

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4210 OF 2015

Namdev s/o Bhimrao Bhil,
Age 26 years, Occ. Business,
r/o. c/o. Rakesh Daulat Chaudhari,
Subhash Chowk/Bhoi Galli, Ranale,
Tq. & Dist. Nandurbar.

...PETITIONER

VERSUS

1. The Union of India,
Through its Secretary,
Ministry of Petroleum and Gas,
Govt.of India.
2. Indian Oil Corporation Limited,
through its Area Manager,
Aurangabad Area Office,
Abish Tower, 1st Floor,
Behind Baba Petrol Pump,
Mahavir Chowk, Aurangabad.

...RESPONDENTS

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Mr.N.L.Chaudhari, Advocate for petitioner.
Mr. Rahul Bagul, A.S.G., for Union of India,
respondent no.1.
Mr. Anand P.Bhandari, Advocate, for respondent
no.2.

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CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

Date: June 16th, 2015

Date of reserving
the order: 10.6.2015
Date of pronouncing
the order: 16.6.2015

JUDGMENT: (Per P.R.Bora, J.)

1. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for respective parties.

2. The petitioner has filed the present petition questioning order dated 25.3.2015 passed by respondent no.2 whereby respondent no.2 has cancelled the candidature of the petitioner for distributorship of L.P.G. under Rajiv Gandhi Gramin LPG Vitarak (RGGLV) Scheme.

3. It is not in dispute that in pursuance of the advertisement published by respondent no.2, the petitioner had applied for the distributorship and after following the prescribed procedure, a letter of intent dated 14.8.2013 was issued in favour of the present petitioner awarding him the distributorship at Ranale, taluka and district Nandurbar.

4. The letter of intent dated 14.8.2013 envisaged conditions for grant of such distributorship of which one of the condition was that the petitioner will construct a godown for storage of 5000 kg (minimum) of LPG filled in cylinders, and that the said godown should be approved and licensed by the Chief Controller of Explosives of Petroleum and Explosives

Safety Organization. It was also required that there must be a showroom also of the dimension 2.6 m x 3 m near the godown or in an existing nearby shop. Accordingly, the petitioner constructed a godown as required by the respondents for storage of 5,000 kg of LPG filled in cylinders, and also obtained necessary license from the Chief Controller of Explosives.

5. As is revealing from the record, in the application, initially submitted by the petitioner, he had mentioned plot Nos. 2 and 3 for proposed construction of the godown and the permission was also sought for the same from respondent no.2. Accordingly, the permission was granted by respondent No.2 for construction of the godown on the said plots. However, since the godown has been constructed by the petitioner on Plot Nos. 2, 3, 32/A and B and 31B, a notice dated 12.11.2014, came to be issued to the petitioner by the Area Manager of respondent no.2 calling upon the petitioner to explain as to why the letter of intent should not be withdrawn for constructing the godown in the land other than that mentioned in the application and verified during the field verification. Petitioner on 18.11.2014 submitted his explanation to the aforesaid notice contending therein that the land admeasuring 18 meters was acquired for State Highway No.6 from out of Plot Nos. 2 and 3

and, as such, only 12 meters portion was remaining of the said plots which was insufficient for carrying out construction of the godown. It was further informed by the petitioner that as per the State Highway Rules, no construction was permissible in the area within 50 meters from the center of the Highway and that was also the additional reason that petitioner could not have constructed the godown of the prescribed measurement in plot Nos. 2 and 3. Petitioner had further submitted that in the above circumstances, he was required to construct some portion of the godown on plot no. 31/B, 32/A and 32/B which are adjacent to plot nos. 2 and 3 and which are also owned and possessed by the petitioner. The petitioner, in many words, clarified that he did not change the site i.e. the plots on which the construction was to be carried out but had to extend the construction of the godown on some other adjacent plots owned by him for the reasons stated by him in the earlier part of the explanation. However, the explanation so submitted by the petitioner did not find favour from the respondents and ultimately vide letter dated 25th March, 2015, respondent no.2 cancelled the candidature of the petitioner for LPG distributorship at Ranale under RGGLV Scheme.

6. Shri Chaudhari, learned counsel appearing for the

petitioner, submitted that the petitioner has not breached any condition incorporated in the letter of intent. Learned Counsel further submitted that the construction of the godown is very well in Plot Nos. 2 and 3 as was submitted by the petitioner in his application, however, because of certain subsequent developments the petitioner was required to extend the construction in the adjacent plots which are also owned by the petitioner. Learned Counsel submitted that adopting a hyper technical approach, the respondents have illegally cancelled the candidature of the petitioner. Learned Counsel further submitted that the petitioner has invested huge amount in making construction of the godown and has also obtained license from the Explosive Department and as such huge losses may be caused if the impugned action taken by respondent no.2 of cancelling candidature of the petitioner is not set aside.

7. Opposing the submissions advanced on behalf of the petitioner, Shri A.P.Bhandari, learned Counsel appearing for respondent no.2, referring to the affidavit in reply filed on behalf of respondent no.2 submitted that it was must on the part of the petitioner to obtain prior permission for carrying out the construction of the godown on the plots other than the plots which were mentioned in the application submitted by the

petitioner. The learned Counsel further submitted that since the petitioner has shown one land for the purpose of being selected and has raised construction of the godown on some other land, he has breached the condition incorporated in the letter of intent. Learned Counsel further submitted that the Rules and Regulations cannot be relaxed in individual cases otherwise the tendency of filing application without satisfying eligibility would be encouraged. Learned Counsel, therefore, prayed for dismissal of the petition.

8. We have carefully considered the submissions advanced on behalf of the petitioner as well as respondent no.2. We have also perused the documents filed on record. It apparently appears to us that the stand taken by respondent no.2 is not only hyper technical but also irrational and unreasonable. The petitioner had sufficiently explained as to in what circumstances he was required to extend the construction of the godown beyond plot nos. 2 and 3 originally mentioned by him in the application filed by him while seeking distributorship. The petitioner had also clarified that the plots wherein construction has been extended i.e. plot No.31-B and 32A and 32B are adjacent to plot nos. 2 and 3 and those plots are also owned and possessed by him. As has been explained by the

petitioner in his explanation dated 18.11.2014, 18 meters of the land has been acquired for State Highway No.6 from out of Plot Nos. 2 and 3. It is further mentioned by the petitioner that as per the State Highway Rules, no construction could have been carried out within 50 meters from the center of the State Highway and, in such circumstances, Plot Nos. 2 and 3 were found insufficient for carrying out construction of the LPG godown as per the norms laid down by respondent no.2.

9. In the show cause notice dated 12.11.2014, issued to the petitioner by Area Manager of respondent no.2, petitioner was called upon to explain as to why the letter of intent should not be withdrawn for constructing the godown in the land other than that mentioned in the application and verified during field verification. From the facts which have come on record the very contention raised as above appears to be incorrect for the reason that the petitioner has not constructed the godown in the land other than that mentioned in the application but has extended the said construction on some other land adjacent to the land mentioned in the application i.e. plot nos. 2 and 3. Had it been the fact that no construction is made on plot Nos. 2 and 3, the respondents had every reason to say that the petitioner has breached the

condition. However, when the petitioner has carried out the construction by consolidating plot nos. 2 and 3 and plot nos. 31B, 32A and 32B, there could not have been any objection from the side of respondent no.2. Secondly, it does not appear to us that by purchasing additional land without informing respondent no.2 and by carrying out the construction in the said additional land by consolidating the said land and plot nos. 2 and 3, the petitioner has committed breach of any term or condition prescribed by respondent no.2. Moreover, no prejudice can be said to have caused to respondent no.2 because of the petitioner making construction of the godown, in addition to plot nos.2 and 3, also on Plot Nos. 31B, 32A and 32B. Thus, viewed from any angle, we do not find the action taken by respondent no.2 vide its letter dated 25th march, 2015 sustainable. We are, therefore, inclined to set aside the said order. Since the petitioner has constructed a godown according to the norms prescribed by respondent no.2, and has also obtained the license from Explosives Department, there may not be any difficulty in making the Distributorship allotted to the petitioner functional.

10. Hence, following order:

ORDER

a) Writ Petition is allowed.

b) The order dated 25.3.2015 issued by respondent no.2 is set aside and the respondents are directed to take further steps so as to make the distributorship allotted to the petitioner functional.

Rule made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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AGP/4210-15wp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4210 OF 2015

Date of decision: 16/6/2015

For approval and signature

HON'BLE MR.JUSTICE R.M.BORDE

HON'BLE MR.JUSTICE P.R.BORA

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| 1. Whether the Reporters of Local Papers may be allowed to see the Judgment ? | Yes |
| 2. To be referred to the Reporter or not ? | Yes/No |
| 3. Whether Their Lordships wish to see the fair copy of the Judgment ? | No. |
| 4. Whether this case involves a substantial? question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ? | No. |
| 5. Whether it is to be circulated to the Civil Judges ? | No. |
| 6. Whether the case involves an important question of law and whether a copy of the Order should be sent to Bombay, Goa and Nagpur Office ? | No |

Private Secretary
AGP/4210-15wp