IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

* * *

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

W.P.Nos.8543, 8456, 8867, 9466, 9752, 9112, 9448, 10849 and 10359 of 2015.

BETWEEN

Smt.Gurram Keerthi and others

... PETITIONERS

AND

Union of India, rep. by its Under Secretary-Petroleum & Natural Gas, and others

...RESPONDENTS

Date of Order pronounced: 31.12.2015

ORDER:

Heard.

2. In these cases, petitioners are declared successful candidates for awarding LPG Distributorship but were not given letters of intent. Under the impugned proceedings dated 21.01.2015, the first respondent revised the selection criteria declaring that it shall, however, not apply to such candidates who were already given letters of intent. Consequently, the petitioners, who are successful candidates but who have not been given letters of intent, seek a declaration that the said revised criteria, as contained in the impugned letters in these writ petitions, shall not apply to selected

candidates irrespective of whether letters of intent are given or not.

3. For the sake of convenience, the facts in W.P.No.8543 of 2015 are set out hereunder and with marginal difference, the facts in each of these cases are similar.

4. M/s. Hindustan Petroleum Corporation Ltd. (HPCL),
second respondent, issued a notification for the purpose of awarding LPG Dealership at Metpally, Karimnagar District, under advertisement dated 15.09.2013. Petitioner applied in response thereto and after scrutiny of the applications, draws were conducted on 12.12.2014, whereunder petitioner emerged as a successful applicant.
HPCL addressed a letter dated 13.01.2015 informing, accordingly,
to the petitioner and directed the petitioner to comply with other conditions in the advertisement. However, petitioner had not received the letter of intent.
The third respondent, Chief Regional Manager-LPG,
issued a letter dated 17.03.2015 to the petitioner informing him that in line with the instructions of Ministry of Petroleum and Natural Gas dated 21.01.2015, list of eligible and ineligible candidates is being reviewed on the issue of reckoning of the lease period of 15 years and all the activities, such as, scrutiny/draw held is being declared as null and void and informed the petitioner that the fresh draw will be held taking into account the fresh guidelines of the Ministry, referred to above, and the amount deposited by the petitioner was returned.
The said communication, being based on the letter of the Ministry dated 21.01.2015, whereunder the conditions of eligibility were revised, is also questioned along with the impugned letter of the second respondent dated 17.03.2015.

4. Since the said communication from the Ministry of Petroleum and Natural Gas, New Delhi, dated 21.01.2015, is relied upon by the respective Oil Companies in this batch of cases, it is appropriate to extract the said letter, which reads as follows:

"No.R-30015/4/2015-MC
Government of India
Ministry of Petroleum & Natural Gas
Shasi Bhavan new Delhi
Dated : 21st January, 2015

To
1. The Director (Marketing 0
IOCL New Delhi,
2. The Director (Marking)
BPCL/HPCL, Mumbai

Subject: reckoning of lease period for considering applications for retail outlets.

Sir,

I am directed to say that on perusal of a grievance petition the Hon'ble Minister 9P &NG) has observed as under:-

Applications are being rejected on the ground that the period of leaser as on the last date for submission of application is less than 15 years. (in some cases the period is short by a few days only).

The OMCs have been adopting hyper-technical interpretation and have been rejecting such applications, giving rise to needless litigation.

The guidelines of 2014 provide for reckoning the 15 years lease period from the date of advertisement.

2. The Hon'ble Minister (P &NG) has therefore desired that he provision of reckoning 15 years lease period from the date of advertisement may be extended to the following cases provided LoI have not been issued to successful candidates).

i) Where during the course of scrutiny of applications the candidatures have been rejected on account of period of lease being less than 15 years.
ii) Where at the time of FVC, the candidatures are being or have been rejected because tenure of lease being of less than 15 years.
iii) All court cases relating to the above and pending in different judicial courts should be revleved and appropriate action in accordance with the above direction to be submitted before the various courts.

3. The OMC are requ4ested to sent a compliance report by 29-01-2015 positively.

Yours faithfully,

(UC. Pandey)
Under secretary to the Government of India
Tele 011-23386339"

5. To appreciate the controversy, it is appropriate to notice the eligibility criteria as per the guidelines for selection of regular LPG Distributors relevant to the Advertisement, in question, in August, 2013. Under clause 6.1, Common Eligibility Criteria for all categories applying as Individual is stipulated and the relevant portion under clause vii is as follows:

"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 M X 30 M (within 15 km from

> municipal/town/village limits to 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 M x 30 M will not be considered."

The word 'own' used in the aforesaid clause is explained in the guidelines as follows:

> "Reference vii & viii 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) as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required."

6. It would be noticed from the above that the requirement of the word 'own' means giving ownership and title to the property or registered lease agreement for minimum 15 years in the name of the applicant/family member as on the last date for submission of the application is satisfied in the advertisement or corrigendum if any. That criteria was amended under the impugned proceedings of the Ministry of Petroleum and Natural Gas under Communication dated 21.01.2015 wherein under the revised criteria it was provided that reckoning of 15 years lease period from the date of advertisement may be extended to all the cases except where letter of intent has not been issued to successful candidate.

7. In other words, therefore, the revised criteria was made applicable to all the advertisements hitherto issued and applied to all the prospective dealers except those who have been issued letters of intent. The impugned proceedings of the third respondent follows the aforesaid revised guidelines of the Ministry and have cancelled all the draws held as null and void and intended to conduct fresh draws vide their communication dated 17.03.2015 issued to the petitioner.

8. Applying the said revised criteria to the petitioner is accordingly questioned *inter alia* on the ground that such of the candidates who are successful in the lots cannot be subject to fresh selection all over again by applying the revised criteria adopted by the respondent-oil companies almost two years after the advertisement so as to nullify the eligibility of the

petitioner, particularly, when petitioner was successful in the draw of lots. Similar contentions are also raised in these writ petitions including that there is discrimination and violation of Article 14 of the Constitution of India in not applying the said revised criteria to cases where letter of intent is issued but applying the same to cases such as petitioners, who are successful in the draw of lots. Petitioners also claim that after the respective oil companies informed them that they are successful in the draw of lots they have deposited further amounts as required and were expecting the letters of intent to be issued to them. But suddenly the draws were cancelled and fresh selection was envisaged by applying the revised criteria. Petitioners, therefore state that such revised criteria cannot be applied retrospectively and in any case, there is hardly any difference between petitioners, who were successful in the draw of lots and the ones who have been issued letters of intent.

9. The first respondent has filed counter affidavit and a separate counter affidavit is filed on behalf of respondent Nos.2 and 3.

In the counter affidavit filed by the first respondent it is stated that as per the previous guidelines for selection, one should have a registered lease agreement for a minimum period of 15 years as on the last date of submission of application and after finding that by applying such clause the lease period would be short by few days, the revised criteria was adopted after the Ministry received several representations.

The first respondent also justifies the application of revised criteria to all the applicants except those, who are given letters of intent,

by categorising the candidates, who applied for distributorship into four different categories. The relevant portion of the counter affidavit is appropriate to be extracted hereunder:

> "15. I submit that in order to explain better, it is submitted that there are four classes of person who apply for distributorship (a) persons who have applied for distributorship and where draw itself is not held; (b) persons who have applied for distributorship and where draw is held but these candidates are unsuccessful; (c) persons who have applied for distributorship and where draw is held and the candidate is successful; and (d) persons who have applied for distributorship and where draw is held and the candidate is successful and file verification of credentials is over and Lot has been issued to them. If one were to see carefully, it is only in case
> (d) above, i.e., where LoI is issued that the persons may have taken some further steps to commission the distributorship i.e., altering their position.

> They may have invested money, applied for permissions, etc. In all other cases, this is not so. Hence, the case of those persons/candidates to whom LoIs have been issued form a different class of persons. There is also a strong justification in not touching such selections. However, the other persons cannot claim the same protection. In case where candidate is successful in a draw, the Field Verification of Credentials, to see that all the details submitted by the candidate is correct or not, itself is not over.
> It is only once all checks are performed that LoI is issued to him. Thus these class of persons cannot claim the same protection."

10. The counter affidavit filed by the respondent–Oil Company is also on the similar lines.

11. However, learned counsel for the petitioners would dispute the said statement in not equating the cases of petitioners with those candidates who have been given letters of intent, by contending that after intimation that they are successful candidates each petitioner has deposited the amount as required in the terms of advertisement and as such it cannot be said that the candidates, who received letter of intent stand on a different footing than the petitioners.

12. Learned standing counsel for the respondent-Oil Company,
while supporting the stand in the counter affidavits of both the respondents, as above, submitted that in this batch of cases the stay of selection having been granted the oil company, they are unable to finalise the selection even after two years and on account thereof,
learned counsel requested the matters to be heard and disposed of urgently. In that context, this batch of cases was heard on priority.

13. Keeping in view the rival contentions, the point that requires determination is as to whether revised criteria can be applied retrospectively.

14. It would be evident from the events as mentioned above that the advertisement in accordance with the then existing guidelines of 2013, as extracted above, clearly stipulate the requirement of having a 15 years lease as on the last of date of submission of application and the same is, undoubtedly, satisfied by each of the petitioner.
Thus, having been eligible under the existing guidelines as on the date of advertisement, each of the petitioners has participated in the draw of lots and

has emerged successful. At this stage, however,

the Government of India issued directions for revising the guidelines and eligibility criteria, which was altered to stipulate that the period of lease of 15 years shall be reckoned from the date of advertisement and not from the last of the date of submission of application.

The revised criteria normally would apply only to future advertisements. However, it was made applicable to the advertisement, in question, by modifying the eligibility criteria even under 2013 guidelines whereby entire selection process commenced and completed up to drawing of lots and declaration of successful candidates got nullified. Petitioners, who have emerged as successful candidates are now subjected to fresh selection process all over again on the basis of revised eligibility criteria, which is impermissible

(see **K. MANJUSREE V. STATE OF ANDHRA PRADESH** [(2008) 3 SCC 512]. To my mind, therefore, the revised criteria *per se* can apply only prospectively and not retrospectively.

Point is accordingly answered.

15. Apart from that, it is not in dispute that all the petitioners were eligible as on the date of advertisement and their eligibility cannot be affected by revision of eligibility guidelines after about two years of the advertisement. Further the revised criteria itself was not made applicable to such candidates, who were given letters of intent,

but applied to all other cases. Apparently, it was not made applicable to cases where letters of intent was issued on the ground that those candidates might have altered their position and might have spent further money for securing distributorship/dealership based on the letter of intent. I do not see any marked difference between candidates, who have been given letters of intent and candidates,

who are successful in the draw of lots and intimated accordingly.

In fact, all such petitioners, who were successful in the draw of lots, were required to deposit the amount in terms of the advertisement and when they were on the verge of receiving letters of intent,

the eligibility criteria was altered. In my view, therefore, out of the four categories of persons, as explained in the counter affidavit of the first respondent, extracted above, the candidates falling under category (c) and (d) are almost on the same footing without there being any marked difference between the two.

16. The respondents are not applying the revised criteria to category (d) candidates. But for reasons best known, the said benefit is not extended to category (c) candidates. In view of the conclusions above, there is no reason why such of the petitioners,
who fall in category (c), as above, are denied equal treatment as candidates falling under category (d).

17. In the circumstances, therefore, the impugned proceedings are liable to be declared as inapplicable to the respective petitioners,
who have been successful in the draw of lots and their cases deserve to be considered for issuance of letter of intent and to proceed further in the matter from that stage onwards.

The writ petitions are accordingly allowed by declaring that the revised guidelines of the Government of India dated 25.01.2015 are inapplicable to the cases of such candidates, who are successful in the draw of lots and thereby, the consequential proceedings of the Oil Company revising the eligibility criteria and applying the said revised criteria to successful candidates in the draw of lots is unsustainable. Consequently, the respondents are directed to consider the cases of each petitioner, who are successful in the draw of lots and complete the selection process by issuing letters of intent to each one of them and to proceed further, thereafter, in accordance with the terms and conditions of the advertisement.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 31, 2015
LMV