



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.501/2019 and CMP.Nos.4354, 4357, 5439, 5440, 6068,
6070/2019

V.Gowtham ... Appellant/Petitioner
-vs-

1. The Senior Regional Manager,
Hindustan Petroleum Corporation Limited,
Kochi Regional Office,
Seaport-Airport Road,
Irumpanam Post, Kochi-682 309.

2. The Joint Director of Explosives,
Shastri Bhavan,
Haddows Road,
Nungambakkam, Chennai-34.

3. R.S.Sowmya ... Respondents/Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge made in W.P.No.31708 of 2016 dated 13.02.2019.

Prayer in W.P.No.31708 of 2016: 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 1st respondent herein pertaining to the proceeding of the draw for selection of LPG Distribution dated 13.07.2016 for Tiruppur (Nallur) Location and consequential selection of the 3rd respondent as illegal and quash the same and consequently direct the 1st respondent to conduct the fresh lots of draw.



For Appellant : Mr.V.Prakash,
Senior Counsel
for M/s.K.Rajendra Prasad

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For 1st respondent : Mr.M.Vijayan
for M/s.King & Partridge

For 2nd respondent : Mr.Sidharth

For 3rd respondent : Mr.N.Manokaran

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been directed against the order of the learned Single Judge made in W.P.No.31708 of 2016 dated 13.02.2019, thereby dismissing the case of the writ petitioner/appellant to cancel the order selecting the 3rd respondent for LPG Distributionship for Tiruppur (Nallur) Location.

2. Learned Senior Counsel appearing for the appellant submitted that the appellant applied for Distributionship of the Liquefied Petroleum Gas Cylinders (in short 'LPG') in Ward No.38, Nallur, Tiruppur Town, pursuant to the advertisement given by the 1st respondent dated 21.09.2013. One of the conditions shows that an applicant has to own or possess a land by means of a lease of not less than 15 years, with an extent of 3 meters by 4.5 meters in the concerned location. This being one among the other conditions, the writ petitioner/appellant, applied for the LPG distributionship along with all the relevant documents well before the last date on 22.10.2013. Since the selection of the applicant had to be made by means of draw of lots from among the eligible applicants, the Draw of lot was scheduled on 13.07.2016 and he was informed by letter dated 11.7.2016 that on 13.07.2016, when the draw would be held, a visiting dignitary would ask to select from the lots. In the said draw, the 3rd respondent was selected for LPG distributionship for the relevant area, namely, Nallur-Tiruppur Town.

3. Learned Senior Counsel for the appellant further submitted that thereafter, on enquiry, the appellant came to



know that the 3rd respondent who was selected initially produced the lease deed for the land in Survey Number 186/1C, Nallur Village, Tiruppur. But the said land was not situated in Ward No.38, Tiruppur City Municipal Corporation and it is, in fact situated in RVE Nagar in Ward No.39 which shows that at the time of the application, the 3rd respondent was not at all an eligible candidate. Besides, the 3rd respondent had also executed a Cancellation Deed dated 28.05.2015 for the lease held by her. Immediately after coming to know about the same, the appellant submitted an objection to the 1st respondent, namely, The Senior Regional Manager, Hindustan Petroleum Corporation Limited, Kochi Regional Office, Kochi, by letter dated 14.07.2016. The said objection was also acknowledged by the 1st respondent. On receipt of the same, the 1st respondent has also sent a reply dated 01.08.2016 mentioning clearly therein that the 3rd respondent has cancelled the said lease on 28.05.2015 that clearly shows that the 3rd respondent was not eligible to be included in the list of eligible candidates for the draw of lots.

4. Learned Senior Counsel for the appellant also submitted that in view of the above admitted factual position, the appellant should have been selected as he had a fair chance of success. But instead of accepting the case of the appellant, the 1st respondent has not cancelled the selection of the 3rd respondent for LPG Distributionship for Nallur, Tiruppur Town location. Therefore, the Writ Petitioner/appellant filed a Writ Petition in W.P.No.31708/2016 on the ground that the impugned order of selection selecting the 3rd respondent was in violation of the Clause 6 (viii) stipulated by the respondent Oil Companies. Therefore, the same is liable to be interfered with as the selection was made without considering the fact that the land in question for establishing the showroom itself is falling outside the advertised location, that the selection was made without considering the fact that the land shown at the time of selection was not available with the 3rd respondent, that the same was used by another LPG dealer by name P.S.Bharat Gas Agency and that the impugned selection was made on the acceptance of the alternate land given by the 3rd respondent for selection which was against the principles and conditions stipulated by the respondent Oil Companies. Therefore, the present Writ Appeal has to be allowed, it is pleaded.



5. A detailed Counter Affidavit has been filed by the selected candidate and supporting the same, the 1st respondent has also filed a counter accepting the substitution of the land made by the selected candidate which cannot be accepted. Once the advertisement shows that on the date of making application and also on the date of draw of lot, the person should possess a requisite land, in the present case, admittedly, the selected candidate while showing 3 metres x 4.5 metres of land for the show room place for the LPG distributionship in the application has admittedly cancelled the said lease of land on 28.05.2015 and when the draw of lot was held on 13.07.2016, the 3rd respondent was having a different land than the one shown and mentioned in the application filed before the last date on 22.10.2013 that clearly shows that the applicant having not altered or substituted any land, applied for selection of LPG Distributionship ought not to have been accepted and selected. But this aspect has been completely overlooked by the learned Single Judge. Therefore, the present Writ Appeal has been filed and allowing the appeal, the impugned order is liable to be set aside and a direction be issued to the selected appellant for running the LPG Distributionship for Ward No.38, Nallur, Tirupur Town, he pleaded.

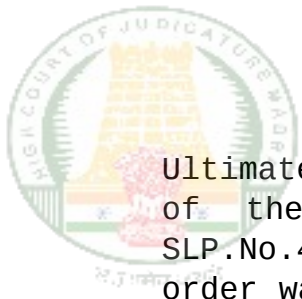
6. Opposing the above submissions, learned Counsel for the 1st respondent submitted that although an advertisement was issued inviting applications from the eligible candidates for the distributionship of the LPG for the Ward No.38, Nallur-Tirupur Town and 58 applicants were qualified for the drop of lots, 53 members were present at the time of draw of lot, considering the qualification and the compliance of all the conditions by the 3rd respondent, she was allowed to take part in the draw of lot and she was selected in the draw of lot. Since several people questioned one or the other conditions, several cases were pending in various courts, finally, the matter went up to the Apex Court. In the meanwhile, during the interregnum period, since various requests were received by the 1st respondent for substitution of the land for running the LPG Distribution ship, as a policy decision, the 1st respondent accepting the requests for substitution, allowed the 3rd respondent to substitute the land. Paragraph 7 of the counter affidavit filed by the 1st respondent also clearly shows that a clarification was issued by the Deputy Secretary, Government of India, MOP&NG by Indian Oil Corporation vide Letter ref SL/1702



dated 09.06.2016 in this regard which shows that the selected candidates have cancelled their lease in respect of the lands shown in their applications. Therefore, an opportunity was provided to the selected candidates to offer the alternate lands. On that basis only, the request of the 3rd respondent made on 22.07.2016 was also accepted.

7. Learned Counsel for the 1st respondent submitted that since the clarification dated 09.06.2016 issued in Letter SL/1702 by the Indian Oil Corporation has not been questioned by anyone including the appellant herein and finally the 3rd respondent was selected on the basis of offering the alternate land, it is too late to question the same. Yet another plea raised in favour of the selected candidate shows that when the selected candidate both on the date of making application and also on the date of holding draw of lot on 13.07.2016 had possessed the land-in-question to run the showroom, the Selection Committee after selecting the 3rd respondent by the draw of lot rightly undertook inspection and after verification of the land-in-question possessed by the 3rd respondent, issued the LPG distributionship on 13.07.2016. From then onwards, the 3rd respondent has been running the LPG distributionship at Nallur-Tirupur Town. Therefore, the learned Single Judge finding no merit whatsoever has dismissed the Writ Petition. Therefore, no interference is called for, he pleaded.

8. We also find merits on the findings and conclusions reached by the learned Single Judge. When the advertisement was issued by the 1st respondent inviting applications from qualified candidates for the distributionship of the LPG cylinders for the Ward No.38 Nallur-Tirupur Town, 48 people had applied. When the draw of lot was held on 13.07.2016, 53 people were present for the draw. Ms.R.S.Sowmya, D/o.R.Subramaniam, Application Sl.No.107046 was declared as selected candidate. Since she had substituted the land-in-question, her candidature was challenged stating that the selected candidate, namely, 3rd respondent has given one land for showroom whereas after canceling the lease deed on 28.05.2015, the 3rd respondent selected has brought in another land without the leave and permission of the 1st respondent that was a mistake committed by the writ petitioner/appellant herein. The reason being that when a delay had occurred before holding the draw of lot, several litigations were initiated by various candidates.



Ultimately, the case went upto Apex Court. After the dismissal of the writ petition, the aggrieved parties also filed SLP.No.4634/2015 etc. before the Apex Court and finally, an order was passed on 09.05.2016. Pursuant to the order passed by the Apex Court, the 1st respondent fixed a date for draw of lot on 13.07.2016 and all the applicants qualified were informed about the date of draw of lot by way of a communication dated 29.06.2016 as well as by way of an advertisement in The Hindu and Daily Thanthi Newspapers dated 11.07.2016 and thereupon 48 applicants have participated in the draw of lot held on 13.07.2016 in which the 3rd respondent was selected as per the proceedings of the draw for selection of LPG Distributionship issued by the 1st respondent. Since the Indian Oil Corporation in their letter dated 09.06.2016 has permitted the substitution of the lands-in-question based on the same, the selected 3rd respondent herein cancelling the lease deed dated 28.05.2016 has acquired another land, therefore, the learned Single Judge has rightly accepted the selection of the 3rd respondent made by the 1st respondent and it appears that from the date of selection, till date, the 3rd respondent has been running the LPG Distributionship without any interruption. Hence, we do not find any infirmity or illegality in the order of the learned Single Judge.

9. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Senior Regional Manager,
Hindustan Petroleum Corporation Limited,
Kochi Regional Office, Seaport-Airport Road,
Irumpanam Post, Kochi-682 309.



2. The Joint Director of Explosives,
Shastri Bhavan,
Haddows Road,
Nungambakkam,
Chennai-34.

+1CC to M/s.N.Manoharan, Advocate, SR.No.39499

W.A.No.501/2019

RR(CO)
B.VC (21/09/2021)