

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

CWP No.314 of 2017 (O&M)

Reserved on: 27.03.2019

Date of Decision:08.07.2019

Sangeeta Devi

... Petitioner

Versus

Bharat Petroleum Corporation Limited

... Respondents

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

Present:- Mr. Arun William, Advocate for the petitioner.

Mr. Raman Sharma, Advocate for the respondent.

....

TEJINDER SINGH DHINDSA, J.

Challenge in the instant writ petition is to the order dated 09.12.2016 (Annexure P-9) issued by the Bharat Petroleum Corporation Limited whereby the petitioner has been held to be ineligible for regular LPG Distributorship at Yamuna Nagar-2, District Yamuna Nagar, Haryana.

Brief facts as set up in the petition are that an advertisement was issued on 20.11.2013 inviting applications with regard to LPG Distributorships of Indian Oil Corporation/Bharat Petroleum Corporation/Hindustan Petroleum Corporation in the State of Haryana. Petitioner is stated to have submitted an application complete in all respects on 20.12.2013 for LPG Distributorship of Bharat Petroleum Corporation at Yamuna Nagar-2, District Yamuna Nagar under the SC Category. A letter dated 20.06.2014 (Annexure P-4) was received by the petitioner informing her that she is not eligible for the LPG Distributorship applied for as the

lands for showroom and godown are not leased to the applicant/petitioner as per clause 6.1 (vii) and (viii) of the brochure. At that stage, petitioner is stated to have submitted another application and which after consideration, a letter dated 30.10.2014 (Annexure P-5) was issued stating that the petitioner's name would be considered in the draw for selection of LPG Distributorship and which was to be held on 25.11.2014. However, on account of certain intervening circumstances, the draw was not held on the date so fixed. Petitioner received yet another call letter dated 05.08.2016 (Annexure P-6) to attend the draw which was fixed for 17.08.2016. Petitioner vide communication dated 17.08.2016 (Annexure P-7) was declared successful in the draw for regular LPG Distributorship at Yamuna Nagar-2 under the SC category and even deposited a demand draft for an amount of Rs.25,000/- on 22.08.2016 in favour of the respondent/ Corporation as per condition contained in letter/Communication dated 17.08.2016 (Annexure P-7).

Petitioner is aggrieved of the communication/letter dated 19.12.2016 (Annexure P-3) and whereby she has been informed that upon a Field Verification of Credentials (F.V.C.) having been carried out on 13.10.2016, she has been held ineligible as the land offered by her for both godown and showroom cannot be considered as the same does not fulfill the requirement as per Clause No.6 (vii) and (viii) of the eligibility criteria in individual applications contained in the brochure for regular LPG Distributorships.

Counsel has argued that conduct of the respondent/ Corporation is grossly unfair and unjust. An application having been submitted on

20.12.2013 for LPG Distributorship under the SC category, a letter was received dated 20.06.2014 holding her to be not eligible on the basis that land for the showroom/godown is not owned by or leased to the applicant as per relevant Clauses of the brochure. The petitioner having applied a second time over, two call letters dated 30.10.2014 and 05.08.2016 at Annexures P-5 and P-6 respectively were issued holding her to be eligible to be considered in the draw for selection of LPG Distributorships. It is contended that the documents at Annexures P-5 and P-6 would tantamount to the relevant condition/Clause in the brochure having been relaxed. Furthermore, the name of the petitioner having been considered in the draw held on 17.08.2016 and she having been declared successful, the respondent/Corporation could not backtrack and hold the petitioner ineligible in terms of the impugned communication dated 09.12.2016 at Annexure P-9. It is urged that the petitioner had taken two plots on lease on 18.12.2013 and 19.12.2013 and the lease agreement in respect of such two plots were notarized but not registered. It is argued that as per Clause 6 (vii) and (viii), the requirement of the lease deed to be registered was merely procedural in nature and which could be cured and rectified even subsequent to the allotment of the LPG Distributorship. It would be apposite to take note that at the stage of preliminary hearing of the instant petition and issuance of notice of motion i.e. on 18.01.2017, reliance had been placed upon a Division Bench judgment of the Calcutta High Court in **Swapnil Singh Vs. Bharat Petroleum Corporation Limited & others**, AIR 2014 Cal. 172 wherein it had been held that the cancellation of LPG Distributorship on the basis of a subsequent registration of the lease deed of the land/plot in

question was improper.

Per contra, Mr. Raman Sharma, learned counsel representing the contesting Bharat Petroleum Corporation Limited would support the impugned communication and the decision contained therein as regards the petitioner being ineligible by submitting that the decision is strictly as per terms and conditions of the advertisement/brochure which had laid down eligibility criteria.

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

The issue as regards eligibility of the petitioner for the LPG Distributorship under SC category at Yamuna Nagar-2 of which she had applied would have to be considered against the backdrop of the relevant Clauses contained in the brochure governing award/selection of the LPG Distributorship.

Clauses 9, 6 (vii) and Clause (viii) would be relevant to the issue at hand and which reproduce as under:

“xxx 9. PROCEDURE FOR DRAW

9.1 The scrutiny of the application will be carried out based on the information given in the application by the Committee appointed by the concerned Oil Company.

9.2 Selection will be done by draw of lot out of all eligible applicants. All applicants satisfying the eligibility criteria will be eligible for the draw. xxx”

xxx

xxx

xxx

*xx 6(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 specified 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 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/coownership by family member(s) in respect of such private road, consent letter from respective family member(s) will be required.

The land should also be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals/Drainage/Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/Town and Country Planning Department etc.

*In case an applicant has more than one suitable plot for construction of godown for storage of minimum 8000 kg of LPG in cylinders or ready LPG cylinder storage godown **as on***

the last date for submission of application as specified in the advertisement or corrigendum (if any), the details of the same can also be provided in the application.

*(viii) Own a suitable shop of minimum size 3 metres by 4.5 metre in dimensions or a plot of land for construction of showroom of minimum size 3 metres by 4.5 metre **as on the last date for submission of application as specified in the advertisement or corrigendum (if any)** at the advertised location or locality mentioned in the advertisement. It should be easily accessible to general public through a suitable approach road.*

*In case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metre by 4.5 metre **as on the last date for submission of application as specified in the advertisement or corrigendum (if any)** at the advertised location or locality as specified in the advertisement, the details of the same can also be provided in the application.*

'Own' for godown/showroom means having

(a) Ownership title of the property

Or

(b) Registered lease deed having minimum 15 yrs of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or corrigendum (if any)."

A bare perusal of the relevant Clauses reproduced herein above make it clear that the scrutiny of an application submitted by an applicant was to be carried out based on the information furnished in the application. Furthermore, selection was to be done by conducting a draw of lots out of the eligible applicants and all such applicants who were satisfying the eligibility criteria were to be considered for the draw. In other words, the eligibility and participation of an applicant in the draw was based upon the

information given by the applicant. Undoubtedly, the petitioner had been considered for the draw of lots that was held on 17.08.2016 and had been declared successful. However, the relevant communication dated 17.08.2016 (Annexure P-7) would make things clear wherein it had been clearly stipulated that even though the petitioner had been declared successful for the LPG Distributorship at Yamuna Nagar-2, category SC but a Field Verification of Credentials (F.V.C.) would be undertaken after deposit of an amount of Rs. 25,000/- towards security. In this very communication, the petitioner had been put to caution that if in the F.V.C. the information given in the application is found to be false/incorrect as regards eligibility, the amount of Rs.25,000/- would be forfeited and further the candidature would also be cancelled.

As per Clause 6 (vii) and (viii), a candidate 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 size of 25 meters x 30 meters (within 15 kms) from the municipal/town/village limits of the location offered in the State of Haryana for a LPG godown for storage of 8000 kg of LPG or a ready LPG cylinder storage godown within 15 km from the municipal/town/village limits of the location offered of 8000 kg capacity. Under Clause 6 (vii), the applicant was to own a suitable shop of minimum size of 3 meters x 4.5 meters in dimension or a plot of land for construction of showroom of minimum size of 3 meters x 4.5 meters as on the last date for submission of applications as specified in the advertisement or corrigendum, if any. The word 'own' was also defined to mean either ownership/title of the property or registered lease deed having minimum 15

years of valid lease period commencing on any date from the date of advertisement upto the last date for submission of applications as specified either in the advertisement or corrigendum (if any).

The undisputed facts in the present case are that the advertisement had been issued on 20.11.2013 and the last date for submission of application forms was 30.12.2013. Petitioner had submitted her application on 20.12.2013.

Neither on the date of submission of application forms i.e. 20.12.2013 nor till the last date for submission of application forms i.e. 30.12.2016, the petitioner had any registered lease agreement with regard to two plots that had been offered. It is the case of the petitioner herself that the lease agreement had only been notarized.

Clearly, the petitioner did not fulfill the conditions of eligibility as per Clause 6 (vii) and (viii) of the brochure. Counsel has not adverted to any other Clause under the brochure and whereby such condition(s) could be relaxed. There is no challenge to Clause 6 (vii) and (viii) in the instant petition.

Under such circumstances, no infirmity is found in the decision contained in the impugned communication dated 09.12.2016 (Annexure P-9) holding the petitioner to be ineligible for LPG Distributorship under the SC category.

It can only be termed as unfortunate that counsel had placed reliance upon a Division Bench judgment of the Calcutta High Court in the case of **Swapnil Singh (supra)** on the date of notice of motion on 18.01.2017. It is being so observed because the Division Bench judgment

already stood overruled and set aside by the Hon'ble Supreme Court on 08.09.2015 in **Bharat Petroleum Corporation Limited & others Vs. Swapnil Singh, 2016 (1) Cal. L.T. 58**. The Apex Court while setting aside the order passed by the Division Bench of the Calcutta High Court had held as follows:

“10. We are unable to accept this contention of learned counsel for the respondent. The brochure and the application form clearly require the applicant to have a registered lease deed in her name. What is shown to us is a notarized document and admittedly this document, even though it may have been in existence, was formalized into a lease agreement only on 20th December, 2012 and that was registered on 21st December, 2012. The notarized document, therefore, does not advance the case of the respondent any further. Therefore, it is quite clear that the respondent was not eligible on the date of application, i.e., 13th September, 2011.

11. Under the circumstances, we allow these appeals and set aside the order passed by the Division Bench of the Calcutta High Court. No costs.”

In view of the above, no intervention in the matter is called for.

Writ petition lacks merit and is dismissed.

08.07.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

- | | | |
|-----|----------------------------|-----|
| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |