
(2013) 08 AHC CK 0140

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35332 of 2013

Samya Chaudhary

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 AHC CK 0140

Hon'ble Judges : Ashok Bhushan, J and Manoj Kumar Gupta, J

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—Aggrieved by order dated 30.5.2013, whereby the petitioner was informed by the Bharat Petroleum Corporation Limited (for short "BPCL") that upon field verification, the information furnished by her in the application for LPG distributorship was found to be at variance and, therefore, her candidature is being rejected, has filed the instant writ petition for quashing the aforesaid order and for commanding BPCL to offer the LPG distributorship in question to the petitioner.

2. During pendency of the writ petition, the petitioner came to know that BPCL is proceeding to hold redraw for selection of LPG distributorship from amongst the remaining eligible candidates and the aforesaid action was also subjected to challenge by filing an amendment application, which was allowed. Yet another amendment was sought challenging the order dated 21.6.2013 whereby the representations made by the petitioner vide her letters dated 7.6.2013 and 17.6.2013 were rejected. The said amendment was also duly allowed by order dated 24.7.2013.

3. The facts in brief giving rise to the instant petition are that the petitioner had applied for LPG distributorship at Naubasta, Kanpur under SC Category pursuant to the advertisement dated 22.10.2011. The Territory Manager, LPG, BPCL, Lucknow informed the petitioner that there are certain shortcomings in the affidavits submitted by her and she was required to remove the defects by 8.2.2013. Pursuant thereto, the petitioner claims to have submitted a fresh

affidavit, and thereafter by letter dated 28.2.2013 sent by Territory Manager, LPG, Lucknow she was informed that she has qualified for the draw of selection of LPG distributorship to be held on 21.3.2013 and she may remain personally present on that date. According to the petitioner, she was successful in the draw of lots and thereafter field verification was carried out to ascertain her credentials and to verify the information submitted by her in the application. At the time of field verification, it was noticed that in the registered lease deed of the land, which was offered by her for construction of godown, by inadvertence, in place of Plot No. 1040, Plot No. 1050 has been mentioned. On coming to know of the said typographical error, she immediately got the registered lease rectified by getting a registered titimma executed on 8.5.2013 in which it was mentioned that in the original lease deed, in place of plot no. 1050, the correct plot no. 1040 be read. The further case of the petitioner is that she immediately intimated the BPCL vide her letter dated 9.5.2013 that the mistake in the registered lease deed has been corrected by substituting plot No. 1040 in place of plot no. 1050. According to the petitioner, no further discrepancy was found in the field verification. However, she was taken aback on receipt of the impugned order dated 30.5.2013 whereby her candidature has been rejected. The relevant portion of the aforesaid letter containing two grounds is reproduced below:

"We regret to inform you that upon field verification of the information submitted by you in your application mentioned above, the following variance was observed.

(1) In your application, you have offered a land at Khasra No. 1050 with size of 27 m x 27 m. However, on verification it has been found that the land bearing Khasra No. 1050 is measuring 100 sq. m only (approx 6.5 m x 15.5 m) and does not meet the requirement of minimum dimensions for LPG Godown. Further, an HT electricity line is also passing through the above plot of land. Hence, land has not been found suitable for LPG Godown as per Clause 7.1(vi) of the brochure for Selection of Distributors.

(2) You have submitted a Notarised Rent Agreement for Showroom and not the Registered Lease Deed as per terms & conditions of the advertisement. Therefore, the shop for Showroom is not suitable as per Clause 7.1 (vii) of the brochure for Selection of Distributors."

4. According to the petitioner, Ground No. 1 on which her candidature has been rejected is manifestly erroneous in law. She duly got the registered lease deed (with respect to the plot of land meant for construction of godown) corrected, by execution of a rectification deed (titimma dated 8.5.2013) and which relates back to the date of execution of the original lease deed dated 16.11.2011. The typographical error in the original lease deed was duly brought to the knowledge of the Officers carrying out the field verification and they were requested to submit their report with reference to the boundaries of the land as mentioned in the registered lease deed dated 16.11.2011, but they wrongly took measurement of Khasra no. 1050. They committed further illegality in submitting their report with reference to Khasra No. 1050. According to the petitioner, if the

officers would have verified the land according to the boundaries shown in the registered deed dated 16.11.2011, it would have transpired that it meets the requirement both in terms of dimensions and the location. No high tension electricity line passes over plot no. 1040 which was actually demised by lease deed dated 16.11.2011 and thus, the first ground on which her candidature has been rejected is not sustainable in law.

5. On the other hand, Sri Vikas Budhwar, learned counsel for BPCL submitted that there is no infirmity in the decision of the BPCL rejecting the candidature of the petitioner. According to him, the petitioner has clearly mentioned in her application that the plot of land being offered for construction of godown bears khasra plot no. 1050 and in such circumstances the field verification of khasra plot no. 1050 was rightly carried out. He submits that subsequent rectification of lease deed cannot have the effect of removing the defects which was in existence at the time of submission of the application. He placed reliance on Clause 7.1 of the brochure in emphasizing that the ownership of the land offered for construction of godown has to be seen as on the date of application and any subsequent exercise to remove the defects or to change the location of the site cannot be taken into consideration. He thus, stoutly protected the action of the BPCL.

6. We have considered rival submissions of the parties and perused the records.

7. Admittedly, the petitioner in her application has offered land measuring 27mx 27m which indisputably meets the requirement for LPG godown. The registered lease deed dated 16.11.2011 was admittedly produced at the time of field verification. It is evident therefrom that the boundaries of the land offered for construction of LPG godown were as follows:

East : Property of Lokendra Dwivedi

West: Remaining part of the land.

North: Remaining part of the land.

South: Road.

8. The case of the petitioner is that on account of typographical error, plot no. 1050, was wrongly mentioned in place of plot no. 1040 in the registered lease deed. She claims to have informed about the said mistake to the officers carrying out field verification and requested them to inspect the plot of land as per boundaries mentioned in the registered lease deed; however, they did not pay any heed to her request.

9. In case of ambiguity or variance in different clauses of the same document, the real intention of the parties to the contract is to be culled out. For such purpose, even aid of extrinsic evidence can be taken. Thus, where discrepancy was noticed in the area and boundaries mentioned in a registered document, it was held that the boundaries will prevail over the area (vide 2008 (3) AWC

2987 :Govt and Public Sector Employees Welfare Housing Organisation Vs. State of UP and others). In the Commentary by S.C. Sarkar on Law of Evidence 14th Edition at Page 1320(Vol.1) the renowned Author has laid down as follows:

Admissibility of Extrinsic Evidence in Cases of Latent Ambiguity Covered by the Section.? "Where lands are described as lying within certain boundaries, and there is a misstatement as to the area within such boundaries, the boundaries must prevail and the error in the quantity should be considered as a mere false description [Pahalwan v. Maheswar, 16 WR 5 PC: 9 BLR 150; Zeenat Ali v. Ram Dayal, 18 WR 25; Eshan Ch v. Pratap, 20 WR 224; Shib Ch v. Brojonath, 14 WR 301; Abdul Mannath v. Baroda, 15 WR 394; Mohiuddin v. Sandes, 12 WR 439; Virjivandas v. Md Ali, 5 B 208, see also Tribhoban v. Krishnaram, 18 B 283; Karuppa v. Periathambi, 30 M 397; 2 MLT 336; Harimohan v. Rameshwar, 64 IC 737; Shk Bara v. Rajendra, 64 IC 751; Nga Cho v Mi Se, 10 Bur LT 245; Johri v. Jowahra, 58 IC 67; Ritlal v. Spilingford, 57 IC 2; Narain v. Jawahir, 50 PLR 1922; Bholanath v. Mrityunjoy, 59 CLJ 532, and other cases as to false description noted under s 95]. Where there is seeming inconsistency as between boundaries and the area stated in an instrument, it is permissible to have recourse to extrinsic evidence and evidence of user by acts of parties for the purpose of gathering the real intention [Sattendra v. Girijabhusan, 58 C 686 : A 1931 C 596; Basavapunnareddi v. Krishnayaa, A 1966 AP 260]."

The same principle will apply in case of misdescription of plot number in a document. It is the boundaries which will ordinarily prevail. In the instant case, the correct intent of the parties to the leased deed became manifest on execution of registered rectification deed dated 8.5.2013 whereby it was clarified that the land which is subject of conveyance is in fact plot no. 1040 and not 1050. Such extrinsic evidence was required to be considered to gather the real intention of the parties to the document in question. Admittedly, a copy of the rectification deed was duly forwarded to the BPCL on 9.5.2013 much before the impugned order dated 30.5.2013 was passed. In such circumstances, it was incumbent upon the BPCL to have considered the rectification deed submitted by the petitioner and to get a reinspection done of plot no. 1040. However, BPCL acted in a mechanical manner and without paying any heed to the stand of the petitioner, it illegally rejected her candidature on the basis of their report based on plot no. 1050. In such circumstances, ground no.1 on which the candidature of the petitioner has been rejected cannot be sustained in law.

10. As regards the second ground to the effect that the petitioner was not having registered lease deed of the showroom on the date of application, the petitioner submits that the aforesaid discrepancy was never brought to her knowledge. In case there was any such requirement, the petitioner should have been informed about the same, as was done by the BPCL itself vide its letter dated 18.1.2013 whereby she was required to remove certain defects in her affidavits. Had such notice been given to her, she would have removed the shortcomings. However, since the impugned decision has been taken without giving any notice or

opportunity of hearing to the petitioner, the impugned order cannot be sustained.

11. Refuting the submissions made by the petitioner, Sri Vikas Budhwar submitted that under clause 7.1(vii) of the brochure, it was clearly stipulated that the applicant should own a suitable shop in the advertised locality as on the date of the application. He has referred to the definition of "ownership" given in the brochure, according to which the applicant should be owner of the property or should have registered lease agreement for minimum period of 15 years in his own name or in the name of family members. He submits that admittedly, the petitioner does not have the registered lease agreement for minimum 15 years with regard to the shop offered by her. The aforesaid fact came to the knowledge of the BPCL on field verification wherein the information given by an applicant in his/her application is verified with the original title documents. He further submitted that the policy relating to settlement of LPG distributorship contemplates two kinds of defects. One which are curable and the other which are not curable and relates to the eligibility of a candidate on the date of the application. He also produced the aforesaid guidelines for perusal of this court at the time of hearing of the writ petition. He placed reliance on Clause 15 and 16 of the aforesaid policy regulating the procedure for selection of LPG distributors. According to it, after last date of submission of applications, the applications are subjected to scrutiny by a committee called "Application Scrutiny Committee" (for short "the committee"). The said committee prepares a list of applicants who were found ineligible due to nontechnical reasons and their candidature is rejected outrightly. Another list is prepared in Appendix M2, which relates to candidates who were found ineligible due to technical reasons. Such applicants are informed by registered post about technical defects in their applications and are given time to rectify the deficiency. According to him, the scrutiny of applications by the committee relates only to the documents which are required to be submitted alongwith the applications, the details of which are given at the foot of the application. These are (i) copy of eligibility certificate for the category applied (ii) demand draft being processing fees (iii) Notarised affidavit in Appendix 1 and (iv) Notarised affidavit in Appendix 2. All other informations are taken to be correct on their face value in view of the declaration made by the applicants to the effect that all information furnished in the application are true and correct. It is only on field verification that the other information given in the applications are verified with original title documents. According to Sri Budhwar, at item no. 10 of the application, the applicants are required to mention the date of registration of sale deed/gift deed/lease deed of the land offered for showroom. Thereunder, the petitioner has mentioned 21.11.2011, and which conveys the impression that the petitioner is owner of the land offered for showroom by virtue of registered sale deed/gift deed/lease deed dt. 21.11.2011. The said information was taken to be correct on its face value as alongwith the application, the title documents are not required to be appended and even if appended they are not subjected to scrutiny. The aforesaid exercise, according to the brochure for selection of LPG distributors, is carried out at the

stage of field verification.

12. Elaborating his argument, Sri Budhwar further submitted that while carrying out field verification of the credentials, the petitioner was required to produce the original title documents relating to shop offered as showroom. It thereafter transpired that the petitioner is only having a notarised lease deed and not a registered one and wherein the tenancy is from month to month. He placed reliance on clause 2 of the said lease deed, according to which, the tenancy starts on first day of each month and determines at the end of each month. Such a lease deed even if registered in future, will not amount to a lease for a period of 15 years. He further submitted that the subsequent registration even if made, will not cure the defect as according to the terms and conditions of the brochure, the eligibility has to be seen with reference to the date of application. Placing reliance on clause 7 of the brochure, he submitted that the petitioner should be having registered lease on the date of application. The petitioner has deliberately suppressed the aforesaid facts in her application and which was detected at the time of field verification. He submitted that since the information given by the petitioner was found to be at variance with the original documents and since it affects her eligibility, she was rightly informed that her candidature is being rejected.

13. He further submitted that in the circumstances aforesaid, there was neither any requirement for giving show cause notice nor it had in any manner prejudiced the case of the petitioner, consequently, the writ petition should be dismissed.

14. For appreciating rival contentions in this regard, it is necessary to refer to certain clauses of the brochure. Clause 7 lays down the eligibility criteria for the individual applicants. Under clause 7.1 (vii) one of the requirements for eligibility is as follows:

"Own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3 metres by 4.5 at the advertised location or locality as specified in the advertisement as on the date of application. It should be easily accessible to general public through a suitable approach road.

""Own" means having ownership title of the property or registered lease agreement for minimum 15 years in the name of applicant/family member as defined in multiple distributorship norms of eligibility criteria."

15. Thus, one of the requirements for an applicant to be eligible for dealership is that he/she should be owner of or should be having registered lease agreement for 15 years with regard to the land/shop offered for showroom.

16. It has not been disputed before us that requirement of having a registered lease of 15 years was sine qua non for eligibility of a candidate. What has been emphasized is that in case the petitioner would have been intimated about such

discrepancy or would have been given show cause notice, she could have got the defect cured by getting the deed registered. Thus, the main emphasis is on the breach of the rule of audi alteram partem.

17. It is true that in the instant case, before cancelling the candidature of the petitioner on the ground that she is not having registered lease deed on the date of application, she was not given opportunity of hearing. However, breach of principles of natural justice is no more a straight jacket formula rendering the action ipso facto invalid unless it could be shown that nonobservance thereof has prejudicially affected the person.

18. In cases where despite non observance of the principles of natural justice, the ultimate result is bound to remain the same; where there is no other view possible even if opportunity of hearing is afforded to the aggrieved parties, then such are the cases where impugned action cannot be struck down on ground of violation of principles of natural justice nor are such cases required to be remitted back to the authorities for a fresh decision after giving show cause notice or opportunity of hearing, as it will be an empty formality, a mere ritual.

19. The Apex Court in its judgment in the case of Haryana Financial Corporation and another Vs. Kailash Chandra Ahuja reported in (2008) 9 SCC 31 has considered in great detail the consequence of nonobservance of principles of natural justice. The Apex Court has held that the recent trend of judgment is that unless prejudice is shown, the impugned order or action cannot be struck down. It has been observed as under:

"The recent trend, however, is of "prejudice". Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that nonobservance had prejudicially affected the applicant.

In Malloch Vs. Abendeen Corpn., Lord Reid said : (All ER p. 1283ab)

"....it was argued to have afforded a hearing to the applicant before dismissing him would have been a useless formality because whatever he might have said could have made no difference. If that could be clearly demonstrated it might be a good answer".

(emphasis supplied)

Lord Guest agreed with the above statement, went further and stated: (All ER p.1291bc)

"...A great many arguments might have been put forward but if none of them had any chance of success then I can see no good reason why the respondents should have given the appellant a hearing, nor can I see that he was prejudiced in any way".

20. In Aligarh Muslim University Vs. Mansoor Ali Khan, (2000) 7 SCC 529, the Court held that though the rules of natural justice have been violated but the

order impugned cannot be set aside as no prejudice has been caused. Referring to several cases, and after considering the theory of "useless" or "empty formality" and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that " had the petitioner been given notice", it "would not have made any difference" and, hence, no prejudice has been caused.

21. In the instant case as well, no purpose will be served in remitting the matter back to the authority for decision afresh after providing opportunity of hearing to the petitioner, in as much as the defect is incurable; no amount of explanation can change the ultimate result, being a *fait accompli*. For petitioner can by no means negate the admitted fact that on the date of application she was not having registered lease of the shop offered for show room for a period of 15 years and therefore did not fulfill the eligibility criteria under clause 7 of the brochure. The clock cannot be put back. Subsequent registration will not cure the defect. Consequently, even if no opportunity of hearing was given to the petitioner, she has not been put to any prejudice and therefore impugned order cannot be set aside on the ground of non observance of principle of natural justice.

22. The second limb of the argument of the petitioner is that as per the guidelines for selection of LPG distributor, the established procedure is to scrutinize the applications and thereafter inform applicants about the defects, if any, and provide opportunity to them, to remove the same.

23. To buttress her aforesaid argument, the counsel for the petitioner has placed reliance on the letter of the Territory Manager, LPG, Lucknow dated 18.1.2013 whereby she was called upon to remove the defects in the affidavit submitted by her as per proforma in Appendix1 and Appendix2. She submits that in case at the time of scrutiny, such defect would have been pointed out, she could have got the lease deed registered. She pressed the doctrine of promissory estoppel against BPCL.

24. Perusal of the scheme for selection of LPG distributorship, copy whereof was passed on to the Court at the time of hearing of the writ petition, it transpires that the defects noticed by the scrutiny committee are to be categorised in 2 classes; the first being of those applicants who were found ineligible due to nontechnical reasons and list thereof is to be prepared in AppendixM1. The other list in Appendix M2 is of applicants found ineligible due to technical reasons. Clause 16 requires that in case of applicants under AppendixM2, an opportunity is to be given to them to remove the deficiency. In the case of the petitioner as well, the affidavit submitted by her did not bear her signatures and there were certain other technical defects therein and she was given opportunity to rectify such defects. However, the defect relating to non registration of the lease as on date of application cannot be said to be a technical defect for which any notice is required to be given to the petitioner or defect wherein could be cured, in as much as, the requirement was to have a registered lease deed on the date of the

application. The defect was fatal in nature. In such cases, no notice was required to be given as per clause 16 of the guidelines for selection of LPG distributors.

25. Other limb of the argument is the plea of promissory estoppel. Before examining the plea of promissory estoppel, it is useful to refer to certain decisions of the Apex court. In one of the recent judgements, in the case of Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Ltd. (2011) 10 SCC 420, it was held that :

34. "A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide Nagubai Ammal v. B. Shama Rao, CIT v. V.M.R.P. Firm Muar, Maharashtra SRTC v. Balwant Regular Motor Service, P.R. Deshpande Vs. Maruti Balaram Haibatti, Babu Ram v. Indra Pal Singh, NTPC Ltd. V. Reshmi Constructions, Builders & Contractors, Ramesh Chandra Sankla Vs, Vikram Cement and Pradeep Oil Corpn vs. MCD.)

35. Thus, it is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.

26. In Monnet Ispat & Energy Ltd. vs. Union of India (2012)11 SCC 1, the Apex Court, after considering catena of decisions, spelled out the broad principles which are to guide a court when issue of applicability of promissory estoppel arises. They are :

182.1. Where one party has by his words or conduct made to the other clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any preexisting relationship between the parties or not.

182.2. The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in

law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

182.3. The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.

182.4. For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.

182.5. In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.

182.6. It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

182.7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the Court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.

Now, we proceed to examine the plea of promissory estoppel on the basis of above principles.

27. Perusal of the application form and the selection procedure would show that alongwith the application, title documents relating to land are not required to be submitted. The committee only scrutinizes the shortcomings which are apparent on the face of the application or the documents which are required to be mandatorily appended to the application. The committee relies on the selfdeclaration made by the applicant with regard to his/her title. Stage for verification of the title documents arrives much later when field verification is carried out. In this regard, it will be fruitful to reproduce Clause 11 of the brochure which is to the following effect :

"11. FIELD VERIFICATION OF CREDENTIALS (FVC)

11.1 Verification of the information given in the application by the applicant with

the original documents and with the issuing authorities wherever required is called Field Verification of Credentials.

11.2 Field verification will be carried out for the selected candidate as per laid down procedure. If in the FVC, the information given in the application by the applicant is found to be correct, letter of intent (LOI) will be issued with the approval of competent authority.

If in the FVC it is found that information given in the application is at variance with the original documents and that information affects the eligibility of the candidate, then a letter would be sent by Registered Post AD/Speed Post pointing out the discrepancy."

28. In the instant case as well, during the field verification, it was found that though the petitioner in her original application under item no.10 had conveyed an impression of being in possession of a registered lease deed dated 21.11.2011 but on verification from the original title documents, it transpired that declaration made in this regard is incorrect as the petitioner was not having registered lease deed but only a notarised one. Thus, there was clear misrepresentation as regards facts mentioned under Item No.10 of the application form. Promissory estoppel is a doctrine of equity, and in the instant case, there is no equity in favour of petitioner being herself responsible for conveying a false impression of having a registered leased deed. Further, the verification of title is at the stage of field verification of credentials and not at the time of scrutiny of the application and therefore there is no question of estoppel coming in the way. Moreover, having registered lease deed on date of application, was a mandatory eligibility criteria and can in no case be relaxed as it renders ineligible the petitioner's candidature and therefore estoppel cannot be pressed. The petitioner cannot be awarded dealership though she does not meet the minimal eligibility criteria. In case, the contention of the petitioner is accepted, it will cause injustice to other eligible candidates and will result in perpetrating a wrong. Therefore, the contention of the petitioner based on doctrine of estoppel is not sustainable in law.

29. In somewhat identical situation, the Apex court in Central Airmen Selection Board and Anr. v. Surender Kumar Das, (2003)1SCC152 refused to give benefit of the doctrine of promissory estoppel. In that case, the upper age limit for appointment to the post of Airmen was relaxable by 2 years in case of those applicants who have passed intermediate examination. The petitioner in that case, under the column "name of examination passed" mentioned "HSC" and "CHSE+2". Although marksheet attached with the Application form reveals that he had failed in 10+2. He was invited to appear in the written test and was thereafter medically examined and was found suitable for appointment. However, when he reported for joining the duties, he was informed that his selection has been cancelled. It was observed as under:

"7. The question, therefore, is whether in case of this nature the principle of

promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the secondary examination as well as the higher secondary +2 examination, and it is clear from the counteraffidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the higher secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the marksheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the higher secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court has clearly erred in law in invoking the said principle in the facts of this case. The judgement and order of the High Court therefore cannot be sustained."

30. There is another aspect of the matter. The requirement to have a registered lease deed for a fixed period of at least 15 years has been inserted to ensure certainty and continuity. The work of distribution of LPG affects the common public at large. It is the duty of Oil Companies, appointing distributors to ensure that they continue undisturbed for long duration, so that the customer attached to them do not suffer. If the tenancy of the showroom is from month to month, as in the instant case, and not for fixed duration of 15 years (which can only be created by a registered document), there will always be apprehension of eviction of lessee (Dealer/Distributor). It will thus not be in public interest to press doctrine of estoppel to compel BPCL to award dealership to the petitioner, who admittedly is not having registered lease of fixed duration of 15 years.

31. In view of above discussion, it transpires that though ground no. 1 on which candidature of the petitioner has been rejected is not sustainable in law, the second ground is valid and legal and the candidature of the petitioner has rightly been cancelled as she did not meet the minimal eligibility criteria of having a registered lease on the date of the application. A fortiori, no exception can be taken to the ultimate decision of the BPCL cancelling the candidature of the petitioner.

32. In the circumstances aforesaid, the writ petition fails and is hereby dismissed. No order as to cost.