



WEB COPY

W.A.No.683 of 2013 and
W.A.No.435 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

W.A.No.683 of 2013 and
W.A.No.435 of 2014 and
C.M.P.No.9035 of 2023 and
M.P.No.1 of 2023

W.P.No.683 of 2013 :

1. C.K.Babu (Died)

2.A.Cynthia Ailanto Nancy

... Appellant

[A2 substituted as LR of the deceased A1
sole appellant vide order dated 23.08.2023
made in CMP.No.13008 of 2019]

Vs.

1.K.Tamilarasan

2.The Executive Director,
Regional Office, Southern Region,
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai – 600 034.

3.The Indian Oil Corporation,
Chief Area Manager,
No.500, Anna Salai,
Teynampet, Chennai – 600 018.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

4.The Union of India,
Rep. By its Secretary,
Ministry of Petroleum and Natural Gas,
New Delhi.

5.Ravi

6.Manjula

7.Malliga

8.Mathiyazhagan alias Soundarapandian

9.Snehalatha

10.S.Mahapandian

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 08.02.2013 made in W.P.No.22110 of 2004.

For Appellant : Mr.G.Ethirajulu

For R1 : Ms.Vinithra Srinivasan
for M/s.N.V.S. & Associates

For R2 & R3 : Mr.R.Ravi
Standing Counsel

For R4 : Mr.B.Sudhir Kumar

For R5 & R6 : No appearance

For R7 & R8 : No such person

For R9 & R10 : No appearance



W.A.No.683 of 2013 and
W.A.No.435 of 2014

W.A.No.435 of 2014:

WEB COPY

K.Tamilarasan

... Appellant

Vs.

1.The Executive Director,
Regional Office, Southern Region,
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai – 600 034.

2.The Indian Oil Corporation,
Chief Area Manager,
Marketing Division,
No.500, Anna Salai,
Teynampet, Chennai – 600 018.

3.C.K.Babu

4.The Union of India,
Rep. By its Secretary,
Ministry of Petroleum and Natural Gas,
New Delhi.

5.Ravi

6.Manjula

7.Malliga

8.Mathiyazhagan alias Soundararajan

9.V.N.Snehalatha

10.S.Mahapandian

11.A.Cynthia Ailanto Nancy

[R11 is impleaded vide order dated
14.09.2023 made in CMP.No.19934 of 2023]

... Respondents



W.A.No.683 of 2013 and
W.A.No.435 of 2014

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 08.02.2013 made in W.P.No.22110 of 2004.

For Appellant : Ms.Vinithra Srinivasan
for M/s.N.V.S. & Associates

For R1 & R2 : Mr.R.Ravi
Standing Counsel

For R3 : Died

For R4 : Mr.B.Sudhir Kumar for R4

For R5 & R6 : No appearance
For R7 & R8 : No such person
For R9 & R10 : No appearance

For R11 : Mr.G.Ethirajulu

C.M.P.No.9035 of 2023:

V.Sumathi

Vs

... Petitioner

1.K.Tamilarasan

2.The Executive Director
Regional Office
Southern Region
Indian Oil Bhavan
139, Nungambakkam High Road,
Chennai – 600 034.

3.Indian Oil Corporation,
Chief Area Manager,
Marketing Division
500, Anna Salai,
Teynampet, Chennai – 600 018.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

4.The Union of India
Rep. By its Secretary,
Ministry of Petroleum and Natural Gas
New Delhi.

5.S.Ravi

6.Manjula

7.Malliga

8.Mathiyazhagan @ Soundararajan

9.V.N.Snehalatha

10.S.Mahapandian

... Respondents

Prayer: Petition filed under Section 151 of the Code of Civil Procedure
praying to implead the petitioner as the proposed 11th respondent in
W.A.No.683 of 2013 pending disposal of the writ appeal.

For Petitioner	: Mr.V.Rajasekar
For R1	: Ms.Vinithra Srinivasan for M/s.N.V.S. & Associates
For R2 & R3	: Mr.R.Ravi Standing Counsel
For R4	: Mr.B.Sudhir Kumar
For R5 & R6	: No appearance
For R7 & R8	: No such person
For R9 & R10	: No appearance



W.A.No.683 of 2013 and
W.A.No.435 of 2014

COMMON JUDGMENT

WEB COPY

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

These intra Court appeals have been directed against the order passed by the Writ Court dated 08.02.2013 made in W.P.No.22110 of 2004.

2. The ranking that has been shown in the writ petition is also being adopted here. K.Tamilarasan filed the writ petition where C.K.Babu was the 3rd respondent. The Executive Director, Regional Office, Southern Region, Indian Oil Bhavan was the 1st respondent and Indian Oil Corporation, General Area Manager, Marketing Division, Chennai - 18 is the 2nd respondent. Remaining respondents will have no bearing in deciding these writ appeals.

3. That the Indian Oil Corporation (in short 'IOC') called for application from the eligible candidates for allotment of distribution of LPG at Vaniyambadi Taluk. The allotment would be made only to Scheduled Caste candidates. Tamilarasan and C.K.Babu and others had made application to seek for such dealership of LPG distribution. The 3rd



W.A.No.683 of 2013 and
W.A.No.435 of 2014

respondent C.K.Babu in the writ petition was selected and distributorship has been given to him, that was questioned by Tamilarasan writ petitioner in the said writ petition.

4. The main grounds urged by Tamilarasan before the Writ Court was that, he was in fact selected and stood as No.1 among the applicants, however subsequently C.K.Babu has been brought as No.1 and he has been pushed to No.2 with a connivance or influence of some third parties with the Indian Oil Corporation officials. The next ground was that, at the time of inspection of the Indian Oil Corporation team, there was no identified land for the purpose of construction of godown for C.K.Babu and also he did not have any other land for the purpose of showroom whereas the Tamilarasan had already got the land and he had taken steps to construct the godown and had identified the showroom also.

5. The next ground that was urged by the Tamilarasan/writ petitioner before the Writ Court was that, one of the condition that has been imposed by IOC is that, close relations should not have been the distributors of IOC. However, in the same District, atleast 4 such close



W.A.No.683 of 2013 and
W.A.No.435 of 2014

relatives of Babu already been the distributors, therefore that condition also had been violated by Babu.

6. Despite all these defects, the distributorship have been awarded to the said Babu, therefore on these grounds the Tamilarasan i.e. the writ petitioner challenged the said distribution given to the Babu and seek for consequential order to give direction to the IOC to allot the distributorship to the petitioner Tamilarasan.

7. The respondent entered appearance in the writ petition and filed counter. The learned Judge who heard the parties passed the order on 08.02.2013. In the said order ultimately the learned Judge set aside the allotment order of distributorship to the 3rd respondent C.K.Babu and directed the IOC officials to go ahead fresh advertisement by making publication for selection of distributor.

8. Aggrieved over the said order passed by the Writ Court, the 3rd respondent C.K.Babu filed Writ Appeal No.683 of 2013. Since the learned Judge directed the IOC officials to go ahead for fresh publication



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

of advertisement calling application to go ahead with the fresh selection, aggrieved over the same, the Tamilarasan also filed writ appeal in W.A.No.435 of 2014. That is how these appeals came to be filed.

9. Very recently i.e. in February, 2023 one V.Sumathi, who is not a party in the writ petition, however was one of the applicant for the subject distributorship, had filed C.M.P.No.9035 of 2023 in W.A.No.683 of 2013 seeking to implead herself as one of the party respondent in the writ appeal as she has got a say in this appeal to be decided.

10. Heard the learned respective counsel appearing for the parties. During the pendency of the writ appeal, the said C.K.Babu since expired, his legal representatives have been impleaded on his behalf, the appeal in W.A.No.683 of 2013 is persuaded.

11. Heard Mr.G.Ethirajulu, learned counsel appearing for the appellant in W.A.No.683 of 2013, Ms.Vinithra Srinivasan, learned counsel appearing for the appellant in W.A.No.435 of 2014 and also heard Mr.V.Rajasekar, learned counsel appearing for the petitioner in C.M.P.No.9035 of 2023.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

12. Insofar as the three grounds mainly urged by the writ petitioner before the Writ Court, the learned Judge while dealing with those grounds has given his findings. Insofar as the land which was identified by C.K.Babu for the purpose of construction of godown is concerned, he entered into a lease agreement with one Ravi and that land was identified by him, however the said Ravi seems to have given a police complaint that, he had not executed a lease deed that created some confusion and subsequently it was resolved, because, the very complaint given by the said Ravi against the C.K.Babu was referred as a mistake of fact by the police authorities who investigated the said complaint.

13. This has been considered by the learned Judge in paragraph 14 of the impugned order which reads as follows:

“14.Insofar as the contention of the petitioner with regard to the lease agreement is concerned, since the complaint given by the said Ravi has been referred as mistake of fact, I am of the view that on that ground the Distributorship given to the third respondent by the second respondent need not be set aside. Since no mark has been awarded to the third respondent by the second respondent, the unimpeachable conclusion can be arrived is that the third respondent could not identify the so called lease of land, which belong to Mr.Ravi.”



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

14. Therefore on the ground of non identification of the exact land for the purpose of construction of godown is concerned, that cannot be the ground to successfully challenge the allotment order given to C.K.Babu, therefore the learned Judge has stated that, on that ground the allotment order cannot be set aside.

15. However, the learned Judge has gone into the aspect with regard to the showroom which has to be identified for the purpose of running the dealership. In this context, the learned Judge has extracted the relevant portion of the Brochure i.e. Clause 8.2 under the heading “Showroom” and extracting the same, he has held that, at the time of inspection, the 3rd respondent in the writ petition that is C.K.Babu was not owning the lease of the land for the purpose of godown and office and it has been proved.

16. Based on these findings ultimately he has concluded that, insofar as the land which has to be identified for the purpose of godown and the office room since it has not been identified that has flawed the entire selection that has been made in favour of the 3rd respondent



W.A.No.683 of 2013 and
W.A.No.435 of 2014

C.K.Babu by the 1st and 2nd respondents in the writ petition i.e. IOC, therefore on that ground the learned Judge was pleased to set aside the allotment order which reads in paragraphs 16 and 17 of the impugned order which are reproduced hereunder:

“16.From the Brochure issued by the Oil Corporations relating to Selection of LGP Distributorship, it is clear that the showroom is essential to get LGP Distributorship. As per the contention of the second respondent, third respondent has produced a godown certificate subsequent to inspection. But there is no document to show that in subsequent to inspection. But there is no document to show that in which place he has identified for godown and the date of inspection and other particulars are not produced before this Court. Therefore, from this, it is clear that after inspection, some of the documents have been obtained by the second respondent from the third respondent.

17. Therefore, the allotment made by the second respondent to the third respondent is set aside and the second respondent is directed to effect fresh paper publication calling for the application of LPG Distributorship.”



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

17. In this context, the learned counsel appearing for the appellant in W.A.No.435 of 2014 argued that, once the learned Judge set aside the allotment given to C.K.Babu that allotment next automatically be given only to her client i.e. Tamilarasan, because, according to her, he stood originally as No.1 and even after the alleged manipulation made by the IOC officials, he stood as No.2, therefore No.1 man goes as his allotment is set aside, the No.2 man i.e. Tamilarasan since is not declared to be ineligible on any ground, has become eligible to get the dealership, accordingly the learned Judge ought to have given direction to the IOC to give such dealership to the appellant i.e. Tamilarasan, which the learned Judge since has failed to give, therefore aggrieved over the same only he has filed the said writ appeal, she contended.

18. The learned counsel appearing for the appellant C.K.Babu in W.A.No.683 of 2013 would contend that, first of all it is an allotment meant for schedule caste candidates for whom the criteria with regard to the evaluation of land and financial capabilities has been dispensed with as per the conditions that has been imposed in the Brochure under the



W.A.No.683 of 2013 and
W.A.No.435 of 2014

heading 'Norms for Evaluating the Candidates' which reads thus:

WEB COPY

“In case of SC/ST there will be no evaluation on Land and Financial capabilities.”

19. Therefore no mark would be given for the purpose of having land or not having land, having the financial/wherewithal or not as that criteria cannot be the consideration for evaluation of the *inter se* merit of the candidates who all belongs to the scheduled caste community.

20. That apart, the learned counsel would contend that, insofar as the identification of the land i.e., the lease land for the purpose of construction of godown is concerned, the learned Judge in para 14 of the impugned order has concluded that, because the complaint given by the lessor since has been referred to as a mistake of fact by the police authorities on that ground the allotment order cannot be set aside, therefore for the purpose of identification of the land for godown purpose, the learned Judge himself has concluded that, it cannot be a fatal to the allottee. The learned Judge only in the penultimate para of the order has stated that, the non identification of the land at the time of inspection for the purpose of office room is one of the ground, that alone



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

made the learned Judge or in the mind of the Court to come to the conclusion that, at the time of inspection he did not have the necessary identification of land, therefore on that ground the learned Judge had come to the conclusion to set aside the order.

21. Referring this position, the learned counsel would contend that, the concept of office room has not been meant in the Brochure, therefore that cannot be the criteria for the purpose of selecting a candidate for distributorship, therefore on that ground as alleged non identification of the land for office room, such a decision cannot be taken by the learned Judge to the extent of setting aside the distributorship.

22. This aspect has been verified by us in the Brochure. Clause 8 under the heading 'Basic Facilities Required for Operation of LPG Distributorship'. Clause 8.1 speaks about 'Godown For Storage of Filled LPG Cylinders'. Clause 8.2 speaks about 'Showroom'. For the easy reference, the relevant portion of the Brochure is extracted hereunder:

*“8.BASIC FACILITIES REQUIRED FOR OPERATION OF
LPG DISTRIBUTORSHIP*



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

8.1.GODOWN FOR STORAGE OF FILLED LPG CYLINDERS.

Godown approved by Chief Controller of Explosives is required for storage of filled cylinders.

Godown / land for construction of Godown will be suitable, if it is located in the area of operation (trading area) of the advertised location, freely accessible through all weather motorable approach road. The plot should be plain, in one contiguous lot, free from overhead power transmission or telephone lines. Pipelines / Canals / Drainage / Nallahs / Public Roads should not pass through the plot.

Minimum Dimensions of plot : 27 m x 26.15 m

8.2 SHOWROOM

Showroom as per the standard layout can be constructed in a shop / land located in the area of operation (trading area) of the advertised location for LPG distributorship and should be easily accessible to general public through a suitable approach road.

Minimum dimension of the showroom 3 m x 4.5 m.”

23. Except these two criteria, no other criteria has been mentioned under the heading 'Office room'.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

24. In fact, this has been clarified by the learned counsel appearing for the appellant in W.A.No.683 of 2013 that, there will be a small office room in the godown place for the purpose of maintaining the stock register, the input and output of the cylinders etc. and that office room would be part and parcel of the godown.

25. Apart from the godown, only a showroom has to be made available in the town itself where the consumers must have an easy access.

26. When that being the position, an unwanted issue of land to be identified separately for the purpose of office room since has been taken by the learned Judge and based on such a finding since the learned Judge has come to the conclusion that, the land for the purpose of office room has not been identified by the said C.K.Babu in whose favour the order was given, was pleased to set aside the said order of allotment, which, in the considered opinion of us, is erroneous, because, nowhere in the Brochure such kind of requirement has been sought for.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

27. Insofar as the close relations who already having the distributorship is concerned, the respondents 1 and 2 i.e., Indian Oil Corporation has filed a counter before the Writ Court where they have categorically stated that, except the spouse and the unmarried children, no other people would be considered as a close relationship for the purpose of denying such distributorship. Therefore the condition that the close relationship should not have such a dealership in the same District would not put against the 3rd respondent C.K.Babu is the stand taken by the I.O.C., as has been stated in their counter affidavit.

28. When that being the position, the four persons named by the writ petitioner stating that, these four people viz., one Mahapandian, one Malliga, one Manjula and one Mathiyazhagan are the relatives of the C.K.Babu and their relationship also has been mentioned as maternal uncle, mother's younger sister, mother's younger sister and maternal uncle respectively would not in anyway hamper the prospects of getting the dealership. Therefore on that ground also it cannot be set aside, moreover the learned Judge has not set aside the allotment order through the impugned order on that ground.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

WEB COPY

29. Now coming to the C.M.P.No.9035 of 2023 filed by V.Sumathi. The learned counsel Mr.V.Rajasekar appearing on behalf of this petitioner who filed the said CMP to get impleaded in W.A.No.683 of 2013 claimed that, his client was one of the applicant she stood as third in the ranking at the time of consideration.

30. His main concern was that, insofar as the distributorship of LPG cylinders as per the Brochure, the evaluation for awarding marks must have been taken place only on the basis of 30 marks however in the present process, the evaluation has been taken place for 100 marks.

31. The said procedure adopted by the IOC official is a wrong procedure and because of the 100 marks evaluation, the said Sumathi could not get through and reach the first position. He would also submit that, had it been evaluated for 30 marks definitely she would have been in the first position and to earn the distributorship by getting the allotment order, therefore the entire evaluation and selection process that has been undertaken by IOC officials insofar as this distribution is concerned, it is completely flawed therefore he wants the said



W.A.No.683 of 2013 and
W.A.No.435 of 2014

distributorship to be set aside and the same to be given to the said Sumathi who stood as the third person in the ranking.

32. Insofar as his contention is concerned, first of all she has never been party in any of the proceedings as the writ petition filed by the Tamilarasan was in the year 2004 thereafter writ appeals were filed in the year 2013 and till date almost for 20 years nothing has been moved by the said Sumathi and only in February 2023, she has come out with the present CMP for which even though the reason has been stated by the learned counsel that, only recently she got that information under the RTI Act, that cannot be the basis for him for approaching this Court after 20 years.

33. Moreover, assuming that the order passed by the learned Judge is to be sustained, that means the effect of the setting aside the dealership is to be sustained and can be kept intact, even then the said Sumathi would not be automatically entitled to seek for any benefit of distribution of dealership, therefore to that extent the said Sumathi cannot have any grievance over the order passed by the learned Judge as the learned



W.A.No.683 of 2013 and
W.A.No.435 of 2014

Judge after setting aside the order has only directed the officials to go ahead for fresh advertisement for selection process.

34. Therefore for these two reasons, the plea raised by the petitioner (V.Sumathi) in C.M.P.No.9035 of 2023 is liable to be rejected accordingly it is rejected.

35. Insofar as the conclusion that has been arrived by the learned Judge in the impugned order, which has been extracted herein above, is only based on the non identification of the land for the purpose of mainly the office room.

36. This position has been explained in our discussion as the office room is part and parcel of the godown for which the land already been identified but there has been some confusion with the lessor and this has also been subsequently resolved. These positions have been taken into account by the IOC officials, therefore the IOC officials had necessarily to select the C.K.Babu as the successful candidate.



W.A.No.683 of 2013 and
W.A.No.435 of 2014

37. This position has been reiterated in their counter affidavit filed before the Writ Court also.

38. Insofar as the non identification of the land for the purpose of godown cannot be the fatal according to the learned Judge who passed the impugned order as has been stated in paragraph 14 of the impugned order. Such a contra stand cannot be taken by the learned Judge in para 16 of the order, therefore on that ground also the order impugned is liable to be interfered with.

39. Moreover, this distributorship has been allotted to the appellant i.e. the 3rd respondent C.K.Babu in the year 2004. Throughout the pendency of the writ petition filed by the said Tamailarasan, the 3rd respondent C.K.Babu was enjoying the dealership and thereafter even it was set aside, when writ appeal was filed, a Division Bench of this Court at the admission stage has granted interim order of stay of the operation of the impugned order which is still continuing, therefore nearly about 20 years the dealership has been maintaining by the said C.K.Babu for several years subsequently by his legal heirs, therefore such a long



W.A.No.683 of 2013 and
W.A.No.435 of 2014

standing rights accrued on the said C.K.Babu and subsequently his legal heirs cannot be upset at this length of time that too for no plausible reason.

40. Therefore for all these reasons, we feel that, the impugned order is liable to be set aside accordingly it is set aside. Resultantly, the appeal in W.A.No.683 of 2013 is to be allowed accordingly it is allowed. Consequently, the appeal in W.A.No.435 of 2014 is to be dismissed accordingly it is dismissed. The C.M.P.No.9035 of 2023 also is liable to be dismissed, accordingly it is dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

[R.S.K., J.]

[G.A.M., J.]

14.12.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

Sgl



WEB COPY



W.A.No.683 of 2013 and
W.A.No.435 of 2014

R. SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

Sgl

W.A.No.683 of 2013 and
W.A.No.435 of 2014

14.12.2023