IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WA.No. 1822 of 2014 () IN WP(C).11746/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 11746/2014 of HIGH COURT OF KERALA DATED 27-08-2014

APPELLANT(S):/RESPONDENTS 2 TO 4
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1. BHARAT PETROLEUM CORPORATION LTD.
BHARAT BHAVAN, 4 & 6, CURRIMBHOY ROAD
BALLARD ESTATE, P.B.NO.688, MUMBAI-400 001
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE EXECUTIVE DIRECTOR(LPG),
LPG BUSINESS UNIT,
BHARAT PETROLEUM CORPORATION LTD.,
BHARATH BHAVAN II, 5TH FLOOR, CURRIMBHOY ROAD,
BALLARD ESTATE, MUMBAI-400 001.

3. THE TERRITORY MANAGER(LPG),
BHARAT PETROLEUM CORPORATION LTD
KOCHI TERRITORY OFFICE & LPG PLANT,
AMBALAMUGHAL, COCHIN-682 302.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENT(S):/PETITIONER & FIRST RESPONDENT
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1. A.R.ROOPESH KRISHNAN, AGED 26 YEARS,
S/O.A.R.RADHAKRISHNAN, ATHIYARATH HOUSE
KURUVILASSERY.P.O, VALIYAPARAMBU,
THRISSUR-680 732.

2. UNION OF INDIA, REPRESENTED BY MINISTRY OF
PETROLEUM & NATURAL GAS,
NEW DELHI - 110 001.

R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1 BY SRI.M.G.KARTHIKEYAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

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W.A.No.1822 of 2014

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Dated this the 13th day of January, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. A petroleum company, M/s.Bharat Petroleum Corporation Limited, and its officers are the appellants. We have heard the learned senior counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. BPCL invited applications for allotment of Liquid Petroleum Gas outlets. Ext.R2(a) is the guidelines on selection of regular LPG distributorship. It is an exhaustive material. Clause 6 prescribes eligibility criteria for individual applicants. Clause 6.1.vi. prescribes that candidates should 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. Such amount is to be arrived at by

adding the amounts in different types of accounts or securities, etc. which are stated in that clause. That would take in savings bank accounts and fixed deposits in Scheduled Banks. The first respondent utilized deposits with a Service Co-operative Bank to peg up the minimum total amount required to consider his application. BPCL did not countenance that. The learned single Judge has issued the impugned judgment holding that if a person is eligible and he is able to satisfy the eligibility in a credible manner, the application cannot be rejected. It was held that the mode indicated in the guidelines is only to verify the credibility of the claim. This is under challenge. The substance of the appeal, therefore, revolves around the interpretation of the aforenoted clause, i.e., clause 6.1.vi of Ext.R2(a), which reads as follows:-

> "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 and 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)."

3. The learned senior counsel for the appellants argued that what is prescribed is qualification, and settled guidelines are necessary to exclude any opportunity of vagueness creeping in. He relied on the decisions of Bombay High Court in Vijay Asaram Sethi and Another v. The State of Maharashtra and Another (writ petition No.5613 of 2014-DB) and of the Calcutta High Court in Sanjib Mondal v. The Ministry of Petroleum & Ors. (W.P.No.24205 of 2014) holding that deposits in an Urban Co-operative Bank or a Primary Co-operative Agricultural Society would not fit the

prescription because they are not Scheduled Banks. It is thus contended that the decision of the learned single Judge is to be reversed.

4. The learned counsel appearing for the first respondent argued that an equitable consideration of the totality of the facts and circumstances would indicate that the learned single Judge has taken up a pragmatic approach, which does not deserve to be interfered with in this intra-court appeal under Section 5 of the High Court Act. He argued that all that is required is to ensure the creditworthiness of the applicant as on the last date for submission of applications, and therefore, a strict view in the matter has to be excluded.

5. Insofar as the prescriptions of guidelines are concerned, the eligibility criteria has to be reasonably fixed. That reasonableness is to be ensured by the maker of the guidelines, namely, BPCL. It having applied its wisdom and having come to a particular

conclusion, it cannot be found fault with for not enumerating any institution other than those institutions which are stated in the aforenoted clause. Therefore, if an applicant depends upon his deposits in Banks, that has to necessarily be with Scheduled Banks and not otherwise. The wisdom of BPCL in not including any other type of Banks for the purpose of the said clause, cannot be treated as arbitrary to be visited in writ jurisdiction. We say this, notwithstanding the fact that the writ petitioner had not challenged the clause in the writ petition.

6. Calcutta High Court had pointedly stated that the particular co-operative society considered therein could not be counted because it is not an institution recognized in the guidelines. That is, pithily, the law. This is also the terror of the judgment of the Bombay High Court in Vijay Asaram Sethi (supra), where the argument that funds available in any other Bank shall be added for computing the fund was found against. We are in respectful agreement with those judgments and we follow them.

7. In the aforesaid view of the matter, the impugned judgment of the learned single Judge does not stand, and the writ petition is liable to be dismissed.

In the result, this writ appeal is allowed setting aside the impugned judgment in the writ petition. As a consequence, the writ petition will stand dismissed. No costs.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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