

CWP No.14451 of 2013

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.14451 of 2013
Date of decision:17.03.2016**

Dinesh Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Manmohan, Advocate,
for the petitioner.

Mr. Ashish Kapoor, Advocate,
for respondents No.1 and 2.

Mr. K.K.Chaudhary, Advocate, for
Mr. Sanjiv Gupta, Advocate, for respondent No.3.

Rakesh Kumar Jain, J. (Oral)

This petition is filed at the instance of one Dinesh Kumar who has challenged the award dated 30.10.2012 of the Rajiv Gandhi L.P.G. Vitrak (hereinafter referred to as the "RGGLV") in open category at village Salwan, District Karnal and also for quashing the letter dated 09.10.2012 by which his candidature was rejected.

In short, the Indian Oil Corporation (hereinafter referred to as the "Corporation") invited applications for awarding RGGLV at village Salwan, District Karnal in the open category through advertisement dated 28.02.2011. There were total 27 applicants who qualified for the draw. The petitioner was, however, informed vide letter dated 09.10.2012 that he has

CWP No.14451 of 2013

[2]

not been found eligible for including in the draw of lots because he was not having the land for the godown at the advertised location.

The case of the petitioner is that his father Raghubir Singh is holding the land in village Salwan falling in Khewat No.1106 Khasra No.205/21, which is near the place where the LPG outlet is to be awarded. On this premise, the present petition has been filed.

On the other hand, counsel for the respondents has submitted that the petitioner does not fulfill the eligibility of holding the land in his own name being a married person in terms of Clause 4(e) of the brochure issued for the selection of the RGGLV. The said provision reads as under:-

“4. Common Eligibility Criteria for all Categories:-

(a) to (d)	xxx	xxx	xxx	xxx
(e)	xxx	xxx	xxx	xxx

'Family Unit' in case of married person/ applicant, shall consist of individual concerned, his/her Spouse 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).”

Counsel for the respondents has further submitted that the land owned by the father of the petitioner cannot be considered to be the land

CWP No.14451 of 2013

[3]

owned by him being a married son. In this regard, he has relied upon three judgments, namely, **Jitendra Sharma vs. Bharat Petroleum Corporation Ltd.**, 2014(2) MPLJ 459, **Gohil Vinjasinh Kunvarji vs. Union of India Department of Petroleum, Oil & 1**, MANU/GJ/1348/2011 and **Om Prakash Malhotra vs. The Union of India and others**, MANU/BH/1097/2015.

I have heard learned counsel for the parties and perused the record.

There is no dispute that until and unless the candidate like the petitioner fulfills all the eligibility criteria mention in Clause 4 of the brochure, his candidature cannot be considered for the purpose of putting him in the draw of lots. The issue involved in this case is as to whether the petitioner was having the land in his own name at the advertised place of allotment of distributorship for the purpose of constructing the godown and showroom? Admittedly, the petitioner does not own any land rather he has offered the land owned by his father. Clause 4(e), referred to above, specifically says that a married son would not fall within the family unit of his father for the purpose of offering the land. The judgments relied upon by learned counsel for the respondents are all in his favour. In this regard, the observations made in **Jitendra Sharma's case (supra)** are as under:-

“7. In the present case, the advertisement was published on 19.05.2012. Admittedly, petitioner's marriage took place on 13.06.2011. Whether or not it is deliberate, it is admitted that the initial information given by the petitioner about his marital status was incorrect. The petitioner furnished this information by Annexure P-

10 only when a spot inspection was carried out. The respondents have rejected the candidature on yet another ground. Apart from furnishing incorrect information about marital status, it is opined that as per the requirement of the brochure, the petitioner is not eligible. As per the brochure, the ownership is defined as under:-

“Own means having clear ownership title of the property in the name of applicant/family member of the 'Family Unit' as defined in multiple dealership/distributorship norm. In case of ownership/co-ownership, by family member consent letter from the family member will be required.”

Clause 4(e) defines family unit as under:--

"Family Unit' in case of married person/applicant shall consist of individual concerned his/her Spouse and their unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'family Unit' shall consist of individual concerned, his/her parents unmarried brother(s) and unmarried sister (s). In case of divorce '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).

8. Although Shri Yogesh Chaturvedi has taken pains to submit that definition of 'family unit' is irrational, arbitrary and unjustifiable, I am not impressed with this argument. It is said to be arbitrary by taking assistance of certain provisions of Contract Act and Succession Act. In the considered opinion of this Court, the candidature

and eligibility of the petitioner is to be tested on the anvil of the eligibility conditions laid down in the brochure. In other words, if petitioner fulfils the eligibility conditions mentioned in the brochure, then alone he can be said to be an eligible candidate. To decide petitioner's eligibility, no assistance can be sought from the Contract Act or from the Succession Act. More-so, when petitioner has not chosen to challenge the validity of the brochure/criteria for selection. Thus, in absence of any such challenge, this Court is not obliged to examine the validity of eligible conditions. As per the definition of family unit, in case of a married person, it is clear that it includes the said person/candidate, his/her spouse and their unmarried children. Thus, it is crystal clear that for a married person, father is not part of the family unit. Admittedly, petitioner is a married person and his father's land cannot be taken into account to decide the eligibility of the petitioner.”

Similarly, in **Gohil Vinjasinh Kunvarji's case (supra)**, the following observations have been made:-

“10. It is not disputed that at the time of making the application on 25.10.2010, the petitioner did not own land at the advertised location, for the construction of a godown, as per the eligibility criteria prescribed in clause 3(g) of the advertisement. The petitioner has submitted a consent letter given by his father, along with the application. A perusal thereof reveals that the father of the petitioner has consented to transfer land to the name of the petitioner, in the event that the petitioner is given gas distributorship. Such a document would not confer eligibility on the petitioner, as the petitioner did not own

the requisite land on the date of making the application. Though the father of the petitioner appears to have transferred land to the name of the petitioner, subsequently, this would not confer eligibility to the petitioner, when none existed at the time of making the application. There is no clause in the advertisement that stipulates that a subsequent transfer of land would make the applicant eligible, even if he was not eligible at the time of making the application. The eligibility criteria of the petitioner has to be seen as on the date of making the application and not subsequent thereto. Admittedly, the petitioner is married, and his family unit would comprise of himself, his wife and unmarried children, if any. Being an adult, married person, he would not be included in the family unit of his father. The fact remains that on the date of making the application, neither the petitioner, nor his spouse or unmarried children, if any, owned any land at the advertised location. In these circumstances, as the petitioner did not fulfil the eligibility criteria as stipulated in the advertisement, his candidature has rightly been rejected by respondent No. 2. The petitioner has been informed by communication dated 08.12.2010 that he has been found to be ineligible and has been permitted to make a representation before 28.12.2010. The petitioner has made a representation dated 27.12.2010. The contents of the said representation are not known, as this document has not been placed on the record of the case. However, after considering the representation dated 27.12.2010, respondent No. 2 has informed the petitioner, vide impugned order dated 03.02.2011, that he has not been found to be eligible, as he did not own land in his name at the advertised

CWP No.14451 of 2013

[7]

location, on the date of the application.”

In **Om Prakash Malhotra's case (supra)**, the following observations were made by the Patna High Court:-

“11. From the above, it is more than abundantly clear that if an applicant is married, his/her family unit will consist of his/her spouse and his/her unmarried son(s) and daughter(s). Only in case, when the applicant is unmarried, his/her family unit will consist of his/her parents, unmarried sister(s) and brother(s). Since the appellant herein is a married person, his family unit consisted of his wife, his unmarried son(s) and daughter (s); but in no case, his father could come within the family unit as explained in Clause 6 (f) of the Brochure.”

I concur with the views taken by the aforesaid High Courts while interpreting the provisions of Clause 4(e) of the brochure and hold that the married son cannot take advantage of the holding of the land of his father as he would not be a part of the family unit.

Consequently, finding no merit in the present writ petition, the same is hereby dismissed, though without any order as costs.

March 17, 2016
vinod*

(Rakesh Kumar Jain)
Judge