

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)**

W.P. No. ____ / 2018

BETWEEN

Karnataka Rajya Vikalachetnara Rakshana Samiti

A Society registered under the Karnataka Society's Registration Act 1960

Having its registered address at:

3/6 1st Floor, Madaliyar Compound,

IInd Main, Azad Nagar

Bangalore – 560018

Represented by its President

..PETITIONER

AND

1. Indian Oil Corporation
Having its Karnataka State Office at:
Indian Oil Bhavan
No. 29, Kalingarao Road
Mission Road, Sampangi Ram Nagar
Bangalore – 560027
Represented by its Chairman
2. Bharat Petroleum
Having its Karnataka Head Office at
17, Duparc Trinity
7th Floor, MG Road
Bangalore – 560001
Represented by its Chairman
3. Hindustan Petroleum
Having its Regional Office at:
Subhash Chandra Nagar,
SBI Colony, Belgaum
Karnataka-590006
Represented by its Chairman
4. Union of India
Ministry of Petroleum & Natural Gas,
201-A Shastri Bhavan,

New Delhi - 110001

Represented by its Joint Secretary

5. Union of India

Ministry of Social Justice and Empowerment

Room No. 202, 2nd Floor, C Wing, Shastri Bhavan

New Delhi - 110001

Represented by its Joint Secretary

...RESPONDENTS

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA 1950**

1. The present petition has been brought by the Petitioner for the protection of the rights of persons with disabilities under the Rights of Persons with Disabilities Act, 2016 ("RPD Act") being aggrieved by the actions of the 1st Respondent in the appointment of LPG distributors. The 1st Respondent in its call for the selection of 238 LPG distributors in various districts of Karnataka has not reserved 5% of the distributorships as mandated under section 37 of the RPD Act which would amount to 11 distributorships and instead reserved only 6 positions which is less than even 3% of 238 distributorships. Further, under the Unified Guidelines for Selection of LPG Distributors issued by the 1st Respondent, no concession in application fee or security deposits have been granted in favor of persons with disabilities, nor has any provision for financial assistance been made in their favour as mandated under Section 19 of the RPD Act, whereas the same has been made for SC / ST persons. The Petitioner society is a not for profit organisation working towards safeguarding the rights of persons with disabilities and being aggrieved by the inactions of the Respondents, has filed this petition.

Brief Facts:

2. The Petitioner is a registered not-for-profit organisation, registered under the Karnataka Societies Registrations Act, 1960 and is actively engaged in

working for the rights of persons with disabilities. The Petitioner Society is represented by its President.

3. It is submitted that Respondents No. 1,2 and 3 are state owned oil companies. In order to appoint LPG Distributors, they had issued jointly a Notification on 17.08.2017 by public advertisement calling for the applications for the appointment of LPG Distributors in several districts of Karnataka. The Notification stated that a total of 238 distributorships were to be filled up, out of which only 6 had been reserved for persons with disabilities. These 6 distributorships that are reserved come up to only 2.52% of the total number of appointments. The 6 locations where distributorships have been reserved for persons with disabilities are:

- (i) Kanamadi in Bijapur District, Gramin Vitrak category (PH/OBC)
- (ii) Galag in Raichur District, Gramin Vitrak Category, (PH/OBC)
- (iii) Anagawadi in Bagalkot District, Gramin Vitrak Category (PH)
- (iv) Tamba in Bijapur District, Gramin Vitrak Category (PH/SC)
- (v) Dudda in Mandya District, Gramin Vitrak Category (PH/ SC)
- (vi) Salluru in Shimoga District, Gramin Vitrak Category (PH)

(A copy of the Notification dated 07.08.2017 issued by the 1st Respondent is annexed herein and marked as **ANNEXURE –A**)

4. The above Notification states that the detailed guidelines for application for distributorships would be as per the Brochure on Unified Guidelines for Selection of LPG Distributors 2017 (“Guidelines”). These Guidelines are published by the Respondent No. 4 Union of India for the Respondents No. 1, 2 and 3 in 2017.

(A copy of the Brochure on Unified Guidelines for Selection of LPG Distributors is annexed herein and is marked as **ANNEXURE – B**)

5. It is submitted that both in the Notification and the Guidelines, adequate reservation and concessions for persons with disabilities has not been provided. As per Section 37 of the Rights of Persons with Disabilities Act 2016 (“RPD Act”), the Respondents are required to provide 5% reservation for persons with disabilities, with priority for women with disabilities in all poverty alleviation and development schemes. Section 37 of the RPD Act states as follows:

“37. 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.”

6. It is submitted that these LPG distributorships are poverty alleviation methods and development measures and would fall under the category of “poverty alleviation and development” activities and schemes of the government. These distributorships provide livelihood to persons and are significant in helping persons with disabilities come out of poverty and earn a sustained livelihood where they fulfill the eligibility criteria. A large number of these distributorships are reserved for other vulnerable categories of persons such as SC / ST persons, OBC persons, freedom fighters and defence personnel also for their livelihood and poverty alleviation. Hence 5% of the distributorships should be reserved for persons with disabilities as per Section 37 of the RPD Act, which amount to 11 distributorships to be reserved. Instead only 6 distributorships have been reserved which does not even fulfill 3% of the distributorships.

7. It is submitted that under the “Unified Guidelines for Selection of LPG Distributors” issued in June 2017 as well Under Clause 4 of the aforesaid

guidelines which deals with the quantum of 'Reservation', it has been stated that only 3% of the total number of LPG distributors appointed are to be appointed from the "Physically Handicapped Personnel" (PH) sub-category. Further, these Guidelines have made provisions for de-categorisation which means that if no persons with disability is found, no adjustment would be made in the roster in the future. Under clause 6 sub clause (d), it is stated as follows:

"With regard to reserved sub categories viz., "GP", "PH", CC' or 'Women' the reservation percentage will be maintained only at the time of initial categorization. In other words, once the category of such locations is changed after the first advertisement if no candidate applies or no eligible candidate is found or no candidate qualifies or no selected candidate is able to commission the LPG Distributorship, no adjustment in the roster would be made under the future marketing plans."

8. In addition to reservation not being adequately provided for persons with disabilities, the Guidelines also do not provide for adequate concessions in the entire application and selection process for persons with disabilities as is done for freedom fighters, SC/ST persons and other categories of applicants. The concessions provided to others and not provided to persons with disabilities are as follows:

- (i) Concession in Application Fee: The application fee for the general Open Category is Rs. 10000/- (Rupees Ten Thousand only) whereas SC / ST applicants are to pay only Rs. 3000/- (Rupees Three thousand only) and Rs. 2500/- (Rupees Two thousand five hundred only).
- (ii) Concession in Security Deposit: Under clause 22 of the Guidelines the Respondents permit a concessional rate of security deposit of Rs. 3,00,000/- to people belonging to the SC/ST category, whereas for the Open Category Rs. 5,00,000/- security deposit has to be paid and no concession is provided for persons with disability.
- (iii) Age Relaxation: Under sub clause A of Clause 8 of the Guidelines, the Respondent prescribe an upper age limit of upto 60 years whereas for those applying for locations under the Freedom Fighter (FF) category, there is no upper age limit.

(iv) Scheme for Financial Assistance: Clause 21 of the Guidelines provides a scheme for financial assistance to selected candidates belonging to the SC & ST categories whereby the Respondents No. 1,2 and 3 would facilitate the securing of a loan by the SC & St candidates from scheduled commercial banks in order to assist them in setting up the infrastructure required for the LPG Godown, Showroom and LPG Cylinder delivery and by also paying margin money of upto Rs. 1,00,000/- (Rupees One Lakh only). It is submitted that no such scheme has been provide for persons with disabilities.

9. It is submitted that the Respondent No. 5 Union of India has issued several Office Memoranda directing that upper age limits for persons with disabilities be relaxed and also granting concessions to persons with disabilities for application fees. Therefore, keeping these Office Memoranda in mind, the Respondent ought to have granted concessions to persons with disabilities in the instant selection of LPG distributors, which it failed to do.

(A copy of the Office Memorandum dated 28.1.1978 is annexed herein and is marked as **ANNEXURE - C**)

(A copy of the Office Memorandum dated 0312.1985 is annexed herein and is marked as **ANNEXURE - D**)

10. The Petitioner, being aggrieved by the Notification and the Guidelines, made a representation dated 05.12.2017 to the State Level Committee of the Respondents No.1, 2 and 3 and also to the Respondent No. 4, praying for an increase in reservation in favour of persons with disabilities for appointment to the post of LPG Distributors and further requested for grant of age relaxation and concession in application fee and other concessions. However, the Petitioner has received no response from the respondents.

(A Copy of the Representation dated 05.12.2017 made to the Respondents No. 1 -3 is annexed hereto and marked as **ANNEXURE-E**)

(A Copy of the Representation dated 05.12.2017 made to the 2nd Respondent is annexed hereto and marked as **ANNEXURE- F**)

(A Copy of the Postal receipts for the Representations dated 05.12.2017 has been annexed hereto and is marked as **ANNEXURE-G**)

11. After this Notification was published, as per the Guidelines, it has been provided that eligible candidates will be intimated to report for the draw of lots to be conducted for selection of LPG Distributors. Under Clause 16(b) of the Guidelines, the notice with regard to the draw would be published before the date of the draw in the same newspapers in which the advertisement for appointment of LPG Distributor was initially published. Accordingly a notice dated 01.01.2018 has been published in the Kannada daily edition of the Prajavani wherein the schedule for the draw of lots to be conducted from 04.01.2018 to 18.01.2018 has been provided. It is therefore submitted that the selection process for the appointment of LPG Distributors has already commenced on 04.01.2018 and is scheduled to be completed on 18.01.2018. Once the draw of lots is completed, the appointment of the selected LPG distributors would begin.

(A copy of the Notice for draw of lots published in Prajavani dated 01.01.2018 is annexed hereto and marked as **ANNEXURE-H**)

12. Being aggrieved by the inaction of Respondents in not granting persons with disabilities 5% reservation in appointment as LPG Distributors and further relaxation of age and concessional terms such as concessions in application fee and security deposit and provision of financial assistance, and having no other alternative and equally efficacious remedy, the Petitioner has filed the present writ petition before this Hon'ble Court. The Petitioner has not filed any other Petition either before this Hon'ble Court or any other Court in respect of this course of action. The Petition is filed on the following, among other grounds:

GROUND:

13. **THAT** the action of the Respondents in not reserving 5% of the LPG distributorships in Karnataka and not providing the concessions in the said appointment and selection process for persons with disabilities amounts to a violation of the provisions of the RPD Act, the Office Memoranda issued by the Respondents and a violation of the rights to equality and equal opportunity of persons with disabilities.

14. **THAT** as per Section 37 of the RPD Act, the Respondents are under a legal mandate to notify schemes in favour of persons with benchmark disabilities and must provide, among other things listed under Section 37, 5% reservation to persons with disabilities in all poverty alleviation developmental schemes, giving priority to women with benchmark disabilities. The LPG Distributors Scheme is one such developmental scheme and poverty alleviation scheme, whether it is categorized as such or not, as it offers an avenue of livelihood for persons with disabilities to come out of poverty. The impugned Notification and Guidelines in reserving only 6 of the 238 advertised posts for appointment of LPG Distributors in Karnataka and not reserving 5% of the distributorships which amount to 11 distributorships being reserved for persons with disabilities, is therefore violative of the provisions of Section 37 of the RPD Act and hence deserves the intervention of this Hon'ble Court.

15. **THAT** the action of the Respondents in not providing concessions to persons with disabilities in the impugned Notification and Guidelines, being concessions in the application fee of Rs. 10,000/-, concessions in the security deposit of Rs. 5,00,000/-, concessions of relaxation of upper age limit which is listed to be 60 years, and concessions in terms of providing financial assistance of loans and payment of margin money, is in violation of the provisions of Section 37 (c) which mandates providing land at concessional rates and also Section 19 of the RPD Act which

specifically provides for provision of loans at concessional rates to persons with disabilities especially for self employment.

16. **THAT** the Respondents, by failing to provide relaxation of the upper age limit for persons with disabilities have disregarded the Office Memoranda issued by the central government which direct that persons with disabilities in all government employment are entitled to relaxation of the upper age limit and the same is also provided in section 34 of the RPD Act which mandates the relaxation of age limit for persons with disabilities. In the impugned Notification and Guidelines, there is no upper age limit for applicants who are freedom fighters, but no such relaxation is provided to persons with disabilities and hence such action is in violation of the provisions of the RPD Act, the Office Memoranda and also amounts to treating persons with disabilities who are as vulnerable and marginalized economically as freedom fighters, if not more, as a different class arbitrarily and without any reasonable basis and deserves the intervention of this Hon'ble Court.

17. **THAT** the Hon'ble Supreme Court in ***Union of India v. National Federation of the Blind and Ors.*** Civil Appeal No. 9096 of 2013, has observed that the Persons with Disabilities Act, 1995 is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted so as to fulfill this objective. The Court has further recorded that it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said provision. Hence it is submitted that the Respondents failure to provide 5% reservation in addition to age relaxation and concessional rates of application fee as well as financial assistance to persons with disabilities violates the rights of such persons and further does not adhere to the plain and unambiguous mandate of the PWD Act, 1995 and its successor, the Rights of Persons with Disabilities Act, 2016.

18. **THAT** the Government of India, Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension had issued an Office Memorandum dated 03.12.1985 whereby persons belonging to the physically handicapped category were exempted from payment of application fee in respect of Group C and D Non-gazetted posts. The concession was granted in favor of physically handicapped persons in order to facilitate participation and social integration of persons with disabilities and similar concessions must therefore be granted in favour of persons with disabilities for the purposes of all developmental and poverty alleviation schemes. The Unified Guidelines issued for Selection issued by the 1st Respondent do not make any provision for grant of concessional rates and are therefore contrary to the spirit and purpose of the enactment of the Rights of Persons with Disabilities Act, 2016.

19. **THAT** the Unified Guidelines for Selection of LPG Distributors under Clause 21 stipulate a scheme for financial assistance to selected candidates belonging to the SC & ST categories whereby the Oil Marketing Companies (OMCs) are to facilitate the securing of a loan by the SC & St candidates from scheduled commercial banks in order to assist them in setting up the infrastructure required for the LPG Godown, Showroom and LPG Cylinder delivery. It is submitted that no such scheme has been provided for those candidates belonging to the (PH) category and the guidelines therefore fail to cater to the needs of persons with disabilities who, like the SC & ST category candidates are in need of financial aid and assistance owing to the fact that they more often than not hail from economically weaker sections of society. This is also contrary to the Rights of Persons with Disabilities Act, 2016.

20. **THAT** the Hon'ble Supreme Court in ***Justice Sunanda Bhandare Foundation vs. Union of India & Anr.*** (2014) 14 SCC 383 held that it is

mandatory for all State Governments and local authorities to comply with the Act and the Rules under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, which was the predecessor of the RPD Act 2016 and observed:

“9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.”

Hence, intervention of this Hon'ble Court is required as the instant appointment of LPG Distributors is in violation of the RPD Act 2016.

21. **THAT** while the respondents have provided concessions in the entire application and selection process such as reduced application fee, reduced security deposit and financial assistance including the provision of loans and payment of margin money of upto Rs. 1 Lakh for other categories of persons such as SC/ST persons, no such concessions are provided to persons with disabilities. This amounts to discrimination and is arbitrary and unreasonable and a violation of the guarantee of equality of persons with disabilities under Article 14 of the constitution.

22. **THAT** the action of the Respondents in not providing adequate reservation of 5% in the LPG distributorships and not granting concessions would lead to persons with disabilities not being able to be appointed as distributors because without adequate concessions and reservation they would not be able to compete with the other candidates and not earn a livelihood and would amount to a violation of their rights to equality and the right to life

under Articles 14 and 21 of the constitution and hence deserves the intervention of this Hon'ble Court.

GROUND FOR INTERIM RELIEF:

23. The Petitioner submits that the selection process for the appointment of LPG Distributors has already commenced with the draw of lots having been announced. The Draw of Lots has commenced from 4.1.2018 and is scheduled to be completed on 18.1.2018. This selection process is being carried on in violation of the provisions of the RPD Act as the Respondents have failed to provide 5% reservation of the 238 distributorships for persons with disabilities and have not given any of the concessions for application fee, security deposit, relaxation of age, or any financial assistance for persons with disabilities in the scheme for appointment of LPG Distributors in the State of Karnataka.

24. If these reservations and concessions are not granted and the appointments of the LPG distributors are made, the present petition would become infructuous and persons with disabilities would suffer immeasurable harm by being deprived of their rights under the RPD Act and their fundamental rights under the constitution. If selections are made without filling up 11 posts of distributors from persons with disabilities, they would be deprived of these posts that they are entitled to, and also third party rights of other candidates would be created. Therefore it is crucial that this Hon'ble Court be pleased stay the final appointments of the 238 LPG distributors till the pendency of proceedings under this petition. In light of these facts and circumstances, it is prayed that the interim relief sought for is granted, in the interest of justice and equity.

PRAYER

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court be pleased to:

- A. Issue a writ in the nature of certiorari setting aside the Notification dated 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;
- B. Direct the Respondents to issue a Corrigendum to the Notification dated 17.8.2017 and Guidelines providing 5% reservation and all concessions in the appointment of the 238 LPG Distributors in Karnataka for relaxation of upper age limit, concessions in application fee and security deposit and financial assistance and re-advertise the same;
- C. Direct the Respondents No. 1, 2 and 3 to accept the applications of eligible persons with disabilities in response to the Corrigendum and give them an opportunity to be considered for the appointment of LPG distributors; and
- D. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

INTERIM PRAYER

In view of the aforesaid facts and circumstances, pending final disposal of the above petition, it is most respectfully prayed that the Hon'ble Court be pleased to stay the final appointment of the 238 LPG Distributors by the Respondents No. 1, 2 and 3 as called for under the Notification dated 17.8.2017 and the Guidelines and pass any other such orders which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

Place: Bangalore

Counsel for the Petitioner

Date:

JAYNA KOTHARI

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