BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17150 of 2016 AND
W.M.P.(MD)Nos.12435,12436 & 17364 of 2016

S.Rajesh Kanna ... Petitioner

Vs.

The Chief Area Manager,
Indian Oil Corporation Ltd.,
Indane Area Office,
No.2, Race Course Road,
Chokkikulam, Madurai – 625 002. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.MAO/759/16, dated 30.06.2016 passed by the respondent and quash the same and consequently direct the respondent to issue a letter of intent to the petitioner for LPG distributorship at Ramanathapuram.

For Petitioner : Mr.VR.Shanmuganathan
For Respondent : Mr.K.Muraleedharan

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O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondent Corporation.

2. The Indian Oil Corporation issued notification on 15.06.2010 calling for applications from eligible candidates for award of LPG distributorship in Ramanathapuram District, under open category. The petitioner applied in response thereto on 14.07.2010. The interview was conducted by the Dealer Selection Committee on 21.11.2011. The petitioner attended the interview and was ranked No.1. He was awarded 94 marks and one Saravanan was ranked No.3 and he was awarded 90.33 marks. The petitioner had a sum of Rs.18,01,000/- in his savings bank account on the date of application. During the field verification, it was found out that a sum of Rs.13,00,000/- had been withdrawn on 13.09.2010 in the afternoon. According to the petitioner, withdrawal was without his knowledge and when he came to know about the same, he deposited the same on the next day morning i.e. 14.09.2010. The Corporation however took the stand that

since a sum of Rs.18,00,000/- did not remain untouched for the entire period of 90 days, they would proceed on the footing that the petitioner had only a sum of Rs.5,00,000/- and that therefore he would be eligible only for 5 marks. They had earlier awarded 18 marks in favour of the petitioner. This was reduced to 5 marks. The petitioner thus became ineligible. To that effect, the communication dated 23.01.2012 was issued. The petitioner lost his first position in the merit panel and he also became ineligible. Challenging the same, the petitioner filed W.P.(MD)No.1092 of 2012. The writ petition was dismissed on 30.08.2012 in the following terms:-

> "5. The petitioner was fully aware of the condition relating to the funds which is set out in column No.14.2, which reads as under:-
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> > "The amount mentioned in the savings bank account should remain in the bank for a minimum period of 90 days from the date of application or till the interview date, whichever is earlier. In case, the amount is not maintained for 90 days, then the minimum amount maintained during the

period of 90 days will be taken and marks awarded will be reduced accordingly."

6. The petitioner in his application dated 13.07.2010 has mentioned that he is maintaining the savings bank account in City Union Bank and the balance in the account was shown as 18,01,000/-. It is for the maintenance of 18 Lakhs, the petitioner was given the maximum marks and thereby, he obtained 94 marks by the Committee.

7. As per the transaction provided in the said account, which was produced by the petitioner at page No.8 of the typed set, the petitioner on 13.07.2010 had Rs.18,01,000/-; on 13.09.2010, there was a withdrawal of Rs.4 Lakhs and thus, amount was short to 14,00,932/-. Again, on the very same day, the petitioner withdrew 9 lakhs and the balance came to Rs.5,00,932/-. But however, on 14/09/2010, Rs.13 Lakhs was deposited and once again, the amount went to Rs.18,00,932/- and

thereafter, the amount was increasing steadily and as on 12.10.2010, he had a balance of Rs.18,22,559/-. As per the application form, the condition stipulated that Rs.18,01,000/- should be maintained for a period of 90 days. Thereafter, calculation is made out from 12.07.2010 to 12.10.2010 for a period of 90 days. On 13 and 14th September, 2010, the petitioner did not have the balance of Rs.18 Lakhs. Though, it is claimed that the petitioner had deposited Rs.13 Lakhs on 14th itself, there has been a lapse of one day that cannot be a ground to reject the petitioner's candidature. It is a fact that all the ninety days, the amount was shown to a minimum of Rs.18 Lakhs and even for one day, if it is reduced to Rs.18 Lakhs, the marks will be reduced and it is already mentioned in the application form that the minimum amount maintained during the period of 90 days will be taken into account.

8. The contention of the learned counsel for the petitioner that subsequent to the withdrawal,

deposit has been made and therefore, there is always a balance of Rs.18 Lakhs.

9. On the other hand, once the amount is withdrawn, he could not retain full marks, even though the amount is subsequently deposited. Further, the application form for dealership is only a commercial appointment and unless the petitioner satisfies the requirement, which are already indicated in the application form, the petition cannot get shelter for his own error.

10. In this case, there is no selected candidates have been shown as parties, so as to examine whether undue favour has been shown.

11. In the light of the above, the writ petition does not merit acceptance and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed."

3. Aggrieved by the same, the petitioner filed W.A.(MD)No.675 of 2012. The Hon'ble Division Bench vide order

dated 13.10.2015 disposed of the writ appeal in the following terms:-

> "5. While accepting the reasoning given by the learned Single Judge on the plea of violation of principles of natural justice, we are not inclined to accept the appellant's plea, because the selection Brochure or the Notification does not provide for such hearing to the candidates. On the other hand, with regard to the plea that the Brochure condition has been wrongly interpreted by the Department, we give liberty to the appellant to make a representation so as to enable the respondent to consider whether the facts in the present case, that is to say, withdrawal on a particular day and re-deposit on the next day would not be a cause for not maintaining minimum balance in terms of Clause 14(2)."

4. Availing the said liberty, the petitioner moved the Corporation once again. The Corporation by the

communication dated 30.06.2016 declined to change their earlier stand. Challenging the same, the present writ petition came to be filed.

5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this court to set aside the impugned order and allow the writ petition as prayed for.

6. The Corporation has filed counter affidavit and the learned Standing counsel took me through its contents. He emphasised that the marks are awarded based on the information provided in the application form. In the application form, the petitioner had stated that he was having a sum of Rs.18,01,000/- in his S.B.A/c. Acting on the premise that this amount was maintained as such for 90 days, full 18 marks were given. Since it turned out that there was a withdrawal of Rs.13,00,000/-, during this period the Corporation concluded that the amount lying the applicant's S.B.A/c. after withdrawal should be taken as minimum amount

and since it was Rs.5,00,000/-, the petitioner was entitled to 5 marks only. The learned counsel also pointed out that it has been consistently held that in such matters, the writ Court will not be justified in interpreting the terms of the notification and that it should be left to the wisdom of the Corporation. He relied on the decision reported in ***(2003) 10 SCC 681(K. Vinod Kumar Vs. S. Palanisamy And Ors.).*** He prayed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The facts obtaining in this case remain the same. The contentions now advanced by the learned Standing counsel were advanced before the learned Single Judge at the time of disposal of W.P.(MD)No.1092 of 2012. The petitioner suffered dismissal in the first instance. But then, the Hon'ble Division Bench had taken the view that the issue calls for interpretation of the brochure condition. That is why, the matter was remitted to the file of the respondent for fresh consideration. I am of the view that the respondents failed to undertake the exercise as mandated by the Hon'ble Division

Bench. The marks for financial soundness are awarded by applying the following parameters:-

" 14.2. Allocation of marks on various parameters based on the information/statements given in the application.

Parameters	Sub Head	Description	Max Marks	Evaluation
Capability to provide finance for both individuals and non individuals	Financially sound-Funds	a. Amount in Saving accounts in Bank. (as on date of application) b. Free and unencumbered fixed deposits in scheduled banks or any other documents/resource which can be readily converted to liquid cash to cover working capital/infrastructure requirements (as on date of advertisement)	18	Based on the information given in application (FD/NSCs/Shares/any other investment bonds in the name of self or family members as defined above under relationship clause) Award 0.1 marks on every unit of Rs.10,000/- or more in multiplies of Rs. 10,000/- and less then complete unit of Rs. 10,000/- / will not be considered for award of marks. Maximum marks-18. (E/G value is Rs. Marks Rs.10,40,000/- 10.4 Rs.10,49,999/- 10.4 Rs.10,50,000/- 10.5 Rs.18,00,000/- and above 18.0

9. Clause 14.2 as found in the application form reads as follows:-

> "The amount mentioned in the Savings Bank account should remain in the bank for minimum period of 90 days from the date of application or

> till the interview date whichever is earlier. In case the amount is not maintained for 90 days, then the minimum amount maintained during the period of 90 days will be taken and marks will be reduced accordingly, which may affect the merit position of the candidate.”

In this case, the interview date was on 21.11.2011. If the interview had been held sometime in September 2010, the duration would not have been 90 days. The latter part of Clause 14.2, will have to be taken note of. If the amount mentioned in the application form has not been maintained as such, marks will be awarded by taking note of the minimum amount maintained during the period. I called upon the learned standing counsel to answer a hypothetical question. I asked him, if the interview had been held on 21.09.2010 what marks would have been awarded to the applicant. Though the learned Standing counsel made a valiant attempt, I could not be convinced. I feel that answer to this question contains the key to the issue. The brochure is silent as to how the minimum amount should be computed. This exercise has to be undertaken only by the respondent and not by the writ Court.

10. In this view of the matter, the impugned communication is set aside. The matter is remitted to the file of the respondent. Since the case is pending for more than seven years, the issue has to be finalised expeditiously. An enquiry shall be held by the respondent as early as possible and final order will be passed on merits and in accordance with law by keeping in mind the order passed by the Hon'ble Division Bench in WA(MD)No.675 of 2012. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

29.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

The Chief Area Manager,
Indian Oil Corporation Ltd.,
Indane Area Office,
No.2, Race Course Road,
Chokkikulam, Madurai – 625 002.

G.R.SWAMINATHAN,J.

PMU

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