
(2014) 06 MAD CK 0108
In the Madras High Court
Case No : W.P. No. 28311 of 2010

K.K. Poongodi

APPELLANT

Vs

Bharat Petroleum Corporation Limited

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 06 MAD CK 0108

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Raja, J.—By way of second round of litigation, the petitioner has once again sought to challenge the earlier impugned proceedings dated 21.02.2004 passed by the Bharat Petroleum Corporation Limited (BPCL) granting LPG Distributorship of Bharat Gas for Mohanur location at Namakkal District in favour of third respondent/Priya Velusamy, on the ground that when the very same impugned order was challenged in the earlier writ petition No. 39582 of 2004, the petitioner did not possess the crucial and relied upon documents now produced in this writ petition, which are obtained under the Right to Information Act (RTI). As per the new documents, under the category for providing infrastructures, such as land, godown and showroom, noting made at the time of interview on 20.02.2004 indicates that the land, godown and showroom facility was totally absent and not available with the third respondent, besides, the Banker's certificate was also not available, therefore, the respondents 1 and 2 must have reduced 40 marks (35 marks for godown etc. + 5 marks for Bank Certificate) for the third respondent, and had the respondents 1 and 2 done so, the petitioner could have become 1st rank in the order of merit list, since the petitioner secured 58.7 marks while the third respondent secured 60.7 marks in the interview. In other words, it is the argument of the learned counsel for the petitioner that the third respondent was awarded 35 marks, for which, she was not eligible as per Clause

13 r/w. 14.2 of the Brochure of BPCL. However, in collusion with the BPCL officials, by manipulating the records, the third respondent has obtained more marks, therefore, the dealership allotment made to the third respondent is liable to be set aside and thereafter, the same should be allotted to the petitioner only.

2. In support of his submission, he has also relied upon a judgment of the Hon'ble Division Bench of this Court in the case of Secretary to Government, Home (Police) Department and Others Vs. A. Eswaramoorthy and Others, to contend that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence, therefore, no judgment of a Court can be allowed to stand if it has been obtained by fraud. In the present case also, he contended, when selection for LPG distributorship of Bharat Gas for Mohanur location at Namakkal District was made in February, 2004, on 05.03.2004, the letter of intent was issued to the third respondent in order to comply with all conditions within two months. The third respondent herself in her counter affidavit filed in the earlier writ petition No. 39582 of 2004 admitted that she commenced business on 30.06.2004. Prior to the filing of earlier writ petition, the third respondent sent representation alleging that she was wrongly denied distributorship despite production of all records. For the first time, the third respondent in August, 2008, filed her counter affidavit stating that she had 1 acre and 10 cents for godown and show room, situated at Valaiyapatti road, but, this land was acquired by her through the sale deed in the year 2005 only, and this document was also not shown at the time of interview on 20.02.2004, nor she mentioned in her application filed in the year 2001. Further, it is submitted that at the time of interview, a minimum period of 10 years lease must be produced in order to constitute a firm offer, only then, even 10 marks can be awarded for the godown compliance, but, nothing has been shown by third respondent at the time of interview. Moreover, the check list dated 20.02.2004 supplied under RTI Act shows that there was no document available with the third respondent towards godown, showroom, Bankers Certificate and for dealership experience. In view of that, the respondents 1 and 2 must have reduced 40 marks for the third respondent, in which case, the petitioner could have become first ranker in the merit list. Although the petitioner secured 58.7 marks, while the third respondent secured 60.7 marks in the interview, even assuming that there was a firm offer in favour of the third respondent and the petitioner, the notings made at the time of interview do not support such hypothesis. He further contended that if the respondents 1 and 2 had in their possession the document dated 19.02.2004, which indicates the existence of godown facility, there was no need for the authority to say that no land available as of now for godown and to say that the showroom and bakers certificate were also not available, therefore, it is very clear that subsequent to the interview dated 20.02.2004, all of them conspired and manipulated the documents by inserting the so called affidavit of one Chinnasamy dated 19.02.2004. The above said facts were not brought before this Court in the earlier writ petition, but, only, after obtaining all these informations under the RTI Act, the present writ

petition has been filed seeking to quash the selection of third respondent for allotting LPG Distributorship.

3. It is the further contention of the learned counsel for petitioner that on page 5 of her original application, the third respondent had stated in Sl. No. 16 that they have godown facilities, which is located 2 km. from Mohanur, for which, she was awarded 10 marks for the godown land. Again, for show room, she was awarded 5 marks, but, on the date of interview held on 20.02.2004, the Interview Committee Members found that she had no such documents by making endorsement Not Available and such endorsement was found in the sheet of paper appended to the check list. It is not only admitted and accepted by the respondents 1 and 2, but also not refuted by the third respondent. On the other hand, if availability of 1 acre and 10 cents is true, again, 19.02.2004 affidavit of Chinnasamy giving alleged lease of his land to her could not have been in contemplation at all, inasmuch as, there was no need to insert an affidavit dated 19.02.2004 as if one Chinnasamy had offered to give his 40 cents of land, therefore, learned counsel for the petitioner contended before this Court that the selection of third respondent for the award of the impugned LPG dealership is the result of a pre-mediated collusion, fraud and manipulation of records and forgery, hence, on that basis, he requested this Court to allow the writ petition and this writ petition is not barred by principles of res-judicata for the reason that the points taken in the writ petition are not the subject matter of earlier writ petition.

4. Per contra, learned counsel appearing for the third respondent, by filing a detailed counter affidavit, submitted that when the respondents 1 and 2 issued a paper advertisement in Thina Thanthi, dated 16.08.2000 calling for application for appointment of LPG (Bharat Gas) Distributors of various locations including one of Serial No. 24, Mohanur, Namakkal District, under general category, not under a sports category, she applied to the BPCL, Coimbatore, and after completing the application form, she submitted the same along with all other original relevant documents to the BPCL. It is the case of the third respondent that she produced all the original necessary documents showing that she was owning godown site and it is closer to the showroom. Thereafter, the Member Secretary, after scrutinizing all the documents, forwarded the same to the Distributorship Selection Committee. The second respondent, by communication dated 21.02.2004, short listed the candidates for Mohanur Village LPG Distributorship, by empanelling 3 candidates in the order of merit, wherein the third respondent was shown as No. 1 candidate. Thereafter, the third respondent spent more than Rs. 60 lacs for godown building, three wheeler, cycles, office room and furniture etc. Subsequently, the showroom was opened on 30.06.2004. However, challenging her selection, the petitioner came to this Court by filing writ petition No. 39582 of 2004 and this Court, by order dated 21.03.2009, dismissed the said writ petition. As against the same, when writ appeal No. 270 of 2009 was filed, the same was also dismissed by this Court on 14.06.2009. Aggrieved the same, when he filed a SLP before the Hon"ble Apex Court, the same was also dismissed on 28.08.2009. Therefore, when the matter was settled on

28.08.2009, the petitioner has once again come to this Court by way of filing writ petition challenging the very same impugned order on new grounds that he has failed to take up the grounds of fraud, manipulation in the earlier writ petition, therefore, the arguments of the learned counsel for petitioner that the principles of res-judicata will not be applicable to the second writ petition, as the issue of fraud and manipulation were not the subject matter of earlier writ petition, is far from acceptance. Concluding his argument, he further contended that the petitioner is wrong in filing second writ petition, when there is no such fraud or manipulation committed on the part of the respondents 1 and 2 in allowing the LPG dealership to the third respondent. On that basis, he prayed for dismissal of the writ petition.

5. Learned counsel appearing for the respondents 1 and 2 submitted that the main grievance of the petitioner that the third respondent has failed to produce any document to prove the availability of land as on 20.02.2004 and therefore, the marks under the category of show room, godown were wholly erroneous and that further allegation that the fraud and manipulation have been played in selecting the third respondent for LPG distributorship is also liable to be dismissed, for the reason that there was no discrepancy in awarding marks either to the petitioner or to the third respondent. It is further contended that while the petitioner was awarded 2 marks for credit worthiness out of 6 marks, the third respondent was awarded Nil marks, in the absence of having not furnished any documentary proof in respect of this category. Further, under the category of infrastructure and facilities to be provided, both the candidates have been awarded 15 marks each out of 35 marks, while so, neither of them have been given any marks under the category of godown and showroom.

6. Adding further, it is stated that at the time of interview, the petitioner submitted all the necessary details as required vide letter dated 03.02.2004. Based on the same, marks were also awarded, however, in respect of third respondent, marks were awarded on the basis of documents submitted as per the letter dated 04.02.2004 by the Selection Committee. When the Selection Committee was appointed just 48 hours before the date of interview so as to avoid any irregularities in the selection process, the petitioner was awarded 58.7 marks while the third respondent was awarded 60.07 marks, therefore, the petitioner cannot question the same repeatedly by filing second writ petition, when his earlier writ petition was dismissed by this Court on 23.01.2009 with an observation that in any event, awarding of marks is purely the deliberation of Selection Committee. The scope of judicial review in Administrative matters is linked to the decision making process and does not extend to the merits of the decision, particularly, where there is no proof of any malafide collusion or fraud or manipulation of records, exercising jurisdiction under Article 226 of the Constitution of India, the Court will not re-appreciate or re-appraise the relevant material factor. The above said order of this Court was also confirmed by the Division Bench of this Court on 14.06.2009 in W.A. No. 270 of 2009 and again, when the matter was taken up to the Hon'ble Apex Court, the same was also

dismissed on 28.08.2009. Thereafter, the petitioner approached the respondents 1 and 2 under RTI Act seeking some more details of the selection made for allotment of LPG distributorship. Based on the information so received, the present writ petition has been wrongly filed on the ground that the respondents 1 and 2 ought not to have awarded marks to the third respondent towards godown, showroom and bankers certificate. In terms of the prescribed guidelines, the respondents 1 and 2 are required to allot marks in the following manner for infrastructure and facilities:

i. Own lands: 35 marks

ii. Has firm offer: 25 marks

iii. Others: 15 marks

As contended by the learned counsel for petitioner, both the petitioner and the third respondent do not fall under category of (i) and (ii) as indicated above. As such, 15 marks were awarded to them under the third category, therefore, it is not known as to how the petitioner can allege fraud or discrepancy in awarding of marks in this category. Moreover, as per the letter dated 04.02.2004, the third respondent is not required to produce all the documents in respect of infrastructure and finance, therefore, the allegation that the marks were awarded wrongly despite failure to produce all the documents by the third respondent, is totally incorrect and malicious.

7. This Court finds full force in the submissions made by the learned counsel for the respondents, for the reason that, as argued by the learned counsel for the petitioner, the first respondent is required to allot marks in the following manner:

i. Own lands: 35 marks

ii. Has firm offer: 25 marks

iii. Others: 15 marks

Admittedly, both the petitioner and the third respondent do not fall on the category (i) and (ii), however, 15 marks were awarded to both of them on the third category, therefore, the argument of the learned counsel for the petitioner that the petitioner was awarded less marks whereas the third respondent was awarded more marks for godown and infrastructure facilities, is far from acceptance. Moreover, when the petitioner and the third respondent have been given marks equally in most of the categories, only in the category of General Level of Intelligence, the third respondent has taken over the petitioner. Therefore, the argument of the petitioner that in view of allotting more marks in the land category, for which necessary documents were not filed by the third respondent at the time of interview, cannot be once again gone into by this Court, since the petitioner has already unsuccessfully challenged the very same impugned order selecting third respondent as LPG distributor at Mohanur Village, Namakkal District, by way of filing writ petition No. 39582 of 2004. This Court,

by order dated 23.01.2009, after considering the educational qualification that the petitioner is a B.E. Graduate in Electrical and Electronics Engineer and was exemplary sports woman falling within the purview of preferential treatment, rightly came to the conclusion that for educational qualification 6 marks were allotted and the third respondent herein was awarded 4 marks, however, for Trade Knowledge, this Court has already clarified that the third respondent herein was entitled to get more marks than the petitioner and on that basis, it was held that awarding of marks is purely the deliberation of Selection Committee and accordingly, refused to entertain the writ petition holding that under Article 226, the Court will not re-appreciate or re-appraise the relevant material factors. The said order of the learned Single Judge has been upheld not only by the Hon''ble Division Bench of this Court, but also by the Hon''ble Apex Court.

8. That apart, one another stand taken by the learned counsel for the petitioner is that the points of fraud, manipulation and malafide intention taken in this writ petition were not the subject matter of earlier writ petition, hence, the present writ petition is maintainable, without being hit by the principle of res-judicata, is also liable to be repelled, for the reason that challenging the selection of third respondent as LPG distributor, the writ petition was filed in the year 2004 itself and the said writ petition was dismissed on 21.03.2009. But, the petitioner moved an application under RTI Act in the year 2008 itself seeking some of crucial documents. The stand taken by the petitioner shows that since these documents were furnished only on 09.07.2010, he was unable to approach this Court on the basis of information obtained under RTI Act, however, subsequent to the information obtained through RTI Act, the present writ petition has been filed by taking strength of a judgment dated 23.12.2010 of this Court in A. Eswaramoorthy's case (cited supra), was also not accepted by this Court, since the above said case was finally dismissed on the ground of delay. In the case on hand also, when the selection took place on 05.03.2004, the third respondent, on being selected for LPG distributorship, was issued with Letter of Intent and subsequently, he has also, by investing huge money on godown building, three wheelers, etc. opened the showroom on 30.06.2004, therefore, filing of a writ petition in the year 2010 in the second time challenging the very same impugned order, that too, with a delay of 6 years, taking a stand that the information was furnished only in the year 2010, is also not convincing to this Court. Besides that, the Ruling of a Division Bench of this Court in Ayyamuthu and Others Vs. The State of Tamil Nadu and Southern Iron and Steel Company Ltd., , stands against the petitioner, inasmuch as it has been emphatically ruled therein that a party raising several grounds before the Court/Division Bench is presumed to have argued all the points and hence, he cannot be permitted to raise any new or additional point, which was not raised before the learned Single Judge, especially when that point involves a question of fact. In the present case also, the allegation of fraud is nothing but a question of fact, hence, such a new plea cannot be raised as it is hit by the principles of res-judicata.

9. Accordingly, for the aforesaid reasons, the writ petition fails and the same stands dismissed. No Costs. M.P. No. 1 of 2010 is closed.