

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

CWP No.17555 of 2016 (O&M)
Date of decision: 06.10.2016

Jaswant Singh

.... Petitioner

versus

Union of India & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Manoj Bajaj, Advocate
for the petitioner.

Mr. Vinod Sharma, Advocate
for Union of India.

Mr. Raman Sharma, Advocate
for respondents No.2 & 3.

Mr. Manjit Singh, Advocate
for respondent No.4.

Rakesh Kumar Jain, J.(Oral)

The petitioner is seeking mandamus to declare the action of respondents No.2 & 3 as wrong and illegal in selection of regular LPG distributor while issuing letter of intent dated 17.06.2016 to respondent No.4.

In short, the facts, as narrated in the Court, are that an advertisement was issued on 20.11.2013 by the three oil companies namely Indian Oil Corporation Ltd. (IOCL) Bharat Petroleum Corporation Ltd. (BPCL) Hindustan Petroleum Corporation Ltd. (HPCL) for the purpose of appointing LPG distributors at various locations under different categories in the State of Haryana including the location at Ellanabad, District Sirsa under the OBC category in the Urban Area. The petitioner and respondent No.4 were among 19

applicants. The allotment was to be governed by the Brochure on Guidelines for Selection of Regular LPG Distributors, August 2013 (for short 'the guidelines') in which Clause 6 deals with the eligibility criteria for individual applicants. Sub Clause (vii) or (viii) of Clause 6.1 requires offer of land, owned by the applicant or by registered lease deed for the purpose of construction of godown or showroom of specific dimensions. Clause (vii) or (viii) are reproduced hereunder:

*(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 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 M x 30 M 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 and 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 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) Own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metres by 4.5 metres **as on the last date for submission of application as specified in the advertisement or corrigendum (if any)** at the advertised location or locality mentioned in the advertisement. It should be easily accessible to general public through a suitable approach road.*

*In case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metre by 4.5 metre **as on the last date for submission of application as specified in the advertisement or corrigendum (if any)** at the advertised location or*

locality as specified in the advertisement, the details of the same can also be provided in the application.

The last date of submission of application form was 20.12.2013. The petitioner submitted the application form on 19.12.2013 along with registered lease deed for the purpose of godown and showroom. The lease deed should be for a minimum 15 years. The registered lease deed submitted by the petitioner was short of 2/3 days to complete 15 years. The applications of 9 applicants were rejected including the petitioner on 04.08.2014 (Annexure P-4) because he was not meeting the necessary criteria as stated above. The draw of lots was held for the remaining 10 candidates on 27.12.2014 in which respondent No.4 was the successful candidate. Before letter of intent could have been issued to respondent No.4, letter dated 21.01.2015 was issued by the Ministry of Petroleum and Natural Gas, Government of India on the subject of reckoning of lease period for considering the applications for retail outlets. The relevant extract of the said letter is as under:

- *Applications are being rejected on the ground that the period of lease 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 the provision of reckoning 15 years 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 applicants, 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 case relating to the above and pending in different judicial Courts should be reviewed and appropriate action in accordance with the above direction to be submitted before the various Courts.*

The oil company, pursuant to the said letter, informed the petitioner on 03.04.2015 (Annexure P-5) that because of change in the guidelines, scrutiny of the applications qua eligibility on account of lease period is being redone. Because of letter dated 21.01.2015, the oil company cancelled the earlier draw of lots held on 27.12.2014, which was challenged by respondent No.4 and many others by filing Civil Writ Petition No.7280 of 2015. While issuing notice to oil company, the operation of the communications dated 05.04.2015 and 03.04.2015 was stayed.

While bunch of writ petitions were pending, Ministry of Petroleum and Natural Gas again issued letter dated 25.02.2016 regarding selection guidelines. The relevant extract is reproduced as under:

"I am directed to convey the approval of the Competent Authority, in supersession of this Ministry's letter of even number dated 18.12.2015, to the following modalities for resumption of pending Regular LPG distributorship:

	<i>Existing Status</i>	<i>Proposed</i>
1	<i>Locations where draw has been held</i>	<i>Proceed with FVC with the Guidelines of March 2015 (pertaining to (i) ownership of land (b) approach road and (c) Funds in bank and (d) lease period reckoning</i>
2	<i>Locations which are due for draw/redraw</i>	<i>Conduct scrutiny of application forms with the Guidelines of March 2015 pertaining to (i) ownership of land (b) approach road (c) Funds in bank and (d) lease period reckoning</i>
3	<i>Locations where draw was declared cancelled on the issue of reckoning of 15 years lease period</i>	<i>Withdraw the cancellation order; approach court citing the changed action plan, by which the grievances of the petitioners are being addressed</i>
4	<i>Locations due for re-advertisement</i>	<i>Advertisement will be issued after the new selection policy comes into being</i>

2. I am also directed to convey the approval for following Action Plan also:

- a) There will be no requirement for issuing corrigendum/addendum to the advertisement already published.
- b) Outcome of draw and LOI whatever has happened, will be considered as settled.
- c) Period of lease will be reckoned from the date of the advertisement.
- d) Land Ownership will include all inheritances.
- e) Funds arrangement by candidate will take into account funds as on relevant date in all banks.
- f) Locations where draw has not been held will be scrutinized following the above conditions (c to e).
- g) Approach road at the time of FVC will consider the possibility of making provision for approach road within time given to LoI.

3. You are requested to furnish the action taken report latest by 28.02.2016 to this office."

Since there was a change in the earlier guidelines on 21.01.2015 as understood by the oil company, therefore, one of the

writ petitioners approached this Court by way of writ petition No.6401 of 2015 challenging the letter dated 21.01.2015, which was dismissed as rendered infructuous on 31.03.2016 and on the basis thereof, all the writ petitions were dismissed as infructuous. Order passed in CWP No.6401 of 2015 is reproduced as under:

"CWP No.6401 of 2015

The only grievance of the petitioner in the present writ petition filed under Articles 226/227 of the Constitution of India is against the notification No.R-30015/4/2015-MC dated 21.01.2015 (Annexure P-15) issued by respondent No.3 – Ministry of Petroleum and Natural Gas, Govt. of India because of which L.O.I. (letter of intent) is not being issued.

Learned Addl. Solicitor General of India and learned counsel for respondent-Bharat Petroleum Corporation Ltd. (for brevity, B.P.C.L.) stated that the aforesaid notification has been withdrawn by the Ministry of Petroleum and Natural Gas, Govt. of India vide letter dated 25.02.2016.

In view of the above, instant petition has become infructuous.

Dismissed as infructuous.

However, respondent No.1 – BPCL will be at liberty to proceed in accordance with law."

Thereafter on 17.06.2016 the oil company issued Letter of Intent to respondent No.4, who has raised construction of godown and showroom, which is depicted by photographs (Annexure R-4/13).

Aggrieved against issuance of Letter of Intent, the present petition has been filed by the petitioner.

Learned counsel for the petitioner has vehemently argued that letter dated 21.01.2015 has not been superseded by letter dated 25.02.2016 by virtue of which the cancellation of his earlier application by letter dated 04.08.2014 was revoked on 03.04.2015 and therefore,

he has prayed that the draw of lots be held again by including the application of the petitioner.

On the other hand, learned counsel for the respondents have submitted that the letter dated 21.01.2015 does not exist any more after issuance of letter dated 25.02.2016 by the Ministry of Petroleum and Natural Gas. It is particularly mentioned, during the course of argument, that in the letter dated 25.02.2016 it is provided that "Location where draw was declared cancelled on the issue of reckoning of 15 years lease period - proposal was - withdraw the cancellation order; approach court citing the changed action plan by which the grievances of the petitioners are being addressed". It is submitted that in this case draw was cancelled because of letter dated 21.01.2015. The said letter was cancelled and the same become in operational again. He has also referred to Clause 2(b) of the letter dated 25.02.2016 in which it is provided that outcome of draw and LoI whatever has happened will be considered as settled. It is submitted that outcome of draw of lots is that respondent No.4 was successful candidate and because of letter dated 17.06.2016, his right was settled. The petitioner has already lost his right by letter dated 25.02.2016.

I have heard learned counsel for the parties and perused the case file and am of considered opinion that the petitioner does not have any right in the present writ petition to challenge the Letter of Intent dated 17.06.2016 issued in favour of respondent No.4 after the letter dated 25.02.2016 in which it is categorically provided that locations where the draw has been cancelled on the issue of reckoning of 15 years lease period, the cancellation order has to be withdrawn,

meaning thereby that the earlier draw of lots in which the candidate, who was successful has to be considered as settled and there is no need to hold a fresh draw of lots. In view thereof, the respondents have rightly issued Letter of Intent to respondent No.4. No other point has been raised by learned counsel for the petitioner.

Accordingly, the present petition stands dismissed.

06.10.2016
sonia

(Rakesh Kumar Jain)
Judge

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| 1. | Whether speaking/reasoned? | Yes/No |
| 2. | <i>Whether Reportable?</i> | <i>Yes/No</i> |