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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8096/2014 and CM No. 18864/2014**

GOKAL CHAND MITTAL Petitioner
Through: Mr Arun Vohra, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr Anurag Ahluwalia, CGSC with
Mr Charitarth Bharti, Advocates
alongwith Dr A.P. Singh, Dy.
Controller of Explosives.
Ms Mala Narayan and Ms Neha
Dawar, Advocates for R-2/IOCL.
Mr Dhanesh Relan and Ms Anshita
Manocha, Advocates for DDA.
Mr Rakesh Singh and Mr Devesh
Tuli, Advocates for R-3.
Mr Avneesh Garg, Mr P. Sinha and
Mr M.P. Singh, Advocates for BPCL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.01.2018

1. The petitioner has filed the present petition, *inter alia*, impugning a Public Notice dated 10.09.2013 (hereafter 'the impugned notice') issued by respondent no.2 (hereafter 'IOCL'), respondent no.3 (hereafter 'HPCL') and respondent no.4 (hereafter 'BPCL') for appointment of LPG distributors in the NCT of Delhi.
2. The principal grievance of the petitioner is with regard to the facilities required for operation of LPG distributorship. IOCL, HPCL and BPCL

(hereafter collectively referred to as ‘OMCs’) had published a notice for appointment of LPG distributors on 30.12.2012 for various localities in the National Capital Territory of Delhi. In terms of the said advertisement, the OMCs required the applicants to have the necessary land for construction of LPG godowns. The notice expressly stated that *“The land offered must be suitable for construction of LPG godown as per Master Plan for Delhi 2021”*.

3. The aforementioned advertisement was subsequently kept in abeyance by respondent no.1. Thereafter, the OMCs issued the impugned notification, which required the applicant to offer certain basic facilities for the operation of LPG distributorship. The relevant requirement as published in the impugned notice is set out below:-

“3. BASIC FACILITIES REQUIRED FOR OPERATION OF LPG DISTRIBUTORSHIP

a. Godown for storage of LPG in cylinders

LPG distributors would require a storage godown duly approved and licensed by Chief Controller of explosives of Petroleum and Explosive Safety Organization (PESO) for storage of 8000 kilogram’s LPG in cylinders.

The applicant should own:-

a plot of land of minimum dimension 25 meter x 30 meter (within 15 kilometre from municipal / town / village limits of the location offered in the same State) of construction of LPG godown for storage of 8000 kilogram’s of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 meter/30 meter will not be

considered.

Or

A ready LPG cylinder godown (within 15 kilometre from municipal/town/village limits of the location offered in the same State) of 8000 kilogram's capacity.

b. Showroom

A Showroom of minimum dimensions 3 metre by 4.5 metre as per the standard layout is to be made. In a shop/land located in the advertised location or locality as specified in the advertisement for LPG distributorship and it should be easily accessible to general public through a suitable approach road.”

4. The only ground advanced by the petitioner for challenging the impugned notice is regarding the land requirement as published in the notice. Mr Arun Vohra, the learned counsel appearing for the petitioner earnestly contended that the petitioner could not apply for LPG distributorship pursuant to the said notice, as it was not possible for any person to comply with the requirements of providing land as demanded by the OMCs. He submitted that the said requirement was contrary to the provisions of the Master Plan for Delhi, 2021 (hereafter ‘MPD’), which provided for a plot size of upto 600 sq. mtrs for LPG godown including booking office and security hut. He submitted that in view of the specific provision of MPD 2021, the plot size as prescribed by the respondents - that is, 750 sq. meters being 25m x 30m - was not in compliance with the provisions of law. He drew the attention of this Court to the relevant extract of Table 13.15 of MPD 2021, which is set out below:-

“Table 13.15: Development Controls for Distributive Services

S. No.	Category	Development Controls			
		Max. Ground Coverage	Max. FAR	Max. Height	Other Controls
1	Milk Booth/Milk and Fruit & Vegetable Booth/Delhi Milk Supply Booth	Permitted in all zones as per approved layout plan.			
2.	LPG godown including booking office	i. Plot size - upto 600 sqm including booking office and security hut. ii. Permitted in all use zones except in residential ridge/regional park and recreational use zones subject to statutory clearances.			
3.	SKO/LDO outlets	i. Permitted in all use zones except in residential ridge/regional park and recreational use zones subject to statutory clearances.			

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5. Ms Narayan, the learned counsel appearing for IOCL contended that as per the requirement of the Petroleum and Explosive Safety Organization (hereafter ‘PESO’), the preferable size of land for storing 8000 kilograms of LPG in cylinders was specified as 25m x 30m. PESO had further specified that 7 meters all around the shed was required as safety clearance. She submitted that the clearance of the Chief Controller of Explosive, Government of India was required for storage of LPG in terms of the Gas Cylinder Rules, 2004, and thus, it was necessary for safety purposes to ensure that any applicant for LPG distributorship offers land of the requisite specifications.

6. She further contended that the contention that petitioner had not

applied pursuant to the impugned advertisement was incorrect. She submitted that the petitioner had, on 07.10.2013, filed an application for allotment of LPG distributorship, which was rejected by a letter dated 19.05.2014. She also stated that the IOCL had also received applications from applicants having the requisite area of land as indicated in the impugned notice.

7. The contents of the letter dated 07.10.2013 indicating the reasons for rejection of the petitioner's application are reproduced below:-

“Dear Sir,

Please refer to your application (serial Number DEL/RD/MUKDP/01) on the subject.

We regret to inform you that your candidature has not been found to be eligible for the LPG distributorship as:

1. Applicant does not have any plot/land for showroom.
2. Size of godown/plot is less than the required size (25 X 30) m².

Thanking You.”

8. The petitioner had also filed another writ petition being W.P.(C) 6645/2013 captioned “*Gokal Chand Mittal v. Union of India and Ors.*”, *inter alia*, challenging the impugned notice dated 10.09.2013, which was disposed of by an order dated 10.03.2014 as the petitioner did not wish to press the said petition in view of the statement made on behalf of the OMCs that the applicant for LPG Dealership of the godowns would have to take no objection from Delhi Development Authority (DDA) in accordance with the prevalent MPD as well as license from Chief Controller of Explosives under

the Gas Cylinder Rules, 2004.

9. It is relevant to note that the petitioner had filed yet another petition - W.P.(C) 5375/2014 - impugning the IOCL's letter dated 19.05.2014 rejecting the petitioner's application for appointment of LPG distributorship. Grounds A and B urged in the said writ petition are relevant and are set out below:-

- “A. Because the respondents are duty bound to take fair and reasonable decisions rather than manipulate processes for favouring certain persons. The instant rejection smacks malice, malafide, bias and collusion between some officers of the respondents with some private individuals whereby the allotment process has been circumvented only to favour few and at the costs of genuine and bonafide persons like the petitioner.
- B. Because as per MPD- 2021 the plot size required for grant of LPG distributorship is 190 mts to 600 mts and Petroleum and Explosive Safety Organization (PESO) has already accepted the same in the state of Delhi and the earlier writ petition was withdrawn only when the counsels for the respondents made a statement that the allotment process shall take into account the MPD-2021 and whereas the respondents have given ago-by to the said rules/statement and have granted distributorship to applicants whose land was outside the MPD 2021.”

10. The aforementioned writ petition (being W.P.(C) 5375/2014) was unconditionally withdrawn by the petitioner and was dismissed as such by an order passed earlier today, that is, 05.01.2018.

11. It is apparent from the above that the submission that the petitioner could not apply for LPG distributorship pursuant to the impugned

advertisement as the requirements were not in conformity with the MPD-2021 is palpably incorrect, as the petitioner had submitted an application pursuant to the impugned advertisement. It also transpires that the petitioner did not own any plot of land at all, and therefore, the dispute sought to be raised by the petitioner - that is, whether the land requirement ought to have been 600 sq. meters as per MPD-2021 or 750 sq. meters as required by OMCs or PESO - is wholly academic. Since in either case, the petitioner cannot offer a plot of land as required to set up: (a) a showroom in the given locality; and (b) godown within 15 kilometre from municipal/town/village limits of the location offered in the same State.

12. The petitioner had filed an application on the basis of the land provided for SKO/LPA dealership. The petitioner claimed that the said land was licensed to him. This was disputed by Ms Narayan. In view of this controversy, Mr Dhanesh Relan, the learned counsel appearing for the DDA, was specifically asked to take instructions in this regard. Mr Relan now confirms that the plot of land, on the strength of which the petitioner applied for LPG dealership, was licensed to IOCL and not to the petitioner; *albeit*, it was for the purposes of the petitioner's SKO dealership. Since IOCL, who is a licensee, is not interested in using the said plot of land for the LPG dealership, the question of petitioner having any right to utilise the same for the said purpose does not arise.

13. There is also much merit in the contention advanced on behalf of the IOCL that the petitioner having submitted an application pursuant to the impugned notice is now precluded from challenging the same.

14. As noticed above, the grounds on which the petitioner seeks to challenge the impugned notification were also an integral part of the petitioner's challenge to the rejection of his application for LPG dealership as raised in W.P.(C) 5375/2014 and that petition was withdrawn unconditionally.

15. In view of the above, the present writ petition and the application are dismissed.

16. This Court is also of the view that this is a fit case for imposing costs on the petitioner, as arguments were advanced on an incorrect basis that the petitioner was precluded from applying for the LPG dealership on account of the land specification, whereas in fact the petitioner had made an application pursuant to the impugned notice. Further, as noticed above, the petitioner had withdrawn his earlier petition which included the grounds sought to be urged in this petition. Accordingly, the petitioner shall deposit a sum of ₹25,000/- as costs with the Delhi High Court Legal Services Committee within a period of two weeks from today.

VIBHU BAKHRU, J

JANUARY 05, 2018
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