

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6763 OF 2016

Hanmant s/o Madhavrao Ainwad
age: 30 years, occu: unemployed &
Business, R/o House No.1113,
Bahadarpura, Tq. Kandhar
District: Nanded

Petitioner

Versus

- 1 The State of Maharashtra
Through: Secretary
Social Welfare Department,
Mantralaya, Mumbai 32
- 2 Deputy Director/Member Secretary
Caste Scrutiny Committee for
Scheduled Caste & Scheduled Tribe,
Aurangabad Region, Aurangabad
- 3 Indian Oil Corporation Limited
Aurangabad Divisional Office,
'Indian Oil Bhavan',
Plot No.99, Jyoti Nagar,
Aurangabad 431 005
through: Its Senior Divisional
Retail Sales Manager

Respondents

Mr. V.S. Panpatte advocate for the petitioner

Mr. A.R. Kale, Assistant Government Pleader for Respondent Nos.1 & 2

Mr. Anand Bhandari advocate for respondent No.3

CORAM : R.M. BORDE &
K.L. WADANE, JJ

(Date : 8th August, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision, at admission stage.

3 The petitioner is objecting to the order passed by the respondent No.3, directing the petitioner to submit validation certificate, within a period of 180 days from the date of issuance of authorization, failure of which will result in denial of the request of the petitioner to claim authorization for operating a retail outlet for sale of petroleum products.

4 The petitioner claims to belong to Manerwarlu, scheduled tribe (ST) and is in receipt of a tribe certificate issued by the competent authority, certifying accordingly. The tribe certificate issued to the petitioner is referred to respondent No.2 scrutiny committee for verification and the proposal is stated to be pending. The petitioner was employed as Shikshan Sevak in a school operated by a private management and continued in employment between 13.12.2014 to 16.3.2016. After the selection of the petitioner for allotment of retail outlet for sale of petroleum products, he tendered resignation on 17.3.2016 which

was accepted by the education society. The petitioner had, in response to the advertisement issued by petroleum Company, tendered an application requesting for issuance of authorization for retail sale of petroleum products i.e. for grant of dealership. On consideration of the application tendered by the petitioner, he was selected by the petroleum Company in observance of the procedure prescribed in that behalf. The petitioner was communicated by the petroleum Company on 17.2.2016 the decision of his selection and he was called upon to tender validation certificate within a period of 180 days from the date of result i.e. from 16.2.2016.

5 The petitioner contends that, it is not within his powers to secure validation certificate within the time stipulated by the petroleum Company. The petitioner, after the favourable result in the selection process for appointment as dealer, tendered resignation to school management and relinquished the job. The petitioner apprehends that, in the event of his failure to submit validation certificate within the time stipulated by the petroleum Company, he is likely to loose the offer made by the petroleum Company appointing him as a dealer for sale of petroleum products. The petitioner, as such, has approached this Court seeking appropriate directions to the petroleum Company.

6 An affidavit in reply has been presented on behalf respondent petroleum Company, wherein, it has been stated that, so far as the terms and conditions laid down under the advertisement are concerned, those are binding on the petroleum Company and Company, on its own, cannot make any deviation from such terms and conditions. Reliance is placed on the Judgment in the matter of **Anita Sidram Koli V/s State of Maharashtra in Writ Petition No.69771 of 2009** decided by the Division Bench of this Court on 9.3.2010. In the aforesaid Judgment, the petroleum Company proceeded to relax the condition in respect of production of validation certificate, at the time of interview, which stipulation was recorded in the advertisement. The relaxation granted by the petroleum Company in favour of the selected candidate was objected by the other candidates who had participated in the process of selection. Dealing with the challenge, the Division Bench of this Court held that it is not open for the petroleum Company to relax the condition in favour of few candidates. It is observed that stipulations recorded in the advertisement or under the Rules, are binding on the petroleum Company and those shall apply uniformly in respect of all the candidates participating in process of selection. The Judgment delivered by the Division Bench has

been followed in the matter of **Anita Sonone V/s Indian Oil Corporation in Writ Petition No.4441 of 2011** decided on 22.2.2012 as well as in the decision rendered by the Division Bench of this Court on 1.10.2012 in Writ Petition No. 8043 of 2012.

7 Learned counsel appearing for the petroleum Company places reliance on the decision of the Division Bench at Nagpur in the matter of **Sau Pallavi V/s Union of India in Writ Petition No.3022 of 2014** decided on 17.4.2015. In the aforesaid matter, the petitioner, therein, challenged the communication issued by the petroleum Company canceling the offer on account of failure of selected candidate to submit validation certificate within 90 days. The Division Bench, in view of the decision rendered in Writ Petition No.6577/2009, W.P.No. 4441/2011 and W.P. No.11190/2013, held that, it was not open for the petroleum Company to relax the condition incorporated in the advertisement in respect of furnishing caste validation certificate. The decision in Writ Petition No.6977/2009 has attained finality since the Honorable Supreme Court has dismissed the SLP challenging the decision of the High Court. It ought to be noted that the issue raised for consideration in Writ petition No.6977/20009 and other matters is slightly different than the

issue arising in the instant matter or in the matter which arose for consideration in Writ Petition No.3022/2014. In Writ Petition No. 6977 of 2009, the Petroleum Company, in spite of specific stipulation in the advertisement requiring production of the validation certificate at the time of interview, deviated from the condition and granted relaxation in favour of some candidates. There were other candidates competing for allotment of dealership. As a result of granting relaxation in favour of few candidates, the other candidates who were also competing for their appointment as dealer, were prejudicially effected. In the instant matter, the petitioner is the only applicant who has been found eligible during selection process and that no other candidate is likely to be prejudicially affected as a result of consideration of the claim of the petitioner.

8 Apart from this, it must be noted that the process of issuance of validation certificate requires adjudication by the scrutiny committee after considering evidence placed on record by the concerned, claiming validation certificate. It is not within the powers of such candidate or applicant to secure adjudication from scrutiny committee within specified time frame. An individual belonging to reserve category can merely submit the proposal for issuance of validation certificate within stipulated period and it is

for the scrutiny committee to process the proposal, call for report of the vigilance enquiry and after perusal of the record and extending opportunity of hearing to all the concerned, pronounce the order either granting validation certificate or turning down the proposal. As has been rightly recorded by the Division Bench of this Court, in the matter of **Dadasaheb Arjun Gulve versus State of Maharashtra and others reported in 2008 (2) Bom. C.R. 712**, it is within the exclusive domain of the scrutiny committee as to when the caste validity certificate is to be issued. The period within which the caste validity certificate is to be issued is not in the hands of the petitioner. In the matter of Dadasaheb, a condition, requiring an elected candidate to submit validation certificate within stipulated period as prescribed in the statute was a matter for consideration. As a result of failure of the elected candidate to submit validation certificate within time frame stipulated under the relevant provisions of the statute, a penalty in the nature of vacation of the elected office with retrospective effect from the date of election is provided. While interpreting the provision, the Division Bench in the matter of Dadasaheb recorded that the provision directing an elected candidate to submit validation certificate within a stipulated period is directory and not mandatory. In the matter of **Shrikant S/o**

Chandrakant Saindane V/s State of Maharashtra and others (2012 (1) Mh.L.J.787, the petitioner, therein objected to condition No.7 recorded in the Government resolution dated 5.11.2009 which prevented an appointment or promotion of a candidate belonging to backward class unless he possesses validity certificate. Relying on the decision in the matter of **Dadasaheb**, the Division Bench of this Court held the condition shall be deemed to be excessive, unreasonable and therefore, directed to strike off the said condition. The division bench, while dealing with the issue in the aforesaid matter also placed reliance on the Judgment of Supreme court in case of **Mohammad Gazi v/s State of M.P. & others (2000 (03) SCALE 6)**, wherein, it has been laid down that a party cannot be asked to do an impossible act.

9 In view of the decisions rendered in the matter of **Shrikant V/s State of Maharashtra** as well as in the matter of **Dadasaheb**, the petroleum Company cannot insist upon the petitioner to tender validation certificate within the time stipulated in the communication or in the advertisement. Apart from this in the peculiar facts of the case, since the interest of none of the candidates, is likely to be affected and the petitioner is the only candidate, found to be eligible during the process, we direct the

petroleum Company to issue letter of authorization to the petitioner, subject to furnishing an undertaking to tender validation certificate after decision by the scrutiny committee. It is clarified that the selection of the petitioner as a dealer shall be subject to production of the validation certificate issued by the competent scrutiny committee and in the event of his failure to substantiate his claim for issuance of validation certificate i .e. in the event of adverse decision by the scrutiny committee, he shall not be entitled to claim equity.

10 Respondent No.2 scrutiny committee is directed to decide the validation claim of the petitioner pending with the committee as expeditiously as possible and preferably within a period of six months from today.

11 Rule is made absolute in above terms.

12 There shall be no order as to costs.

(K.L. WADANE, J)

(R.M.BORDE, J)