

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2021

DELIVERED ON : 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.12468 of 2020 and
WMP.Nos.15387 & 15388 of 2020

Ganapathiraman Srinivasan

... Petitioner

vs.

M/s. Indian Oil Corporation Ltd,
Rep. by Mr.AE.Sivakumar,
its Head of Divisional office,
Salem Divisional Office,
No.234, 1st Floor, NH-7,
Salem Bangalore Bye-Pass Road,
Kondalampatti,
Salem - 636 010.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 06.07.2020 in Ref. No.15453649492836 and its consequential letter in Ref.SLMDO/SRMP dated 24.07.2020 passed by the respondent herein and quash the same, consequently direct the respondent to award the Retail Outlet Dealership in the name of the petitioner viz., Ganapathiraman Srinivasan for the advertised location at Uthangarai Town & Periphery (Town limits and 2KMS beyond Town limits), Krishnagiri District as per the selection mode on 11.11.2019 forthwith.

For Petitioner : Mr.N.Baskaran

For Respondent : Mr.R.Sivakumar

ORDER

This writ petition has been filed challenging the order dated 06.07.2020 passed by the respondent Oil Corporation rejecting the petitioner's candidature for allotment of a retail petroleum outlet for the advertised location at Uthangarai Town & Periphery (Town limits and 2KMS beyond Town limits), Krishnagiri District.

2. The petitioner had applied for a retail petroleum outlet with the respondent Oil Corporation on 21.12.2018 and he was provisionally selected in the draw of lots conducted by the respondent Oil Corporation subject to the fulfillment of the terms and conditions of the tender. However, the respondent oil corporation under the impugned order dated 06.07.2020 rejected the petitioner's candidature on the ground that Appendix-III A and Appendix-III B are dated after the application date.

3. The issues that arise for consideration are:

(a) whether the non-submission of the consent affidavit from the family member (brother) of the petitioner (Appendix-III A) who has offered to give his land to the petitioner at the time of submission of the application by the petitioner; and

(b) whether the non-submission of the confirmatory letter from an Advocate (Appendix-III B) pertaining to the offered land at the time of submission of the application; are fatal to the petitioner's candidature for the petroleum retail outlet.

4. According to the petitioner, the reason for rejection of the petitioner's candidature by the respondent Oil Corporation under the impugned order is flimsy and is curable.

5. However, according to the respondent Oil Corporation, the submission of Appendix-III A (consent affidavit from the family member of the applicant) and Appendix-III B (confirmatory letter from the Advocate) at the time of submitting the application for petroleum retail outlet are mandatory and is not curable.

6. Heard Mr.N.Baskaran, learned counsel for the petitioner and Mr.R.Sivakumar, learned counsel for the respondent.

7. Learned counsel for the petitioner would submit that Appendix-III A and Appendix-III B were very much available with the petitioner at the time of submission of his application for allotment of a retail petroleum outlet with the respondent Oil Corporation on 21.12.2018, but by inadvertence, the same was not enclosed by the petitioner along with his application dated 21.12.2018. Learned counsel for the petitioner drew the attention of this Court to the consent affidavit (Appendix-III A) and the Advocate's confirmatory letter (Appendix-III B) both dated 20.12.2018 filed in the typed set of papers and would submit that even though the said documents were very much available with the petitioner, due to inadvertence, the same were not submitted to the respondent Oil Corporation along with his application.

8. Learned counsel for the petitioner drew the attention of this Court to the conditions contained in the brochure dealing with the submission of Appendix-III A (consent affidavit from the family member for offering the property) and Appendix-III B (confirmatory letter of the advocate) and would submit that the same will have to be furnished by the petitioner as and when advised by the respondent Oil Corporation. According to him, the said condition was duly complied by the petitioner. However, he would submit that by inadvertence, a fresh consent affidavit (Appendix-III A) and a fresh confirmatory letter of the Advocate (Appendix-III B) were given by the petitioner which were dated 15.11.2019 to the respondent Oil Corporation instead of Appendix-III A and Appendix-III B that were available with the petitioner which were obtained on 20.12.2018 itself, a day prior to the date of the application i.e., on 21.12.2018.

9. Learned counsel for the petitioner then drew the attention of this Court to the impugned order and would submit that arbitrarily, on flimsy grounds and without considering the fact that the petitioner was possessing the consent affidavit (Appendix-III A) and confirmatory letter from the advocate (Appendix-III B) even at the time of submission of his application for allotment of a retail petroleum outlet, the respondent has rejected the petitioner's candidature for getting dealership of the retail petroleum outlet from the respondent Oil Corporation.

10. Learned counsel for the petitioner also drew the attention of this Court to the consent affidavit dated 15.11.2019 (Appendix-III A) and the confirmatory letter of the advocate dated 15.11.2019 (Appendix-III B) sent by the petitioner to the respondent Oil Corporation on the request made by them and would submit that only by inadvertence, a fresh consent affidavit and a fresh confirmatory letter were sent by the petitioner. Learned counsel for the petitioner also drew the attention of this Court to the land requirement stipulated under the brochure issued by the respondent Oil Corporation for retail petroleum outlet and would submit that the petitioner has satisfied the land requirement as the land offered by the petitioner for setting up of a retail petroleum outlet in his application is also the same even now.

11. Learned counsel for the petitioner also submitted that the respondent has violated the principles of natural justice as they have not adhered to the terms and conditions for allotment of petroleum retail outlet. He drew the attention of this Court to the conditions in the brochure whereby the respondent Oil Corporation will have to give sufficient time for the selected candidates to submit the required documents and would submit that the same was not adhered to by the respondent Oil

Corporation. Learned counsel for the petitioner also drew the attention of this Court to clause 11 of the brochure dealing with affidavits and would submit that only as per the format prescribed by the respondent Oil Corporation, the petitioner has submitted the consent affidavit (Appendix-III A) and hence, according to him, the reasons given under the impugned order rejecting the petitioner's candidature is arbitrary, flimsy and is curable.

12. Learned counsel for the petitioner in support of his submissions drew the attention of this Court to the following authorities:

(a) Sunita Gupta vs. Union of India and Others reported in (2014) 15 SCC 604;

(b) United Bank of India vs. Naresh Kumar and Others reported in (1996) 6 SCC 660;

(c) Indian Oil Corporation vs. Kapil Bagri reported in 2015 SCC Online Del 10954; and

(d) Shankar Kumar Bhagar vs. Indian Oil Corporation and others reported in 2019 SCC Online Pat 1225.

13. Per contra learned counsel for the respondent would submit that Appendix-III A (notarized consent affidavit of landlord) and Appendix-III B (confirmatory letter of the Advocate) were submitted by the petitioner only on 15.11.2019, subsequent to the date of application i.e., on 21.12.2018 seeking for allotment of a retail petroleum outlet and hence, according to him, the respondent Oil Corporation has rightly rejected the petitioner's candidature for allotment of petroleum retail outlet. Learned counsel for the respondent drew the attention of this Court to clause 13 of the terms and conditions for allotment of petroleum retail outlet and would submit that the consent affidavit of the land owner (Appendix-III A) and the confirmatory letter from the advocate (Appendix-III B) must be available with the petitioner on the date of the application seeking for allotment of petroleum retail outlet and should be submitted to the respondent Oil Corporation as and when advised by the respondent Oil Corporation. However, the consent affidavit (Appendix-III A) and the confirmatory letter (Appendix-III B) both are dated 15.11.2019 and are subsequent to the date of submission of application seeking for allotment of petroleum retail outlet and therefore, the same cannot be accepted by the respondent. According to the learned counsel for the respondent, the conditions that Appendix-III A and Appendix-III B must be available with the petitioner even on the date of submission of the application is mandatory and it cannot be relaxed.

14. Learned counsel for the respondent also drew the attention of this Court to clause 15 of the application wherein

the petitioner has given an undertaking that he is in possession of the supporting documents in original in respect of the information given by him in his application. He has also given an undertaking that if he is selected and fails to present the required documents in original to the respondent Oil Corporation, his selection can be cancelled. According to the learned counsel for the respondent, despite the said undertaking, the petitioner has challenged the impugned order in violation of the terms and conditions.

15. In support of his contentions, learned counsel for the respondent relied upon the decision of the Hon'ble Supreme court in the case of *Vidarbha Irrigation Development Corporation vs. Anoj Kumar Agarwala* reported in MANU/SC/0078/2019.

Discussion:

16. Land is an essential requirement for allotment of any retail petroleum outlet. Without the availability of the land, there cannot be any petroleum retail outlet. In the case on hand, the petitioner has applied for allotment of a retail petroleum outlet in his name. He has offered his brother's property for the said petroleum retail outlet. Under the application, the petitioner is entitled to do so. However, the petitioner will have to submit a consent affidavit from his brother as per Appendix-III A consenting to give his land to the applicant for setting up the petroleum retail outlet in his name as a dealer of the respondent Oil Corporation. The petitioner must also submit a confirmatory letter from an advocate giving details of the current ownership, documents relied upon and the category under which the land falls (Group-1 or Group-2) before submitting the application.

17. As per the terms and conditions for according distributorship, the aforementioned two documents namely Appendix-III A and Appendix-III B must be available with the petitioner on the date of the application. The relevant clause reads as follows:

"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."

18. Admittedly, Appendix-III A namely the consent affidavit from the petitioner's brother and Appendix-III B namely the confirmatory letter from the Advocate were submitted by the petitioner to the respondent Oil Corporation only on 27.08.2020 i.e., after a lapse of almost 20 months from the date of the application and only after passing of the impugned order dated 06.07.2020, the petitioner has submitted Appendix-III A and Appendix-III B both dated 20.12.2018 with the respondent oil Corporation. It is the contention of the petitioner that though Appendix-III A and Appendix-III B were very much available even on the date of the application seeking for allotment of retail petroleum outlet, the genuineness of both the documents dated 20.12.2018 has to be verified. This Court under Article 226 of the Constitution of India cannot hold a roving enquiry with regard to its genuineness.

19. As observed earlier, only when the respondent is fully satisfied and convinced that the land is very much available for setting up of a petroleum retail outlet, they will be in a position to award distributorship to any party. The consent affidavit (Appendix-III A) sought for under the terms and conditions for allotment by the respondent Oil Corporation is only to ensure that there will not be any withdrawal of the offer made by the petitioner's family member to give his property at a later date. Therefore, the condition imposed by the respondent Oil Corporation for submission of Appendix-III A and Appendix-III B at the time of application cannot be treated lightly and cannot be considered to be curable in case of violation of the said condition.

20. The application for petroleum retail outlet submitted by the petitioner was on 21.12.2018. He became successful by draw of Lots held on 11.11.2019 and he was requested to submit Appendix-III A and Appendix-III B by the respondent Oil Corporation on 12.11.2019. However, the petitioner submitted the consent affidavit (Appendix-III A) and confirmatory letter from the advocate both dated 15.11.2019 to the respondent Oil Corporation in violation of terms and conditions which stipulates that the date of the consent affidavit (Appendix-III A) and confirmatory letter from an advocate (Appendix-III B) must be the date of the application seeking for allotment of petroleum retail outlet which is on 21.12.2018.

21. This Court is of the considered view that the respondent Oil Corporation considering the mandatory nature of the documents has rightly rejected the petitioner's candidature on the ground that he has not submitted Appendix-III A and Appendix-III B on the date of the application but submitted the same only after the date of the application. The affidavit mentioned in the brochure for selection of dealers for petroleum

outlets relied upon by the learned counsel for the petitioner deals with Appendix 10-A (for individual) and Appendix 10-B (for non-individual) and does not deal with Appendix-III A and Appendix-III B. Therefore the contention of the learned counsel for the petitioner that non-submission of Appendix-III A and Appendix-III B is curable cannot be accepted by this Court as the said documents are mandatory in view of the aforementioned reasons.

22. The brochure for selection of dealers for regular and retail outlets also makes it clear that the land should be available with the applicant as on the date of the application and should have minimum lease of 19 years and 11 months (as advertised by the respondent Oil Corporation) from the date or after the date of advertisement but not later than the date of application. In the case on hand, the land offered by the petitioner for the petroleum retail outlet is not his own land but his brother's land. Admittedly, Appendix-III A and Appendix-III B were not submitted by the petitioner on the date of application. Unless and until, the respondent Oil Corporation is satisfied and convinced about the land availability on the date of the application, they cannot award the contract to the petitioner as land is the essential requirement for allotment of any retail petroleum outlet. In the case on hand, since the petitioner's brother's property was offered and the respondent Oil Corporation was not in possession of the consent affidavit from the petitioner's brother on the date of the application, they have rightly rejected the petitioner's candidature under the impugned order.

23. The judgments relied upon by the learned counsel for the petitioner referred to supra have no bearing to the facts of the instant case.

24. The decision relied upon by the learned counsel for the petitioner in the case of *Sunita Gupta vs. Union of India and Others* reported in (2014) 15 SCC 604 is concerned, the same will not apply to the facts of the instant case. In that case, admittedly the consent letter of the applicant's family members was submitted along with the application and the applicant was also called for interview, but whereas in the case on hand, admittedly, the consent affidavit (Appendix-III A) and confirmatory letter of the Advocate (Appendix-III B) were not submitted by the petitioner along with his application and were submitted only after the date of impugned order rejecting the petitioner's candidature.

25. The second decision relied upon by the learned counsel for the petitioner in the case of *United Bank of India vs. Naresh Kumar and Others* reported in (1996) 6 SCC 660 is also not

applicable to the facts of the instant case as the said decision does not deal with allotment of petroleum retail outlet and further the grounds for rejection of the petitioner's candidature by the respondent Oil Corporation cannot be considered to be flimsy as land is an essential requirement for any allotment of a petroleum retail outlet. This Court is of the considered view that only in accordance with the terms and conditions which makes it mandatory for submission of Appendix-III A and Appendix-III B along with the application, the respondent Oil Corporation has passed the impugned order rejecting the petitioner's candidature.

26. Insofar as the third decision relied upon by the learned counsel for the petitioner in the case of *Indian Oil Corporation vs. Kapil Bagri* reported in 2015 SCC Online Del 10954 is concerned, it is also not applicable to the facts of the instant case. It did not deal with affidavits required to be submitted in respect of the land requirements but the said decision dealt with normal affidavits where one of the parties by inadvertence failed to sign though a notary public had attested his affidavit.

27. Insofar as the fourth decision relied upon by the learned counsel for the petitioner in the case of *Shankar Kumar Bhagar vs. Indian Oil Corporation and others* reported in 2019 SCC Online Pat 1225 is concerned, the same is also not applicable to the facts of the instant case as it was not a case involving a similar nature as that of Appendix-III A and Appendix-III B which according to this Court is mandatory in nature, since it concerns land availability. Appendix-III A and Appendix-III B are the essential tender conditions which have to be strictly complied with by any applicant seeking for allotment of petroleum retail outlet. As Appendix-III A and Appendix-III B pertain to availability of the land at the time of submission of application, the non-submission of Appendix-III A and Appendix-III B by the petitioner at the time of submission of application is not a curable defect. Admittedly, the petitioner has submitted Appendix-III A and Appendix-III B disclosing the date of the consent affidavit (Appendix-III A) and the confirmatory letter of the advocate (Appendix-III B) as 20.12.2018 with the respondent Oil Corporation only after the date of the impugned order dated 06.07.2020 which goes to show that the petitioner was not in possession of the consent affidavit from his brother (Appendix-III A) and the confirmatory letter of the Advocate (Appendix-III B) on the date of the application i.e., on 21.12.2018.

28. As rightly contended by the learned counsel for the respondent, the petitioner cannot use the writ jurisdiction to make a fresh bargain with the respondent. The principles laid

down in the decision relied upon by the learned counsel for the respondent in the case of *Vidarbha Irrigation Development Corporation vs. Anoj Kumar Agarwala* reported in MANU/SC/0078/2019 that (a) writ jurisdiction cannot be utilised to make a fresh bargain between the parties and (b) an essential tender condition which ought to be strictly complied with cannot be condoned, will apply to the facts of this case also.

29. For the foregoing reasons, this Court is of the considered view that there is no merit in this case. Accordingly, this writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

M/s. Indian Oil Corporation Ltd,
Head of Divisional office,
Salem Divisional Office,
No.234, 1st Floor, NH-7,
Salem Bangalore Bye-Pass Road,
Kondalampatti,
Salem - 636 010.

+lcc to Mr.R.Sivakumar, Advocate SR.NO..18644

AKM/15.04.21/ 9P-3C/

order in

W.P.No.12468 of 2020
23.03.2021

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