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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.12560 OF 2013 AND 27661 OF 2015

AND

M.P.NO.1 OF 2013

M.P.NOS.1 TO 3 OF 2015

W.M.P.NOS.18672 AND 18673 OF 2016

B.K.Baskar

... Petitioner
in both W.Ps.

..Vs..

1. The State Level Co-ordinator (TN & PY) Executive Director,
M/s.Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
Nungambakkam High Road,
Chennai-600 034.

2. The Chief Area Manager,
M/s. Indian Oil Corporation Ltd.,
No.500 Anna Salai,
Chennai-600 018.

3. K.R.Muralikrishnan

... Respondents in
W.P.No.12560 of 2013

1. Indian Oil Corporation Limited,
Represented by Chief Area Manager,
Marketing Division, Indane Area Office,
500 Anna Salai, Teynampet,
Chennai - 600 018.

2. K.R.Muralikrishnan

... Respondents in
W.P.No.27661 of 2015

PRAYER in W.P.No.12560 of 2013:

Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the proceeding of the second respondent dated 16.04.2013 in recalling the petitioner's selection for L.P.G. Distributorship of location at Perambakkam



and direct the respondents to award the L.P.G. Distributorship of location at Perambakkam as per the selection list dated 08.12.2011.

PRAYER in W.P.No.27661 of 2015:

Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the first respondent relating to its order in LOI Ref No.2015/IN000110/TN./000001/4112/00001 dated 03.06.2015 / 29.06.2015 and quash the same.

For Petitioner : Mr.Kandhan Duraisamy
in both W.Ps'

For Respondents : Mr.R.Sreedhar
for R1&R2 in W.P.No.12560 of 2013
and R1 in W.P.No.27661 of 2015
Mr.T.Karunakaran
for R3 in W.P.No.12560 of 2013
and R2 in W.P.No.27661 of 2015

C O M M O N O R D E R

The petitioner filed two Writ Petitions and the first Writ Petition filed in W.P.No.12560 of 2013 has been filed challenging the order of rejection dated 16.04.2013. The name of the petitioner was empanelled at the first instance and he was the top scorer and secured 99.3 marks. Subsequently, the revised marks were awarded to the petitioner and the empanelment made in favour of the petitioner was cancelled. Thus, the writ petitioner filed the first Writ Petition.

2. During the pendency of the first Writ Petition, the first respondent/Indian Oil Corporation awarded LPG Distributorship in favour of the second respondent subject to the result of the Writ Petition filed in W.P.No.12560 of 2013. Initially, an interim order was granted in the said Writ Petition. However, it was not extended by this Court. Thus, the first respondent/Indian Oil Corporation granted permission to run LPG Distributorship by the second respondent subject to the outcome of the first Writ Petition filed by the petitioner in W.P.No.12560 of 2013. Therefore, the writ petitioner filed the second Writ Petition in W.P.No.27661 of 2015 challenging the order awarding LPG Distributorship in favour of the second respondent.



3. The facts in nutshell are that, pursuant to the advertisement published in "The Hindu" on 15.06.2010, the applications were called for by the Indian Oil Corporation for appointment of Distributorship of LPG in Perambakkam locality in Tiruvallur District. The petitioner and the second respondent submitted their respective applications in the prescribed format. The applications submitted by the candidates were scrutinized by the first respondent / Indian Oil Corporation and awarded marks as per the brochure.

4. The petitioner scored 99.3 marks and his name was empanelled in S.No.1 and the name of the second respondent was found in S.No.2. Thus, the petitioner was expecting a letter of intent to commence the distributorship. However, the second respondent filed W.P. No.247 of 2012 before this Court to quash the selection list and to direct the first respondent / Indian Oil Corporation to award LPG Distributorship in his favour.

5. This Court passed an order on 07.11.2012 directing the authorities to consider the representation submitted by the second respondent on 23.12.2011 after hearing the petitioner and the second respondent. The first respondent has not immediately passed orders based on the direction issued by the High Court. However, the first respondent passed the impugned order dated 16.04.2013 removing the name of the petitioner from S.No.1 of the empanelment and inserted the name of the second respondent in S.No.1.

6. The order impugned dated 16.04.2013 provides three grounds for removal of the name of the petitioner from S.No.1 of the empanelment. The first ground stated is that the annual income declared in the application includes the agricultural income of the father, which is not part of the "Family Unit" defined in the advertisement. Further, the spouse's income declared in the application is not supported by consent document. Secondly, the date of application is 16.07.2010. The closing balance as on 16.07.2010 is Rs.17,49,981/-. Along with the Fixed Deposit, the total funds available is only Rs.18.7 Lakhs as on 16.07.2010. Therefore, the balance is not falling within the ceiling limit fixed by the first respondent / Indian Oil Corporation and on that ground also, the empanelment was removed. Thirdly, it is stated that the extent / dimensions of godown land owned by the lessor is not clear in the settlement deed, as defined in the advertisement.

7. Mr.Kandhan Duraisamy, learned counsel appearing on behalf of the writ petitioner contended that all the three grounds stated for revision of empanelment is perverse and not in consonance with the facts and circumstances of the case and, based on the erroneous principles, the impugned order is passed.



8. In respect of the first ground, the learned counsel for the petitioner reiterated that the mother of the petitioner is owning agricultural land and the said income was handed over to the petitioner and therefore, this income was also considered as part of the income of the petitioner and thus, there is no irregularity as stated in the impugned order.

9. The second ground for rejection is perverse in view of the fact that no doubt the date of application was 16.07.2010 but it was submitted on 19.07.2010 admittedly and even in the counter filed by the first and second respondents in W.P. No. 12560 of 2013, the first respondent had admitted that the application was acknowledged by the Indian Oil Corporation only on 19.07.2010. As on 19.07.2010, as per the bank statement of the petitioner, the balance maintained by the petitioner was a sum of Rs.20,25,481/-. Before presenting the application on 16.07.2010, the petitioner has deposited a sum of Rs.2,75,500/- on 17.07.2010 itself by cash in his State Bank of India account. The State Bank of India account furnished by the petitioner would reveal that on 17.07.2010, the cash deposit was made to the tune of Rs.2,75,500/-. Thus, as on 19.07.2010, the closing balance in his account was Rs.20,25,481/-.

10. Relying on the said Bank statement, the learned counsel for the petitioner contended that the first respondent has erroneously considered the date of application and as on the date of acknowledgment of the application, the petitioner was having necessary closing balance in his SB account. Thus, the order of rejection is infirm and liable to be set aside.

11. Regarding the third ground that the petitioner was not owning proper godown as prescribed in the advertisement, the learned counsel for the petitioner emphasized that the first respondent has not pointed out any discrepancy in respect of the size and the dimensions of the godown. However, it is blankly stated that the extent/dimensions of the godown land owned by the lessor is not clear.

12. The learned counsel for the petitioner reiterated that such a blanket ground without providing particulars of deficiency cannot be accepted and therefore, the third ground is also improper and the impugned order is liable to be set aside.

13. The learned counsel appearing for the first respondent/ Indian Oil Corporation objected the contentions raised on behalf of the petitioner by stating that the first respondent has scrutinized the documents and awarded marks. However, the learned counsel for the first respondent is unable to dispute the fact that the application submitted by the petitioner was acknowledged by the Indian Oil Corporation on 19.07.2010, even



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the acknowledgment slip furnished would reveal that the date mentioned is 19.07.2010 and 16.07.2010 falls on Friday and 17.07.2010 and 18.07.2010 are Saturday and Sunday. Thus, the application was acknowledged on 19.07.2010 and the said date is mentioned in the counter statement filed by Indian Oil Corporation also.

14. The first respondent filed counter in W.P. No. 12560 of 2013 and in Para 5 of the counter, the first respondent has clearly stated that "the petitioner had applied for distributorship at Perambakkam vide application dated 19.07.2010 against the advertisement in 'The Hindu' dated 15.06.2010 and called for interview on 08.12.2011 as per procedure".

15. However, in Para 10 of the very same counter, the first respondent has stated that "the statements made in Para 8 and 9 that the application is dated 19.07.2010 and having an amount of Rs.20,25,481/- as on 19.07.2010. On the other hand, the date of application of the petitioner is 16.07.2010 and not 19.07.2010 as claimed by the petitioner".

16. The learned counsel for the Indian Oil Corporation relying on the said portion stated that the date mentioned in the application is 16.07.2010, however, the application was acknowledged by the Indian Oil Corporation on 19.07.2010 and as per the advertisement, the date of application is taken into consideration. Thus, there is no infirmity in respect of the consideration made by the first respondent.

17. With reference to the agricultural income of the father of the petitioner, the learned counsel appearing for the first respondent made a submission that the petitioner is a married person and therefore, the father's agricultural income cannot be taken into consideration. As far as the third reason is concerned, it is stated that the Indian Oil Company has verified with reference to the brochure and the advertisement and has revised the empanelment of the petitioner from S.Nos.1 to 2. Thus, there is no irregularity.

18. The learned counsel for the second respondent opposed the contentions raised on behalf of the petitioner by stating that the second respondent is meritorious. No doubt, at the first instance, the marks awarded to the second respondent was 97.3, lesser than the marks awarded to the petitioner, i.e., 99.3. However, the second respondent was able to secure certain documents through Right To Information Act, 2005 and produced the same before the Indian Oil Corporation and thereafter, the revised consideration was made and accordingly, the second respondent was selected for grant of LPG Distributorship at Perambakkam.



19. The learned counsel for the second respondent also contended that the reason stated in the impugned order are in consonance with the terms and conditions stipulated in the brochure. The reasons stated in the impugned order are based on the documents and the initial marks awarded in favour of the petitioner was erroneous and not in consonance with the documents submitted by the petitioner. Regarding the date of application, the learned counsel for the second respondent also emphasized that the date of application must be taken into consideration and in the present case, the date of application is 16.07.2010 and not 19.07.2010. Thus, the Writ Petitions are devoid of merits.

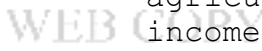
20. Further, the interim order granted in W.P. No. 12560 of 2013 was not extended and the actions of the Indian Oil Corporation was questioned by the second respondent and thereafter, they have awarded the distributorship. However subject to the result of the first Writ Petition, the second respondent is now running the LPG Distributorship and supplying LPG gases to the consumers and therefore, the supply need not be disrupted at this length of time.

21. The learned counsel for the second respondent relying on the brochure has stated that the marks awarded based on the date of application and the closing balance in the SB account was in accordance with the brochure and 18 marks were awarded. It is clearly stated that the date of application is to be considered. Thus, as on the date of application, the petitioner was not possessing required closing balance in his account. Thus, the rejection is in accordance with law and there is no infirmity as such.

22. The learned counsel for the second respondent regarding the documents contended that the second respondent submitted all the documents after securing the same and furnished before the first respondent. The first respondent thereafter considered the merits and awarded distributorship in favour of the second respondent. Thus, there is no irregularity. Accordingly, the Writ Petitions are to be rejected.

23. Considering the arguments, this Court is of the considered opinion that, the reasons stated for revised empanelment in the impugned order is to be tested for the purpose of considering the issues. If the reasons furnished are not in consonance with the facts and legal principles, then the petitioner is entitled to succeed.

24. Let us now consider the reasons for revised empanelment of the name of the petitioner. The first reason is that the agricultural income of the father of the petitioner cannot be



25. The petitioner claims that his mother was owning agricultural lands and that the income was treated as family income and accordingly, he has furnished the details. However, these factors are to be ascertained with reference to the documents produced by the parties. This Court cannot go into the relative merits of the income aspect which is to be verified by the competent authorities.

27. A question arises as to whether the date of application is the date mentioned by the applicant in his application or the date of acknowledgment of the application by the Indian Oil Corporation. This requires a clarification in view of the fact that the applicants put the date in their applications on the day they filled up the application. However, some applicants may send the applications through Registered Post with acknowledgment due, some other may send by Speed Post or Courier or several other modes of delivery to the addressee.

<https://hcservices.ecourts.gov.in/hcservices/>



applicants through various modes of communications.

29. For example, if an applicant sent his application from a Post Office situated in a village, it may take two or three days to reach the Indian Oil Corporation. If the candidate is residing nearby the Corporation Office, he may hand it over in person and the third person may send the application through Registered Post with acknowledgment due. Thus, the applications may reach the Competent Authority on different dates depending on the method of delivery. Thus, in all such cases, the date of acknowledgment by the Competent Authority must be considered as the date of eligibility to consider the application.

30. In the present case, the first respondent in their counter filed in W.P. No. 12560 of 2013 admits the fact that the petitioner had applied for distributorship at Perambakkam vide application dated 19.07.2010. However, they have stated in Para 10 that the application is dated as 16.07.2010 and not 19.07.2010. The counter itself reveals that the date mentioned in the application by the petitioner is 16.07.2010 and the said application was acknowledged by the first respondent on 19.07.2010. Thus, for all purposes, 19.07.2010 must be the date to be considered to fix the eligibility to scrutinize the application.

31. Practical and pragmatic interpretation of terms mentioned in the brochure are of paramount importance. No doubt in the brochure it is stated that the date of application is to be considered, however, the interpretation of such date of application must be in consonance with the established principles of law. The date of application mentioned in the brochure cannot cause insistency and discrimination amongst the candidates for the purpose of admitting eligibility. In the event of such circumstances, undoubtedly, discrimination would be caused amongst various candidates who all are sending their applications through various modes of communications. Thus, for all purposes, the date of application mentioned in the application should be interpreted as if the date of acknowledgment by the Competent Authority and the said date is to be taken into consideration for the purpose of admitting eligibility of the application.

32. However, as of now, the online mode of receiving application is introduced and these sort of confusions are avoided. In view of the fact that the present case was filed in the year 2013, such an interpretation is required considering the facts and circumstances of the case.

33. As far the third ground of rejection is concerned as rightly pointed out by the learned counsel for the petitioner



the extent / dimensions of the godown land owned by the lessor is not clear in the statement made. If so, the first respondent ought to have clearly mentioned what is the defect or discrepancy in respect of the extent / dimensions. When the reasons for rejection is relating to the godown, then the discrepancy or deficiency must be given with full particulars. In the absence of any such details or particulars, a blanket statement for rejection given in the impugned order cannot be sustained at all. Thus, the reasons stated in the impugned order is blank and not clear. Merely, stating that the extent / dimensions of the godown is not as per the brochure is vague and such vagueness crept in the impugned reason is untenable.

34. The learned counsel for the second respondent made a submission that pursuant to the order granting LPG Distributorship, the second respondent is now supplying LPG cylinders to the customers. However, this Court is of the opinion that such a permission was granted in order dated 29.06.2015, clearly stating that the said order is subject to outcome of W.P. No. 12560 of 2013, which was pending before the High Court. Thus, the first respondent has clearly stated that it is not an absolute letter of intent to run LPG Distributorship and the permission is granted subject to the outcome of the said Writ Petition.

35. Under these circumstances, the second respondent cannot claim any right in respect of the order passed granting distributorship during the pendency of the Writ Petition. It is to be construed as an interim arrangement in order to facilitate the customers to get the LPG cylinders without interruption.

36. In view of the facts and circumstances, this Court is of an opinion that the reasons stated for revision of empanelment of the name of the petitioner from S.Nos.1 to 2 is not in consonance with the established principles and such reasons are not substantiated by the first respondent / Indian Oil Corporation.

37. This Court cannot make a finding in respect of relative merits between the candidates. It is for the authorities to verify all the original documents carefully and award marks. Admittedly, in the present case, the petitioner was awarded with 99.3 marks at the initial stage and thereafter, it was revised as 88.3 marks. In view of these discrepancies, this Court is of an opinion that the entire exercise must be conducted afresh by the first respondent to ensure that the distributorship is granted in a transparent manner and considering the relative merits of the candidates, who are all eligible for grant of LPG Distributorship.



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38. Accordingly, the following orders are passed:

"(i) The impugned orders passed by the first respondent dated 16.04.2013 and the subsequent order passed in LOA Reference No. 2015/IN000110/TN./000001/4112/00001 dated 03.06.2015 / 29.06.2015 are quashed.

(ii) The first respondent is directed to issue publication / notification in respect of Perambakkam LPG Distributorship alone within a period of four weeks from the date of receipt of a copy of this order.

(iii) On receipt of the applications from all the eligible candidates including the petitioner and the second respondent, the first respondent is directed to scrutinize the application by following the procedures as contemplated and award LPG Distributorship within a period of four weeks thereafter.

(iv) The entire exercise is directed to be done by the first respondent within a period of two months from the date of receipt of a copy of this order.

(v) The second respondent is permitted to supply LPG cylinders to the existing customers for a period of three months from the date of receipt of a copy of this order. The second respondent shall not admit any new customers for the purpose of supply of LPG cylinders during the said period of three months."

39. With these directions, these Writ Petitions stand allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The State Level Co-ordinator (TN & PY) Executive Director,
M/s.Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
Nungambakkam High Road,
Chennai-600 034.
2. The Chief Area Manager,
M/s. Indian Oil Corporation Ltd.,
No.500 Anna Salai,
Chennai-600 018.
3. The Chief Area Manager,
Indian Oil Corporation Limited,
Marketing Division, Indane Area Office,
500 Anna Salai, Teynampet,
Chennai - 600 018.

+2cc to Mr.Muthumani Duraisamy, Advocate, S.R.No.53282
+3cc to Mr.T.Karunakaran, Advocate, S.R.No.53052, 53051
+2cc to Mr.R.Sreedhar, Advocate, S.R.No.53327, 53328

W.P.Nos.12560 of 2013 and 27661 of 2015
and
M.P.No.1 of 2013
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