

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2730/2016

Sudhakar s/o Vasantrao Shivankar and another

...Versus...

Indian Oil Corporation Ltd., Marketing Division, Through its Chief Manager,
Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.R. Thote, Advocate for petitioners

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 15.06.2016

By this writ petition, the petitioners seek a direction to the respondent nos.1 and 2 – Indian Oil Corporation and another to grant dealership of Petrol Pump for Amgaon town to the petitioners, in pursuance of the result of the interview conducted on 24.11.2012. The petitioners seek a further direction that the results of the interview dated 22.6.2015 be declared as null and void.

In pursuance of an advertisement floated by the respondent nos.1 and 2 for grant of retail dealership for petroleum on 13.7.2012, the petitioners as well as the respondent no.3 had applied along with others. The interview was conducted on 24.11.2012 and the petitioners were found to be eligible and entitled to allotment, having secured the highest marks i.e. 88.83/100. The respondent no.3 was declared ineligible. The

respondent no.3 challenged the action on the part of the respondent nos.1 and 2 in declaring him ineligible, in a writ petition and the writ petition was partly allowed. By the decision in the said writ petition, the respondent nos.1 and 2 were directed to reconsider the claim of the respondent no.3 along with the petitioners. After the writ petition was decided, the petitioners were called by a communication to appear at the interview that was scheduled on 22.6.2015. The petitioners appeared at the interview and secured 88.52 marks. The respondent no.3 secured 92.57 marks and was found to be more meritorious. Since the dealership is sought to be allotted to the respondent no.3 on the basis of his merit, the petitioners have challenged the said action by the instant petition.

On hearing the learned Counsel for the petitioners, it appears that the relief sought by the petitioners cannot be granted. A direction cannot be issued to the respondent nos.1 and 2 to grant the petroleum retail dealership in favour of the petitioners on the basis of the interview that was conducted on 24.11.2012. In the interview dated 24.11.2012, the respondent no.3 was held to be ineligible and the respondent no.3 had challenged the said action in a writ petition. The writ petition was partly allowed and the Oil Company was directed to reconsider the claim of the petitioners and the respondent no.3. The petitioners were communicated about the same and were called for interview on 22.6.2015. The petitioners did not object to the communication and participated in the interview on 22.6.2015. Admittedly, the marks secured by the petitioners are lesser than the respondent no.3, inasmuch as the respondent no.3 has

secured 92.57% marks and the petitioners have secured 88.52 %. Since the respondent no.3 is more meritorious, the Oil Company has rightly decided to grant the dealership in favour of the respondent no.3. Having participated in the interview on 22.6.2015, the petitioners cannot effectively canvass that the second interview could not have been conducted. A candidate participating in the selection process cannot subsequently turn around and state that the selection process is vitiated. Having participated in the interview, the petitioners are estopped from canvassing that the second interview dated 22.6.2015 ought not have been conducted at all as the petitioners were not a party to the petition filed by the respondent no.3. It would be necessary to refer to the judgments of the Hon'ble Supreme Court, reported in ***2009 (3) SCC 227, 1997 (4) SCC 426*** and ***2012 (1) SCC 150*** in this regard. Since the marks secured by the petitioners are admittedly lesser than the marks secured by the respondent no.3, the relief sought by the petitioners cannot be granted.

For the reasons aforesaid, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

Wadkar