HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 14000, 14358, 14716, 14971, 15769, 17168 and 17205 of 2016

COMMON ORDER:

Since the question involved in all the writ petitions is one and the same, they are being disposed of by this Common order.

2) Taking W.P.No.14000 of 2016 as lead petition, I proceed to deal with the matter.

3) The Present Writ Petition came to be filed seeking to declare the action of the first respondent in issuing letter No.P-17011/7/2010-LPG dated 25.02.2016, by applying the guidelines used in March 2015 to the LPG distributor selections relating to the notification dated 15.09.2013 as illegal, arbitrary and consequently to set-aside the said letter and direct the respondents 2 and 3 to follow the terms and conditions of the notification dated 15.09.2013.

4) The facts in brief are as under:-

The second respondent along with Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited issued a Notification for the purpose of awarding LPG dealership at Nellimerla, Vizianagaram District vide Advertisement dated 15.09.2013. Pursuant to that, the petitioner submitted her application for the said Distributorship along with all the requisite documents. As per the said notification dated 15.09.2013, the applicant must own a suitable land for LPG godown and a showroom or must have a registered lease deed of a land and a showroom for a period of 15 years as on the last date of submission of the application. Further, the applicant has to maintain balance of Rs.15,00,000/- for Urban Market and Rs.10,00,000/- for rural market, as a closing balance, on the last date for submission of application, apart from fulfilling all the other conditions of the advertisement dated 15.09.2013. The total locations, identified under the advertisement dated 15.09.2013, are 499. Pursuant to the said advertisement, Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited completed their selection process, but the 2nd respondent could not complete the process of scrutiny of the applications. While things stood thus, the 1st respondent issued a letter dated 21.01.2015 showing the number of applications which were rejected on the ground that the period of lease is less than the prescribed limit. It further states that since in some cases it was short by few days, and it being hyper-technical, directed reckoning 15 years lease period from the date of advertisement, provided the letter of intent has not been issued to the successful candidate. Some of the applicants approached this Court, wherein the said amendment was set-aside, observing that the said amendments are not for the advertisement already issued. It is further stated that the first respondent, once again issued a letter dated 25.02.2016 revising the guidelines, giving a go bye to the terms and conditions of the notification dated 15.09.2013. The said letter directed the Oil Corporations to conduct the scrutiny of application as per the guidelines issued in March 2015. By which, the first respondent accommodated some of the applicants, whose applications are liable to be rejected, as they have failed to fulfill the actual terms and conditions of the earlier advertisement dated 15.09.2013.

5) The learned counsel for the petitioner would submit that the first respondent has every right to relax the conditions but the same would be applicable only prospectively but not retrospectively. It is mainly urged that by applying the conditions laid down after the notification, the second respondent is now considering the applications of the ineligible persons. Further, the learned counsel for the petitioner mainly submits that once the applications are invited basing on certain set of rules, the respondents/authority have no authority or right to change the same after receiving the applications and before making the final allotment. According to him, if the said process, as contemplated now is adopted, it would favour those applicants whose applications were rejected, basing on 2013 guidelines.

6) Respondents 2 and 3 filed their counter denying the allegations made in the affidavit except those which are specifically admitted. It is contended that no cause of action exists for the petitioner to file the present writ, since no orders of disqualifying are passed basing on guidelines issued in 2015. It is further contended that as the application of the petitioner is at the stage of consideration, there is no question of infringement of any rights. It

is specifically stated that neither the petitioner nor the other applicants would be disqualified by applying the 2015 guidelines as the said guidelines have taken into account the criteria of eligibility in 2013 guidelines and only relaxed the said 2013 guidelines in certain aspects and as such the number of candidates getting disqualified would be less and all the eligible candidates will get a fair opportunity. The candidates who got disqualified, filed writ petitions in various high courts across the country challenging their disqualification with similar notification issued in their state and in some of the cases the Hon'ble Courts passed orders in faovur of the respondent/corporation, upholding the disqualification. It is to be noted that in the year 2015, new comprehensive guidelines for appointment of LPG distributors were issued and in the said guidelines, the eligibility criteria in respect of four categories were relaxed making them more liberal, so that more number of candidates would qualify, and there would be a healthy competition. It is also stated that the guidelines issued in March 2015, have clarified the issues like ownership of land, approach road, funds in bank and reckoning of lease period. The respondents further stated that the letter dated 25.02.2016 has been issued only to bring clarity and to smoothen the process of selection of regular LPG distributorships and that it is neither illegal nor irrational.

7) Learned counsel for the respondents would submit that the request made by the petitioner is pre-mature and that since the

allotments are not yet be finalized, the petitioner cannot complain of any harm being done to them. He took me through the guidelines framed, the applications received and the results declared under 2013 guidelines and 2015 guidelines, to show that there is not much variance in the number of eligible applicants even if 2015 guidelines are adopted.

8) The subject matter of dispute in the present Writ Petition is; Whether the rules of game can be changed, while the play is on?

9) With regard to the ownership of land, as per the notification dated 15.09.2013, one must own the land for a LPG godown and a showroom or must have a registered lease for a period of 15 years. Whereas, as per the guidelines of March 2015, the land ownership will include all inheritances . By applying the said guidelines, the respondents are trying to accommodate the applications who are not having own land or having registered lease in their favour. Further, insofar as the availability of funds in the bank accounts is concerned, the Banks were directed to consider the funds available in the banks as on the last date for submission of applications, whereas, as per the impugned letter, the funds available as on relevant date in all the banks, was to be taken into account.

10) In **K.Manjusree v. State of Andhra Pradesh and another [(2008)3 SCC 512],** the Apex Court while dealing with the scaling down of ratio from 4:1 to 3:1 observed as under:

"Introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. "

11) In **Maharashtra SRTC v. Rajendra Bhimrao Mandve [(2001)10 SCC 51],** the Apex Court held that *"the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."*

12) In **Smt. Gurram Keerthi and others v. Union of India, rep.by its Under Secretary Petroleum & Natural Gas and others (W.P.No.8543 of 2015 batch),** this Hon'ble Court while dealing with 2015 guidelines and the revision made to the said guidelines held as under:-

"14. It would be evident from the events as mentioned above that the advertisement in accordance with the then existing guidelines of 2013, as extracted above, clearly stipulate the requirement of having a 15 years lease as on the last of date of submission of application and the same is, undoubtedly, satisfied by each of the petitioner. Thus, having been eligible under the existing guidelines as on the date of advertisement, each of the petitioners has participated in the draw of lots and has emerged successful. At this stage, however, the Government of India issued directions for revising the guidelines and eligibility criteria, which was altered to stipulate that the period of lease of 15 years shall be reckoned from the date of advertisement and not from the last of the date of submission of application.

The revised criteria normally would apply only to future advertisements. However, it was made applicable to the advertisement, in question, by modifying the eligibility criteria even under 2013 guidelines whereby entire selection process commenced and completed up to drawing of lots and declaration of successful candidates got nullified. Petitioners, who have emerged as successful candidates are now subjected to fresh selection process all over again on the basis of revised eligibility criteria, which is impermissible (See K.Manjusree v. State of Andhra Pradesh). To my mind, therefore, the revised criteria per se can apply only prospectively and not retrospectively."

13) It is not in dispute that the methodology adopted for lodging the LPG dealership was changed after issuance of notification. From the judgments referred to above, it is clear that rules once framed cannot be changed, during the course of play. In fact, in identical circumstances, this Court in **Gurram Keerthi and others v. Union of India, rep.by its Under Secretary Petroleum & Natural Gas and others,** while dealing with 2015 guidelines and revision made to the said guidelines found fault with the authorities in changing the norms for allotment of LPG dealership. It was categorically held that revised guidelines would normally apply to future advertisements and not to the advertisement which was already issued.

14) Having regard to the above, the Writ Petitions are allowed setting aside the impugned letter No.P-17011/7/2010-LPG dated 25.02.2016. No costs. Miscellaneous Petitions pending if any in these Writ Petitions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 19.07.2017
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