

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.26949 of 2018

and

WMP Nos.31317, 31316 of 2018 and 21747 of 2019

Komathi

... Petitioner

Vs

1. The General Manager (LPG-Sales),
Indian Oil Corporation Limited,
Marketing Division,
Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai - 34.

2. The Deputy General Manager (LPG - Sales)
Indian Oil Corporation Limited,
Marketing Division,
Indane Area Office,
No.500, Anna Salai,
Chennai - 18.

3. Chief Area Manager,
Chennai Area Office,
Indian Oil Corporation Limited,
Indane Area Office,
No.500, Anna Salai,
Chennai - 18.

4. P.Sridhar

5. M.Bharkavi *

... Respondents

* R5 impleaded vide order dated 12.04.2019
made in WMP No.6863 of 2019.

* Amended Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the impugned order in IOC 04112018621092017, dated 26.10.2018 issued by the 2nd respondent and quash the same and consequently to retain the selection of LPG Distributorship in Ref. No.IOC 04112060125092017, dated 06.04.2018 following setting aside the

rejection order in Ref. No.IOC04112060125092017, dated 26.09.2018 passed by the 2nd respondent.

* Prayer amended vide order dated 12.04.2019 made in WMP No.10612 of 2019 in WP No.26949 of 2018

For petitioner ... Mr.M.Rajendiran

For respondents ... Mr.Mohammed Fayaz Ali
for RR1 to 3
Mr.R.Neelakandan for R5
R4- Served - No appearance

ORDER

This writ petition has been filed challenging the order dated 26.09.2018 passed by the 2nd respondent rejecting the candidature of the petitioner for LPG distributorship under Clause No. 26 of the advertisement and Clause No.19 of the Brochure on the Unified Guidelines for selection of LPG distributorship at Sembedu, Vellore District.

2. The 2nd respondent / Oil Corporation has passed the impugned order rejecting the petitioner's candidature giving the following reasons :-

a) No such land for godown and showroom as mentioned in application and no documents have been submitted till date as per policy guidelines.

b) the petitioner has only submitted the letter dated 07.08.2018 for transfer of patta and no documents for alternate land has been submitted by her.

c) no response has been received from the petitioner either in person or through correspondence to proceed further.

3. The respondent / Oil Corporation had earlier intimated the petitioner that the lands provided by the petitioner for the godown in his application for dealership does not suit the requirements of the respondent / Oil Corporation and therefore, she was directed to provide an alternate land under the respondent's communication dated 26.06.2018. In the said communication, dated 26.06.2018 was directed to submit all the requisite documents on or before 04.07.2018. Subsequently, a reminder letter was also sent to the petitioner on 16.07.2018. Thereafter on 24.07.2018, the petitioner was directed to offer an alternate land on or before 03.08.2018. On 06.08.2018, the respondent / Oil Corporation once again granted an opportunity for the petitioner to offer an alternate land on or before 03.08.2018.

4. The petitioner by her letter dated 07.08.2018 to the respondent / Oil Corporation intimated the respondent / Oil Corporation that the alternate land to be provided was her ancestral property and hence mutation of revenue records will have to be done in her mother's name and that is the reason for delay in submitting the documents. Hence, she sought for further time to produce the documents by her letter dated 07.08.2018. According to her, the revenue records for the alternate land was mutated in her mother's name and was very much available on the date of the impugned order i.e. on 26.09.2018. The petitioner has also filed the patta standing in the name of the petitioner's mother for the land, which has been offered by the petitioner as an alternate land for the retail outlet to the respondent / Oil Corporation. According to the petitioner, the patta was issued only on the date of the impugned order. It is her contention that all the documents were produced before the respondent / Oil Corporation on 26.09.2018 itself. However according to her without considering the same, arbitrarily and by total non application of mind, the second respondent has passed the impugned order rejecting the petitioner's candidature for the non submission of the required documents.

5. The respondents 1 to 3 have filed an application in WMP No.21747 of 2019 seeking to vacate the interim stay granted by this Court. The learned counsel for the respondents 1 to 3 would submit that the affidavit filed in support of the said application may be treated as counter affidavit. As seen from the counter affidavit filed by the respondents, they are denying the allegations made by the petitioner. The respondent Oil Corporation would contend that sufficient opportunity was granted to the petitioner to provide an alternate land along with the required documents. In their counter affidavit, they have mentioned about various reminders sent by the respondents to the petitioner calling upon her to produce the required documents. According to them, there has been a considerable delay on the part of the petitioner to provide the documents. According to the respondent Oil Corporation, since the requisite documents were not produced by the petitioner for the alternate land, the second respondent was constrained to pass the impugned order rejecting the petitioner's candidature for LPG distributorship on 26.09.2018. According to the respondent Oil Corporation, the rejection of the petitioner's candidature has been done only in accordance with Clause No. 26 of the advertisement and Clause No.19 of the Brochure on the Unified Guidelines for selection of LPG distributors.

6. Heard Mr.Velmurugan, learned counsel for the petitioner and Mr.Mohammed Fayaz Ali, learned panel counsel appearing for the respondents 1 to 3 and Mr.R.Neelakandan, learned counsel

for the 5th respondent. Despite service of notice on the 4th respondent and his name having been printed in the cause list, there is no representation on his side.

7. The learned counsel for the petitioner drew the attention of this Court to the Field Verification of Credentials (FVC) report submitted by the respondents in their typed set of papers filed before this Court. She would submit that even as per the said Field Verification report, it has been recorded that the petitioner's mother has given the property for patta transfer on 07.08.2018. According to her, respondent Oil corporation are very much aware that the process for transfer of patta in respect of the alternate land was in progress and even without waiting for the patta transfer, the impugned order has been passed rejecting the petitioner's candidature for LPG distributorship.

8. The learned counsel for the petitioner also drew the attention of this Court to the Encumbrance Certificate dated 26.09.2018, which discloses that the petitioner's grand mother Amalamamal, was the owner of the property prior to the mutation of revenue records in favour of the petitioner's mother. According to her, the encumbrance certificate was very much available with the second respondent Oil Corporation even before the passing of the impugned order.

9. The learned counsel for the petitioner also drew the attention of this Court to the patta standing in the name of the petitioner's mother subsequent to the mutation in her name, which pertains to the alternate land offered by her to the respondent / Oil Corporation.

10. The learned counsel for the petitioner drew the attention of this Court to the impugned order and would submit that despite the petitioner producing the documentary evidence to establish that mutation of revenue records has happened in favour of the petitioner's mother, the second respondent has passed the impugned order rejecting the petitioner's candidature even without considering the said documents. Therefore, according to her, arbitrarily and by total non application of mind, the impugned order has been passed.

11. Per contra, Mr. Mohammed Fayaz Ali, learned Panel counsel appearing for the respondent Oil Corporation would submit that several opportunities were granted to the petitioner to offer an alternate land and to provide the requisite documents. He drew the attention of this Court to the various communications sent by the respondent Oil Corporation to the petitioner requesting her to provide the requisite documents in respect of the alternate land offered by her.

12. In particular, the learned Panel counsel drew the attention of this Court to the representation of the petitioner dated 05.10.2018 to the respondent and would submit that only on 05.10.2018 viz., after passing of the impugned order, the requisite documents were made ready by the petitioner. Therefore, according to the learned panel counsel for the respondent, it is false to contend that the requisite documents were very much available on 26.09.2018, i.e. being the date of the impugned order.

13. The learned panel counsel for the respondent Oil Corporation drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of Sorath Builders versus Shreejikrupa Buildcon Limited and another reported in (2009) 11 SCC and in particular, he referred to paragraph 27 of the said judgment and would submit that if pre-qualification documents have not been furnished by the bidders, within the time schedule, the Courts cannot interfere with the decision of the respondent Oil Corporation to reject the candidature of the bidder.

14. According to the learned counsel for the 5th respondent, the 5th respondent has complied with all the requirements of the respondent Oil Corporation and therefore the 5th respondent is entitled for allotment of the retail outlet. He would further submit that if any indulgence is shown to the petitioner, the rights of the 5th respondent will be greatly affected.

Discussion :

15. The respondent Oil Corporation has rejected the petitioner's candidature for allotment of LPG distributorship on the ground that the petitioner has not satisfied the land requirements for the alternate land offered by the petitioner in lieu of the land which was offered at the time of submitting the application. According to the respondent / Oil Corporation, the petitioner has not fulfilled the requirements of Clause 26 of the advertisement and Clause 19 of the Brochure on Unified Guidelines for selection of LPG distributorship. The ground for rejection of the petitioner's candidature by the respondent Oil Corporation are as follows :

a) No such land for godown and showroom as mentioned in application and no documents have been submitted till date as per policy guidelines.

b) the petitioner has only submitted the letter dated 07.08.2018 for transfer of patta and no documents for alternate land has been submitted by her.

c) no response has been received from the petitioner either in person or through correspondence

to proceed further.

16. The petitioner has produced before this Court the following documents in support of her case that the land requirements of the respondent Oil Corporation has been satisfied by her :

a) Sale deed dated standing in the name of the petitioner's grand mother Amalammal, dated 07.09.1973, they registered as Document No.2653 of 1973.

b) Death certificate of petitioner's grand mother dated 15.12.1995 confirming that she died on 14.11.95.

c) Legal Heirship certificate of petitioner's grand mother dated 29.12.1995 disclosing that the petitioner's mother Usha Ammal is her only legal heir.

d) Encumbrance Certificate dated 26.09.2018 disclosing that the petitioner's grand mother Amalammal purchased the property under sale deed dated 07.09.1973 registered as Document No.2653 of 1976.

e) Patta standing in the name of the petitioner's mother Usha Ammal

17. According to the petitioner, the patta came to be issued in favour of her mother Usha Ammal only on 26.09.2018, i.e., on the date of the impugned order. In the Typed set of papers filed by the respondent Oil Corporation before this Court, they have filed the Field Verification of Credentials (FEC) report dated 21.09.2018 pertaining to the property offered by the petitioner to the respondent Oil Corporation for the retail outlet. As seen from the Field Verification of Credentials report dated 21.09.2018, the respondent Oil Corporation has acknowledged the fact that the petitioner's mother whose property has been offered as an alternate property has been given for patta transfer by the petitioner on 07.08.2018. The impugned order rejecting the petitioner's candidature for LPG distributorship has been passed on 26.09.2018 i.e., after the Field Verification of Credentials report dated 21.09.2018.

18. In the impugned order dated 26.09.2018, there is no reference to the Field Verification Credentials report dated 21.09.2018, wherein, the respondent has acknowledged the fact that the alternate property offered by the petitioner is in the process of mutation of revenue records. As seen from the communications filed before this Court both by the petitioner as well as the respondent /Oil Corporation, it is clear that the

petitioner has been requesting time to produce the mutated revenue records for the alternate property as it was under process by the Revenue Authorities. The petitioner has also intimated the respondent Oil Corporation that only due to the delay in getting the mutation done on account of the delay caused by the authorities concerned, she has not been able to produce the mutated revenue records in the name of her mother Usha Ammal on time.

19. Further, it is the case of the petitioner that all the requisite documents were produced before the second respondent on 26.09.2018 but the second respondent refused to accept the same and gone ahead by passing the impugned order on the same date i.e. on 26.09.2018 itself completely ignoring the documents produced by the petitioner. Admittedly, as seen from the impugned order, the documents that have been placed before this Court to establish the petitioner's case that she has satisfied all the land requirements as sought for by the respondent Oil Corporation has been complied with, has not been considered by the second respondent.

20. The learned Panel counsel for the respondent Oil Corporation has also submitted before this Court that though the 5th respondent has been allotted the retail outlet, since this writ petition is pending, no contract has been awarded to the 5th respondent till date. In such circumstances and in view of the foregoing reasons, no prejudice will be caused to any of the respondents if the matter is remanded back to the second respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner as well as the 5th respondent, who has now been allotted retail outlet for LPG distributorship in place of the petitioner.

21. For the foregoing reasons, this Court is of the considered view that principles of natural justice has been violated by the second respondent since, they have not considered the documents that have been placed by the petitioner before this Court and they have also not afforded a fair hearing to the petitioner that too when the respondent Oil Corporation have themselves admitted in their independent Field Verification Report dated 21.09.2018 that the petitioner has applied for mutation of revenue records in the name of her mother, which was pending consideration by the authorities concerned. The learned panel counsel for the respondent / Oil Corporation has relied upon a decision of the Hon'ble Supreme Court in the case of Sorath Builders versus Shreejikrupa Buildcon Limited and another reported in (2009) 11 SCC and would submit that since the petitioner was negligent in submitting his pre-qualification documents, within the time schedule, she is not entitled for any indulgence from this Court.

22. The relevant paragraphs of the judgment referred to by the learned panel counsel for the respondent / Oil Corporation reads as follows :-

27. Following the aforesaid legal principles laid down by this Court, we are of the considered opinion that Respondent 1 was negligent and was not sincere in submitting his pre-qualification documents within the time schedule laid down despite the fact that he had information that there is a time schedule attached to the notice inviting tenders. Despite being aware of the said stipulation he did not submit the required documents within the stipulated date. Pre-qualification documents were received by Respondent 2 University only after the time schedule was over. The terms and conditions of the tender as held by the Supreme Court are required to be adhered to strictly, and therefore, Respondent 2 University was justified in not opening the tender submitted by Respondent 1 on 1-12-2008, which was late by three days. According to us no grievance could also be made by Respondent 1 as lapse was due to his own fault.

28. The High Court proceeded to interfere with the entire process as if acting as an appellate authority over the decision of the University which was beyond the jurisdiction of the Court. The High Court was not justified in accepting the contentions of Respondent 1 and thereby upsetting the entire process of inviting tenders by interfering with the terms and conditions of inviting the tenders and by rescheduling and directing the process of retendering, which would only cause further delay and would increase the burden on the exchequer of the University.

29. In that view of the matter, we set aside the judgment and order of the High Court and upheld the decision of the University in awarding the contract in favour of the appellant. Accordingly, the appeal stands allowed.

23. The judgment referred to supra by the learned panel counsel for the respondent Oil Corporation does not have any bearing for the facts of the instant case. That case involves a tender matter for construction of a college building and there was no draw of lots involved in that matter. Even in that case, the Hon'ble Supreme Court has observed that the bidder was negligent and was not sincere in submitting his pre-qualification documents, within a time schedule and only on those grounds, the Hon'ble Supreme Court held the bidder is not

entitled for any indulgence for acceptance of his bid. The case on hand is on a different footing as in the instant case, the petitioner claims that she has been sincere in attempting to satisfy the land requirements of the respondent Oil Corporation. The documents placed before this Court also does not prima facie make this Court to believe that there was no sincere attempt made by the petitioner to satisfy the land requirements of the respondent Oil Corporation. Therefore, the judgment relied upon by the learned panel counsel for the respondent Oil Corporation referred to supra does not have any bearing for the facts of the instant case, where the petitioner was declared as successful bidder by the respondent Oil Corporation out of the short listed candidates based on draw of lots. In the decision relied upon by the learned panel counsel for the respondents referred to supra, there was no draw of lots involved and therefore, the said decision is not applicable for the facts of this case.

24. For the foregoing reasons, the impugned order dated 26.09.2018 is quashed and the matter is remanded back to the 2nd respondent for fresh consideration and the 2nd respondent shall pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner as well as the 5th respondent including granting them the right of personal hearing, within a period of eight weeks from the date of receipt of a copy of this order.

25. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The General Manager (LPG-Sales),
Indian Oil Corporation Limited,
Marketing Division,
Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai - 34.

2.The Deputy General Manager (LPG - Sales)
Indian Oil Corporation Limited,
Marketing Division,
Indane Area Office,
No.500, Anna Salai,
Chennai - 18.

3.The Chief Area Manager,
Chennai Area Office,
Indian Oil Corporation Limited,
Indane Area Office,
No.500, Anna Salai,
Chennai - 18.

+1cc to Mr.M.G.Ramachandiran, Advocate SR.14143

W.P. No.26949 of 2018

GPL (CO)
CB (29/03/2021)



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