

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2318 of 2014

1. Anurag Tiwari S/O Shri Satyendra Nath Tiwari Aged About 26 years R/O Tiwari Colony Darripara Ambikapur P.S. Ambikapur Distt. Surguja C.G.

---- Petitioner

Versus

1. Hindustan Petroleum Corporation Limited, through Director Hindustan Petroleum Corporation Limited Registered Office 17, Jamshedji, Tata Road Mumbai 400 020 M.H.
2. Regional Officer Hindustan Petroleum Corporation Limited, LPG Bottling Plant, Mandir Hasaud, Dist. Raipur C.G.

---- Respondent

For Petitioner	Shri Sunil Tripathi, Advocate
For Respondents	Shri Ali Asgar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

01/05/2015

1. Petitioner is assailing the order passed by the respondents on 20-9-2014 cancelling the candidature for award of LPG Distributorship at Ambikapur (Sattipada, Babupada), District Sarguja and forfeiting the deposit of Rs.50,000/-made by the petitioner.
2. Three Oil Companies namely; Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and the respondent Hindustan Petroleum Corporation Limited issued advertisement vide Annexure – P/2 inviting applications from eligible candidates for award of LPG Distributorship at different locations including the

location at Ambikapur (Sattipada, Babupada). This location was of open category. Petitioner applied for the distributorship of the said location and in course of scrutiny the petitioner was issued a communication on 9-12-2013 (Annexure – P/4) directing him to submit papers issued by the Revenue Department in proof that the proposed land is situated within the advertised location. Similar communication was sent to the petitioner on 2-1-2014 also. The petitioner submitted required documents and, thereafter, his candidature was processed and he was included in the select list by declaring him qualified for a draw for selection of LPG distributorship. This was communicated to him vide Annexure – P/7 dated 21-1-2014. The final selection was to be made on 10-2-2014 and on completion of the said selection process, the petitioner was informed vide Annexure – P/8 dated 10-2-2014 that he has been selected for award of LPG distributorship for the subject location. The petitioner was also informed that field verification of the selected candidate is required to be done for which the selected candidate is required to deposit Rs.50,000/-. The said amount was deposited by the petitioner by demand draft dated 17-2-2014.

3. According to the petitioner, the field verification was conducted by the respondent Corporation and he was waiting for the formal letter of allotment, however, without issuing any further notice the petitioner was served with the impugned order directing

cancellation of his candidature and forfeiture of deposit of Rs.50,000/- made by him. It is argued that the impugned order is wholly illegal and arbitrary being rendered in violation of principles of natural justice. It is further contended that, under the procedure prescribed for dealing with LPG distributorship applications, entire verification was already conducted and being satisfied the petitioner was issued the letter of selection, therefore, the respondents are estopped from cancelling the candidature. Learned counsel would rely on the order passed by this Court in **Shatrughan Kumar Sahu v. Indian Oil Corporation Limited & Another**¹.

4. Per contra, learned counsel appearing for the respondent Corporation would rely on the order passed by the Division Bench of this Court in **Mrs. Vandana Devi Heda v. Indian Oil Corporation**² to argue that no right would accrue in favour of a candidate before issuing the letter of intent, therefore, the Corporation is fully justified in cancelling the petitioner's candidature when he was found ineligible during field verification.
5. Before proceeding to deal with the rival submissions made by the learned counsel for the parties, it would be necessary to refer to the relevant clauses of the Guidelines for Selection of Regular LPG Distributors (for short 'the Guidelines').

¹ WP (C) No.786 of 2013 (decided on 21-8-2013)

² WA No.451 of 2011 (decided on 9-5-2012)

6. Clause 6 of the Guidelines provides for eligibility criteria for individual applicants. Amongst other criteria, the criteria with which the present petition is concerned, includes the criteria of having total closing balance of Rs.15.00 lacs and having land/plot bearing dimensions 25 meter x 30 meter. Clauses 6.1 vi & vii are reproduced hereunder for reference :

“6. 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 :

6.1 Common Eligibility Criteria for all Categories applying as Individual

The applicant should

i	xxx	xxx	xxx
ii	xxx	xxx	xxx
iii	xxx	xxx	xxx
iv	xxx	xxx	xxx
v	xxx	xxx	xxx

vi. Have minimum total amount of 15 lakhs for Urban Markets and 10 lakhs for Urban-Rural & Rural Markets respectively **as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any).** 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 of 5 lakhs for Urban Markets and 2.5 lakhs for Urban-Rural & Rural Markets respectively should be available as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any).

vii Should own **as on the last date for submission of application as specified in the advertisement or corrigendum (if any) :**

a plot of land of minimum dimensions 25 Metre x 30 Metre (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of LPG Godown for storage of 8000 Kg of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 Metre x 30 Metre will not be considered.

Or

a ready LPG cylinder storage godown (within 15 km from municipal/town/village limits of the location offered in the same State) of 8000 Kg capacity.

In case there are any state specific requirements/norms applicable for construction of the LPG Godown, then the same will be applicable for the respective Regular Distributorship locations including revised minimum dimensions of plot of land will be required as specified in the Advertisement of that respective State.

The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (public road or private road connecting to the public road). In case of private road

connecting to the public road, the same should belong to the applicant/member of Family Unit (as per the multiple dealership/distributorship norm of eligibility criteria) as per the ownership criteria defined below. In case of ownership/co-ownership by family member(s) in respect of such private road, consent letter from respective family member(s) will be required.

The land should also 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 last date for submission of application as specified in the advertisement or corrigendum (if any)**, the details of the same can also be provided in the application.

viii	xxx	xxx	xxx
ix	xxx	xxx	xxx
x	xxx	xxx	xxx
xi	xxx	xxx	xxx”

With reference to clause 6.1 vii the word ‘own’ has been defined to mean ownership having title of the property or registered lease agreement for minimum 15 years in the name of the applicant.

7. Petitioner’s candidature has been cancelled on two counts; *firstly*; he was not having deposit of Rs.15.00 lacs in the current account and *secondly*; for approaching the land proposed for godown

Government land and private lands are also situated in between, therefore, free access for movement of trucks carrying LPG cylinders is not available.

8. The first reason for cancellation is about not having amount of Rs.15.00 lacs in the current account deposit deserves outright quashment for the simple reason that clause 6.1 vi of the Guidelines clearly provides that the applicant should have total amount of Rs.15.00 lacs as closing balance and 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. It is not the case of the Corporation that availability of fund shown by the petitioner in the name of his father, who is the proprietor of his own firm, does not belong to the fund of one of the family members of the family unit. The reason for disallowing the fund is that the amount is lying in the current account and not in the saving account, however, a reading of clause 6.1 vi above would make it explicit that the said reference to saving bank account is by inclusive expression and it does not exclude other accounts because provision says

'the amount is to be arrived at by adding amount in saving bank accounts'. In any case there is no express exclusion of the availability of fund lying in the current account deposit.

9. The second ground for rejection of the candidature is that the land offered for godown is approx. 400 meters away from main road. Between offered land and main road there are plots belong to other persons as well as Government also, there is no all weather motorable approach road to reach the cylinder truck to offered godown land from either side. The relevant clause of the Guidelines for selection clearly provides that the plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (public road or private road connecting to the public road). In case of private road connecting to the public road, the same should belong to the applicant/member of family unit as per the ownership criteria defined. In case of ownership/co-ownership by family members in respect of such private road, consent letter from respective family members will be required. It also provides that the land should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines.
10. Report of field verification at item No.9 clearly found that the offered land is more than 400 meters away from the main road. The land between the road and site is agricultural open uneven land and Government land. Although the word 'private land' is not

mentioned in the Field Verification of Credentials (FVC), as is mentioned in the impugned order, but the petitioner has neither submitted any proof before this Court nor argued that the land of any other individual is not falling between the main road and the offered plot. Moreover, the plot is not plain and is agricultural open uneven land, therefore, the offered plot does not fulfill the requisites as mentioned in clause 6.1 vii of the Guidelines. It is also to be seen that the FVC was carried out in the presence of Patwari.

11. Although, the first ground of cancellation of candidature of the petitioner may not hold good, but the second ground of rejection is in accordance with the guidelines, therefore, the petitioner's candidature has rightly been rejected. The impugned order not only cancels the candidature of the petitioner, but also forfeits the deposit of Rs.50,000/- by the petitioner. Under the Guidelines, the forfeiture of deposit is attracted only when the candidate has submitted false/incorrect information or has misrepresented any fact in the application.
12. In the considered opinion of this Court, submission of false or incorrect information or misrepresentation implies existence of an element of fraud from the inception and merely because at the fag end of selection procedure, during FVC, the land was not found suitable, it cannot be said that the petitioner is guilty of submitting

false or incorrect information. If in every case where the candidature is rejected at the fag end finding the applicant unsuitable, it would necessarily involve forfeiture of the amount. Forfeiture would entail only when there was an effort to procure dealership by submitting apparently false documents or information. Mere unsuitability of land does not amount to submission of false or incorrect information. Moreover, the petitioner has not been heard before forfeiting the amount of Rs.50,000/-.

13. In the result, the writ petition is allowed in part; while upholding the cancellation of petitioner's candidature the other part of the impugned order dated 20-9-2014, whereby security amount of Rs.50,000/- has been forfeited, is quashed. The respondent Corporation is directed to refund the amount of Rs.50,000/- to the petitioner within a period of two months from the date of communication of this order.
14. There shall be no order as to costs.

J u d g e

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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (C) NO.2318 OF 2014

PETITIONER

Anurag Tiwari

Versus

RESPONDENTS

Hindustan Petroleum Corporation
Limited & Another

Post for pronouncement of orders on the ____ day of May, 2015

J u d g e
-5-2015