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

249 (2 cases) CWP-9511-2018 (O&M)
Date of Decision : 20.01.2024

ASHISH DUGGAL .... PETITIONER

V/S

UNION OF INDIA AND ORS .... RESPONDENTS

2. CWP-24497-2019

JAGWANT KAUR .... PETITIONER

V/S

UNION OF INDIA AND ORS. .... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate,
Mr. Nilesh Bhardwaj, Advocate
Mr. Shrenik Jain, Advocate,
Mr. Mahipal, Advocate and
Mr. Manay Chadda, Advocate
for the petitioner in CWP-9511-2018.

Mr. Amit Jain, Sr. Advocate with
Mr. Aryaman Thakur, Advocate
for the petitioner in CWP-24497-2019.

Mr. Aditya Dassur, Advocate
for respondent No.1 in CWP-24497-2019.

Mr. Ashish Kapoor, Advocate
for respondents No.2 and 3.

Mr. Akshay Bhan, Sr. Advocate with
Mr. HPS Sandhu, Advocate

Mr. Harsh Gupta, Advocate and
Mr. Sahil Mehndiratta, Advocate
for respondent No.4 in CWP-9511-2018.
Ms. Avin Kaur Sandhu, Advocate
for respondent No.4 in CWP-24497-2019.

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CWP-9511-2018 and CWP-24497-2019 are disposed of as issue involved in both the petitions is common. For the sake of convenience, the facts are borrowed from CWP-9511-2018.

The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of candidature of respondent No.4 for allotment of LPG distributorship for the location at Balachaur, District SBS Nagar.

2. The brief facts of the case are that respondent-Indian Oil Corporation Ltd. (for short, 'Corporation') vide advertisement dated 19.01.2013 invited applications for allotment of LPG distributorship under various categories for various locations including location at Balachaur. The location of Balachaur was in open category. The said advertisement was withdrawn and another advertisement dated 26.10.2013 was issued wherein last date of submission of application form was fixed as 25.11.2013. The petitioner as well as respondent No.4 participated in the selection process. The respondent No.4 entered into a lease deed dated 11.11.2013 with Avtar Singh who was owner of 8 kanal and 2 marlas land out of piece of 52 kanal and 04 marlas land. The entire land was owned by 7 co-owners. The draw of lots was held on 18.12.2014 wherein respondent No.4 was declared successful. The respondent-Corporation vide order

dated 20.05.2015 cancelled selection of respondent No.4. The said order was passed in view of instructions dated 21.01.2015 issued by Ministry of Petroleum and Natural Gas. The Ministry issued guidelines dated 18.12.2015 which were later on superseded by guidelines/letter dated 25.02.2016. The letter dated 25.02.2016 provided that where draw of lots has been held, oil companies may proceed with the guidelines of March' 2015. It is apt to mention here that guidelines of March' 2015 made minor deviation in guidelines of 2013. The respondent No.4 preferred CWP No.11488-2015 before this Court assailing cancellation order dated 20.05.2015. In view of subsequent instructions, the respondent-Corporation withdrew the cancellation of candidature of respondent No.4 and by order dated 15.06.2016 declared her a selected candidate. In view of order dated 15.06.2016, the said petition was withdrawn.

On account of aforesaid instructions issued in 2016, writ petitions came to be filed before different High Courts including CWP No.8674 of 2016 before this Court. In the said writ petition, instructions dated 18.12.2015, whereby certain amendments were made in the eligibility criteria prescribed in the earlier guidelines, were challenged. This Court vide order dated 17.04.2018 dismissed the writ petition holding that certain parameters of selection process are in the nature of relaxation which have been made pursuant to the orders passed by various High Courts in a number of cases as a large number of applications were rejected due to deficiency in their lease period by a few days because the date of determination of 15 years lease period was fixed as last date for submission of applications, whereas those candidates had got the lease registered after the date of issuance of advertisement. It was further observed in the order that the changes introduced by the respondents do not in any manner prejudice any candidate or make any candidate ineligible and rather make some of the candidates eligible while widening the scope of selection. The relevant extracts of judgment dated 17.04.2018 read as:

> *"After hearing learned counsel for the parties and examining the available record, I have found that the changes made in certain parameters of the selection process are in the nature of relaxation which have been made pursuant to the orders passed by various High Courts in a number of cases as a large number of applications were rejected due to deficiency in their lease period by a few days because the date of determination of 15 years lease period was fixed as last date for submission of applications, whereas those candidates had got the lease registered after the date of issuance of advertisement and obviously before the last date for submission of applications. Majority of those candidates had challenged rejection of their candidature and a large number of petitions were filed throughout the country and in that background, the letter dated 25.02.2016 was issued relaxing condition of reckoning of 15 years lease period. Apart from above, the changes introduced by the respondents do not in any manner prejudice any candidate or make any candidate ineligible and rather makes some of the candidates eligible while widening the scope of selection."*

The petitioner lodged a complaint against respondent No.4 alleging that same piece of land has been leased out to two different persons. The respondent-Corporation in its inquiry found that land leased out to another party is different from land leased to respondent No.4. The Corporation wrote a letter to jurisdictional Tehsildar seeking clarification with respect to land offered by respondent No.4 who in his report dated 15.12.2017 confirmed that there are 07 co-sharers of the offered land. The respondent No.4 filed affidavits dated 21.12.2017 of all the co-owners of the land. The Corporation conducted field verification and accepted affidavits of co-owners. It is apt to notice here that affidavits of co-owners of the land were not available at the time of filing application by respondent No.4.

3. Mr. Ashok Aggarwal, Sr. Advocate submits that respondent-IOC has allotted distributorship to respondent No.4 relying upon instructions of March’ 2015 whereas advertisement in question was based upon guidelines of August' 2013. The guidelines of 2015 categorically provides that these guidelines would be applicable to locations advertised/re-advertised from March' 2015 onwards. In the guidelines of 2015, vide para 8.5 various deficiencies are declared as non-rectifiable. The deficiency of non-filing of affidavit of co-sharer was not jotted down in the category of non-rectifiable deficiencies, resultantly, it became a rectifiable deficiency. In the format prescribed for field verification of credentials of individual applicants, it is provided that notarized affidavits of co-sharers may be taken up at the time of field verification. The said clause permits to take affidavit of co-sharers at the time of field verification, however, it does not permit to accept notarized affidavits of a date subsequent to date of application and in the present case, concededly, all the affidavits of co-sharers were furnished at the time of field verification which took place in 2018 whereas last date of filing of applications was November' 2013.

The filing of affidavits of co-sharers was an indispensable requirement and as per guidelines of 2013 all the documents should be available on the last date prescribed for filing application. This fact has been categorically mentioned in general instructions issued for all the candidates applying for LPG distributorship as well as in Column No.15 of the application form. The instructions issued in 2015 cannot be made applicable. For all purposes, the last date for all the documents was last date prescribed for filing applications. The instructions of 2015 on which respondents are placing reliance simply permit to accept affidavits of co-sharers at the time of field verification, however, it does not permit to accept the documents of a date after the last date of application. The same conditions were available even in the brochure of 2013.

In support of his contentions, he relied upon judgments of Calcutta High Court in ***Indian Oil Corporation Limited and others vs. Paromita Bag and others, 2023 SCC OnLine Cal 3700***, Allahabad High Court in ***Manoj Kumar Rai vs. Union of India through Secy., Ministry of Petroleum and Natural Gas and others, 2015 SCC OnLine All 7597*** and ***Ramesh Chandra Mishra vs. Indian Oil Corporation Ltd. Through Senior Divisional Manager (RS) and others, 2015 SCC OnLine ALL, 9360.***

4. Per contra, Mr. Akshay Bhan, Sr. Advocate and Mr. Ashish Kapoor, Advocate submit that guidelines of 2015 have classified deficiencies into two categories i.e. rectifiable and non-rectifiable. Filing of affidavit of co-owners of the land has been declared a rectifiable mistake. The Ministry vide its instructions dated 25.02.2016 has categorically clarified that where draw has been held, the oil companies should follow guidelines of March' 2015 with respect to ownership of land, approach road, funds in bank and lease period reckoning. The petitioner has not challenged instructions and as per those instructions, the oil companies

were bound to follow guidelines of March' 2015 where draw has been held.

In the case in hand, the draw of lots was held, however, distributorship was not finally allocated to anyone, thus, corporation adopted guidelines of March' 2015 and as per said guidelines, the affidavits of co-sharers could be filed at a later stage. NOC is required if land is owned by family members or jointly by family members and third party. The land in question was not owned by family members or jointly by family members and third party, thus, there was no requirement to get NOC of all the co-owners, nevertheless, the respondent No.4 secured affidavit of all the co-owners of the land and submitted before field verification. This Court has already approved applicability of instructions of 2015, thus, the respondent has rightly invoked instructions of 2015 and allotted distributorship to respondent No.4. The petitioner is nephew of a person who is already having LPG distributorship at Balachaur. The petitioner is acting at the behest of the said distributor who is trying to avoid competition.

In support of their contentions, they relied upon judgment of this Court in ***Bikramjit Singh vs. Hindustan Petroleum Corp. Ltd. And Anr., in CWP No.22394 of 2017, decided on 20.12.2017.***

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

6. The respondent has raised preliminary objection of maintainability. As per respondent, the respondent No. 4 and IOC have entered into a contract and this court should refrain from interfering in a

pure commercial contract.

It is settled proposition of law that scope of judicial intervention in contractual matters is very limited especially where contract is a non-statutory contract. IOC is a public sector undertaking and contract executed between IOC and respondent No. 4 is a non-statutory contract. A two-Judge Bench of Supreme Court in ***Siemens Aktiengeselischaft & S. Ltd. versus DMRC Ltd. 2014 (11) SCC 288*** has adverted with scope of judicial interference in government contracts/ tenders. The court has elucidated parameters and guidelines which need to be considered while entertaining writ petition in such matters. The court has held:

> *18. The Principles governing judicial review of administrative decisions are now fairly well-settled by a long line of decisions rendered by this Court, since the decision of this Court in* ***Ramana Dayaram Shetty v. International Airport Authority of India and Ors. (1979) 3 SCC 489*** *which is one of the earliest cases in which this Court judicially reviewed the process of allotment of contracts by an instrumentality of the State and declared that such process was amenable to judicial review. Several subsequent decisions followed and applied the law to varied situations but among the latter decisions one that reviewed the law on the subject comprehensively was delivered by this Court in Tata Cellulars case (supra) where this Court once again reiterated that judicial review would apply even to exercise of contractual powers by the Government and Government instrumentalities in order to prevent arbitrariness or favouritism. Having said that this Court noted the inherent limitations in the exercise of that power and declared that the State was free to protect its*

interest as the guardian of its finances. This Court held that there could be no infringement of Article 14 if the Government tried to get the best person or the best quotation for the right to choose cannot be considered to be an arbitrary power unless the power is exercised for any collateral purpose. The scope of judicial review, observed this Court, was confined to the following three distinct aspects:

(i) Whether there was any illegality in the decision which would imply whether the decision making authority has understood correctly the law that regulates his decision making power and whether it has given effect to it;

(ii) Whether there was any irrationality in the decision taken by the authority implying thereby whether the decision is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at the same; and

(iii) whether there was any procedural impropriety committed by the decision making authority while arriving at the decision.

19. The principles governing judicial review were then formulated in the following words:

(i) The modern trend points to judicial restraint in administrative action.

(ii) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(iii) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(iv) The terms of the invitation to tender cannot be open

to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(v) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(vi) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

The matter is pending before this court for last 6 years. IOC is a public sector undertaking, thus, court cannot turn a blind eye rather is duty bound to examine issues raised by petitioners. In view of above-noted judgment and facts of this case, this court finds it appropriate to examine issues raised by the parties, accordingly, objection of maintainability raised by respondents is hereby rejected.

7. Before adverting with the issues involved, it would be apposite to dwell into different clauses of the brochure and its Annexures which are edifice of entire litigation.

7.1 Clause 6 of the Brochure (August' 2013) prescribes eligibility criteria for individual applicants. Clause 6.1(vii) deals with question of land offered by applicant. The relevant extracts of clause 6.1 reads as:

(vii) ***Should own as on the last date for submission of application as specified in the advertisement or corrigendum (if any):***

a plot of land of minimum dimensions 25' M x 30 M (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of LPG Godown for storage of 8000 Kg of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 M x 30 M will not be considered.

Or

a ready LPG cylinder storage godown (within 15 km from municipal/ town/ village limits of the location offered in the same State) of 8000 Kg capacity.

In case there are any state specific requirements/norms applicable for construction of the LPG Godown, then the same will be applicable for the respective Regular Distributorship locations and revised minimum dimensions of plot of land will be required as specified in the Advertisement of that respective State.

The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (public road or private roa: connecting road connecting to the public road). In case of private road connecting to the public road, the same should belong to the applicant/member of Family Unit (as per the multiple dealership/distributorship norm of eligibility criteria) as per the ownership criteria defined below. In case of ownership/co-ownership by family member(s) in respect of such private road, consent letter from respective family member(s) will be required.

The land should also 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. The land for construction of LPG godown should also meet the norms of various statutory bodies such as

PWD/Highway authorities/ Town and Country Planning Department etc.

In case an applicant has more than one suitable plot for construction of godown for storage of minimum 8000 Kg of LPG in cylinders or ready LPG cylinder storage godown as on the last date for submission of application as specified in the advertisement or corrigendum (if any), the details of the same can also be provided in the application.

(viii) xx xx xx

Reference vii & viii above:

'Own' means having ownership title of the property or registered lease agreement for minimum 15 yrs in the name of applicant/family member (as defined in multiple distributorship norm of eligibility criteria) as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required.

In case the land is jointly owned by the applicant/member of 'Family Unit' (as defined in multiple dealership/distributorship norm) with any other person(s) and the share of the land in the name of applicant/ member of the 'Family Unit' meets the requirement of land including the dimensions required, then that land for godown/showroom will also qualify for eligibility as own land subject to submission of 'No Objection Certificate' in the form of an Notarized Affidavit from other owner(s).

7.2 Appendix-I of the Brochure prescribes Format of application form for individual applicants. Column 9 of the format requires declaration with respect to owned/leased land. Column 9 of the format reads as:

9. Provide the following details of land for construction of LPG godown or constructed LPG godown (within 15 km from municipal/town village limits of the advertised location in the same State) ***owned or leased for minimum 15 years*** *in the name of applicant/member(s) of 'Family Unit'. In case land belongs to member(s) of 'Family Unit', attach notorised affidavit as per* ***Appendix-2****. In case land is jointly owned by the applicant/member(s) of the family unit with any* ***other person(s) or jointly leased*** *in the names of the applicant/members of the family unit & any other person(s) and the share of such land in the name of the applicant/member(s) of the Family Unit meets the requirement of land for godown then an NOC from the* ***joint owners/joint lessee*** *in the form of a Notarised affidavit is to be provided as per* ***Appendix-4****.*

Name (s) of the **owner of land/ lease holder (s)**	Relationship with Applicant	Date of Registration of Sale Deed/Gift Deed/Lease Deed/Date of Mutation	Address of the location of the land for LPG Godown	Khasra No./ Survey No.	Dimension of land		Distance of the land for LPG Godown/ Godown from location in km
					Length in metre	Breadth in meter	

Give the dimensions of the plot that will be used for proposed godown out of the total land owned.

Note : Date of documents of land for Godown/Godown should be on or before the last date for submission of application as specified in the advertisement or corrigendum (if any) and the same will be verified during Field verification.

7.3 Column 16 of the said Format notifies check list for applicants. Column 16 reads as:

16. Check list for Applicants		
Sr. No.	Documents/activity to be checked	Check box (✓ / X)
6	I have enclosed Notarised affidavit in original for **joint owners/joint lessee** of land as per Appendix 4 as applicable	

7.4 The **Appendix-4** of the Brochure prescribes format for notorised affidavit from family members/third party. The relevant extracts of Appendix-4 read as:

*Notarized Affidavit for offer of land from applicant/member of the family unit and third party-All the **joint owners/joint Lessee** of the land (except the applicant) have to submit this affidavit individually including the member of the family unit.*

That I, Shri/Smt.________ , own a piece of land jointly or Jointly Leased, bearing Gatta/ Khasra/Survey No.____________at____________ (village/town), Taluka/Tehsil ____________, Dist_________ and measuring area of__________ Sq. mts. (Dimensions____________meters x _______ meters) in the State of ________as per the following details :

Land for Godown :

Name of the **Joint owner(s)/Joint lessee**	Relationship of the member of family unit with Applicant (not Applicable for third party)	Date of Registration of Sale Deed/Gift Deed/Lease Deed/Date of Mutation	Khasra No./Gatta No./Survey No.	Dimension of land offered as per Demarcated plan (___ meters x ___ meters)

7.5 There are general instructions for the all the candidates in the brochure. The relevant extracts of the instructions read as:

General instructions to the candidates applying for LPG Distributorship		
Item No.	Instructions	Supporting Documents to be provided by the applicant at the time of verification
9	Details of the Plot of Land for godown or readymade godown which meets the following requirement:- The applicant should own (as per ownership criteria defined in Clause No.6.1 (vii) & (viii), 7.1 (x) & (xi) & 7.2 (ix) & (x) of the Brochure as applicable): a plot of land of minimum dimensions 25 Mx30 M (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of LPG Godown for storage of 8000 Kg of LPG cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 Mx 30 M will not be considered. Or a ready LPG cylinder storage godown (within 15 km from municipal/village limits of the location offered in the same State) of 8000 Kg capacity. (Note: In case there are any state specific requirements/norms applicable for the LPG Godown/approach road, then the same will be applicable for the	Documents pertaining to land/Godown in the name of applicant or member of 'family unit' Registered Sale Deed/ Gift Deed/Lease Deed (15yrs minimum)/Mutation and government record etc. The **Date of the documents have to be on or before the last date for submission of application** as mentioned in the advertisement or corrigendum, if any. In case land is in the name of member of 'family unit' consent from the family member in form of Notorized Affidavit (Appendix 2) is required to be attached with the application. In case land is **jointly owned** by the applicant/member of the Family Unit with any other person(s) or **jointly leased** in the name of the applicant/member of the Family Unit and any other person(s) and the share of such land in the name of the applicant/member of the Family Unit meets the

	respective Regular Distributorship locations including revised minimum dimensions of the plot of land/width of approach road will be required as specified in the advertisement of that respective State). The plot of land or ready LPG cylinder storage godown should be freely accessible through all weather motorable approach road (public road or private road connecting to the public road). It should also be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Canals/Drainage/Nallahs should pe be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/Town & Country Planning department etc. Regular Distributor would require a storage Godown approved and licensed by Chief Controller of Explosives of Petroleum and Explosive Safety Organization (PESO) for storage of 8000 Kg LPG in cylinders.	requirement of land for godown then an NOC in the form of an affidavit from the **joint owner(s)/joint leasee** is to be provided as per Appendix-4 'Family Unit' is defined below in Important Note.

7.6 Clause 8.5 of Brochure of 2015 prescribes procedure of receipt of application. It also prescribes deficiencies which are non-rectifiable. This clause was introduced for the first time in the brochure. The said clause reads as:

8.5 Procedure for Receipt of Application

Application would be received in sealed envelope only. After application is received, serial number would be put on the envelope and also recorded in a 'Register'. Acknowledgement for applications received will be sent to the applicants.

In case deficiencies are found in the application, a letter would be sent to the applicant to rectify the deficiencies within a specified period of time.

The following deficiencies will be treated as Non-rectifiable:

a. Age as on the date of application is less than 21 completed years or more than 45 years except applicants applying under GP & FF category & applicants belonging to the category of 'SKO dealers of OMCs'

b. Does not belong to the category for which the concerned distributorship location is reserved.

c. Does not possess the minimum requisite qualification as per the eligibility criteria except for FF category.

d. Not an Indian Citizen.

e. Not a resident of India

f. Does not have land for Godown/Showroom as per the eligibility criteria

g. Does not have minimum funds as per the eligibility criteria

h. Same land offered for godown/showroom in multiple applications for a particular location.

i. Same Funds/financial instruments offered by multiple applicants for the same location.

j. Applicant is a family member of OMC employee.

k. Applicant not fulfilling multiple dealership/ distributorship norms as per the eligibility criteria

l. Does not meet the eligibility criteria prescribed *for the applicant applying under category of 'existing SKO dealers of OMCs'*

From the reading of above clause, it is evident that delayed filing of NOC of joint owners of land is a curable deficiency.

7.7 Appendix-P of the Brochure prescribes Format for Field Verification of Credentials of individual applicant. Column No. 9 of the format deals with verification of documents of offered land. The relevant extracts of the Column 9 read as:

Item No.	Particulars to be verified	Documents to be verified	Documents provided by the applicant Yes/No.	Information given in the application is verified with original document and found correct/ incorrect (✓) for correct/ x for incorrect	Remarks
A	B	C	D	E	F
		In case of joint ownership Notarised Affidavit as per format Appendix-2/ Appendix 4 of the Application format should be available. If not take it at the time of FVC.			

7.8 The Ministry of Petroleum & Natural Gas issued a letter dated 25.2.2016 whereby it was provided that guidelines of 2015 may be followed in the eventualities discussed therein. The said letter reads as:

P-17011/7/2010-LPG
Government of India
Ministry of Petroleum & Natural Gas
Shastri Bhawan, New Delhi

The 25th February 2016

To

The Director (Marketing)
IOC/BPCL/HPCL
Mumbai

Subject: Regarding selection guidelines.

Sir,

I am directed to convey the approval of the competent authority in supersession of this Ministry's letter of even number dated 18.12.2015 i.e. the following modalities for resumption of pending Regular
LPG distributorships:

	Existing Status	Proposed
1	Locations where draw has been held	Proceed with FVC with the guidelines of March 2015 pertaining to (i) ownership of land (b) approach road and (e) Funds in bank and (d) lease period reckoning.
2	Location which are due for draw/redraw.	Conduct scrutiny of application forms with the Guidelines of March 2015 pertaining to (i) ownership of land (b) approach road (e) Funds in bank and (d) lease period reckoning.
3	Location where draw was declared cancelled on the issue of reckoning of 15 years lease period.	Withdraw the cancellation order approach court citing the changed action plan, by which the grievances of the petitioners are being addressed.
4,	Locations due for re-advertisement.	Advertisement will be issued after the new selection policy comes into being.

2. I am also directed to convey the approval for following action plan also :

a) There will be no requirement for issuing corrigendum/addendum to the advertisement already published.

b) Outcome of draw and LOI whatever has happened, will be considered as settled.

c) Period of lease will reckoned from the date of the advertisement.

d) Land ownership will include all inheritances.

e) funds arrangement by candidate will take into account funds as on relevant date all banks.

f) Locations where draw has not been held will be scrutinized following the above conditions (c to e).

g) Approach road of the time of FVC will consider the possibility of making provision for approach road within time given to LOI.

8. From the perusal of Guidelines for Selection of Regular LPG Distributor (August' 2013), it comes out that expression 'own' includes titled deed of the property as well as registered lease deed of minimum 15 years. The titled deed may be in the name of applicant or it may be in the name of any family member of the applicant. Similarly, lease deed may be in favour of applicant or any family member of the applicant. In case titled deed or lease deed is in favour of family member(s) or in favour of more than one person including family members, the brochure contemplates and permits following permutations and combinations:

(i) If titled deed is in favour of one or more than one family members, the applicant shall have to obtain notarized affidavit of consent from aforesaid family member(s).

(ii) If land is jointly owned by applicant with one or more other persons and share of the applicant meets the requirement of required land, the applicant shall be eligible provided he will have to obtain 'No Objection Certificate' in the form of a notarized affidavit from other owner(s).

(iii) If the land is owned by any one or more family members jointly with one or more other persons and share of family members meets the requirement, the applicant shall have to obtain 'No Objection Certificate' in the form of notarized affidavit from family members as well as other owners.

(iv) In case, an application is filed on the basis of registered lease deed and any family member is lessee in the lease deed, the applicant is required to get consent in the form of notarized affidavit from the family member who is lessee in the lease deed.

(v) In case, more than one family members of the applicant are 'lessee', the applicant is required to get consent in the form of affidavit from all the family members who are lessee in the lease deed.

(vi) In case, family members of the applicant as well as one or more persons are lessee, the applicant has to obtain consent in the form of affidavit from family members as well as others who are lessee in the lease deed.

(vii) In case, the applicant himself is lessee alongwith one or more other persons, he is required to get 'NOC' in the form of affidavit from other lessee(s).

9. The petitioner has objected candidature of the respondent No.4 on the ground that she is lessee in the offered lease deed and there are 7 owners of offered land and respondent No.4 did not furnish 'NOC' of all the owners at the time of filing application. The 'NOC' of owners of the land could be furnished subsequently, however, 'NOC' by way of affidavit must be in the possession of applicant on the last date for filing application. The respondent No.4 obtained 'NOC' of owners of land in 2017 whereas last date for filing application was 25.11.2013, thus, respondent No.4 was ineligible.

10. From the perusal of brochure, this Court is of the considered opinion that contention of the petitioner that respondent was required to have 'NOC' by way of affidavit of all the owners of land i.e. lessors on the last date of filing application is misconceived. From the reading of Clause

(vii) of paragraph 6 (1) of the Brochure, Column No.9 of Application Form (Appendix I), Clause 16 (6) of Application Form (Appendix I), Serial No.1 of Appendix IV i.e. notarized affidavit, General Instructions to the candidates applying for LPG distributorship, it is evident beyond the pale of doubt that consent in the form of notarized affidavit, in case of lease deed is required from lessee(s) where applicant is lessee or applicant is a joint lessee. In the Brochure and its Annexure, the expression 'joint owner(s)/joint lessee' has been used. If consent of joint owner is required even in case of lease, there was no need to use expression 'joint lessee' alongwith expression 'joint owner'. Thus, in case of lease deed there is no concept of seeking 'NOC' from owners of land. 'NOC' from co-owners of land is required where applicant is a joint owner or land is owned by family members or land is owned by applicant or his family members jointly with third party. The condition of consent from owners is linked with the land which is co-owned by applicant or his family members. The condition of consent of owners has no bearing with a lease deed. In case of lease deed, consent of lessee is required. If the applicant himself is sole lessee, there is no need of 'NOC' from any one, however, 'NOC' is required from the lessee, if any family member is lessee or family member is lessee with any other person. In the entire brochure, no consent of lessor is contemplated. The entire brochure contemplates consent of owners where application is based upon titled deed and consent of lessee where application is based upon lease deed. The applicant is not supposed to look at owners of the land where application rests upon lease deed.

As per petitioner, the respondent No.4 was bound to procure notarized affidavit in Appendix 4 from the co-owners of the land. From the perusal of contents of Appendix 4, it is quite clear that it is applicable to joint owners/joint lessee. In case of lease deed, notarized affidavit of joint lessee is required and not owners of the land. The relevant extracts of Appendix 4 as are reproduced in Para 7.4 of this judgment clearly indicate that expression joint owners/joint lessee has been repeatedly used, thus, there is no scope of doubt. Had consent of joint owners been required even in case of lease deed, there was no need to use expression 'joint owners' as well as 'joint lessee'. It was sufficient to use expression joint owners. The use of expression 'joint lessee' makes it clear that in case of lease deed, consent of 'joint lessee' is required and not the owners of the land.

11. In view of above discussion, this Court is of the considered opinion that entire case of the petitioner is based upon misreading of different Clauses of brochure as well as its Annexures. The respondent No.4 was sole lessee of the offered lease land and she was not required to get 'NOC' from anyone. The only condition in case of respondent No.4 was that lease deed must be registered and its validity period should be 15 years on the last date for filing application. In the case in hand, the last date was 25.11.2013 and on the said date, the respondent No.4 was having a registered lease deed and period of lease was 20 years, thus, respondent No.4 fully complied with requirement as well as conditions contemplated by brochure of August' 2013.

12. It is apt to notice here that during the course of arguments, the petitioner did not assail validity of the lease deed on the ground that one out of 7 co-owners of land could not execute lease deed. The share of the lessor

in the total land was more than 8 Kanal and he had executed lease deed qua 1 Kanal land. The petitioner during the course of arguments doubted lease deed on another ground which would be dealt with in subsequent part of the judgment.

13. In view of above discussion and findings, though, there is no need to return findings qua other issues/arguments, yet, this court finds it appropriate to advert with other issues because both sides have vehemently addressed those issues.

14. The petitioner concededly has not challenged letter dated 25.02.2016 issued by MOPNG. As per said guidelines, locations where draw has been held would follow guidelines of March' 2015 pertaining to ownership of land, approach road, funds in Bank and lease period reckoning. The letter dated 18.12.2015 superseded by letter dated 25.02.2016 came to be challenged before this Court. A Coordinate Bench of this Court in CWP No.8674 of 2016 vide judgment dated 17.04.2018 upheld validity of aforesaid letters. The Court has held that these instructions are not prejudicial to any one and have expanded scope of selection.

The dispute in hand relates to ownership of land. In the guidelines of 2015, deficiency of 'NOC' of co-owners has been declared a curable defect. The co-owners of the land furnished their 'NOC' after filing of application but before FVC. As deficiency of furnishing 'NOC', as per guidelines of 2015, is a curable defect and respondent No.4 before FVC has cured defect, if any, the contention of petitioner cannot be countenanced.

15. The respondents in support of their contention that 'NOC' of

co-owners could be submitted prior to FVC are relying upon Appendix P of brochure of different years. The said Appendix is a format for field verification of credential of applicants. The clause relied upon by respondents reads as:

> "*In case of joint ownership Notarized Affidavit as per format Appendix-2/Appendix 4 of the Application format should be available. If not take it at the time of FVC.*"

The said clause permits acceptance of 'NOC' at the time of field verification, if it is not furnished at earlier point of time. The said clause permits furnishing of 'NOC' at the time of FVC but it does not extend date of 'NOC'. In the brochure as well as its different annexures, it has been provided that applicant should be in possession of all the documents on the last date of filing application. It implies that applicant cannot secure documents after the last date for filing application. It is apt to notice here that clause 8.5 of guidelines of 2015 has made deficiency of furnishing of 'NOC' of joint owners a curable defect, thus, it is said clause of brochure of 2015 which permits furnishing of 'NOC' at a later point of time. The Appendix P neither expands date for furnishing documents nor it can. A document may be furnished at the time of field verification but it must be available with the applicant on the last date for filing application.

16. Learned counsel for the petitioner has also raised a question with respect to mortgage deed executed by owner of the land. As per petitioner, the owner of the land prior to lease with respondent No.4 has mortgaged his land to a Bank. As per mortgage deed, the owner without consent of the Bank could not execute lease deed and owner of the land had executed lease deed with respondent No.4 without getting prior approval of

the Bank. As the lease deed was executed without prior consent of the Bank, the lease deed itself was bad in the eye of law. As per respondents, there is no covenant in the brochure which prohibits lease deed of a land which is already mortgaged, nevertheless, the respondent No. 4 offered and IOC as per its guidelines accepted another piece of land.

In the brochure of August' 2013, there was no restriction to execute lease deed with respect to a land which is already mortgaged. The execution of lease deed might be contrary to mortgage deed, however, its execution can create rights in favour of Bank and in the absence of objection by Bank or IOC, this Court does not find it appropriate to hold that lease deed itself was invalid and IOC could not accept said land. In any case, the respondent No. 4 offered alternative land which stands accepted by IOC and respondent No. 4 has already constructed godown.

17. In the wake of above discussion and findings, both the petitions deserve to be dismissed and accordingly dismissed.

18. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

20.01.2024
anju

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*