

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

WRIT PETITION NO.2983 OF 2016

[Bhalchandra Ramkrishna Kavishwar .vs. M/s. Hindustan Petroleum Corporation Limited and one]

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

Court's or Judge's orders

Shri A.S. Kilor, counsel for the petitioner,
Shri A.M. Quazi, counsel for the respondents.

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

DATED : JULY 19, 2016.

By this writ petition, the petitioner challenges the communication, dated 5.5.2016 for asking the petitioner to remain present for the draw for selection of LPG distributor for Ralegaon, District-Yavatmal. The petitioner seeks the cancellation of the draw that was scheduled in terms of the communication, dated 5.5.2016.

Along with the several others, the petitioner had applied for LPG distributorship at Ralegaon. One of the essential conditions for grant of distributorship was a lease of specified premises for a period of 15 years. The petitioner's claim was considered and the petitioner was selected in the draw held earlier. Some of the applicants, whose candidature was rejected, as the lease fell short of 15 years by a period of couple of days only, filed separate writ petitions at the Nagpur Bench seeking a direction against the respondent-oil company to consider their candidature. The writ petitions filed by those petitioners were allowed and the respondent-oil company was directed to consider the candidature of the petitioners. After the judgment was rendered, the respondent-oil company issued a communication to the eligible candidates asking them to appear at the draw for selection for grant of LPG distributorship.

The said communication is challenged by the petitioner in the instant petition.

It is the case of the petitioner that though at the Nagpur Bench, the candidates, whose lease fell short by a couple of days, were granted relief and the writ petitions filed by them were allowed and directions were issued to the respondent-oil company to consider their candidature, the writ petitions filed by a similarly situated candidates at Aurangabad Bench and the principal seat were dismissed. It is stated that three different benches of the Bombay High Court had taken different views, as a result of which, the candidates, within the jurisdiction of the Nagpur Bench, were entitled to again participate in the selection process, whereas the candidature of the persons situated within a jurisdiction of the principal seat and the Aurangabad Bench, were not entitled to compete. It is stated that, in this background, it would be necessary to refer the matter to the larger bench. It is further stated that though the petitioner had approached the Hon'ble Supreme Court against the judgment rendered by the Nagpur Bench in favour of the candidates that were held to be ineligible and the said Special Leave Petition was withdrawn, liberty was granted to the petitioner to take up appropriate proceedings at the Nagpur Bench and hence this petition is filed.

Shri Quazi, the learned counsel for the respondents, strongly opposes the prayer made by the petitioner in the instant writ petition. It is stated that the judgments rendered by the different benches were upheld by the Hon'ble Supreme Court and in terms of the judgment passed by the Nagpur Bench, the other eligible candidates, who had missed the bus only because the lease period fell short by a couple of days, the respondent-oil company in compliance with the judgment rendered at the Nagpur Bench, permitted all the eligible candidates to participate in the draw. It is stated that the petitioner has not approached

this court with clean hands. It is stated that a review application was filed by the petitioner herein seeking a review of the judgment rendered by this court in the writ petitions filed by the various applicants, whose candidature was rejected. It is stated that the said review application was dismissed by this court by the order, dated 19.12.2014. It is stated that the review application filed by the petitioner herein for seeking a review of the judgment of the Nagpur Bench of the Bombay High Court was dismissed, is concealed by the petitioner in the instant petition. It is stated that the Special Leave Petition filed by the petitioner herein against the judgment of the Nagpur Bench was permitted to be withdrawn and this shows that the Hon'ble Supreme Court did not find any merit in the case of the petitioner that the judgment rendered by the Nagpur Bench was liable to be reversed. It is stated that, in the aforesaid background, the petitioner cannot effectively challenge the impugned communication by which the respondent-oil company had asked the eligible candidates to participate in the draw.

On hearing the learned counsel for the parties, we are not inclined to grant the relief, as sought by the petitioner and the impugned communication cannot be quashed and set aside. The judgment rendered by the Nagpur Bench was firstly sought to be reviewed by the petitioner herein and the review application was dismissed as no ground was made out for reviewing the judgment. After the review application was dismissed, the judgment of the Nagpur Bench was challenged by the petitioner before the Hon'ble Supreme Court and the Hon'ble Supreme Court permitted the petitioner to withdraw the Special Leave Petition. If that be so, there is nothing wrong in the respondents calling upon the petitioner as well as all other eligible candidates to participate in the draw for selection of an eligible candidate for grant of LPG distributorship. We also find some merit in the

submission made on behalf of the respondent-oil company that the petitioner should have disclosed that he had filed the review application in this court seeking a review of the common judgment rendered by the Nagpur Bench and the said review application was dismissed by the order dated 19.12.2014. If the petitioner is eligible and more meritorious, the LPG distributorship could have been allotted to the petitioner, but the petitioner cannot thwart the process of participation of the other eligible candidates in the draw for selection of the LPG distributor. Also, we find that during the pendency of the writ petition, the draw was conducted and Shri Praful Govind Hadekar was selected and was granted LPG distributorship for Ralegaon. The petitioner has not joined Shri Praful Govind Hadekar, as party respondent to this writ petition, though the fact about the selection and appointment of Shri Hadekar finds place in the affidavit-in-reply filed on behalf of the oil company.

In view of aforesaid, we dismiss the writ petition, with no order as to costs.

JUDGE

JUDGE

CERTIFICATE

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