In the High Court of Punjab and Haryana at Chandigarh.

CWP No.9585 of 2016
Decided on 26.5.2016

Sushma Chauhan

--Petitioner

Vs.

Union of India and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Madan Pal, Advocate,
for the petitioner

Mr.Raman Sharma,Advocate
for the respondents

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Rakesh Kumar Jain,J: (Oral)

This petition is filed to challenge the order dated 04.4.2016 passed by Bharat Petroleum Corporation Limited (for short, 'the Corporation') rejecting the candidature of the petitioner for the purpose of allotment of LPG Distributorship at Pipli, District Kurukshetra.

Brief facts of the case are that the respondents issued an advertisement dated 20.11.2013, inviting applications for allotment of regular LPG Distributorship at various places in Haryana including Pipli, District Kuukshetra. Attracted by the advertisement, the petitioner applied for allotment of LPG Distributorship vide her application dated 20.12.2013, which otherwise was the last date for filing of the application form.

Shorn of unnecessary details, it would be pertinent to mention here that the dispute in this case is about Clause vi of the Guidelines on Selection of Regular LPG Distributorship (Applicable to all locations Advertised/Re-advertised from May 13, onwards) (for short, the Guidelines) which reads as under:-

> "Having minimum total amount of ₹15 lakhs for Urban Markets and 10 lakhs for Urban-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 Bank/ 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 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)”

According to the aforesaid provision, in case of LPG Distributorship for Urban and Rural Markets, the applicant has to maintain an amount of ₹10 lakhs as the closing balance on the closing date of the application. The applicant could also maintain the amount of ₹10 lakhs as a family unit as well. The 'Family Unit' is defined in the aforesaid Guidelines which are reproduced 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 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)”.

The petitioner in her application form mentioned the amount of ₹10, 32,195.60 which was obviously more than ₹10 lakhs. However, in the said application form, it is categorically provided that “*Note: The amount declared above in each case must be available as closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any) and the same will be verified during Field Verification”*.

It is also provided in the application that *"if any information given in it is found to be false, the OIC would have a right to cancel the allotment. The petitioner has also given her undertaking in this regard on the printed application form.*

The petitioner was successful in draw of lots. Thereafter, as per the procedure, Field Verification was held in which it was found that *"In this connection,we have already certified on your letter dated 08.07.2015 that FDR DA-568 is in the names of Shri Subhash Chand & Sh. Madan Pal sons of Shri Singh Ram. As on 20.12.2013 Shri Subhash Chand was having half share in the FDR to the extent of ₹503546/-".*

The petitioner submitted a certificate dated 20.12.2013 obtained from Punjab National Bank in which it is certified that Shri Subhash Chand son of Sh.Singh Ram was having two FDR Nos.2549000100073474 amounting to ₹5,28,649.60 and 254900DA00000568 (½ share) amounting to ₹5,03, 546.00, total of which comes to ₹10,32,195.60/- which has been mentioned by the petitioner in her application form which shows that the petitioner was not having any amount of her own and has relied upon the account of her father in order to fulfill the condition of Clause vi of the Guidelines.

It is also pertinent to mention here that on 29.2.2016, the respondents had informed the petitioner in the following manner:-

> "During Field Verification of Credentials (FVC) of the information given by you in application form, it is observed that the total liquid fund available with you/member of your family unit is on last date of submission of application is not matching with the same furnished by you in the application.
>
> Hence you are requested to submit detail of any additional liquid funds available as on the last date of

> submission of application (20.12.2013) in your name or in the name of member of your family unit as per clause no.6.1 (vi) of Brochure of Guidelines for selection of Regular LPG distributors, August,2013".

Pursuant thereto, the petitioner submitted her reply dated 21.3.2016, relevant portion of which is reproduced below:-

> "That there are 15 acre land in the name of my father (cost about ₹15 crore) in village Mathana, District Kurukshetra and my father obtained a agriculture limit of ₹40,00,000/- from AXIS Bank, Karnal. Out of these ₹40,00,000/- my father taken ₹32,76,515.80/- from the said bank through A/CNo.913030016900563 and remaining ₹7,23,484.20/ as on 20.12.2013 can be withdrawn/taken at any time. Thus, this is the additional amount which is readily available with me and it can be taken at any time as per your requirement for Regular LPG Distributorship."

As a matter of fact, the petitioner has now referred to a limit sanctioned by the AXIS Bank to her father on his A/C No.913030016900563. According to the petitioner, her father was sanctioned ₹40,00,000/-, out of which he has taken ₹32,76,515.80/ and still the available limit is of ₹7,23,484.20/. Therefore, it is contended that the said amount is liquid cash available with her father which would satisfy the condition of Clause vi of the Guidelines.

The respondents, however, did not accept this offer made by the petitioner and vide order dated 04.04.2016 passed the impugned order, the relevant portion of which is reproduced below:-

> "As per the details provided by you in your revised application form received by us on 5.9.2014, you had mentioned liquid fund of ₹13,28,649/- out of which ₹5,28,649/- in PNB Account, in the name of Subhash Chand, your father. Apart from that, your have mentioned funds ₹8,00,000/- in the form of financial assistance from your father and Grand Uncle, in case the distributorship is allotted to you and enclosed affidavits from your father and uncle. The affidavits cannot be

considered as per guidelines.

You have also mentioned of funds of ₹4,75,000/- in Fixed Deposit Account. During FVC it was observed that the fixed deposit of ₹10,29,899/- was in the joint name of your father and uncle. Since the uncle does not comprise the member of family unit, the amount in the FD could not be considered.

However, during the FVC, it was observed that the total liquid fund available as on last date of submission of application was only ₹5,28,649/- You were also given an opportunity to submit details of additional/ alternate liquid funds including funds in non-scheduled banks in your name or member of family unit's name. But you could not provide details of additional/ alternate liquid funds that can be considered as per regular LPG Distributors selection guidelines of March,2015..

As per clause 9.1. vi of Common Eligibility Criteria for all Categories applying as individual of PSO OIL MARKETING COMPANY'S MANUAL FOR SELCTION OF REGULAR LPG DISTRIBUTORS, MARCH, 2015.

The applicant should have minimum total amount of ₹15 lakhs for Urban Markets and ₹10 lakhs for Urban-Rural Markets respectively as the closing balance on the last date for submission of application as specified either in the advertisement or corrigendum(if any). This amount is to be arrived at by adding amount in the financial instruments namely Saving Bank accounts in Bank/ Post Office, free and un-encumbered Fixed Deposits in banks, Post Office, Listed Companies/Government Organisation/ Public Sector Undertaking of State and Central government, Kisan Vikas Patra, SC, Bonds, Share of Listed Companies, Listed Manual 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'.

View above, your candidature is not found to be eligible for regular LPG distributorship at Pipli, District Kurukshetra (Haryana)".

According to the petitioner, cash limit of the AXIS Bank has not been considered by the respondents in their reply. It is also contended that the respondents have erred in not considering the certificate of the Punjab National Bank dated 20.12.2013 in which it is specifically mentioned that in the FDR A/C No.254900DA00000568, father of the petitioner has ½ share to the extent of ₹5,03, 546.00/ and the other FDR is bearing A/C No. 2549000100073474 amounting to ₹5,28,649.60/- about which there is no dispute, the total of both the FDRs comes to ₹10,32,195.60/-.

On the other hand, learned counsel for the respondents has submitted that the FDR bearing A/C No.254900DA00000568 cannot be considered to be the FDR of the father of the petitioner alone as per the certificate issued by the Punjab National Bank which reads as under:-

> "This is to certify that FDR bearing Number (254900DA00000568) DA-568 for ₹95000/- was originally issued in the name of Shri Subhas Chand S/o Shri Singh Ram resident of VPO Mathana, District Kurukshetra on 19.01.2013 for a period of 1111 days i.e. upto 04.02.2016. Second name of Shri Madan Pal son of Shri Singh Ram was added in the account on 07.10.2013 at the request of the original depositor Shri Subhash Chand with mode of operation as '**Either or Survivor**' wherein any one of them can withdraw full amount of the FDR. In the absence of claim from any of the depositors, both have equal right (½ share) in the deposit. In view of above, out of ₹10,07,092/- outstanding on 20.12.2013, half share of ₹5,03, 546/- belongs to Shri Subhash Chand".

It is contended by the learned counsel for the respondents that initially the said FDR was of ₹9,50,000/- but on 07.10.2013, father of the petitioner had added the name of his brother Madan Pal in the said account and on his request, mode of operation of the said FDR was '**Either or Survivor**'. It is further submitted that since the said FDR was not now of one party alone, but of his brother Madan Pal as well who can withdraw the said FDR , therefore, it is wrong on the part of the bank to have given opinion that the FDR is to be considered as ½ share of both the brothers which was not the intention of the depositor.

As regards the certificate issued by AXIS Bank is concerned, it is submitted by learned counsel for the respondents that the said certificate is of no help to the petitioner because cash limit of ₹7,23,484.20/- has not been taken by the father of the petitioner and is not credited to his account to show that on the last date of submission of the application form on 20.12.2013, he had the said amount in his account to make the closing balance of more than ₹10 lakhs.

It is further submitted by learned counsel for the petitioner that brother of the petitioner is not a member of the family which constitutes a 'family unit' and any amount in his account cannot be considered to be the amount of the family of his father.

The learned counsel for the petitioner has relied upon a Division Bench judgment of the Allahabad High Court in the case of **Smt.Amrita Arya Vs. Union of India and 3 others** 2016 (115) ALR 596, whereas counsel for the respondents has relied upon a judgment of this Court in the case of **Raminder Singh Vs. Bharat Petroleum Corporation Ltd. and others** 2014 (3) PLR 392 which has been upheld in LPA No.832 of 2014 (O&M) Raminder Singh Vs. **Bharat Petroleum Corporation Ltd. and others** decided on 16.5.2014.

I have heard learned counsel for the parties and perused the available record with their assistance.

The issue involved in this case required to be adjudicated upon by this Court is as to *"whether on the last date i.e.20.12.2013 when the petitioner had filed her application form for the purpose of availing LPG Distributorship for Pipli, District Kurukshetra was having ₹10 lakhs or more in her account provided in the application form as a mandatory condition ?*

The entire case hinges upon the evidence led by the parties. The petitioner has led evidence in the shape of certificate issued by the Punjab National Bank dated 20.12.2013, wherein the FDR A/C No.254900DA00000568 to the extent of ₹5,03, 546.00/ has been ordered to be shown ½ share of her father but her father has also been issued certificate by the AXIS Bank in which the amount of ₹7,23,484.20/ has been shown as liquid cash in the hands of the father of the petitioner as she is an unmarried girl but the amount shown in the FDR A/C No. 254900DA00000568 cannot be said to be owned by the father of the petitioner alone because of the certificate issued by the Punjab National Bank.

Secondly, name of the brother of the petitioner namely Madan Pal was added on 07.10.2013 before submitting the application form and the said FDR is being operated on the basis of as **"Either or Survivor**, meaning thereby the amount of the said FDR can be withdrawn by Subhash Chand father of the petitioner or by his brother Madan Pal.

In view thereof, the petitioner cannot take the benefit of ½ share because the FDRs' entire amount belongs to the petitioner's father or petitioner's uncle who is not a member of the family unit.

Consequently, the certificate of AXIS Bank is of no help to the petitioner because it only shows that the petitioner's father has availed limit of ₹7,23,484.20/ which can be availed by him at any time but the said amount was not credited to her father's account on 20.12.2013, meaning thereby the conditions mentioned in the application form that the amount declared in the application form has to be available as closing balance on the last date, is not satisfied.

Insofar as the judgments relied upon the learned counsel for the parties are concerned, those are on their own facts but the facts of the present case are altogether different.

Hence, in view of my aforesaid discussion, I do not find any merits in this petition and the same is hereby dismissed without any order as to cost.

26.5.2016 **(Rakesh Kumar Jain)**
rr **Judge**