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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20183-2018
Date of Decision:01.08.2023

JASPREET SINGH .... Petitioner

Versus

INDIAN OIL CORPORATION LTD AND ANR ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. Ashish Kapoor, Advocate
for respondents.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of letter dated 14.06.2018 whereby candidature of the petitioner for LPG distributorship has been cancelled.

2. The case of the petitioner is that petitioner pursuant to advertisement applied for LPG distributorship. The last date for applying LPG distributorship was 25.11.2013. Draw of lots was conducted and petitioner was declared successful candidate. The petitioner was asked to deposit security. The petitioner complied with directions of the respondent, however, respondent initially on one ground rejected claim of the petitioner and later on vide communication dated 30.03.2017 (Annexure P-5) rejected candidature of the petitioner on the ground that alternative fund i.e. father's EPF, Gratuity and leave encashment cannot

be considered as per policy. The petitioner preferred CWP No.8237-2017 before this Court seeking quashing of aforesaid communication. The said petition came to be disposed of vide order dated 26.03.2018. The petition was disposed of in terms of order of this Court in ***CWP No.25419-2016*** titled as ***'Amrinder Singh Cheema Vs. Indian Oil Corporation'*** decided on 09.02.2017. In view of orders of this Court, the petitioner was granted opportunity of personal hearing and fresh order dated 14.06.2018 (Annexure P-9) came to be passed which is under challenge.

3. Learned counsel for the petitioner *inter alia* contends that case of the petitioner is squarely covered by Division Bench judgment of Hon'ble Himachal Pradesh High Court in ***CWP No. 3536-2014*** titled as ***'Meena Kumari Vs. Indian Oil Corporation'*** wherein Court has held that amount lying in GPF does not stand excluded from the list of liquid assets, thus, amount lying in GPF should be considered towards financial capacity. He further submits that as per eligibility criteria, amount lying in Saving Bank Accounts, Post Office, Listed Companies, Government Organization/ 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 are considered for determining minimum amount of Rs.10 Lakhs and there seems no reason to exclude EPF, Gratuity and Leave Encashment amount.

4. Per contra, learned counsel for the respondent submits that present case is squarely covered by Judgment of Hon'ble Supreme Court in ***'Bharat Petroleum Corporation Limited and another Vs. Meet Kalhar' C.A. No.6677 of 2015*** decided on 28.08.2015 and judgment of

this Court in ***'Raminder Singh Vs. Bharat Petroleum Corporation Limited' C.W.P No.26986 of 2013*** decided on 15.01.2014. Hon'ble Supreme Court has held that amount lying in joint account cannot be considered. He further submits that as per judgment of Hon'ble Supreme Court, a candidate is bound by terms and conditions of the brochure and unless and until guidelines are challenged, the petitioner cannot doubt legality of the conditions.

5. I have heard arguments of learned counsels of both sides and with their able assistance perused the record.

6. The conceded position emerging from record is that the petitioner applied for LPG distributorship. The applicant in its application did not disclose financial capacity of Rs.10 lakhs which was mandatory. The respondent Corporation has cancelled candidature of the petitioner on the sole ground that petitioner has failed to fulfill requirement of financial capacity. The petitioner has applied as per policy prevailing in 2013, however, policy in 2015 was amended and it was provided that pending cases would be governed by 2015 policy. The petitioner in terms of 2015 policy submitted financial record of his father who was holding Rs.10.50 lakhs on 25.11.2013 and he was also having Rs.8.35 lakhs in joint account with Dalbir Singh. The respondent has not considered amount lying in the joint account and amount lying in EPF, Gratuity and Leave Encashment has been rejected on the ground that it does not fall within financial instruments specified in the brochure.

7. From the perusal of record, it is quite evident that respondent Corporation in advertisement has considered various liquid assets to determine financial capacity. The amount lying with Bank Accounts, Post

Office, Listed Companies, Government Organization/ 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 etc have been considered, however, balance lying in EPF, Gratuity and Leave Encashment have not been included in those liquid assets. The contention of the petitioner is that EPF, Gratuity and Leave Encashment in view judgment of Himachal Pradesh High Court should be included in total assets of the petitioner. A Division Bench of Himachal Pradesh High Court has held that balance lying in GPF should be considered while calculating financial capacity because in the exclusion clause GPF was not excluded.

8. In the case in hand, in the brochure there is no exclusion clause whereas various liquid assets in the form of deposits and instruments have been considered, however, EPF, Gratuity and Leave Encashment have not been included. There is no exclusion clause in the case in hand, thus, this Court finds that it would not be appropriate to add those liquid assets which are not specifically included. Had there been exclusion clause, it would have been possible to include EPF, Gratuity and Leave Encashment, however, in the absence of exclusion clause, the Court cannot add any liquid asset in the assets noticed in the brochure. The amount lying in joint account cannot be considered. The Hon'ble Supreme Court in ***Bharat Petroleum Corporation Limited and another*** (supra) has clearly held amount lying in joint account cannot be included. The relevant extracts of the judgment is read as under:

> *"8. There can be no manner of doubt that the appellant as the grantor can lay down guidelines and parameters on the basis of which application(s) for*

grant of distributorship is to be considered. So long such guidelines and parameters are not found to be unreasonable or ex facie irrelevant the appellant would have the right to insist on compliance thereof. In the present case, clauses 7.1 (iv) and 7.1(v) of the Guidelines were not under challenge in the writ petition filed. The said guidelines lay down the requirements as to availability of finance in the hands of the applicant making an application for grant of distributorship. The finance shown to be available could also be held jointly with the members of the family as defined in the guidelines. In this regard, it will be required to notice that the definition of 'Family' has been spelt out by the guidelines depending on the marital status of the applicant. If the applicant is a married person the definition of family unit in clause 7.1(iv) of the Guidelines does not take within its fold an unmarried brother or sister. Not only the legality and legitimacy of the said conditions have not been put to challenge in the writ petition, even otherwise, we do not find the same to be either unreasonable or irrational. We, therefore, have to hold that it was within the domain of the appellants, as the grantor, to lay down such conditions. Admittedly, the respondent-writ petitioner did not satisfy the laid down conditions inasmuch though he is a married person he had indicated the availability of the required funds in a joint account in the Oriental Bank of Commerce which he held with his brother. The reasons recorded in the order of rejection dated 23rd March, 2013 have to be necessarily understood in the above context in which event it must be held that the same was in conformity with the laid down parameters. The High Court, therefore, was wrong in setting aside the said decision of the appellant and in allowing the writ petition filed

> *by the respondent. Consequently, we allow this appeal; set aside the order of the High Court of Allahabad and uphold the order dated 23rd March, 2013 passed by the appellant herein."*

9. In the case in hand, the petitioner has not challenged the guidelines and conditions of the brochure and in the absence of challenge, the Court is bound to read terms and conditions as such. The assets disclosed by petitioner do not fall in the liquid assets contemplated in the guidelines, thus, there is no substance in the present petition. Being devoid of merit, the present petition deserved to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

01.08.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*