

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 12115 of 2016

Date of decision : September 27, 2017

Onkar Nath

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Nr. Abhishek Bajaj, Advocate
for the petitioner.

Mr. Ashish Kapoor, Advocate

Mr. P. K. Mutneja, Advocate
for respondent No.4.

RAKESH KUMAR JAIN, J (oral).

The petitioner has challenged the order dated 8.9.2014 by which his application for allotment of distributorship has been cancelled and the instructions dated 25.2.2016, issued by the Ministry of Petroleum & Natural Gas, in which it is provided that the period of lease will be reckoned from the date of the advertisement.

Shorn of the unnecessary details, the respondent Indian Oil Corporation (for short 'the Corporation') initially issued an advertisement on 19.1.2013 for inviting applications for appointing the distributors in various categories at various locations, including the location at Balachaur in District SBS Nagar, in open category. However, the said advertisement was later on withdrawn and another advertisement was issued on 26.10.2013 prescribing the last date for submission of application as 25.11.2013. The Corporation issued a brochure on guidelines for selection of regular LPG Distributors in August, 2013 in which it was provided that

agreement for minimum 15 years in the name of applicant/family member (as defined in multiple distributorship norm of eligibility criteria) as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership//co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required.”

The petitioner filed his application along with two lease deeds dated 22.1.2013 in respect of the showroom which was valid from 22.1.2013 to 22.1.2028 and the other one from 23.1.2013 for godown valid from 23.1.2013 to 23.1.2028. The petitioner was held ineligible to participate in draw of lots held on 18.12.2014. However, LOI was not issued and the petitioner was informed about the cancellation of his candidature much before the draw of lots on 18.12.2014. The writ petition was filed on 1.6.2016 to challenge the order of rejection dated 8.9.2014 because in the meantime, on 21.1.2015 the Ministry of Petroleum and Natural Gas issued a letter, that the Minister of Petroleum and Natural Gas has observed, that 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”. Thus, he desired that the provision of reckoning 15 years lease period from the date of advertisement may be extended to such cases provided LOI has not been issued to the successful candidates. In that matter, the letter further narrates that :-

- 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 of 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.”

It is also pertinent to mention that before the writ petition was filed on 1.6.2016, the impugned circular regarding selection guidelines came into being in which it was provided that “ period of lease will be calculated from the date of advertisement”. It is also submitted that before filing of the writ petition, the candidature of respondent No.4 was also withdrawn.

Counsel for the petitioner has submitted that the petitioner had taken the property on lease on 22.1.2013 for the show room and 23.1.2013 for the godown pursuant to the advertisement dated 19.1.2013 but unfortunately, the said advertisement was withdrawn and the locations for the purpose of LPG Distributorship were again advertised on 26.10.2013. It is submitted that there is no fault of the petitioner because the petitioner had bona fide taken the property on lease and was sanguine that the said lease would be taken into consideration by the Corporation in respect of the advertisement dated 26.10.2013 as well, particularly when there is a renewal clause of 5 years in both the lease deeds.

It is also submitted that even if there was some deficiency in the lease deed on the part of the petitioner as it was not of

minimum period of 15 years, the brochure provides that the petitioner could have rectified the deficiency for which the Corporation should have given the opportunity. It is further submitted that the case of the petitioner has been rejected on 8.9.2014 on the ground that he was not having valid lease of minimum period of 15 years from the date of advertisement whereas in the circular dated 21.1.2015 issued at the instance of the Ministry of Petroleum & Natural Gas the period of 15 years was reckoned from the date of submission of the application. It is also submitted that the instructions dated 25.2.2016, which has also been challenged, came during the pendency of the proceedings in which it is provided that the period of lease deed will be reckoned from the date of advertisement though it should have been from the date of submission of the application.

On the other hand, learned counsel appearing on behalf of the respondent-Corporation has submitted that the advertisement dated 19.1.2013 was withdrawn and the lease deeds dated 22.1.2013 and 23.1.2013 cannot be taken into consideration in view of the definition of “own” provided in the brochure. The petitioner was supposed to act in terms of the advertisement dated 26.10.2013 and should have prepared the lease deeds after cancellation of earlier lease deeds dated 22.1.2013 and 23.1.2013 so that it should have the required period of minimum 15 years.

It is also submitted that clause 8.5 of the brochure is not applicable to the lease deeds because it is a mandatory condition and such deficiency cannot be rectified. It is further submitted that the instructions dated 21.1.2015, even if applied in the case of the petitioner, would not make the petitioner eligible if the period of 15 years is counted from the date of submission of the application.

It is further submitted that the instructions dated 25.2.2016 even if, not applied to the case of the petitioner, still the case of the petitioner cannot be improved because he is loosing both from the date of advertisement as well as from the date of submission of the application.

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

The question involved in this case is as to whether the candidature of the petitioner has rightly been cancelled on the ground that he was not having the minimum period of 15 years valid lease deed at the time when he had submitted the application for allotment of distributorship?

The parties are bound by the provisions of brochure in which it is one of the eligibility criteria that the person who applies for the dealership must have ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant/family member (as defined in multiple distributorship norm of eligibility criteria) as on the last date for submission of application.

In the present case, the advertisement is dated 26.10.2013 and the last date to submit the application form was 25.11.2013. It is admitted that the petitioner had submitted the application form with two registered lease deeds dated 22.1.2013 and 23.1.2013 for the showroom and godown respectively but both the lease deeds, even if considered from the date of the advertisement and submission of the application form do not meet the criteria.

Now the question would be as to whether the petitioner could be given the benefit of Annexure P-5?

It may be noticed that the petitioner was informed vide

letter dated 8.9.2014 that his case has been rejected because he was not having valid lease deeds from the date of advertisement. The instructions dated 21.1.2015 issued by the Ministry of Petroleum and Natural Gas says that the provision of reckoning 15 years lease period from the date of advertisement may be extended in certain cases. It was the case where even if the period is extended for reckoning 15 years from the date of submissions but still the petitioner do not fulfil the minimum period of 15 years. The petitioner has been loosing on both counts namely if the period of 15 years is to be counted from the date of advertisement or it is counted from the date of submission of application. Thus, to my mind, the instructions dated 21.1.2015 are not of any help to the petitioner.

No other point has been raised.

I do not find any merit in the present writ petition and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

September 27, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No