be followed.

16. In any event, nothing substantial turns on section 47 of the Act of 1908 having regard to the fact that although there was a notarized lease agreement dated 20th December, 2018, the final lease/confirmation deed at pages 73-74 of the writ petition would reveal that such deed was executed on 1st January, 2020, after fees paid on 19th June, 2019 were found to be deficient (as it appears from the English translation thereof which we have since obtained from the official translator of this Court).

17. Section 47 of the 1908 Act is primarily intended to affirm the title of a person created by a registered document executed earlier, should there be a dispute as to title on the face of two or more registered instruments in respect of the same property. The legislative intent is that if there be a delay in registration in respect of a document executed earlier, such delay should not be allowed to defeat the right of the person in whose favour execution was made at an earlier point of time. However, the fiction created by section 47 of the 1908 Act does not come into play before the actual registration of the document takes place. Here, we are not concerned with multiple registered instruments through which title is being claimed

by different parties. Notably, section 47 uses the expression "*no registration thereof had been required or made*". In terms of section 17(1)(d) of the 1908 Act, lease of immovable property from year to year or for any term exceeding one year has to be compulsorily registered. The word "required" assumes significance in the present context, not only because of the terms of section 17 but particularly in the light of the advertisement dated 25th November, 2018 issued by IOCL. By such advertisement, a representation was made to the public that as on the last date for receiving applications, i.e., 24th December, 2018, an applicant must "*own*" the land on which the retail outlet is proposed, "*own*" taking colour from clause (a) under Note 1 extracted supra. It was, therefore, the specific requirement of the terms of the advertisement that the petitioner should have had the lease deed registered on the date he offered his candidature for the retail outlet dealership. There being no registered instrument as on the last date of submitting application, the petitioner is precluded from contending that the notarized lease agreement would amount to sufficient compliance of the terms of the advertisement bearing in mind section 47.

18. We, therefore, find no reason to interfere with the impugned decision of the IOCL. The writ petition is dismissed, however, without any order as to costs.

[S.S. SHINDE, J.]

[CHIEF JUSTICE]

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