

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4151 OF 2013

Sudhakar S/o Dattatraya Deomali,
Age: 50 yrs, Occ. Business,
P/o Ms Sunder Inden
M.N. No 1857, Main Road, Phulambri
Dist. Aurangabad

...PETITIONER

versus

1. Indian Oil Corporation,
Through its
Deputy General Manager (LPG)
Marketing Division
for Maharashtra State
254-C, Dr. Annie Bezent Road
Worli Colony, Mumbai-30
2. Indian Oil Corporation Ltd.
Area Officer, Area Office,
Anti Commerce Centre, 5th Floor,
East Street, Camp Pune
3. The Union of India,
Through Secretary,
Petroleum Ministry New Delhi.

...RESPONDENTS

.....
Mr. A.B. Kadethankar, Advocate for petitioner
Mr. Alok Sharma, Advocate for respondents No. 1 and 2
Mr. S.B. Deshpande, ASG for respondent No. 3
.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 21st JUNE, 2016.

ORAL JUDGMENT : (Per : S.V. Gangapurwala, J.)

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioner assails order dated 30-04-2013 issued by respondent No. 1, thereby terminating letter of intent/distributorship agreement of the petitioner. This Court vide order dated 14-05-2013 has granted ad-interim relief in terms of prayer clause "C" i.e. respondents were prevented from discontinuing the petitioner's LPG distributorship license and agreement by staying execution and operation of the impugned order dated 30-04-2013.

3. Said ad-interim relief granted vide order dated 14-05-2013 is still in force.

4. Mr. Kadethankar, learned counsel for petitioner submits that petitioner is an ex-serviceman, who had suffered disability while in service and was discharged from the defence services. Disability Certificate was also issued. Pursuant to advertisement issued by respondents No. 1 and 2, the petitioner had applied being ex-serviceman and having suffered disability while in service. The petitioner was selected and was issued LPG distributorship by respondents No. 1 and 2. Show cause notice dated 04-12-2012 was issued to the petitioner on the ground that eligibility certificate issued to the petitioner has been cancelled. Though petitioner has replied said notice, however, order of termination of distributorship agreement was passed by respondent No. 1 on 30-04-2013.

5. Learned counsel for the petitioner submits that petitioner approached to Armed Forces Tribunal against rejecting eligibility certificate by filing Original Application. The Tribunal has allowed said

Original Application and held that petitioner suffered disability from 01-07-1992 and at the time of discharging the duties, he had suffered disability, therefore, petitioner is entitled to the benefit of the of rounding off the disability pension from 11.14% to 50%. According to learned counsel, as the Tribunal has allowed Original Application, the impugned order deserves to be set aside.

6. We have heard Mr. Sharma, learned counsel for respondent Nos. 1 and 2. According to learned counsel, the fact of the eligibility certificate being cancelled was existing as on the date of issuance of show cause notice and there was no illegality committed by respondent No. 1 while passing the impugned order and the same has been passed on the basis of cancellation of eligibility certificate by the defence.

7. We have heard Mr. Deshpande, Assistant Solicitor General for respondent No. 3.

8. We have considered the submissions canvassed by learned counsel for respective parties. Basis for issuance of show cause notice dated 04-12-2012 by respondents No. 1 and 2 appears to be a letter dated 11-09-2012 received from the Government of India, Ministry of defence, informing that eligibility certificate dated 05-12-2007 issued by the Defence to the petitioner is cancelled. Facts as on the date of issuance of the certificate were existing as stated in show cause notice. It appears that petitioner approached before the Armed Forces Tribunal, Principal Bench at Delhi against rejection of the eligibility certificate. The Tribunal vide order dated 30-04-2013 has allowed the

Original Application filed by the petitioner upholding disability and also further observed that the petitioner is entitled for benefit of disability pension upto 50%.

9. Considering aforesaid aspect of the matter, the premise on which impugned order dated 30-04-2013 is issued does not survive.

10. In light of the above, impugned order dated 30-04-2013 issued by respondent No. 1 is quashed and set aside.

11. Writ petition stands allowed. Rule is made absolute accordingly.
No order as to costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK