
(1995) 08 MAD CK 0023
In the Madras High Court

V. Chandran

APPELLANT

Vs

Oil Selection Board and Others

RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1995) 2 MLJ 458

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Judgement

AR. Lakshmanan, J.—The petitioner in W.P. No. 5389 of 1994 is the appellant in this appeal. He filed the writ petition seeking the issue of

a writ of certiorarified mandamus calling for the records comprised in the proceedings of the 1st respondent, dated 16.3.1994 in Lr. No. Ref.

OSB/TN & P/IOC/1538 and quash the same and consequently to issue a writ of mandamus forbearing respondents 1 to 3 from appointing any

distributor- Indane at Mahe, Union Territory of Pondicherry, pursuant to the interview held on 16.3.1994 or from giving effect to any decision

taken by the 1st respondent for awarding the dealership to the 4th respondent.

2. The brief facts leading to the filing of the writ petition are as follows: The 2nd respondent issued a notice in the Indian Express dated 11.7.1993

calling for applications for appointment of Indane Distributorship at Mahe. The appellant submitted his application in the prescribed form to

respondents 1 and 2 on 17.8.1993. He was directed to appear for a personal interview at 9.00 a.m., on 16.3.1994 at Hotel Malabar Palace,

Calicut, before the 1st respondent. There were six applicants. However, only four of them had turned out for personal interview on 16.3.1994

including the appellant. According to Mr. Mohan Parasaran, learned Counsel for the appellant, respondents 1 to 3 have already decided to grant

the distributorship to the 4th respondent even prior to the interview and the 4th respondent was seen accompanying the members of the 1st

respondent Board from the date of their arrival at Calicut. All the four persons were interviewed within 15 minutes. It was further argued by the

learned counsel for the appellant that when the interview was held at Calicut on 16.3.1994, on the same day, an order was posted by the 1st

respondent from Madras with the Madras Post Office seal dated 17.3.1994 rejecting the appellant's application. The order of rejection was the

carbon copy of the original letter sent for interview and it patently suffers from total non-application of mind. The members of the 1st respondent

were staying at Calicut from 15.3.1994 to 17.3.1994 at Hotel Malabar Palace and they left from Calicut only on 17.3.1994. Therefore, it is not

known as to how the rejection order was sent on 16.3.1994 and posted from Madras on 17.3.1994 as evident from the postal seal. It is further

argued by Mr. Mohan Parasaran, that the 4th respondent is not even qualified to be appointed as a dealer inasmuch as he does not fulfil any of the

requirements and the qualification as to five years residence in the Union Territory of Pondicherry and that his departure from Army was

unceremonious. The entire selection by the 1st respondent is only a make believe affair and is a pre-determined one. The rejection order is clearly

illegal and unsustainable and is vitiated by total non-application of mind.

3. The 1st respondent filed a detailed counter-affidavit through its Chairman Mr. Justice M. Maruthamuthu explaining the procedure followed by

the 1st respondent in matters like this, which has its wide jurisdiction over Tamil Nadu, Pondicherry, Andaman and Nicobar Islands. The 1st

respondent denied the allegations of the appellant as baseless. According to the 1st respondent, the appellant secured 40 marks as against the 4th

respondent who secured 55 marks and one V.N. Haridasan, who secured 50 marks. Two candidates were absent and one was declared ineligible

as he failed to produce the certificate issued by the Director General of Resettlement, New Delhi. It is also explained in the counter that the

appellant was not selected since he has secured only 40 marks, lowest among the three candidates, and therefore, it is not open to him to challenge

the assessment of the candidates by the 1st respondent and claim that he is entitled to the award of distributorship. The procedure adopted by the 1st respondent in regard to the intimations regarding interview, call letter and letter of regret has also been explained in detail in paragraph 4 of the counter-affidavit. According to the 1st respondent, the said procedure has been adopted to facilitate quick action. The 4th respondent is also said to suffer from permanent physical disability of 50% viz., limitation of spine movements and pain, and he is said to have been discharged from defence service on medical grounds. The 4th respondent has also produced the residence certificate issued by the Deputy Tahsildar, Mahe, to the effect that the 4th respondent has got his residence at No. 7/1285, Chalakara Village, Pondicherry State, for the last five years. His name also appears in the family ration card issued on 23.1.1990. Therefore, the 1st respondent has denied the allegation of the appellant that the selection of the 4th respondent is arbitrary and a colourable exercise of power. The Chairman of the Oil Selection Board has also filed an additional counter-affidavit in the writ petition.

4. The 4th respondent filed a separate counter-affidavit. According to him, he was discharged from the Army on medical grounds and his character was assessed as exemplary. He has been permanently living with his parents at Chalakara Village for the last more than 22 years. As an army man, he is deemed to reside at the address declared by him in the service book and the said principle is followed for issuing residence certificate to army men. Following the said principle, the Deputy Tahsildar (Revenue), Mahe, has issued the nativity certificate dated 23.7.1993 to the 4th respondent stating that he is a native of Union Territory of Pondicherry by virtue of continuous residence for five years preceding the date of the certificate. He appeared for the interview before the 1st respondent and the 1st respondent after interviewing all the four candidates as per the procedure has selected the 4th respondent for the grant of Indane distributorship for Mahe on the basis of better comparative merit and communicated the same to him by its letter of indent dated 29.3.1994.

5. Shivaraj Patil, J., rejected all the contentions of the appellant holding that the 4th respondent has secured highest marks among the candidates who were interviewed and therefore there is nothing wrong in the selection of

the 4th respondent for awarding Indane Distributorship at Mahe, particularly so in the absence of any mala fide. The learned Judge in his detailed and well considered order has discussed all the contentions raised before him by the appellant and rejected the same for the reasons recorded.

6. The very same contentions raised before the learned single Judge were reiterated before us by the learned Counsel for the appellant, which were duly answered by the learned, counsel for the respective respondents. Respondents 1 and 2 were directed by us to produce the entire selection records and the proceedings of the 1st respondent. Accordingly, the entire records were placed before us by the learned Counsel for the 1st respondent. We have also perused the records. We are unable to agree with the contentions raised by the learned Counsel for the appellants for the reasons stated infra.

7. The affidavit filed in support of the writ petition has been sworn to by one N.K. Sundaram, who is not having any personal knowledge about any of the allegations contained therein. In fact, it is stated by the 4th respondent that the request of the said N.K. Sundaram for running the distributorship in partnership with the 4th respondent was rejected by him and only out of frustration and with mala fide intentions the said N.K. Sundaram has speculatively filed the writ petition through the appellant V. Chandran.

8. It is contended by the learned Counsel for the appellant that the entire selection by the 1st respondent is only a make believe affair and is a predetermined one and that the 4th respondent is not qualified to be appointed as the distributor for Indane Gas at Mahe. It is seen from the counter-affidavit of the 1st respondent, that the Ministry of Petroleum and Natural Gas, Government of India, constituted the present Oil Selection Board on 1.1.1993, which has its jurisdiction over Tamil Nadu, Pondicherry, Andaman and Nicobar Islands. The Board consists of Chairman and two members viz., Mr. Justice M. Maruthamuthu, retired Judge of Madras High Court, Mr. K. Ravi Arunan, Ex. M.L.A. and Mr. P. Subbarayan, Former Deputy Accountant-General and former Member and Acting Chairman, Tamil Nadu Public Service Commission. The 1st respondent is in charge of selecting dealers and distributors in respect of petroleum products and L.P.G. The State Level Co-ordinator coming from Oil company

is the Non-Member Secretary.

9. The merits or otherwise of the candidates were examined by the Board with regard to.

(a) Personality, business ability and salesmanship 30 marks

(b) Capacity to arrange finance and capability to provide facilities 20 marks

(c) Full time working dealer 30 marks

(d) General assessment and extra curricular activities 20 marks

Total 100 marks

Marks were awarded by the Chairman and the members of the Board to all the candidates under each of the aforementioned categories. We have

perused the file and in the instant case, the Chairman and the two members have independently assessed the performance of the candidates

interviewed, and assigned marks under each category. The comparative statement of the performance of the candidates interviewed by the 1st

respondent on 16.3.1994 at Calicut for L.P.G. Distributorship at Mahe, relating to three candidates viz., the appellant, 4th respondent and one

N.V. Haridasan, who is not a party to the present proceedings, is as follows:

Name of the Application Marks given by.

M. Maruthamuthu K. Ravi P. Subbarayan Total

Chairman Arunan Member (II)

Member (I)

V. Chandran 101804 35 40 40 115

Haridasan, 101807 50 42 45 137

C. Premarajan 101808 55 45 50 150

It is seen from the above comparative statement that the appellant has secured 40 marks as against the 4th respondent, who secured 55 marks.

The other candidate N.V. Haridasan has secured 50 marks.

10. Though the learned Counsel for the appellant has alleged that the entire selection is only a make believe affair and is a pre-determined one, he

is not in a position to pin point the irregularities, if any, in the selection. The Chairman of the 1st respondent Justice M. Maruthamuthu himself has

sworn to the counter-affidavit in the main writ petition filed in June, 1994 and also the additional counter-affidavit filed on 22.9.1994. He has also

filed a counter-affidavit in the writ appeal on 7.7.1995. As rightly pointed out by Mr. G. Masilamani, learned Senior Counsel for the 4th

respondent, it is not open to the appellant to challenge the assessment of the candidates made by the members and Chairman of the 1st respondent

and claim that the appellant is entitled to the award of distributorship. Though the appellant was eligible to apply, he did not merit consideration

when his performance was judged at the time of interview. In our opinion, the appellant is wrong in alleging in his affidavit that the 4th respondent

was favoured with the grant of distributorship with pre-conceived decisions to the exclusion of the appellant.

11. In regard to the contention of the appellant in sending the letter of regret on 17.3.1994 the 1st respondent has explained in paragraph 4 of its

counter-affidavit the procedure adopted by the Oil Selection Board all along. There is nothing wrong, in our view, if the letter of regret issued to

the appellant was posted from Madras on 17.3.1994. It is stated that the 1st respondent has got the printed formats for the call letters and regret

letters and makes arrangements to fill up certain columns such as the name and address of the candidate and the subject, to facilitate quick action.

The letter of regret will be kept ready for all candidates who are called for interview for a particular location and it will be taken out and destroyed

in the case of selected candidates and absentees. They will be sent to the other candidates who attended the interview and were not selected. It is

also explained that for the purpose of avoiding delay and duplication of work at the office administration, call letters for interview and rejection

letters are designed and printed by way of set of three forms in such a way leaving blanks in identical places in the forms so that particulars that are

common in these forms such as name, address of candidates, etc., could be typed out in all the forms in one insertion by using carbon papers.

According to the 1st respondent, such designed and planned printed forms became necessary since for the selection of one person, several scores

of applications are received due to high profitability in this business. Further, unselected candidates have to be informed without any delay so that

they may seek other means of livelihood without waiting for long time for the selection results. It is further explained that in the set of three forms,

the first two forms relate to the call letter for interview and the third form relates to rejection letter. The common particulars in the third form are

also typed along with the call letter form by using carbon paper for all the candidates to whom call letters for interview are sent. The explanation

offered by the 1st respondent for adopting such a procedure is convincing since unnecessary delay can be avoided by this process. The method

adopted, in our view, is for the administrative convenience of the 1st respondent and therefore not liable for any criticism at the hands of the

appellant.

12. Learned counsel for the appellant next contended that the 4th respondent has not satisfied the essential requirement of five years residence in

the Union Territory of Pondicherry. In answering the said contention Mr. G. Masilamani, learned Senior Counsel appearing for the 4th respondent,

drew our attention to paragraph 8 of the counter-affidavit of the 4th respondent filed in the main writ petition. It is stated that an army man is

deemed to reside in the address declared by him in the service book and the said principle is followed for issuing resident certificate to army men.

As a matter of fact, in the Pondicherry Rajya Sainik Board (Registration of Ex. Servicemen and Grant of Financial Assistance) Bye-laws, 1981,

and in the prospectuses of all the Government Colleges in Pondicherry, the Pondicherry Union Territory residents have been defined in respect of

Ex. Servicemen/Defence Personnel as the persons who have declared/entered any place in the Union Territory as their permanent residence in

their service records. Following the said principle, the Deputy Tahsildar (Revenue), Mahe, has issued a nativity certificate dated 23.7.1993 to the

4th respondent stating that he is a native of the Union Territory of Pondicherry by virtue of continuous residence for five years preceding the date

of the certificate. Therefore, this contention of the appellant also fails and we reject the same by accepting the explanation offered by the 4th

respondent. In our opinion, the 4th respondent is fully qualified and is eligible for applying to the distributorship of Indane Gas at Mahe since,

according to us, he satisfies all the requirements therefor.

13. Learned counsel for the appellant is also not in a position to establish any illegality or irregularity in the conduct of the interview by 1st

respondent. The learned Judge has adverted to all the contentions raised before him by the appellant in extenso and has rejected the same, which,

in our opinion, is correct. It is also seen from the counter-affidavit of the 4th

respondent filed in the writ appeal that after the dismissal of the writ petition, the 2nd respondent has issued a letter bearing No. S.LPG. 855 dated 7.4.1995 appointing the 4th respondent as the distributor of Indane Gas for Mahe and also requesting him to sign the distributorship agreement sent along with it. Accordingly, the 4th respondent had also signed the said agreement. Thereafter, on 8.4.1995, he made wide publicity by distributing bit notices and putting up banners regarding commissioning of the distributorship on 10.4.1995. On 10.4.1995, Mr. R. Sudarsan, Deputy Manager (LPG), who was sent by the Indian Oil Corporation for the purpose of commissioning the distributorship, has commissioned the distributorship in the name and style of M/s. Mahe Gas. The Indian Oil Corporation is supplying L.P.G. Cylinders and regulators to the 4th respondent for distribution to public and so far 2,574 people have registered their names for gas connection and the registration is still going on. As on 8.6.1995, according to the 4th respondent, 500 new connections have been released and he is running the distributorship from 10.4.1995 by giving new connections. Admittedly, the 4th respondent is the first distributor appointed in Mahe. He has also commenced the business and as claimed by him, he has spent about Rs. 2.75 lakhs so far for purchase of land, construction of godown, telephone connections, etc., after 10.4.1995. He has spent another Rs. 70,000 till 10.6.1995. He has also appointed six persons for working in the agency.

14. As already seen, the 1st respondent Board is a high level body consisting of a retired Judge of this Court, one retired Deputy Accountant General and former member and acting Chairman of Tamil Nadu Public Service Commission and Anr. respectable person. The 1st respondent, after considering the materials on record and the personal assessment of merit, business ability, capacity, etc., of the applicants, has prepared a panel according to their merits and granted the distributorship to the 4th respondent by the Letter of Indent dated 29.3.1994. The process of appreciating and weighing the various factors, materials and rival merits, is the function of the 1st respondent Board, which is having the necessary expertise and experience to perform its duties properly. In our view, there cannot therefore be any re appreciation or re-appraisal of relevant material factors, relative qualifications and evaluation of the comparative merits

of the candidates in a writ proceeding under Article 226 of the Constitution of India.

15. For the fore-going reasons, we hold that there are no merits in any of the contentions raised by the learned Counsel for the appellant.

Therefore, the writ appeal fails and is accordingly dismissed. However, there will be no order as to costs.

16. Though, on a consideration of the case on merits, we have confirmed the order of the learned single Judge and dismissed the writ appeal, but,

we consider it necessary to issue certain directions to respondents 1 to 3 for future guidance and in the interest of making the functioning of the 1st respondent more transparent and avoiding allegations of the nature made in the present writ petition.

17. The 1st respondent and other such Boards constituted for other areas will be dealing with appointment of Indane Distributorship, allotment of

Petrol Bunks and other matters connected with sale and distribution of the products of the Oil and Natural Gas Commission of the Union of India.

Therefore, it should not result in distribution of largest of the State. The functioning, proceeding and decision of the 1st respondent should be

transparent so as to be free from criticism and arbitrariness. The proceedings of the Board should speak for itself. There should be a regular

proceeding drawn up discussing the mortise of each candidate and the reasons for selecting the required number of applicants out of several

applicants. As the Board is headed by a retired Judge of the High Court, there should not be any difficulty in ensuring that the proceedings and the

decision of the Board are free from arbitrariness and informed by reasons. In other words, the decision of the Board must speak for itself to avoid

arbitrariness and to ensure the propriety and regularity of the proceedings of the Board and the requirement of Article 14 of the Constitution. We

accordingly issue the directions to respondents 1 to 3 in the aforesaid terms. We also direct the 3rd respondent to issue similar directions to all

other Oil Selection Boards constituted for other areas.