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

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1. *CWP No.6871 of 2017 (O&M)*
Date of Decision: 24.01.2018

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Sonaf Ahuja

. . . . Petitioner

Vs.

Indian Oil Corporation Ltd. and another

. . . .Respondents

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2. *CWP No.17496 of 2017*

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Pushp Lata

. . . . Petitioner

Vs.

Bharat Petroleum Corporation Ltd. and others

. . . .Respondents

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

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In CWP No.6871 of 2017

Present: Mr.A.M. Punchhi, Advocate,
for the petitioner.

Mr.Ashish Kapoor, Advocate,
for the respondents.

Mr.Jai Vir Yadav, Advocate,
for the applicant.

In CWP No.17496 of 2017

Present: Mr.Manjeet Singh, Advocate,
for the petitioner.

Mr.Raman Sharma, Advocate,
for the respondents.

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RAKESH KUMAR JAIN, J. (ORAL)

<u>CWP Nos.6871 of 2017 (O&M) and</u>
<u>CWP No.17496 of 2017</u>

I shall dispose of two petitions, namely, *CWP No.6871 of 2017* titled as *"Sonaf Ahuja Vs. Indian Oil Corporation Ltd. and another"* [for short 'the 1st petition] and *CWP No.17496 of 2017* titled as *"Pushp Lata Vs. Bharat Petroleum Corporation Ltd. and others"* [for short 'the 2nd petition] by way of this common order as the issue involved in both the petitions is identical. However, for the sake of convenience, facts are being extracted from the 1st petition.

In short, the Indian Oil Corporation Limited [for short 'the Corporation'] issued an advertisement on 26.10.2013 for inviting applications to appoint LPG Distributors at 198 different locations in the State of Punjab under various categories. The said advertisement was on behalf of other two Oil Companies also, namely, Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited. The allotment of distributorship is governed by the Brochure on Guidelines for Selection of Regular LPG Distributors, August 2013 [for short 'the Brochure']. Clause 6 of the Brochure deals with 'Eligibility Criteria for Individual Applicants'. Clause 6.1(vii) provides that the applicant should own, as on the last date of 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 15km 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 25M x 30 M will not be considered.

The word 'own' is further defined in the said Brochure, which read as under: -

> *"'Own' means having ownership title of the property or registered lease deed having minimum 15 yrs of valid lease period from the date of advertisement in the name of applicant / member of "Family Unit" (as defined in multiple dealership/distributorship norm of eligibility criteria). The applicant should have clear ownership as defined under the term 'Own' above as on 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."*

It is an admitted fact that the petitioner was not the owner of the land which was offered for the purpose of showroom and godown rather she offered the land as a lessee on the basis of lease deed dated 23.11.2013 which otherwise was not registered. The application of the petitioner was considered in the draw of lots in which she was successful. Therefore, she deposited ₹25,000/-, as directed, for the Field Verification Credentials (FVC), which is provided in the Brochure and is read as under: -

> *"10. FIELD VERIFICATION OF CREDENTIALS (FVC)*
>
> *a. Verification of the information given in the application by the applicant with the original documents and with the issuing authorities wherever required is called Field Verification of Credentials (FVC).*
>
> *b. Field verification will be carried out for the selected candidate as per laid down procedure. If in the FVC, the information given in the application by the applicant is found to be correct. Letter of Intent (LOI) will be issued with the approval of competent authority.*
>
> *c. If in the FVC it is found that information given in the application is at variance with the original documents and that information affects the eligibility of the candidate, then a letter would be sent by Registered Post AD / Speed Post*

> *pointing out the discrepancy. Candidature of selected candidate in such a case will be cancelled and 10% of applicable security deposit remitted by the selected candidate before FVC will be forfeited if false / incorrect / misrepresented information has been given in the application."*

During the FVC, the Corporation came to know that the petitioner had offered the land as a lessee by the unregistered lease deeds. However, the case of the petitioner is that she had got the lease deeds registered on 5.7.2016 and 13.7.2016. However, the corporation did not accept the said lease deeds for the purpose of considering the candidature of the petitioner and thus vide order dated 9.8.2016 the candidature of the petitioner was cancelled and ₹25,000/- deposited by the petitioner with the Corporation for the purpose of FVC were forfeited.

Learned counsel for the petitioner has vehemently argued that the petitioner had not offered any alternate piece of land after the last date of submission of the application. The lease deeds in her favour have also not been cancelled by the lessor. The only difficulty with the petitioner is that she could not get the lease deeds registered at the time when she offered the land to the respondents, however, with the concurrence of the lessor, the lease deeds have been got registered later on from the date when the lease deeds were originally executed which was, in any case, prior to the last date of submission of the application.

Learned counsel for the respondents, however, submits that the controversy involved in this case is fully covered by an earlier decision of this Court rendered in ***CWP No.9041 of 2016*** titled as ***"Hardeep Singh** Vs. **Bharat Petroleum Corporation Limited and another"*** decided on 26.9.2017 in which the similar question was decided against the applicant holding thus *"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".*

The respondents have also submitted that the eligibility criteria provided in the Brochure has to be strictly followed which was also known to the petitioner when the application for seeking distributorship was filed. It is submitted that the word 'own' has been specifically defined to remove any kind of confusion in which it is provided that the candidate should have ownership title of the property or a registered lease agreement for a minimum 15 years in his/her name. The world 'registered lease' has been cautiously used by the respondents in the Brochure because as per Section 107 of the Transfer of Property Act, 1882, 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 and Section 49 of the Registration Act, 1908, further provides the effect of non-registration of documents required to be registered which says that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein, or confer any power to adopt ,or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

The argument of learned counsel for the petitioner that the said unregistered lease deeds which were offered at the time of submission of application has been got registered after the cut off date is of no consequence because the Brochure specifically provides that the lease deed has to be registered at the time when the application is filed before the cut of date, therefore, keeping in view the facts and circumstances much less the controversy having been settled by this Court in the case of ***Hardeep Singh (Supra),*** I do not find any reason to interfere in the 1st petition and hence, the same is hereby dismissed.

Insofar as the 2nd petition is concerned, the Corporation has submitted that even the petitioner has made a false declaration because in the application form, which is appended as Annexure R-1 with the written statement filed on behalf of respondents No.1 to 3, the petitioner has mentioned the date as 17.12.2013 in the column of 'date of registration of sale deed/gift deed/lease deed/date of mutation' despite the fact that the said lease deed was unregistered. If the lease deed was unregistered, there was no occasion for the petitioner to have mentioned the date in the said column.

Learned counsel for the petitioner has submitted that the lease deed was notarized and was not registered. It appears that in order to avoid the registration charges, the lease deed was notarized by the petitioner in the

2nd petition otherwise, Section 107 of the Transfer of Property Act, 1882 read with Section 49 of the Registration Act, 1908, the said lease deed has no meaning at all in the eyes of law for the purpose of relying upon it. Thus, with this observation, the 2nd petition is found to be without any merit and the same is also hereby dismissed.

A photocopy of this order be placed on the file of connected case.

(RAKESH KUMAR JAIN)
JUDGE

24.01.2018
Vivek

Whether speaking/reasoned	*Yes/No*
Whether reportable	*Yes/No*