

CWP-14157-2015 (O&M)

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

**CWP-14157-2015 (O&M).
Decided on: March 21, 2017.**

Harpreet Singh

.. Petitioner(s)

VERSUS

Bharat Petroleum Corporation Ltd. and others

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Mr.Harpal Singh Sirohi, Advocate,
for the petitioner.**

Mr.Raman Sharma, Advocate, for respondents.

M.M.S. BEDI, J. (ORAL)

The petitioner claims that he belongs to OBC category and being eligible for LPG distributorship at Chheherta, Amritsar, Punjab, he applied for being appointed as LPG distributor on 20.11.2013 along with requisite fee of Rs.1000/-. He had appended along with his application form 16 years lease deed of the land for LPG godown as well as of showroom duly attested by Notary Public. The petitioner claims that his application was considered and the only deficiency found in his application regarding OBC certificate was communicated to the petitioner vide Annexure P3 dated 14.2.2014, requiring the petitioner to submit the eligibility certificate for the OBC category as per appendix-3B as per the prescribed format.

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Petitioner had removed the said objection of deficiency by supplying the certificate vide Annexure P4 dated 16.10.2014. The petitioner was informed that he has qualified for draw for selection of LPG distributorship and was required to be personally present along with photo identity card on 5.11.2014. The petitioner was intimated vide Annexure P5, dated 11.11.2014 that he had been declared as selected candidate during the draw held on 5.11.2014 and was required to deposit sum of Rs.25,000/- which was to be adjusted against the security deposit of Rs.2,50,000/- which would be payable at the time of appointment of LPG distributorship. In letter Annexure P5, it was mentioned as follows: -

“Please also note that if in the FVC (Field Verification Credentials), the information given in your application is found to be false/incorrect/misrepresented affecting your eligibility, the said amount of Rs.25,000/- paid by you before conducting the FVC, will be forfeited along with the cancellation of your candidature.”

The respondent-Corporation submitted an application to Tehsildar for verification of the showroom land for LPG distributorship at Chheherta, Amritsar. The petitioner got the lease deed Annexure P7 registered on 8.1.2015, as such, Tehsildar informed that the lease deed for 16 years had been registered on 8.1.2015. Vide Communication Annexure P10, the petitioner was informed that upon field verification the information submitted by the petitioner in the application pertaining to the ownership/ lease deed of land for godown and the condition of having owned/leased land for showroom in his own name or member of family unit, was not

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fulfilled.

In view of said circumstances, the petitioner's candidature was rejected. The amount of Rs.25,000/- deposited with the Corporation was ordered to be forfeited.

The petitioner approached this Court by filing CWP No.11079 of 2015, challenging rejection of his application. The said petition was withdrawn being not maintainable under the guidelines for selection of regular LPG distributorship and thereafter, appeal Annexure P11 was filed.

Counsel for the petitioner has again challenged the order Annexure P10, in this writ petition stating that there has been no response to his appeal.

Counsel for the petitioner submits that since the petitioner fulfilled all the eligibility conditions, the application for allotment of distributorship has been wrongly declined.

Counsel for the respondent has vehemently contended that eligibility was required to be seen on 25.11.2013 on which date the petitioner did not fulfill the eligibility criteria under para 6.1 of Broucher of Guidelines for Selection of Regular LPG Distributors. He relies upon para 8.2 which provides that any application received after the cut off date i.e. the specified closing date, was not to be entertained. He relies upon the judgment of Hon'ble Supreme Court in **Bharat Petroleum Corporation Limited and others Vs. Swapnil Singh, 2016 (1) Cal. Law Times 58,** wherein Hon'ble the Apex Court had set aside the judgment of Calcutta

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High Court which had recognised the notarised lease agreement in favour of applicant holding that the applicant was eligible on the last date of hearing in terms of the notarised lease agreement. Hon'ble the Apex Court in para 8 of the judgment held as follows:-

“We have gone through the records of the case along with the assistance of learned counsel for the parties and we find that the brochure read with the application form is absolutely clear in the sense that the applicant must be the owner of the specified area of land or must have a registered lease deed of the specified area of land on the date of application. The admitted position (which is also clear from the counter affidavit filed by the respondent in this Court) is that on 13th September, 2011, when the application for allotment was made, the respondent was neither the owner of any land nor had any registered sale deed/lease deed in her name. In fact, the lease deed came into existence only on 20th December, 2012 and that was registered on 21st December, 2012. Clearly on the date of the application, the respondent was not eligible in terms of the brochure and the application form.”

Counsel for the petitioner has contended that he was required to be given an opportunity of hearing before rejecting his application on the basis of his ineligibility. He has placed strong reliance on para 8.5 of the Brochure which reads as under: -

“Procedure for Receipt of application

Application would be received in sealed envelope only. After application is received, serial number would

be put on the envelope and also recorded in a 'Register.' Acknowledgement for applications received will be sent to the applicants.

In case deficiencies are found in the application, a letter would be sent to the applicant to rectify the deficiencies within a specified period of time.”

Counsel for the petitioner submits that in case any deficiencies are found in the application, a letter is required to be sent to the applicant to rectify the deficiency within specified period of time. It is contended by the counsel for the petitioner that no letter having been sent to the petitioner to rectify the deficiency within specified period of time, the petitioner was required to be given an opportunity of hearing as per the judgment of the Hon'ble Allahabad High Court in **Smt. Mamta Goswami Vs. Bharat Petroleum Corporation Limited (BPCL) and another, Writ -C No.64659 of 2014, decided on 4.2.2015** wherein relying on para 8.5 of the Brochure of the Corporation, it was held that the petitioner was entitled to an opportunity of hearing to rectify the deficiency. In the present case, the last date of hearing was 25.11.2013 on which date the petitioner did not fulfil the qualification of being a lessee by virtue of a registered document for land for godown. He acquired the eligibility after the last date of hearing. The judgment of Hon'ble the Apex Court in Swapnil Singh's case (supra) is dated 8.9.2015 whereas the judgment of the Hon'ble Allahabad High Court in case Smt.Mamta Goswami (supra) is dated 4.2.2015. The judgment of the Allahabad High Court in Smt.Mamta Goswami's case (supra) is on the same line as the judgment in Swapnil Singh's case of

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Calcutta High Court which has been set aside by the Hon'ble Supreme Court of India on 8.9.2015.

In all fairness to the petitioner, I have gone through the judgment in **Moumita Poddar Vs. Indian Oil Corporation Ltd., 2011 (6) RCR (CrL), 2623**, cited by the petitioner in support of his contention that lease deed even if unregistered can be considered

I have also gone through the conditions which were required to be fulfilled by applicant in said case. In the advertisement, the eligibility criteria provided for the grant of retail outlet dealership for petrol pump in the area of NorthEast of India were that the candidates should furnish along with the application, details of the land which he/she may make available for the retail outlet. There was no specific condition prescribed in the said selection criteria that the applicant should own land of particular specification or he should be a lessee by registered lease deed. In the said case, if the applicant, after selection was unable to provide land indicated by him in application form, within two months from date of letter of intent, the company had a right to cancel the allotment but in the present case the requirement was that applicant should have ownership of the property or registered lease deed agreement for minimum 15 years in the name of applicant and his family members. The said eligibility condition is sine qua non on the date of the application.

In view of said circumstances, the judgment in case **Moumita Poddar Vs. Indian Oil Corporation Limited, 2011 (6) RCR (CrL), 2623**, is not applicable to the facts of the present case.

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No ground is made out for interference.

The petition is dismissed without prejudice to the right of the petitioner to be considered in case at any stage, the selection process is to be reconsidered afresh.

(M.M.S. BEDI)
JUDGE

March 21, 2017.

rka	Whether speaking / reasoned	Yes / No
	Whether reportable:	Yes / No