Jasleen v. Union of India , 2022 PLRonline 0097 = (2022-2)206 PLR 294 (SN)

PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Sudhir Mittal.
JASLEEN – Petitioner,
Versus
UNION OF INDIA and others – Respondents.
CWP Nos.9503 & 6595 of 2021 (O&M)

H.P. Gas (Liquefied Petroleum Gas Dealer-ship (Domestic and Commercial) Agreement/Guidelines – Acquisition of a foreign citizenship is no ground to return a finding that the dealer/distributor was not taking adequate interest when there is no other evidence to establish this fact – It also does not amount to breach of agreement or violation of Guidelines – There was no evidence of non-performance or lack of supervision.

Cases referred to:-

1. *2010(13) SCC 427, Oryx Fisheries Private Limited v. Union of India.*
2. *2014(14) SCC 411, Sushila Kumar v. Indian Oil Corporation Limited.*
   Mr. Prateek Gupta, for the petitioner. Mr. Ankur Sharma, Sr. Panel Counsel, for respondents No.1 and 2-UOI. Mr. Raman Sharma, for respondents No.3 to 5.

Sudhir Mittal, J. – *(14th December, 2021)* – This judgment shall decide aforementioned two writ petitions as the issues raised therein are inter-related.
CWP-6595-2021

1. The petitioner was married with one Flight Lieutenant A.K. Aggarwal who was serving in the Indian Air Force. He died in an air crash in the year 1987. Being the widow of a Defence Per-sonnel, she applied for Liquefied Petroleum Gas (LPG) dealership. The application was accepted and allotment letter dated 24.07.1987 was issued followed by a Letter of Intent dated 19.08.1987. Dealership agreement was signed between the parties only on 22.05.2008, a copy of which is Annexure P-1 on the record. The agreement was for a period of 10 years. It has been extended from time to time. The last extension was made vide agreement dated 25.10.2018, a copy of which is Annexure P-4 on the record. This agreement is valid upto 24.10.2023. Meanwhile, on account of domestic compulsions and death of her father, who was residing in the United States of America alongiwth the mother of the petitioner, the petitioner had to frequently travel abroad. The mother also passed away and the petitioner re-married a person living in the United States of America. Thereafter, she applied for and was granted citizenship. The Consulate General of India, Chicago, USA, registered her as an Overseas Citizen of India on 10.06.2013, copy of which is Annexure P-2 on the

record. It appears that in her absence, her brother managed the affairs of the dealership. The petitioner thus, sought for re-constitution of the dealership by including her sister-in-law, namely, Mrs. Gurpreet Kaur as a partner. The proposal for re-constitution was in principal approved vide communication dated 16.05.2015, copy annexed as Annexure P-3. This proposal did not finally go through as disputes regarding succession arose between the petitioner and her brother some times in the year 2019-2020. The petitioner, accordingly, shifted the office of the dealership to another location and the inauguration was attended by the Deputy General Manager and Sales Officer of respon-dent No.3. Photographs of the inauguration ceremony are annexed as Annexure P-8.

2. On 05.08.2020, a show-cause notice was issued to the petitioner asking her to give her explanation alongwith valid passport, Income Tax Returns and other relevant documents against proposed action to be taken for violation of the dealership agreement as a complaint had been received that she was a United States citi-zen and permanently residing in the United States of America and not physically available at the distributorship. It was alleged that this con-stituted violation of Clause 24 (b) and (c). The petitioner responded vide email dated 15.08.2020. The explanation was not found sat-isfactory as valid passport to ascertain citizenship had not been submitted. Thus, another show-cause notice dated 18.08.2020 was issued. In addition, it was alleged that during inspections carried out in the last three years, she was found available only during one inspection and this shows that she was not actively supervising the distributorship. This was followed by a reminder show-cause notice dated 03.10.2020. Soon thereafter, an email dated 03.11.2020 was sent by one Amanpreet Singh Kalia to the third respondent stating that the petitioner was not an Indian Citizen and was running a parallel business in the USA, thus, action be taken against her for breach of the dealership agree-ment. This complaint was ultimately withdrawn vide email dated 10.03.2021. On account of this complaint, another show-cause notice dated 04.11.2020 was issued to the petitioner to which detailed reply dated 10.11.2020 was filed. Ac-quisition of citizenship of United States of Amer-ica was not denied and it was submitted that the frequent show-cause notices were an attempt to blackmail the petitioner at the behest of her brother with whom disputes had arisen on ac-count of succession to the properties of their deceased parents. Till 05.08.2020, there were no complaints, in fact, a proposal to re-constitute the dealership had also been approved in princi-pal. All directions given by the third respondent were being faithfully complied with and the su-pervision was continuous through phone calls, emails and video conferencing with the staff. All targets provided had been met and business had grown. A new and modernized godown had been acquired alongwith an updated showroom. A new retail outlet had also been started. There had never been any complaints regarding mis-management of the dealership and it was ap-parent that her brother had orchestrated the attack against her interests. The notices being motivated deserved to be revoked. Despite re-ply, another show-cause notice dated 01.12.2020 with substantially similar allegations was sent. However, the allegation regarding running of a parallel business in United States of America was not repeated. This was also responded to vide reply dated 09.12.2020. Yet, the third respondent did not feel satisfied and issued another show-cause notice dated 24.12.2020. Reply dated 10.01.2021 was filed, yet, another show-cause notice

dated 02.02.2021, copy annexed as Annexure P-16 was issued. The language of this show-cause notice caused great consternation to the petitioner. The relevant line is as follow:-

'It is of great concern to us that you have breached/violated terms and conditions of dealership agreement entered by and be-tween our corporation and yourself.'

3. This was also replied to vide a detailed re-ply dated 11.02.2021, copy of which is Annexure P-17 on the record. Explanations given earlier were reiterated but as the petitioner did not expect any favourable response from the re-spondents, present writ petition dated 15.03.2021 was filed, seeking quashing of the various show-cause notices (total 07 in number) issued between the period 05.08.2020 and 02.02.2021, threatening to terminate the deal-ership agreement.
4. In the written statement filed on behalf of respondent No.3, a preliminary objection re-garding the maintainability of a writ petition against show-cause notices has been raised. Apart from that, it has been submitted that the various show-cause notices were issued as a complaint of violation of the terms of the deal-ership agreement had been received. The deal-ership is governed by the dealership agreement as well as HP Gas (Liquefied Petroleum Gas) Dealership (Domestic & Commercial) Agree-ment/Guidelines dated 25.10.2018 (hereinafter referred to as Guidelines). According to the same, a dealer was required to be an Indian Citi-zen and resident in India. Since, a complaint had been received that the petitioner had taken citi-zenship of a foreign country issuance of show-cause notices were justified. Various inspections were conducted during the period 01.04.2018 to 15.05.2021, but the petitioner was present only on three occasions. This also gave rise to the apprehension that she was not managing the affairs of the distributorship properly. It has also been stated that the petitioner has not submit-ted her passport in reply to the show-cause no-tices and has thus, violated the directions given by the answering respondents. A further sub-mission is that the petitioner has deliberately withheld material information about change in citizenship and has submitted false affidavit that she was a citizen of India.
5. A perusal of the written statement shows that two major objections have been raised, (a) The petitioner has acquired citizenship of a for-eign country and (b) she is not managing the affairs of the distributorship properly. A third objection raised half-heartedly is that a false affidavit dated 25.10.2018 was filed regarding her citizenship.
6. A rejoinder has been filed to the written statement, in which, it has been stated that an-nexation of documents pertaining to matrimo-nial disputes of the petitioner shows that her brother was behind the complaints made against her which led to the issuance of the various show-cause notices. Regarding affidavit dated 25.10.2018, it has been stated that being a standard typed format, it was signed while renewing the dealership agreement. Acquiring a foreign citizenship does not bar the petitioner holding a dealership in India as she possesses an Overseas Citizen of India Card. It also does not amount to violation of any of the terms of the agreement entered into between the parties. Regarding allegations of mis-management and allegation of lack of supervision, it has been stated that despite her absence, she manages the affairs on a daily basis through phone calls, emails and video conferencing with staff. She also visits India frequently and there is no com-plaint against the dealership by any customer. The customer base has grown over the years and thus, the success of the dealership is very well known to the third respondent. The show-cause notices are

motivated, malicious and mala-fide and have been issued with a pre-determined mind.

7. From the pleadings and arguments raised, it transpires that the case of the petitioner is that the various show-cause notices issued to her have been orchestrated by her brother with whom she is in dispute regarding succession since the year 2019-20. She has been travelling to the United States at least since the year 1997 when she issued an Authority Letter dated 29.04.1997 in favour of her brother to act on her behalf for running the gas agency. A copy of the Authority Letter is available with the respon-dents and they have themselves annexed the same on record as Annexure R-3/11. Overseas Citizen of India Card was issued to her in the year 2013. All this time, there has never been any complaint regarding mis-management or inefficient running of the business. This gives rise to only one conclusion that her brother is behind the entire exercise. Issuance of letter dated 02.06.2020 (Annexure R-3/12) regarding non-performance cannot be relied upon as the same was also issued after the differences arose between herself and her brother. Acquisition of a foreign citizenship does not amount to viola-tion of the terms and conditions of the agree-ment or of the Guidelines issued by the respon-dents. The allegations in the written statement that the petitioner has rendered herself liable to action on account of submission of false affidavit cannot be accepted as the impugned show-cause notices contain no such allegation. Issu-ance of seven show-cause notices within a pe-riod of six months is nothing sort of sustained harassment. No violation of the terms and con-ditions of the agreement or the Guidelines has been committed by her and thus, the impugned show-cause notices deserve to be set aside.
8. On behalf of the oil company, the stand taken is that by acquisition of foreign citizenship, Clause 24 (b) and (c) of the agreement between the parties have been violated. There is a violation of the said provisions also because the petitioner is not available for supervision of the dealership. The petitioner has violated the direc-tions issued to her by not submitting her pass-port. She is also guilty of submission of false in-formation as in the affidavit dated 25.10.2018, she has mentioned that she is an Indian Citizen. No writ is maintainable against show-cause no-tices. An appropriate order would be passed, in case, the petitioner submits the requisite docu-ments. Thus, the writ petition deserves to be dismissed.
9. First and foremost, I shall take up the pre-liminary objection raised by the respondents that writ petition against show-cause notices is not maintainable. It is their case that no order has been passed against the petitioner till date and thus, the writ petition is pre-mature. Order could not be passed as requisite documents were not supplied. On this short ground, the writ petition deserves to be dismissed. In response, learned counsel for the petitioner has argued that a perusal of the show-cause notice dated 02.02.2021 shows that the respondents have made up their mind to terminate the dealership agreement. Thus, the show-cause notices are the result of a biased mind. Under the cir-cumstances, the respondents cannot be ex-pected to act fairly and thus, writ petition was maintainable. Reliance has been placed upon Oryx Fisheries Private Limited v. Union of India and others 1 2010 (13) SCC 427.
10. It may be noted that the first show-cause notice issued to the petitioner is dated 05.08.2020 to which a reply dated 15.08.2020 was given. Yet, another notice dated 18.08.2020 was issued followed by notices dated 23.10.2020, 04.11.2020,

01.12.2020, 24.12.2020 and 02.02.2021. The petitioner has submitted replies dated 15.08.2020, 10.11.2020, 09.12.2020, 10.01.2021 and 11.02.2021. In show-cause notice dated 02.02.2021, it has been stated as follows:-
'It is of great concern to us that you have breached/violated terms and conditions of dealership agreement entered by and be-tween our corporation and yourself.'

11. From the facts, it is evident that numer-ous show-cause notices have been issued and in the final one dated 02.02.2021, it has been stated that the petitioner had breached/violated the terms and conditions of dealership agree-ment. In Oryx Fisheries Private Limited (supra), the petitioner had supplied certain products to a customer in Sharjah. Dispute arose regarding the quality of the product supplied and resultant loss caused. The party in Sharjah complained to Marine Products Exports Development Authority (MPEDA). The quality complaint was forwarded to the appellant before the Supreme Court. Of-fers were made, but it did not result in any set-tlement. Thus, a showcause notice was issued by MPEDA as to why the registration certificate of the appellant before the Supreme Court be not cancelled. The certificate was cancelled without granting an opportunity of hearing which led filing of a statutory appeal. The appeal was however, dismissed. The orders were challenged by way of a writ petition which also failed. Thus, the Special Leave Petition was filed, whereupon, notice was issued and stay was granted. Upon examination of the wording of the show-cause notice issued to the appellant before the Supreme Court, it was held that a Quasi Judicial Authority must act with an open mind while initiating show-cause proceedings. At that stage, the authority issuing the show-cause notice cannot confront the noticee with definite conclusion of alleged guilt. If it is done, the pro-ceedings initiated by the show-cause notice get vitiated being unfair and biased. The Special Leave Petition was accordingly allowed and the order passed by the High Court was quashed. The order of cancellation of registration certifi-cate was set aside.
12. The question that arises is, whether, the respondents had an open mind ?
13. The petitioner has been travelling to the United States of America at least since the year 1997. This can be safely concluded from the fact that she issued an Authority Letter dated 29.04.1997 in favour of her brother, authorizing him to run the distributorship business on her behalf, copy placed on record as Annexure R-3/11 by the respondents. Frequent travel was necessitated because her parents were residing in the United States and were ailing. They ulti-mately passed away. During her visits she came into contact with a person of Indian origin and married him. She also took US Citizenship and Overseas Citizen of India Card was issued to her in 2013. All this while there was no complaint of lack of supervision or mis-management. In fact, the dealership agreement was renewed on 25.10.2018. The submission of the petitioner that she was personally supervising the affairs on a daily basis through emails, video calls and voice calls, thus, merits acceptance.
14. Differences with the brother started in 2019-20 and the only letter of non-performance is dated 02.06.2020. The first show cause notice is dated 05.08.2020. Timing of commencement of proceedings is not purely coincidental.
15. The case of the respondents is that Clause 24 (b) and (c) have been violated. The last agreement between the parties is dated 25.10.2018, copy of which is Annexure P-4 on record. Clause 24 (b) and (c) thereof are repro-duced below:-

'(b) It shall be paramount condition of the agreement that the Dealer himself (if he be individual) or both the partners of the Dealers firm (if the Dealer is partnership firm con-sisting of two partners only) or the majority of the office Bearers/Elected members of the dealers Cooperative Society (if the Dealer is a Cooperative Society) Managing/Whole time or Elected Directors (if the dealer is a private limited company) as the case may be shall take active part in the Management and run-ning of the Dealership and shall personally supervise the same and shall not under any circumstances do so through any other per-son, firm or body.'
(c) Except with the previous written con-sent of the Corporation.
(i) The Dealer shall not enter into any ar-rangement, contract or understanding where by the operations of the Dealer hereunder are or may be controlled/carried out and/or financed by any other person firm or Com-pany, whether directly or indirectly and whether in whole or in part:
(ii) The Dealer himself (if he is an individ-ual) or the partners themselves (if the Dealer is a partnership firm or the whole time Office Bearers/Elected Members if the Dealer is a Cooperative Society) shall not, (without prior permission in writing of the Corporation) take up any other employment or engage in any other business part from the operation of the Dealership which in subject matter of this agreement.
(iii) The Dealer (if it be a firm or a Coop-erative Society) shall not effect any change in its constitution whether in the identity of its partners or appointment of whole time office bearers of Elected members or in the term of the dealer of Partnership of the Byelaws as the case may be.
(iv) The Dealer (if it be a private limited company) shall not cause or permit any group transfer or substantial change in its shareholding (transmission by death etc., executed).
In the event of death of any partner of a firm/death or retirement of whole time Office bearers/Elected Members of Cooperative Soci-ety which has been appointed as a Dealer here-under, the surviving partners/remaining mem-bers hereby agree to indemnify and keep in-demnified the Corporation against any claims or demands which may be made by the heirs of the deceased/retired partner/member.

16. Clause (b) aforementioned stipulates that in case of an individual dealership, the supervi-sion shall be the responsibility of the individual himself and shall not be done through any other person, firm or body. Clause (c) stipulates that without the prior written consent of the Corpo-ration, the dealer shall not handover the opera-tions of the dealership to any other firm or company or take up any other employment or engage in any other business. There is no allega-tion against the petitioner that she has handed over the management of the dealership to any other person, firm or body or that she has en-tered into an arrangement with a third party for the purpose of management. It is also not the case of the respondents that she has taken up any other employment or is engaging in any other business. Though, an allegation was raised in show-cause notice dated 04.11.2020 that she was running a parallel business in the United States of America, after submission of reply dated 10.11.2020, copy annexed as Annexure P-11, the allegation was not repeated. It can thus, be safely concluded that the allegations made against the petitioner are ill-founded. There is no violation of the terms and conditions of the agreement.
17. Learned counsel for the respondents has referred to the Guidelines, copy of which is

on record as Annexure R-3/5. Clause 8 of the said guidelines has been referred to, to submit that an applicant must be a Citizen of India. Admit-tedly, the said Guidelines came into being in the year 2018, whereas, the petitioner was allotted the dealership in the year 1987. Dealership agreement between the parties was executed on 15.06.1988. Clause 8 of the Guidelines would not be applicable as the same is regarding selec-tion of new dealers/distributors. It is also an admitted case that said guidelines are applicable uniformly and have been adopted by all the oil companies. In a case pertaining to the Indian Oil Corporation, reported as Sushila Kumar v. Indian Oil Corporation Limited and another, 2 2014 (14) SCC 411, the appellant before the Supreme Court had acquired Citizenship of New Zealand while she was operating an LPG dealership. The dealership agreement was cancelled on the ground that the dealer was not available for personal supervision. Challenge before the High Court failed and thus, the Supreme Court was approached. The order of the Division Bench of the High Court was set aside. It was held that 14 visits in 13 years cannot lead to a conclusion that the appellant before the Supreme Court was not taking adequate interest. Accordingly, the LPG distributorship was ordered to be restored. This judgment clearly indicates that acquisition of a foreign citizenship is no ground to return a finding that the dealer/distributor was not taking adequate interest when there is no other evidence to establish this fact. It also does not amount to breach of agreement or violation of Guidelines. An almost identical situation exists in this case.

18. Facts speak louder than words. The pre-ceding facts clearly establish that commence-ment of proceedings was motivated. There was no breach of terms of agreement nor there was violation of the Guidelines. Acquisition of foreign citizenship did not constitute violation of contractual obligations. There was no evidence of non-performance or lack of supervision. On the contrary, the facts loudly proclaim that vested interests were operating to harm the in-terests of the petitioner. The wording of show-cause notice dated 02.02.2021 concludes the issue. It leaves no doubt that the respondents were proceeding with a pre-determined mind. Consequently, Oryx Fisheries (supra) squarely applies. The apprehension of the petitioner was justified and the writ petition is held to be main-tainable.
19. The argument raised on behalf of the re-spondents that the petitioner has submitted a fake affidavit and thus, rendered herself liable to action, deserves rejection. None of the notices issued to the petitioner contain such an allega-tion.
20. No other arguments need to be consid-ered as all of them have been dealt with while considering the maintainability of the writ peti-tion.
21. The proceedings having been found to be vitiated, the show-cause notices deserve to be quashed. Accordingly, the writ petition is al-lowed and Annexures P-5, P-6, P-7, P-10, P-12, P-14 and P-16 are quashed.

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22. In this writ petition, order dated 12.04.2021 passed by the 3rd respondent (Oil Company) is under challenge. The proposal for reconstitution of distributorship submitted online by the petitioner on 26.02.2021 has been rejected on the ground of pendency of CWP-6595-2021 and vigilance proceedings.
23. The case of the petitioner is that the order of rejection has been passed without application of mind. Order dated 22.03.2021 passed by this Court in the earlier writ petition does not bar a decision of the application for re-constitution of the firm. The

said order is on record as Annexure P-20 and it only says that no adverse order to the interests of the petitioner shall be passed. The vigilance enquiry is vitiated being motivated and mala fide in nature.

24. On behalf of the respondents, reference has been made to Detailed Guidelines for Re-constitution of LPG Distributorship, 2020 (here-inafter referred to as the Guidelines, 2020). Spe-cifically, Clause 3.15.3 has been relied upon which provides that incoming proprietor/partner should be Indian Citizen and resident of India. Reliance has also been placed upon Clause 3.16.1 and 3.16.2 pertaining to process of re-constitution of a commissioned distributorship. According to the said provisions, an application is to be submitted online, whereupon, a unique identification number would be generated. The distributor has to submit all original documents and application at the time of verification and scrutiny. The scrutiny is to be done by a Two Members' Committee which shall assess the eligibility of the incoming member in accordance with the relevant guidelines and criteria, whereafter, a proposal for approval of the competent authority would be put up. On the basis of these provisions, it has been submitted that the petitioner being a foreign citizen cannot maintain an application for re-constitution of the distributorship.
25. Clause 3.15.3 is being mis-interpreted. The requirement thereof is that the incoming partner should be an Indian Citizen and not that the existing partner should be an Indian Citizen.
26. A perusal of impugned order dated 12.04.2021 shows that online application has already been submitted and unique identifica-tion number has been generated. Accordingly, the petitioner has followed the process of re-constitution of commissioned distributorship as provided in Clause 3.16 of the Guidelines, 2020. The respondents are guilty of not having carried out a scrutiny as provided in the process. Pend-ency of previous writ petition did not bar a con-sideration of the application as order dated 22.03.2021 only restrained the respondents from passing an order adverse to the interest of the petitioners. The pending vigilance proceedings could have been considered by the competent authority at the stage of passing of order after taking into consideration the report of the Scrutiny Committee.
27. The order patently suffers from the in-firmity of non-application of mind and deserves to be set aside.
28. The writ petition is accordingly, allowed and impugned order dated 12.04.2021 (Annex-ure P-21) is set aside. Further, process of con-sideration of the application for re-constitution of the distributorship be carried on in accordance with Guidelines, 2020 and without being prejudiced by the vigilance proceedings as the same have been held to be vitiated.
29. An appropriate order be passed within thirty days of receipt of copy of this judgement.
30. A photocopy of this judgment be placed on the file of the connected case.

R.M.S. – Order set aside.