

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7519 OF 2023

M/s Sarnath Indane through its Partner Anand Satwaji Gaikwad
Vs.

Indian Oil Corporation Ltd., Through its Executive Director and another
WITH

WRIT PETITION NO. 6071 OF 2023

M/s Sarnath Indane through its Partner Anand Satwaji Gaikwad
Vs.

Indian Oil Corporation Ltd., Through its DGM and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Pushkar Ghare, Advocate for petitioner
Shri Abhijeet Khare, Advocate for respondents

CORAM : AVINASH G. GHAROTE AND
SMT M.S. JAWALKAR, JJ.

DATE : 03.09.2024.

Heard Mr. Ghare, learned Counsel for the petitioner, Mr. Khare, learned Counsel for the respondents. Heard finally with the consent of learned Counsel for the parties.

2. On 22/08/2024 the following position was recorded :

“The petitioner had applied for LPG Distributorship at Plot No.46 for which he had given the consent of his brothers on 05/01/2018 (Pg.55) and was allotted the distributorship. On a notice sent by one Jawanjal, the respondent-Corporation had called

for an explanation of the petitioner and after considering it and not finding it satisfactory, by the communication dated 12/09/2023, terminated the distributorship, which has been challenged in the present petition. The earlier show cause notice dated 11/01/2023 and the earlier communication dated 07/06/2022 were challenged in Writ Petition No.6071 of 2023. It is also submitted that an application for shifting of the licence filed by the petitioner (Pg.49), though has been permitted by the communication dated 10/04/2019 in consonance with which the place of the distributorship came to be shifted to Gut No.485, village Ugwa, Tahsil and District Akola and therefore, there was no cause for termination of the distributorship as the basic grievance regarding any objection by the brothers did not survive.

2. List the matter on 30/08/2024 along with Writ Petition No. 6071 of 2023.”

3. Mr. Khare learned Counsel for respondents, submits that when the distributorship was advertised, the brother of the petitioner had also applied for the same in respect of the same plot No. 46, on account of which, since two different persons had applied for the distributorship at the same place it was rightly terminated.

4. It is not in dispute that the petitioner had applied for LPG distributorship on plot No. 46 for which he had also given consent of his brothers dated 05/01/2018 (page 55). Since the petitioner was selected by a lottery drawn by the respondents, he was called along with the documents for the

purpose of considering the grant of distributorship. Since the documents were found in order and the petitioner satisfied the criteria, the LPG distributorship was awarded to the petitioner on 27/02/2018. The petitioner, thereafter, continued the distributorship till 10/04/2019, when upon his application the place of distributorship came to be shifted to Gat No.485, Village Ugwa, Tahsil & Dist. Akola. Mr. Khare, learned Counsel for respondents does not dispute that no complaint against the petitioner was filed by his brothers. Though, he contends, that the brother of the petitioner had also applied for distributorship from the same place, it would be material to note, that this position was within the knowledge of the respondents throughout as the application for the distributorship by the brother of the petitioner, was made by him to the respondents. It was therefore open for respondents upon scrutiny of the applications, to have ascertained whether two persons had applied for the same place. The respondents however, appeared to have failed in their duty to do so at the time of scrutiny, which resulted in awarding the distributorship to the petitioner. That apart the respondents, also do not dispute the consent dated 05/01/2018, granted by the brothers of the petitioner for awarding distributorship to him on plot No. 46. It is also not disputed that thereafter the petitioner, at considerable expense, had erected the infrastructure, for housing the distributorship which comprised of showroom and godown, also hired personnel to operate the same and continued with it till 10/04/2019, the date on which

transfer of the place of distributorship was permitted. It is, therefore, apparent, that throughout the respondents were aware of the aforesaid position. Even if, we consider that an application for distributorship was filed by the brother of the petitioner from the same place, in absence to indicate anything on record that the petitioner was aware of the same, or was made aware by the respondents, the contention that two different persons had applied for distributorship at the same place would not affect the petitioner for the aforesaid reason. That apart, the petitioner had the consent in writing of his brothers dated 05/01/2018, which still continues to hold good as it has never been withdrawn by them. Had the respondents, any grievance, with the petitioner of the nature as indicated above which forms the ground for the cancellation of the distributorship, they ought to have brought this to the notice of the petitioner and at least granted him an opportunity to explain the position, moreso for the reason, that it is not the case of the respondents, that upon receipt of all the applications for distributorship a list of the applicants is published in public domain so as to attribute any knowledge regarding the brother of the petitioner also having applied for the same at the same place. This was also not pointed out to the petitioner at the time when shifting was permitted by the communication dated 10/04/2019. The reply of the petitioner to the show cause dated 11/01/2023, clearly indicates the absence of knowledge regarding submission of an application by Niraj Satwaji Gaikwad, the brother of the petitioner for the

LPG distributorship. This would also indicate that it is the respondents, who failed in the scrutiny of the applications received by them.

5. That apart, even considering again, the contention that the brother of the petitioner had applied for distributorship, the consent granted by him in favour of the petitioner unless it stood withdrawn, would not only bind him but would also bind the respondents, who upon accepting it, had also acted upon it by granting the distributorship to the petitioner. Clause – 8A(j) of the brochure has to be read in a pragmatic manner inasmuch as it will have to be considered, in light of the fact that the brother of the petitioner had in fact granted consent dated 05/01/2018 (Page 55) and also the position that he has never raised any objection with the respondents regarding the distributorship awarded to the petitioner. In our considered opinion, even if, there is an offer of the same piece of land by the two different persons, it would be permissible for the respondents, to have accepted the offer of one of the persons where there is no dispute raised by the other person. In the instant matter there is a specific consent in writing given by the brother of the petitioner on 05/01/2018, apart from the fact that he has never raised any grievance against the distributorship being awarded to the petitioner. The purpose behind Clause - 8A (j) of the brochure, is to avoid the respondents getting embroiled in litigation, so

that the public distribution system of the LPG cylinders to the consumers is not adversely affected.

6. Though Mr Khare, learned Counsel for the respondents relied upon *Indian Oil Corporation Ltd. and others Vs. Atulanand Singh, 2022 SCC OnLine Cal 3034*, however, the same is distinguishable on facts as the stage under consideration therein was grant of LOI, at which stage it was found that the wife of the respondent therein had also applied, as against which, in the instant case there is a specific consent in writing resulting in granting of the distributorship as well as absence of any objection or claim from the brother of the petitioner and the fact that permission to shift was also granted within a period of one year. For the reasons stated above, we do not see any reason to sustain the impugned order dated 12/09/2023, terminating the distributorship of the petitioner. The same is hereby quashed and set aside. The petition is accordingly allowed in the above terms. No costs.

7. In light of the above, Writ Petition No. 6071/2023, which challenges show cause notice is rendered as infructuous and is dismissed as such.

(SMT M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)