

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

202

CWP-3905-2023
Date of Decision : 09.04.2024

USHA SAINI
Versus
... PETITIONER

M/S BHARAT PETROLEUM CORPORATION LTD HISAR AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Jaynish Saini, Advocate
for the petitioner.

Mr. Raman Sharma, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 24.12.2021 (Annexure P-4) whereby respondent has terminated her LPG dealership and order dated 28.10.2022 (Annexure P-9) whereby respondent has dismissed her appeal.

2. The petitioner contends that she was granted LPG distributorship in the year 2016 and a bilateral agreement in that regard was executed. After a period of five years, a show cause notice was issued to her on the ground that the lease deed which she had executed was not in accordance with law, apart from other allegations against her on the basis of a complaint from a person who had enmity with her. The impugned order of termination has been passed after a period of six years of the execution of the agreement. The respondent- Bharat

Petroleum Corporation Limited had not executed contract on the basis of few

documents including lease deed whereas it conducted intensive exercise of scrutiny of documents and field verification. Now after a period of six years when she has invested a lot of money and altered her position to her disadvantage, the respondent has terminated the contract. As per brochure which laid down the terms and conditions, there is a period of limitation of 30 days for receiving and entertaining a complaint whereas in the present case a complaint was filed after a period of five years which has been entertained in violation of the aforesaid terms and conditions of the brochure. The respondent conducted physical verification and land was duly identified in the verification, thus, termination of agreement was unjust and unfair.

3. Mr. Raman Sharma, Advocate submits that respondent received complaint through Prime Minister's office. The complaint was scrutinized and it was found that petitioner had submitted two sets of lease deeds with respect to godown as well as showroom. There were more than one owners of the land as well as more than one lessee. The land disclosed in the application form was at variance with registered lease deed. In the registered lease deed, submitted at the time of field verification, addition of khasra numbers was made, though, total land offered remained same. As there were more than one owners as well as lessee(s) of the offered land, the question of NOC from co-owners as well as co-lessee(s) was bound to arise. These questions could not be examined at the time of physical verification. The mistake was not minor which on being pointed out could be ignored and variance in offered land is not a curable defect.

4. I have heard the arguments of learned counsel for the parties and perused the record.

5. Clause 21 of the brochure provides that if any statement made in the application or in the documents enclosed therewith is found incorrect or false,

the application/candidature may be rejected without assigning any reason. The respondent accepted candidature of the petitioner and terminated contract after expiry of almost 06 years. Clause 21 of the brochure could not be invoked after execution of contract.

6. Clause 9.3 of the Letter of Intent provided that if any statement made in the application or in the documents at any stage is found to have been suppressed/misrepresented/incorrect or false affecting eligibility, the LOI shall be withdrawn without assigning any reason. Clause 9.3 of the Letter of Intent dated 24.12.2021 is reproduced as below :

“If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by you at any stage is found to have been suppressed/misrepresented/incorrect or false affecting eligibility, then the LOI is liable to be withdrawn without assigning any reason and in case you have been appointed as a distributor, the distributorship is liable to be terminated. In such cases you shall have no claim whatsoever against the respective Oil company.”

7. Clause 28 of agreement provides that Corporation shall be at liberty to terminate application if any information given by distributor in his application is found untrue or incorrect. Clause 28 of the agreement is reproduced as below:

“Clause 28- "Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events, namely:-

I. 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.”

In view of clause 9.3 of LOI and Clause 28 of agreement, the respondent was empowered to terminate distributorship in case of mis-statement or suppression of facts or incorrect information.

8. The respondent on investigation found irregularities in the documents especially lease deeds offered by the petitioner. She was confronted with these irregularities by way of notice. The relevant extracts of the notice read as:

1. Irregularities in lease deed of Godown

(i) In your application form, you had stated that you are offering land situated in Khasra No. 52//2/2, 23, 24 situated in Village Shergarh.

ii) Vide letter dated 14.02.2014, you had sent a letter w.r.t advance clarification in regard of your application, wherein you had enclosed copy of lease deeds pertaining to the godown and showroom.

(iii) In the lease agreement No. 1454 dated 13.12.2013, submitted under above mentioned letter, Sh. Surinder Pal, co-owner of the land had executed the lease in favour of 6 individuals in equal shares, wherein you were one of the lessees. The land details mentioned in the lease deed were Khewat No. 3, Khatoni No. 3, Khasra No. 52//22/2/2 3 Kanal 2 Marlas 23 8-0, 24 8-0, Total 19 Kanal 2 Marlas.

(iv) During the FVC, you had submitted a certified copy of the lease deed No. 1454 dated 13.12.2013, wherein the details of the land were mentioned as Khewat No. 3, Khatoni No. 3,

Khasra No. 52//22/2/2 3 Kanal 2 Marlas 23 8 Kanal 0 Marlas
24 7 Kanal 3 Marlas, 581/2/2/2 0 Kanal 17 Marlas Total 19
Kanal 2 Marlas.

(v) Two copies of Lease Deed No. 1454 dated 13.12.2013 were provided by you. Initially a photocopy under letter dated 14.02.2014 and then subsequently a certified copy during the FVC process. On comparing the two copies of the same lease deed, it is observed that the certified copy of the lease deed has an additional Khasra, being Khasra No. 58//2/2/2 and there is slight change in area of Khasra No. 24.

II. Irregularities in NOC pertaining to godown land

- (i) As per the revenue records submitted by you pertaining to time of selection, godown land was owned by 2 people- Sh. Surinder Pal and Sh. Suresh Kumar.
- (ii) As per the guidelines, NOC was required from all other owners (remaining co-owner and other lessees) as per the format provided in Appendix-4. However, no NOC was issued by Mr. Suresh Kumar for land located at Khara No. 52//2/2, 23 & 24. One NOC was issued by Sh. Suresh Kumar only for land situated at Khasra No. 58//2/2/2, wherein said Khasra No. was not mentioned in the application form or lease deed submitted under letter dated 14.02.2014.

III. Irregularities pertaining to NOC's for Showroom land

- (i) As per the revenue records submitted by you pertaining to time of selection, the land given for showroom was owned by total of 22 owners bearing land Khasra No. 11//2/1/2 located at Village Moja Dakola, Sub Tehsil Saha, Dist- Ambala. The lease deed dated 13.12.2013 was executed by Smt. Suman Devi W/o Sh. Pawan in favour of six people in equal shares wherein you were one of the lessees.
- (ii) As per the selection guidelines, NOC was required from all other owners (remaining co-owners and other lessees) in the format provided in Appendix 4. You had submitted the NOC's at the time of FVC.
- (iii) The NOC's submitted by you for the 21 Nos of Co-owners of land are not as per the format provided in Appendix 4 of the Selection Guidelines. Further it doesn't have any identifiable / verifiable addresses of the deponents (NOC tenderers) or any type of ID proofs to locate them for verification purpose.
- (iv) Vide letter dated 30.09.2019, you had stated that since the shop for showroom was already constructed and well demarcated since registration of lease deed in 2013, no NOC was required and you had never submitted the affidavits from 21 co-owners as referred to in our letter dated 20.09.2019. You had also stated that it was evident from subject affidavit that the same was not as per the standard Appendix 4.

- (v) Such reply was not found tenable, as the NOCs were submitted by you during the FVC process. Further, the NOC's were to be submitted as per the format provide in Appendix 4 of the selection guidelines mandatorily and it cannot be claimed that the same was not required..

IV. Irregularities pertaining to lease of land for Showroom

- (i) For land for Showroom, you had not declared any Khasra No. in your application form.
- (ii) Further, you had submitted lease deed dated 13.12.2013 executed by Smt. Suman Devi, presumably for land for Showroom, but no details of Khara No., proper description of land being given on lease was given in the lease deed.

9. The petitioner is claiming that variance in documents was not intentional. The mistake had occurred on account of lack of knowledge, however, the petitioner is unable to controvert the fact that land offered in the application form is at variance with registered lease deed which was submitted at the time of field verification. The variance in land is not a curable defect. The respondent in view of different clauses was competent to revoke contract because petitioner had submitted incorrect information in the application form.

10. The petitioner is invoking writ jurisdiction of this Court qua termination of distributorship. It was a pure contract between the parties. This Court, indubitably, in contractual matters, can exercise its jurisdiction under Article 226 of the Constitution of India if it finds that there is patent illegality or

violation of fundamental rights or statutory provisions on the part of State or its instrumentalities, however, in case of disputed questions of facts or where no public law is involved or no violation of fundamental rights/statutory provisions is involved, writ cannot be entertained.

11. In the wake of above discussion and findings, the petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.04.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>