IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12678 of 2014

==========

Puja Singh Wife of Satendra Kumar Singh Resident of Sawan Bigrah, P.O. Maharajganj, P.S. Darauda, District- Siwan.

.... Petitioner/s

Versus

1. Union of India, through the Secretary, Ministry of Petroleum and Natural Gas, New Delhi.
2. Bharat Petroleum Corporation Ltd., Bharat Bhawan, 4 AND 6 Currimbhoy Road, Ballard Estate, Mumbai- 400001 through its Chairman cum Managing Director.
3. The Chairman Cum Managing Director, Bharat Petroleum Corporation Ltd., Bharat Bhawan, 4 AND 6 Currimboy road, Ballard Estate, Mumbai- 400001.
4. The Executive Director Coordination, Bharat Petroleum Corporation Ltd., Bharat Bhawan, 4 AND 6 Currimboy road, Ballard Estate, Mumbai- 400001.
5. The Executive Director (LPG), Bharat Petroleum Corporation Ltd., Bharat Bhawan, 4 AND 6 Currimboy road, Ballard Estate, Mumbai- 400001.
6. The General Manager, Bharat Petroleum Corporation Ltd., Bharat Bhawan, Plot No. 31, KIT Scheme No. 118, Prince Gulam Mohammad Shah Road, Kolkata, 700095.
7. The Territory Manager (LPG), Patna LPG Territory and Bottling Plant, Fatuha Industrial Area, Fatuha, Patna- 803201.
8. Assistant Manager (LPG Sales), Patna LPG Territory and Bottling Plant, Fatuha Industrial Area, Fatuha, Patna- 803201.

.... Respondent/s

==========

Appearance :

For the Petitioner/s : Mr. Chitranajan Sinha, Sr. Adv.
Mr. Siddhartha Prasad, Adv.

For the UOI : Mr. Anurag Singh

For the Resp. 2 to 8 : Mr. Sanjay Singh, Adv.

==========

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 01-10-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

> *"1(a) For issuance of appropriate writ(s)/order(s)/ direction(s) for quashing the Letter dated 3.05.2014 issued by the Territory Manager (LPG), Patna LPG*

WEB COPY NOT OFFICIAL

Territory, Bharat Petroleum Corporation Ltd. whereby and whereunder the candidature of the petitioner for appointment as an LPG Distributor at Chapra has been rejected on flimsy, hyper technical and nonest ground.

(b) For issuance of appropriate writ(s)/orders(s)/ direction(s) commanding Bharat Petroleum Corporation Ltd for considering the appointment of the petitioner as an LPG Distributor at Chapra.

(c) For issuance of appropriate writ(s)/orders(s)/ direction(s) further commanding the respondent corporation to stay the fresh draw of lots fixed for 5th of August' 2014."

3. Mr. Chitranjan Sinha, learned senior counsel appearing on behalf of the petitioner, while assailing the impugned order dated 3.5.2014, as contained in Annexure-15, has submitted that the rejection of the candidature of the petitioner for grant of LPG distributorship at Chapra is bad both on fact and in law, inasmuch as, such rejection has been made on non-est and non-existent grounds. Mr. Sinha in this regard explains that not only the petitioner had submitted the required papers but had also clarified that the land, belonging to the petitioner jointly being owned by her with her brothers, it could not have been held that the petitioner had no clear ownership of the land offered by her. In this regard, he has also referred to various documents enclosed with the writ application to establish that when the petitioner had submitted her application on 20.6.2012 for grant of LPG distributorship by offering plot no. 713,

714, 716 and 717 for the go-down purpose and plot no. 1525 for the showroom, it was dully backed by a registered deed of lease in favour of the petitioner executed by one Raj Kamal wherein the averments were made that part of the land measuring 8100 Sqft. i.e. nearly 6 Katha out of total land measuring 16 Katha and 8 Dhoor had fallen in the share of the petitioner under the family arrangement and that she was also in possession of the same.

4. Mr. Sinha has also submitted that even for the showroom, the land offered by the petitioner was purchased in the name of Vishwanath Cold Storage Pvt. Ltd. in which the petitioner was a Director and, in that capacity, the lease had been made in her favour. A strong reliance has also been placed by Mr. Sinha on the land possession and ownership certificate issued by the Circle Officer, Rivilganj as with regard to possession and ownership of the land, in question, wherein 1/3rd share was that of the petitioner and her two brothers as was also dully established by the rent receipt issued in her name. On the basis of all these submissions, Mr. Sinha by referring to the documents has submitted that the petitioner had fulfilled the terms and condition of the advertisement and brochure with regard to ownership of the land, in question, and, therefore, the impugned order rejecting the case of the petitioner for grant of LPG dealership cannot be sustained.

5. Mr. Sanjay Singh, learned counsel for the respondent nos. 2 to 8, on the other hand, has submitted that the land offered by the petitioner either for go-down or for show-room in her application dated 20.6.2012 declaring herself to the owner of the land cannot be substantiated because the lease has been executed in favour of the petitioner only on 21.6.2012. Thus, Mr. Singh is of the view that both the registered deed of lease were executed after the date of submitting of the application by the petitioner.

6. Learned counsel for the respondents have also submitted that whatever complaints were received disputing the ownership of the land, in question, whereafter field verification was made in course of which the petitioner was asked to submit the ownership/title deed/authorization/Board resolution of the Board of Directors and the petitioner, in reply thereof, had produced a land possession certification dated 6.1.2014 which also went to show that the land was recorded in the name of the mother of the petitioner and others in which the mother of the petitioner had only 1/3rd share. Mr. Singh has also highlighted on the aspect that the petitioner could not produce any document in support of the land offered by her for the show-room and in fact she had come out with a request to offer another land for the purpose of show-room in which she had submitted a land possession certificate dated 17.1.2014. It was again in the name of the

father of the petitioner and was jointly owned by the petitioner with her two brother each having 1/3rd share.

7. Mr. Singh has submitted that in absence of clear demarcation of the property in the name of the petitioner and there being also no mutation in the name of the petitioner, he could not prove that she was the owner of the land. In this regard, he has also submitted that the matter was considered at the level of Executive Director and it was found that the owner-ship of the land was not fulfilling the criteria as per the brochure.

8. First of all this Court would find that the petitioner has made an allegation of malafide against Assistant Manager (LPG Sales), Patna and in this regard, Paragraph no.15, 16 & 18 reads as follows:-

> *"15. That the petitioner was shocked to receive a letter dated 28.10.2013 written by Sri Viaksh Kumar Singh, Assistant Manager (LPG Sales), Patna LPG Territory whereby and whereunder he was asked the petitioner to produce ownership/title deed proof in favour of the person who has leased the land for godown and ownership/title deed/ authorization/Board resolution in favour of the who has leased the land for showroom. In the said letter the petitioner has been informed that several complaints have been received by the corporation regarding ownership of land offered by the petitioner for construction of the godown and the showroom.*
>
> *16. That the petitioner has come to know from reliable sources that the complaint mentioned in the abovesaid*

letter has been made to the corporation by a person who has no concern whatsoever with the land or distributorship in question. The said person is an outsider and alien to the selection process. At this juncture it would not be out of place to mention here that Sri Vikash Kumar Singh, Assistant Manager (LPG Sales), Patna LPG Territory belongs to Chapra and therefore obviously has interests in grant of LPG Distributorship there.

18. That in reply to the letter dated 28.10.2013, the petitioner submitted a letter to Sri Vikash Kumar Singh, Assistant Manager (LPG Sales), Patna LPG Territory on 15.11.2013 explaining everything in detail alongwith supporting documents. The petitioner also gave her family genealogy and explained how the lands offered by her are ancestral properties of Sri Raj Kamal i.e. her own brother."

9. This Court will have to proceed on the basis of the facts asserted by the respondents in the counter affidavit while keeping in mind that the aforesaid facts asserted by the petitioner in the writ application has also not been controverted, inasmuch as, paragraph no. 16 of the counter affidavit reads as follows:-

"16. That the answering respondents is not making a paragraph wise reply, however it reserves its rights to submit a paragraph wise reply in case the need arises during the course of the present proceedings."

10. Since, these averments made paragraph nos. 15, 16 and 18 have not been controverted, this Court will have to accept that the officers had entertained some complaints against the petitioner and had proposed to hold enquiry even without furnishing a copy thereof

to the petitioner.

11. That apart, the reasons given in the counter affidavit that the petitioner's application was filed on 20.6.2012 and the lease deed was executed on 21.6.2012 also does not appear to be correct for rejecting the case of grant of LPG dealership of the petitioner, inasmuch as, under the advertisement dated 18.5.2012, the last date of submission of the application was 22.6.2012 and if the lease deed was already executed in favour of the petitioner on 21.6.2012 as is apparent from Annexure-2, the rejection could not have been made on the ground of lease deed being a day after the petitioner filed her application. In this regard it has to be kept in mind that the petitioner, by filing a supplementary affidavit, has produced receipt showing filing of her application on 22.6.2012. Thus, whatever has been stated in paragraph no.8 of the counter affidavit stating that the application of the petitioner was filed on 20.6.2012 has been not supported by the documentary evidence by the respondents. This Court therefore will have to accept the case of the petitioner that she had filed her application on 22.6.2012 along with the lease dated 21.06.2012 as is fully established from perusal of the photocopy of the receipt being Annexure-19 to the writ application.

12. This Court, having held so that lease deed dated 21.06.2012 was filed by the petitioner along with her application

dated 22.06.2012 would go to examine the other reasons in the impugned order and, in this regard, it will firstly note the requirement of the brochure as laid down in clause-7 thereof which, for the sake of clarity and convenience, is quoted herein below:-

"7. ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS

All applicants fulfilling the eligibility criteria will become eligible for the draw for selection of the LPG distributorship. The eligibility Criteria is as under: -

7.1. Common Eligibility Criteria for all Categories applying as Individual

The applicant should

i. Be an Indian citizen and be a resident of India.

ii. Have minimum any one of the following educational qualification awarded by any of the Universities incorporated by an Act of the Central or State Legislature in India or any other educational institutions established by an Act of Parliament or declared to be deemed as a University under the UGC Act, 1956, or possess an equivalent qualification recognized by the Ministry of HRD, Government of India as on the date of application:

a) Graduation in any field

b) Chartered Accountant

c) Company Secretary

d) Cost Accountant

e) Diploma in Engineering

iii. Be not less than 21 years of age and not more than 45 years of age as on the date of application for all categories except GP category.

For applicants applying for location reserved under GP Category, age should not be less than 21 years and not more than 60 years as on date of application.

iv. Fulfil Multiple dealership/distributorship norm as under: -

Multiple Dealership/Distributorship norms means that the applicant or any other member of 'family unit' should not hold a dealership/ distributorship/RGGLV or Letter of Intent (LOI) for a dealership/distributorship/RGGLV of a PSU Oil Company i.e. only one Retail Outlet / SKO-LDO dealership / LPG distributorship/RGGLV of PSU Oil Company will be allowed to a 'Family Unit'.

'Family Unit' in case of married person/ applicant, shall consist of individual concerned, his/her Spouse(s) and their unmarried son(s)/daughter(s). In case of unmarried person/ applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorcee, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

v. *Have minimum total amount of ` 15 lakhs for Urban Markets and ` 10 lakhs for Urban-Rural & Rural Markets respectively* ***as on the date of application****. This amount is to be arrived at by adding amount in Savings Bank accounts in Scheduled Bank/ Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies / Government Organisation / Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, NSC, Bonds, Shares of Listed Companies, Listed Mutual Funds, ULIP, PPF, Surrender Value of Life Insurance policies in the name of Applicant or family members of the 'Family Unit' of the Applicant as defined above. In case of locations reserved under 'SC/ST' category, minimum total amount as on the date of application should be ` 5 lakhs for Urban Markets and ` 2.5 lakhs for Urban-Rural & Rural Markets respectively.*

vi. *Should own a plot of land of adequate size (within 15 km from municipal/town/village limits of the location offered in*

the same State) for construction of godown for storage of 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown ***as on the date of application****. As per Gas Cylinder Rules 2004, the floor area of the storage shed for storing 8000 kg LPG in cylinders should be 80 sq metres. The length of the storage shed should not be more than 1.5 times of width of storage shed. There should be clear minimum safety distance of 7 metres between storage shed and the boundary wall/ fencing. The plot of land with minimum dimension of 26.15 metres by 27 metre is adequate. It should be freely accessible through all weather motorable approach road (public road or private road of the applicant connecting to the public road) and should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals / Drainage / Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/ Town and Country Planning Department etc.*

In case an applicant has more than one suitable plot for construction of godown for storage of minimum 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown ***as on the date of application****, the details of the same can also be provided in the application.*

vii. *Own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3 metres by 4.5 metre at the advertised location or locality as specified in the advertisement* ***as on the date of application****. It should be easily accessible to general public through a suitable approach road.*

In case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3 metre by 4.5 metre at the advertised location or locality as specified in the advertisement ***as on the date of application****, the details of the*

same can also be provided in the application.

Reference vi & vii above:

'Own' means having ownership title of the property or registered lease agreement for minimum 15 yrs in the name of applicant / family member as defined in multiple distributorship norm of eligibility criteria.

In case the land is jointly owned by the applicant / member of 'Family Unit' (*as defined in multiple dealership / distributorship norm****) with any other person(s) and the share of the land in the name of applicant / member of the 'Family Unit' meets the requirement of land including the dimensions required, then that land for godown/showroom will also qualify for eligibility as own land subject to no objection from other owner(s).***

viii. Neither have been convicted nor charges been framed by any Court of Law for any criminal offence involving moral turpitude/ economic offences.

ix. Not be a signatory to distributorship/dealerships agreement, terminated on account of proven cases of malpractice of any Oil Company."

13. As would be evident, the requirement of ownership has been given an artificial meaning in the brochure as would be evident from the definition of family unit wherein under Clause 7(iv) wherein for a married person being applicant, it was supposed to consist of individual concerned, his/or spouses and their unmarried son(s)/daughter(s). Admittedly, the petitioner is a married lady being wife of Sri Satendra Kumar Singh and, therefore, if she was having land in her own name to fulfill the requirement, it cannot be said, as has been projected in the counter affidavit that her share was

undefined. It is here that the explanation given below 7(vii) of Brochure would acquire significance which will itself go to show that the ownership could be proved either by way of title to the property or by way of registered deed in the name of the applicant or the family member as per the specification of family given in Clause 7(iv) of the Brouchure.

14. In the considered opinion of this Court in presence of the said definition and the lease deed being in the name of the petitioner, if there was any doubt with regard to the title of the person who had executed the registered deed of lease in favour of the petitioner, the same could have been enquired into from the revenue authorities instead of making a guess work as with regard to the title of Raj Kamal, who had executed the lease in favour of the petitioner. It is infact this aspect which has been also clarified by the petitioner by explaining that Raj Kamal was none else but the brother of the petitioner. Thus, after the year 2005 when the daughter also has a share in the father’s property, eliminating the case of the petitioner on the ground of his brother's name having not been mutated in respect of the land leased by him does not appear to be correct. The respondents in fact have sought to reject the case of the petitioner without considering her case objectively.

15. In that view of the matter, the impugned order dated

3.5.2014 passed by the Territory Manager (LPG), Patna LPG Territory, Bharat Petroleum Corporation, is quashed and the matter is remitted back for reconsideration by the Chairman cum Managing Director of Bharat Petroleum Corporation who now shall pass fresh order in accordance with law without being guided by the earlier recommendation of the respondent nos.4 to 8. For this purpose, the petitioner is also directed to file her fresh representation directly to the Chairman cum Managing Director with the supporting documents and a reasoned order thereafter shall be passed by the Chairman cum Managing Director in accordance with law keeping in view the terms and conditions of the brochure and the deed of lease dated 21.06.2012.

16. In view of aforesaid directions, the order of status quo passed by this Court on 2.9.2014 as with regard to the L.P.G. distributorship at Chapra shall continue till a final decision is taken by the Chairman cum Managing Director of the Bharat Petroleum Corporation Limited on the representation filed by the petitioner.

17. This application is, accordingly, allowed only to the extent indicated above.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 1st October 2015
N.A.F.R./Rishi/-

U			