IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.07.2022
Pronouncing orders on : 14.07.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.22495 of 2011

K.M.Shanmugasundaram ...Petitioner

vs.

1.P.Anandasundaresan
General Manager Sales (Retail) South,
BPCL, 11th Main Road, Anna Nagar, Chennai – 40.

2.Ms.A.Amudha Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in order dated 12.04.2010 and qaush the same and consequently to direct the respondent to set aside the allotment of petrol bunk at Pavithram Village in favour of the 2nd respondent and allot the same to the petitioner.

For Petitioner : Mr.Vigneshwar Elango for Mr.S.R.Rajagopal

For Respondents : Mr.K.Ethiraj for R1

Mr.V.Raghavachari for R2

O R D E R

The subject matter of challenge in this writ petition pertains to the order passed by the 1st respondent dated 12.04.2010 and the petitioner has also sought for a consequential direction to direct the 1st respondent to allot the petrol bunk in favour of the petitioner.

2.The case of the petitioner is that he belongs to Schedule Caste community. The 1st respondent issued an advertisement on 10.02.2005, calling for applications for allotment of petrol bunk under various categories and the petitioner also applied for the same under the SC category. The petitioner made a representation on 24.07.2008, questioning the dealership granted in favour of the 2nd respondent. Since this representation was not considered, the petitioner filed W.P.No.18563 of 2008 and this writ petition was disposed of by an order dated 05.01.2010, directing the 1st respondent to consider the same within a stipulated time after affording opportunity to all parties concerned.

3.The 1st respondent through the impugned proceedings dated 12.04.2010, rejected the representation made by the petitioner and thereby, the dealership that was given in favour of the 2nd respondent was confirmed. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The 1st respondent has filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

a) *After the commissioning of the dealership similar complaints were received from one Shri V.Rathinavel (brother of Shri.V.Thirugnanam). One committee comprising of two senior level managers from different department, investigated the matter. The findings of the committee has been detailed under para 4 of the impugned order dated 12.04.2010. It was concluded by the committee that the retail outlet dealership is personally managed by Ms.Amudha and she only is in complete control and management of the retail outlet dealership.*

b) *After the receipt of the representation dated 24.07.2008 filed by petitioner, the allegations were once again investigated. The investigation team at the time of investigation found that RO is selling 30 KL MS and 60 KL HSD per month approx. and is personally being* *managed by the DPSL signatory Ms.A.Amudha with a team of 2 DSMs in the day shift and 3 DSMs working in the night shift. The investigation team verified documents such as Retail Outlet Inspection Reports, Technicians Report, SGS Authentix Marker Test Report, Invoices, Deputy Inspector of Labour's Stamping Certificate all of various dates and observed that all the records were signed by the DPSL signatory i.e., Ms.A.Amudha herself. It was further observed that the Sales Tax Registration RC No.3102776 was in the name of DPSL signatory i.e., Ms.A.Amudha. The bank account of the impugned dealership firm in Tamilnad Mercantile Bank,, Pavithrampudur Branch was maintained in the name of M/s.Shri Venkateshwara Traders with name of Proprietix as Ms.A.Amudha. At the time of enquiry it was submitted by Ms.A.Amudha that one Shri.Rajkumar has been assisting her in the initial days of Retail Outlet commissioning however on account of his malpractice of swindling Retail Outlet cash he was removed from Retail Outlet's activities. Thereafter, Ms.A.Amudha sought assistance of the retail outlet land owner Shri.V.Thirugnanam who was also removed on account of misappropriation of funds by him. It was submitted by Ms.A.Amudha that said Shri.Rajkumar on the pretext of helping her obtained her signatures in blank sheets* *and used the same to create false documents. In view of the enquiries made, records perused the investigation team in their report dated 03.11.2008 concluded that DPSL signatory Ms.A.Amudha is managing the said retail outlet personally and also attending the day to day affairs of the said dealership. Copy of the investigation report dated 03.11.2008 is annexed and marked herein as Annexure A.*

c) *As per the directions of Hon'ble High Court, personal hearing was provided to both petitioner and pvt. Respondent before passing the impugned order dated 12.04.2010. The said personal hearing was attended by both the parties.*

d) *It is further submitted that the petitioner has not demonstrated or attributed malafides against BPCL, further it is not the case of petitioner that the marks to the candidates were awarded belatedly and it is a matter of fact, marks were awarded instantly and the selection results with marks were displayed in the in Notice Board on the same of interview as per the stipulated guidelines. All transparency known to law followed and it is not the case of the petitioner that there was no transparency and that the selection* *process were mere a desk work.*

5.Heard Mr.Vigneshwar Elango, learned counsel appearing on behalf of the petitioner, Mr.K.Ethiraj, learned counsel appearing on behalf of the 1st respondent and Mr.V.Raghavachari, learned counsel appearing on behalf of the 2nd respondent.

6.The learned counsel for the petitioner submitted that the 2nd respondent had produced forged and fabricated documents and the dealership issued in her favour is liable to be cancelled on this ground alone. To substantiate the same, the learned counsel brought to the notice of this Court, the application submitted by the 2nd respondent and also the documents submitted by her which are found at page 20 to 32 of the typed set of papers. It was further submitted that the 2nd respondent was merely a name lender and the outlet is actually run by one Thirugnanam and thereby, the allotment under the SC category is being misused by a person who does not belong to that community. The 2nd respondent applied in her individual capacity and whereas, the application was accompanied with a partnership agreement in which the petitioner was only shown as a paid servant. In the light of the apparent illegality in the allotment of the petrol bunk in favour of the 2nd respondent, the learned counsel for the petitioner contended that the allotment is liable to be cancelled.

7.The main allegations that have been leveled by the petitioner against the 2nd respondent are:

a) The documents submitted by the 2nd respondent are fabricated.
b) The 2nd respondent was only acting as a benami to a third party named V.Thirugnanam and
c) The 2nd respondent having applied in her individual capacity, was found to be relying upon a Partnership Deed, dated 10.11.2006, wherein, the 2nd respondent was only shown to be a paid servant.

8.In the present case, even before the petitioner gave a complaint against the 2nd respondent, a complaint was given by one Rathinavel. He also made similar allegations against the 2nd respondent. Hence, an Investigation Committee was appointed and from the report submitted by this Committee, it is seen that each and every allegation that was made against the 2nd respondent was dealt with and it was found that it is the 2nd respondent who is in complete control and management of the retail outlet and that she has not given any false information or relied upon any forged documents to get the dealership. This finding given by the Committee has been elaborately dealt with by the 1st respondent in the impugned order dated 12.04.2010 at Paragraph No.4.

9.The complaint given by the petitioner was once again investigated and insofar as the first ground that was put against the 2nd respondent, it pertained to the alleged fabricated documents submitted by the 2nd respondent. While dealing with this ground, the 1st respondent has rendered a finding to the effect that a field verification was conducted by the respondent Corporation and it was found that the 2nd respondent was employed as a Farm Labourer and was also undertaking tailoring jobs at her residence. Insofar as the complaint made by the petitioner to the effect that the 2nd respondent was employed as a Chief Chemist, it was found that the 2nd respondent was working as a Chief Chemist for a temporary period in a oil refinery and after the same was closed down, she was undertaking tailoring work in her residence. This was also substantiated by the police verification report which was relied upon by the respondent Corporation.

10.Insofar as the 2nd ground is concerned, the 1st respondent after going through the documents has come to a conclusion that all the bank accounts, sales registers, statutory licenses etc., stand in the name of the 2nd respondent and she has also signed in all the Inspection Reports. That apart, three investigations were carried out by the Committee from time to time and it was found that the 2nd respondent was personally supervising the operation at the petrol bunk and was in-charge of the day-to-day affairs of the retail outlet.

11.Insofar as the 3rd ground is concerned, the 1st respondent relied upon the earlier report of the Investigation Committee and also ascertained the fact that the Partnership Agreement was a fabricated document and the blank document that was signed by the 2nd respondent was utilized to prepare this document. Infact, the said Thirugnanam for whom the 2nd respondent is alleged to be a benami, it was found by the 1st respondent that he was removed on account of misappropriation of funds and it was the 2^{nd} respondent who was managing the retail outlet personally.

12.In the considered view of this Court, while ascertaining the facts and rendering a finding in a writ petition, this Court does not act like the Civil Court by appreciating the evidence and at the best, this Court only considers the material and ensures that it does not suffer any illegality on the face of it. The findings rendered by the 1^{st} respondent is backed by proper reasons and this Court does not find any apparent illegality in those findings. This Court does not find any ground to interfere with the impugned proceedings of the 1^{st} respondent dated 12.04.2010.

13.In the result, this writ petition stands dismissed. No Costs.

14.07.2021

Speaking Order/Non-Speaking Order
Index: Yes / No
Internet: Yes / No
ssr

To

P.Anandasundaresan
General Manager Sales (Retail) South,
BPCL, 11th Main Road,
Anna Nagar, Chennai – 40.

N.ANAND VENKATESH.J.,

ssr

Pre-Delivery Order in
W.P.No.22495 of 2011

14.07.2021