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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6968 of 2016 (O&M)
Date of decision:September 05, 2018

Ramandeep and another …Petitioners

Versus

Union of India and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Atul Lakhanpal, Senior Advocate, with
Mr. R.S.Chahal, Advocate, for the petitioner(s)
in CWP Nos.6968, 7481, 9812 and 10167 of 2016.

Mr. J.S.Khattar, Advocate, for
Mr. Pankaj Bali, Advocate, for the petitioner(s)
in CWP No.10888, 17134 and 17135 of 2016.

None for the petitioner(s)
in CWP Nos.7471, 10614, 16200 and 12894 of 2016.

Mr. Satya Pal Jain, Senior Advocate, with
Mr. Dheeraj Jain, Advocate, for respondent no.1-UOI.

Mr. Ashish Kapoor, Advocate,
for respondent no.2.

Mr. Raman Sharma, Advocate,
for respondents no.3 and 4.

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Rakesh Kumar Jain, J. (Oral)

This order shall dispose of a bunch of 11 cases bearing CWP Nos. 6968, 7481, 9812, 10167, 10888, 17134, 17135, 7471, 10614, 16200 and 12894 of 2016 as the issue involved in all the cases is same. However, for the sake of convenience, the facts are being extracted from CWP No.6968 of 2016, which has been filed against the order dated 18.12.2015 (Annexure P-4), by which decision has been taken by the Ministry of Petroleum & Natural Gas, Government of India, for bringing some changes in the Dealership Selection

Guidelines.

In brief, respondents no.2 to 4, i.e. Indian Oil Corporation Limited (IOCL), Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL), together issued an advertisement in the newspaper "The Tribune" dated 26.10.2013 to appoint LPG Distributors in various categories at various locations in the State of Punjab. The distributorship is to be regulated by the Brochure on Guidelines for Selection of Regular LPG Distributors-August 2013 (hereinafter referred to as the "Brochure"). The eligibility criteria, as laid down in the advertisement in terms of the Brochure, read as under:-

> **"6. ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS**
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> All applicants fulfilling the eligibility criteria will become eligible for the draw for selection of the LPG distributorship. The eligibility criteria is as under:-
>
> **6.1 Common Eligibility Criteria for all Categories applying as Individual**
>
> **The applicant should**
>
> i to v xxx xxx xxx xxx
>
> vi. Have minimum total amount of ₹15 lakhs for Urban Markets and ₹10 lakhs for Urban Rural & Rural Markets respectively as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any). This amount is to be arrived at by adding amount in Savings Bank accounts in Scheduled Bank/ Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies / Government Organisation / Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, NSC, Bonds, Shares of Listed Companies, Listed Mutual Funds, ULIP, PPF, Surrender Value of Life Insurance policies in the name of Applicant or family members of the 'Family Unit' of the Applicant as defined above. In case of locations reserved under 'SC/ST' category, minimum total

amount of ₹5 lakhs for Urban Markets and ₹2.5 lakhs for Urban-Rural & Rural Markets respectively should be available as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any).

vii. Should own **as on the last 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.

Or

a ready LPG cylinder storage godown (within 15 km from municipal/town/village limits of the location offered in the same State) of 8000 Kg capacity.

In case there are any state specific requirements/norms applicable for construction of the LPG Godown, then the same will be applicable for the respective Regular Distributorship locations and revised minimum dimensions of plot of land will be required as specified in the Advertisement of that respective State.

The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (public road or private road connectingroad connecting to the public road). In case of private road connecting to the public road, the same should belong to the applicant/member of Family Unit (as per the multiple dealership/distributorship norm of eligibility criteria) as per the ownership criteria defined below. In case of ownership/co-ownership by family member(s) in respect of such private road, consent letter from respective family member(s) will be required."

xxx xxx xxx xxx

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Reference vii & viii above:

'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."

Out of these 11 cases, in 6 cases, applications were filed by the petitioner(s) and in 5 cases, no application was filed by the petitioner(s) for seeking allotment of distributorship.

Admittedly, no draw of lots has been held in all cases where the petitioner(s) had applied.

According to the petitioners, in the eligibility criteria, it was provided that the candidate should have minimum total amount of ₹15 lacs in a "scheduled bank" but now it has been changed to "all the banks". Similarly, it was also one of the conditions that the plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (public road or private road connecting to the public road) and in case the private road is connecting to the public road, then it should belong to the applicant or member of family unit, which condition has now sought to be changed that the applicant should make arrangement of the separate road within the time given in the Letter of Intent (LOI). The condition of having ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant as on the last date for submission of application has also now been diluted with the clause that the period of lease will be reckoned from the date of the advertisement and not from the date of the

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application.

The proposal made on 11.08.2015 with regard to the aforesaid changes in the meeting held under the Chairmanship of Hon'ble Minister of State (I/C), Petroleum and Natural Gas, was conveyed to the Directors (Marketing) of all the three oil companies vide the impugned letter dated 18.12.2015. Thereafter, a letter was issued on 25.02.2016 to the Directors (Marketing) of all the three oil companies, in which reference of the letter dated 18.12.2015 was made and the proposed amendment were conveyed in the following manner:-

> "a) There will be no requirement for issuing corrigendum/addendum to the advertisement already published.
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> b) Outcome of draw and LOI whatever has happened, will be considered as settled.
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> c) Period of lease will reckoned from the date of the advertisement.
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> d) Land ownership will include all inheritances.
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> e) funds arrangement by candidate will take into account funds as on relevant date all banks.
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> f) Locations where draw has not been held will be scrutinized following the above conditions (c to e).
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> g) Approach road of the time of FVC will consider the possibility of making provision for approach road within time given to LOI."

Before the oil companies could have applied, for the purpose of draw of lots, the present petitions were filed, in which draw of lots was stayed.

Counsel for the petitioners have submitted that respondents no.2 to 4 have committed an error of law in making amendments in the eligibility criteria after the applications were filed by them. It is submitted that the respondents cannot be allowed to change rule of the game after the game has started and in this regard, they rely upon three judgments of the Supreme Court rendered in the cases of **Ramana Dayaram Shetty vs. International Airport Authority of India and others,** (1979) 3 Supreme Court Cases 489, **Maharashtra State Road Transport Corpn. and others vs. Rajendra Bhimrao Mandve and others,** (2001) 10 Supreme Court Cases 51 and **K. Manjusree vs. State of A.P. & anr.,** 2008(3) SCC 512.

On the other hand, counsel appearing on behalf of the respondents have submitted that the aforesaid changes have been brought on account of an order passed by the Himachal Pradesh High Court on 30.10.2014 in CWP No.3536 of 2014 titled as **Meena Kumari vs. Indian Oil Corporation,** in which it has been held that *"in our considered opinion, her candidature should have not been rejected only on the ground that her account was not in a scheduled bank, as the only requirement is the availability of requisite funds in the saving bank account of the applicant. We feel that whether such funds are in a scheduled bank or non-scheduled bank is not so relevant. Above all, what is the nexus between the requirement of such deposit in a scheduled bank and the purpose, sought to be achieved, we failed to elicit anything material from the arguments addressed on behalf of the respondent-Corporation".*

It is further submitted that the aforesaid decision of the Himachal Pradesh High Court has been upheld by the Supreme Court when the SLP filed by the IOCL against the said decision was dismissed on 13.04.2015.

In respect of the reckoning of the period of ownership/lease deed in favour of the applicant, counsel for the respondents have referred to a decision of the Bombay High Court rendered in the case of **Mrs. Priya vs. Bharat Petroleum Corporation Ltd. and another,** Writ Petition No.6587 of

2014, decided on 24.02.2015, in which the issue was that *"upon verification of the application of the petitioner, the petitoner was found to be eligible and was permitted to participate in the draw. In the draw, the petitioner was successful and as such filed verification was done. In the field verification, it is found that the lease deed executed in favour of the petitioner was from 1.11.2013 to 31.10.2028 and as such on the last date of submission of the application form i.e. on 29.10.2013, she was not qualified".* In this regard, the Division Bench of the Bombay High Court has held that *"we are at pain to say that the respondent-company has adopted totally a hyper technical approach. The only intention of insisting upon the sale-deed, lease deed or gift deed is to ensure a person, who is allotted dealership, is in a position to run his business in the said premises for 15 years without any hindrance. In the facts of the present case, the said purpose is very much served inasmuch as there would be a valid lease for a period of 15 years in favour of the petitioner".*

The said judgment was also upheld by the Supreme Court as the SLP filed by the BPCL against the said judgment was dismissed on 03.08.2015.

Counsel for the respondents have also submitted that in the case of **Dr. Pankaj Aggarwal vs. State of Haryana through Secretary,** 1995(4) S.C.T. 512, this Court has held that in the case of relaxation of conditions prescribed in the prospectus for admission to postgraduate medical courses, the criteria was changed relaxing the conditions with the object to give chance to more candidates and extend the field of choice to select the best but the eligibility of the petitioners remained unaltered and their conditions of qualifying the examination not changed, therefore, it was found that they have no grievance.

Counsel for the respondents have also relied upon a judgment of this Court rendered in the case of **Priyanka Monga and another vs. Union of India and others,** CWP No.8674 of 2016, decided on 17.04.2018, in which exactly similar controversy was involved about the change/amendment in the eligibility conditions after the issuance of advertisement. In the said case, this Court has held that "*after hearing learned counsel for the parties and examining the available record, I have found that the changes made in certain parameters of the selection process are in the nature of relaxation which have been made pursuant to the orders passed by various High Courts in a number of cases as a large number of applications were rejected due to deficiency in their lease period by a few days because the date of determination of 15 years lease period was fixed as last date for submission of applications, whereas those candidates had got the lease registered after the date of issuance of advertisement and obviously before the last date for submission of applications. Majority of those candidates had challenged rejection of their candidature and a large number of petitions were filed throughout the country and in that background, the letter dated 25.02.2016 was issued relaxing condition of reckoning of 15 years lease period. Apart from above, the changes introduced by the respondents do not in any manner prejudice any candidate or make any candidate ineligible and rather makes some of the candidates eligible while widening the scope of selection. Thus, in view of the above, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs*".

Although the main case has been argued by Shri Atul Lakhanpal, Senior Advocate, who is the counsel in this case, however, the Court had asked the other advocates also who are representing the petitioners in other connected cases which are being decided together, but no-one have chosen to argue in the matter.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Although the law laid down by the Supreme Court, as has been referred to by the counsel for the petitioners, has no exception but the issue is as to whether the said law is applicable to the facts and circumstances of the present case or not?

The petitioner(s) were eligible at the time when they had applied for allotment of the LPG distributorship. The changes in the brochure/ guidelines have not made them ineligible. The respondents have not made the changes on their own but the changes have been brought in view of the various decisions of the various High Courts, which have been upheld by the Supreme Court. This fact has also been noticed by this Court while deciding **Priyanka Monga's case (supra)** and it was held that it is not the change in the eligibility criteria but a relaxation in the eligibility criteria. It is also the case of the respondents that despite the changes, no new application has been received, therefore, there is no grievance that a new person has entered the arena of the game in which the petitioners have to play and are now afraid of playing with the candidates who are already in the fray.

In any case, the selection is a matter of chance as it will have to be by way of draw of lots and if the petitioners would be lucky, then they would be selected for the purpose of allotment of LPG Dealership *de hors* that how

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many persons are competing with them.

The judgment relied upon by the respondents in **Dr. Pankaj Aggarwal's case (supra)**, which pertains to the admission in the postgraduate medical courses, has dealt with the question of relaxation of condition in the prospectus, in which it has been held that when the criteria is changed relaxing the conditions with the object to give chance to more candidates and extend the field of choice to select the best and the eligibility of the petitioners remained unaltered and their conditions of qualifying the examination not changed, then they should not have any grievance.

Thus, in my considered opinion, the petitioners should not feel threatened to compete with the persons made eligible with the aforesaid relaxation as they are not held ineligible because of the aforesaid relaxation. Even otherwise, the petitioners who have not applied for the allotment of LPG Distributorship should not have any kind of grievance.

Consequently, all the 11 petitions are hereby dismissed being denuded of any merit, though without any order as to costs.

September 05, 2018 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No