



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.26249 of 2012 & 8616 of 2013 and
M.P.Nos.1 & 2 of 2012 and 2 & 3 of 2013

WP.No.26249 of 2012

B.Dakshayani

... Petitioner

Vs

1.The Regional Manager,
Bharat Petroleum Corporation Limited,
No.1, Renganathan Gardens,
11th Main Road, Anna Nagar (West),
Chennai-40.

2.The Territory Manager LPG,
Bharat Petroleum Corporation Limited,
Post Box No.1644,
Peelamedu, Coimbatore.

3.The Selection Committee,
Peelamedu, Coimbatore.

4.G.Kayal Sundar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records pertaining to the



proceedings issued by the 1st respondent in Ref.No.SR:LPG: PALLADAM:INQ dated 9.5.2012 and quash the same and direct the 1st respondent to allow the dealership to the petitioner.

AND

WP.No.8616 of 2013

B.Dakshayini

... Petitioner

Vs

1.The Regional LPG Manager (South),
Bharat Petroleum Corporation Limited,
No.1, Renganathan Gardens,
11th Main Road, Anna Nagar (West),
Chennai.

2.The Territory Manager, LPG,
Bharat Petroleum Corporation Limited,
Post Box No.1644,
Peelamedu, Coimbatore.

3.The Selection Committee,
Bharat Petroleum Corporation Limited,
Post Box No.1644,
Peelamedu, Coimbatore.

4.G.Kayal Sundar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records pertaining to the proceedings in Letter No.CBE;LPG;Palladam (OSP-W) dated 23.1.2013 issued by the



2nd respondent, quash the same and direct the respondents 1 and 2 to allot the dealership to the petitioner.

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(In both WPs)

For Petitioner : Mr.B.Ravi

For Respondents : Mr.O.S.Karthikeyan (for R1 to R3)
Mr.Prakash, Senior Counsel
for Mr.Swarnam Rajagopalan (for R4)

COMMON ORDER

These two Writ Petitions have been filed by an individual, who was an aspirant for a dealership of LPG cylinders from the Bharat Petroleum Corporation Limited (in short 'BPCL') in Palladam, Coimbatore District.

2. An application was made by the petitioner on 15.07.2010 in response to an advertisement issued by BPCL on 15.06.2010. After going through the process stipulated in the Notification, three individuals had been empanelled. Empanelled candidate No.1 was one Ms.Kayalsundaar, who is arrayed as 4th respondent (R4), the second empanelled candidate was the petitioner herein and the third empanelled candidate was one Ms.V.Santhi.

3. The mark list containing the details of marks awarded in different categories in relation to all three applicants was published in the website of BPCL, as follows:



COIMBATORE LPG TERRITORY, PEELAMEDU, COIMBATORE
FINAL MARK SHEET

STATEMENT OF PERFORMANCE OF CANDIDATES INTERVIEWED ON 02.11.2011 AT
TERRITORY OFFICE INTERVIEW FOR DOMESTIC LPG DISTRIBUTIONSHIP AT
LOCATION - PALLADAM OSP(W), TIRUPPUR DISTRICT
TAMIL NADU

CATEGORY - OSP(W)

Conducted by: Chairman - Manoj.K. Empanelled Candidate-I Kayal Sundar
Member-I - Madhavan.D. Empanelled Candidate-II B.Dhakshayani
Member-II - Ravindranath.K. Empanelled Candidate-III V.Sanathi

Capability Capability to provide
to provide finance

Sl. No	Name of the candidate	Godo wn	Sho wro om	SB /F DS	Cr edi t	W ort hi-	ne ss	Fi xe d/ ot he r as se ts	O th er ce s m e	S ur in	O f M	Ed u ge M	A ri en ce	Ex pe sin	Bu ess en/ ab y	ac um	Per alit	Total
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Max. Marks.	25	10	18	7	5	5	15	4	4	5	2	100
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1.B.Dhakshayani	25	10	18	7	5	5	12	2	2	3.83	2	91.83
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2.Kayal Sundaar	25	10	18	7	5	5	10	4	2	4.33	2	92.33
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3.V.Sanathi	10	5	18	7	5	5	15	4	2	3.83	2	76.83
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4.Rajyalakshmi Poddapally	ABSENT											
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Sd/-
CHAIRMAN
2.11.11

Sd/-
MEMBER-I
02.11.2011

Sd/-
MEMBER-II
02.11.2011



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4. Upon a perusal thereof, the petitioner was of the view that the award of marks and consequent order of selection was incorrect, and she thus lodged complaints in this regard on various dates between 05.11.2011 and 20.02.2012. According to her, her selection ought to have preceded that of empanelled candidate No.1/R4.

5. Enquiry was conducted by BPCL that appointed an Enquiry Officer. The complaints raised by the petitioner are as follows:

'a. Doubt about eligibility of the First empanelled Candidate under "OUTSTANDING SPORTS PERSON (WOMEN CATEGORY).

b. Award of Marks for Experience willfully reduced

c. Award of Marks for Business Ability/Acumen illogical

d. Land offered for the proposed godown by the First Empanelled candidate is not suitable'

6. To be noted, that the dealership itself was intended for a special category of persons, being 'Outstanding Sports Person (Women) category'. The first empanelled candidate/R4 is, admittedly, an eligible sportswoman having participated and secured laurels in basketball and kabaddi.

7. The petitioner is a cricketer who had participated and won accolades at National level. Neither of their eligibility on this aspect, is in question. However, in the complaint filed by the petitioner, she does raise a doubt on the eligibility of R4 on



the above score as well. Before me however, and as a result of the fact verification that has been conducted by the respondents, it is seen that there is no dispute that may be raised on this score and learned counsel also concur on this aspect.

8. The thrust of the petitioner's arguments are that the marks awarded for 'experience' have been wilfully reduced. She does not pursue the award of marks for 'business ability/acumen' before me, though before the authorities, the petitioner had contended that the award of 2 marks to R4 on this aspect was 'illogical'.

9. As regards the award of marks under the head of 'experience', it is the contention of the petitioner that the assessment has not been made in a proper manner and that her experience has not been taken note of in proper perspective. The gist of her complaint has been recorded in the minutes of enquiry held on 14.12.2011 as follows:

'Regarding the point on award of mark for experience, the complainant in her letter dated 5.11.211 had stated about her experience as Director Marketing of Green Signal Bio Pharma (P) Ltd and also about her experience in Avon Cycle Ltd. While it was told to the complainant that the service years in Railways and Avon Cycle Ltd will not be counted for experience and the quality of experience will be judged based on the response to the questions related to experience and complainant agreed. In this connection, point was made by the complainant that while she had one year and ten months experience as Director Marketing in Green Signal Bio Pharma (P) Ltd, at the time application for LPG distributorship, the empanelled candidate no.1 Mrs.Kayal Sundar did not have any other business experience other than working in Railways which does not count for any trade/business experience. The interview committee thus wilfully reduced her eligible mark from 4 to 2 while they



had awarded 2 marks to the first candidate who do not posses any experience in "other trade" category.'

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10. It is seen that both the petitioner and R4 have been placed on par, with the award of 2 marks. The argument advanced is that the petitioner and R4 ought not to have been placed on par and granted equal marks. The petitioner argues that her experience, gained by positions occupied in both public and private sectors, is vast as compared with the more restricted exposure that R4 has had.

11. This, according to her, is the primary basis in support of her allegation of favouritism and bias. The official respondents are public authorities and should not be seen to have engaged in such an arbitrary and incorrect selection, she states. R4, for her part, defends her selection, drawing attention to the evaluation parametres and the discretion provided in such matters of selection.

12. The last point agitated is as regards the requirement of a godown in possession by the dealers, for storage of the LPG cylinders. Both R4 and BPCL confirm that while the godown that was used till 2017 by R4 was in a leased premises, thereafter, R4 has purchased land and has constructed a shed thereupon that is being used as a godown. Nothing untoward is seen in this procedure and, in fact no violation is made out in this regard.



13. Having heard learned counsel, I am of the considered view that there is no justification whatsoever to interfere with the selection process. The primary reasoning for my conclusion is that the enquiry report reveals the methodology followed by the respondents in the award of marks for 'Experience', in the following terms:

'II) Award of Marks for Experience:

As per the guidelines the marks for Experience (4 marks) has to be awarded on 3 categories : Direct Sales / Home delivered products : 4 marks; Other Petroleum Products :3 and Any other trade : 2 marks. Marks are awarded based on the information given in the application for experience of running or worked in an establishment for minimum one year. Marks are awarded on the quality rather than amount of experience. The quality of experience will be judged based on the response of the questions related to the experience in direct sales/ Home delivered products, other petroleum products or any other trade by the candidates in the interview.'

14. This is based on the terms of Notification itself, which sets out the evaluation criteria for the grant of marks towards various categories. Thus the process of award of marks for experience, though subjective, is based on quantifiable and scientific parameters as extracted below.

Brochure on Selection of Bharatgas (LPG) Distributors

14. NORMS FOR EVALUATING THE CANDIDATES

14.1. Evaluation

<i>S.No.</i>	<i>Parameter</i>	<i>Max Marks Individual including partnerships</i>	<i>Max Marks Non-Individual entities</i>
<i>1</i>	<i>Capability to provide Infrastructure</i>	<i>35</i>	<i>35</i>



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S.No.	Parameter	Max Marks Individual including partnerships	Max Marks Non-Individual entities
	<i>and facilities</i>		
2	<i>Capability to provide finance</i>	35	35
3	<i>Educational qualifications</i>	15	0
4.	<i>Age of individual</i>	4	15
5.	<i>Experience</i>	4	8
6.	<i>Business ability/acumen</i>	5	7
7.	<i>Personality</i>	2	0
	<i>Total</i>	100	100

....

Evaluation based on interaction during personal interview.

Parameter	Description	Max Marks Individual including partnerships	Max Marks Non-Individual entities	Evaluation
<i>Experience</i>	<i>Direct Sale/Home Delivered products (including LPG distributorship) or</i>	4	8	<i>Marks to be awarded based on the information given in application for experience of running or working in an establishment for minimum one year. Marks will be awarded on the quality rather than amount of experience. The quality of experience will be judged based on the response to the questions related to experience in Direct</i>
	<i>Other Petroleum products or</i>	3	6	
	<i>Any other Trade</i>	2	4	



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Parameter	Description	Max Marks Individual including partnerships	Max Marks Non-Individual entities	Evaluation
	<i>Sub Total maximum marks</i>	4	8	<i>Sale, Home Delivered products, Trade of petroleum products, hospitality/service industry by the candidates in the interview.</i>

15. Apart from the petitioner making a bald assertion that there has been wilful reduction in the marks awarded to her, there is no other material to establish prejudice or bias against the petitioner or in favour of R4.

16. Reliance is placed by the petitioner upon a decision of a Division Bench of this Court in the case of *Indian Oil Corporation Limited V. J. Ranjith* (2012 (5) CTC 577). This matter relates to the maintainability of a Writ Petition itself, in similar circumstances as before me now, and at paragraph 30, the Bench states as follows:

'30. We are called upon to test the legality and correctness of the decision taken by a Public Sector Oil Corporation on the basis of the



selection criteria and guidelines governing the field. The Corporation was not expected to flout the selection norms indicated in the Notification. The norms are applicable equally to the Corporation and the Applicants. The Courts cannot direct the State or its instrumentalities to violate their own regulations. The Respondent is not a layman. He is a qualified medical practitioner and he has made the Application after reading the Notification. He has given a declaration that in case he is not in a position to construct the godown on the site mentioned in the Application his candidature could be rejected and in case the selection is made, the Letter of Intent could be withdrawn. Having accepted such a condition and made an Application, it is not open to the Respondent to make a Complaint that the Corporation erred in rejecting his request to accept the alternative site. We do not find any error or illegality in the order passed by the Corporation. The mandatory condition incorporated in the Notification was not taken note of by the learned Single Judge. Therefore, we are constrained to set aside the order passed by the learned Single Judge. Accordingly, the order dated 22nd January 2011 in WP.No.22320 of 2010 is set aside.'

17. In the present case, the records reveal that the decision taken by the authorities is based on evaluation criteria that have been made public from the time of Notification for applications. The evaluation criteria make it clear that the panel of interviewers would take into account not just the stated experience as per the application of the candidates but their own assessment of the candidates before them. Thus, I note a distinction in the facts of the case of *J.Ranjith* (supra) and the present, and do not find any arbitrariness or flouting of norms, in the present case.

18. In the case of *V.Chandran V. Oil Selection Baord, Tamil Nadu, Pondicherry and Andaman, Nicobar Islands and others* ((1995) 2 MLJ 458), the First Bench of this



Court was faced with a challenge to the evaluation procedure by the Oil Selection Board. The Bench categorically held that the process of appreciating and weighing the various factors, materials and rival merits is that of the Board, which has the necessary expertise and experience to perform its functions. Unless there is any bias that is made out, malafides that is established or arbitrariness that is shown in the selection process, the Court may not take it upon itself to intervene in such subjective evaluation.

19. In the present case, to reiterate, while it is the petitioner's contention that the marks awarded to her on the basis of the experience should have been more than what is awarded to R4, this decision has been taken by the panel of interviewers, based on intelligible criteria which, in the opinion of the Court, does not warrant any interference.

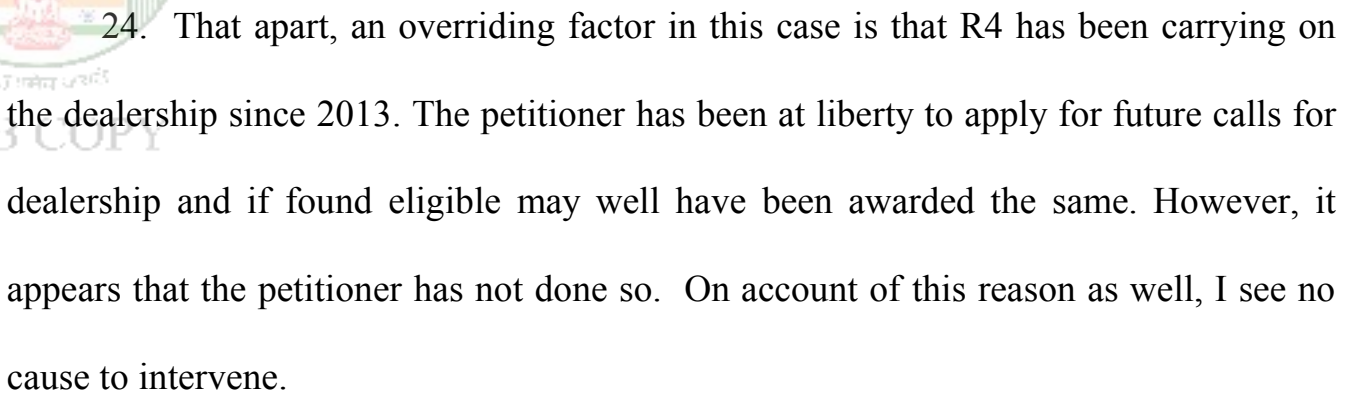
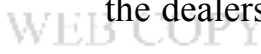
20. In the case of *R.Kalaivani V. Chairman, Indian Oil Corporation Ltd.* (2010) 1 MLJ 742, the ratio of the decision *V.Chandran* (supra) has been followed and the writ petition dismissed. The Bench held that the Notification that was issued was very specific to the award of marks for experience. Marks were to be awarded for experience only on the basis of response to questions relating to experience and not on the basis of certificates produced. So too in the present case.



21. The Division Bench in the aforesaid case, has also taken note of the judgements in the cases of *G.N.Nayak V. Goa University* (AIR 2002 SC 790) and *Union of India V. S. Vinodh Kumar* (AIR 2008 SC 5) to the effect that no challenge to an interview may be entertained in cases where the candidate has appeared for an interview and participated in the selection process, conscious and cognizant of the terms and conditions of selection. The ratio of these matters is fully applicable in the present case as well.

22. In the case of *Manikandan Kolandaivelu V. Bharat Petroleum Corporation Ltd. And another* (2012 SCC Online Mad 2720), the ratio of the decisions in the case of *V.Chandran and R.Kalaivani* (supra) have been followed and the writ petition dismissed.

23. In the case of *Daisey Bai Vs. The General Manager (T.N.S.O.) V. Marketing Division, Indian Oil Corporation Ltd., Indian Oil No.IV level, 139, Nungambakkam High Road, Chennai -34 and 3 others* (2001 (4) CTC 291) a learned judge allowed the writ petition on facts and circumstances distinguishable from the present. The process in that case was held to be opaque and not transparent and the impugned order was held to be non-speaking. This decision is thus, of no assistance to the petitioners.



24.01.2023

3.The Selection Committee,
Bharat Petroleum Corporation Limited,



Post Box No.1644,
Peelamedu, Coimbatore.

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Dr.ANITA SUMANTH,J.

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W.P.Nos.26249 of 2012 & 8616 of 2013 and
M.P.Nos.1 & 2 of 2012 and 2 & 3 of 2013

24.01.2023