

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2014

CORAM

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

Writ Petition No.11098 of 2011
and
M.P.No.2 of 2011

C.Sivakumar

.. Petitioner

Versus

1. The Area Marketing Manager
Bharat Petroleum Corporation Ltd.,
1, Ranganathan Gardens,
11th Main Road, Anna Nagar,
Post Bag No.1212 and 1213
Chennai - 40.
2. The Territory Manager (Retail)
Bharath Petroleum Corporation Ltd.,
Irugur Top Installation
Ravathur Post
Coimbatore 641 103.
3. The Chairman
Selection Committee for Appointment of Dealer
Bharat Petroleum Corporation Ltd.,
Dealer Selection Office
O/o. AMM (Tamil Nadu & Pondy)
Coimbatore.
4. S.Ponnusamy

.. Respondents

The Writ Petition has been filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned empannelled list dated 03.02.2011 on the file of the Third Respondent herein pertaining to the selection of dealership outlet with regard to S.No.91, Kodiyampalayam Naal Road, left side Chengapalli to Uthukuli Road, and to quash the same and consequently, directing the Respondents 1 and 2 to conduct an enquiry through the Grievance Committee to disqualify the name of the Fourth Respondent, who is empannelled No.1 and directing the Respondents 1 and 2 to appoint the Petitioner as a dealer for the outlet in respect to the location in

S.No.91, Kodyampalayam Naal Road, left side Chengapalli to Uthukuli Road, in the advertisement published in 'Dinamani' daily newspaper dated 14.08.2010.

For Petitioner : Mr.N.Manokaran
For Respondents 1 to 3 : Mr.O.R.Santhanakrishnan
For Respondent-4 : Mr.A.K.Kumarasamy

ORDER

The Petitioner has preferred the instant Writ of Certiorarified Mandamus in calling for the records pertaining to the impugned empannelled list dated 03.02.2011 on the file of the Third Respondent/Chairman, Selection Committee for Appointment of Dealer, Bharat Petroleum Corporation Ltd., Coimbatore, pertaining to the selection of the dealership outlet with regard to Serial No.91, Kodyampalayam Naal Road, left side Chengapalli to Uthukuli Road, and to quash the same. Further he has sought for passing of an order by this Court in directing the Respondents 1 and 2 to conduct an enquiry through the Grievance Committee to disqualify the name of the Fourth Respondent, who is empannelled as No.1 and also directing the Respondents 1 and 2 to appoint him as a dealer for the outlet in respect to the location in Serial No.91, Kodyampalayam Naal Road, left side Chengapalli to Uthukuli Road, in the advertisement published in 'Dinamani' daily newspaper dated 14.08.2010.

2. According to the Petitioner, the First Respondent / Area Marketing Manager, Bharat Petroleum Corporation Ltd., Chennai, issued a publication in 'Dinamani' daily newspaper dated 14.08.2010 inviting applications to appoint the Retail Outlet Dealers within the territory of Tamil Nadu and Pondicherry. Also that it notified 295 places in the said publication to select the dealers. In terms of the advertisement issued, the applications along with requisite documents and particulars were required to be submitted to the Second Respondent on or before 15.09.2010. He applied for the dealership to the place earmarked in Serial No.91 (left side of Chengapalli to Uthukuli Road Kodyampalayam Naal Road). He had completed B.Sc., degree in Chemistry. He has enclosed necessary documents to prove the financial capacity to invest money in the proposed outlet. He possesses requisite qualification and experience in the automobile sector in view of his employment and exposure. His cousin Thiru.Sankarsamy is owning lands measuring an extent of 35 cents in S.No.614/1 and 11/4, Uthukuli Village, which is most suitable and viable for establishing the Bharat Petroleum Corporation Limited outlet. The Fourth Respondent has also applied for the said place in Serial No.91, but he did not have the required extent of 30 x 30 meters as per advertisement issued by the First Respondent.

3. The Fourth Respondent produced two documents for a total extent of 6442 sq.ft, which was hardly insufficient to establish the petroleum outlet for the notified places. He produced a sale deed dated 07.09.1998 (registered as Document No.706 of 1998) where under he purchased an extent of 3757½ sq.ft in R.S.No.66/2 and also produced a sale deed dated 07.09.1998 (registered as Document No.707 of 1998) whereby he purchased an extent of 2685 sq.ft in R.S.No.66/2 and thereby he produced the sale deeds for the properties measuring an extent of 6442 sq.ft as against the required sq.ft of 900 sq.metre. Therefore, the application of the Fourth Respondent should have been rejected at the threshold by the Authorities concerned.

4. After scrutiny of the applications submitted by him and the Fourth Respondent, the Second Respondent issued a letter informing him to attend the interview on 03.02.2011 before the Selection Committee. He attended the interview by producing all the documents and satisfied the Second Respondent in all aspects. On the same day, the Third Respondent Committee has published the result by naming the Fourth Respondent as the empanelled candidate. Before that, the Third Respondent Committee has assessed the performance of the candidates by awarding necessary marks under the heads, like, capacity to provide infrastructure & facility, Ready availability of finance, Letter ensuring loan/credit worthiness, Educational Qualification etc., As a matter of fact, the total marks applicable for the candidate for category is '100'.

5. The Learned Counsel for the Petitioner submits that the impugned advertisement to select the Fourth Respondent as an empanelled candidate is an arbitrary and illegal one besides the same being contrary to the settled principles of law.

6. Advancing his argument, the Learned Counsel for the Petitioner contends that a petition dated 25.02.2011 was submitted to the Second Respondent for the purpose of conducting an enquiry to expel the selection of Fourth Respondent and in spite of that, select his name in the Empanelled-II to appoint a dealer of BPCL outlet at Kodyampalayam Nall Road, left side of Chengapalli to Uthukuli. Further the existing guidelines and the procedure established in law require an adjudication on the complaint dated 25.02.2011 before proceeding further.

7. Expatiating his submission, the Learned Counsel for the Petitioner strenuously submits that specific exclusion of the Petitioner's entry from dealing with the State in the above dealership has the effect of preventing him from doing the lawful trade in discriminating against him and in favour of other citizen. Moreover the requirement of Article 14 of the Constitution of India being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State / other

Authorities always to act so even in contractual matters.

8. Lastly, it is the statement of the Learned Counsel for the Petitioner that the Fourth Respondent had not produced any documentary evidence to prove the required extent of 30 x 30 sq. mt. and so far no concession or relaxation in this regard to the extent of the property was given to appoint a dealer. As such the Respondents already in a pre-determined fashion decided to grant allotment in the name of Fourth Respondent, which was evident from the selection of the same place notwithstanding the fact that the required extent of 30 x 30 sq.mt. were not complied with.

9. Per contra, it is the submission of the Learned Counsel appearing for the Respondents 1 to 3 that the Petitioner is not an aggrieved person, because of the reason that he had taken part in the interview without any demur and also that having failed to get selected, it is not open to him to challenge the appointment of Fourth Respondent.

10. The Learned Counsel appearing for Respondents 1 to 3 urges before this Court that the Petitioner after taking part in the selection process by appearing in the interview without any demur and having failed to get selected, it is not open to him to challenge the mode of selection especially the award of marks under the caption 'Availability of Finance' and in short, the conduct of the Petitioner is against the Principles of Estoppel.

11. The Learned Counsel for Respondents 1 to 3 contends that when the Petitioner projected a complaint dated 25.02.2011, he was required to submit the details of his allegations/averments especially in regard to awarding of marks under 'Availability of Finance', in and by letter dated 28.02.2011 of the First Respondent for which he issued a reply dated 18.03.2011 and on examining his reply, the First Respondent found that the Petitioner / complainant does not have any specific and verifiable data in regard to 'Ready Availability of Finance' as such the First Respondent was perfused to file the complaint of the Petitioner dated 25.02.2011 in terms of clause-19 of the guidelines mentioned in the Brochure of Procedure for Selection of Petrol/Diesel Retail Outlet Dealers dated 15.09.2008.

12. The Learned Counsel for the Respondents 1 to 3 brings it to the notice of this Court that the terms of advertisement, Col.No.10, which mentions as follows:-

"Preferable Land required, dimension in Metres
(Frontage X Depth) for S.No.91 (Chengapalli to
Uthukuli Road on LHS) is 30 x 30M."

and therefore, it is the stand of the Respondents 1 to 3 that the dimensions sought is a preferable one and not minimum one required. Also that, the Site Selection Committee, as per the Dealership Selection Guidelines, screened the site offered by the candidates and

evaluated in terms of the parameters contained in the Dealership Selection Points. The Committee would evaluate not only the technical parameters to the site, but also assign marks out of 35 marks earmarked for the land under Dealership Selection Guidelines. The marks so assigned are to be placed in a sealed cover and to be transmitted to the Coimbatore Territory, where the Interview Committee conducted the interview for all the applications.

13. The Learned Counsel for the Respondents 1 to 3 brings it to the notice of this Court that yet another Screening Committee would scrutinize and allot the marks on the basis of the attested documents submitted by the candidates along with the application as the original documents would be brought at the time of interview. Further more, contrary to the announcement of the interview as per the Dealership Selection Guidelines, the Interview Committee disclosed the marks awarded in the 'infrastructure' to the candidates as well as the marks on the 'technical parameters' and obtained the candidate's signature as confirmation that the candidates have seen the marks awarded to them.

14. In fact the pith and substance of the Learned Counsel appearing for the Respondents 1 to 3 is that the extent of the land offered by the Fourth Respondent was 30 x 30 sq.metre and the same was a suitable one and was in line with the advertisement dated 14.08.2010 published in 'New Indian Express'. That apart, the Respondents 1 to 3 had taken necessary care and caution to adhere to the Guidelines for Selection of Dealers and they have not done anything in a hurry and hasty manner in selecting the Fourth Respondent. Indeed the Respondents 1 to 3 have followed three tier process stages.

15. The Learned Counsel for the Respondents 1 to 3 contends that the First Respondent for the complaint of the Petitioner dated 25.02.2011 sent a reply dated 28.02.2011 to him requiring him to furnish details of his allegations, particularly with respect of Point No.3 of his letter, based on which the First Respondent informed him that they shall investigate further. At this juncture, the Learned Counsel for the Respondents 1 to 3 submits that the Petitioner had not furnished details to substantiate his allegations especially with reference to Point No.3 of his letter and in fact, the First Respondent had replied to his letter. Therefore, it cannot be contended on behalf of the Petitioner that he was not given adequate opportunity or enough opportunity to put forward his case. Also that there is no violation of principles of natural justice.

16. The Learned Counsel for the Respondents 1 to 3 relies on the decision of the Hon'ble Supreme Court in 2012 (12) SCC 106 (Sajeesh Babu K. ..vs.. N.K.Santhosh and Others) at special page 106 whereby and wherein, it is held and laid down as follows:-

"In a matter of appointment/selection by an

Expert Committee/Board consisting of qualified persons in the particular filed, normally, the courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of malafides against the experts who had constituted the Selection committee. Admittedly, in the case on hand, there is no allegation of malafides against the three experts in the Selection Committee. In such circumstances, it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry, etc. and awarded marks. In such circumstances, the High Court ought not to have sat as an appellate court on the recommendations made by the Expert Committee. Further, in order to ascertain the genuineness of the contents of experience certificates, Exts.P2 and P3, the Corporation deputed responsible persons for verification and in fact, they met the issuing authority and were satisfied with the correctness of their statement. Therefore, the Single Judge as well as the Division Bench committed an error in interfering with the decision of the Selection Committee.

17. He also seeks in aid of the judgment of the Hon'ble Division Bench of this Court dated 04.12.2009 in W.A.No.1573 of 2009 "R.Kalaivani ..vs.. Chairman, Indian Oil Corporation, New Delhi and three others" whereby and wherein, in paragraph -11, it is observed as follows:-

"11. As rightly contended by the learned counsel for the respondent, the appellant / writ petitioner applied for Dealership of Indane Gas based on advertisement inviting applications, which is the rule of selection. Appellant/Writ Petitioner knows fully well that the marks will be awarded for experience on the basis of interview and not on the basis of mere production of certificate. The appellant/writ petitioner also taken part in the selection by appearing in the interview without any demur. Having failed to get selected she has now chosen to challenge the mode of selection particularly the award of marks under the heading 'Experience'. The said conduct of the

petitioner is clearly against the Principles of Estoppel."

18. Apart from the above, the Learned Counsel in the aforesaid order of the Division Bench of this Court places reliance on paragraphs 13 and 14 of the said order, wherein it is observed and held as under:-

"13. The scope of interference by the Court under Article 226 of the Constitution of India in the matter of selection of Distributorship of Indane Gas is considered by the Division Bench of this Court in the decision reported in (1995) 2 MLJ 458 (V.Chandran ..vs.. Oil Selection Board).

14. Admittedly, no malafide is alleged against the respondents by the petitioner. The petitioner, having been treated like other candidates, who participated in the interview and the Selection Committee having awarded marks for the experience on the basis of the questions put to the candidates and the answers given by them, there is no arbitrariness as alleged by the petitioner in awarding marks to 46 candidates."

19. He also cites yet another Division Bench Judgment of this Court dated 16.04.2009 in W.A.No.270 of 2009 "K.K.Poongodi ..vs.. Bharat Petroleum Corporation Ltd., Coimbatore and three others" wherein in paragraph 6, it is observed as follows:-

"6. In our view, it is not possible for the Court or any other Body to take a different view where there are quite a number of subjective factors also. After considering all these factors, the Committee has given the marks. We cannot say that we are better suited to have a re-appreciation of the evaluation done by the officers of the Bharat Petroleum Corporation. They know their requirement quite well. By applying the specified yardstick, they are entitled to decide as to who is better suited and, therefore, we decline to take a different view from the one which the learned Judge has taken."

20. The stand of the Respondents 1 to 3 that they had followed the guidelines scrupulously in regard to the appointment of the Retail Outlet Dealers in the subject matter of issue before this Court in the Writ Petition and rightly selected the Fourth Respondent, which need not be disturbed by this Court at this distance point of time. Also it is submitted on their behalf that the scope of judicial review is limited on the part of a Court of Law and also a Court of Law cannot take a different view or substitute its views for the views taken by the Experts in the Field.

21. The Learned Counsel for the Fourth Respondent submits that the Site Selection Committee is a competent authority to inspect and to give a report as to the suitability of the site before the Interview Committee finalises the suitability of the site for the purpose of awarding marks under the parameter 'land and infrastructure' and the Committee on Inspection found the site offered by the Fourth Respondent as suitable for them and added further, the site in question is situated in the junction of four roads.

22. While winding up his argument, the Learned Counsel for the Fourth Respondent contends that the process of appreciating and weighing the numerous factors, materials and rival merits are the domain and functions of the Selection Board of the Respondents 1 to 3/ Authorities, who are possessing necessary expertise and experience to perform the duties assigned to them and in this regard it is not a Court of Law either to re-appraise or to re-appreciate the relevant materials, relative qualification and evaluation of the comparative merits of the candidate in a Writ Proceedings under Article 226 of the Constitution of India. Moreover, there is no illegality or irregularity in the conduct of Interview of assessing the merits of each applicant or coming to a conclusion.

23. On a careful consideration of respective contentions and in view of the fact that the Respondents 1 to 3 have come out with a categorical stand before this Court that preferable land required, dimension in metres (frontage and depth) for S.No.91 (Chengapalli to Uthukuli Road on LHS) is 30 x 30 metre, which is only a preferable one and not the minimum dimension so required and also taking note of the fact that the Respondents 1 to 3 / Authorities had replied to the complaint of the Petitioner dated 25.02.2011 through the reply dated 28.02.2011 and that apart, this Court by also looking into the file note of the Area Marketing Manager of Tamil Nadu and Pondicherry of the Respondents Authorities enclosed in the Index to Typed Set of documents at page 3, is of the considered view that the First Respondent had informed the Petitioner to submit details of allegations / particularly with respect of 'ready availability of finance' based on which, they shall investigate further for which the Petitioner replied only the measurement of land alleged to have been offered by Ponnusamy etc., and other than two sale deed documents registered as Document Nos.706 and 707 of 1998, no other documents were produced by him and also he evaded his ready availability of finance as stated in the original complaint etc., this Court comes to an inevitable and irresistible conclusion that the writ Petitioner (purported to be an aggrieved/affected person) has not made out a case for interference by this Court in regard to the impugned empanelled list dated 03.02.2011. Viewed in that perspective, the Writ Petition is devoid of merits.

24. In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar (CS-III)
Dated:

/True Copy/

Sub Assistant Registrar

mra

To

1. The Area Marketing Manager
Bharat Petroleum Corporation Ltd.,
1, Ranganathan Gardens,
11th Main Road, Anna Nagar,
Post Bag No.1212 and 1213
Chennai - 40.
2. The Territory Manager (Retail)
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3. The Chairman
Selection Committee for Appointment of Dealer
Bharat Petroleum Corporation Ltd.,
Dealer Selection Office
O/o. AMM (Tamil Nadu & Pondy)
Coimbatore.

1cc to Mr.N.Manokaran,Advocate, Sr.4302
1cc to Mr.O.R.Santhanakrishnan,Advocate, Sr.4135
1cc to Mr.A.K.Kumarasamy,Advocate, Sr.4137

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and
M.P.No.2 of 2011

jsv(CO)
GKG/7.2.14