

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

261

CWP-7681 of 2017

Date of Decision: 11.04.2023

M/s SRA HP Gas Agency and others

....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Abhilaksh Grover, Advocate,
for the petitioners.

Mr. Vipul Aggarwal, Sr. Panel Counsel,
for respondents No.1 and 4.

Mr. Raman Sharma, Advocate,
for respondents No.2 and 3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of the termination letter dated 25.03.2017 (Annexure P-8) whereby the dealership agreement dated 17.03.2016 between the petitioners and respondent No.2 for running of the LPG dealership in the name of M/s SRA H.P. Gas Agency at Hoshiarpur was terminated, with a further prayer to issue a writ in the nature of *certiorari* for quashing of the guidelines (Annexure P-2) as they run contrary to the Article 19 & 21 of the Constitution of India as well as circulars issued by the Ministry of External Affairs not allowing the petitioners to continue its dealership and further a prayer has been made to

issue a writ in the nature of *mandamus* directing the respondents to honour the memorandum of agreement dated 17.03.2016 entered into by respondent No.1 with the petitioners whereby the petitioners were appointed as dealer for sale of LPG in Hoshiarpur.

2. Learned counsel for the petitioners, at the outset, has submitted that he confines the scope of the present petition with regard to the first prayer whereby a prayer has been made for quashing of the termination letter dated 25.03.2017 (Annexure P-8) and he does not wish to press the prayer with regard to challenging the guidelines (Annexure P-2) at this stage.

3. The brief facts of the present case are that petitioner No.2 applied for LPG distributorship which was advertised by the respondent-Corporation and after following due process, the LPG distributorship was granted to the petitioner by way of dealership agreement dated 17.03.2016 preceded by LOI dated 02.02.2015 and thereafter the petitioners started the business of LPG distributorship. The present petition was filed in the year 2017 and by order dated 20.04.2017 this Court had directed the *status quo* regarding the agency, as existing today, would be maintained till further orders. Prior to passing of the aforesaid interim order, the petitioner company had already transferred the existing customers to some other agency and in view of the *status quo* order, the petitioners' company has not been dealing with the customers till date.

4. After the allocation and commissioning of the LPG distributorship to the petitioners, a complaint was received by the company against petitioner No.2 by alleging that petitioner No.2, while applying for the LPG distributorship, has concealed and suppressed the facts from the respondent-Corporation and that he was not even eligible for the grant of LPG

distributorship. The complaint was based upon clause 5.1.1 of the Unified Guidelines for Selection of LPG Distributorship issued by the Ministry of Petroleum & Natural Gas, Government of India 2016 vide Annexure P-2. Clause 5.1 provides for common eligibility criteria for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak type of LPG Distributorships and clause 5.1.1 so provides that the applicant eligible for selection should be an Indian citizen and be a resident of India. The relevant portion of the aforesaid clause is reproduced as under:-

“5.1. Common Eligibility Criteria for Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak type of LPG Distributorships

The applicant eligible for selection should:

5.1.1 Be an Indian citizen and be a resident of India.”

5. Petitioner No.2 in his individual capacity filled up the application form vide Annexure P-3 in which there was a column at Sr. No.7.4 which provided two options as to whether he is the citizen of India or not, with the indication of 'Yes' or 'No', to which he had put a cut mark on 'No' and therefore he had so stated that he is the citizen of India. It also indicates in the column that in case the applicant is not Indian citizen then he is not eligible. Alongwith the aforesaid application, there is an affidavit also in the prescribed format as Appendix-1 in which also petitioner No.2 had sworn an affidavit dated 23.11.2013 by specifically stating that he is an Indian citizen and is residing in India. Para 1 of the aforesaid affidavit is reproduced as under:-

“That I am an Indian Citizen and residing in India.”

6. On the basis of aforesaid complaint received by the respondent-Corporation, the respondent-Corporation thereafter issued a show cause notice to petitioners No.2 and 3 vide Annexure P-6 dated 28.10.2016 on the ground that petitioner No.2 has violated clause 6.1.(i). This clause as in the Brochure Annexure R-2/1 according to learned counsel for the respondents is in *pari materia* with the brochure which has been attached as Annexure P-2 by the petitioner. Therefore, language used in clause 6.1.1 and 5.1.1 pertaining to requirement of being Indian citizen and resident of India is exactly the same in both the brochures. In the show cause notice it was so stated that petitioner No.2 has specifically stated in the affidavit as well as in the application form that he is a citizen of India and in the affidavit specifically stated that he is also residing in India and in pursuance of clause 29B(i) of the dealership agreement, the respondent-Corporation is at liberty to terminate the agreement forthwith upon any information received at the time of appointment, information provided by the dealer is found to be untrue or incorrect in any material particular. Thereafter, petitioner No. 2 filed a reply to the aforesaid show cause notice vide Annexure P-7 dated 13.11.2016, whereby he stated that it is correct that petitioner No.2 had submitted that he is an Indian citizen on the basis of which letter of intent was issued to him but the petitioner holds an Overseas Citizen of India (OCI) card and he is treated to be an Overseas Citizen of India as per the Citizenship Act, 1955 and as an Overseas Citizen of India, he was to be allotted the dealership at Hoshiarpur and to serve in the best possible manner. An Overseas Citizen of India is to be treated at par with Non Resident Indian (NRI) qua economic purposes and a person registered as OCI is given parity with the NRI in terms of the notification issued by the Government of India dated

11.04.2005 by the Ministry of Home Affairs. After considering the reply which was filed by petitioner No.2, the present impugned order Annexure P-8 dated 25.03.2017 was passed whereby the dealership of the petitioners was terminated on the grounds as aforesaid that the petitioners have concealed material facts and they were not eligible for being granted the LPG distributorship.

7. Mr. Abhilaksh Grover, learned counsel appearing on behalf of the petitioners submitted that the complaint was filed by a competitor of the petitioner company and on the basis of which, the Corporation has now terminated the dealership maliciously. He submitted that there had been no concealment of any material facts. While referring to the application form which is Annexure P-3, he submitted that at Sr. No.7.4 there were only two options available i.e. as to whether the applicant is an Indian citizen and the option were either 'Yes' or 'No' and there was no option with regard to OCI and consequently he had opted for 'Yes' as a citizen of India and so far as the affidavit Appendix-1 as aforesaid is concerned, the said format is a cyclostyled format in which admittedly he has so stated that he is an Indian citizen and residing in India and there was no occasion for petitioner No.2 to have added or substracted anything beyond the prescribed format.

8. He further submitted that in fact the rights of OCI card holders are at par with that of a NRI and an OCI is also a citizen of India and therefore it cannot be said that petitioner No.2 was not a citizen of India. He referred to the provisions of the Citizenship Act, 1955 in this regard. He submitted that Section 7B deals with the conferment of rights on Overseas Citizen of India Cardholder and by virtue of sub-section (1) of Section 7B, an Overseas Citizen

of India is entitled to the rights which may be conferred upon him by way of issuance of a notification by the Central Government in the official gazette. So far as sub-section (2) which is the exclusion clause is concerned, the case of the petitioners does not fall in any of the provision of sub-section (2). In pursuance of the enabling provision of sub-section (1) of Section 7B of the Citizenship Act, 1955 the Government of India in the Ministry of Home Affairs issued a notification dated 11.04.2005 vide Annexure P-10 which provided that Overseas Citizens of India shall be entitled for parity with Non Resident Indians in respect of all the facilities available to them in economic, financial and educational fields except in the matters relating to the acquisition of agricultural or plantation properties. The aforesaid notification Annexure P-10 is reproduced as under:-

“The Gazette of India: Extra Ordinary

[Part II-Sec. 3(ii)]

*Ministry of Home Affairs
Notification*

New Delhi, the 11th April, 2005

S.O. 542(E)- In exercise of the powers conferred by Sub-section (1) of Section 7B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7A of the said Act shall be entitled, namely:-

(a) grant of multiple entry lifelong visa for visiting India for any purpose;

- (b) *exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and*
- (c) *parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.*

[F. No.26011/2/20054C]
Durga Shanker Mishra, Jt. Secy.”

9. Mr. Abhilaksh Grover further submitted that by virtue of aforesaid notification, the petitioner who is admittedly an Overseas Citizen of India would enjoy Statutory Rights conferred under the aforesaid notification which has been so made under the provision of sub-section (1) of Section 7B of the Citizenship Act, 1955 which provides that an OCI would be at parity with a NRI pertaining to the economic affairs. He submitted that so far as dealing with the LPG distributorship is concerned, the same is an economic activity for the purpose of earning of his livelihood and therefore he was totally covered under the aforesaid notification issued by the Government of India and therefore the ground which has been taken for the purpose of termination of dealership was not a good ground and was rather violative of the aforesaid notification. He submitted that the case of the petitioner was protected under the aforesaid notification and therefore the order of termination was bad in law.

10. He further submitted that once the letter of intent has been issued and the agreement has also been executed with the Corporation and thereafter the same has been commissioned, then there was no occasion for the

respondent-Corporation to have terminated the agreement on this ground subsequently. To support his contention, he referred to a Division Bench judgment of this Court in **Sorab Singh Gill versus Union of India and others** (CWP-18093 of 2009, date of decision 18.03.2010) and another judgment in **Jasleen versus Union of India and others** (CWP-9503 of 2021) in this regard.

11. On the other hand, Mr. Raman Sharma, learned counsel appearing on behalf of respondents No.2 and 3-Corporation submitted that the respondent-Corporation is a public sector enterprise and it is within its powers to frame and make any guidelines for governing the terms and conditions at the time of selection of dealers. He submitted that the policy matter is taken at the highest level and the Corporation in its wisdom incorporates the conditions which are required by them in public interest. In pursuance of the aforesaid powers, a specific clause was inserted in the Unified Guidelines for selection of LPG dealership in 5.1.1 wherein it has been so expressly provided as an eligibility criteria that a person applying has to be an Indian citizen and be a resident of India. He further submitted that the Corporation does not permit any OCI or any NRI to apply for the dealership either for the LPG or for the petrol-pump and therefore there was no occasion for the respondent-Corporation to have inserted any such provision in the application form and that was the reason as to why two options have been provided i.e. 'Yes' or 'No' and even a specific format of affidavit in the form of Appendix-1 has been provided so that the applicant has to clearly state as to whether he is a citizen of India or not and in case he is not a citizen of India then straightway he is not eligible for the dealership and his application is not further processed. He further submitted that it was on the basis of the application and the affidavit furnished by

petitioner No.2 which was filed in individual capacity that it was processed. But thereafter he entered into a partnership with his wife. The Corporation had on the basis of the aforesaid affidavit processed his application and granted him the dealership. However, later on when it was discovered on the basis of a complaint that the petitioner is not a citizen of India. Thereafter, by virtue of clause 29B(i) whereby there was an inherent power with the Corporation to terminate the agreement however after following the proper procedure and giving an opportunity of hearing which was specifically done in the present case by issuance of a show cause notice to petitioner No.2 who had filed a response thereto.

12. He submitted that so far as the notification which has been relied upon by learned counsel for the petitioners Annexure P-10 is concerned, the same will not even apply to the present petitioners in view of the fact that the parity has been granted to the OCIs with NRIs and a NRI would be a person who is an Indian but who is residing abroad but it is a case where there was an express condition in clause 5.1.1 as reproduced above wherein two conditions must co-exist for the purpose of considering the eligibility i.e. Indian citizen and resident of India. He submitted that in case the petitioner is an OCI and wants parity by virtue of the aforesaid notification with a NRI, then he would not be a resident of India and in case he is not the resident of India then he otherwise would not be eligible under clause 5.1.1 and in case the petitioner states himself to be resident of India then he will not be covered by the aforesaid notification. He submitted that in pursuance of the order passed by this Court dated 10.02.2021, petitioner No.2 had furnished an affidavit before this Court pertaining to the status of his residence five years preceding to the

date of application, in which it has been so stated by petitioner No.2 that he was residing by and large in India for the last five years preceding the date of allotment.

13. Mr. Raman Sharma further submitted that in case petitioner No.2 was residing in India for the five years preceding the date of application then by no stretch of imagination can he be Non-Resident Indian and therefore the aforesaid notification on the face of it will not apply to the present petitioner.

14. He next submitted that the rationale for not granting the dealership to non-resident is that the Corporation wants that the person to whom the dealership is granted should be Indian citizen and should be also residing in India so that the work of the Corporation and that of the distributorship either LPG or retail petrol outlet is done in the presence of the person concerned and it is never the intention of the Corporation to grant any dealership to a person who is not even citizen of India or even not residing in India and therefore the arguments raised by learned counsel for the petitioners are not sustainable and therefore the present petition is liable to be dismissed.

15. I have heard the learned counsel for the parties.

16. The issue involved in the present case is limited to a very short domain where petitioner No.2 applied for LPG distributorship by filling up a form vide Annexure P-3 accompanied by an affidavit in which he had specifically stated although by filling up a cyclostyled form that he is a citizen of India which was a declaration made by him not only in the form but also by way of a duly sworn in affidavit. Nothing was mentioned in the affidavit by petitioner No.2 that he is an OCI. One of the conditions precedent for determining the eligibility of an applicant is contained in clause 5.1.1 as

reproduced above. The aforesaid provision has to be understood by dissecting it into two parts as follows:-

1. The applicant has to be an Indian citizen and
2. The applicant has to be a resident of India.

17. The expression 'and' has been used by way of conjunction which would mean that both the conditions must co-exist apart from being conditions precedent and *sine qua non* for determining the eligibility of an applicant. In other words, one condition will not exclude the other condition and in the absence of fulfillment of one condition as aforesaid, still the applicant will not be eligible. Therefore, for a person to be eligible, he has to fulfill both the conditions i.e. Indian citizen and also resident of India regarding which no dispute has been raised by any learned counsel for the parties.

18. However, the issue involved in this case as raised by learned counsel for the petitioners is that the petitioner was an Indian citizen because he was an OCI card holder and OCI card has also been attached by the petitioner alongwith the present petition and there is no dispute with regard to the same. Sections 7A and 7B of the Citizenship Act, 1955 provide for provisions pertaining to grant of status and conferment of rights on the Overseas Citizens of India. Section 7B is in the nature of a non-obstante clause which has overriding effect upon any other law for the time being in force and is divided into two parts. Sub-section (1) provides for the conferment of rights in general by stating that the conferment of rights shall be on the basis of being so notified by the Government of India in the official gazette. Sub-section (2) provides for the exclusion clause that in case the applicant falls in any of the

categories provided in sub-section (2), then there shall be no conferment or vesting of any rights in the OCI card holder. Admittedly, the case of the petitioner does not fall in any of the exclusion clauses of sub-section (2) of Section 7B but the effect of sub-section (1) of Section 7B has to be considered in the present case so far as the present petitioner is concerned. In pursuance of sub-section (1) of Section 7B, the Central Government issued a notification in the year 2005 (Annexure P-10) on 11.04.2005. A perusal of the aforesaid notification would show that an OCI has been granted the benefit pertaining to economic, financial and educational fields at par with that of a Non-Resident Indian pertaining to the facilities available to him. Therefore, the issue involved in the present case would be as to whether the petitioner is covered by the aforesaid notification or not. In case the petitioner is covered by the aforesaid notification, then certainly the termination order which has been passed by the Corporation would not sustain.

19. On the one hand, the eligiblity criteria provides for twin conditions which must co-exist i.e. a person should be Indian citizen and also a resident of India whereas the notification Annexure P-10 states that an OCI is to be treated at par with a Non-Resident Indian. Petitioner No.2 has filed an affidavit before this Court by stating that for five years preceding the date of allotment/application he was residing in India for most of the time. The relevant portion of the affidavit dated 24.02.2021 is reproduced as under:-

Sr. No.	Arrival in India	Departure from India	Period of stay in India
1.	18.10.2006	10.08.2010	1392 days (3 years 9 months)
2.	18.08.2010	19.05.2012	640 days (1 year 8 months)
3.	05.07.2012	07.01.2013	186 days (6 months)
4.	01.02.2013	28.03.2014	420 days (1 year 2 months)

20. A perusal of the aforesaid affidavit would show that the petitioner was residing in India for five years preceding the date of application and therefore if it is to be assumed that the petitioner is an Indian citizen but in view of the aforesaid affidavit filed by petitioner No.2, he would not be a Non-Resident Indian. In case he is not a Non-Resident Indian, then by virtue of the aforesaid notification, he cannot be treated at par with an OCI. Admittedly, the petitioner is not citizen of India simplicitor but he is only an OCI and learned counsel for the petitioners is claiming parity only on the basis of the notification Annexure P-10. Therefore, either the petitioner violates the eligibility criteria or he does not fall within the parameters of the notification Annexure P-10 because both of them create a dichotomous situation. By no stretch of imagination, it can be said that the petitioner being an OCI would fulfill both the eligibility criteria having two conditions co-existent and also the notification Annexure P-10 because they cannot be satisfied together and simultaneously at one point of time.

21. So far as the judgments relied upon by learned counsel for the petitioners is concerned, the same are distinguishable on facts. In ***Sorab Singh Gill's*** case (supra), the subject-matter did not pertain to Petrol Pump or LPG and therefore eligibility condition of being Indian Citizen and Resident was not in issue. So far as judgment in ***Jasleen's*** case (supra) is concerned, the US citizenship was acquired much after the allotment and therefore it was not a case of concealment of material facts at the time of allotment.

22. Therefore, this Court is of the considered view that once the petitioner did not fulfill the eligibility criteria and there is a specific provision for termination of an agreement after following due procedure and the same

has been so adopted and followed by the respondent-Corporation, the present petition being devoid of merit is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

April 11, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No