

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11645 OF 2014

Pratik Mhaske.

...Petitioner

Versus

1.Hindustan Petroleum Corporation Ltd.

2.Swapnil Ramchandra Yadav.

...Respondents

WITH

Civil Application No.2128 of 2016

Mr.Atul G.Damle, Senior Advocate with Mr.Nachiket V. Khaladkar, for the
Petitioner.

Ms.Ashiya Shaikh i/b. M/s.Rustamji & Ginwala, for Respondent No.1.

Ms.Duraiya S. Retiwala with Ms.Rashida Retiwala, for Respondent No.2.

**CORAM : SHANTANU KEMKAR &
 G. S. KULKARNI, JJ.**

DATE : NOVEMBER 7, 2017

PC..:

1. The petitioner was one of the applicant under the advertisement dated 29 September 2013 issued by the first respondent for allotment of LPG distributorship at Charholi, Alandi, Pune. By the impugned communication dated 7 May 2014, the first respondent informed the petitioner that the petitioner does not meet the eligibility

criteria for the reason that the petitioner did not have land for the godown in the advertised location as also the lease agreement as submitted by the petitioner was for the period 22 October 2013 to 21 October 2028 which was not for fifteen years as on the last date of submission of the application, as specified in the criteria under the said advertisement and hence, the petitioner was not found eligible.

2. It appears that the allotment process had proceeded and the second respondent was found to be eligible and a letter of intent (LOI) was issued on 28 August 2014. This petition was filed on 28 November 2014.

3. Respondent No.1 as also respondent no.2 have appeared and filed their respective counter affidavits opposing this petition. Respondent No.1 contends that the terms and conditions as set out in the brochure and the guidelines for the selection of LPG distributor in regard to requirement of the land, were clear. Our attention is drawn to Clause 6.1 which pertains to minimum lease period of the land. It is contended that after examining the documents of the petitioner, the petitioner was informed on 7 May 2014 about his non-eligibility as the petitioner did not own or had a clear fifteen years lease of the land for godown or showroom

as on the last date of submission of the form. It is contended that the final list of the eligible and ineligible applicants was declared on the website of the first respondent, as also the selection draw was conducted on 26 July 2014. It is stated that after completing all the formalities like construction of godown and showroom as per Petroleum and Explosives Safety Organization (PESO), specifications for Cylinder storage and showroom, the second respondent was appointed as distributor for location Charohli (Alandi) vide appointment letter dated 2 February 2015. It is stated that there is no illegality, arbitrariness or malafides in the decision taken by the first respondent which would affect any legal rights of the petitioner.

4. The second respondent in the counter has contended that appropriate procedure was followed by respondent no.1 and accordingly LOI was issued to the second respondent on 28 August 2014 which was a selection undertaken from other twelve eligible candidates. He says that he is operating the LPG distributorship since its commission on 2 February 2015 and is catering to the services of refill delivery to 4000 customers. It is further stated that he has invested an amount of Rs.30 lakhs in operating the said LPG distributorship, all required Government NOCs, explosive licenses have been obtained. Further he has also constructed a LPG godown and showroom and has provided furniture and fixtures etc.

It is submitted that the petition having been filed in November,2014,, in the circumstances, suffers from delay and laches.

5. Learned Senior Counsel for the petitioner submits that an opportunity ought to have been granted to the petitioner by the first respondent to remedy the lacunae in the documents. In support of his contention, learned Senior Counsel has referred to a circular issued by the Under Secretary to the Government of India, Ministry of Petroleum, dated 21 January 2015 and more particularly reference is made to paragraph 2 which reads thus:-

“2. The Hon'ble Minister (P&NG) has therefore desired that the 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 reviewed and appropriate action in accordance with the above direction to be submitted before the various courts.”

6. It is submitted that except for this infirmity in the lease document, the petitioner was eligible to participate in the selection in appointment of distributor.

7. We have gone through the advertisement in question inviting application for LPG distributorship and the terms and conditions in regard to the eligibility criteria. We have also perused the documents as placed on record. It is not in dispute that the lease agreement as submitted by the petitioner was not complying with the eligibility as provided by the first respondent and set out in the terms and conditions of the invitation, for awarding of LPG distributorship. The first respondent as per his procedure considered the proposal of the petitioner and by the impugned letter dated 7 May 2014 setting out clear reasons, declared the petitioner to be ineligible. It appears that thereafter a list of selected candidates was published and on 26 July 2014 a draw was conducted amongst twelve other eligible candidates and the second respondent having been selected was issued a letter of intent on 28 August 2014. This petition was filed almost after four months after the publication of list of selected candidates. In pursuance of the letter of intent, the second respondent had spent substantial amounts as also has obtained necessary licences and has actually commenced the distributorship from 2 February 2015.

8. In our opinion, in the facts of the case there was admittedly delay on behalf of the petitioner to approach this Court inasmuch as the petitioner was clearly aware of his disqualification as on 26 July 2014 as also of the LOI being issued to the second respondent. The petitioner belatedly approached the court in the last week of November, 2014. In these facts, the doctrine of laches is thus clearly attracted for us to come to a conclusion that the petitioner would not be entitled to any relief on this count.

9. Apart from the delay even on merits, we do not find any infirmity in the decision making process as undertaken by the first respondent to award the distributorship in question to the second respondent. The contention of the petitioner relying on the Circular dated 21 January 2015 issued by the Government of India (*supra*) would also not assist the petitioner. This for the reason that firstly this circular was issued much after the LOI was issued to the second respondent, as also it is made applicable in those cases where the LOI is not issued as clearly stated in paragraph (2) of the Circular as noted by us above. In the present case LOI was issued on 28 July 2014. Thus, there is no question of application of the said circular.

10. In the above circumstances, we find no merit in the present petition. It is accordingly dismissed. No costs.

11. As the petition is disposed of as aforesaid, pending civil application does not survive, it is accordingly disposed of.

(G. S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)