

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

CWP No.13780 of 2019 (O&M)

Date of Decision:16.09.2019

Reeta Devi

.....Petitioner

Versus

Bharat Petroleum Corporation and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Akshay Jain, Advocate for the petitioner.

Mr. Raman Sharma, Advocate for respondents.

TEJINDER SINGH DHINDSA J.

Challenge in the instant writ petition is to the Email dated 16.05.2019 (Annexure P-8) sent by the Bharat Petroleum Corporation Limited and in terms of which the petitioner has been held ineligible for award of Retail Outlet Dealership at Village Ambehra, Tehsil Bangana, District Una under SC Category for Group 1 Category.

Brief facts of the case are that a public notice was issued on 25.11.2018 by the respondent-Corporation for appointment of a Regular/Rural Retail Outlet Petroleum Pump Dealership within the States of Haryana and Himachal Pradesh. The last date of submission of application forms online was stipulated to be 24.12.2018. Such date was subsequently extended to 25.12.2018. In the public notice there was a specific reference made to an Information Brochure. Appended alongwith the writ petition at Annexure P-1 is the brochure issued by the Indian Oil, Bharat Petroleum and Hindustan Petroleum for Selection of Dealers for regular and rural retail outlets. Clause 4 of the Brochure laid down the

eligibility criteria for Individual Applicants-Proprietorship/Partnership. Clause 4 of the brochure would be material to the controversy at hand and the relevant extract thereof is reproduced hereunder:-

“4. ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS – PROPRIETORSHIP / PARTNERSHIP Common Eligibility Criteria for all Categories applying as Individual (as on date of application unless mentioned otherwise)

(v) Land (Applicable to all categories):

The applicants would be classified into three groups as mentioned below based on the land offered or land not offered by them in the application form:-

Group 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership / long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 2: Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 3: Applicants who have not offered land in the application. Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant get selected under Group 1 & 2.

In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group 1 & Group 2 along with

applicants under Group 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location / stretch, within a period of 3 months from the date of issuance of intimation letter to them through SMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected.

The other conditions with respect to offering of land are as under:-

a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application.

b) If the offered land is on Long term lease, then the Lease agreement should have a provision to sub-lease the land wherever the locations are advertised under Corpus Fund Scheme (CFS), Other Corporation Owned Sites (“A”/ “CC” sites).

In case it is observed that the lease agreement for the land offered by the selected applicant does not have a provision to sub-lease the land, in such cases the selected applicant would be provided 21 days’ time from the date of intimation through SMS/e-mail to make suitable amendment / addendum to the lease agreement and submit the same to the concerned OMC.

c) For Dealer owned sites (“B”/“DC” sites), the applicant should ensure that the land arranged by the applicant is either registered in the applicant’s name or leased in favour of the applicant for a minimum period of 19 years and 11 months (as advertised by respective oil company), before issuance of LOA as per the conditions of LOI.

d) The applicant(s) under Group-1 should have documents to establish ownership of land offered for the Dealership as on date of application, such as:-

- Khasra / Khatauni or any equivalent revenue document or certificate from revenue official confirming status of the ownership of the land*
- Registered Sale deed/Registered Gift deed.*
- Registered Lease deed for a minimum period of 19 years and 11 months (as advertised by respective oil company) .*
- Any other type of ownership / transfer deed document*
- Lease agreement or firm allotment letter issued by Government / Semi Government bodies*

Petitioner applied for the Retail Outlet Dealership for the site situated at Village Ambehra, Tehsil Bangana, District Una (HP) under the Scheduled Caste Category vide application dated 21.12.2018. Such application was submitted online for Group-1 Category being lessee of land measuring 0-04-00 Hect, being 400/1343 share out of land measuring 0-13-43 Hect. Comprised in Khewat No.2 Min, Khatoni NO.2 min, Khasra No.651, 653, 654, 655, Kitta-4 as entered in Jamabandi for the year 2016-2017, situated in Mohal Ambehra Dheeraj, Mauja Momniar, Sub Tehsil

Jol, Tehsil Bangana, District Una (Himachal Pradesh). At the time of submission of the application form petitioner indicated the date of registration of the lease-deed to be 21.12.2018. It has been averred that the lease-deed was presented for registration before Sub-Registrar Jol, District Una (HP) on 21.12.2018 for purposes of registration. However, on account of some connectivity issue, the same could not be registered on the date of presentation i.e.21.12.2018 but was registered vide registration No.409 dated 24.12.2018. In support of such assertion a certificate issued by the Sub-Registrar Jol, District Una (Himachal Pradesh) to endorse that the lease-deed was attested and entered in the office of Sub-Registrar Jol on 21.12.2018 but the same having not been registered on the same date on account of connectivity issues and actually registered on 24.12.2018 is appended as Annexure P-6 alongwith the petition. The petitioner then received an Email dated 26.02.2019 whereby respondent-corporation informed her that she had been declared successful in the draw of lots conducted on 25.02.2019 for selection of the Retail Outlet Dealership at the location in question under the Scheduled Caste category. By virtue of such Email petitioner was called upon to furnish certain documents as also to make an initial security deposit. It is the case of the petitioner that the needful was done forthwith. Thereafter, petitioner has received the impugned Email dated 16.05.2019 (Annexure P-8) informing her that the land documents submitted are not valid for considering her candidature under Group-1 and as such she has been held ineligible for award of the Retail Outlet Dealership.

Even though the impugned Email does not point out the infirmity/insufficiency as regards the land documents submitted by the

petitioner so as to hold her ineligible, it is in the written statement filed on behalf of the respondent-corporation that the precise reason has been spell out. In para 4 of the written statement it has been averred that as per Clause 4 (v) (d) of the eligibility criteria contained in the Selection Brochure the applicant(s) under Group-1 were obligated to have documents establishing ownership of land as on the date of application and which would also cover a registered lease-deed for a minimum period of 19 years 11 months. The precise case set up on behalf of the Corporation is that the lease-deed submitted by the petitioner was found to have been registered on 24.12.2018 whereas the application was submitted on 21.12.2018. The petitioner as such is stated to be not fulfilling the relevant clause under the eligibility criteria contained in the Brochure.

Confronted with such basis of holding the petitioner to be ineligible and as disclosed in the written statement, counsel representing the petitioner has raised a two-fold submission; (i) It is urged that no fault could have been attributed to the petitioner for not getting the lease-deed registered as on the date of application. The lease-deed complete in all respects and duly attested was presented for registration on 21.12.2018 in the Office of Sub Registrar concerned but the same on account of a technical fault/connectivity issue could not be registered on the same day i.e.21.12.2018. It is submitted that 22.12.2018 and 23.12.2018 being holidays, the same was registered on 24.12.2018. Such factual premise stands dully verified by the certificate issued by the Sub Registrar Jol at Annexure P-6 and as such the action of the respondent-Corporation holding the petitioner to be ineligible on such count is patently unjust and unfair; (ii) Counsel adverts to Section 47 and Section 75 (3) of the

Registration Act 1908 to contend that registration of lease-deed in question would relate back to the date when it was first duly presented for registration before the concerned Sub Registrar i.e. on 21.12.2018 and not from the date of registration i.e. 24.12.2018. It is vehemently contended that by virtue of such position in law, the petitioner qualifies the eligibility criteria as per Clause 4 (v) (d) of the Brochure. In support of such contention reliance placed upon a judgment of the **Delhi High Court in Yogesh Kumar Malik Vs. Indian Oil Corporation Ltd. and another 2018 (250) DLT 383.**

Per contra learned counsel representing the respondent-Corporation justifies the action holding the petitioner to be ineligible by stating that as per complete information provided to the prospective applicants in the brochure, the applications were required to be submitted online and the same were to be complete in all respects as on the date of submission of application even if the application had been submitted prior to the last date for submission of the same. Counsel submits that as per Clause 4 (v) (d) of the Eligibility Criteria, the applicant (s) under Group 1 were to possess documents establishing the ownership of land offered as on date of application including the registered lease-deed for a minimum period of 19 years 11 months. It is submitted that the petitioner cannot take any benefit of the alleged snag in the Office of the Sub Registrar. The lease-deed was actually registered on 24.12.2018 while the date of submission of the application was 21.12.2018 and as such the land offered by the petitioner did not meet the eligibility criteria pertaining to Group 1. Yet another submission raised by counsel is by adverting to the copy of the application that had been submitted by the petitioner and appended as

Annexure P-4 alongwith the writ petition. In the column relating to Date of registration of sale-deed/Gift-deed/registered lease-deed/ deed of mutation, the applicant/petitioner had entered the date as 21.12.2018. As per Clause 15 of the application format an undertaking was to be furnished by each applicant. As per printed format the undertaking was coined in the following terms:-

“a. I am aware that eligibility for Retail Outlet Dealership will be decided based on the information given in the application above. On verification by the Oil company if it is found that the information given by me is incorrect/false/misrepresented then my candidature will stand cancelled and I will be declared ineligible for the Retail Outlet Dealership.

b. I also confirm that I am in possession of the supporting documents in original in respect of the information given by me in this application and if selected, failure to present these documents in original will result in cancellation of selection due to submission of false/unsupported information in this application.”

It is contended by counsel for the corporation that the petitioner had furnished false information as regards the date of the registered lease-deed by mentioning the same as 21.12.2018 whereas it was actually registered on 24.12.2018. As per undertaking furnished by the petitioner in the eventuality of any information furnished in the application form found to be incorrect/false, the candidature was to be cancelled and the applicant was to be declared ineligible. Action of the Corporation in declaring the petitioner ineligible is sought to be justified even on the basis that false information had been given by the petitioner in the application

form.

Counsel for the parties have been heard and the pleadings on record have been perused.

Instant writ petition raises a vital question i.e. when would the registration of the lease document relied upon by the petitioner take effect?

Precisely such question came to be considered in **Yogesh Kumar Malik's case (supra)**. In such case the petitioner therein had applied for being appointed as a LPG Distributor in the category of Open Government Personnel in Sector 18, Rohini, Delhi. The documents in issue were two separate lease-deeds of even date i.e.09.10.2013. They were presented for registration before the concerned Sub Registrar on 10.10.2013, while the certificate of Registration under Section 60 of the Registration Act 1908 (hereinafter to be referred to as the 1908 Act) was issued on 14.10.2013.

Sections 47 and 75 of the 1908 Act are reproduced hereunder:-

“47. Time from which registered document operates.- A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

“75. Order by Registrar to register and procedure thereon.-(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering

officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for purpose of any enquiry under Section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (5 of the 1908).”

The learned Single Judge in Yogesh Kumar Malik's case (supra) having examined numerous judgments of the Supreme Court threadbare and having gone into the scope, ambit and inter-play of Section 47 and Section 75 (3) of the 1908 Act, culled out the following principles :-

“ Having regard to the array of judgments cited before me in my view, what emerge as the guiding principles are as follows: -

(i) A registered document shall operate from the time it is intended to operate by the parties if no registration thereof had been required in law or made, and not from the date of its registration. Having said so, Section 47 of the 1908 Act would kick in only upon the subject document being registered.

(ii) While registration accords necessary solemnity to the subject document for the purpose of enforcing the rights encapsulated therein, the transfer of rights from one party to the other, in this case from lessor to the lessee, would not remain in suspension until registration is actually effected.

(iii) Registration of a document is not consent centric, once the document is executed, the concerned statutory authority must register it if it is presented by the person having interest in it in accordance with the applicable provisions of law.

It was further held as follows:-

43.6 That the date of first presentation is important from point of view of ascertaining the date of registration can be discerned from the provisions of sub-section (4) of Section 75 which gives power to the Registrar to summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court for the purposes of inquiry under Section 74. An inquiry under Section 74 would be necessary where the Registrar is required to ascertain: -

(a) Whether the subject document has been executed.

(b) The requirements of law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

43.7 Necessarily, where inquiry is conducted, there would be a hiatus between the date of presentation and the registration of the document in issue. It is quite possible that

inquiry may return findings which favour the person seeking registration of a document - should then the period utilized in carrying the inquiry shift the date of registration? The answer would have to be in the negative if one were to taken into account the provisions of Section 75(3) of the 1908 Act.

44. Clearly, a perusal of the aforesaid provisions would show that once an order for registration has been made, and the extant requirements of law are fulfilled, then the registration is to take effect as if the document had been registered when it was first duly presented for registration. If this statutory logic and rationale is not followed, it would lead to complications and at times, iniquities which are best avoided.

44.1 The provisions of Section 60 which deals with the certificate of registration and Section 61 which requires the endorsement and certificates referred to and mentioned in Section 59 and 60, to be copied in the margin of the register book would have to be understood in the light of provisions of Section 75(3) of the 1908 Act. No doubt Section 47 of the 1908 Act would kick in, as indicated above, after the completion of the registration and when, perhaps, there are competing rights of priority qua two or more documents, section 75(3) of 1908 Act would undoubtedly come to the aid of the applicant in fixing the date of registration, which would be the date when the subject document was first presented. In other words, the difference between Section 47 and 75(3) of 1908 Act, is that, while the former fixes the date of operation of the subject document after

its registration the latter, that is, fixes the date of registration.

This Court is in respectful agreement with the conclusions drawn in Yogesh Kumar Malik's case (Supra).

Adverting back to the facts of the present case, it would be seen from the perusal of the copy of the lease-deed placed on record at Annexure P-5 that the same was scribed on 20.12.2018 between Shiv Kumar son of Sant Ram (lessor) and the petitioner herein as the lessee. The lease period was 25 years commencing w.e.f. 20.12.2018. The details of the parcel of land were clearly mentioned and the lessor had assigned in favour of the lessee all rights, easements and appurtenances as regards the land in question for the entire lease period. Parties to the lease deed had affixed their signatures thereupon on 20.12.2018 itself. The certificate of registration reflects the date as 24.12.2018. As per Deed Endorsement Details the stamp papers were shown to have been purchased on 20.12.2018. Undoubtedly in the certificate of registration carrying registration No.409/2018 and registration date 24.12.2018 the presentation date is also mentioned as 24.12.2018. However, placed on record at Annexure P-6 is a certificate issued by Sub Registrar Jol, District Una (Himachal Pradesh) and the relevant extract of which reads as follows:-

“This lease deed was attested and entered in the office of Sub Registrar Jol on 21.12.2018 and parties to the said lease deed have signed on the said lease deed along with marginal witnesses in my presence on the same day but the same could not be registered on the same date due to lack of connectivity as such the same was got registered vide Registration No.409/2018 dated 24.12.2018.”

As per certificate at Annexure P-6 issued by the concerned Sub Registrar, the lease deed in question was attested and entered in the Office of the Sub Registrar on 21.12.2018. Furthermore, parties to the lease deed signed on the same alongwith the marginal witnesses in the presence of the Sub Registrar on the same day i.e. 21.12.2018 but the same could not be registered on the same date due to lack of connectivity. Lease deed was got registered vide Registration No.409/2018 dated 24.12.2018.

The respondent corporation has not doubted the issuance of the certificate at Annexure P-6 nor the contents thereof. Even if the appropriate authorities under the Corporation had any doubt as regards date of presentation of the lease deed, it was open for the Corporation to have sought a further clarification in such regards from the petitioner. Corporation has chosen not to do so. Under such circumstances, this Court would proceed on the premise that the date of presentation of the lease deed before the concerned Sub Registrar was 21.12.2018 even though registered on 24.12.2018. By applying the dictum laid down in **Yogesh Kumar Malik's case (supra)** and as per Section 47 and 75 (3) of the 1908 Act the lease deed relied upon the petitioner would take effect from the date it was first duly presented for registration before the concerned Sub Registrar i.e. 21.12.2018. The decision of the respondent corporation to hold the petitioner ineligible merely on the count that the date of submission of application was 21.12.2018 and the date of registration of the lease deed on a date subsequent i.e. on 24.12.2018 as such cannot sustain.

The submission raised by counsel for the respondent corporation with regard to false information having been furnished by the petitioner in

the application form and her candidatures being rightfully rejected in terms of the undertaking furnished is not well-founded. In the first instance, it may be taken note of that the petitioner has been held ineligible for award of the Retail Outlet Dealership, at the location in question by issuance of the impugned email dated 16.05.2019 (Annexure P-8) only on the ground that the land documents submitted by her are not valid for considering her claim under Group 1. Candidature of the petitioner was not cancelled on the ground that any false information had been furnished. The validity of an impugned order has to be tested on the basis disclosed therein. It would not be open for the Corporation to now add to the grounds of rejection by virtue of a stand taken in the pleadings or during the course of submissions being advanced. Even otherwise by virtue of operation of Section 75 (3) of the 1908 Act, the registered lease deed relied upon by the petitioner is to take effect from the date of its presentation before the Sub Registrar concerned i.e.21.12.2018.

In view of the above the application furnished by the petitioner in the application form cannot be termed as false/incorrect so as to invite cancellation of her candidature.

For the reasons recorded above, writ petition is allowed. The action of the respondent corporation holding the petitioner to be ineligible for award of RO dealership at Village Ambehra, Tehsil Bangana, District Una (HP) under the SC Category under Group 1 as per email dated 16.05.2019 (Annexure P-8) is quashed.

The respondent-corporation is directed to proceed further in the matter as per terms and conditions contained in the application brochure and by holding the petitioner to have fulfilled the criteria as per Clause 4

(v) (d) and thereby satisfying the conditions of ownership of land by virtue of registered lease deed for a period in excess of 19 years and 11 months for the location in question under Group 1.

Writ petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

September 16, 2019

shweta

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