



W.A.(MD)No.839 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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The Divisional Manager (Marketing Division),
Indian Oil Corporation Limited,
Trichy Divisional Office,
“Triveni” 3rd Floor,
Thillai Nagar,
Trichy-620 018.

... Appellant/Respondent

Vs.

S.Neelakandan

... Respondent /Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 25.02.2020 made in W.P.No.20059 of 2017 passed by this Court.

For Appellant : Mr.K.Muraleedharan

For Respondent : Mr.K.Mahendran



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JUDGMENT

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

This Writ Appeal has been directed against the order passed by the writ Court dated 25.02.2020 in W.P(MD).No.20059 of 2017.

2. The appellant, who is the Indian Oil Corporation Limited, issued an advertisement inviting the applications from the eligible candidates for providing Retail Outlet Dealership at various locations in the State of Tamil Nadu in the year 2014.

3. Serial No.552 is one of the locations at Pookollai Village, Peravurani Taluk, Thanjavur District. The said Outlet has been specifically earmarked for Scheduled Caste category's applicants.

4. The petitioner being the Scheduled Caste candidate applied for the Dealership to run the Retail Outlet in the said place as shown in Serial No.552 at Pookollai Village, Peravurani Taluk, Thanjavur District.



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5. The said application was filed in time. Along with the said application, necessary documents as required by the appellant Corporation through the guidelines for selection of Dealership 2014 issued by the appellant Corporation had been annexed, by thus, the application in all respects fulfilled the conditions.

6. Subsequently, a preliminary scrutiny seems to have been taken place and after the preliminary scrutiny, the appellant considered the respondent/applicant under Group-I Category and accordingly, he was declared as selected on 13.05.2017.

7. Thereafter, some internal approvals were required, that have also been given.

8. After such internal approvals, as per the Brochure, the land which has been offered by the applicant has to be evaluated which is otherwise called as Land Evaluation Process or Field Verification Process, for which, two Officers were nominated and they formed a Committee. The said Committee on 26.05.2017 visited the field (i.e.,) the land offered by the



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applicant to verify the suitability of the land and also they perused the original documents including the land documents submitted by the applicant along with the application.

9. Only at that juncture, it is the case of the appellant that if at all an applicant has been considered under Group-I, it must be under two categories, namely, firstly he must be the owner of the land which is offered, otherwise if he is a lessee of the land, he must have the long lease or minimum years of lease which according to the learned counsel appearing for the appellant is 19 years 11 months (the reason being that 19 years 11 months as a minimum period has not been specifically mentioned in 2014 Brochure).

10. But it is a fact that the applicant has fulfilled that criteria also as he was having the lease deed for 19 years 11 months. Therefore, to that extent, he has fulfilled the condition.

11. Therefore, he was treated under Group-I Category and accordingly, the preliminary scrutiny, declaration, internal approvals and



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field verification everything had been completed in favour of the respondent/writ petitioner.

12. However, at the time of scrutiny of the lease agreement, it is a case of the appellant that the lease agreement does not contain a clause of sub-lease to sublet the land to and in favour of the Company and this requirement, according to the learned counsel appearing for the appellant, is required to be made in the lease agreement under clause 4(vi)(b) of 2014 Brochure.

13. In view of the said omission in the lease deed, the appellant Company had been in a position either to accept that omission by getting an additional or fresh lease deed consisting the sub-lease clause or to push the applicant back to Group-II Category to consider him along with Group-II Category candidates.

14. Only at that juncture, since no decision had been taken for longer period, the respondent approached this Court by filing a writ petition in W.P.(MD).No.20059 of 2017 seeking for a writ of Mandamus.



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15. In the said writ petition, the counter affidavit has been filed by the respondent therein, who is the appellant Company herein, where, *inter alia*, the following has been stated by the appellant Company:

“11.It is submitted that, petitioner Mr.Neelakandan offered the land under lease to him for 21 years and also filled in details under Group I and Group II under land in his application. Also, the letter dated 19.11.2014 submitted by him from Shri T.K.Govindarajau, B.Sc., B.L., Advocate & Notary Public, Pattukottai, stated that he belonged to Group I. Hence, Mr.Neelakandan was treated as candidate under Group I and being the only one candidate in Group I, was declared selected on 13.05.2017. After requisite internal approvals, Committee of Officers comprising Mr.Naveen Joshua and Mr.V.R.Jayakrishnan, visited the candidate for Field Verification of Credentials on 26.05.2017 to verify with original documents submitted along with the application including land documents.”

16. Though it was admitted by the appellant Company in their counter before the writ Court that on 13.05.2017, the writ petitioner's application was declared to be selected and thereafter, the required internal approvals were given and the Committee of Officers also visited for field verification



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on 26.05.2017 to verify the land as well as the original documents submitted along with the application including the land documents, they seem to have not taken a stand that since the sub-clause condition was not available in the lease deed, on that ground, whether the application can be considered by accepting the same under Group-I Category or to place it under Group-II Category.

17. The reason being, according to the learned counsel appearing for the appellant, is that, if there is an application under Group-I Category, first that must be considered and if those applications are considered and rejected or exhausted where there has been no eligible application to be considered under Group-I, then only, they have to take the applications which are pending under Group-II Category.

18. These positions have been projected before the writ Court where the learned Single Judge, who heard the writ petition, has disposed the said writ petition by passing an exhaustive order on 25.02.2020 where the learned Judge has considered the case and counter case projected before him and ultimately, concluded that since the writ petitioner had been invited and



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asked to submit all the formalities to get the Retail Outlet in his name for selling petroleum products, he has invested substantial amount apart from spending his valuable time in pursuing the application and insofar as his candidature is concerned, that was considered and declared so as selected on 13.05.2017 and the field verification has also been taken place and subsequently, the lease deed has also been submitted with a sub-clause condition and the omission in the lease deed about the sub-clause condition is not because of the applicant as such a requirement has been sought for by way of a subsequent letter and assuming that the omission has taken place, that can only be a rectifiable one and therefore, for all these reasons, the learned Judge was pleased to allow the said writ petition by order dated 25.02.2020 giving a direction to the respondent therein who is the appellant before us to grant such Letter of Intent for petroleum Outlet to the petitioner within a time frame.

19. It is to be noted that the learned Judge, after having thoroughly scrutinized the points projected before him and after having gone through the materials, has recorded that no other infirmity or ineligibility has been attached with the said application and it is an admitted fact.



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20. Aggrieved over the same (i.e.,) the order passed by the writ Court dated 25.02.2020, the present Intra-Court Appeal has been directed.

21. We have heard Mr.K.Muraleedharan, learned counsel appearing for the appellant and Mr.K.Mahendran, learned counsel appearing for the respondent.

22. The learned counsel appearing for the appellant has pointed out that insofar as this applicant is concerned, since he has been considered under Group-I, the clause 4(vi)(b) of the Brochure would be made applicable to him under which if the offered land is on long term lease, then the lease agreement should have a provision to sub-lease the land wherever the locations are advertised under Corpus Fund Scheme, Other Corporation Owned Sites and the Company Leased sites.

23. Relying upon this clause, the learned Standing Counsel would submit that this Outlet is earmarked for Scheduled Caste candidates, therefore, under the Corporate Fund Scheme alone, by funding of the Corporation to the applicant, the Outlet will be built and therefore, such



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kind of sub-lease condition must be available in the lease agreement.

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24. He would also submit that in the absence of such sub-lease condition which has been found out later only after completing the process, the Company was of the view that the applicant whether to be considered under Group-I or to be pushed back to Group-II and only at that juncture, since the writ petition had been filed where some interim order had been granted and subsequently, a positive direction was given by the learned Judge through the impugned order dated 25.02.2020 which triggered the appellant Company to prefer this Intra-Court Appeal where since the appeal has been pending from the year 2020 till date, nothing could be moved forward and the said Outlet issue could not be finalized till date, he contended.

25. Mr.K.Mahendran, learned counsel appearing for the respondent would submit that if there has been no other infirmities or ineligibilities attached with the application on the land offered by him, the sub-lease clause if at all has not been mentioned, by a subsequent deed, it could be rectified and therefore, that cannot be a sole criteria for keeping the

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application pending endlessly or to push back the applicant to Group-II Category, he contended.

26. It is the further contention of the learned counsel appearing for the respondent that when similar omission was found out in respect of yet another case, that has been considered and granted by the appellant Company and this has been specifically mentioned by the respondent in his counter which has been filed herein in this writ appeal at paragraph Nos.9 and 10 which read thus:

“9. I specifically state here that in the very same notification dated 16.10.2014, the appellant called for the similar category in S.No.551, Kurvikarambai is also for reserved category. I state that one Sathyamoorthy of Ayyanarpuram, Kalathur East Village, Pattukottai Taluk, Thanjavur District ought to have been submitted application along with the lease deed on or before 20.11.2014. But the appellant received the lease deed from Sathyamoorthy only on 06.10.2017. In that lease deed also he has not mentioned anything about the sub lease. I came to understand that only after selection of the dealership, the appellant instructed the said Sathyamoorthy to include the sub lease in favour of the appellant in the lease deed. Further, I came to understand that



after selecting the said Sathyamoorthy, the appellant received the lease deed dated 06.08.2018 including the words of sub lease that, “on terms and condition stated hereinafter for the purpose of sub-leasing to M/s.Indian Oil Corporation Limited” which clearly shows that the said Sathyamoorthy submitted lease deed without sub-lease clause and the appellant should have rejected the application on the ground of non-inclusion of sub lease document in favour of them, at the time of submitting application. But the appellant by his proceedings in Ref.N/2017/000304/TN000074/415/00016 dated 11.10.2017 had sent a requisition letter to the District Collector for issuing “No Objection Certificate” for constructing petrol bunk at Kurvikarambai, Thanjavur District. After obtaining No Objection Certificate from the District Collector, the appellant issued RO Dealership to the said Sathyamoorthy and now the said Sathyamoorthy is running the Petrol Bulk from January 2019.

10. I further state that, similarly in the very same notification dated 16.10.2014, S.No.99 for the proposed Petrol/HSD Retail, Thirupooranikadu at Peravurani Taluk, Thanjavur District, is also reserved for SC category. In that case also, the appellant received the lease deed dated 18.11.2014 along with the necessary application filed by one Asohan. I further state that the said lease deed also does not contain the provision of sub lease clause in favour of the



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appellant oil corporation. But the appellant for the best reason known to them, based on the lease deed, sent a requisition letter by his proceedings in Ref/4105/0004 dated 22.01.2019 to the District Collector to issue “No Objection Certificate” for construction of Petrol/Diesel outlet at Thirupporanikadu, Peravurani Taluk, Thanjavur District. Now the matter is pending before the District Collector for issuing No Objection Certificate.”

27. Relying upon these materials, the learned counsel appearing for the respondent would therefore submit that there was every justification before the learned Judge who decided the writ petition in favour of the respondent herein by giving a positive direction and therefore, the said order does not require any interference from this Court.

28. We have given our anxious consideration to the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

29. The admitted case before the writ Court and before this Court is that in all respects, the application was in tact and on preliminary scrutiny,



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that was accepted by the appellant Company and it was declared as selected on 13.05.2017 under Group-I category. Thereafter, some internal approvals were also required that were also given and thereafter, the Committee of field verification was formed by the Company which had an inspection of the site concerned on 26.05.2017.

30. Insofar as all other aspects including the suitability of the site is concerned, absolutely there has been no quarrel as admittedly, the writ petitioner's land documents on verification everything were accepted by the Company.

31. The only itch that was projected by the appellant Company is that in the lease deed, the sub-lease clause has not been mentioned.

32. Assuming that if it is an omission within the meaning of clause 4(vi)(b), it is a rectifiable one as it does not alter the situation.

33. If at all any major defect is found with regard to the eligibility of the applicant as he does not belong to Scheduled Caste community and the



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Community Certificate has not been produced or in case, the land offered by the applicant was not suitable for establishment of the Outlet and if that is found out by the Committee after scrutiny or any other such major deficiencies are found out either in the application or in the documents filed along with the application or with regard to the site, we can understand that the appellant Company can take a decision to reject such application.

34. Here, in all respects, the application submitted by the respondent was in order and this has been admitted at various stages as a complete scrutiny was over as early as on 26.05.2017, before which, he was declared as selected on 13.05.2017.

35. When that being the position, whether at this stage, the appellant Company can refuse to consider the application on the small error of omission of having a sub-lease clause in the lease agreement.

36. The said error can at any time be rectified and therefore, such a rectification if at all is made by the applicant, that can very well be accepted by the appellant Company as in the case of another such application having



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been considered it was granted in their favour which has been mentioned by the respondent in paragraph Nos.9 and 10 of the counter affidavit which has been recorded hereinabove.

37. Moreover, if we peruse the clause 4(vi) of the Brochure under the headline, Land [applicable to all categories], insofar as Group-I category, it states that “the applicants having suitable piece of land in the advertised location/area either by way of ownership/long term lease for a period of minimum years (as advertised by the Oil Company)”.

38. So far as the minimum year is concerned, it has been advertised by the appellant Company as 19 years 11 months. Therefore, that is the minimum.

39. The words used in clause 4(vi)(b) are that if the offered land is on long term lease, then the lease agreement should have a provision to sub-lease the land.



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40. The words "long term lease" since have been mentioned and the words "minimum year" have been mentioned in clause 4(vi) itself, it should not be 19 years 11 months or it may be more than 19 years 11 months. Suppose a person is giving a lease for 30 years and another person gives it for 19 years 11 months and yet another person gives it for 25 years and the fourth person gives it for 22 years, among them, which one would be considered as long term lease is the question that has not been clarified in the Brochure.

41. Here, the applicant had given the lease deed for 21 years. If 21 years whether is to be considered as a long term lease or little ahead of minimum years has not been demarcated and there has been no earlier fixation in this regard to come to a conclusion that 21 years lease can be treated as a long term lease. Therefore, whether clause (b) would apply to the case of the respondent/writ petitioner itself is a question which in fact has not been canvassed or gone into by the learned Judge and there is no finding to that effect. However, we are of the considered view that even the clause (b), as very much relied on by the appellant Company, may not be applicable to the case in hand unless the long term lease is specifically



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defined either under the Brochure or under the advertisement given prior to the issuance of Brochure.

42. Therefore, for that reason also, we feel that the application submitted by the respondent cannot be rejected on the sole ground of non-availability of sub-lease clause in the lease agreement. Even otherwise, it is a rectifiable error or mistake that has been rectified. Therefore, the same can very well be accepted by the Company.

43. That apart, in this Group-I Category, admittedly there has been no other applicant. Therefore, if at all any applicant is available, that would be only from Group-II. Therefore, the Group-II applicants cannot exclude the Group-I applicant without any cognizable reason. Therefore, the dilemma that was in the minds of the Officials concerned of the Company as to whether the applicant (i.e.,) the respondent herein has to be considered under Group-I Category or Group-II Category does not have any strong materials to support. Therefore, we feel that the applicant shall be considered only under Group-I category since he has given lease for a minimum of 19 years 11 months, in fact, 21 years which is a little more than



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what is the required minimum years.

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44. Therefore, for all these reasons, we feel that the approach of the learned Judge in allowing the said writ petition by the order impugned cannot be found fault with as the said approach is not erroneous and in fact, the learned Judge has considered all these aspects and allowed the said writ petition. Therefore, it does not require any reconsideration and interference from this Court. Accordingly, this Writ Appeal fails.

45. In that view of the matter, this Court is inclined to pass the following orders:

(i) that the order impugned passed by the writ Court is to be sustained and accordingly, it is sustained. Hence, the Writ Appeal fails and therefore, it is liable to be dismissed.

(ii) as a sequel, there shall be a direction to the appellant Company to finalize the application of the respondent by treating him as Group-I applicant, based on which, necessary orders following the acceptance of the application shall be passed by the appellant Company with regard to the



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grant of petrol outlet in the prescribed location and the needful shall be undertaken by the appellant Company within a period of eight weeks from the date of receipt of a copy of this order.

46. With these directions, this Writ Appeal is dismissed. There shall be no order as to costs.

(R.S.K., J.) & (K.K.R.K, J.)

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AND
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