

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

CWP No.10183 of 2017 (O&M)

Date of decision: 17.09.2018

Sunil Kumar Bhoria

...Petitioner(s)

Versus

Union of India and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Parminder Singh, Advocate with
Mr. Dilpreet Singh, Advocate for the petitioner(s).

Mr. Rajiv Verma, Advocate for respondent No.1.

Mr. Ashish Kapoor, Advocate for respondent Nos.2 & 3.

Jitendra Chauhan, J. (Oral)

The petitioner seeks quashing of the impugned order dated 23.03.2017 (Annexure P-7) whereby his candidature after being successful in the allotment of draw of distribution of LPG Gas agency was rejected by respondent No.3 as he failed to meet the prescribed eligibility criteria as per advertisement dated 20.11.2013.

It is contended that the petitioner fulfils the requirement of the distributorship as he had enclosed 15 years agreement (notarized) with the owner of the land along with the application and after the draw of lots was declared successful for the allotment of distributorship of village Baragon and letter of allotment was also issued in favour of the petitioner as he fulfilled the prescribed criteria for selection of LPG

distributorship, however, his candidature was rejected on the ground that he was not in possession of any land (owned or with registered lease deed for a minimum period of 15 years) as per policy as on the last date of submission of application i.e. 20.12.2013.

On the other hand, learned counsel for respondent Nos.2 and 3 states that the candidature of the petitioner was rightly rejected as he did not fulfil the prescribed conditions of the distributorship. The petitioner had submitted notarized lease deed dated 14.12.2013 of the land which was not registered deed.

Heard.

As per record, the petitioner had applied for LPG distributorship of village Baragon, District Karnal in pursuance of advertisement dated 20.11.2013 under S.C. Category. Clause 6(vii) of guidelines of selection of regular LPG distributorship reads as under:-

“Should own as on the late date for submission of application as specified in the advertisement or corrigendum (if any):

a plot of land of minimum dimensions 25 M x 30 M (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of LPG godown for storage of 8000 kg of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 M x 30 M will not be considered.”

Further, reference of Clause 6 (vii) and (viii) of the above guidelines reproduced as under:-

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.”

In the instant petition, firstly, the petitioner is not the owner of the land and secondly, the lease deed of the land was not a registered deed, rather the same was notarized. The petitioner was not in possession of the land on the last date of submission of application i.e. 20.12.2013. Furthermore, vide impugned order, the petitioner was given an opportunity to provide another land in his possession by way of registered lease or ownership, however, he failed to do so. In CWP-9041-2016 titled as **Hardeep Singh** Vs. **Bharat Petroleum Corporation Limited and another**, this Court in a similar matter set the controversy at rest in the following terms:-

“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.”

Keeping in view the ratio of law laid down in Hardeep Singh's case (supra) and the fact that the petitioner has failed to meet with the necessary conditions of the guidelines as referred to above, therefore, no fault can be found in the impugned order dated 23.03.2017 (Annexure P-7). Consequently, the instant petition is dismissed.

17.09.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No