

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3414 OF 2013

CHANDRAKALA@SADHANA DILIP PHUKE
VERSUS
THE UNION OF INDIA AND OTHERS

...

Advocate for Petitioners : Mr. Chetan Jadhav, Advocate h/f. Mr. A.D. Pawar
Advocate for respondent No.1 : Mr. S.B. Deshpande, ASG.
Smt. Anjali Dube Advocate for respondent No.3.
Mr. A.M. Karad, Advocate for respondent No.4.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 7TH JUNE , 2016.

PER COURT:

1] Allotment of retail outlet to respondent No.4 by respondent No.2 and the rejection of the proposal of petitioner for allotment of retail outlet, vide advertisement dated 14.9.2011 is assailed in the present petition.

2] Learned counsel for the petitioner submits that the respondents have shown bias while evaluating the proposal of the petitioner and the respondent No.4. The marks allotted for the land itself are faulty. Land of the respondent No.4 had two culverts. It did not have any water or electricity connection. Still, respondent No.4 is allotted more marks than the petitioner. Petitioner had a tube well in his land, had electricity connection and his land had no culverts. According to learned counsel, the land which was offered by respondent No.4, was changed subsequently to

overcome the objection of the petitioner. According to learned counsel, the petitioner was asking for the copies of the sale deed and other documents, i.e. second joint inspection report, so as to bring on record the change of land offered by respondent No.4. However, copies of the same are not supplied to him till date. According to learned counsel, even for income, zero marks are awarded to the petitioner though the petitioner has bank balance and property in the name of her husband, so also in her own name. Same is not considered and zero marks are allotted. Learned counsel further submits that it is a case of legal bias on the part of the respondent company. Land of the respondent No.4 is rocky, still, the said aspect is not considered.

3] According to learned counsel for petitioner, 3 times objections have been raised by the petitioner. The objection/appeal filed before the Grievance Committee has also not been dealt with properly. In a pre-determined manner, the same has been rejected.

4] Learned counsel for respondent Corporation submits that the objections of the petitioner have been considered. The objection of the petitioner regarding site offered by respondent No.4 and hard rock existing thereon, was improper. The strata of land inside the land of respondent No.4 is soft soil. Same was cross checked by digging a pit upto one feet in the land. On the contrary, on physically digging a pit on the plot of the petitioner, the same was found to be rocky. As far as culverts in both directions on the site offered by respondent No.4 is concerned, it was found that there were two culverts on the site. One at Fulambri which was at a

distance of 276.4 Meters and another at Kolte Takli side, which was at a distance of 202 Meters. Marks came to be deducted for the same.

5] The complaint of the petitioner was partly accepted by them and 3 marks were deducted. Objection with regard to water and electricity is also considered. Availability of electricity service line is at a distance of 154 Meters and water is also available at a distance of 75.8 Meters. As the water was not available on the site, but in the vicinity, one mark was deducted or reduced. All the objections of the petitioner have been considered in detail. No error has been committed by the respondent company. Respondent No.4 has already commenced the retail outlet from August, 2013.

6] Learned counsel for respondent No.4 adopts the arguments of learned counsel for respondent No.2. He further submits that retail outlet is commissioned and is functioning . The site was never changed.

7] We have considered the submissions. This Court while considering the writ petition shall be more concerned with the decision making process and would not sit in appeal over the decision taken, unless a case of malafides is made out and decision taken is palpably erroneous.

8] We have considered the complaints filed. The first complaint is filed by the petitioner on 17.10.2012. No allegations are made of change of site in the said complaint, except the objection about location of the site within 2 Kilometers from Takli bus stand and same would not be viable under

the Explosive Substances Act. Second objection is raised on 6.11.2012. In the same also, we do not find any objection with regard to change of site. However, objection as regards non-availability of electricity and water is raised and the quality of the land i.e. presence of hard rock. Objection with regard to awarding Zero marks for income is also not raised in the second objection also. 3rd objection is raised on 7/2/2013 when the site is already allotted to respondent No.4. We do not find any objection being raised at the relevant time regarding no allotment of marks on the count of financial position.

9] Details are given as to how marks are given and deducted for the presence of culvert at a particular distance and for non-availability of water and electricity on the site but the availability of the same within the vicinity. It has also been stated on affidavit that the land of the petitioner which was offered was rocky and found not suitable after physically digging a pit whereas the land offered by respondent NO.4 was not rocky. Same was also dug for about one feet.

10] Considering the aforesaid conspectus of the matter, the decision making process adopted by respondent No.4 cannot be faulted with. In the light of that, no relief can be given to the petitioner. As such, the writ petition is disposed of. No costs.

[K.K. SONWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-

{5}

17 sr. no. 3414wp.odt