

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.15326 OF 2017

Dushyant S/o Harishchandra Mate
Age: 36 years, Occu. Service and Agri.,
R/o. 4, Ideal Co-operative Housing Society,
Burudgaon Road, Ahmednagar,
Dist. Ahmednagar.

... **Petitioner**

V/s.

1. Indian Oil Corporation Ltd.,
Indane Area Office,
Aditi Commerce Centre
5th Floor, Office 1 & 4
East Street, Camp,
Pune – Through its Chief Area
Manager, Pune Area Office.
2. The Chief Area Manager
Indian Oil Corporation Ltd.,
Pne Area Office,
Aditi Commerce Centre
5th Floor, Office 1 & 4
East Street, Camp,
Pune.

... **Respondents**

...
Advocate for Petitioner : Mr. S.P. Salgar h/f. Mr. N.V. Gaware
Advocate for Respondent Nos.1 & 2 : Mr. A.P. Bhandari
...

**CORAM : MANGESH S. PATIL &
Y.G. KHOBRADE, JJ.**

**RESERVED ON : 23-11-2022
PRONOUNCED ON : 06-12-2022**

JUDGMENT :- (Per: Y.G. Khobragade, J.)

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is aggrieved by the rejection of his application for allotment of LPG distributorship in pursuance to the advertisement dated 29.09.2013 for Ahmednagar City.

3. The petitioner's application has been rejected vide order dated 14.08.2017 by the respondent-company on the following grounds:

“A. Factum of framing of charges in RCC No.23 of 2015 was not voluntarily disclosed by you.

B. After issuance of show cause notice dated 27.03.2017, you have accepted the fact that, charges are framed and you are defending the same.

C. You have not objected the policy of introduction of spouse, which was duly notified to you in the advertisement, and relevant guidelines. After knowing said policy, without questioning said condition you have participated in the process for selection even though you knew it before hand that compliance of said condition may not be possible for you.

D. You neither showed willingness to introduce your spouse as a partner, nor have you given any justification regarding the clause in advertisement.

E. As a matter of fact, criminal charges are now framed against you and as such, in the light of all the circumstances, subsequent events are affecting your eligibility.

As such, on perusal of your replies and stand taken by you during the course of personal hearing it is clear that, you have no justification regarding framing of charges in criminal proceedings, non-introduction of your spouse as a partner (in view of fact that, your spouse has filed the complaint in question), suppression of facts affecting eligibility and hence we do not wish to enter into further business transaction with you.

In view of the aforementioned facts, your candidature for LPG Distributorship stands cancelled in line with the criminal charges framed against you (admitted by you in your reply dated 17.4.2017). The amount deposited by you with the Corporation before FVC is also being forfeited in line with the policy.”

4. The learned counsel appearing for the petitioner submitted that initially, on 28.10.2013, the petitioner submitted his candidature for LPG distributorship in pursuance of the advertisement dated 29.09.2013 on fulfilling all criteria including the land / plot for construction of godown and showroom, however, on 07.05.2015, the respondent-company rejected his candidature for LPG distributorship on the ground that land which has been offered by the petitioner could not be considered as his own as the lease document was not registered. Therefore, the petitioner had approached

before this Court by filing Writ Petition No.9975/2015 and on 27.07.2016 the Division Bench of this Court quashed and set aside the order dated 07.05.2015 and 20.07.2015 and restored the candidature of the petitioner. So also, the respondent no.1-company was directed to consider alternate site offered by the petitioner for LPG distributorship by adopting usual mode of verification in accordance with the rules and regulations. Thereafter the petitioner offered alternate site and land for establishing showroom & godown. However, on 27.03.2017, the respondent-company issued a letter on the ground that, the petitioner executed agreement of distributorship but he was found involved in criminal offences relating to moral turpitude / economic offences and such a complaint was filed by his wife such Smt. Sonali D. Mate and called his explanation. Accordingly, the petitioner replied said notice on 17.04.2017 and pointed about his acquittal in Crime No.150/2014 of the offence punishable under Section 420, 498-A, 323, 504, 506 of the I.P.C. so also, dismissal of the proceeding under the Domestic Violence Act by the Competent Court vide its judgment and order dated 20.10.2015. However, on 14.08.2017, the respondent no.2 issued impugned order and cancelled his candidature for distributorship on the grounds mentioned in the order. It is illegal, bad in law and hence liable to be quashed and set aside.

5. The learned counsel appearing for the petitioner vehemently canvassed that, on the day of submission of application no criminal case was pending against him and no charges for any offences were framed against him and guideline 6.1 (x) does not provide about cancellation of distributorship on ground of framing of charges pertaining to domestic / family dispute except moral turpitude and economical offences and charges framed are not pertaining to moral turpitude / economic offences. Therefore, the respondent no.2 could not have cancelled his candidature. So also, as on today there is no divorce between the petitioner and his wife Smt. Sonali Mate. Therefore, the matrimonial relations between the petitioner and his wife Smt. Sonali Mate still exists. However, the respondent no.2 arbitrarily passed the impugned order and cancelled the candidature for distributorship of the petitioner prematurely which is illegal, bad in law and hence liable to be quash and set aside.

6. Per contra, the learned counsel appearing for the respondents submitted that, after issuance of communication dated 14.08.2017 which is challenged in the present petition a notice dated 21.09.2017 was issued and re-draw has been held on 06.10.2017 and one Smt. Aparna Ithape was selected in said draw. However, the petitioner has not joined the selected candidate, therefore, the petition is bad for non rejoinder of necessary party.

The learned counsel appearing for the respondents further canvassed that according to the terms and conditions of distributorship agreement, if any, crime has been registered against the candidate and the distributorship was liable to be cancelled. Therefore in adherence of guidelines of advertisement and terms and conditions of the distributorship agreement, the respondent no.2 passed the impugned order and cancelled the candidature of the petitioner for LPG distributorship which is just and proper and hence prayed for dismissal of the petition.

7. Having regard to the rival submissions canvassed on behalf of both the sides we have gone through the record. On the face of record, it appears that, on 28.10.2013, the petitioner submitted his candidature for LPG distributorship in pursuance of advertisement dated 29.09.2013 in individual capacity. The brochure provides about common eligibility criteria for all categories applying as individual for LPG distributorship.

8. The brochure provides guideline no.6.1 (v) i.e. family unit. In case of married person / applicant it shall consist of individual concerned, his/her Spouse and their unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of

divorcee. 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

As per guidelines no. 6.1 (vii), a plot of land of minimum dimensions 25 M x 30 M (within 15 km from municipal limits) for construction of LPG godown for storage of 8000 kg of LPG cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 M x 30 M will not be considered.

The guideline 6.1 (viii) provides for suitable shop having size 3 M x 4.5 M in dimension or a plot of land for construction of showroom of minimum size 3 M x 4.5 M as on the date of submission of application as specified in the advertisement.

Guideline no. 6.1 (x) provides that neither the candidate have been convicted nor charges been framed by any Court of law for any criminal offence involving moral turpitude / economic offences. The clause 11.5 provides for the spouse as co-owner which reads as under:

"In each case where an individual gets selected, his/her spouse (i.e. wife/husband) would be made co-owner. In case, the applicant is unmarried/divorcee/widow/widower, an undertaking will be required to be given that after

marriage / re-marriage, spouse will be made co-owner. Co-owner means spouse will be 50% partner irrespective of age, qualification and employment. Individual applicants are not permitted to enter into partnership with anyone other than their spouse."

9. The guidelines 6.1 (vii) provides for required specified dimensions space for godown and showroom as contemplated under guideline 6.1 (viii). No doubt as per guideline 6.1 (x), the candidate neither have been convicted nor charges been framed by any other Court of law for any criminal offences involving moral turpitude / economic offences. However, record speaks that initially, on 07.05.2015 and 20.07.2017, the respondent-company cancelled distributorship of the petitioner mainly on the ground the land which was offered by the petitioner for godown / showroom does not fulfill the criteria and said orders were subject matter of Writ Petition No.5775/2015. It is evident that, on 27.07.2016, the Division Bench of this Court (Coram: A.V. Nirgude & V.L. Achliya, JJ.) passed order and set aside the orders dated 07.05.2015 and 20.07.2015 and directed the respondent no.1 company to consider alternate accommodation offered by the petitioner for LPG distributorship by adopting the usual mode of verification in accordance with the rules and regulations, so also the plots / properties offered by the petitioner for establishing showroom was directed to be considered. It is evident that in compliance of said order the petitioner offered alternate plots /

properties for showroom as well as for godown and this fact has not been disputed by the respondents, however, on 14.08.2017 the respondent no.2 passed impugned order and cancelled the candidature of the petitioner for LPG distributorship mainly on the ground that the petitioner failed to introduce his spouse as partner and framing of charges in criminal proceedings.

10. On face of record it appears that, the charges which were framed against the petitioner in Crime No.154/2014 registered with Kotwali Police Station, Ahmednagar were not in respect of an offence involving moral turpitude / economic offences. Nonetheless the criminal proceeding under the Protection of Women from Domestic Violence Act, 2005 initiated by Smt. Sonali Mate has already been rejected by the 2nd J.M.F.C., Ratnagiri vide its judgment and order dated 20.10.2017. During the course of arguments the learned counsel appearing for the petitioner produced copy of judgment and order dated 02.02.2019 passed by the learned J.M.F.C. Court No.4, Ahmednagar in Regular Criminal Case No.23/2015, whereby the present petitioner, his father and brother have been acquitted in Crime No.154/2014 for the offence under Section 498-A, 323, 504, 506 read with Section 34 of the I.P.C.

Clause 11 of guidelines provides that: (relevant portion)

"5. SPOUSE AS CO-OWNER

In each case where an individual gets selected, his/her spouse (i.e wife/husband) would be made co-owner. In case, the applicant is unmarried/ divorcee/ widow/ widower, an undertaking will be required to be given that after marriage/re-marriage, spouse will be made co-owner. Coowner means spouse will be 50% partner irrespective of age, qualification and employment. Individual applicants are not permitted to enter into partnership with anyone other than their spouse.

11. FURNISHING OF FALSE INFORMATION

If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to have been suppressed / misrepresented / incorrect or false affecting eligibility, then the application/candidature is liable to be rejected without assigning any reason.

In case the selection of the candidate is rejected after the FVC or after issuance of LOI but before issue of Letter of Appointment, then the 10% of the security deposit deposited by the selected candidate before FVC will be forfeited.

In case the selected candidate has been appointed as a distributor and the allotment is liable to be cancelled, then the distributorship will be terminated along with forfeiture of security deposit remitted by the candidate.

In such cases, the selected candidate / distributor will have no claim whatsoever against the respective Oil Company."

11. That as per clause 11.5 of guidelines in case an individual is selected, his / her spouse (i.e. wife / husband) would be made co-owner and in case the candidate is unmarried / divorcee / widow / widower in that event an undertaking will be required to be given that, after the marriage / re-marriage, spouse will be made co-owner of 50% partner irrespective of age, qualification and employment.

12. On face of record, it further appears that, on 14.08.2017, the respondent no.2 passed the impugned order in respect of cancellation of LPG distributorship of the petition on ground of non introduction of his spouse as a partner. However, it is evident that, as on today, no material is available on record to show about ceasure of matrimonial relationship between the petitioner and his wife-Smt Sonali Mate. Therefore, at this stage the respondents could not have predicted on hypothetical basis about non introduction of spouse by the petitioner as a co-owner. In case the petitioner would have failed to introduce his spouse to fulfill criteria for issuance of letter of intent for LPG distributorship, in that event the respondents could have cancelled or revoked allotment / intent letter of LPG distributorship. The respondent no.2 passed the impugned order of cancellation of LPG distributorship no sooner it received a complaint from her regarding filing of criminal case. It should not have predicted the eventuality of petitioners inability to induct her as co-owner. This ground, therefore, also fails, being based on hypothesis.

13. Therefore, in our conscious view the impugned order dated 14.08.2017 passed by the respondent no.2 is liable to be quashed and set aside.

14. In view of above discussion, we proceed to pass the following order:

ORDER

- I) The petition is allowed in terms of prayer clause 'B'.
- II) Rule is made absolute in above terms.
- III) It is made clear that it would always be open for the respondents to insist for compliance with Clause 11.5 of the relevant guidelines.

[Y.G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]