

(2007) 07 MAD CK 0208

In the Madras High Court

Case No : W.A. (MD) No. 216 of 2007 and M.P. (MD) No. 1 of 2007

Dr. K. Santhosh Kumar

APPELLANT

Vs

The Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Citation : (2007) 2 CTLJ 488 : (2008) 1 MLJ 240

Hon'ble Judges : P.R. Shivakumar, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : AR. L. Sundaresan for AL. Gandhimathi, for the Appellant; N. Krishnaveni, for Respondent Nos. 1 to 5 and V. Sitharanjandas, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—This writ appeal has been preferred by the unsuccessful writ petitioner putting in issue the correctness of the order

dated 26.06.2007 passed by the learned Single Judge dismissing the writ petition of the appellant in W.P. No. 3369 of 2006.

2. The appellant herein/writ petitioner had filed the said writ petition praying for the issue of a writ of mandamus, forbearing the respondents 1 to 5

from appointing any one other than the petitioner (who is holding Letter of Indent dated 19.09.2005), as the Retail Outlet dealer of Indian Oil

Corporation, Madurai City - I which is reserved for scheduled castes under notification dated 21.12.2003 and pass such further or other suitable

order or orders, as the Court may deem fit.

3. For conveniently dealing with the issue/issues involved in this writ appeal, the facts leading to the filing of the writ appeal can be stated thus:

(i) Respondent No. 1 is the Indian Oil Corporation and respondent Nos. 2 to 5 are

the officials of the Indian Oil Corporation. By an advertisement dated 21.12.2003, for appointment of dealers for Retail Outlets at 233 locations through out the State of Tamil Nadu and Union Territory of Pondicherry, applications were called for. Out of the above said 233 locations, serial No. 209 - Madurai City - I and serial No. 210 - Madurai City - II were two among the Outlets reserved for candidates belonging to scheduled castes. The appellant (writ petitioner) and the sixth respondent were two among the applicants for both the Outlets. At the first instance, interviews were conducted from 22.07.2004 to 24.07.2004 in which admittedly the appellant was ranked No. 1 in respect of Retail Outlet - Madurai City - I and for Retail Outlet - Madurai City - II, the appellant was ranked No. 2.

(ii) However, the said selection was cancelled and fresh interviews were conducted in the month of June for both the Outlets. The appellant participated in the fresh interview without any protest and the results of the said interview were published in which the rankings assigned to the top three candidates for both the Outlets are as follows:

Madurai City - I Madurai City - II

1. T.V. Sundaravadivelu 1. T.V. Sundaravadivelu

(6th Respondent) (6th Respondent)

2. K. Santhosh Kumar 2. K. Santhosh Kumar

(Petitioner) (Petitioner)

3. Veerapandi 3. Veerapandi

As the sixth respondent stood at No. 1 in the ranking for both the Outlets, namely Madurai City - I and Madurai City - II, he opted to have the

Letter of Indent for Madurai City - II and gave a letter accepting the Letter of Indent for Retail Outlet: Madurai City - II and conveying an

undertaking that he would not require Letter of Indent for the Retail Outlet: Madurai City - I. This was done in view of the restriction in the rules

that one cannot have Letter of Indent for two Outlets at one and the same time. Consequently, field investigation was conducted for the candidate

ranked second (the appellant herein) for the Retail Outlet: Madurai City - I and a Letter of Indent was given to the appellant on 19.09.2005. The

same was accepted and acknowledged by the appellant on 23.09.2005.

(iii) According to the scheme and clauses of Letter of Indent, the Indian Oil Corporation itself would get the land either on sale or on long lease for

locating the Retail Outlet, develop the same with office building, storage tank, pumps and air filling facilities and then hand over the same to the

selected dealer under the category of Scheduled Castes/Scheduled Tribes. While so, unable to secure suitable land for both the Outlets concerned

in this case, the Indian Oil Corporation took a decision, of course at the request of the sixth respondent, to allot the existing Company Operated

Company Owned Retail Outlet at Gokhale Road to the sixth respondent herein, the holder of Letter of Indent for Retail Outlet : Madurai City - II.

Aggrieved over the same, the appellant herein approached this Court and filed the above said writ petition for the issue of a writ of Mandamus as

indicated supra, contending that Madurai City has been divided into two supply areas as Madurai City - I and Madurai City - II; that the said

Retail Outlet situates within the Madurai City - I sales area for which the appellant holds Letter of Indent and that the same was sought to be

allotted to the sixth respondent, who holds the Letter of Indent for the other supply area, namely Madurai City - II.

(iv) The prayer in the writ petition was resisted by the Indian Oil Corporation (respondents 1 to 5) and the sixth respondent contending inter alia

that there was no geographical division of Madurai City into Madurai City - I and Madurai City -II; that since it was proposed to appoint dealers

for two Retail Outlets in the very same area, namely Madurai City, for the sake of convenience, they were designated as Retail Outlet Madurai

City - I and Retail Outlet Madurai City - II; that the sixth respondent, having been issued a Letter of Indent earlier in point of time the Company

Operated Company Owned Retail Outlet at Gokhale Road, was sought to be allotted to him in preference to the appellant, who holds Letter of

Indent for the very same area which was issued to him later in point of time for the second Outlet advertised for Madurai City and that the

appellant should wait till the Indian Oil Corporation was able to find out suitable location for setting up the second Retail Outlet within Madurai

City.

(v) Holding that the appellant cannot have any vested right for demanding the allotment of Company Operated Company Owned Retail Outlet at

Gokhale Road and that the sixth respondent having stood in the first rank for both the Outlets and having been issued Letter of Indent earlier in

point of time, shall have the preferential right for the allotment of the Retail Outlet, the learned Single Judge non-suited the appellant herein/writ

petitioner for the relief sought for in the writ petition and dismissed the writ petition by order dated 26.06.2007. The correctness of the above said

order of the learned Single Judge is put in issue in this writ appeal.

3. We have heard the submissions made by Mr. A.R.L. Sundaresan, learned Senior Counsel, by Mrs. N. Krishnaveni, learned Counsel for the

respondents 1 to 5 and also by Mr. V. Sitharanjandas, learned Counsel for the sixth respondent. We have also perused the materials on record.

4. The learned Single Judge, in paragraph five of the order impugned in this Writ Appeal, has observed as follows:

Admittedly, in the second interview in which the petitioner had participated he was ranked as No. II for both the locations. Since Madurai City II

interview was held earlier, the 6th respondent selected an outlet at Othakadai situated in Madurai-Melur Highways coming under City II.

Therefore, originally, a Letter of Indent was given to Madurai City II for the 6th respondent and for the petitioner, Letter of Indent was given for

Madurai City I. But since the interview for Madurai City-I was conducted later i.e. after 10 days, the 6th respondent changed his mind and sought

for an outlet in City I. As already stated, there was no bar for making any application and the interview for City-I was conducted subsequently. It

is made clear that there was nothing wrong in the 6th respondent changing his mind and seeking for allotment of an outlet at Madurai City I.

Pointing out the above said observation made by the learned Single Judge, Mr. AR. L. Sundaresan, learned Senior Counsel for the appellant

argued that the same was factually incorrect in so far as the sixth respondent chose to issue a letter dated 26.07.2005, after the field investigation

for both the locations in respect of the sixth respondent was completed and FIRs (Field Investigation Reports) were submitted by the Field Officer.

Of course the Letter of Indent for Madurai City -II was issued to the sixth respondent on 25.07.2005 and the above said letter of the sixth

respondent was obtained one day later i.e. on 26.07.2005. But the fact remains that the sixth respondent opted to have the Letter of Indent for

Retail Outlet: Madurai City -II and gave up his claim to have Letter of Indent for Retail Outlet: Madurai City -I since the rules do not permit him to

have Letter of Indent for two Outlets at one and the same time. We do concur with the above said submission made by the learned Senior Counsel

for the appellant that the observation made by the learned Single Judge to the effect that the sixth respondent who stood first in the rank for both

the Outlets had opted for the allotment of dealership for the Retail Outlet: Madurai City -II since the interview for the same was conducted later in

point of time and that there was nothing wrong in changing his mind and seeking allotment of the other Outlet, namely Retail Outlet: Madurai City -

I. The said observation made by the learned Single Judge is factually incorrect, as rightly pointed out by the learned Senior counsel for the

appellant. It is not the case of any one of the respondents that the sixth respondent, who got the Letter of Indent for Retail Outlet: Madurai City -II

later on changed his mind and sought allotment of dealership in respect of Retail Outlet: Madurai City - I. It is the consistent case of the

respondents that there is no geographical division of Madurai City into Madurai City - I and Madurai City -II and that since applications were

called for in respect of two Retail Outlets for the same area (Madurai City) without even fixing the exact location within such area, for the sake of

identification they were designated with distinguishable numbers as Madurai City - I and Madurai City -II. Therefore we are not able to concur

with the above said view expressed in paragraph - 5 of the order of the learned Single Judge.

5. The learned Senior Counsel for the appellant contended further when the bone of contention in the writ petition is was centered around the core

issue - ""Whether there is any geographical division into Madurai City -I and Madurai City -II"", the learned Single Judge, without expressing any

opinion regarding the said issue, simply dealt with the other aspects which according to him were extraneous to the main issue in the writ petition

and by adopting such an erroneous approach, the learned Single Judge has non-suited the writ petitioner for the relief sought for. There is some

substance in the above said contention raised by the learned Senior Counsel for the appellant.

6. It is true that it is not the contention of any one of the respondents that the appellant shall not be entitled to seek allotment of a Retail Outlet

within Madurai City. On the other hand, the contention of the appellant that there is geographical division of the supply area into Madurai City-I

and Madurai City-II and that the Company Operated Company Owned Retail Outlet at Gokhale Road sought to be allotted to the sixth

respondent comes within area of Madurai City -I and hence he does have a preferential right to the allotment of the said Outlet to him, alone is

disputed by the respondents. Though the learned Single Judge in paragraph -6 of the order passed in the writ petition has narrated the contention

of the respondents in this regard, no definite finding has been rendered on the above said issue which is a clinching one. But the mere fact that the

said issue has not been decided by the learned Single Judge cannot be the sole ground on which the appellant shall be granted the relief sought for

in the writ petition. Under these circumstances, we are constrained to go through the records and find out which one of the rival contentions is

sustainable.

7. Upon a consideration of the documents available on records, for the reasons hereinafter appearing, we are of the considered view that the

contention of the appellant that there is a division of Madurai city into two sales areas as Madurai city-I and Madurai city-II is not correct:

The appellant has not made it clear as to what are all the areas coming under Madurai City-I and Madurai City-II respectively. On the other hand,

it is the consistent stand taken by the respondents that the geographical division pleaded by the appellant is only hypothetical and in fact there is no

such geographical division of Madurai city into Madurai city-I and Madurai city-II and that two outlets in one and the same area have been

designated as Madurai City-I and Madurai city-II in order to avoid future confusion since the location for setting up the Retail outlets had not been

selected either on the date of notification or on the date of issue of Letter of Indent to the selected candidates. Extracting the relevant passage in

the additional counter-statement of the respondents 1 to 5 reads as follows:

It is incorrect to state that the corporation has two separate Field Officers, one for Madurai city-I and another for Madurai city-II. Only for the

administrative reason, we have Madurai I and Madurai II. Madurai I covers Madurai district part and Virudhunagar District. Madurai II covers

Madurai district part and Sivagangai and Pudukottai Districts. Therefore, two

Field Officers for Madurai I and Madurai II are not for Madurai City

I and Madurai City II as claimed by the writ petitioner. It is true that Corporation has been treating the two locations distinctively and differently all

along from the beginning. That does not mean that they have identified two locations.

8. On the other hand, in order to sustain his claim that there is a geographical division of Madurai city into Madurai city-I and Madurai city-II, the

appellant relies on the following documents : They are:

(1) A letter dated 23.06.2005 sent by the Chief Retail Sales Manager, Tamil Nadu State Office, Indian Oil Corporation, Chennai to the Senior

Divisional Retail Sales Manager, Madurai in respect of conducting field investigation on the sixth respondent in respect of the Retail outlet at

Madurai city-II.

(2) A similar letter dated 04.07.2005 sent by the Chief Retail Sales Manager, Tamil Nadu State Office, Indian Oil Corporation, Chennai to the

Senior Divisional Retail Sales Manager, Madurai in respect of conducting field investigation on the sixth respondent in respect of the Retail outlet at

Madurai city-I.

(3) Letter of Indent dated 25.07.2005 issued to the sixth respondent for the proposed Retail outlet dealership at Madurai City-II.

(4) Letter of Indent dated 19.09.2005 issued to the appellant in respect of the Retail outlet dealership at Madurai City-I.

(5) Note dated 02.08.2005 for approval for conducting field investigation on the appellant in respect of Madurai City-I.

(6) Inter Office memo dated 30.04.2006.

AND

(7) Office order of the Chief Divisional Retail Sales Manager dated 12.05.2006 allocating areas to Mr. M. Dharma Rao, Deputy Manager (Retail

sales) of Madurai-I sales area and to Mr. D. Madhaneswaran, Probationary Officer (Retail sales), of Madurai-II sales area.

9. Copies of the above said documents relied on by the appellant have been included in the typed-set of papers and as such, we have had the

opportunity of going through the same. After perusing the same, we are of the considered view that none of the above said documents supports the

contention of the appellant and on the other hand, all the documents support the stand taken by the respondents that there is no such geographical

division of sales areas as Madurai City-I and Madurai City-II. On the other hand, it is quite obvious from the said documents, especially the office

order of the Chief Divisional Retail Sales Manager dated 12.05.2006, that the division itself has been divided into two sales areas as Madurai-I

and Madurai-II. Under Madurai -I sales area all the outlets in the Madurai District other than those located in Madurai-Ramnathapuram Road and

Madurai-Melur road and all outlets in Virudhunagar District are included. In Madurai-II sales area, outlets located in Madurai-Ramanathapuram

road, Madurai-Melur road within Madurai District and all outlets in Sivaganga and Pudukkottai District have been included. The appellant seems

to have mistaken the division of the Madurai division itself into two sales area as Madurai-I and Madurai-II as a division of Madurai City into

Madurai City-I and Madurai City-II.

10. From the above said documents, it can be seen that the entire Madurai Division has been divided into two sales areas and not Madurai city

itself into two areas for allotment of Retail outlets. On the other hand, since notification was issued for two outlets within Madurai City even before

identifying the exact locations, distinct marks have been assigned for them as Retail outlet at Madurai City-I and Retail outlet at Madurai City-II.

Therefore, we hereby come to the conclusion that the contention put forth by the appellant that there are two geographical divisions, namely

Madurai City-I and Madurai City-II is not sustainable and that since two outlets in one and the same area have been sought to be allotted to the

candidates belonging to scheduled castes in one and the same area, namely Madurai City and since the location for setting up those Retail Outlets

had not been identified, they have been designated with Roman Numericals I and II respectively for the purpose of identification and conducting

separate interview. While that being so, the sixth respondent happened to be the person in whose favour, Letter of Indent was issued first in point

of time. In fact, the interview for Retail outlet-Madurai City-II was conducted earlier in point of time and the Letter of Indent for Retail outlet,

Madurai City-I was issued to the appellant at a later point of time. Therefore, when only one outlet is available to be allotted under the category of

SC/ST, the sixth respondent shall have a preferential right to have the same allotted to him. The appellant, who was issued a Letter of Indent later

in point of time shall have to await the identification of land and development of the same as a Retail outlet to be allotted to him. Therefore, there is

nothing wrong in the Indian Oil Corporation allotting the Company Operated Company Owned Retail Outlet at Kokale Road to the sixth

respondent and the appellant shall have no right to challenge or prevent the same. Under these circumstances, we are of the considered view that

the decision taken by the learned Single Judge to non-suit the appellant/writ petitioner to the reliefs sought for in the writ petition does not suffer

from any discrepancy or infirmity and hence no interference can be made in this writ appeal. Accordingly, this writ appeal deserves to be

dismissed.

11. However, the learned Counsel for the respondents 1 to 5 submitted, across the bar, that the Indian Oil Corporation is ready to provide a

Retail Outlet to be developed in due course to the appellant as quickly as possible and before ever allotting any Retail Outlet in the said category

(Retail Outlet to be developed by the company and allotted to the dealer) to any other person and that the said submissions could be recorded as

an undertaking to make it binding on the respondents 1 to 5. The above said submission is recorded.

12. Accordingly, this Writ Appeal is dismissed with an observation that the respondents 1 to 5 shall, without being influenced by the dismissal of

the writ appeal, acquire a suitable land within Madurai City, develop the same into a Retail Outlet and allot the same to the appellant as early as

possible. Consequently, the connected miscellaneous petition is also dismissed. No costs.