

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF AUGUST, 2018**



**PRESENT**

**HON'BLE MR.JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE**

**AND**

**HON'BLE MR.JUSTICE S SUNIL DUTT YADAV**

**WRIT PETITION NO.1963 OF 2018 (GM-RES-PIL)**

**BETWEEN:**

KARNATAKA RAJYA  
VIKALACHETNARA RAKSHANA SAMITI,  
A SOCIETY REGISTERED UNDER  
THE KARNATAKA SOCIETY'S REGISTRATION ACT, 1960,  
HAVING ITS REGISTERED ADDRESS AT  
3/6, 1<sup>ST</sup> FLOOR,  
MADALIYAR COMPOUND  
II MAIN, AZAD NAGAR,  
BANGALORE - 560 018  
REPRESENTED BY  
ITS ACTING PRESIDENT.

... PETITIONER

(BY SMT.JAYNA KOTHARI, ADVOCATE)

**AND**

1. INDIAN OIL CORPORATION  
HAVING ITS KARNATAKA STATE OFFICE AT:  
INDIAN OIL BHAVAN,  
NO.29, KALINGARAO ROAD,  
MISSION ROAD, SAMPANGI RAM NAGAR  
BANGALORE - 560 027  
REPRESENTED BY ITS CHAIRMAN.

2. BHARAT PETROLEUM  
HAVING ITS KARNATAKA HEAD OFFICE AT  
17, DUPARC TRINITY  
7<sup>TH</sup> FLOOR, MG ROAD,  
BANGALORE - 560 001  
REPRESENTED BY ITS CHAIRMAN.

3. HINDUSTAN PETROLEUM  
HAVING ITS REGIONAL OFFICE AT  
SUBHASH CHANDRA NAGAR,  
SBI COLONY, BELGAUM  
KARNATAKA - 590 006  
REPRESENTED BY ITS CHAIRMAN.

4. UNION OF INDIA  
MINISTRY OF PETROLEUM & NATURAL GAS,  
201-A SHASTRI BHAVAN,  
NEW DELHI - 110 001  
REPRESENTED BY ITS JOINT SECRETARY.

5. UNION OF INDIA  
MINISTRY OF SOCIAL JUSTICE AND  
EMPOWERMENT ROOM NO. 202,  
2<sup>ND</sup> FLOOR, C WING, SHASTRI BHAVAN  
NEW DELHI - 110 001  
REPRESENTED BY ITS JOINT SECRETARY.

... RESPONDENTS

(BY SRI K.M.NATARAJ, SENIOR ADVOCATE FOR  
SRI.SHARATH MULIA, ADVOCATE FOR  
M/S.FOX MANDAL ASSTS., FOR R1, 2 & 3,  
SRI JAGADISH G.KUMBAR, CGC FOR R4 & 5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET  
ASIDE THE NOTIFICATION DTD:17.8.2017 PRODUCED HEREIN  
AS ANNEXURE-A AND THE GUIDELINES PRODUCED HEREIN  
AS ANNEXURE-B TO THE EXTENT THAT IT DOES NOT  
RESERVE 5% OF THE 238 LPG DISTRIBUTORSHIPS IN  
KARNATAKA FOR PERSONS WITH DISABILITIES AND DOES  
NOT PROVIDE CONCESSIONS FOR PERSONS WITH  
DISABILITIES AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED, THIS DAY, COMING ON FOR PRONOUNCEMENT OF ORDER, THE **CHIEF JUSTICE** PRONOUNCED THE FOLLOWING:

**ORDER**

1. The petitioner, said to be a non-profit organization, registered under the Karnataka Societies Registrations Act, 1960, and actively engaged in working for the rights of the differently disabled persons, has filed the present petition as a public interest litigation ('PIL'), while questioning the notification dated 17.08.2017 (Annexure-A) issued by three state-owned oil companies (respondent Nos.1 to 3), whereby the applications were invited for selection of 238 Liquefied Petroleum Gases ('LPG') distributors in various districts of Karnataka.

2. The petitioner has stated the cause and grievance as under:-

(a) There has been gross violation of Section 37 of the Right of Persons with Disabilities Act, 2016 ('the Act of 2016'), inasmuch as reservation of 5%, as mandated under Section 37 of the Act, has not been provided. According to the petitioner, while providing for 5% reservation out of 238 LPG

distributorship, 11 distributorships would have been reserved, but the respondents have reserved only 6 positions, which is less than even 3% of 238 distributorships.

(b) Under the unified guidelines for selection of LPG distributors issued by the respondents, neither any concession in application fees and security deposit has been provided in favour of the persons with disabilities nor any provision for financial assistance has been made as mandated under Section 19 of the Act of 2016, whereas the same has been provided for persons belonging to the Scheduled Castes and Scheduled Tribes category.

3. This petition, was filed when the notice was published in a Kannada daily newspaper specifying the schedule for draw of lots for selection of LPG distributors, to be conducted from 04.01.2018 to 18.01.2018. After notice, when this petition was considered by a Co-ordinate Bench on 09.02.2018, after finding no specific response from learned counsel for the Union of India about the basis for providing 3% reservation, further proceedings pursuant to the impugned notice were stayed.

4. Learned counsel for the petitioner has argued that the LPG distributorship is a developmental scheme and a welfare measure and is not merely a commercial transaction and hence, the provisions of Section 37 do apply to such award of LPG distributorship. Learned counsel would submit that such distributorships being of welfare measures and of poverty alleviation schemes is evident from the fact that the unified guidelines of the respondents themselves provide for reservation for various categories, including for persons with disabilities.

5. Learned counsel has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of ***Onkar Lal Bajaj & Ors. vs. Union of India & Anr. (2003) 2 SCC 673*** and that of the Hon'ble Punjab and Haryana High Court in the case of ***All India LPG Distributors Fed. (Punjab) vs. Union of India: 2014 SCC Online P & H 10630.***

6. Learned counsel has further argued that the reservation of 5% and other concessions for persons with disability are mandated under the Act of 2016 and any reservation less

than that is required to be pronounced against. Learned counsel has further contended that in case of allowing the petition, no harm would be caused to any eligible candidate, but it would only serve the cause of justice for the persons with disabilities.

7. Learned counsel for the petitioner has strongly argued that the impugned notification deserves to be struck down to the extent it does not provide for 5% reservation for the persons with disability and the revised notification with such reservation ought to be issued and the guidelines deserve to be revised for other concessions for the persons with disabilities such as the concessions in age, security deposit, application fees, financial assistance and loans.

8. Per contra, the learned Senior Counsel appearing for the respondent Nos.1 to 3 has argued that the provisions of the Act of 2016, particularly Sections 19, 34 and 37 thereof are not applicable to the joint public advertisement dated 17.08.2017 floated by the oil companies, inasmuch as LPG distributorship involves normal business risks without

guaranteeing assured profits. Therefore, the expression 'poverty alleviation and various developmental schemes' as envisaged in clause (b) of Section 37 of the Act cannot be made applicable to the present case. It is contended that sub-clause (5) of Point No. 5 of the advertisement clearly states that this is only a business proposition and not a job application and being purely of a contractual nature, cannot be construed as a 'poverty alleviation scheme'.

9. Learned Senior Counsel submits that in the advertisement in question, a total of 6 locations have been rightly reserved for persons with disabilities. If any addition is now made, the entire process for appointment of LPG distributors will come to a standstill, causing irreparable injury to the oil companies.

10. Having heard learned counsel for the parties and having perused the material placed on record, with reference to the law applicable, though we are not persuaded to accept the submissions about applicability of Section 37 of the Act of 2016 directly to the allotment of the LPG distributorships

under the notification dated 17.08.2017; and providing for reservation in such allotment of distributorships at 3% cannot be faulted at, but then, as regards other submissions on behalf of the petitioner, for the measures to be taken by the appropriate Government for providing loan/concessional fees as also other facilities to differently-abled persons, we are of the view that the grievance deserves to be left open for consideration of the respondents, if an appropriate representation is made in that regard.

11. As regards, the claim by the petitioner that 5% reservation in the allotment of LPG distributorships ought to have been provided under Section 37 of the Act of 2016, the contention does not merit acceptance on a bare look at the provisions of Section 37 and the scheme of the Act of 2016.

12. The Act of 2016 has been enacted for empowerment of the persons with disabilities in substitution of its forerunner, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and in pursuance of



the United Nations Convention on the Rights of Persons with Disabilities.

13. The rights of equality and non-discrimination; community life; protection from cruelty, abuse, violation and exploitation; safety; accessibility and guardianship are provided in Chapter II of the Act of 2016. In Chapter III, the provisions are made for the Education of the persons with disabilities and the measures to be taken by the appropriate Government and the local authorities. In Chapter IV, the provisions are made for skill development and employment of the persons with disabilities and in Chapter V, for social security; healthcare; rehabilitation; and recreation, etc.

14. Thereafter, in Chapter VI of the enactment, special provisions are made for the persons with benchmark disabilities, for free education; reservation in higher educational institutions and the reservations in employment under Sections 31 to 34 thereof. Then, under Section 35, the provisions are made that the appropriate Government and the local authorities, within the limit of their economic capacity

and development, shall provide for incentives to employer in private sector to ensure that 5% of their workforce is composed of the persons with benchmark disabilities. In Section 36, the provisions are made for notifying special employment exchange and requiring the employer in every establishment to furnish the information in relation to the vacancies and the persons appointed with benchmark disabilities.

15. Thereafter, the provisions are made in relation to special schemes and developmental programmes in Section 37, which has been pressed into service in the present case and reads as under:

**“37. Special schemes and developmental programmes.-** *The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,-*

*(a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;*

*(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;*

*(c) five per cent. reservation in allotment of land on concessional rate, where such land is to*

*be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.”*

16. Other provisions are made in the enactment for the persons with disabilities with high support needs; towards duties and responsibilities of appropriate Governments; registration of institutions for persons with disabilities and grants to such institutions; constitution and setting up of the Central and State advisory Boards, the commissions for the persons with disabilities, Special Courts with Special Public Prosecutors as also for state funds for persons with disabilities; and for offences and penalties.

17. Reverting to Section 37 of the Act of 2016, noticeable it is that what is expected therein of the appropriate Government and the local authorities is to make schemes in favour of the persons with benchmark disabilities, so as to provide for reservation in: (a) allotment of agricultural land and developmental programmes with appropriate priority to women with benchmark disabilities; (b) for 5% reservation in all 'poverty alleviation and developmental schemes', again

with priority to women with benchmark disabilities; and (c) for 5% reservation in the allotment of land on concessional rate, where the land is to be used for promoting housing, sheiter, setting up of business, occupation, etc.

18. In order to bring the claim, as made in this petition within the four-corners of Section 37 of the Act of 2016, learned counsel for the petitioner has strenuously argued that the LPG distributorship is not a purely commercial transaction, but is a development scheme and a welfare measure. In this regard, the following observations in the case of **Onkar Lal Bajaj** (*supra*) have been referred:

*“45. ....It is apparent from the guidelines that the dealerships and distributorships were provided to be given to the allottees as a welfare measure. Even in respect of open category there is a limitation for the income of the applicant being not more than 2 lakhs per annum so as to be eligible for consideration by DSBs. The DSBs are required to consider the applications within the parameters of the guidelines and select the best applicant. If DSBs in some cases have selected someone not on merits but as a result of political connections/considerations and positions of the applicant, undoubtedly such allotments deserve to be quashed. In Common Cause case, this Court on examination of the facts held that the allotment to the sons of the Ministers were only to oblige the Ministers. The allotments to the Members of the*

*Oil Selection Boards and their/Chairmen's relations had been done to influence them and to have favours from them. It was observed that a Minister who is the executive head of the department concerned, when distributing benefits and largesses in a welfare State in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. has to deal with people's property in a fair and just manner. He holds all these as a trust on behalf of the people. He cannot commit breach of the trust reposed in him by the people."*

19. Learned counsel has further relied upon the following observations in the case of **All India LPG Distributors** (*supra*):

*"14. .... In the present case, As per "Vision 2015" for the LPG sector, a target has been given to public sector Oil Marketing Companies (OMCs) to raise the over all LPG population coverage in the country to 75% by releasing 5.5 crore new connections by 2015, especially in rural areas and under covered areas. As per the written statement filed by respondent No. 2, the RGGLV Scheme was started in the year 2009. Out of total 6713 LPG distributorships advertised under this Scheme, around 2341 have already been commissioned. In addition to the above figure, the Scheme has pro-poor features including release of LPG connection to BPL families with funding of security deposit from CSR funds of OMCs, allotment of distributorship to the local (Panchayat) domiciles, women empowerment through mandatory partnership of spouse etc. 38.8 lakh LPG customers, including 1.42 lakh BPO*

*families, have been enrolled through these distributorships up to 01.07.2013.*

*In the light of the above discussion and the law laid down by the Hon'ble Supreme Court, this Court is of the view that the FGGLV Scheme has been launched while keeping in mind the larger public interest."*

20. Learned counsel would also refer to certain press releases by the Ministry of Petroleum and Natural Gases, wherein, *inter alia*, it is stated that the idea of awarding of such distributorships is to empower rural women by providing for financial independence as also of creating job and rural employment opportunities towards supply chain system.

21. In the observations made by the Supreme Court and the Punjab and Haryana High Court in the decisions above referred, as also the other observations made allegedly by the Central Government in the press releases, we are unable to find any proposition that the award of LPG distributorship be treated as poverty alleviation and developmental scheme, as asserted on behalf of the petitioner.

22. Even when the laudable objectives, including those of women empowerment, creating rural employment

opportunities, and raising LPG population are taken as the welfare measures, while keeping in mind larger public interest, it is difficult yet to consider that the award of LPG distributorship is a 'poverty alleviation' scheme.

23. The supply chain by way of LPG distributorships, no doubt, is of welfare measures, where on one hand employment and earning opportunities are created and at the same time, the Liquefied Petroleum Gases reaches even to the Below Poverty Line ('BPL') families. However, if any element of poverty alleviation is at all to be seen in such award of distributorship, that only refers to the consumers and not to the distributors.

24. In an overall comprehension of the matter, we are satisfied that even if the award of LPG distributorships, which is essentially a matter of commercial contract, is a welfare measure and leads to manifold empowerment and all-round development of society, it cannot be termed as a notified scheme for poverty alleviation and development, to which Section 37 of the Act may apply. In this regard, it may also be

observed that any scheme for poverty alleviation could be for removing of various deprivations of necessities, which any particular person or class of persons are found suffering from; and the scheme for its alleviation would bring about the changes for betterment whereby the basic necessities are appropriately and conveniently made available to the persons in need but, in our view, it is beyond the ordinary scope of such a concept to include therein even a commercial contract of award of LPG distributorship. Needless to reiterate that the availability of LPG to the persons below poverty line may be correlated with the poverty alleviation, but that relates to the consumers and not to the distributors. To the extent welfare is brought about by the award of distributorships, has nevertheless been kept in view and hence, 3% reservation has indeed been provided for the persons with disabilities, but it is difficult to correlate such reservation with Section 37 of the Act of 2016. The provision for reservation by the respondent Oil Companies, who are the agencies and instrumentalities of the Government *prima facie* indicates their attention to the requirements of the persons belonging to



different classes and categories. However, for that matter, we find no reason to issue a mandamus to provide for extra reservation for persons with disabilities by operating Section 37 *ibid.* in award of LPG distributorship.

25. It is also noteworthy that award of LPG distributorships is taken up essentially by the respondent Nos.1 to 3 - the three State-owned oil companies and such award of distributorship is not of any notified scheme of the appropriate Government or local authorities, which could be classified as a poverty alleviation and developmental scheme.

26. In the aforesaid view of the matter, we find no force in the submissions made on behalf of the petitioner about applicability of Section 37 of the Act of 2016 to the award of distributorships under the notification dated 17.08.2017 in question.

27. During the course of submissions, learned counsel for the petitioner has also contended that apart from not providing for 5% reservation, the respondents have committed another illegality in providing only 6 positions for the persons with

disability, though 3% of total 238 locations ought to have been 7. In this regard, the learned counsel for the respondents has clarified that 31 distributorship out of the total 238 are of 'Durgam Kshetriya Vitrak', which are not suitable for the persons with disability; and after taking them out, 3% of the reminder has been provided, which comes to 6. We do not find any error or illegality on the part of the respondents in this regard; and it appears that the unified guidelines have been properly applied in this matter.

28. We would hasten to observe that 3% reservation in the award of distributorships has been provided under the unified guidelines for selection of LPG distributors and no observations herein could be taken as curtailing the rights of the respondents to provide for such reservation within the framework of law, as deemed fit and proper, as regards award of LPG distributorships. The question being considered in this matter is confined to the applicability of Section 37 of the Act of 2016 and not beyond.

29. Even while not agreeing on the contentions as regards applicability of Section 37, we are clearly of the view that so far the other claim of the petitioner about concession in application fees and financial assistance are concerned, it remains open for the petitioner as also for any aggrieved person to make appropriate representation to the authorities concerned for consideration and upon making any such representation, the authorities may examine the same and take a decision thereupon in accordance with law.

30. With the observations foregoing, this petition stands disposed of.

31. The Interim order dated 09.02.2018 stands vacated.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

AHB/CA