



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
09.04.2021	19.04.2021

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CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A.(MD) No. 1193 of 2020
and
C.M.P(MD).No. 6499 of 2020

The Divisional Manager,
Indian Oil Corporation Limited,
Madurai Divisional Office,
No.2, Race Course Road,
Chokkikulam, Madurai - 2.

... Appellant/2nd Respondent

Vs

1. M. Arunkumar

...1st Respondent/Petitioner

2. The General Manager,
The Indian Oil Corporation Limited,
Regional Office, Chennai.
Indian Oil Bhavan,
Nungambakkam, Chennai - 600 034.

... 2nd Respondent/1st Respondent

PRAYER: Appeal under Clause 15 of the Letters Patent, against the order dated 19.08.2020, passed in W.P.(MD) No. 8032 of 2020.

Prayer in WP(MD). 8032 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ, Order or Direction in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent vide Ref.15447854825273 dated 17.1.2020 Quash the same and further Direct the 2nd respondent to process forthwith the petitioners application in Ref.No.15447854825273 dated 14.12.2018 for award of petroleum Retail outlet dealership at Melakrishnanputhoor to Puthoor on SH 179 Kanyakumari District under Group-I (Dealer owned sites), and pass such further or other suitable Order/Orders as this Honourable Court.



For Appellant : Mr.K. Muraleedharan
For 1st Respondent : Mr.Isaac Mohanlal, Senior Counsel
for
Mr.H. Thayumanasamy
For 2nd Respondent : Notice Dispensed with

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JUDGMENT

[Judgment of the Court was delivered by **S.ANANTHI, J.**]

This appeal by the 2nd respondent, is filed against the order dated 19.08.2020, in W.P.(MD)No.8032 of 2020 filed by the 1st respondent/petitioner herein.

2. The 1st respondent had filed W.P.(MD) No.8032 of 2020 under Article 226 of the Constitution of India, challenging the impugned order passed by the 2nd respondent vide Ref.15447854825273, dated 17.01.2020 and sought further direction to process forthwith the petitioner's application in Ref.15447854825273, dated 14.12.2018.

3. The respondents/Corporation issued tender notification dated 25.11.2018 inviting applications from eligible candidates for appointment of retail outlet dealers at various locations in the State of Tamilnadu and Union Territory of Pondicherry. The case on hand pertains to the location at Melakrishnaputhoor, Kanyakumari District. The petitioner submitted his application dated 14.12.2018 in response to the said notification. The petitioner wanted his case to be considered under what is known as Group-I category. The respondents conducted a local inspection on 23.12.2019. Thereafter, the impugned order, dated 17.01.2020 was issued and the petitioner was informed that his candidature under Group-I was found ineligible and that he would be considered for selection along with Group-III applicants as per the guidelines. This communication is put to challenge in this writ petition. The petitioner's application was rejected on the ground that the applicant was not in possession of required land as on date of application.

4. The 1st respondent/writ petitioner had contended that his case is to be considered as Group-I category in the brochure. As per Clause 4(v) of the brochure, the applicant would be classified into three groups as mentioned below based on the land offered or land not offered by them to the application form and Group-I applicants having suitable place of land in the advertised location/area either by way of ownership/long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

5. The land required for the project was 30m/30m. The 1st respondent/writ petitioner had submitted his application, dated

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



14.12.2018 as in Group-I category along with lease deed dated 10.12.2018 for 20 years. When a lease deed executed for more than 11 months it must be compulsorily registered. But the above deed is not registered. Further, he shown the extent as 48m/30m in the application. He relied only the lease agreement in his application.

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6. As per brochure note 1(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.

7. The writ petitioner had filed only lease deed along with his application that too unregistered. The appellant had inspected the property on 23.12.2019 and found that the site was not upto the eligibility criteria fixed for the project.

8. Further, the writ petitioner had filed one sale agreement dated 26.11.2018 which was alleged to be prior to application. But, the sale agreement was not annexed with the petitioner's application. The sale agreement also not registered. The same was executed on 15.11.2019 only after filing the application. Therefore, on the date of application, the writ petitioner did not possess the required land under any valid documents.

9. The relevant portion of the Judgment, dated 22.04.2019 in W.A. No. 1277 of 2019 passed by the Division Bench of this Court, is extracted hereunder:

"

13. The respondent is deemed to be fully aware of the terms and conditions. Despite that being the position, while submitting his application in column No.5, he had given the date of lease deed as 23.04.2018 along with the document number. Column 5 of the application clearly states that the land should be owned or leased for minimum fifteen years. Having submitted the application fully knowing well that the mandatory condition is fifteen years lease, the applicant could not have filed a document with eleven months lease period to state that it satisfied the requirement in column 5 of the application. Therefore, the applicant was right in stating that the respondent had filed an incorrect declaration and in terms of clause 6 of the application, the application is liable to be rejected, as it is in violation of the solemn declaration given by the applicant".

10. The decision of the Hon'ble Supreme Court in the case of Bharat Petroleum Corporation Ltd. & Ors. (BPCL) Vs.Swapnil Singh [Civil Appeal Nos.6928-6929 of 2015 dated 08.09.2015, is extracted hereunder:



" In the said case BPCL invited application for selection of regular LPG Distributorship by a brochure issued in April, 2011. Eligibility criterion for individual applicants is mentioned in paragraph 7(vi) of the brochure requires the applicant to own a plot of land of adequate size within 15 kilometres from the municipal/town/village limits of the location offered in the same State for construction of godown for storage of 8000 kg of LPG in cylinders or ready LPG cylinder storage godown as on the date of application. In paragraph 7 of the brochure, the term "own" was defined to mean having ownership title of the property or registered lease agreement for minimum fifteen years in the name of the applicant/family member as defined in multiple distributorship norm of eligibility criteria. The respondent therein submitted an application dated 13.09.2011 and in column no.9 of the application, the date of registration of the deed was mentioned as 13.09.2011. The application was processed and draw of lots were held in which, the respondent therein was found to be successful. Thereafter, in February, 2013, a field verification was done to verify as to whether the respondent therein actually was the owner of the land or a lease holder as required by the brochure. During the process of field verification, it came to the knowledge of BPCL that the respondent therein had entered into the lease agreement on 20.12.2012, for a period of fifteen years and the lease agreement was registered only on 21.12.2012, in other words, the respondent therein did not have a registered lease deed on the date of application, i.e., 13.09.2011. In view of the same, BPCL cancelled the allotment. Aggrieved over which, writ petition was filed before the Calcutta High Court which was dismissed by the learned Single Bench, as against which, the respondent therein filed appeal before the Division Bench which allowed the appeal. Challenging the said judgment, BPCL filed appeal before the Hon'ble Supreme Court which was allowed by order dated 08.09.2015 and the operative portion of the order reads as follows:-

"We have gone through the records of the case along with the assistance of learned counsel for the parties and we find that the brochure read with the application form is absolutely clear in the sense that the applicant must be the owner of the specified area of land or must have a registered lease deed of the specified area of land on the date of application. The admitted position (which is also clear from the counter affidavit filed by the respondent in this Court) is that on 13th



September, 2011 when the application for allotment was made, the respondent was neither the owner of any land or had any registered sale deed/lease deed in her name. In fact, the lease deed came into existence only on 20th December, 2012 and that was registered on 21st December, 2012. clearly, on the date of the application, the respondent was not eligible in terms of the brochure and the application form.

The Calcutta High court has proceeded on the basis of a notarized lease agreement which appears to have been produced by the respondent before the High court. A photocopy of the notarized lease agreement has been shown to us and that document is dated 13th September, 2011. Learned counsel for the respondent has relied upon this document to contend that the respondent was eligible as on 13th September, 2011 in terms of the notarized lease agreement.

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.

Under the circumstances, we allow these appeals and set aside the order passed by the Division Bench of the Calcutta High Court."

The decision of the Apex Court is applied to the facts of this case.

11. The writ petitioner did not possess any land under valid registered documents at the time of his application. Therefore, the appellant/1st respondent has rightly rejected the petitioner's application. The learned Single Judge of this Court allowed the writ petition on the ground that the writ petitioner was in possession on the date of application and the brochure permits lease arrangement also. But, the extent for the eligible criteria was not on ground. Further, the lease deed for 20 years which is mandate to be registered. The writ petitioner did not possess any registered documents on the date of application.



12. For all the aforesaid reasons, the Order and direction issued by the learned Writ Court calls for interference.

13. In the result, the writ appeal is allowed, the order passed in the writ petition is set aside and consequently, the writ is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.ISAAC CHAMBERS, Advocate
(SR-16544[F] dated 20/04/2021)

+1 CC to M/s.K.MURALEEDHARAN, Advocate
(SR-16357[F] dated 19/04/2021)

W.A. (MD) No.1193 of 2020

19.04.2021

TR(18.05.2021) 6P 3C