

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-21852-2017 (O&M)
Date of Decision: 11.12.2018

Naresh Kumar

--Petitioner

Versus

Indian Oil Corporation & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- S. Kanwaljit Singh, Sr. Advocate with
Mr. Ashish Soi, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J (Oral)

An L.P.G Distributorship was advertised on 18.9.2006 by the Indian Oil Corporation (herein after to be referred to as the Corporation). Petitioner applied for the distributorship at Mamdot vide application dated 16.10.2006 under the open and rural category. Distributorship was allotted to the petitioner and an agreement dated 28.6.2014 was executed with the Corporation under the name and style of M/s Mamdot Indane Gas Service at Mamdot, District Ferozepur with the petitioner as sole proprietor.

Instant petition has been filed impugning the order dated 3.8.2017 (Annexure P-23) passed by the respondent-Corporation terminating the distributorship held by the petitioner.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the impugned order at Annexure P-23 cannot sustain and a case is made out for remand to the respondent-Corporation for passing of an order afresh. Such view is being taken for the following reasons:-

Admittedly, petitioner had been served with a show cause notice dated 3.4.2017 (Annexure P-11) pursuant to complaints having been

received by the Chief Area Manager, Jalandhar of the respondent-Corporation from Smt. Satwinder Kaur and Sh. Rakesh Kumar alleging that the petitioner had concealed facts at the time of applying for the Indane L.P.G. Distributorship in the year 2006 as he was already a member of M/s Mittal & Company, Ajitwal, District Moga, Retail Outlet of Bharat Petroleum Corporation Ltd. (B.P.C.L). In the complaints it had been alleged that the petitioner had resigned from the membership of the B.P.C.L Retail Outlet in the year 2009 and same had been accepted by the B.P.C.L in the year 2010. It was upon taking cognizance of such complaints that the show cause notice dated 3.4.2017 (Annexure P-11) had been served upon the petitioner primarily to show cause as regards concealment of relevant information as also having been allotted distributorship by furnishing wrong information. 15 days time was granted to the petitioner to submit a reply and as per show cause notice, action was contemplated for violation of the guidelines of L.P.G Distributorship Multiple Dealership Norms as also violation of Clause 27 of the Indane (L.P.G) Distributorship Agreement dated 28.6.2014.

Apparently, petitioner with a view to submit a comprehensive reply to the show cause notice had submitted a request for supply of certain documents. Such request was not acceded to and the respondent-Corporation was proceeding against the petitioner and which led to the filing of CWP-13643-2017 before this Court. The writ petition was disposed of on 9.6.2017 in the following terms:-

“Be that as it may, without entering into the controversy whether respondents are wrong in this regard or the petitioner defaulted, it would be in the interest of justice, if the petitioner is confronted with the material sought to be used

against him, which the respondents shall supply to him within a period of two weeks from today. Thereafter, the petitioner will submit his reply within two weeks from the date of receipt of the material. It is made clear that no further indulgence shall be granted to the petitioner in this regard. Thereafter, the respondents shall afford an opportunity of personal hearing to the petitioner and determine the controversy.

Disposed of in above terms.

Till the time final decision is taken as per the manner indicated above, the petitioner shall be permitted to operate the LPG distributorship.

June 09, 2017

*(Mahesh Grover)
Judge”*

Documents having been supplied to the petitioner, a detailed reply dated 24.6.2017 (Annexure p-18) was furnished by the petitioner. Perusal of the same reveals that apart from raising other grounds and submissions, the following contentions had been raised:-

(i) It was stated in the reply to the show cause notice that an investigation report dated 26.12.2016 which the Corporation had been considering against the petitioner was a one sided report and in which the petitioner had not been associated.

(ii) M/s Mittal & Company which had been formed as a partnership concern involving the petitioner, Neelam Mittal and Sat Parkash in the year 1999 had been granted dealership of B.P.C.L. The partnership firm had been dissolved through a Dissolution Deed dated 2.10.2003 and a copy of which was attached along with the reply to the show cause notice. Petitioner had asserted that as per Dissolution Deed dated 2.10.2003 he along with his father namely Sat Parkash had left the partnership.

(iii) A new partnership deed carrying even date i.e. 2.10.2003 had been entered into between Neelam Mittal and one Ramesh Kumar Bansal. The new partnership deed dated 2.10.2003 was also attached along with the reply to the show cause notice. Petitioner's name did not figure in the new partnership deed dated 2.10.2003.

(iv) Petitioner duly informed B.P.C.L as well as income tax authorities vide letter dated 3.10.2003 as regards factum of dissolution of the partnership firm M/s Mittal & Company which was holding the dealership of B.P.C.L. Petitioner further asserted that the remaining partner namely Neelam Mittal and the new partner namely Ramesh Kumar Bansal had even opened a new bank account of the new partnership firm on 10.5.2004. Documents in support of such stand were also attached along with the reply to the show cause notice.

In a nutshell stand taken in the reply dated 24.6.2017 (Annexure P-18) that the petitioner had submitted to the show cause notice was that on the date the L.P.G Distributorship had been advertised by the respondent-Corporation on 18.9.2006, he had no connection with the partnership firm M/s Mittal & Company and which was also evident from the income tax returns for the year 2005-2006 and 2006-2007.

Impugned order terminating the distributorship held by the petitioner was passed on 3.8.2017 (Annexure P-23). Perusal thereof would reveal that the defence set up by the petitioner in his reply to the show cause notice as also the supporting documents have not even been noticed much less dealt with. Apparently, the respondent-Corporation has proceeded against the petitioner on the strength of a communication dated 21.12.2016 placed on record by learned counsel as Annexure R-1/1 and wherein it is

stated that M/s Mittal & Company had submitted a reconstitution proposal for the dealership upon resignation of Naresh Kumar (present petitioner) and another partner Sh. Sat Parkash vide letter dated 15.11.2009 and the resignation of Naresh Kumar Mittal (present petitioner) from M/s Mittal & Company, Ajitwal, District Moga was accepted by B.P.C.L on 21.10.2010.

This Court would have no hesitation in observing that the impugned order dated 3.8.2017 (Annexure P-23) terminating the L.P.G Distributorship held by the petitioner is without application of mind. The information supplied by B.P.C.L vide communication dated 21.12.2016 (Annexure R-1/1) cannot be termed as irrelevant. Be that as it may, the respondent-Corporation/competent authority was obligated to weigh such information as contained in communication dated 21.12.2016 supplied by B.P.C.L against the stand/information taken by the petitioner in the reply dated 24.6.2017 (Annexure P-18) to the show cause notice. It was only thereafter that an opinion could have been formed as to whether the petitioner had actually resigned and left the partnership concern namely M/s Mittal & Company prior to 18.9.2006 when the L.P.G Distributorship had been advertised by the respondent-Corporation. The respondent authorities were also obligated to consider the effect of the reconstitution proposal that had been submitted by M/s Mittal & Company vide letter dated 15.11.2009 pursuant to resignation of the present petitioner and another partner. If the partnership firm i.e. M/s Mittal & Company had actually been dissolved on 2.10.2003 as is claimed by the petitioner and whereby the petitioner left the partnership and the reconstituted firm M/s Mittal & Company submits a reconstitution proposal belatedly, the same prima facie could not have worked to the prejudice of the petitioner.

Unfortunately these are aspects which have not been dealt with by the competent authority under the respondent-Corporation prior to passing of the impugned order dated 3.8.2017 (Annexure P-23).

In view of the above, the impugned order dated 3.8.2017 (Annexure P-23) is set aside. Matter is remanded back to the competent authority under the respondent-Corporation for reconsideration and for passing an order afresh. Such exercise of reconsideration be completed within a period of four months from the date of receipt of a certified copy of this order. A personal hearing to the petitioner prior to passing of the final order would be appreciated.

It is, however, clarified that the observations contained in this order are only for purposes of remanding the matter back for a decision afresh and would have no bearing on the merits of the case. Also clarified that by virtue of the setting aside of the impugned order dated 3.8.2017 (Annexure P-23) the L.P.G. Distributorship would not stand restored in favour of the petitioner and the same would be subject to the outcome of the final order that has now been directed to be passed.

Writ petition is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

11.12.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No