

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9041 of 2016

Date of Decision: 26th September, 2017

Hardeep Singh

. . . . Petitioner

Vs.

Bharat Petroleum Corporation Limited and another

. . . .Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.M.S. Kohli, Advocate,
for the petitioner.

Mr.Raman Sharma, Advocate,
for respondent No.1.

Mr.Abhaypal Gill, AAG, Punjab.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 6.4.2016 by which his candidature for LPG distributorship has been rejected.

In brief, respondent No.1/Bharat Petroleum Corporation Limited [hereinafter referred to as 'the Corporation'] issued an advertisement on 26.10.2013 for allotment of the LPG distributorship on various locations in the State of Punjab including the location at Sangrur-2 under OBC category. The last date for submission of the application was 25.11.2013. The petitioner applied for the LPG distributorship after complying with the necessary formalities and his name was put in the draw of lots on 21.10.2014 in which he was successful. The petitioner deposited ₹25,000/- with the Corporation for the Field Verification of Credential [FVC]. In the FVC, the Corporation found that the petitioner did not submit registered lease deed at the time of filing of

application and also found the deficiency of funds. The Corporation thus passed the impugned order of cancellation of the candidature of the petitioner.

Learned counsel for the petitioner has vehemently argued that the petitioner had submitted notarized lease deed along with the application, filed before the cut off date and further submitted the registered lease deed at the time of FVC, therefore, the impugned order is patently erroneous and is liable to be set aside.

On the other hand, learned counsel for the Corporation has submitted that the submission of the registered lease deed is a *sine qua non* because the lease deed was for more than 11 months and it is so prescribed in the brochure. In this regard he has referred to the relevant para of clause 6 of the brochure, which reads thus: -

“ ‘Own’ means having ownership title of the property or registered lease agreement for minimum 15 yrs 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.”

Learned counsel for the Corporation has also relied upon a decision of this Court rendered in **CWP No.8383 of 2014** titled as **Nitish Behl**

Vs. Bharat Petroleum Corporation Ltd. and others decided on 5.10.2015 and a decision of the Supreme Court in the case of *Bharat Petroleum Corporation Ltd. and others Vs. Swapnil Singh* 2016(1) Cal. L.T. 58 to contend that the notarized lease deed was not accepted by the Corporation as it is provided in the brochure that the applicant has to submit registered lease deed.

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

The question involved in this petition is as to whether the candidature of an applicant can be cancelled if he submits a notarized lease deed at the time of filing the application, followed by the registered lease deed, after the cut off date?

In order to answer the aforesaid question, reference could be made to the provision of the brochure, which has already been reproduced hereinabove, in which the meaning of 'own' is defined as having ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant. It further says that the registered lease deed has to be submitted on or before the cut off date of submission of the application and the registered lease deed is required in terms of Section 107 of the Transfer of Property Act, 1882 [for short 'the Act'] in which it is provided that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Since the lease of minimum 15 years is required, therefore, in terms of Section 107 of the Act it has to be registered and is required to be supplied with the application on or before the cut off date.

The question involved in this petition is no more *res integra* in view of the decision rendered by Supreme Court in the case of *Bharat*

Petroleum Corporation Ltd. and others (Supra) in which a similar issue was involved. The Supreme Court while deciding the aforesaid case has recorded its finding, which read as under: -

“7. Feeling aggrieved, the respondent preferred an appeal before the Division Bench of the Calcutta High court and the Division Bench allowed the appeal, which has resulted in the present appeal before us.

8. 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.

9. The Calcutta High Court has proceeded on the basis of a notarized lease agreement which appears to have been produced by the respondent before the High Court. A photocopy of the notarized lease agreement has been shown to us and that document is dated 13th September, 2011. Learned counsel for the respondent has relied upon this document to contend that the respondent was eligible as on 13th September, 2011 in terms of the notarized lease agreement.

10. We are unable to accept this contention of learned counsel for the respondent. The brochure and the application form clearly require the applicant to have a registered lease deed in her name. What is shown to us is a notarized document and admittedly this document, even though it may have been in existence, was formalized into a lease

agreement only on 20th December, 2012 and that was registered on 21st December, 2012. The notarized document, therefore, does not advance the case of the respondent any further. Therefore, it is quite clear that the respondent was not eligible on the date of application i.e. 13th September, 2011.”

Similar view has also been taken by this Court in the case of **Nitish Behl (Supra)** that the lease deed has to be registered and the notarized lease is not acceptable.

In view of the above the question posed hereinabove is answered to the effect that at the time when the application is filed for the allotment of LPG distributorship, the applicant has to submit registered lease deed, if the period is more than one year and the notarized lease deed cannot be accepted. Moreover, it is also held that the defect committed at the time of submission of application before the cut off date cannot be cured by submitting registered lease deed thereafter.

With these observations, the present petition is hereby dismissed.

26th SEPTEMBER, 2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>