

GAHC010041052024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1181/2024

HITENDRA PEGU
S/O LATE AMULYA PEGU, R/O VILL- SAI RAM DEVOTTAR, P.O.-
JENRAIMUKH, P.S.-JENGRAI, DIST-MAJULI, ASSAM

VERSUS

UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF PETROLEUM
AND NATURAL GAS, NEW DELHI

2:BHARAT PETROLEUM CORPORATION LTD.
HAVING ITS HEAD OFFICE AT 11/E AND F
MAKER TOWER
CUFFE PARADE
POST BOX NO. 19949
MUMBAI-400005 REPRESENTED BY ITS CHAIRMAN CUM MANAGING
DIRECTOR

3:THE TERRITORY MANAGER (RETAIL)
GUWAHATI BHARAT PETROLEUM CORPORATION LTD.
1ST FLOOR
NEXIA PARK
GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005

4:SHAHID HUSSAIN
THE HEAD OF TERRITORY OFFICE
T M RETAIL
GUWAHATI BHARAT PETROLEUM CORPORATION LTD.
1ST FLOOR
NEXIA PARK

GMCH ROAD
CHRISTIAN BASTI
GUWAHATI-781005

5:SMT. TUTU MONI DEURI
W/O SRI RAJESH DEURI
R/O VILL AND P.O.-JENRAIMUKH
DIST- MAJULI
ASSAM
PIN-78510

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 24.05.2024

Heard Mr. D.P. Bora, learned counsel for the petitioner as well as Mr. S. Borthakur, learned counsel for the respondent Nos. 2 and 3 Bharat Petroleum Corporation Ltd. (BPCL) and also for respondent No.4. None appears for the respondent No.5. Order dated 20.05.2024 of the Lawazima Court says that as per the postal track consignment, notice was delivered to the addressee respondent No.5 on 19.03.2024. As such, notice is complete on respondent No.5. As for respondent No.1, notice was already accepted by Mr. DJ Das, learned CGC on 29.02.2024.

2. By filing this writ petition, the petitioner has challenged the communication dated 09.02.2024 (Annexure-7) by which he was informed that his candidature for Retail Outlet (RO) dealership was found ineligible due to non-submission of the certain documents/corrected documents as was asked from him vide letter dated 17.01.2024.

3. The case of the petitioner, in brief, is that the respondent authorities invited notice for appointment of Regular/Rural RO (Petrol Pump) Dealership which was

published in the local daily, *the Assam Tribune* on 28.06.2023 and the petitioner applied for the RO Dealership for the location on *Nayabazar Road (within intersection of Jengraimukh Road and Ayush Hospital)*, in the distirct of Majuli, Assam.

4. The petitioner was found qualified for draw of lots for selection of RO dealership and was accordingly informed vide communication 25.11.2023. The petitioner was then declared provisionally selected and he was accordingly informed vide letter dated 12.12.2023. Also vide a communication of the same date, the petitioner was asked to deposit a sum of Rs. 40,000/- towards initial security deposit and to upload a set of self attested documents as specified in the letter by 22.12.2023. Although, the petitioner uploaded the required documents and deposited the security, the respondent authorities upon finding the documents to be insufficient, informed the petitioner vide *e-mail* dated 17.01.2024 to submit rectified/corrected documents as was mentioned in the said communication by 07.02.2024.

5. According to the petitioner he did not receive the said communication and that on his part, he sent an *e-mail* to the respondent concerned on 14.02.2024 asking for an update in the matter. The petitioner also visited the office of the respondent authority concerned on 17.02.2024 to inform about the non-receipt of any communication which required him to upload corrected/required documents. However, as the respondents could not change their mind and stood by the impugned communication dated 09.02.2024, the petitioner being aggrieved is before this Court.

6. Mr. D.P. Bora, learned counsel for the petitioner submits that the petitioner did not received the message dated 17.01.2024 and it was only upon checking his mobile phone subsequently that he found the message to be in the '*thrash folder*'. He submits that had the petitioner received the communication dated 17.01.2024, he certainly would have uploaded the required documents as the rectified/corrected documents were/are very much in his possession. He therefore, submits that the petitioner may be allowed to submit all the required documents as was notified to him vide the

communication dated 17.1.2024 and be considered for allotment of R.O. Dealership.

7. Mr. S. Borthakur, learned counsel on the other hand submits that all the communications to the petitioner and to all other applicants were done through online by sending *e-mails*. Therefore, it is most surprising for the petitioner to contend that he did not receive the communication dated 17.01.2024. The learned counsel submits that it only appears that the petitioner has withheld from the respondents about his receipt of the *e-mail* dated 17.01.2024 for the reason best known to him. Therefore, the contention of the petitioner about non-receipt of the *e-mail* was rightly rejected.

8. Regarding the guidelines for selection of R.O. Dealership, the learned counsel submits that the applicants are required to have the required land available as on the date of the submission of application. The petitioner was provisionally selected on the basis of his application wherein he projected that he was in possession of land covered by dag No. 73 and Patta No. 73. However, in the document which he submitted pursuant to the communication dated 12.12.2023, the petitioner apparently was not in possession of the land as the Jamabandi for Surveyed Village that was submitted subsequently indicates that that the land measuring 1 Bigha covered by Dag No. 73 was mutually partitioned to the new Dag No.223 and new Periodic Patta No. 29, in the name of the petitioner as per the order of the Revenue Circle Officer, dated 20.12.2023. He therefore, submits that the petitioner is clearly not eligible as per the guidelines of the tender notice.

9. The learned counsel submits that the Court in exercise of its powers under Article 226 of the Constitution of India ordinarily does not interfere with contractual matters as selections are subject to fulfillment of the guidelines, terms and conditions etc. of the contract and therefore, court has little role to play. In support of his submission, the learned counsel relies upon the case of *Tata Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Ors.* 2023 SCC Online SC 671 and *K.D. Sharma Vs. Steel Authority of India & Ors.* (2008) 12 SCC 481.

10. The learned counsels for the rival parties have made their respective submissions and arguments in the matter. As may be noticed, according to the respondent BPCL, the petitioner failed to upload the required documents despite the *e-mail* communication made to him on 17.01.2024. As per the said communication, the petitioner was required to upload the rectified/corrected documents by 07.02.2024 in the website of the respondent BPCL. Having failed to do so, the respondent authorities issued the impugned communication dated 09.02.2024 informing the petitioner that his candidature has been found ineligible.

11. The claim of the petitioner otherwise is that he could not upload the documents that was asked from him as he did not receive the *e-mail* communication dated 17.01.2024 and came to know about it only belatedly when it was found in the '*trash folder*'. He is otherwise in possession of the documents that is required to be submitted to the respondents for considering the allotment of R.O. Dealership to him. In the initial round of the selection, the petitioner was found to be provisionally qualified and therefore selected. However the documents uploaded by him pursuant to the letter dated 12.12.2023 (Annexure-5) were not found to be not satisfactory and therefore he was asked to upload rectified/corrected documents by 07.02.2024 vide the *e-mail* communication dated 17.01.2024 which the petitioner claims to have not received. It is also noticed that the petitioner was not found ineligible on account of the documents he submitted/uploaded pursuant to the letter dated 12.12.2023 but for failure to submit rectified/corrected documents. Therefore, this Court is of the view that instead going into the controversy whether the petitioner had indeed received the *e-mail* dated 17.01.2024 or not and having regard to the fact that the petitioner was found provisionally eligible in the initial scrutiny after the draw of lots, one more opportunity should be given to him to submit the required documents as was stipulated to be uploaded vide communication dated 17.01.2024.

12. In view of above, the petitioner is allowed to submit hard copies of the required documents before the respondent concerned within a period of 10 (ten) days from today in terms of the communication dated 17.01.2024 and the respondents on receipt of the same shall take a decision within a week thereafter. The order of Status-quo passed earlier shall stand vacated once a decision is taken by the respondents as directed herein above. The outcome of the consideration should be communicated to the petitioner.

13. It is however made clear that since the documents mentioned in the communication dated 17.01.2024 were to be uploaded by 7th February, the documents to be submitted by the petitioner cannot be documents generated after that date. The guidelines framed by the respondents for selection of dealership has not been interpreted in any manner and the consideration of the petitioner for being allotted R.O Dealership will have to be in accordance with the said guidelines. It is further made clear that the above direction has been passed under the peculiar facts and circumstances of the instant case and should not be used as a precedent.

14. With the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant