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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-34489-2019(O&M)
Date of Decision: 02.03.2023

(I)

M/s. Vishkarma Bharat Gas and others

....Petitioner(s)

Versus

Bharat Petroleum Corporation Ltd and another

.....Respondent(s)

CWP-1951-2021 (O&M)

(I)

Ankur Sangwan

....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Abhinav Gupta, Advocate,
for the petitioners in CWP-34489-2019.

Mr. Ranbir Singh, Advocate,
for the petitioner in CWP-1951-2021.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Shobit Phutela, Advocate and
Ms. Shweta Nahata, Advocate, for respondent No.1-UOI.

Mr. Akshay Bhan, Senior Advocate with
Mr. Ashish Kapoor, Advocate,
for the respondent-BPCL.

JASGURPREET SINGH PURI, J. (Oral)

By way of this order, two civil writ petitions shall be disposed

of with the consent of learned counsel for the parties since the issue involved in the aforesaid two petitions is similar.

Facts of the case
(CWP-34489-2019)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing the impugned order dated 22.11.2019 (Annexure P-14) by which the distributorship of the petitioner has been terminated illegally, arbitrarily and unlawfully in view of the facts and circumstances.

The brief facts of the present case are that the respondent-Bharat Petroleum Corporation had issued an advertisement for the purpose of allotment of LPG Distributorship in the year 2013 in various categories at different places and for that purpose the terms and conditions of allotment were governed by the guidelines for selection of Regular LPG Distributorship vide Annexure P-1. The subject matter of the present location is at Dabuda Khurd, District Jhajjar and the petitioner applied in the category of 'Other Backward Classes'. There was a specific eligibility criteria for the main reservation category including Other Backward Classes which is governed by Clause 6.2.1(c) which provided that the candidates belonging to Other Backward Classes recognized as OBC by the Government of India (Central Government) under the Constitution of India will be eligible and that the candidates will be required to submit alongwith application a certificate issued by the competent authority notified by the Government of India certifying that the candidate belongs to Other Backward Classes recognized as OBC by a Resolution/Gazette Notification

issued by the Government of India (Central Government) and alongwith the same, even an undertaking was also required to be given by a candidate that he belongs to OBC Category and fulfils the non-creamy layer status. The aforesaid provision is reproduced as under:-

“6.2.1 (c) Other Backward Classes:

The candidates belonging to Other Backward Classes recognised as OBC by Government of India (Central Government) under the Constitution of India will be eligible.

The candidates will be required to submit along with application a certificate issued by the competent authority notified by the Government of India certifying that the candidate belongs to Other Backward Classes recognized as OBC by a Resolution/Gazette Notification issued by the GOI (Central Government). Alongwith the OBC certificate, the candidate also has to submit an undertaking that he/she belongs to the OBC category and fulfils the non-creamy layer status. The last date for submission of application mentioned in the notice of advertisement or corrigendum (if any) will be treated as the date of reckoning for OBC status of the candidate and also for determining that the candidate does not fall in the creamy layer”.

In accordance with the advertisement issued by the respondent-Corporation, the petitioner applied for LPG Distributorship in OBC Category on 20.12.2013 which was in fact the last date for making such an application. Thereafter after about 11 months, a draw of lots was held in accordance with the procedure under the brochure on 21.11.2014. The petitioner was also part of the candidates who participated in the draw of lots and thereafter when the result was declared the petitioner was declared to be successful. Consequently, the petitioner deposited the requisite amount of 10% as security on 21.12.2014. For the purpose of allotment of LPG

Distributorship, there has to be a specific land which is to be offered by a candidate and regarding which information has to be given at the time of filing of the application. The petitioner has given the information regarding having land on lease in the place of advertisement pertaining to the present case. The petitioner had taken the land on lease from a private individual where she proposed to set up the LPG Distributorship godown etc. but the said land was opposed by the local Gram Panchayat and vide Annexure P-3 dated 08.06.2014 which was much prior to the draw of lots objected by the Gram Panchayat that since the proposed site is adjoining to the residential area of the village, there was an objection for making a godown pertaining to LPG Distributorship since it involved the safety of villagers and the residents so as to avoid any untoward incident or an accident. The Gram Panchayat therefore passed a resolution that they will be opposing the aforesaid setting up of an LPG Distributorship vide Annexure P-3. At that point of time when the resolution was passed, the petitioner had already applied but the process was not going on by the respondent-Corporation and draw of lots had not taken place. Thereafter vide Annexure P-4, the petitioner moved a representation to the respondent-Corporation with regard to changing the land so that an alternate land can be offered by the petitioner. This representation Annexure P-4 was given by the petitioner on 20.01.2015 immediately after the draw of lots since rights had accrued to her on the basis of being successful in the draw of lots and since the Gram Panchayat had objected to the already proposed land, she vide Annexure P-4 proposed another land. However, the aforesaid representation given by the petitioner was rejected by the respondent-Corporation vide Annexure P-5 on

05.04.2015. In the aforesaid order which was passed by the respondent-Corporation, it was so stated that the land which was offered by the petitioner on lease in khewat No.864/774, khata No.910 in village Bupanaia, Tehsil Bahadurgarh, District Jhajjar, the same land has already been surrendered by the petitioner on 16.06.2014 and that the petitioner had offered an alternate land in the name of the petitioner in village Dabuda Khurd but the date of registration of the land is 19.01.2015 i.e after the last date for submission of applications and therefore the request of the petitioner could not be accepted. Thereafter, the petitioner filed a writ petition before this Court bearing CWP No. 18419 of 2015 challenging the aforesaid order of the respondent-Corporation which was disposed of by this Court on 17.04.2017. One of the issues which was raised by the respondent-Corporation in the aforesaid writ petition was that although now some instructions of the Central Government had come that an alternate land can be offered but those instructions were of 15.07.2015 and those instructions were after the selection procedure had started and after draw of lots and those instructions which permitted relaxation and providing of alternate land were prospective in nature and therefore the petitioner could not have been given the benefit of alternate land. However, a Co-ordinate Bench of this Court directed respondent No.4 to decide the representation of the petitioner which was handed over by him to the learned counsel in consonance with the contents of the letters as expeditiously as possible and preferably within a period of two months from the date of the receipt of the certified copy of the order after affording an opportunity of hearing to the petitioner. It was also observed by this Court that the decision shall be rendered by respondent

No.4 influenced to the reasoning given in the impugned letter dated 15.04.2015. Thereafter, the respondent-Corporation rather issued a letter to the petitioner whereby it was stated that the personal hearing has been granted to her and she has submitted copies of registered sale deed No.6658 dated 04.01.2006 as the proposed alternate land to be offered which was stated to be khewat No.483, khasra No.120/1 and the land is registered in favour of Ajit Kumar who is the husband of the petitioner Neelam and the photocopy of the OBC Certificate issued by the Tehsildar, Bahadurgarh on 11.12.2014, PAN Card etc. were also submitted to them. The Corporation therefore accepted another alternate land which was offered by the petitioner which was as aforesaid i.e. khewat No.483, khasraNo.120/1. The reasoning given by the respondent-Corporation for accepting the alternate land offered by the petitioner was that this alternate land was available with the petitioner prior to the last date of submission of the application. In other words, the first offered land which was on lease was already objected by the Gram Panchayat and was even cancelled later on and the second alternate land was with the petitioner after the date of application and both the lands were not found to be suitable in view of the brochure and guidelines but now after the passing of the order by this Court as aforesaid, the third alternate land which was provided by the petitioner was accepted by the respondent-Corporation itself by citing a reason that land was already available with the petitioner prior to the last date of submission of application and that there was no violation of any guidelines or the brochure. The aforesaid letter Annexure P-7 is reproduced as under:-

DEL/PYL/DAB-KHURD/003

04.10.2017

Mrs. Neelam,
W/o Shri Ajit Kumar,
House No.383, Sector-2,
Tehsil Bahadurgarh, District Jhajjar,
Haryana-124507

*SUBJECT: APPLICATION FOR AWARD OF LPG DISTRIBUTORSHIP
AT DABUDA KHURD, DISTRICT JHAJJAR, UNDER OBC
CATEGORY; ADVERTISED ON 20.11.2013.*

Madam,

This is with reference to the meeting we had with you on 16.6.2017 in compliance of Hon'ble High Court of Punjab and Haryana at Chandigarh order dt. 17.04.2017 in CWP 18419-2015 (O&M) and out subsequent letter of even reference dtd. 18.6.2017.

In compliance to the order of Hon'ble High Court, we have heard you personally on 16th June 2017 at out Piyala Plant Office in presence of your husband Shir Ajit Kumar and other officials of Piyala LPG Territory, BPCL.

During this personal hearing, you have submitted copies of the registered sale deed no.6658 dtd. 4.1.2006 as the proposed alternate land to be offered (Khewat No.483, Khasra No.1201). This land is registered in favour of Ajit Kumar, your husband. Photocopy of your OBC certificate issued by Tehsildar, Bahadurgarh on 11.12.2014, PAN card etc. were also submitted to us.

You requested BPCL to accept the subject site as alternate land for award of LPG Distributor and issue LOI to you.

Considering your request and the direction of the Court order dt. 17.04.2017 by Hon'ble High Court of Punjab and Haryana at Chandigarh, we have now examined the documents submitted by you. After obtaining opinion from the competent authorities, we are now pleased to accept, in principle, the alternate land offered by you in place of the original land offered in your application no. DEL/PYL/DAS-KHURD/003 since the alternate land now offered by you is prior to the last date of submission of application for the location Dubada Khurd.

Field verification of the land and scrutiny of other

documents submissions by you will be carried out as per the guidelines and procedures of the corporation for finalization of your application for LPG Distributorship at the location Dabuda Khurd, Dist. Jhajjar, Haryana.

Thanking you,

*Yours faithfully,
For BHARAT PETROLEUM CORPN. LTD.,
Sd/-
YM (LPG)
Piyala LPG Territory*

After the acceptance of the land and the claim of the petitioner by the Corporation itself, the petitioner was issued a Letter of Intent (LOI) vide Annexure P-8 on 10.11.2017. After the issuance of the LOI, the respondent-Corporation entered into a written agreement on a stamp paper on 26.04.2018. Although the aforesaid agreement is not a part of the paper-book but during the course of arguments, the learned counsel for the Corporation has supplied a photocopy of the same. The same is hereby taken on record as Mark-X. By way of the aforesaid bilateral agreement dated 26.04.2018 as aforesaid, the contract between the parties was **concluded** and all the rights and liabilities thereafter started flowing upon the respective parties in accordance with the agreement.

After the issuance of the LOI, the petitioner started developing infrastructure on the site where the LPG godown was to be built up and after establishing the entire infrastructure and the godown, the said LPG distributorship was commissioned by the Corporation on 26.04.2018 and the petitioner immediately started commencement of her business for distribution of LPG and in this way, from the month of April, 2018, the petitioner had been doing the business of LPG as allotted by the respondent-

Corporation till date. As per learned counsel for the petitioner, the petitioner has already spent an amount of Rs.50 lacs on the aforesaid infrastructure etc. and there has been no complaint whatsoever from the time of her commencement till date from any customer with regard to any misconduct of the petitioner or because of any other reason whatsoever and the business of the petitioner is being commenced in a smooth and proper manner.

However, after the aforesaid business was commenced by the petitioner, one person in the name of Parminder Singh who was also one of the candidates originally at the time in the year 2013 when the applications were invited and draw of lots was held made a complaint to the respondent-Corporation by alleging that the petitioner was wrongly granted the distributorship of LPG since she had violated the conditions of the brochure which are in the nature of guidelines. It is the case of the petitioner that the complaint which was moved by the aforesaid Parminder Singh has never seen the light of the day. Neither the copy of the complaint was supplied to the petitioner nor the petitioner was called nor was confronted with any such kind of complaint. However, the respondent-Corporation acting upon the aforesaid purported complaint issued a show-cause notice to the petitioner vide Annexure P-11. Earlier the petitioner was rather apprised by the Corporation that there is one inquiry pending against her but when she sought an information from the respondent-Corporation as to what was the inquiry which was against her to which it was replied to her vide Annexure P-10 on 13.06.2019 specifically stating that there was no inquiry pending against the petitioner. However, with regard to the aforesaid show-cause notice, the petitioner filed a reply vide Annexure P-12. There were two

issues which were raised in the show-cause notice and replied by the petitioner and which ultimately became the basis of the order of termination. The first issue was that the petitioner at the time of application did not provide for the requisite OBC Certificate in accordance with the conditions of the brochure which have been reproduced above in Clause 6.2.1(c) because the petitioner had submitted the certificate which was issued by the State of Haryana in which it is so stated that the caste of the petitioner is recognised as Backward Class under the Notification issued by the Government of Haryana whereas as per the brochure, it has to be as recognised by the Government of India.

The second ground taken in the show-cause notice was that at the time of the application, the petitioner did not possess any land and the land which was given by the petitioner in the application was a land on lease which was subsequently cancelled and in case any other land has been offered by the petitioner later on would not confer any right upon the petitioner because there is no provision in the brochure for the purpose of giving an option of an alternate land. The reasoning which governed the respondent-Corporation was that although there is a provision for giving an option for alternate land but the said provision came into force on 15.04.2015 which operated prospectively and therefore was not applicable to the petitioner. Thereafter, after considering the reply filed by the petitioner to the show-cause notice, the impugned order Annexure P-14 was passed on 22.11.2019. In the aforesaid order as well, there were primarily two grounds on the basis of which the dealership of the petitioner was terminated. After the filing of the present petition, a Coordinate Bench of this Court on

03.12.2019 had directed status quo as it exists today and therefore the petitioner is running the LPG Distributorship even till today.

**Arguments raised by learned counsel
for the petitioners**

Mr. Abhinav Gupta, learned counsel appearing on behalf of the petitioners has submitted that it is the case where the action of the respondent-Corporation was totally arbitrary, discriminatory and violative of the Fundamental Rights of the petitioner guaranteed under Article 19(1)(g) of Constitution of India apart from being violative of Article 14 and 21 of the Constitution of India. He submitted in detail while dealing with both the grounds which have been taken in the show-cause notice which became the basis for the termination of the contract.

While dealing with the first issue pertaining to the Certificate of OBC, he submitted that the petitioner alongwith the application had filed a Certificate of OBC which has been attached alongwith the present writ petition/replication as Annexure P-16 which is dated 19.07.2001. Therefore, this Certificate itself was much prior to the advertisement or filing of the application which happened in December, 2013. However, the respondent-Corporation pointed out the defects in the certificate by saying that it has to be mentioned in the certificate that the said status of the Backward has to be in accordance with the Notification of Government of India but the certificate of the petitioner was pertaining to Government of Haryana. However, later on, the petitioner provided another certificate which confirmed to the guidelines as per reproduced above in Clause 6.2.1(c) that her status of Backward Class is in consonance with the Notification issued

by the Government of India. He submitted that the objection which has been taken by the respondent-Corporation was that at the time of the application, the petitioner ought to have the aforesaid certificate but he has submitted certificate dated 11.12.2014 which was after the date of the application. He submitted that the draw of lots in the present case had taken place on 21.11.2014 and when she was found successful in the draw of lots and no objection was raised by the respondent-Corporation, she submitted the requisite certificate regarding OBC which is dated 11.12.2014 and after the submission of the aforesaid certificate, contract was entered into between the parties by way of an agreement in April, 2018 and thereafter, the Corporation itself got the LPG Distributorship of the petitioner commissioned and the business commenced. He submitted that had it been a case that the respondent-Corporation had taken the objection at that point of time, the situation would have been different but once after considering the certificate submitted by the petitioner, the respondent-Corporation concluded the contract and entered into a bilateral agreement binding upon the parties by which the petitioner has altered his position by investing into it and commenced with the business, then such an objection now which has been taken by the respondent-Corporation by issuing show-cause notice on the basis of a complaint made after a period of 1 ½ years of the commissioning cannot be sustained.

He also referred to a judgment of Hon'ble Supreme Court in ***Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another, 2016(4) SCC 754*** which although pertains to the certificate of Scheduled Caste and Scheduled Tribes category but while relying upon the

judgment submitted that the rationale of the aforesaid judgment and the present case is the same. He submitted that the Hon'ble Supreme Court had rather observed that the status of a person as a Scheduled Caste will remain the same and the date would not make any difference for the purpose of eligibility. He referred to para No. 14 and 15 in this regard. He submitted that in the same way while applying the same rationale for the Backward Category as well, the respondent-Corporation after passage of long period of time cannot turn around and say that at the time of filing of the application, the certificate which the petitioner had given was defective although later certificate was correct but after last date of application.

On the second issue pertaining to the land, he submitted that initially when the petitioner applied for the dealership, she had offered the land which was having on lease from another person but due to the objection from the local Gram Panchayat, lease deed was cancelled in the month of June, 2014 which was much after the filing of the application in December, 2013. He submitted that it is true that the draw of lots had taken place afterwards but it was only when the draw of lots was conducted and she was declared as successful, she had offered an alternate land which was not accepted by the respondent-Corporation and she was constrained to file a writ petition before this Court. After the directions were issued by this Court for considering the case of the petitioner again, the respondent-Corporation themselves vide Annexure P-7 accepted the candidature of the petitioner and the land offered by her which was the third land, although it was as an alternative land. He submitted that even if there was no provision for offering of an alternate land in the brochure but in view of the aforesaid

prolonged delay and the directions issued by the Court in CWP No. 18419 of 2015 as aforesaid, it was respondent-Corporation themselves who have accepted the offer of the petitioner and the land pertaining thereto and thereafter they themselves entered into an agreement with the petitioner and commissioned the LPG Distributorship. Thereafter with a passage of time after more than 1 ½ years, one of the old candidates filed a complaint and acting upon the same, the respondent-Corporation have now terminated the agreement of the petitioner on the ground that there was no provision for giving of an alternate land. He submitted that such kind of action of the respondent-Corporation was totally arbitrary, discriminatory and motivated and therefore the impugned order of termination is liable to be quashed.

**Arguments by learned Senior Counsel for the
respondent-Corporation**

Mr. Akshay Bhan, learned Senior Counsel with Mr. Ashish Kapoor, Advocate appearing on behalf of the respondent-Corporation submitted that it was only after the receipt of the complaint by one Parminder Singh even if after a period of 1 ½ years that they had acted upon the aforesaid complaint and once it was found that there was a violation of the terms and conditions of the brochure which were binding and mandatory, it was the duty of the respondent-Corporation to have rescinded the contract which was in violation of the terms and conditions of the brochure. He submitted that in fact it is a case where a fraud has been committed by the petitioner especially with concealment of facts at the time of filing of the application and since fraud vitiates everything, the plea taken by the learned counsel for the petitioners that now after commissioning of the LPG, no

such termination could have been made is not sustainable. Learned Senior Counsel also referred to a judgment of this Court in ***Rupinder Pal Singh Versus The Bharat Petroleum Corporation Ltd and others***, CWP No.2522 of 2016, decided on 21.04.2016 to contend that the letter of the Government of India dated 15.07.2015 whereby relaxation by way of alternate land can be given was prospective in nature has now been adjudicated by this Court by which it has been held that earlier thereto, there was no power with the Corporation to accept offer of an alternate land. The same judgment has now been upheld in LPA as well because the LPA has been dismissed. He further submitted that the action of Corporation cannot be termed to be illegal or bad because it was on the basis of fraud that there was a termination of contract. Learned Senior Counsel also referred to Clause 6.1(vii) wherein it is so stated that the applicant should own as on the last date for submission of application as specified in the advertisement a plot or a land. He submitted that since the petitioner did not own or have any land even on lease at that point of time when she filed an application for grant of LPG Distributorship, she was not entitled for being allotted the LPG Distributorship since there was a violation of Clause 6.1 (vii). He submitted that the land which the petitioner had offered at the time of application was not in existence and thereafter so far as the first land offered on lease was concerned, it stood cancelled although after the filing of the application but before the draw of lots but it was the duty of the petitioners to have informed the Corporation that the lease deed has been cancelled which was not done by the petitioners and secondly, the petitioners did not submit any undertaking in view of the clause 6.2.1 (c) as reproduced above. The learned

Senior Counsel also referred to a judgment of Hon'ble the Supreme Court in ***Union of India and another Versus Narendra Singh, 2008(2) SCC 750*** to contend that the mistake committed by the Corporation can always be rectified with due process of law.

**Analysis of arguments advanced by learned
counsel for parties**

I have heard the learned counsel for the parties at length.

The facts as aforestated pertaining to the procedure adopted for the allocation of LPG Distributorship to the petitioners is not in dispute. However, the controversy in the present case is that after the allotment of LPG Distributorship to the petitioners, the respondent-Corporation acting upon a complaint of one of the earlier candidates has terminated the LPG Distributorship of the petitioner on two grounds. It will be necessary to deal with both the grounds separately.

The first ground which was raised by the Corporation in the show-cause notice which ultimately also became a reason for termination of LPG Distributorship was that the petitioner at the time of application did not file a requisite OBC Certificate which was required under Clause 6.2.1 (c) as reproduced above. There are two certificates which are on record of the present case. The first certificate is Annexure P-16 which was attached alongwith application which the petitioner filed on 13.12.2013. This certificate although is a declaration of the petitioner being a Backward Class but as per the certificate, it is so stated that the certificate is issued as per the Notification issued by the State of Haryana whereas as per the specifications

given in Clause 6.2.1 (c) it has to be as per the Notification of the

Government of India. This aforesaid Annexure P-16 which was attached alongwith the application filed by the petitioner is dated 19.07.2001 which is much before the date of the application and regarding which there is no dispute. The second certificate is of 11.12.2014 (Annexure P-17) which even according to the respondent-Corporation confirms to the specifications as contained in Clause 6.2.1 (c) since this certificate was issued declaring the petitioner to be OBC as per the Notification issued by the Government of India. The issue involved in this ground is that once at the time of the filing of the application the petitioner did not produce the aforesaid certificate Annexure P-17 dated 11.12.2014 and as per Clause 6.2.1(c) as reproduced above, she had to submit the certificate along with the application, then as to whether the contract of petitioner can be terminated on this ground or not.

Learned counsel for the petitioners has relied upon a judgment of Hon'ble Supreme Court in *Ram Kumar Gijroya(Supra)* while submitting that even when the category pertaining to the Scheduled Caste, it is the status of a person which is to be seen and for the purpose of eligibility, the date cannot be considered as relevant factor and similar rationale would apply in the present case as well pertaining to OBC because it is not a case of the respondent-Corporation that the petitioner was never an OBC but it is a case of the Corporation that she did not supply the certificate as per the specifications. This Court is of the view that the reliance placed upon the aforesaid judgment of Hon'ble Supreme Court is well placed.

The second ground on the basis of which the termination was made was that the land which was offered by the petitioner at the time of application was the land on lease which was not acceptable to the

Corporation on the ground that there was an objection from the local Gram Panchayat and lease deed stood cancelled prior to the draw of lots and was not informed by the petitioner. However, the process did not stop here and it continued at the instance of the Corporation. The petitioner after the draw of lots represented to the Corporation that she is offering an alternate land to which the Corporation did not agree and they rejected her claim but the petitioner approached this Court by filing No. 18419 of 2015 which was disposed of on 17.04.2017 and in pursuance of the orders passed by this Court, the respondent-Corporation themselves accepted the claim of the petitioner vide Annexure P-7 wherein the petitioner had offered a third alternate land which according to the Corporation was suitable and they accepted it. It is not a case where something was hidden from the Corporation except the allegation which now the Corporation raises is that at the time of draw of lots she did not disclose that the lease deed was cancelled but after the aforesaid draw of lots and after the orders passed by this Court in CWP No. 18419 of 2015, the Corporation itself accepted the alternate land of the petitioner. After acceptance of the alternate land of the petitioner, the respondent-Corporation entered into a written agreement on a stamp paper which was a bilateral agreement binding upon both the parties. After the execution of the agreement, immediately the LPG Distributorship of the petitioner was commissioned and the petitioner commenced her business which she is doing till date.

This Court after hearing the learned counsel for the parties is of the considered view that both the grounds which the respondent-Corporation had taken are devoid of any merit and are unsustainable. The primary ground

which has been taken by learned Senior Counsel for the respondent-Corporation was that a fraud has been committed by the petitioner by concealment of facts and therefore, since fraud vitiates everything, the termination order cannot be termed to be bad in law. However, it is not understood as to how the petitioner has committed a fraud. All the documents etc. were already on the record. The purported defect of requisite certificate of OBC was removed by the petitioner and the requisite certificate was filed which is Annexure P-17 and no objection was raised by the Corporation at that point of time and similarly with regard to the land, vide Annexure P-7, the respondent-Corporation themselves accepted the land after directions were issued by this Court and after the acceptance of the land, they had entered into an agreement in the month of April, 2018 which was much after the acceptance itself and thereafter they themselves commissioned the LPG Distributorship and supplied all the necessary services.

The first principle of law which would come to the rescue of the petitioner in the present case is the doctrine of promissory estoppel. The action of respondent-Corporation itself will be hit by the doctrine of promissory estoppel which in the peculiar facts and circumstances would protect the petitioner. Had it been a case where the respondent-Corporation itself was not aware of any document or land which according to them did not fall within the requisite eligibility qualification or some fact which had come after the agreement was made by her, then it may have constituted to be an element of fraud but it is not a case in the present case that some new fact has come to the knowledge of the Corporation after the execution of the

contract between the parties and after commissioning of LPG distributorship and therefore it is held that it is not a case of a fraud by the petitioner at all. Once there is a concluded contract between the parties and petitioner has altered her position by investing huge sum of money and till date is running the distributorship, the respondent-Corporation is estopped from rescinding the contract on the above-mentioned two grounds.

The second principle of law which will again come to the rescue of the petitioner will be the doctrine of legitimate expectation. The aforesaid doctrine is also to be considered alongwith the Fundamental Rights which are vested in the petitioner under Article 19(1)(g) of Constitution of India. Although the aforesaid Fundamental Right is not absolute in nature and is subject to exception which is contained in Article 19(6) of the Constitution of India but the present case does not fall in the exception as aforesaid. Once the petitioner had applied and entered into the process which was ultimately accepted by the respondent-Corporation and thereafter entered into an agreement and commissioned the LPG, then the benefit of doctrine of legitimate expectation would be given to the petitioner and a complaint which was received after 1 ½ years of the agreement could not have been entertained by the respondent-Corporation to the detriment of the petitioner. During the course of arguments, learned counsel for the petitioners also referred to the procedure in case where grievance or a complaint is received which is at Clause 13(3) which provides for a inbuilt mechanism to deal with the complaints and as per them aforesaid procedure which is contained in the brochure, it is so stated that the complaint can be entertained only if it is received in the office of OMC within 30 days from

the date of declaration of draw result and thereafter it also provides that on receipt of the complaint, a letter will be sent to the complainant asking him to submit details of the allegations within a period of 15 days with a view to *prima facie* to substantiate the allegations alongwith the supporting documents, if any. In the present case, the present complaint after the draw of lots is much after and rather there is no date of the complaint and such complaint never saw the light of the day. The petitioner in the present petition has made specific pleadings and averred in para No.2 (l) of the petition that the details of the complaint were never disclosed to the petitioner and the respondent-Corporation while filing a reply has not controverted the same and there is no denial of the same and therefore, the specific averment made by the petitioner in the writ petition is deemed to have been admitted and in this way, it is clear that the petitioner was never provided with such a complaint and straightaway show-cause notice was issued and therefore rather the Corporation itself has violated its own procedure as contained in the brochure.

Apart from the above, a perusal of the agreement which has been now placed on record today as supplied by the learned counsel for the respondent-Corporation, there is a specific provision for the purpose of termination of agreement. Clause 28 provides for a non-obstante clause by stating that notwithstanding anything to the contrary therein contained, the Corporation shall also be at liberty and on its entire discretion to terminate this agreement forthwith upon or any time after the happening of any of the following events and Clause (l) states that if any information given by the Distributor in his application for appointment as a Distributor shall be found

to be untrue or incorrect in any material particular. The aforesaid clause is reproduced as under.

“28 (l) If any information given by the Distributor is his application for appointment as a Distributor shall be found to be untrue or incorrect in any material particular”.

During the arguments, learned Senior Counsel for respondent-Corporation has pressed into service the aforesaid clause by submitting that the termination has been done in view of the aforesaid Clause 28(l). However, *ex facie* the argument raised by learned counsel for the respondent is not sustainable in view of the fact that as per aforesaid Clause, it itself provides that if any information is given by the distributor in his application for appointment as a distributor is found to be untrue or incorrect in any material particular, then agreement can be terminated. However, in the present case, all the information which was given by the petitioner in the application was subjected to thorough scrutiny and rather there was a first round of litigation before this Court and after considering all the information given by the petitioner, the Corporation came to the conclusion that the offer of the petitioner is to be accepted and which was so accepted vide Annexure P-7 and thereafter an agreement was executed which was a conscious act of the Corporation and it was not out of any ignorance or deception. Therefore, the aforesaid Clause 28(l) will not apply in the present case and the reasons for termination of agreement are perverse, arbitrary, illegal, discriminatory and without any basis and therefore violative of Article 14, 21 and 19(1) (g) of the Constitution of India.

Conclusion

In view of aforesaid totality of facts and circumstances, the present petition is allowed and impugned order of termination dated 22.11.2019 (Annexure P-14) is hereby set aside and quashed.

There shall be no order as to costs.

CWP-1951-2021

The prayer in the present petition is for seeking a writ in the nature of *Mandamus* to allot Distributorship of LPG for location of Dabuda Khurd after the termination of earlier selected candidate.

Since writ petition i.e. CWP-34489-2019 has been allowed and the order of termination has been set aside, nothing survives in the present petition and therefore, the same is hereby dismissed.

02.03.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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