

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3933/2013
 (SANJAY HIRAMANJI AMBILDIGE VERSUS STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

 Shri H.D. Dangre, counsel for the petitioner.
 Mrs. M.R. Chandurkar, counsel for the R-1.
 Shri Rohit Joshi, counsel for the R-2 & 3.
 Shri S.N. Kumar, counsel for the R-4.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.
DATE : SEPTEMBER 07, 2016.

By this writ petition, the petitioner challenges the order of the respondent-Indian Oil Corporation Limited, dated 08.05.2013 rejecting the candidature of the petitioner for allotment of petroleum retail outlet. The petitioner also challenges the order of allotment of the petroleum retail outlet in favour of the respondent no.4, dated 31.05.2011.

In pursuance of an advertisement issued by the respondent-Indian Oil Corporation Limited, the petitioner, the respondent no.4, the respondent no.5 and several other interested persons applied for allotment of the petroleum retail outlet, at Dhanaj. On a consideration of the applications and the comparative merit of the applicants, in the initial select list, the petitioner was placed at Serial Number 3, the respondent no.5 at Serial Number 2 and the respondent no.4 at Serial Number 1. Being aggrieved by the placement of the petitioner at Serial Number 3, which according to the petitioner was wrong, and the placement of the respondent no.4 at Serial Number 1, who according to the

petitioner was ineligible, the petitioner challenged the select list in Writ Petition no.5303 of 2009. During the pendency of the petition, the respondent-Corporation decided to re-assess the candidature of the applicants and, hence, the petitioner withdrew the writ petition. The points raised in the petition were kept open. Since a complaint made by the petitioner on 16.08.2011 that the respondent no.4 did not suffer 40% disability and the petroleum retail outlet cannot be allotted to him was not decided, the petitioner filed a second writ petition bearing Writ Petition No.5804 of 2011. The writ petition was allowed and a direction was issued against the respondent-Corporation to decide the complaint. The complaint of the petitioner, dated 16.08.2011 was decided by the respondent-Corporation by the order dated 09.04.2012. According to the decision, the respondent no.4 was held to be eligible but, his marks were reduced. According to the said decision, the respondent no.5 was entitled for allotment of the petroleum retail outlet as he had secured the highest marks as per the re-assessment and the petitioner was placed at Serial Number 2 in the select list. The petitioner challenged the selection of the respondent no.5 by filing Writ Petition No.4060 of 2012. It would be necessary to mention at this juncture that in Writ Petition No.4060 of 2012, the respondent no.4 was not joined as a party though by the decision of the respondent-Corporation, dated 09.04.2012, he was held to be eligible though his marks were reduced. In pursuance of an order passed in Writ Petition No.4060 of 2012, re-assessment was made and by the impugned order dated 08.05.2013, the candidature of the petitioner was rejected and the respondent no.4 was held to be entitled for

allotment of the petroleum retail outlet. The petitioner has challenged the order dated 08.05.2013 in the instant petition.

Shri Dangre, the learned counsel for the petitioner, submitted that it was necessary for the respondent-Corporation to have re-assessed the eligibility of the respondent no.4 after a statement was made on behalf of the respondent-Corporation in Writ Petition No.4060 of 2012 that the Corporation would re-assess the candidature of the applicants, after considering the objections. It is stated that though a statement was made on behalf of the respondent-Corporation in Writ Petition No.4060 of 2012 on 29.01.2013, that there would be a re-assessment within eight weeks, complaints against the petitioner and the respondent no.5 were only considered and the complaint made by the petitioner against the respondent no.4, dated 16.08.2011 was not considered. It is submitted that in view of the statement made by the learned counsel for the Corporation on 29.01.2013, it was incumbent on the part of the respondent-Corporation to have considered the complaint of the petitioner against the respondent no.4. It is submitted that the candidature of the petitioner is wrongly rejected by the impugned order dated 08.05.2013 and the petitioner is wrongfully disqualified after recording an incorrect finding that the petitioner had submitted false affidavits of four persons along with his application for allotment in regard to tied up volumes of sale. It is stated that the four persons that had tendered the affidavits in respect of tied up volumes of sale in favour of the petitioner had turned round after a lapse of about 3½ years to falsely contend that they had not

tendered the affidavits in favour of the petitioner in the year 2009. It is submitted that the action on the part of the respondent-Corporation in allotting the petroleum retail outlet to the respondent no.4 though he does not suffer from 40% disability is bad in law as the petroleum retail outlet at Dhanaj was earmarked for a physically disabled person.

On the other hand, it is submitted on behalf of the respondent-Corporation as also the respondent no.4 that after the complaint of the petitioner against the respondent no.4 was decided by the respondent-Corporation by an order dated 09.04.2012, the petitioner did not challenge the said order in Writ Petition No.4060 of 2012. It is stated that in Writ Petition No.4060 of 2012, the petitioner had not joined the respondent no.4 as a party respondent and the entire challenge in the petition was related to the marks allotted to the respondent no.5. It is submitted that before Writ Petition No.4060 of 2012 was disposed of, the candidature of the petitioner and the respondent no.5 was reconsidered and it was found that the petitioner was not eligible for allotment as he had submitted false affidavits of four persons in respect of tied up volumes of sale. It is submitted that in this petition also, the petitioner has not challenged the order of the respondent-Corporation, dated 09.04.2012 refusing to reject the candidature of the respondent no.4. It is submitted that the candidature of the petitioner was rightly rejected in view of the false affidavits tendered by the petitioner in respect of the tied up volumes of sale, along with his application.

On hearing the learned counsel for the parties and on a perusal of the impugned order as also the orders passed in the writ petitions referred to hereinabove, it appears that

no case is made out for interference with the impugned order as also the order dated 31.05.2011 allotting the petroleum retail outlet in favour of the respondent no.4. Earlier, the respondent no.4 was placed at Serial Number 1, the respondent no.5 was placed at Serial Number 2 and the petitioner was placed at Serial Number 3, in the select list. The petitioner had challenged the said decision in Writ Petition No.5303 of 2009. In the said writ petition, the petitioner had challenged the candidature of the respondent no.4. The said petition was withdrawn as the respondent-Corporation had decided to re-assess the applications of the concerned candidates. On 16.08.2011, the petitioner had made a complaint against the respondent no.4, in respect of the extent of disability suffered by him and his eligibility for allotment and since the complaint was not decided, he had filed Writ Petition No.5804 of 2011 in which a direction was issued to the Corporation to decide the complaint. In pursuance of the order dated 05.01.2012 in Writ Petition No.5804 of 2011, the complaint of the petitioner against the respondent no.4 was decided by the Corporation on 09.04.2012 and the Corporation found that the respondent no.4 cannot be disqualified. However, in the said decision, the marks of the respondent no.4 were reduced. The respondent no.5 was placed at Serial Number 1 in terms of the decision, dated 09.04.2012 and, hence, the petitioner challenged the said action of the respondent-Corporation by filing a third writ petition bearing Writ Petition No.4060 of 2012. During the pendency of the writ petition, a statement was made on behalf of the respondent-Corporation that the grievance of the petitioner could be looked into and a re-

assessment could be done and in view of the said statement, the objections and the complaints against the candidature of the petitioner and the respondent no.5 were decided by the Corporation. By the impugned order dated 08.05.2013, the Corporation held that the marks of the respondent no.5 were liable to be reduced and the candidature of the petitioner was liable to be rejected as the petitioner had submitted false affidavits of four persons in respect of the tied up volumes of sale. In this writ petition, there is word against word in regard to the falsity of the affidavits filed by the petitioner in respect of the tied up volumes of sale. It is the case of the petitioner that the affidavits are true and the four persons were won over by the respondent no.4 subsequently and, hence, they had filed false affidavits that they had not tendered the affidavits in favour of the petitioner in respect of the tied up volumes of sale. On the other hand, it is the case of the respondent-Corporation and the respondent no.4 that the affidavits tendered by the petitioner are false and the said persons had not tendered the affidavits in favour of the petitioner. The issue in regard to the falsity of the affidavits cannot be considered in exercise of the writ jurisdiction, more so, when several documents are produced by the parties to substantiate their respective cases. The matter in regard to the falsity of the affidavits could be decided only in civil proceedings where the parties would be entitled to tender evidence, both, oral and documentary.

We are not inclined to consider the submission made on behalf of the petitioner in regard to the acceptance of the candidature of the respondent no.4 despite his disability. When the second writ petition filed by the

petitioner bearing Writ Petition No.5804 of 2011 was decided on 05.01.2012 and the respondent-Corporation decided the complaint of the petitioner, dated 16.08.2011 by the order dated 09.04.2012 and it was held that the candidature of the respondent no.4 could not have been rejected, the petitioner did not challenge the decision of refusal to reject the candidature of the respondent no.4 in the third writ petition filed by the petitioner, bearing Writ Petition No.4060 of 2012. In the said writ petition, the petitioner joined the respondent no.5 as a party respondent but, the respondent no.4 was not joined as a party, at all. So also, the decision, dated 09.04.2012 rejecting the complaint of the petitioner, dated 16.08.2011 is not challenged in the third writ petition bearing Writ Petition No.4060 of 2012. In the present writ petition also, there is no challenge to the decision of the Corporation, dated 09.04.2012, whereby the Corporation rejected the claim of the petitioner that the respondent no.4 was disqualified, on the ground that the disability suffered by him is less than 40%. In the absence of any challenge to the said decision, the petitioner cannot, at this stage, without any challenge to the decision, dated 09.04.2012, canvass that the candidature of the respondent no.4 is wrongly accepted though the disability suffered by him is less than 40%. In this petition, we are not inclined to consider the objection of the petitioner in regard to the extent of the disability suffered by the respondent no.4, more so, when there is ample material on record to show that the extent of the disability suffered by the respondent no.4 is more than 40%. In any case, since the decision dated 09.04.2012 in regard to the disqualification of the respondent no.4 was not challenged by the petitioner in

the previous writ petition bearing Writ Petition No.4060 of 2012 and the said decision is also not challenged in this writ petition, we are not inclined to consider the claim of the petitioner that the respondent no.4 does not suffer from 40% disability.

We find, on hearing the learned counsel for the parties, that the petroleum retail outlet is allotted to the respondent no.4, on 31.05.2011 and the respondent no.4 is operating the same since then. More than five years have lapsed from the allotment of the petroleum retail outlet in favour of the respondent no.4 and this is not a fit case for interference with the said allotment.

Since the impugned order calls for no interference, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

APTE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by: Rohit D. Apte.

Uploaded on :16.09.2016.