
(2019) 04 MP CK 0062
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7058 Of 2018

Durgesh Kumar Bamne

APPELLANT

Vs

Indian Oil Corporation Limited Through Its General Manager
And Others

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 294, 323, 332, 506B

Citation : (2019) 04 MP CK 0062

Hon'ble Judges : Nandita Dubey, J

Bench : Single Bench

Advocate : K.C.Ghildiyal, Aditya Adhikari, Deepak Tiwari, Sanjay K. Agrawal

Final Decision : Dismissed

Judgement

1. The validity of the Order (Annexure P/18) dated 20.03.2018 is under challenge in this writ petition filed by the petitioner under Article 226 of the Constitution of India whereby the LPG distributorship granted to the petitioner was terminated.

2. Pursuant to advertisement dated 15.11.2011, published by the Indian Oil Corporation Ltd. inviting applications for award of LPG distributorship at Itarsi under the Scheduled Caste category, the petitioner submitted an application on 15.12.2011. On the basis of draw of lots, on 08.08.2012, the petitioner was declared successful and letter of intent (LOI) was issued on 31.01.2014 and subsequently letter of allotment (LOA) was issued on 10. 07.2014. However, on a complaint made by one Karan Singh Tomar that the petitioner has suppressed the information regarding the criminal case pending against him, investigation was conducted and certain irregularities were detected. A show cause notice was issued to the petitioner to which reply was filed by him. The explanation furnished by the petitioner was not found satisfactory and rejected. This order was challenged in WP No.20256/2016 in which this Court had directed the

respondents to pass an order after providing opportunity of hearing to him. Thereafter, considering the reply of the petitioner dated 03.03.2017 and giving personal hearing to him on 03.10.2017, the competent authority vide impugned order terminated the distributorship of the petitioner.

3. Shri K.C.Ghildiyal, learned counsel appearing for the petitioner has submitted that non-disclosure of the information was not intentional as the requirement was to furnish the information with regard to offence involving moral turpitude/economic offences. As no such offence, which could fall under the category of moral turpitude or economic offence, was committed by him, it was not essential for him to mention the other details.

4. On the other hand, Shri Aditya Adhikari, learned senior counsel appearing with Shri Deepak Tiwari, learned counsel for the respondent no.1 and 2, and Shri Sanjay K.Agrawal, learned counsel for the respondent no.3, have supported the impugned order. It is submitted that the information required to be conveyed to the authority is not only with respect to offences involving moral turpitude/economic offences, but also in respect of other offences. It is further submitted that as the petitioner has suppressed and concealed the information/material facts in respect of the criminal case pending against him, the allotment of distributorship was rightly terminated.

5. Heard learned counsel for the parties at length and perused the record.

6. Before advertng to the rival submissions of the parties, it is necessary to mention the allotment criteria for award of distributorship, to an individual applicant.

7. Clause 7 of the Guidelines on Selection of Regular LPG Distributorship, provides eligibility criteria for individual applicant. Sub-clause (viii) of Clause 7 prescribes that the applicant should neither have been convicted nor charges been framed by any Court of law for any criminal offence involving moral turpitude/economic offences.

8. Further clause 22 of the aforesaid guidelines requires a candidate to furnish the correct information. It reads 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 affecting eligibility, then the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a distributor, the distributorship is liable to be terminated. In such cases the candidate/distributor shall have no claim whatsoever against the respective Oil Company."

9. Clause 13 of the application form (Annexure P/3) requires a candidate to disclose that if he has ever been convicted by a competent Court of Law or

charges have been framed against him regarding moral turpitude/economic offences or in connection with other criminal offences.

10. Clause 14 of aforesaid Annexure P/3 requires a candidate to give a declaration as under :--

14 - आवेदक का घोषणापत्र:

(क) मैं पूर्ण रूप से अवगत हूँ कि उपर्युक्त आवेदन में दी गयी सूचना के आधार पर एलपीजी डिस्ट्रीब्यूटरशिप की योग्यता का निर्णय किया जाएगा। तेल कम्पनी द्वारा जांच करने पर मेरे/हमारे द्वारा दी गयी सूचना गलत/मिथ्या/छुपाई/गलत ढंग से प्रस्तुत की गई प्रमाणित होती है तो मेरी उम्मीदवारी रद्द कर दी जाएगी एवं मुझे एलपीजी डिस्ट्रीब्यूटरशिप के लिये अयोग्य घोषित किया जायेगा।

(ख) मैं इस बात की भी पुष्टि करता हूँ कि इस आवेदन पत्र में मेरी दी गयी सूचना का मूल प्रमाण पत्र मेरे पास मौजूद है और चयनित होने पर मैं मूल प्रमाण पत्र प्रस्तुत करने में अगर विफल होता हूँ तो मेरा चयन रद्द कर दिया जाएगा।

(ग) मैं इस बात से भी अवगत हूँ कि अगर मैं तेल कम्पनी के मानक ले-आउट के अनुसार चीफ कण्ट्रोलर ऑफ एक्सप्लोसिव्स (पीईएसओ) के कार्यालय द्वारा विधिवत् अनुमोदित एलपीजी गोदाम एवं शोरूम उपलब्ध कराने में अयोग्य होता हूँ, तो आवंटित की गई डिस्ट्रीब्यूटरशिप रद्द कर दी जाएगी।

(घ) मैं इस बात से पूर्णतः अवगत हूँ कि अगर मैं कहीं भी कार्यरत हूँ, तो मुझे एलपीजी डिस्ट्रीब्यूटर नियुक्त नहीं किया जाएगा। और तब मुझे नौकरी से त्यागपत्र देना होगा एवं नियुक्ति पत्र जारी होने से पहले मुझे नियोक्ता द्वारा स्वीकृत त्यागपत्र का प्रमाण प्रस्तुत करना होगा।

(ङ) मैं इस बात से पूर्णतः अवगत हूँ कि एलपीजी डिस्ट्रीब्यूटरशिप के परिचालन के लिये प्रबंध व्यवस्था मुझे स्वयं करनी होगी।

(च) मैं इस बात पूर्णतः अवगत हूँ कि मेरे विवाहित होने पर मेरा पति/मेरी पत्नी एलपीजी डिस्ट्रीब्यूटरशिप के लिये सह-स्वामी होंगे/होगी अर्थात् एलपीजी डिस्ट्रीब्यूटरशिप के 50 प्रतिशत के भागीदार होंगे और मुझे (मेरा पति/मेरी पत्नी) के अलावा किसी अन्य के साथ पार्टनरशिप करने की अनुमति नहीं है।

(छ) अगर मेरा चयन होता है, तो मुझे कॉर्पोरेशन की नीति के अनुसार ब्याज मुक्त सुरक्षा निधि जमा करनी होगी।

(ज) मैं इस बात की पुष्टि करता हूँ कि दिये गये आवेदन पर मैं एलपीजी डिस्ट्रीब्यूटरशिप के लिये योग्यता की हर शर्तों को पूरा करता हूँ।

वचनबद्धता

मैं दुर्गेश कुमार बामने.....का पुत्र/पुत्री श्री रमेश बामने इस बात की पुष्टि करता/करती हूँ कि उपर्युक्त दी गई सूचना मेरी जानकारी में पूर्णतः सत्य और सही हैं। अगर कोई सूचना गलत/मिथ्या/छुपाई/गलत ढंग से प्रस्तुत की गई प्रमाणित होती है, तो इस एलपीजी डिस्ट्रीब्यूटरशिप के लिये मुझे अयोग्य करार दिया जायेगा।

आवेदक के हस्ताक्षर

आवेदक का नाम

स्थान:-इटारसी

दिनांक 15.12.2011

11. A perusal of the application form filed by the petitioner shows that he has left

Column No.13 blank. The petitioner has also filed a notarized affidavit along with his application which is reproduced as under :-

नोटराइज्ड शपथ पत्र

मैं, दुर्गेश बामने, श्री रमेश बामने का पुत्र आयु 33 वर्ष

निवासी पुरानी इटारसी, तहसील इटारसी, जिला

होशंगाबाद एतद् द्वारा शपथपूर्वक घोषणा करता

हूँ और वचन देता हूँ कि:

1. मैं एक भारतीय नागरिक हूँ और भारत का निवासी हूँ
 2. मेरी जन्मतिथि है दिन 02 महीने 09 वर्ष 1978 शब्दों में दो सितम्बर उन्नीस सौ अठहत्तर
 3. मान्यता प्राप्त विश्वविद्यालय/संस्थान से जिस वर्ष मैंने स्नातक की परीक्षा पास की है
 4. बरकतउल्ला विश्वविद्यालय, भोपाल वर्ष 2004 4. मैं विवाहित हूँ। न ही मैं और न मेरे पत्नी के पास किसी तेल कंपनी की डीलरशिप/डिस्ट्रीब्यूटरशिप अथवा रिटेल आउटलेट का आशय पत्र है और न एसकेओ-एलडीओ डीलरशिप अथवा एलपीजी डिस्ट्रीब्यूटरशिप अथवा आरजीजीएलवी है।
 5. मैं मानसिक रूप से पूरी तरह स्वस्थ हूँ।
 6. मुझे किसी भी न्यायालय द्वारा आपराधी घोषित नहीं किया गया है। न ही मुझ पर नैतिक दुराचार/आर्थिक अपराधों सहित किसी भी न्यायालय द्वारा आपराधिक चार्ज जो कानूनन दण्डनीय हो किया गया है (स्वतंत्रता संग्राम का छोड़कर)
 7. मैं एतद् द्वारा यह भी घोषणा करता हूँ कि मैं किसी भी तेल कंपनी की ऐसी किसी भी डीलरशिप/डिस्ट्रीब्यूटरशिप के करार का कभी भी हस्ताक्षरकर्ता नहीं रहा हूँ, जिससे मिलावट/कदाचार के कारण एवं/अथवा मार्केटिंग डिसीप्लीन गाइडलाइन के प्रावधानों का उल्लंघन करने के कारण निरस्त कर दी गई हो।
 8. एलपीजी डिस्ट्रीब्यूटरशिप के अवार्ड के लिये आवेदन के समर्थन में मेरे द्वारा जमा किये गये किसी प्रमाण पत्र में अथवा मेरे आवेदन पत्र में दी गई कोई जानकारी/घोषणा अथवा प्रस्तुत किये गये शपथपत्र में कोई भी जानकारी असत्य अथवा गलत अथवा झूठी पायी जाती है तो भारत पेट्रोलियम कॉर्पोरेशन/हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन/इंडियन आयल कॉर्पोरेशन को यह अधिकार होगा कि वह आशय पत्र वापस ले ले/डिस्ट्रीब्यूटरशिप निरस्त कर दे (यदि पहले नियुक्ति हो गयी हो) और इस प्रकार वापसी/निरस्तीकरण के लिये कॉर्पोरेशन के विरुद्ध मैं किसी प्रकार का दावा नहीं कर सकूंगा।
- मैं एतद् द्वारा प्रमाणित करता हूँ कि उपर्युक्त विवरण मेरी पूर्ण जानकारी एवं विश्वास के अनुसार सही है और किसी तथ्य को छिपाने की मैंने कोई कोशिश नहीं की है मेरे सामने शपथ लेकर घोषित किया।

12. A perusal of the aforesaid affidavit makes it clear that the petitioner has clearly stated that he has not been convicted by any Court of Law nor charges under moral turpitude/economic offences have been framed against him. Clause 8 of the affidavit shows that petitioner has stated that in case any information given in the affidavit or in the application form/documents filed by him is found incorrect or wrong, the respondent/authority will have the power to cancel the distributorship against which he will not have a right to file any claim.

13. It is an admitted fact that pursuant to the complaint filed against the

petitioner, investigation was conducted and it was found that charges under Sections 332/34, 294,506-B and 323/34 of IPC were framed against the petitioner by Judicial Magistrate First Class, Itarsi and he was tried. During the investigation, it was also found that 21 cases were lodged by the police under various acts against the petitioner, but he was not convicted till date by any Court of Law. It was also found that charges under Section 332 clearly falls under the definition of offence of "moral turpitude". As per clause 13 of the eligibility criteria, the candidate applying for the distributorship should neither have been convicted nor charges been framed by any Court of Law for any criminal offence involving moral turpitude/economic offences.

14. The issue in question has been dealt with by a Division Bench of this Court in the case of Sanjay Richharia vs. Director, Indian Oil Corporation Ltd. 2003 (4) MPLJ 148 wherein it has been held thus :-

"10. Giving description of all the essentials relevant to the controversy, we advert to the question posed for our consideration. Careful reading of the matter demonstrates that the appellant committed wilful suppression of information with regard to three criminal cases pending against him. The relevant date is the last date for submission of application in the advertisement. Candidate should be eligible on this date, therefore, contention that by the time enquiry was lodged against the appellant, he had been acquitted in the criminal cases cannot be accepted. The appellant knew very well that he had been charged in the three criminal cases. He did not make mention of that while submitting the application. Submission that he was required to furnish information with respect to offences involving moral turpitude/economic offences cannot be accepted if the relevant criteria is properly scrutinized. Requirement is those candidates who have been convicted for an criminal offence involving moral turpitude and/or economic offence (other than freedom struggle) and those candidates against whom charges have been framed by the Court (other than freedom struggle) would not be eligible for dealership/distributorship. In case of suppression, allotment is liable to be cancelled. Clause 11 of eligibility criteria speaks of two kinds of candidates, namely, those who have been convicted and those against whom charges have been framed by Court. In case allotment has been made by suppression of information, the same is liable to be cancelled. Clause 20 makes the position more clear and requires the candidate to state whether he has ever been convicted or, whether there are any proceedings pending against him in a Court of law for criminal offence involving moral turpitude and/or economic offence (other than freedom struggle), or, whether any charges had been framed by the Court against him ? If so, details thereof have to be given, otherwise file affidavit. Clause 7 of Appendix A-1 also envisages the two categories, namely, no charges are framed against the candidate by any Court of law, other than freedom struggle, and/or no conviction for any criminal offence involving the moral turpitude and/or economic offence (other than freedom struggle) punishable in law. Therefore, it is rightly submitted that candidate has to furnish information not only with respect to criminal offence involving moral turpitude

and/or economic offence (other than freedom struggle) but also with respect to other criminal offences he is charged by the Criminal Court.

11. Conjoint reading of the above quoted clauses clearly stipulate that candidate is required to convey information to the authorities not only in respect of offence involving moral turpitude/economic offence but also in respect of other offence. He has to mention whether proceedings are pending against him, whether charge has been framed with respect to offence involving moral turpitude/economic offence and other offence. The eligibility is divided in two parts by 'or', therefore, the clauses are to be read disjunctively, rightly so interpreted by learned single Judge. This is the intention of eligibility criteria of respondents 1 and 2, so should be, otherwise a candidate proceeded against/tried/convicted may plead for allotment of dealership as against other candidates/individuals who are or have been maintaining clean and upright conduct, character and integrity, stating that offence against him did not involve moral turpitude and/or economic offence. Moral turpitude is anything done contrary to the justice, honesty, principle or good morals or depravity in the private and social duties which a man owes to his fellow men or to society in general, conduct which is inherently base, vile or depraved. Three criminal cases were pending against the appellant pointing out his participation. Intentionally, he avoided giving information of these three criminal cases with which he was charged. There is clear suppression of information, which has resulted in the cancellation of his candidature for dealership and he would not derive any benefit out of the acquittals in the three cases. The Apex Court decision in *Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav* 2003 (3) SCC 437, is squarely applicable in this case. Therefore, suppression of information should result in the cancellation of his candidature for dealership."

15. In the instant case, the petitioner has intentionally avoided giving explanation about the criminal case with which he has been charged. This amounts to suppression of information, and as per Clause 22 of the Guidelines, the distributorship is liable to be terminated.

16. In view of aforesaid, I do not find any merit in the present petition. The petition is, accordingly, dismissed.