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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9561/2009

LOVISH HEALTH CARE PVT LTD Petitioner
Through: Mr. Sanat Kumar and Ms. Poonam
Gulia, Advocates.

versus

INDIAN OIL CORPORATION LTD Respondent
Through: Mr. M.M. Kalra and Mr. Kunal Kalra,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **24.09.2009**

1. Rule. With the consent of the parties the matter is finally heard and disposed of.
2. The issue is limited and relates to interpretation of clause 6 of the circular dated 15th September, 2008 issued by the Ministry of Petroleum and Natural Gas making amendments in the guidelines on selection of dealers/distributors of petroleum products. Clause 6 of the said circular reads as under:-

“Other existing provisions of the guidelines on selection of dealership/distributorships of petroleum products not covered in the above paras will remain the same. The above amendments in the selection guidelines will come into effect from the date of issue of this letter. However, in cases where advertisements have been issued

and where interviews have not been held, OMCs may, if required and if permitted under the terms and conditions of the advertisement, alter/revise such advertisements in conformity with the amendments on selection guidelines introduced in this letter.”

3. Clause 6 quoted above stipulates that the circular dated 15th September, 2008 making amendments in the guidelines on selection of dealers/distributors of petroleum products is given prospective effect to selections made on or after date of issue of the circular. However, a limited retrospective effect is given in cases where an advertisement had already been issued but interviews had not been held and as per the terms and conditions of the advertisement, the oil companies were entitled to revise the selection guidelines.

4. The admitted position is that on 9.11.2007, an advertisement was issued by respondent No.1 oil company for appointment of LPG distributorships in Delhi and Haryana. On 10.12.2007 the petitioner had filed an application for appointment as an LPG Distributor for Uttam Nagar area under the open category. By letter dated 11.06.2008 the petitioner was asked to appear before the selection committee on 03.07.2008. The petitioner and other applicants who had applied for LPG distributorship appeared before the selection committee and were interviewed on 3.7.2008. Thereafter on 30.7.2008 results were declared. Thus, in the

present case, before the circular dated 15th September, 2008 was issued, the interviews had been held and even results had been declared. In these circumstances, it is not possible to accept the contention of respondent No.1 that circular dated 15th September, 2008 should be made applicable to the selection procedure adopted pursuant to the advertisement published on 9.11. 2007 and the interviews held on 3.7.2008 and the results declared on 30.7.2008.

5. Learned counsel for the respondent No.1 oil company states that fresh interviews are being held and, therefore, circular dated 15th September, 2008 will apply. By this indirect method the respondent No.1 oil company cannot get over clause 6 of the circular dated 15th September, 2008. Admittedly, selection process was complete when interviews were held on 3.7.2008 and result was declared on 30.7.2008. It is not the case of the respondent no.1 oil company that the said selection process was vitiated or bad in law because of any illegalities or irregularities committed during the selection procedure. Circular dated 15th September, 2008 has been given limited retrospective effect in cases where interviews had not been held before the said date and the advertisement permitted change in the terms and conditions. It may be noted that the respondent No.1 oil company has not brought any new advertisement or invited fresh

applications. The applicants who had applied earlier pursuant to the advertisement dated 9.11.2007 and were interviewed on 3.7.2008 and have already been graded and awarded marks as per list dated 30.7.2008, are being re-interviewed on the basis of the amended guidelines. The action of the respondent no. 1 oil company is per se arbitrary and is contrary to the circular dated 15th September, 2008. Government of India was conscious of the fact that amendment of the guidelines should be given prospective effect and limited retrospective effect and discretion should not be left to the oil companies to pick and choose. This prevented arbitrariness, misuse of discretion by adopting pick and choose policy.

6. One of the contentions raised by the petitioner is that they were not been awarded marks in respect of educational qualifications and age. The respondent No.1 oil company, has in the counter affidavit admitted that the petitioner was wrongly not awarded 19 marks. If a mistake has been made by the respondent No.1, it should be corrected. This cannot be a ground to cancel the earlier interviews and have fresh interviews. Cancellation of the earlier panel has to be for some valid reason. The counter affidavit does not disclose any reason why the earlier selection was scrapped and fresh interviews are being held.

7. The writ petition is allowed to the extent indicated above. Selection

for the LPG gas distributor of Uttam Nagar, Delhi will be made as per the interviews held and marks awarded. If any mistake has been made, the same will be corrected. In the facts and circumstances of the case there will be no order as to the costs.

SANJIV KHANNA, J.

SEPTEMBER 24, 2009
RS