IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1910 of 2020
Reserved on: 19.12.2024
Date of Decision: 27.12.2024

Vijay Kumar

.....Petitioner

Versus

Bharat Petroleum Corporation Ltd and Ors.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Vinay Kuthiala, Senior Advocate with Mr. Rajiv Rai, Advocate.

For the respondents: Mr. B.N. Misra, Senior Advocate with Ms. Diksha, Advocate, for respondent No.1.

Sandeep Sharma, J. *(Oral)*

By way of instant petition filed under Article 226 of the Constitution of India, petitioner has prayed for following main reliefs:

> "A. That the Hon'ble Court may kindly be pleased to issue the Writ of Certiorari whereby this Hon'ble Court may kindly be pleased to quash and set-aside the impugned rejection letter dated 15th of April, 2020 vide Annexure P/1 and further the impugned rejection letter dated 30.01.2018 vide Annexure P/13 issued by the office of the respondent no.2.
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> B. That this Hon'ble Court may further be pleased to quash and set-aside the Field Verification Credentials (FVC) Vide Annexure P/17, conducted Respondent no.3 qua the petitioner in the application reference no. BPC03119000701092017 being illegal, without authority and mala-fide.
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> C. That the respondents may kindly be directed to constitute a proper FVC Committee consisting of Officials and further to conduct the FVC absolutely in consonance with the Unified Guidelines for the section

of Distributorship of LPG dated July 2017 vide Annexure P/4 after designating a date for FVC with prior intimation to the petitioner well in time.

D. That the Hon'ble Court may kindly be pleased to direction investigation/inquiry into the issue involved in the present case as per the allegation leveled by the petitioner."

2. Relevant facts necessary for adjudication of the case as emerge from the pleadings adduced on record by parties to the lis are that vide public notice dated 13.8.2017 (Annexure P-5), three leading oil companies namely Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited, jointly invited applications for allotment/grant of dealership of Liquefied Petroleum Gas (hereinafter referred to as the "LPG") at various places, wherein place called Dharampur (Rural), District Mandi, Himachal Pradesh, was reserved for Scheduled Caste Category. Petitioner herein being eligible applied for allotment of LPG distributorship on 1.9.2017 vide application No. BPC03119000701092017 (Annexure P-6). On 12.1.2018, petitioner was found eligible for selection of LPG distributorship of Bharat Petroleum Corporation at Dharampur, District Mandi, in the draw of lots conducted on 11.1.2018. Vide communication dated 12.1.2018 (Annexure P-8 Colly), respondent Bharat Petroleum Corporation Limited while intimating petitioner with regard to his selection called upon him to deposit amount of Rs. 20,000/- and submit relevant documents. On 16.1.2018, petitioner besides submitting the relevant

documents also deposited the fee as per afore communication dated 12.1.2018.

3. As per Brochure/Unified Guidelines for Selection of LPG Distributors jointly prepared by all the three oil companies as detailed herein above in June 2017 (Annexure P-14), Field Verification of Credentials (hereinafter referred to as the "FVC") was required to be conducted by the Committee officials and accordingly, in that regard, an official of respondent/BPCL visited the location offered by the petitioner. On 17.1.2018, respondent No.3 reached the location of the petitioner for field verification and found that there were over hanging high tension electric wires passing through the plot. While conducting inspection afore respondent No.3, allegedly got prepared the rough site plan of area measuring 21x26 meters out of total plot measuring 70x30 meters, offered by petitioner from a revenue official i.e. Patwari of area concerned. Allegedly, afore respondent No.3 also compelled the petitioner herein to write communication dated 18.1.2018 (Annexure P-11 Colly) to FVS committee, stating therein that he has land to offer for godown in his own name having dimensions of 21x26 meters at advertised location i.e. village Dharampur. In the afore communication, while admitting that he does not have any alternative land to offer for godown at advertised location owned/registered lease in the name of his wife, parents and grandparents, petitioner undertook to take up the matter with the Electricity Department for

removal of the electricity line passing through the plot offered by him for godown. Though petitioner after his having signed communication dated 18.1.2018, was hopeful that alternate land offered by him shall be acceptable and soon, he would be issued letter of intent, but respondent-BPCL vide communication dated 7.2.2018 (Annexure P-13) intimated the petitioner that he has not been found eligible for LPG distributorship.

4. After issuance of afore communication, respondent No.3 allegedly started sending communications for the computerized redraw among the remaining candidates, as such, on 28.2.2018, petitioner filed CWP No. 384 of 2018, titled *Vijay Kumar v. Union of India*, which ultimately came to be disposed of vide judgment dated 4.3.2020 (Annexure P-3). Coordinate Bench of this Court while ordering that order passed by the Corporation dated 30.1.2018, shall remain in abeyance, permitted the petitioner to file representation with direction to respondent to decide the same afresh in terms of policy. As such, petitioner filed detailed representation dated 18.3.2020 (Annexure P-2), however, same came to be rejected vide order dated 15.4.2020, passed by the respondent-corporation. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein for reliefs as have been reproduced herein above.

5. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Vinay

Kuthiala, learned Senior counsel duly assisted by Mr. Rajiv Rai, Advocate, representing the petitioner is that order dated 15.4.2020 passed in purported compliance of judgment dated 4.3.2020, passed in afore Civil Writ Petition is not only contrary to the provisions contained in the guidelines, but same has been also passed without affording opportunity of hearing to the petitioner. Mr. Kuthiala, while making this Court peruse various documents adduced on record, vehemently argued that FVC conducted on spot by respondent No.3 cannot be said to have been conducted by the Committee in terms of Unified Guidelines/Brochure, rather such visit was conducted by an individual i.e. respondent No.3 that too without there being intimation to the petitioner and report submitted by him is totally contrary to the factual position on the spot. Mr. Kuthiala, learned Senior Counsel, further argued that as per brochure/Unified Guidelines, prior notice was required to be issued to the petitioner herein by the Committee, constituted by Respondent-Corporation for inspection of site, however in the case at hand, respondent No.3 visited the spot within two days of the submission of documents, whereas such visit ought to have made by the Committee after seven days of submission of the documents. While making reference to alleged conversation held inter-se petitioner and respondent No.3 on Whatsapp, learned Senior Counsel also attempted to argue that respondent No.3 has proceeded to reject the site offered by the petitioner on extraneous

considerations. While referring to communication dated 18.1.2018, (Annexure P-11 available at page-99 of the paper book), Mr. Kuthiala argued that since plot offered by the petitioner in his application was of bigger dimensions i.e. 70x30 meters and requirement of Respondent-Corporation to set up a LPG godown was 21x26 meters, respondent No.3 himself after having visited the site got the tatima prepared by the revenue officials (Annexure P-9 Colly.), thereby agreeing to use 21x 26 meters area of the plot, over which, admittedly, there was no high tension wire. He submitted that though while getting signature of petitioner on the aforesaid communication dated 18.1.2018, petitioner was made to understand that land offered by him having dimension of 21x26 meters shall be acceptable, but yet subsequently, taking undue advantage of other submissions made in the afore applications, wherein allegedly, petitioner had expressed its inability to provide alternative land, respondents allegedly proceeded to reject the case vide order dated 7.2.2018.

6. While referring to order dated 15.4.2020 (Annexure P-1), passed by the respondents in purported compliance of order dated 4.3.2020, passed by the coordinate Bench of this Court in CWP No. 384 of 2018, Mr. Kuthiala, strenuously argued that since there was specific provision under the Brochure/Unified Guidelines to provide opportunity to the applicant for providing alternative accommodation and such, alternate land was offered by the petitioner, there was

otherwise no occasion, if any, for Respondent-Corporation to reject the claim of the petitioner. While making this Court peruse the Brochure /Unified Guidelines for Selection of LPG Distributors/Unified Guidelines (Annexure P-4), Mr. Kuthiala, further submitted that since at no point of time, petitioner herein submitted wrong information while submitting his application, rather he offered plot having dimension of 70x30 meters and out of which, respondent No.3 agreed to use area having dimension of 21x26meters, over which no electric wires were hanging, there was no authority, if any, with the respondent corporation to reject the claim of the petitioner on the ground that petitioner herein had furnished wrong information while submitting his application. While placing reliance upon judgment passed by the Hon'ble Apex Court in **Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405**, learned Senior counsel appearing for the petitioner submitted that principle for natural justice was not followed in the case of the petitioner as he was not granted adequate opportunity of hearing. Relevant paras No. 46 to 48 of the afore judgment are reproduced herein below:

> "46. It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. [Boson University Law Review, Vol. 53, p. 899] Natural justice is being given access to the United Nations. [American Journal of International Law, Vol. 67, p. 479] It is notable that Mathew, J. observed in *Indira Gandhi* (p. 513, see p. 128, para 303):
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> > "If the amending body really exercised judicial power, that power was exercised in violation of the principles of natural justice of *audi*

alteram partem. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance."

Lord Morris of Borth-y-Gest in his address before the Bentham club concluded [Current Legal Problems, 1973 Vol. 26, p. 16] :

"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying those principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fairplay in action — who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled if it lacks more exalted inspiration."

47.It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play.

48. Once we understand the soul of the rule as fairplay in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation : nothing more — but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing

> unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

7. To the contrary, Mr. B.N. Misra, learned Senior Counsel, representing the Respondent-Corporation supported the impugned action of respondent-corporation in as much as it proceeded to reject the application of the petitioner on the ground that plot offered for construction of LPG godown had overhead high tension electrical wires and on the date of FVC, petitioner was unable to offer alternate land. While making this court peruse application submitted by the petitioner vis-à-vis provisions contained under clause-8 of the Unified Guidelines (available at page 66 of the paper book), Mr. Misra argued that for a Gramin Vitrak, the candidate should own a land of minimum 21x26 meters within 15km from the advertised location and as such, plot should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines, canals, drainage and Nallahs should not be passing through the plot. He submitted since during FVC, it was found that high tension power line passes over the land offered by the petitioner and he was unable to offer any alternative land, no illegality can be said to have been committed by the Respondent-Corporation while rejecting the application filed by the petitioner. He further submitted that mere selection of the petitioner

through draw of lots would not mean that he automatically had become eligible for grant/allotment of LPG distributorship. To substantiate his aforesaid arguments, he specifically invited attention of this Court to letter dated 12.1.2018 (Annexure P-8), whereby intimation came to be given to the petitioner with regard to his selection through draw of lots. While referring to aforesaid letter, Mr. Misra argued that Respondent-Corporation while calling upon the petitioner to deposit an amount of Rs. 20,000/- specifically clarified that deposit, if any, shall be applicable subject to advertised location in line with the provisions contained in Unified Guidelines for selection of LPG distribution. He further submitted that since during FVC, site offered by the petitioner was not found suitable, which fact stands duly established on record with the placing of communication dated 18.10.2018, signed by the petitioner, there was no requirement, if any, for Respondent-Corporation, to make further correspondence, if any, with the petitioner. Mr. Misra stated that though as per Unified Guidelines, petitioner herein could have offered alternative land and in that regard, time was required to be given to him, but in the case at hand, petitioner, during field verification conducted by respondent No.3, expressed inability to provide alternative land, rather insisted upon the Respondent-Corporation to carve out an area having dimensions of 21x26 meters out of bigger plot having dimensions of 70x30 meters, over which admittedly, high tension electric wires

were hanging. He submitted that since despite there being opportunity afforded by Respondent-Corporation to provide alternate accommodation, petitioner failed to provide the plot, rather showed his inability to do so, no illegality can be said to have been committed by the Respondent-Corporation while issuing communication dated 7.2.2018, thereby intimating the petitioner that his case has been rejected. While referring to Clasue-26 of the Unified Guidelines, Mr. Misra argued that if any statement made by the applicant 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. He submitted that since in the case at hand petitioner failed to inform that there is high tension electric wire hanging on the plot, application submitted by him otherwise required to be rejected at its threshold, but yet taking lenient view, respondent No.3 during field verification called upon the petitioner to offer alternate land, which he failed.

8. Having heard learned counsel for the parties and perused the material available on record, this Court finds that pursuant to petitioner's having made application in terms of advertisement, he was issued communication dated 12.1.2018 (Annexure P-8), thereby intimating that he has emerged as successful candidate in draw of lots

conducted on 12.1.2018. Vide aforesaid communication, Respondent-Corporation while calling upon the petitioner to deposit sum of Rs. 20,000/- clarified that deposit, if any, made shall be subject to advertised location in line with the provisions of Unified Guidelines for Selection of LPG distributorship. It is also not in dispute that pursuant to aforesaid communication, petitioner herein besides depositing sum of Rs. 20,000/- also submitted the relevant documents. Deposit as well as submission of documents in terms of aforesaid order was made/done within seven working days from the date of afore email and before expiry of period of seven days as detailed in the communication dated 12.1.2018, respondent No.3 visited the location on 17.1.2018 for FVC. Though it came to be vehemently argued that at the behest of the petitioner that no prior intimation with regard to FVC was given to the petitioner, but once it is not in dispute that on 17.1.2018, petitioner herein was present on the spot alongwith respondent No.3, he is estopped from claiming that no prior information was given to him with regard to visit of officials of Respondent-Corporation. Though Mr. Vinay Kuthiala, learned Senior Counsel, attempted to argue that as per Unified Guidelines, a committee was required to visit the spot/location for field verification, whereas in the case at hand, only one official i.e. respondent No.3 visited the spot and as such, field verification, if any, is of no consequence, however, this Court finds no force in the afore

submission of Mr. Kuthiala for the reason that though Unified Guidelines talks about a Committee, but that Committee can be of one official also. Moreover, there is nothing to suggest that objections, if any, were ever raised by the petitioner with regard to composition of the Committee which visited the spot/location of 17.1.2018, rather as per averments contained in the petition, petitioner after having noticed the objections raised by respondents No.3 tried to persuade him to consider area of having dimensions of 21x26 meters, out of total area offered by him in the application having dimension 70x30 meters and pursuant to such request of him, allegedly, respondent No.3 with the help of revenue officials carved out a tatima (Annexure P-9).

9. Moreover, perusal of Annexure P-10, whereby certain conversation held inter-se petitioner and respondent No.3 on Whatsapp, came to be placed on record nowhere suggests that objection with regard to composition of the committee was ever raised, rather petitioner through aforesaid Whatsapp message kept on inquiring from respondent No.3 with regard to nature of documents required to be furnished by the petitioner. Save and except bald allegations as contained in the petition, which have been seriously refuted by Respondent-Corporation while filing reply to the petition, no cogent material has been placed on record suggestive of the fact that communication dated 18.11.2018 was procured by respondent No.3 under coercion from the petitioner. Though learned Senior counsel for

the petitioner while making this Court peruse averments contained in the petition vis-à-vis reply filed by the petitioner strenuously argued that allegations contained in the petition have been not specifically denied, but this Court having perused reply filed by the respondents is not in agreement with learned senior counsel for the reason that allegation with regard to coercion exercised by the petitioner while allegedly procuring signature of the petitioner on communication dated 18.1.2018, has been specifically denied. Careful perusal of afore communication dated 18.1.2018, if read in entirety, clearly reveals that there was over hanging electric power line on the plot offered by the petitioner having dimensions of 70x30meters and as such, during field verification, petitioner after having noticed objection raised by respondent No.3 though, at the first instance, attempted to offer alternative land belonging to his father, but since same was 15km away from Dharampur and there was no road connecting to the said land, he insisted upon member of Committee to carve out a smaller plot having dimensions of 21x26 meters out of bigger plot of 70x30 meters, to which respondent No.3 had allegedly agreed. Though Respondent-Corporation while filing reply has specifically refuted claim of the petitioner that respondent No.3 while conducting field verification had agreed to accept the proposal submitted by the petitioner for setting up godown in the area having dimensions 21x26 mteres, but bare perusal of communication dated 18.1.2018, itself

suggests that during field verification, respondent No.3 had afforded opportunity to the petitioner to find alternate plot, which he was unable to do. Had respondent accepted proposal of the petitioner to carve out a plot having dimensions 21x26 meters out of bigger plot of 70x30 meters, offered by him in the application, there was otherwise no requirement, if any, for the petitioner to write communication dated 18.1.2018, thereby expressing inability to offer alternate land, rather in that eventuality, he could have only mentioned that instead of considering his entire plot as mentioned in the application, only area having dimension of 21x26 meters, over which no electric wire is hanging may be considered, however, in the case at hand, petitioner himself in afore communication, apprised respondent No.3 that matter has been already taken up with electricity department for removal of the electricity line passing through his plot and same will be removed soon. After receipt of communication dated 18.11.2018, respondent No.3 rightly proceeded to reject the application of the petitioner on the ground that he had furnished false information at the time of filing of the application. At this stage, it would be apt to take note of certain provisions contained under the Unified Guidelines, pertaining to land/plot clauses 2(b) and 2(c), with regard to basic facilities required for operation of LPG distribution and clause 26 for rejection of application in the event of furnishing false information.

"**2. Basic facilities required for operation of LPG distributorship**.

b. If the land offered by the candidate in the application or alternate land offered by the candidate at the time of Field Verification (FVC) meets all specifications as laid down in the advertisement on the basis of which LOI has been issued, then the LOI holder can offer an alternate/new land for construction of godown of specified dimensions, in the advertised location, which will be considered on the grounds of enhanced security/ safety, better title (owned instead of leased), convenient location, lower operating cost etc. The selected candidate has to ensure that an all weather motor able approach road (public or private road connecting to the public road) of minimum 2.5 meter width is made available to provide access of LPG Cylinder Truck to the offered land for LPG Godown. In case of private road connecting to the Public Road, the same should be either owned/registered lease or having a right of way from the owner(s) of the land. Wherever the State Government stipulates an approach road of wider dimensions the same should be made available by the applicant.

C. An undertaking has to be provided by the selected candidate at the time of acceptance of LOI that the Approach Road as specified will be provided within the time frame mentioned in the LOI. The Approach Road will be verified for its suitability before the issuance of Letter of Appointment. It would be responsibility of the selected candidate to ensure that the LPG cylinder truck is allowed unhindered access at all times through this approach road to the LPG Godown upon commissioning of the LPG distributorship. In the event of failure of selected candidate to make available the approach road, the LOI is liable to be cancelled along with forfeiture of the 10% security deposit. OMCs will not be held responsible for any investment made by candidate in the construction of the godown without having a proper approach road.

"**8. Eligibility Criteria for applicants**

The land for construction of godown should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines, Canals/Drainage/Nallahs, should not be passing through the plot."

"Opportunity to offer land for Godown and/or showroom

In case if the offered land for Godown and/or offered land for showroom by the selected candidate which is shown in the application

is found not meeting the eligibility conditions/requirements as stipulated in the advertisement/brochure/application at the verification (FVC) stage, then the selected candidate can offer an alternate land which is owned by the applicant/member of the 'Family Unit/ parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law of the applicant or the spouse (in the case of married applicant) as on the last date for submission of application as specified either in the advertisement or corrigendum if any

Selected candidate, who has been issued an Letter Of Intent (LOI) can offer an alternate land which is owned by the applicant/member of the 'Family Unit'/ parents (includes Step Father/Step Mother), grandparents (both maternal and paternal), Brother/Sister (including Step Brother & Step Sister), Son/Daughter (including Step Son/Step Daughter), Son-in-law/Daughter in-law of the applicant or the spouse (in the case of married applicant) for construction of Godown/Showroom, in the advertised location provided the land originally offered in the application was meeting all the specifications as laid down in the advertisement and on the basis of which LOI is issued."

"**26 Furnishing of false information**

a. If any statement made by the applicant in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application 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.

b. 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 amount deposited by the selected candidate before the FVC is conducted i.e., 10% of the applicable security deposit will be forfeited.

c. 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.

> d. In all the above cases, the selected candidate/distributor will have no claim whatsoever against the respective PSU Oil Marketing Company."

10. No doubt, as per Unified Guidelines taken note herein above, petitioner herein being successful in draw of lots was issued letter dated 12.1.2018, which has been considered to be letter of intent by the petitioner, but certainly perusal of letter itself suggests that selection of the petitioner through draw of lots, was fully dependent upon the compliance of provisions contained in Unified Guidelines for Selection of LPG distributorship. As per aforesaid guidelines, after deposit of amount as well as submission of documents, field verification was required to be done by the Committee, which in the case at hand, was done by respondent No.3. Unified Guidelines further reveals that in case land offered by the applicant/petitioner herein is not found suitable, he/she is to be provided opportunity to offer alternative land. In the case at hand, though, it came to be argued on behalf of the petitioner that no adequate opportunity to provide alternate land was afforded to the petitioner, however such plea, deserves outright rejection for the reason that as per own case of the petitioner, respondent No.3 after having visited the location agreed to carve out a separate area having dimensions out of total plot of 70x30 meters and in that regard, he also got prepared map from the revenue agency. Moreover, perusal of communication dated 18.1.2018, itself suggests that petitioner herein

while expressing his inability to provide alternative accommodation offered to make available land having dimensions of 21x26 meters out of bigger plot of 70x30 meters, offered by him in his application. Perusal of aforesaid communication suggests that petitioner himself admitted factum with regard to existence of overhanging high tension electric wires on the plot in question. Since field verification is conducted on the spot to verify the correctness of the information given in the application, especially with regard to location and in the case at hand, on such verification, information supplied by the petitioner was found to be false, no illegality can be said to have been committed by the respondent, while issuing rejection letter dated 7.2.2018. Though learned Senior Counsel for the petitioner attempted to argue that clause-26 of the Guidelines would not apply in the case of the petitioner for the reason that rejection of the application of the petitioner was not on the ground of furnishing false information, rather on the ground that petitioner was unable to offer alternate land, but such plea of him deserves outright rejection for the reason that bare perusal of application submitted by the petitioner clearly suggests that he had offered plot having dimensions of 70x30 meters and admittedly over aforesaid plot, a high tension electricity line was found to be passing, which fact has been duly admitted by the petitioner in communication dated 18.1.2018. In clause 26 of Unified Guidelines, it has been categorically provided that if any statement

made by the applicant in the application or in the documents enclosed therewith is found to be false, then the application/candidature is liable to be rejected without assigning any reason. Most importantly, under clause-26(b), it has been provided that 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 amount deposited by the selected candidate before the FVC is conducted i.e. 10% of the applicable security deposit will be forfeited. Careful perusal of aforesaid clause clearly reveals that any letter of intent issued before FVC shall give no right to the applicant to claim letter of appointment, rather letter of appointment would only be granted pursuant to the satisfactory report qua the location offered by the petitioner is given by the FVC.

11. Division Bench of this Court vide judgment dated 11.9.2018 in **CWP No. 383 of 2018**, titled **Bhupesh Sharma v. Bharat Petroleum Corporation Limited and Ors**. has held as under:

> "10. It is not the case of the petitioner that the contents of impugned order are not in consonance with the provisions of the Brochure on Unified Guidelines for Selection on LPG Distributors. For our satisfaction, we have alongwith learned counsel for the petitioner, gone through the provisions of the Brochure and the same expressely envisages that for the purpose of showroom, either the land has to be owned by the applicant or there has to be a registered lease deed minimum for a period of 15 years in his favour. The contention of the learned counsel for the petitioner that there is no difference between "a rent agreement" and "a lease deed", in our considered view, has no force. When the Brochure

> expressly contemplates that the land over which the showroom has to be constructed, should either be owned, as provided in the Brochure or should be on lease with the applicant for a minimum period of 15 years by way of a registered lease deed, then, it is incumbent upon an applicant to fulfill the said conditions. Any violation thereof, will render an applicant ineligible. Incidentally, there is no challenge in the petition to the Clauses of the Brochure.
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> 11. We further hold that simply because the petitioner was intimated at one stage by the respondent-Corporation that in the draw of lots, he stood declared as a successful candidate, did not confer upon him an indefeasible right for being awarded the LPG distributorship, because as per the terms of the Brochure, the grant of dealership was inter alia dependent upon the field inspection, as envisaged in the Brochure."

12. Reliance is also placed upon judgment passed by the Hon'ble Apex Court in **Bharat Petroleum Corporation Ltd and Anr. v. Meet Kalhar, (2016) 15 SCC 498**, relevant paras whereof 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.

9. 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."

13. Further, in case titled **Devesh Chandel v. Union of India and Ors**., (**CWP No. 835 of 2020),** Hon'ble Division Bench of this Court vide judgment dated 6.7.2023, has held as under:

"33) Admittedly, Annexure P-3 Brochure issued by the Corporation for selection of dealer for retail outlets, contains Clause 22 which states as under:-

"22 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, then the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases the candidate/dealer shall have no claim whatsoever against the respective Company."

34) Thus, if any statement made in the application submitted by an applicant like respondent no.5 was at any stage found to have been false, incorrect or certain facts are found to have been suppressed or misrepresented, then the application was liable to be rejected by the

Corporation without assigning any reason and in case, an applicant had been appointed as a dealer, the dealership was liable to be terminated.

35) Strangely, notwithstanding such a Clause having been incorporated in the Brochure issued by the Corporation, and notwithstanding the fact that the petitioner had informed about the false information furnished by respondent no.5 to respondents no.2 to 4 on 25.06.2019 (including the factum of pendency of a Civil Suit between Leeladhar and his brother Dinesh Kumar), respondents no.2 to 4 went ahead and issued the Letter of Intent on 21.09.2019 to respondent No.5 in gross violation of Clause22, referred to above.

36) In our considered opinion, it was not open to respondents no.2 to 4/ Corporation to grant the retail outlet dealership to respondent no.5 in the face of Clause-22 of the Brochure, merely on the ground that there was a subsequent Out of Court Settlement between Leeladhar and his brother Dinesh Kumar and Dinesh Kumar later gave an affidavit stating that he has no objection for grant of retail outlet dealership to respondent no.5.

37) This is because in the application filed by respondent no.5 at Sr. no.13 where land details are to be furnished, respondent no.5 could have mentioned that Leeladhar and others were co-owners of the land, but instead, he mentioned only Leeladhar and did not mention either about the other co-owners or about the pendency of the civil suit between Leeladhar and his brother Dinesh Kumar.

38) In view of the undertaking given in the said application as well as declaration signed by respondent no.5 that wrong information/ misrepresentation/ suppression of facts would make him ineligible for the retail outlet dealership, which would bind the 5th respondent, not only respondents no.2 to 4 cannot grant him the retail outlet dealership but cannot also they cannot defending their action in giving him the Letter of Intent by calling the petitioner as a medlesome interloper.

39) We fail to see how the petitioner can be considered as a medlesome interloper in the facts and circumstances of the case, when he was also a contender for the allotment of the retail outlet alongwith the respondent no.5.

> 40) As held in the decision of **Ramana Dayaram Shetty versus The International Airport Authority of India & Others**,*1979 (3) SCC 489, if an executive agency lays down certain standards which it professes its actions to be judged, it must scrupulously observe those standards. In the said case, the Supreme Court held that today the Government in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licenses, quotas etc.; the valuables dispensed by Government take many forms; many individuals and many more businesses enjoy largess in the form of Government contract, and the discretion of the Government or its agency is not unlimited, in that, it cannot give or withhold largess in its arbitrary discretion or its sweet will.
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> 41) This was reiterated in **B.S. Minhas versus Indian Statistical Institute & Other**s (1983) 4 SCC 582 where the Supreme Court held that it is obligatory on the part of the respondent to follow its bye-laws since they have been framed for the conduct of its affairs to avoid arbitrariness and the respondent cannot escape liability for not following the procedure prescribed in the byelaws.
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> 42) Recently, this was reiterated in M.P. Power Management Company Limited versus Sky Power Southeast Solar India Private Limited & Others (2023) 2 SCC 703 and it was held that if an agency of the State had laid down a standard or a norm of eligibility and if a person submitting a tender did not satisfy this condition of eligibility, his tender would not be eligible for consideration. It held that this Principle had an independent existence apart from Article 14 of the Constitution of India."

14. In view of the aforesaid exposition of law, it is quite apparent that the guidelines have to be understood by the application of the principles of purposive interpretation having regard to the underlying objective thereof. It has been further held by the Hon'ble Apex Court that so long such guidelines and parameters are not found to be unreasonable or ex-facie irrelevant, the FVC officials would have

the right to insist on compliance of such guidelines. In the case at hand, the respondent-corporation being the grantor is well within right to frame guidelines/conditions for grant of LPG distributorship and petitioner being an applicant was to satisfy/meet such conditions/guidelines and upon his failure to meet with such conditions, respondent corporation has rightly rejected the application of the petitioner having failed to satisfy the conditions for grant of distributorship.

15. Similarly, this court finds no force in the submission of the learned Senior Counsel for the petitioner that respondent No.3 while passing impugned order dated 15.4.2020, (Annexure P-1) failed to afford opportunity of hearing to the petitioner, rather careful perusal of aforesaid communication itself suggests that petitioner was afforded due opportunity of hearing by the Respondent-Corporation. If the afore order is read in its entirety, it clearly reveals that representation having been filed by the petitioner has been dealt with at length by the respondent, wherein each and every point raised by petitioner has been duly answered. Therefore, reliance placed by learned Senior Counsel for the petitioner in **Mohindhr Singh Gill's** case (supra) to state that action of the respondents in rejecting the candidature of petitioner is against the principle of natural justice, does not hold ground and deserves to be rejected.

16. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court finds no merit in the present petition and as such, same is dismissed being devoid of any merit.

December 27, 2024 **(Sandeep Sharma),**
manjit **Judge**