

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 2728 OF 2018**

Pushpa Vishal Ghuge,
 Age : 37 Years, Occ. Household,
 R/o. H. No.A/93/11, Behind Sai Mandir,
 N-11, Hudco, Aurangabad.

..PETITIONER

Versus

1] The Chief Area Manager
 Aurangabad Area Office,
 Indian Oil Corporation Ltd.,
 Indance Area Office, Abish Tower,
 1st Floor, Behind Baba Petrol Pump,
 Mahavir Chowk, Aurangabad

2. Jayshri Ananta Jawale,
 Age : 32 Years, Occ. Household,
 R/o. Kowadi, Tq. & Dist. Jalna

..RESPONDENTS

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Mr. V. P. Savant Advocate for the Petitioner.
 Mr. A. P. Bhandari, Advocate for the respondent No.1
 Mr. V.A. Bagal Patil, Advocate for the respondent No.2

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**CORAM :T.V. NALAWADE AND
 SMT.VIBHA KANKANWADI,JJ.**

RESERVED ON : 13th DECEMBER, 2018
 PRONOUNCED ON: 20th DECEMBER, 2018

JUDGMENT [PER T.V. NALAWADE J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The proceeding is filed for relief of direction against respondent

No.1 to see that the order dated 26.12.2017 made in favour of respondent No.2 by the respondent No.1 of giving LPG distributorship for location Shewali district Jalna is cancelled- withdrawn and consequential direction is also claimed for starting procedure for selection of LPG distributorship afresh or for fresh draw for selection.

3. The submissions made and the record show that respondent No.1 by its advertisement had invited application for the selection of LPG distributorship for location Shewali and it was to be given to OBC (Women) category. Respondent no.2 and the applicant had applied and there were 38 applications for this location. The petitioner was qualified for this location and accordingly intimation was given to petitioner on 18.12.2017 to inform that from eligible candidates selection was to be made by the procedure of draw of lots. In the draw of lots respondent No.2 was selected for the distributorship.

4. It is case of the petitioner that respondent No.2 was not fulfilling the eligibility criteria but respondent No.1 has given the distributorship to respondent No.2. It is specifically contended that as per the requirement, on the date of the application, it was necessary to possess land for construction of Godown. It is contended that if there was no ownership than it was necessary to possess registered lease deed in respect of the land of the date prior to the date of submission of

application. It is contended that as per the information received by the petitioner, respondent No.2 had submitted notarize rent document and affidavit of her father-in-law and only after the selection process was over, registered lease deed executed by her father-in-law was produced. It is contention that father- in-law is not covered by the definition of family unit given for the present purpose and so respondent No.2 was not qualified for selection. It is contended that petitioner had made complaint in aforesaid regard and had prayed for fresh draw but by the communication dated 09.02.2018 it was informed that the complaint was received after 30 days and so cognizance of it was not possible. On the date of petition the letter of intent was not issued but submissions made show that letter of intent came to be issued subsequently.

5. Along with the petition, a copy of advertisement is produced, which shows that it was the advertisement of respondent No.1 for the category of OBC (Women). In the advertisement, in clause No. 1 it was made clear that the detail guidelines of eligibility criteria for selection of LPG distributor, infrastructure requirement for land for LPG Go-down etc. along with the details of selection process were given in Brochure for selection of LPG distributors and which was to be downloaded from any of the oil companies website. The descriptions of the websites were given in the advertisement itself.

6. Copy of the brochure is produced in the present proceeding. In clause 8 (A) (m) there is condition in respect of Godown and relevant portion quoted is as under :-

Godown: Applicant should 'Own' a plot of land of capacity, minimum dimensions and located as specified below for construction of LPG Godown or 'Own' a ready LPG cylinder storage godown as on the last date for submission of application as specified either in the advertisement or corrigendum (if any)."

In clause 1 (w) the definition of ownership or "OWN" is given and it is as under :-

'Ownership' or "Own" for godown/showroom for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Keshetriya Vitrak Tye of Distributorship means having :

a. Ownership title of the property

or

b. Registered lease deed having minimum 15 years of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any)

Additionally, applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of 15

years from the date of advertisement. The applicant should have ownership as defined under the term 'Own' above in the name of applicant/member of " Family Unit" (as defined in multiple dealership/ distributorship norm of eligibility criteria)/parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law of the applicant or the spouses (in case of married applicant) as on last date for submission of application as specified either 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 declaration from the family member(s) will be required.

In case the share of land in the jointly owned property by the applicant/member of 'Family Unit' as defined in multiple dealership/distributorship norm)/parents and grandparents (both maternal and paternal) of the applicant or the spouse with any other person(s) meets the requirement of land including the dimensions required, then that land for godown/showroom should qualify for eligibility as 'own' land subject to submission of ' No Objection Certificate' in the form of declaration from other owner(s).

- x. ' Dependent'- For the purpose of determining eligible ' Dependent'

persons who are considered as dependent family members' under Central Government Health Scheme (CGHS) will only be considered.

- y. Location- In this document, would location means the area identified for setting up of new LPG Distributor. It can be a locality/village/cluster of villages/town or city which is mentioned in the Notice for Appointment of LPG Distributors."

7. In the present matter it is not disputed that as on the last date of submission of the application respondent No.2 was not having registered lease deed in respect of the land, Godown shown in the application. There is reply affidavit of respondent No.1 on record and in the reply affidavit it is contended that the land owned by the father-in-law can be considered by respondent No.1 as per the term " owned" given in aforesaid clause of the Brochure.

8. The learned counsel for the petitioner placed reliance on the decision given by the learned Single Judge of Madras High Court in Writ Petition No. 7944 of 2018 and W.M.P. Nos. 9899 & 9900 of 2018 decided on 04.04.2018(A. Renuka Devi Vs. The Deputy General Manager (LPG Sales), Indian Oil corporation and another). In that case also the father-in-law had offered to give his land for use as Godown but no registered lease deed was there on the date of the

application. In view of that circumstance and the aforesaid clauses, the learned Single Judge held that meaning of family unit does not include father-in-law's property and so the selection of the party was cancelled on that ground was proper. Copy of order made by the other Court like Rajasthan High Court in S.B. Civil Writ Petition No. 2917/2017 (Smt. Soniya Choudhary Wife of Kailash Choudary Vs. Bharat Petroleum Corporation a Govt. of India Enterprises, LPG Distributor Selection Cell Rajasthan) is there and in that case also similar decision was given by Rajasthan High Court. Thus it is held by other High Courts that the father-in-law does not fall in the category of family unit of applicant.

9. If the aforesaid clauses/conditions and definition are seen carefully it can be said that the property owned by the father-in-law of the applicant is not treated as the property owned by the applicant. In clause (w) of Section (1) son-in-law and daughter-in-law of the applicant are covered and son-in-law and daughter-in-law of the spouse of the applicant are also covered but father-in-law and mother-in-law of the applicant are not covered. This Court does not want to go behind the logic of the mentioning few relations in this clause. When by such conditions respondent No.1 makes it clear that only the property owned by those relations can be treated as property owned by the applicant, the Court is not expected to expand the scope of such definition. If the respondent no.1, the oil company wanted to include father-in-law or

mother-in-law of the applicant they could have easily done so considering so many relations mentioned in clause 1-(w). When that is not done, respondent No.1 ought not to have held respondent No.2 eligible for further process. The circumstances that respondent No.1 subsequently allowed respondent No.2 to produce the lease deed subsequently executed by father-in-law and now reliance is placed on that document shows that respondent No.1 knew that father-in-law was not covered by this clause. In view of this circumstances, this Court holds that respondent no.1 has committed error in giving the distributorship to respondent No.2.

10. The other relief claimed by the petitioner of fresh draw from the same applicant cannot be given in view of the other condition like the grievance needs to be raised within 30 days from the date of declaration of result as provided in clause 27(e). Thus the period given for consideration was over and only one thing can be done like giving direction to respondent No.1 to cancel the distributorship given in favour of respondent No.2. Fresh draw will be against provision of Article 14 of the Constitution of India.

11. The learned counsel for the respondent No.2 submitted that hudge amount is invested by respondent No.2 for starting the business and after issue of letter of intent the business was started and for three

months respondent No.2 is doing that business. Such contentions are made in the affidavit and some photographs of the business are also produced. Respondent No.1 admitted that letter of intent was issued during the pendency of the present proceeding. In view of the observations already made, this Court holds that only due to such circumstances decision cannot be given in favour of respondent. In the result following order.

ORDER

1. Petition is allowed.
2. Relief is granted to the petitioner in terms of prayer clause (B).
3. Rule made absolute in those terms.

12. The learned counsel for Respondent No.1 requested for stay to the decision given by this Court. The other side counsel opposed to it. Time of four weeks is given to challenge the decision given by this Court. During this period, the decision is not to be executed.

**[SMT.VIBHA KANKANWADI]
JUDGE**

**[T.V. NALAWADE]
JUDGE**

YSK/