
(2010) 06 MAD CK 0248
In the Madras High Court
Case No : Writ Petition No. 23651 of 2009

K. Muniraja

APPELLANT

Vs

The Territory Manager, Bharat Petroleum Corporation Ltd.,
LPG Bottling Plant and Others

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 06 MAD CK 0248

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : S. Vijayakumar, for P.K. Rajesh Praveenkumar, for the Appellant;
Krishna Srinivasan, for Ramasubramaniam Associates for RR 1 to 3, for the
Respondent

Final Decision : Dismissed

Judgement

N. Kirubakaran, J.—The petitioner has been declared as successful candidate for dealership in distribution of LPG Gas for the domestic purpose at Palani District under "Schedule Caste" category and subsequently he was rejected by the respondents, which made the petitioner to approach this Court.

2. The facts of the case are as follows:

As per the advertisement dated 6.2.2008, the petitioner applied for LPG distributorship to the Respondents corporation under the schedule caste category. He contended that interview was held on 5.8.2009, in which he was awarded 27.33 marks out of 30 marks and was declared as first empanelled candidate for LPG distribution in Palani District. Thereafter, the Dealership ought to be awarded after the field verification by the respondents corporation. As per Clause 10 of the brochure published by the respondent corporation in June 2007, on field verification the petitioner did not give the supporting documents to prove that he worked in Anjappar Restaurant, Coimbatore as well as Nandakumar Petroleum, Karur. By the impugned order, the petitioner's candidature was

rejected by the respondent on 2.11.2009. The said impugned order is the subject matter of the writ petition.

3. The petitioner contended that work experience was proved by proper documents during field verification. He further contended that The Anjappar Restaurant, Coimbatore and Nandakumar Petroleum, Karur did not repudiate his claim that he worked with them and that they only sought time to produce supporting documents viz. salary slip and attendance register. When that is the position, the respondents are not justified in rejecting the petitioner's candidature.

4. On the other hand, the respondents filed counter affidavit, stating that the petitioner was the first empanelled candidate among the candidates interviewed. As per the brochure, the first respondent's officials proceeded to conduct a field investigation on 1.9.2009. The field verification committee could not get any supporting documents for the work experience of the petitioner from his ex-employers viz. Anjappar Restaurant, Coimbatore and Nandakumar Petroleum, Karur. More over in paragraph 8 of the counter affidavit, it has been stated that on a query to the petitioner with regard to the documents in support of his work experience, he replied in his letter dated 1.9.2009 stating that he did not have any document to prove the employment with his ex-employers. Therefore the respondents justified the impugned order passed by them. Though a point was raised with regard to petitioner's enrolment with the Bar Council of Tamilnadu, the said factor has not been reflected in the impugned order and the same has also not been pressed into service by the learned Counsel for the respondents and therefore this Court has not considered the aspect.

5. Mr. S. Vijayakumar, the learned Counsel for the petitioner submitted that the petitioner complied with all the formalities that is the reason why he was called for an interview and he was declared as first empanelled candidate with highest mark namely 27.33. The interview committee was convinced that he possessed the qualification for allotment of LPG distributorship. The documents produced by the petitioner were taken into consideration in the interview and a decision was taken only after the aforesaid exercise only. learned Counsel stressed the point that in Clause 12 of the brochure which is occurring at page No. 10, "experience" has been given as one of the conditions for awarding LPG dealership. With regard to proof of experience, certificate that has been mentioned is required to be produced at the time of verification and not at the time of interview. The documents were subsequently submitted to the authorities issued by the ex-employees and those documents have been produced before this Court by way of filing additional typed set. Therefore, learned Counsel submitted that the ex-employee did not deny the employment of the petitioner. Even in the counter affidavit filed by the respondents it is stated that the employers did not repudiate the claim of the petitioner relating to employment and it is only stated that supporting documents were not given in time.

6. learned Counsel submitted that the writ petition is maintainable before this

Court under Article 226 of the Constitution of India and he relied on a judgement of the Honourable Supreme Court in Hindustan Petroleum Corpn. Ltd. and Others Vs. Super Highway Services and Another, . He also relied on Anr. Constitution Bench judgement of the Hon''ble Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and stressed the point that the impugned order cannot be developed by way of subsequent affidavit. In fine the learned Counsel submitted that having complied with all norms as per the brochure published by the respondents, the respondents are not justified in rejecting the petitioner's candidature on unfound reasons which are arbitrary and cannot be sustained in law.

7. On the other hand Mr. Krishna Srinivasan, appearing for the learned Counsel for the respondent Mr. Ramasubramaniam and Associates, submitted that there is no personal enmity or grievance against the petitioner. Since the petitioner failed to comply with the conditions for appointment of distributorship, the respondents are left with no other option except to cancel the candidature. He relied upon Clause 12 of the General instructions issued to the applicants for making LPG distributorship, which is occurring at page 10 of the brochure state what are all required as proof. The experience is categorically given in notification dated 6.2.2008 and the interview was given on on 7.8.2009 and therefore the petitioner should have complied with all requirements to prove his experience. Subsequently he contended that the field verification is a part of the procedure for allotment of distributorship. During field inspection, both the employers failed to produce any documents in support of the petitioner's claim and therefore the respondent's corporation rejected the petitioner's candidature.

8. learned Counsel relied upon the judgement of the first bench of this Court in K.K. Poongodi v. Bharat Petroleum Corporation Ltd. Coimbatore and three Ors. passed in W.A. No. 270 of 2009. It has been held therein that the committee after considering the factors has given marks and the same cannot be re-appreciated by this Court. In other judgement in Senior Area Manager, Indian Oil Corporation and Anr. v. M. Natesan made in W.A. No. 223 of 2010 dated 3.3.2010, the Hon''ble First Bench of this Court held that it is for the applicant to place credence and if the application is incomplete, insufficient and documents are not produced in support thereof, the appellant corporation cannot/grant any marks on that score. It has been held in that case that the appellant corporation is not supposed to run any investigating agencies. By relying upon those judgements, learned Counsel for the respondents submitted that as per brochure, field investigation was done and it was found that no supporting documents was produced by the employers and on that score the petitioner's candidature was rejected and therefore the impugned order cannot be found fault with.

9. There is no dispute about dates and events till the petitioner was empanelled as first candidate on 7.8.2009. Clause 16 at page 12 of the brochure speaks about the field verification which is extracted as follows:

16.1 The field verification will be conducted for 1st candidate in the merit panel. If found eligible and no complaint is pending or no stay is granted by any court, then Letter of Intent (LOI) will be issued.

16.2. If the No. 1 candidate is not found suitable/fails to fulfill the terms and conditions of the award of distributorship or the award is to be cancelled for any reason whatsoever, the distributorship will be offered to the 2nd candidate in the merit panel after necessary field verification.

16.3. If the 2nd candidate also fails to fulfill the terms of conditions of offer or found unsuitable for any reason whatsoever, then the distributorship will be offered to the 2nd candidate in the merit list.

16.4 If the 3rd candidate also fails to full fill the terms and conditions of offer or found unsuitable for any reason whatsoever, or in case where no 2nd or 3rd candidates are available in the "merit panel" as explained above, the location may be re advertised at the discretion of the Oil Company.

10. As per the said clause it is stated that field verification would be conducted for first candidate in the merit panel and he/she would be awarded letter of intent if he is found eligible, by the Field Verification Committee. Page 10 of the advertisement dated 6.2.2008 for LPG distributorship "General instructions to the applicant for making LPG Distributorship application" speaks about the experience which is reproduced as follows:

12. Experience: Minimum one year experience in the capacity of supervisor/ Manager/Proprietor/partner involved in running a business/organisation will be considered. Provide information based on the type of experience. I- Direct Sales/ Home delivered product in case experience is in the products or services which are delivered at residence of customer like LPG cylinders. II- Other Petroleum Products III- Any other trade.

Experience certificate should be supported by Salary slips/ appointment letter etc.

11. As per aforesaid clause, candidate should have experience in the capacity of Supervisor/Manager/Proprietor/Partner involved in running a business/ organisation. The said experience should be proved by way of production of experience certificate which in turn should be supported by salary slips/ appointment letter etc.

In this case admittedly the petitioner produced two experience certificates namely experience certificate dated 28.7.2007 given by Nandakumar Petroleum, Kulithalai, Karur in proof of petitioner's having worked as Manager in their retail out let from 5.11.2002 to 28.12.2004 and an experience certificate dated 12.8.2007 given by Anjappar Restaurant, Coimbatore for proving petitioner's work experience as Manager in their restaurant for the period from December, 2005 to February 2007. The respondents after having convinced that the petitioner complied with all the conditions called him for an interview and for the experience awarded marks as per Clause 14.2 "Evaluation based on interview" at

page 10 of the brochure.

12. The aforesaid certificates were taken into consideration during the interview and the petitioner was awarded marks as stated above. The field verification is required to be conducted by the respondent as per the procedure, which was also done. During field investigation was done on 1.9.2009 and a report was submitted on 12.9.2009. In column 12 of the Field Investigation Report, the Committee stated that the experience certificate could not be corroborated with any supporting documents like salary slips, payment letter issued by the employer. Though the employers are made as parties to W.P. as 4th and 6th respondents which filed affidavit stating that the petitioner worked as Manager with them, they could not produce documents at the time of field inspection. However the 4th respondent refused to receive the notice.

13. In column-12 of page No-10 of Notice for appointment of LPG Distributorship, it has been categorically stated that experience certificate should be supported by salary slips/appointment letter etc. and they are to be provided at the time of verification. The notice is a first document which enables the applicant to apply for appointment. All the conditions in the notification are binding on the petitioner. Having understood the clause and conditions the petitioner applied for it. Moreover it is stated across the bar that the petitioner is a BL graduate and already appeared three times for dealership. When that is the position the petitioner should have taken care to see that all those documents were given at the time of verification. The verification was done on 28.8.2009 and on 1.9.2009. Whereas the petitioner worked with the fourth respondent during the period from 5.11.2002 to 28.12.2004 and with the 5th respondent during the period from December 2005 to February 2007. The notice for dealership was given on 6.2.2008 in the newspapers. He filed an application on 4.3.2009 and the verification was made only in September, 2009. Hence there was more than sufficient time for the petitioner to collect and make available the material documents, which are essential for awarding distributorship. The aforesaid facts would show that there was lapse on the part of the petitioner. For the lapse of the petitioner, the respondents cannot be made responsible.

14. Though certain documents are produced before this Court by way of additional documents, these documents failed to convince this Court about its veracity and genuineness. A perusal of those documents would show that the petitioner was paid monthly salary by way of cash in both 4th and 5th respondents. It is very difficult to believe that a person who was designated as manager was drawing his salary only by way of cash. "Anjappar Restaurant" is a famous Restaurant, which is having a chain of branches in Tamilnadu and it should be an income tax assessee and more workers should be employed with the Restaurant. By no stretch of imagination, it could be stated that the said restaurant is paying its manager by way of cash and not by cheque. All other documents that have been produced are not convincing. Therefore this Court has to conclude that the petitioner miserably failed to prove his experience by way of

convincing documents as per the procedure contemplated in the brochure as well as through notification dated 6.2.2008 issued by the respondent corporation. Any belated attempt on the part of the petitioner to file documents cannot fill up lacuna in the application filed by the petitioner. The narration of events would establish that the respondents acted as per procedure and there was no dispute till the petitioner was declared as a candidate. Only on verification it was revealed that there was no supporting documents made available. Therefore the respondents rightly rejected the petitioner's candidature.

15. As far as the judgment relied upon by the learned Counsel for the petitioner in Hindustan Petroleum Corpn. Ltd. and Others Vs. Super Highway Services and Another, regarding jurisdiction of this Court, it is settled position of law that availability of alternative remedy is not an absolute bar to main the writ petition. In any event the plea of alternative remedy is not canvassed by the respondents. The learned Counsel relied on the said judgement in Mohinder Singh Gill to press the point that the impugned order cannot be improved by way of subsequent affidavit. In this case the plea regarding petitioner's enrolment as an advocate though taken in the counter affidavit as a point and the same was not mentioned in the impugned order. Apart from that, the said point was not canvassed by the respondent. Therefore the plea is not considered. learned Counsel for the respondents relied upon two judgments of this Court to stress the point for taking into the factors that the committee was constituted for the purpose of awarding remarks. In those cases though facts are different and this Court observed that Petroleum Corporation cannot act as investigating agency. As far this case is concerned, the committee only has to verify with the ex-employers regarding petitioner's employment and not more than that. Since the documents were not produced by the ex-employees during verification, the petitioner's candidature was rejected rightly.

16. Moreover, the decision was taken by the Respondent Corporation based on facts and evidence and this Court can not sit on appeal over the decision of the Respondent Corporation.

17. Therefore the writ petition is dismissed. There will be no order as to costs. Consequently the connected M.P. Nos. 1 and 2 of 2009 are also dismissed.