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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1404 OF 2019

Imran Salim Sayyad,
Age: 32 years, Occu: Business,
R/o. Bundelpura, Near Fire Station,
Tq. & Dist. Beed

..PETITIONER

VERSUS

1. The Union of India,
Through the Secretary,
Ministry of Petroleum & Gas,
Government of India,
Shastri Bhavan, New Delhi 110 001
2. The Indian Oil Corporation Ltd.,
Indane Area Office, Abish tower,
1st Floor, Behind Baba Petrol Pump,
Mahveer Chowk, Aurangabad
3. Vaibhav Kedarnath Ghute,
Age: 32 years, Occu: Business,
R/o. Rushiprasad Niwas, Maulinagar,
Beed, Dist. Beed

..RESPONDENTS

Mr H. D. Deshmukh, Advocate for petitioner;
Mr S. B. Deshpande, ASGI for respondent No.1;
Mr A. P. Bhandari, Advocate for respondent No.2;
Mr A. D. Aghav, Advocate for respondent No.3

**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 23rd July, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioner, Mr Deshpande, learned ASGI for respondent No.1, Mr Bhandari, learned

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Counsel for respondent No.2 and Mr Aghav, learned Counsel for respondent No.3.

2. The petitioner, by way of present writ petition, challenges the order dated 10th December, 2018, issued by Indian Oil Corporation Ltd. (respondent No.2), whereby complaint raised by the petitioner for selection of respondent No.3 was rejected.

3. Few facts giving rise to filing of present petition can be summarized as follows:

The petitioner is resident of village Bundelpura, Tq. and Dist. Beed. An advertisement was published on 31st August, 2017 for selection of LPG distributors for various categories, such as, 'Shahari Vitrak (Urban)', 'Gramin Vitrak' and 'Durgam Kshetriya Vitarak', etc. The petitioner was aspiring for LPG dealership for village Nathapur, Tq. and Dist. Beed. The said advertisement was issued in accordance with the Unified Guidelines published in June 2017 and the location i.e. village Nathapur, Tq. and Dist. Beed was shown at Sr.No.95. The distributorship for the said place was open for the aspiring candidates belonging to Other Backward Classes category and the petitioner is also belonging to Other Backward Classes category and was aspiring and as such, submitted his application.

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4. It is undisputed fact that the last date of submission of online application was extended by fifteen days and it was 18th October, 2017. There were 19 eligible and aspiring candidates and various successive draws were conducted for selection. In total, four re-draws were conducted and in these four re-draws four candidates were rejected. Fifth draw was conducted on 24th October, 2018 and ultimately, respondent No.3 was selected for LPG distributorship.

5. Being aggrieved by selection of respondent No.3 and by taking recourse to the guidelines, more particularly in view of Clause 27 (c) and (d) preferred complaint to respondent No.2 with the requisite documentary evidence. It is the case of the petitioner that respondent No.2, without considering grounds raised in the complaint, rejected the complaint and issued Letter of Intent to respondent No.3.

6. Mr Deshmukh, learned Counsel for the petitioner, by inviting our attention to the guidelines, namely, Unified Guidelines for Selection of LPG Distributorship issued in June 2017 as well as to the documents placed on record vehemently submits that the communication impugned in the present writ petition is unsustainable and Respondent No.2 committed a serious error in selecting respondent No.3 and issuing Letter of Intent to him.

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7. Per contra, Mr Bhandari, learned Counsel for respondent No.2 supported the letter/communication impugned in the petition. He submits that on receipt of complaint of the petitioner, the same was thoroughly examined. He also submits that the grievance raised in the complaint by the petitioner was two fold. Firstly, the land offered by respondent No.3 i.e. selected candidate was not as per the requisite criteria and secondly, the selected candidate i.e. respondent No.3 is not belonging to Other Backward Classes category.

8. Mr Bhandari, learned Counsel for respondent No.2 then submits that the complaint was thoroughly examined and no substance was found in the grounds raised by the petitioner and as such, it was informed to the petitioner by communication dated 10th December, 2018 and no error is committed by respondent No.2 in rejecting the complaint of the petitioner.

9. With the assistance of learned Counsel appearing on behalf of the respective parties, we have gone through the material placed on record. Perusal of the document placed on record at Exh. 'A', titled as 'Brochure on Unified Guidelines for Selection of LPG Distributors' for Shahari Vitrak, Urban Vitrak and Durgam Kshetriya Vitrak refers to minimum dimension of land for godown. As it is not in dispute that the grievance raised in the petition is in respect of distributorship for

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the category Gramin Vitrak, it would be useful to refer to Sub-clause A (I) (iii) of Clause 8 of the brochure which is about minimum dimension of land for godown and the same reads thus:

“Minimum Dimension of Land for Godown :

.....

(iii) For Gramin Vitrak the candidate should ‘Own’ a plot of land of minimum dimensions 21 Metre x 26 Metre within 15 km from the advertised location.

.....

It will be the responsibility of the selected candidate to observe and perform the provisions of all rules and regulations, Government or municipal or local Acts, Laws, Regulations, Bye-Laws as may be enforced from time to time with respect to land for construction of LPG Godown.

In case there is any reference relating to violation of any of the statutory provisions, it will be referred to the concerned authority for examination and for appropriate action.

In case there is any dispute/ambiguity regarding location of land vis’-a’vis’ advertised specifications, the matter will be referred to District Revenue authorities whose decision will be final.”

10. It will be also useful to refer to the eligibility criteria and Sub-clause (B) of Clause 8 of the guidelines carries the caption “Specific Eligibility Criteria for Different Reservation Categories” which reads thus:

“B. Specific Eligibility Criteria for Different Reservation Categories :

Specific eligibility criteria for Main Reservation Categories:

a.

b.

c. Other Backward Classes (OBC)

Applicants belonging to ‘Other Backward Classes’ recognized as ‘OBC’ by Government of India (Central Government) under the Constitution of India will be eligible to apply under this category. These applicants will be required to declare in the online application form that he / she belongs to ‘Other Backward Classes’ recognized as OBC by government of India (Central Government) under the Constitution of India.

If selected, the candidate will be required to submit a copy of the certificate issued by the competent authority, notified by the Government of India (GOI) certifying that the candidate belongs to ‘Other Backward Classes’ recognized as OBC by a Resolution/Gazette Notification issued by GOI (Central Government). Along with the OBC certificate, the candidate has to submit a certificate in the prescribed format that he/she belongs to the OBC category and fulfils the non-creamy layer status. Both the above certificates should be submitted within 7 days from the date of intimation of his/her selection. The last date for submission of application mentioned in the notice of advertisement or corrigendum (if any), will be treated as the date of reckoning for OBC status of the candidate and

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also for determining that the candidate does not fall in the creamy layer.”

11. A copy of an advertisement is also placed on record. A copy of an application submitted by the petitioner is also placed on record at page 64 of the petition. Perusal of the copy of complaint placed on record at Exh. ‘B’ shows that the petitioner, in his complaint raised two grounds, firstly; the land offered by respondent No.3 for the said location is less than the requisite dimension and secondly, the selected candidate i.e. respondent No.3 is not possessing creamy layer certificate issued from the office of the Sub Divisional Officer.

12. Mr Deshmukh, learned Counsel for the petitioner, by inviting our attention to the copy of document placed on record i.e. the lease deed entered between respondent No.3 – Vaibhav Kedarnath Guthe and one Chandrakant Uttam Giram, submits that the land owned by respondent No.3 is lesser than requisite land as per the guidelines. He also submits that the selected candidate i.e. respondent No.3, who had shown the land for setting up of the distributorship was under a lease deed and same was under a permission granted by the General Power of Attorney but there was no permission granted by the competent authority.

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13. Mr Deshmukh, learned Counsel for the petitioner also submits that respondent No.3 initially was not possessing creamy layer certificate and he had submitted the same subsequently and as such, selection of respondent No.3 was not proper. He vehemently submits that the land offered by respondent No.3 was subjected to DCPR Rules.

14. Per contra, Mr Bhandari, learned Counsel for respondent No.2 submits that no error is committed by respondent No.2 in selecting respondent No.3 and issuing Letter of Intent to him. He then submits that pursuant to the Letter of Intent, respondent No.3 had already commissioned the outlet from 3rd May, 2019. He also submits that at the time of drawing of the lots and selection of the candidates, no grievance was raised by the petitioner on the backdrop of the DCPR Rules or the social status of respondent No.3, more particularly the requirement of creamy layer certificate. He further submits that as per the guidelines, the necessary documents were submitted by the aspiring candidates and respondent No.3 had also submitted the documents to show that he is in possession of requisite area of land to set up LPG distributorship.

15. The lease deed submitted by respondent No.3 was registered document and as such, there was no reason for respondent No.2 –

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Company to discard that document and to show the social status, respondent No.3 had submitted caste certificate on 5th October, 2017. Respondent No.3 submitted non-creamy layer certificate on 3rd November, 2018. It is the further submission of Mr Bhandari, learned Counsel for respondent No.2 that respondent No.3 was complying with all the requisite criteria in respect of his social status and his candidature as a candidate belonging to Other Backward Classes category, specified in Sub-clause B(c) of Clause 8 of the guidelines. He further submits that respondent No.3 had already submitted caste certificate and on his selection, he submitted creamy layer certificate within seven days of the intimation which is due compliance of Sub-clause B(c) of Clause 8 of the guidelines. He then submits that the petitioner, who is an unsuccessful candidate is unnecessarily placing heavy reliance on DCPR Rules to challenge the selection of respondent No.3, who is duly selected after compliance of all the necessary norms.

16. Mr Bhandari, learned Counsel for respondent No.2 placed reliance upon the judgment and order of this Court in the matter of **Namdev Bhimrao Bhil Vs. The Union of India and anr.** (Writ Petition No.4210 of 2015) and more particularly para 9 thereof, to submit that respondent No.3 had also obtained licence from Explosive Department and had commissioned the distributorship. It would be

useful to refer to the relevant observations made by the Division Bench of this Court in para 9 of the said order, which read thus:

“9. In the show cause notice dated 12.11.2014, issued to the petitioner by Area Manager of respondent no.2, petitioner was called upon to explain as to why the letter of intent should not be withdrawn for constructing the godown in the land other than that mentioned in the application and verified during field verification. From the facts which have come on record the very contention raised as above appears to be incorrect for the reason that the petitioner has not constructed the godown in the land other than that mentioned in the application but has extended the said construction on some other land adjacent to the land mentioned in the application i.e. plot nos. 2 and 3. Had it been the fact that no construction is made on plot Nos. 2 and 3, the respondents had every reason to say that the petitioner has breached the condition. However, when the petitioner has carried out the construction by consolidating plot nos. 2 and 3 and plot nos. 31B, 32A and 32B, there could not have been any objection from the side of respondent no.2. Secondly, it does not appear to us that by purchasing additional land without informing respondent no.2 and by carrying out the construction in the said additional land by consolidating the said land and plot nos. 2 and 3, the petitioner has committed breach of any term or condition prescribed by respondent no.2. Moreover, no prejudice can be said to have caused to respondent no.2 because of the petitioner making construction of the godown, in addition to plot nos.2 and 3, also on Plot Nos. 31B, 32A

and 32B. Thus, viewed from any angle, we do not find the action taken by respondent no.2 vide its letter dated 25th march, 2015 sustainable. We are, therefore, inclined to set aside the said order. Since the petitioner has constructed a godown according to the norms prescribed by respondent no.2, and has also obtained the license from Explosives Department, there may not be any difficulty in making the Distributorship allotted to the petitioner functional.”

17. Learned Counsel appearing on behalf of respondent No.3 also opposes the petition and submits that respondent No.3 has already started giving connections to the consumers as the distributorship granted in favour of him is now fully commissioned. He places reliance on the judgment of the Honourable the Apex Court in the matter of **Dhananjay Malik & ors. Vs. State of Uttaranchal & ors.**, reported in **AIR 2008 Supreme Court 1913**. It would be useful to refer to the observations made by the Honourable the Apex Court in para 7 of the said order, which read thus:

“7. It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion

inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.”

18. Considering the rival submissions of learned Counsel appearing for the respective parties and on going through the material placed on record, we find merit in the submissions of Mr Bhandari, learned Counsel for respondent No.2 as well as Mr Aghav, learned Counsel for respondent No.3. In our opinion, no error is committed by respondent No.2. Respondent No.2, while selecting respondent No.3, followed the guidelines and the claim of respondent No.3 was meeting all the requisite criteria laid down for selection. There is also merit in the submission of learned Counsel that respondent No.3 that respondent No.3 had already commissioned the distributorship and the petitioner, who had participated in the selection process is now raising an objection of selection of respondent No.3 on certain superficial grounds.

In our opinion, the petition is devoid of merits and deserves to be dismissed and same stands dismissed accordingly.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)