

(2012) 11 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 4189 of 2012 and M.P. No's. 2-4 of 2012

Dr. K. Arul Prakash

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2012) 8 MLJ 769

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Ar.L. Sundaresan, for Al. Ganthimathi, for the Appellant; Anand, Abdul and Vinod Associates, V. Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—Indian Oil Corporation Ltd. ("IOCL" for short) gave an advertisement in "The Hindu", an English daily and

Dinakaran", a Tamil daily, on 23.10.2010, calling for applications for grant of petroleum Retail Outlet Dealership to various places, including the

place at Katchupalli-Kornampatti on State Highway 86, in Salem District. Pursuant to the same, the petitioner and the respondents 4 and 5 who

constituted a partnership firm by name "Sri Vallabha Ganapathy Agency, applied for the same.

2. Ultimately, the third respondent issued the selection panel, giving ranks of parties in each of the Retail Outlets.

3. As far as the place at Katchupalli-Kornampatti on State Highway 86 is concerned, the petitioner ranks at no. 2, while the respondents 4 and 5

rank at no. 1. While the petitioner was awarded 87.01 marks out of 100 marks, the respondents 4 and 5 were awarded 88.57 marks out of 100

marks.

4. The petitioner made a representation dated 17.10.2011 to the third respondent, questioning the rank as assigned in the rank list. The petitioner stated in his representation that the respondents 4 and 5 should not have been awarded 34.65 marks out of 35 marks for the land, since high tension electric lines cross over the said property.

5. Thereafter, the petitioner filed W.P. No. 25077 of 2011 seeking a direction to dispose of his representation dated 17.10.2011. This Court disposed of the said writ petition by order dated 12.11.2011 by directing the third respondent herein, to dispose of the petitioner's representation after hearing the petitioner as well as the respondents 4 and 5 and to pass appropriate orders within a period of six weeks.

6. Accordingly, the third respondent passed an order dated 14.2.2012 stating that high tension electric lines passing through the corner of the site is not a safety hazard, considering the fact that the land offered by the selected applicants has more than the adequate depth to take care of the required dimension of 35m x 35m to put up Retail Outlet facilities.

7. The petitioner has filed this writ petition seeking to quash the aforesaid order dated 14.2.2012 passed by the third respondent and also the selection results dated 22.9.2011, insofar as they relate to the respondents 4 and 5 and for a direction to respondents 1 to 3 to allot the Retail Outlet Dealership to the petitioner herein for the location at Katchupalli-Kornampatti on State Highway 86.

8. The respondents 1 to 3 have filed a common counter affidavit and the respondents 4 and 5 also have filed a common counter affidavit refuting the allegations.

9. The learned counsel for the respondents 1 to 3 has produced the original file relating to the impugned orders.

10. Heard both sides.

11. The learned senior counsel appearing for the petitioner has vehemently contended raising three issues. Those three issues are as follows:

1. The respondents 4 and 5 were allotted 34.65 marks out of 35 marks for the land offered by them for Retail Outlet, without noticing the fact that

high tension lines were passing over the aforesaid land; the Land Evaluation Committee failed to take into account the said fact and awarded

excessively 34.65 marks out of 35 marks. He has expanded his submissions stating that since high tension electric lines were passing through the plot of the respondents 4 and 5, the respondents 4 and 5 are dis-qualified from making application.

2. The respondents 4 and 5 were also allotted 11 marks out of 12 marks for educational qualification erroneously, considering the fourth respondent as a graduate; but, the fourth respondent is not a graduate and if marks are correctly awarded, the respondents 4 and 5 shall get only 10 marks out of 12 marks.

3. The respondents 4 and 5 have given a false information relating to educational qualification in the application that the fourth respondent has passed B.Lit., while she did not pass B.Lit.; hence, the application deserves to be rejected based on Clauses 10(k) and 19(2) of the Brochure conditions.

12. Per contra, the learned counsel for the respondents 1 to 3 has submitted that the respondents 4 and 5 offered a larger extent of land than the extent of land that was required under the advertisement; under the advertisement, the land required was to an extent of 35m x 35m; but, the respondents 4 and 5 have offered land measuring 35m x 60m; the high tension lines are crossing on the south-west corner of the plot; even if the area covered by the high tension lines is omitted, the land offered by the respondents 4 and 5 was sufficient enough for the purpose of Retail Outlet. The learned counsel for the respondents 4 and 5 has produced the entire file and also the report of the Land Evaluation Committee.

13. The learned counsel for the respondents 1 to 3 has further submitted that there was a mistake by the respondents 1 to 3 in granting 11 marks towards the educational qualification of the fourth respondent and only 10 marks should have been granted; further, the respondents 1 to 3 had erroneously considered that the fourth respondent had passed B.Lit.; but, the fourth respondent did not state that she had passed B.Lit.; even if 10 marks are awarded for educational qualification, the rank list cannot get altered.

14. As far as the allegation relating to providing false information is concerned, the learned counsel for the respondents 1 to 3 has submitted that the said allegation lacks merit.

15. The learned counsel for the respondents 4 and 5 has submitted that the

respondents 4 and 5 are in possession of the land measuring 40m x 61m and they have offered 35m x 60m for the Retail Outlet, though the required extent of land was only 35m x 35m; if 35m x 35m is taken into consideration, there are no high tension lines passing over the same.

16. Regarding the educational qualification of the fourth respondent, his submission is that though it was mentioned in the application that the fourth respondent was studying B.Lit., the fourth respondent had already passed B.Lit. and therefore, the respondents 1 to 3 were correct in awarding

11 marks for the educational qualification; in any event, whether it is 10 marks or 11 marks, that would not alter the position; the petitioner

obtained Provisional Certificate dated 23.11.2010 that she passed B.Lit. from Tamil Nadu Open University; however, she was issued the same

only subsequently; hence, when she made application, she had stated that she was studying B.Lit.; in fact, the fourth respondent passed B.Lit.

examination that took place in June 2010; hence, her qualification of B.Lit. should date back to June 2010.

17. As regards furnishing of false information, the learned counsel for the respondents 4 and 5 has submitted that the above statement of facts

would make it amply clear that the respondents 4 and 5 never gave any false information.

18. I have considered the rival submissions of the learned counsel.

19. The following issues arise for consideration in this writ petition:

i. Whether the third respondent committed an error in awarding 34.65 marks out of 35 marks for the land provided by the respondents 4 and 5

and also whether the third respondent committed a mistake in accepting the land for the purpose of Retail Outlet when high tension electric lines

were passing over the same?

ii. Whether the third respondent erroneously granted 11 marks out of 12 marks for the educational qualification of the respondents 4 and 5?

iii. Whether the respondents 4 and 5 have given false information relating to the educational qualification of the fourth respondent and therefore, the

application of the respondents 4 and 5 has to be rejected in limine?

Issue No. 1:

20. The respondents 4 and 5 have made an application for Petroleum Retail

Outlet at the place-Katchupalli-Kornampatti on State Highway 86 in Salem District. In the application, they offered the land that was got by them through a settlement deed dated 26.7.2010. In the said settlement deed, the respondents 4 and 5 got the land measuring 40m x 61m on State Highway 86. The same is not in dispute. The respondents 4 and 5 offered the land measuring 35m x 60m out of the aforesaid land for the purpose of Retail Outlet. The requirement as per the advertisement for Retail Outlet is 35m x 35m. It is true that as per the Notes appended to Clause 15 of the Brochure, if high tension overhead lines pass over the plot offered, the same will be dis-qualified.

21. The learned senior counsel appearing for the petitioner has heavily relied on the said Clause and has submitted that since high tension overhead lines pass over the plot offered by the respondents 4 and 5, the application of the respondents 4 and 5 should not have been considered.

22. He has also drawn my attention to the sketch in this regard. As per the sketch, 3 high tension lines are shown in the south-west corner of the land. Those 3 lines are crossing upto a length of 2.8 metres out of 60 metres length of the plot. Since they are passing only upto 2.8m out of 60m, the respondents 1 to 3 have stated that the land offered by the respondents 1 to 3 is much more than the required land, i.e., if 2.8m is deducted from 60m, there are no high tension overhead lines over the land measuring 57.2m x 35m. But, the requirement is only 35m x 35m.

23. I have also perused the sketch. In my considered view, since it occupies only upto a distance of 2.8m out of 60m, that too, on the south-western end, the same could not be considered as a dis-qualification.

24. It is a different matter altogether if the respondents 4 and 5 offered only the land measuring 35m x 35m and the high tension overhead lines are passing to an extent of 2.8m. In that case, the Corporation is not correct in entertaining such an application. But, the respondents 4 and 5 have offered a very large extent of land than the required land and the same is taken into account by the respondents. Therefore, I do not find any infirmity in awarding 34.65 marks out of 35 marks for the land offered by the respondents 4 and 5.

25. Further, Initially, 100 marks were allotted for the land. But, later, it was converted to 35 marks. As per Clause 15 of the Brochure, 100 marks

are distributed under various heads.

26. The attempt of the learned senior counsel was to dis-qualify the respondents 4 and 5 at the first instance by submitting that since high tension

lines were passing over the land offered by the respondents 4 and 5, their application should not have been entertained.

27. As far as this submission of the learned senior counsel appearing for the petitioner is concerned, I hold against the petitioner. Originally, he

submitted that the marks allotted under various heads are not correct and particularly, the marks given for frontage is not correct. I am afraid that I

am not an appellate authority sitting over the Land Evaluation Committee.

28. In any event, the sketch that is produced by the petitioner which is found at page no. 186 of typed set of papers and which was considered

hereinbefore, does not support the submission made by the learned senior counsel appearing for the petitioner.

29. For all the aforesaid reasons, I reject the contention of the leaned senior counsel appearing for the petitioner and Issue No. 1 is answered

accordingly.

Issue No. 2:

30. As far as Issue No. 2 is concerned, the learned senior counsel appearing for the petitioner has submitted that if the Court is not inclined to

agree with Issue No. 1, then, Issue No. 2 will not be of any help to him very much, since, even if 10 marks are awarded for educational

qualification out of 12 marks, that could not alter the position. Hence, no need whatsoever arises to dwell on Issue No. 2 in detail, any further.

Issue No. 3:

31. The submission of the learned senior counsel is that the respondents 4 and 5 have made false statement regarding the educational qualification

of the fourth respondent and hence, their application is liable to be rejected. In this connection, the learned senior counsel has relied on Clauses

10(k) and 19(2) of the Brochure. The said clauses are extracted as under;

Clause 10(k)

If any statement made in the application or in the document enclosed therewith by the candidate at any state is found to be incorrect or false and/or

the applicant conceals any information, which if declared, would have made him/

her ineligible for dealership, the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases the candidate/dealer shall have no claim whatsoever against IOC.

Clause 19(2)

Furnishing of False Information:

If any information furnished by the applicant is found to be false any point of time before or after appointment as a dealer, the allotment will be

cancelled forthwith and dealership terminated in case commissioned.

32. The fourth respondent has submitted that she was undergoing B.Lit. course as on the date of submission of application. The fourth respondent

has drawn a line above the term ""B.Lit."" for the said purpose. In fact, the learned counsel for the respondents 4 and 5 has explained that the

examinations for B.Lit. took place in June 2010 and that the fourth respondent passed in the said examination and the Provisional Certificate dated

23.11.2010 was issued subsequent to the submission of the application dated 25.11.2010 and in these circumstances, it was stated that the

respondents 4 and 5 were undergoing B.Lit. course.

33. In any event, I am of the considered view that there is no false information. The respondents 4 and 5 acted guardedly stating that the fourth

respondent was undergoing B.Lit. course, though actually, she had passed B.Lit. course by taking her last examination in June 2010.

34. In any event, since the fourth respondent had stated in the application that she was undergoing B.Lit. course, I am of the considered view that

the respondents 4 and 5 have not suppressed any fact in their application as regards the aspect of educational qualification.

35. The learned senior counsel appearing for the petitioner relied on two judgments in support of his submissions.

36. The first judgment relied on by him is the one of a Division Bench of this Court S. John Sundarraj, Oil Selection Board represented by its

senior Coordinator, Nungambakkam Madras-34 and 3 Others 1997 WLR 342.

37. In the said case, the IOCL cancelled the Retail Outlet Dealership allotted to the successful candidate on the ground that he gave false

information by stating that his wife was not employed, while his wife was actually

employed as a teacher and was in receipt of Rs. 47,476/- as salary per year.

38. In those circumstances, the Division Bench of this Court upheld the judgment of the learned single Judge dismissing the writ petition which was filed challenging the cancellation of dealership allotment. Paragraph nos. 5 and 6 of the order are extracted hereunder:

We have already pointed out that as per condition No. 9 of the conditions, the dealership is liable to be cancelled in case it is subsequently found

that the applicant has suppressed material facts as to income. There cannot be a denial of the fact that the wife of the fourth respondent was

employed as a teacher in a Higher Secondary School. It is too much on the part of the petitioner to contend before us that he was under the

impression that the income of his wife was not required to be included along with his income and therefore, he showed the income of his wife as

Nil". It is also further contended that since his wife was not residing with him, her income was not included. It is not disputed before us-rather, it is

the case of the petitioner also that he has not divorced his wife and she continues to be his wife and his family consists of his wife, children and also

his parents. Thus, it is a case in which there is suppression of the relevant material only with a view to seek allotment of dealership. In the event the

income of the wife of the fourth respondent would have been disclosed, he would have been held to be ineligible to seek allotment. So this is an

intentional suppression to make material gain allotments of dealership. In such a case, the authority concerned ought to have taken immediate steps

to cancel the dealership, when it was brought to the notice of the authorities that there was material suppression. But it has not been done in spite

of the fact that a complaint was given on 1.3.1996. As the authority concerned did not take any action in the matter, the writ petitioner-appellant

was compelled to approach this Court, as the petitioner-appellant was one of the applicants.

Thus, this is a case in which there can be no second opinion that the 4th respondent purposely with a view to gain allotment of dealership

suppressed the material information as to employment of his wife as a teacher receiving salary of Rs. 47,476/- per year. Consequently, we have no

doubt that this is a case in which no further enquiry whatsoever is required. We,

accordingly, of the view that there is no justification for directing the authority to enquire into the matter. Accordingly, the writ appeal is allowed and the order dated 6.11.1996 passed by the learned single Judge in W.P. No. 3590 of 1996 is set aside and the writ petition as per the prayer made in the amendment application is allowed. The order dated 16.2.1996 passed by the second respondent granting dealership/distributorship to the 4th respondent for Indane gas at Kulachel in Kanyakumari District, is quashed. We consider that this is a fit case in which heavy costs should be awarded. We accordingly award costs of Rs. 5,000/- (Rupees five thousand) to be paid to the writ petitioner-appellant by the 4th respondent. Consequently, W.M.P. Nos. 17340 and 17341 of 1996 are dismissed.

39. In the instant case, I am of the view that no such false information has been provided by the respondents 4 and 5, warranting rejection of their application. As such, the aforesaid judgment, does not, in any way, support of the case of the petitioner.

40. The other judgment relied on by the learned senior counsel appearing for the petitioner is the one in B.R. Chowdhury Vs. Indian Oil Corporation Ltd. and Others,

41. In the above said case also, the IOCL cancelled the allotment of Retail Outlet Dealership on finding that the applicant gave false information, as if he was an un-employed youth and secured higher marks when he was actually in employment.

42. The Apex Court refused to interfere with the action of the IOCL. The relevant passages from the aforesaid judgment are extracted hereunder:

Indian Oil Corporation (for short the Corporation) invited applications for appointment of a dealer relating to a retail outlet on 22.6.1987. It was open to all but preference was to be given to the unemployed youth...

... A combined reading of the offer of appointment and the aforementioned reply of the Denis Chem Lab Limited clearly shows that the appellant

was an employee on the relevant date. Mere use of word trainee cannot be taken to say that he was not an employee particularly so when his

services were confirmed later. In the application filed by the appellant for securing dealership, as against column No. 8(c) whether he was

temporarily employed, he has filled as ""No". In column No. 9, as against the

present occupation, he has shown as ""Nil"". These statements made by the appellant in column No. 8(c) and column No. 9 amount to suppression of material fact. This apart, nothing prevented the appellant from mentioning in column no. 9 of the application as against the status of employment at least as a trainee. But on the other hand, in column 9 he has shown the status of occupation as ""Nil"". The contention advanced on behalf of the appellant that the status of occupation as shown was bona fide cannot be accepted. In view of para 10 of the affidavit filed by him coupled with the para 56 of the Memorandum, the Corporation was well within its right to terminate the dealership of the appellant....

In my considered view, the above said judgment also does not apply to the facts of this case since I have found that the respondents 4 and 5 have not given any false information in their application.

For all the aforesaid reasons, the writ petition which is devoid of any merit, fails and hence, the same is dismissed. No costs. Connected

Miscellaneous Petitions are closed.