

(2008) 03 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No's. 10436 of 1999 and 1170 of 2002

K. Selvaraj (died) (S. Krishnaveni, S. Nagadepa and S. Pradeep)

APPELLANT

Vs

The Commissioner and Others
V.C. Ajeeth Kumar Vs
The Indian Oil Corporation and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 420, 466, 472
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 57(1), 62, 63

Citation : (2008) 03 MAD CK 0150

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : M. Ravindran for S. Parthasarathy, in W.P. No. 10436 of 1999, for the Appellant; Meera Gupta, for R1 to R4 and S. Elamurugan, for R5 in W.P. No. 10436, S. Elamurugan in W.P. No. 1170 of 2002 and P.N. Radhakrishnan, for R1 to R4 and R. Krishnamurthy, for R5 in W.P. No. 1170 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsels appearing for the parties concerned.

2. Since the issues involved in the above writ petitions have arisen out of the same facts and circumstances, a common order is passed. W.P. No. 1170 of 2002:

3. With regard to W.P. No. 1170 of 2002, it is submitted by the learned Counsel appearing on behalf of the petitioners that Mr.K.Selvaraj (hereinafter referred to as the deceased petitioner in W.P. No. 1170 of 2002), who was the original petitioner in the present writ petition had died, on 28.9.2002. The present petitioners, who are the legal representatives of the deceased petitioner, have been brought on record by an order of this Court, dated 7.4.2003. The deceased petitioner was a diabetic patient from the year 1980. He had undergone renal

transplant during the year 1990. Due to diabetes, he had lost his vision in the right eye, completely and had diminished vision in his left eye. Thus, he was 60% handicapped. The deceased petitioner has been under regular treatment at Sankara Netharalaya Eye Hospital, Chennai. While so, he had come across an advertisement in the newspaper, dated 7.6.1998, inviting applications for L.P.G. Distributorship.

4. It has been further submitted that the deceased petitioner had applied under the physically handicapped category for locating the place of business at Avinashi. The deceased petitioner had submitted a medical certificate in the form prescribed, along with the application. The prescribed form had been duly signed by the doctor attached to the Government Head Quarters Hospital, Tirupur, and duly countersigned by the Chief Medical Officer. Thereafter, the deceased petitioner had been directed to appear before a Selection Committee. By an order, dated 12.1.1999, issued by the Selection Committee, the deceased petitioner was granted the L.P.G. Distributorship. Based on the said order, the deceased petitioner had invested huge amounts of money to establish and to run the business.

5. It has been further submitted that the fifth respondent, who had also applied for the Distributorship, had not been selected. Therefore, he had made a representation, dated 23.2.1999, to the Indian Oil Corporation, regarding his non-selection. Thereafter, the fifth respondent had filed a writ petition in W.P. No. 10436 of 1999, to quash the order of selection made, on 12.1.1999. After a lapse of two years, the fifth respondent had filed a claim petition before the first respondent requesting him to exercise the powers vested with him, under Sections 62 and 63 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, to declare that the deceased petitioner is not physically handicapped and for a direction to the authorities of the Indian Oil Corporation to cancel the distributorship granted in favour of the deceased petitioner and to appoint the fifth respondent as the L.P.G. Distributor for Avinashi area.

6. It has been further submitted that the deceased petitioner had approached the Bank authorities for financial assistance to have a lorry to be used for his business purposes. The Bank authorities had informed him that the deceased petitioner would have a concession in the rate of interest and in the repayment schedule, if the deceased petitioner was a driving licence holder. The deceased petitioner had applied for renewal of his driving licence through the Proprietor of Saravanan Driving School, Gobichettipalayam. The deceased petitioner's signature was obtained in a blank printed form and his licence was renewed, on 4.4.2000.

7. The deceased petitioner had further submitted that he had produced a medical certificate, dated 24.5.2001, and the case summary of Sankara Netharalaya Eye Hospital, dated 12.7.2001, before the first respondent to establish that he was a physically handicapped person. The deceased petitioner had also offered himself

for medical examination before a team of doctors, as directed by the first respondent.

8. It is further submitted that the fifth respondent had filed a criminal complaint before the Judicial Magistrate, Avinashi, under Sections 420, 466 and 472 of the Indian Penal Code alleging that the deceased petitioner had made a false claim before the authorities of the Indian Oil Corporation to obtain the L.P.G. Distributorship, under the physically handicapped category. On the directions issued by the Judicial magistrate, Avinashi, the Police authorities had registered a case in crime No. 751/01, dated 28.11.2001. To verify the claim of the deceased petitioner that he was a handicapped person he was produced before The Tirupur Government Hospital, on 12.12.2001. Since there was no eye specialist at The Tirupur Medical Hospital, the deceased petitioner was produced before the Medical Board attached to the Coimbatore Medical College Hospital. Dr.R.Pandurangan, the Professor and Head of Department of Ophthalmology, Coimbatore Medical College Hospital, had checked the deceased petitioner's visual acuity and he had certified that the deceased petitioner had permanent blindness in his right eye and had also certified visual acuity in his left eye at 5/60 and glass 6/36.

9. It is further submitted that, based on the medical examination, the deceased petitioner was certified to be visually handicapped at 50%. With regard to the renewal of the deceased petitioner's licence, the Proprietor of Saravanan Driving School, Gobichettipalayam, had been interrogated by the Police authorities, on 21.12.2000. He had admitted that the deceased petitioner's licence had been renewed based on a medical certificate obtained without producing the deceased petitioner for medical examination.

10. It is further submitted that after the necessary investigation, the Police authorities had filed a report before the Judicial Magistrate in the month of December 2001. The first respondent had passed the impugned order, dated 3.1.2002, without examining the police report and without properly appreciating the materials available on record.

11. It has also been stated that the impugned order has been passed by the first respondent without having jurisdiction and without giving sufficient reasons for not accepting the deceased petitioner to be a physically handicapped person. Section 62 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, does not confer the powers on the first respondent to decide as to whether the deceased petitioner is a physically handicapped person or not. In such circumstances, the deceased petitioner had preferred the present writ petition before this Court, invoking Article 226 of the Constitution of India.

12. In the counter affidavit filed on behalf of the respondents 2, 3 and 4, it has been stated that the process of selection for the L.P.G. Distributorship was within the jurisdiction of the Dealer Selection Board which had been constituted by the

Government of India. There are eight categories of distributors prescribed by the Ministry of Petroleum and Natural Gas, Government of India. Based on the advertisements made in the newspapers regarding the requirement of distributors for the various areas, specifying the eligibility criteria, the applications, along with the relevant documents, fulfilling the norms are forwarded to the Dealer Selection Board constituted by the Ministry of Petroleum and Natural Gas, Government of India, for carrying out the selection process.

13. It has been further stated that the said Dealer Selection Board calls the eligible candidates for an interview and the selection is based on the guidelines and the procedures issued by the Ministry of Petroleum and Natural Gas, Government of India. The Dealer Selection Board consists of three members headed by a Chairman appointed by the Government. The Chairman is either a retired High Court Judge or a retired District Judge. Of the other members, one will be from the concerned Oil Company, in whose location the interview will be held and the other member will be from any other Oil Company. Such members would not be below the rank of Chief Manager of the concerned Oil Company. Based on the eligibility criteria and the other guidelines laid down by the Ministry of Petroleum and Natural Gas, Government of India, the candidate with the highest marks will be graded as No. 1 in the order of merit. Names of candidates, who have secured the second and third highest marks, would also be recommended. The names would be forwarded to the Regional Executive Director/General Manager of the concerned Oil Company, as per the Manual of instructions (guidelines).

14. It has been further stated that after the receipt of the merit list, a Field Investigation is conducted by the concerned Oil Company, with regard to the candidates who have been selected, in order to verify whether they have complied with the eligibility criteria. A Field Investigation is prepared by the Field Officer concerned and submitted to the General Manager of the Oil Company, through the Area Manager concerned. If the Field Investigation Report is found to be in order, a Letter of Intent is issued to the candidate granting sufficient time to provide the required facilities for operating the Distributorship. If the conditions of the Letter of Intent are complied with by the candidate concerned within the time specified, the candidate is given the Letter of Appointment and the Distributorship Agreement is entered into. Once this is done and the Distributorship is commissioned, the merit panel is treated as scrapped.

15. It has also been stated that the first respondent will have no jurisdiction to deal with matters concerning appointments made by the Central Government undertaking, since his jurisdiction is limited to the State Government matters. It is only the Chief Commissioner, who will have the jurisdiction in matters concerning Central Government appointments. Further, the first respondent will have no jurisdiction to direct the cancellation of the Distributorship granted to a candidate and will also have no jurisdiction to award the Distributorship to any other person. Since the Dealer Selection Board has been specifically constituted

for the purpose of selection of Distributors, it is only the said Board that can direct the appointment of the Distributors. Further, the Dealer Selection Board had not been made a party to the proceedings before the first respondent and therefore, the said Board did not have an opportunity of being heard in the matter.

16. In the counter affidavit filed on behalf of the fifth respondent, the claims made on behalf of the deceased petitioner have been denied. The fifth respondent had denied the specific claim of the deceased petitioner that he is a visually handicapped person. Therefore, the selection of the deceased petitioner for the L.P.G. Distributorship at Avinashi, under the handicapped person category, is incorrect and invalid. The deceased petitioner had obtained false and fabricated medical certificate from Dr.R.Pandurangan, the Professor and Head of Department of Ophthalmology ,Coimbatore Medical College Hospital, only with the illegal motive of obtaining the Distributorship, even though he does not deserve the same. Since the deceased petitioner has not lost total visual capacity in either of his eyes he cannot be termed as a physically handicapped person. Even if he had lost vision in one eye, the handicap can be fixed at only 30%, as per the guidelines issued by the Central Government for a uniform definition of a physically handicapped person.

17. It has been further stated that the deceased petitioner had obtained a motor vehicles driving licence in the year 1973 and it has been renewed upto 3.4.2003. If the deceased petitioner was a visually handicapped person, the motor vehicles authority could not have renewed the licence of the deceased petitioner. While filling up the form required for the renewal of his licence, the deceased petitioner has clearly stated that he has no visual handicap. If that be so, the certificate obtained by him stating that he has 50% visual handicap cannot be right. The certificates have been obtained by the deceased petitioner fraudulently only with the intention of cheating the Indian Oil Corporation authorities to illegally obtain the L.P.G. Distributorship for Avinashi area under the physically handicapped person category.

18. It has also been stated that the first respondent is vested with the powers under Sections 61 and 62 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, to deal with the complaint made against the deceased petitioner. The State Commissioner's jurisdiction is wide enough to include an enquiry into the matters relating to the disability of persons even if it relates to the complaints made against the selection of candidates made by the authorities of the Central Government. The words "appropriate Government" in Section 62(b) of the Act would include both the Central and the State Governments for which the Commissioner is appointed. Admittedly, the appointment of the deceased petitioner as a dealer was made by the Indian Oil Corporation whose office is situated within the jurisdiction of the first respondent. Therefore, by virtue of Sections 61(c) and 62(b), the complaint made by the fifth respondent against the granting of Distributorship to the

deceased petitioner is maintainable.

19. The first respondent has the power to decide whether the deceased petitioner is a handicapped person or not and he also has the power to direct the authorities concerned to rectify a mistake and to allot the Distributorship to a qualified person. In such circumstances, the claims made by the deceased petitioner and the contentions raised on behalf of the deceased petitioner are unacceptable and without any merit or substance.

20. It has also been stated that after the petitioner K.Selvaraj had died in the year 2002, the Distributorship has been allotted to his wife. Such allotment is also unsustainable in the eye of law. The legal heirs of the deceased petitioner, including his wife S.Krishnaveni, have been brought on record as the petitioners in the present writ petition as per the order of this Court, dated 7.4.2003, made in W.P.M.P. No. 60481 of 2002.

21. One of the contentions of the fifth respondent is that the deceased petitioner cannot be categorized as a physically handicapped candidate, as he was a holder of a driving licence. In such circumstances, the writ petition is liable to be dismissed.

22. The learned senior counsel appearing for the petitioner had submitted that the first respondent had no jurisdiction to pass the impugned order, dated 3.1.2002, as it is only the Chief Commissioner, appointed under Sub section 1 of Section 57 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, who can deal with the matters relating to the Central Government and its authorities. The powers of the Commissioner, as seen from Section 61 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, is to be exercised with regard to the State Government and its authorities. The first respondent has passed an illegal order without considering the facts and circumstances of the case. Further, the first respondent is not empowered or qualified to contradict the findings of a medically qualified person, with regard to the disabilities of the deceased petitioner, once the Medical Board had given a finding on the reference made by the Judicial Magistrate, with regard to the criminal case foisted on the petitioner.

23. The learned senior counsel appearing for the petitioner had further submitted that once the deceased petitioner has been found to be a handicapped person, qualified for the allotment of Distributorship by the Dealer Selection Board, it is not open to the first respondent to go into the aspect and to declare that the deceased petitioner is not a handicapped person. The Medical reports from Sankara Netharalaya Eye Hospital, Chennai, and the report of the Medical Board of the Coimbatore Medical College Hospital would clearly show that the deceased petitioner is a visually handicapped person qualified to be allotted the L.P.G. Distributorship under the handicapped person category. The Professor and the Head of Department of Ophthalmology, Coimbatore Medical College Hospital, had

clearly certified that the deceased petitioner is a visually handicapped person with 50% disability. No certificate contrary to the said finding has been produced by the fifth respondent. The statement of Dr.R.Pandurangan, before the Judicial Magistrate, Avinashi, made with regard to crime No. 751/01 is clear proof of the fact that the deceased petitioner was suffering 50% visual disability at the time of the medical examination. It cannot be the fault of the deceased petitioner if there are no accurate scientific instruments to measure the exact percentage of disability of a person, as stated by the fifth respondent. Further, the alleged declaration made by the deceased petitioner, with regard to his visual disability, while obtaining the renewal of his driving licence has been satisfactorily explained. Even if it is found that the renewal of licence of the deceased petitioner has been granted, based on false declarations, it cannot negate the fact that the deceased petitioner is visually handicapped, as certified by the medical experts. In such circumstances, the impugned order of the first respondent, dated 3.1.2002, is illegal, ultra vires, void and cannot be sustained in law.

24. The learned Counsel appearing for the respondents 1 to 4 had submitted that the selection of the deceased petitioner, for the granting of the L.P.G. Distributorship for Avinashi area, has been made following the guidelines laid down by the Ministry of Petroleum and Natural Gas, Government of India, and in accordance with the relevant provisions of law. There is no illegality involved in the selection process by the Dealer Selection Board, consisting of eminent qualified persons. The first respondent has no authority or jurisdiction to pass the impugned order as he is not vested with the powers, by the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, to declare that the deceased petitioner is not qualified to be considered as a handicapped person and to direct the Indian Oil Corporation, which is an authority under the control of the Central Government, to appoint the fifth respondent as its dealer.

25. The learned Counsel appearing for the respondents 1 to 4 had further submitted that once the deceased petitioner had been selected by the Dealer Selection Board and the Letter of Appointment has been issued and the Distributorship agreement entered into, the merit panel is treated as scrapped. In such circumstances, the impugned order passed by the first respondent, according to which a direction has been issued to appoint the fifth respondent as the dealer, cannot be sustained. The appointment of S.Krishnaveni, the wife of the deceased petitioner, who had died in the year 2002, is according to the policy guidelines being followed by the Indian Oil Corporation Limited. In such circumstances, the claims made on behalf of the fifth respondent are not acceptable as they are devoid of merits.

26 Considering the submissions made on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the impugned order of the first respondent, dated 3.1.2002, cannot be sustained in

the eye of law. It is clear that the deceased petitioner has been declared to be a visually handicapped person with 50% disability. The declaration has been made by the Medical Experts who have assessed the disability of the deceased petitioner, based on the necessary medical examinations. The Medical Board of the Coimbatore Medical College Hospital has certified that the deceased petitioner is a visually disabled person with 50% disability and Dr.R.Pandurangan, the professor and Head of Department of Ophthalmology ,Coimbatore Medical College Hospital had supported its findings in his statement made before the Judicial Magistrate, Avinashi, with regard to crime No. 751/01. Even according to the medical report of Sankara Netharalaya Eye Hospital, Chennai, the deceased petitioner has been suffering from visual disability over a fairly long period of time. The Dealer Selection Board consisting of sufficiently qualified persons seems to have followed the guidelines prescribed by the Ministry of Petroleum and Natural Gas, Government of India, during the process of selecting the dealer for the L.P.G. Distributorship for Avinashi area. While that being so, it is not open to the first respondent to nullify the selection of the deceased petitioner as a dealer, under the handicapped person category. Consequently, it would also not be open to the first respondent to direct the Indian Oil Corporation authorities to appoint the fifth respondent as a dealer, circumventing the due procedures which are to be followed for such selection and appointment. It is clear that the first respondent had travelled beyond his powers vested in him by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, in passing the impugned order, dated 3.1.2002. Therefore, the impugned order of the first respondent, dated 3.1.2002, is set aside. However, since the issue relating to the allotment of the Distributorship in the name of the deceased petitioner's wife S.Krishnaveni is not directly in issue in the present writ petition, this Court does not find sufficient reasons to decide the validity or otherwise of such allotment at this stage. Therefore, the said issue is left open to be agitated before the appropriate forum in the manner known to law.

With the above observations, the writ petition No. 1170 of 2002 stands allowed. Consequently, W.P.M.P. No. 1663 of 2002, is also closed. No costs.

W.P. No. 10436 of 1996:

1. The writ petition No. 10436 of 1999, is filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents 1 to 4, ending with the order of the fourth respondent, dated nil 01.1999, in ref. No. DSB/CBE/99 and quash the same and to direct the respondents 1 to 4 to appoint the petitioner herein as LPG Distributor at Avinashi location in Coimbatore District.
2. The petitioner in W.P. No. 10436 of 1999, who is the fifth respondent in W.P. No. 1170 of 2002, had challenged the final recommendation issued for the appointment of a L.P.G. Distributor for Avinashi area showing the order of merit of the candidates in the merit panel. The merit panel includes the name of the petitioner in W.P. No. 10436 of 1999, namely, V.C.Ajeeth Kumar, as well as the

name of the deceased petitioner in W.P. No. 1170 of 2002, namely, K.Selvaraj. The impugned proceedings, dated 01.11.1999, in ref. No. DSB/CBE/99, has been issued by the fourth respondent in W.P. No. 10436 of 1999, addressed to the Executive Director, Indian Oil Corporation Ltd., Southern Region, Chennai, requesting him to arrange for carrying out Field Investigation Report in respect of the No. 1 candidate in the merit panel and a further direction has been issued stating that if he is found suitable, necessary action may be taken for the issuance of the Letter of Intent to him.

3. The deceased petitioner in W.P. No. 1170 of 2002, namely, K.Selvaraj, had been subsequently granted the L.P.G. Distributorship for Avinashi area based on the Field Investigation Report. In view of the subsequent event, the petitioner in W.P. No. 10436 of 1999 had agitated the matter before the Commissioner, Office of the State Commissioner for the Disabled, Chennai, challenging the appointment of K.Selvaraj. In view of the order passed by the State Commissioner for the Disabled, Chennai, on 3.1.2002, in claim No. 0205/R.d.II-3/2001, as communicated in Roc. No. 0205/R.D. 2.3.2000, which has been challenged by the petitioner in W.P.No1170 of 2002, the writ petition No. 10436 of 1999 stands dismissed as infructuous. Consequently, connected W.M.P. No. 14774 of 1999 is also dismissed. No costs.