

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

**WRIT PETITION NO. 3168 OF 2018
with CA/4783 OF 2018 with CA/6785/2019**

1. Shivaji s/o Dattatraya Bhange
Age: 40 Years, Occu.- Business,
R/o: At Post Sarni (Sangvi), Tq. Kaij,
District – Beed – 431122. ... **Petitioner**

Versus

1. Bharat Petroleum corporation Ltd.,
Head Office and Registered Office at
Bharat Bhavan, 4 & 6, Currimbhoy Road,
Ballard Estate, Mumbai – 400001
Through its Authorized Signatory.
2. The Territory Manager,
L.P.G. Solapur, Bharat Petroleum
Corporation Ltd., Territory Office
& L.P.G. Plant, Solapur,
District: Solapur. ... **Respondents**

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Mr. R.R. Mantri alongwith Mr. R.R. Sancheti , Advocates for the Petitioner.
Mr. S.D. Kulkarni along with Mr. S.S. Kulkarni, Advocate for the Respondent
No.2.
Mr. H.P. Jadhav, Advocate for caveator (not made party).

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**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 29.07.2019
DATE OF PRONOUNCING THE JUDGMENT : 20.09.2019**

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JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The respondent no.1 is the Petroleum Company and respondent no.2 its Territory Manager. They published an advertisement for appointing LPG Dealers *inter alia* for a location of village Wida Tq. Kaij, District Beed on 01.09.2017. Pursuant to such advertisement the petitioner submitted an application under Durgam Kshetriya Vitrak – type of distributorship under O.B.C. category. The respondents published a list of candidates selected for the draw. Accordingly he deposited Rs. 30,000/- for the field verification. It was carried out on 28.12.2017. However without giving an opportunity of being heard the respondents cancelled his candidature. Pursuant to the terms and conditions in the brochure published by the respondents he preferred representation on 17.02.2018. Since there was no response he filed Writ Petition No.2503 of 2018 on 27.02.2018. By the order dated 07.03.2018 this Court relegated him to the alternate remedy in the form of presentation of his grievance before the respondents. However instead of deciding his representation the respondents decided to go for a redraw. Hence this writ petition seeking a mandamus against them directing them to decide his representations dated 17.02.2018 and 14.03.2018 and to quash and set aside the proceeding of redraw held on 19.03.2018.

3. The learned advocate for the petitioner vehemently submitted that petitioner had not made any misrepresentation. He is resident of village Sarni (Sangvi), Tq. Kaij, District Beed but he was applying for the distributorship for the place of Wida. Without extending any opportunity of being heard to him and without deciding his grievance the respondents have proceeded for redraw. Though he was resident of village Sarni (Sangvi), he was entitled to apply for distributorship of Wida. Instead of deciding his representation pursuant to the direction of this Court in Writ Petition No. 2503 of 2018 the respondents have resorted to a redraw, the action which is arbitrary and illegal. The learned advocate further submitted that once the respondents have placed the petitioner in Priority list-1 they could not have resorted to a redraw excluding him. The learned advocate for the petitioner further submitted that since the petitioner had not resorted to any misrepresentation, there was no reason for the respondents to cancel his candidature and forfeit the deposit. The action of resorting to redraw and allotment of distributorship to the respondent no.3 is illegal.

4. It is necessary to mention here that in fact, as the writ petition was originally drafted, the only prayers that were made were for considering the representations of the petitioner and setting aside the proceeding of redraw. By way of Civil Application No.4783 of 2018 the petitioner seeks to bring on record the supervening events regarding the respondents having

proceeded with the redraw and decided to award the dealership for the writ place to one Mrs. Anita Rajendra Shinde who is sought to be added as respondent no.3. By way of amendment the petitioner sought to add the prayers for quashing and setting aside the communication dated 12.02.2018 cancelling his candidature and forfeiting the deposit amount of Rs. 30,000/-, seeking a mandamus against the respondents directing them to issue letter of intent to him for the dealership at Wida, directing an inquiry against the respondent nos. 1 and 2 for going ahead with the redraw in contravention of the order of this Court dated 19.03.2018 and to punish them for cancelling his candidature. The petitioner also seeks compensation. In view of the exigencies, with the consent of both the sides, the parties have been heard also in respect of these Civil Applications, including the learned advocate for the proposed respondent no.3 who has put appearance suo moto.

5. The learned advocate for the respondent nos. 1 and 2 by referring to the affidavit-in-replies submitted that the petitioner was not a resident of Wida Gram Panchayat and therefore his candidature was cancelled and the second draw was resorted to on 19.03.2018. It was mandatory for the petitioner to have deposited necessary fees of Rs.5,000/- for considering his representation. He deposited the money on 26.03.2018 after the redraw and therefore his grievance was not considered by the respondent nos. 1 and 2.

6. The learned advocate for the respondent nos. 1 and 2 further submitted that the draw was conducted as per the directions of this Court. M.S.T.C. was authorized to conduct the draw which was conducted in presence of all the qualified candidates and since the process was computerized a system generated letter was automatically issued to the selected candidate calling upon her to deposit the money and to complete the formalities. On the contrary, even after the redraw since they were telephonically communicated about the order passed by this Court neither the field verification was conducted nor was any letter of intent issued in favour of the selected candidate and therefore there was no breach of the order of interim relief granted by this Court.

7. The learned advocate also submitted that the petitioner was not resident of Wida but had misrepresented about it. He was not entitled to lay an claim to appear in Priority list-1 and therefore his candidature has been rightly cancelled.

8. The learned advocate for the proposed respondent no.3 who is a candidate selected after the redraw, referring to her affidavit-in-reply filed in the civil application submitted that the petitioner was not eligible to apply for the advertised location of Wida Tq. Kaij, District Beed in Durgam Kshetriya Vitrak category. There were also other applicants who were also not eligible

to apply for that place and therefore after the first draw was held on 06.12.2017 she had lodged a complaint about ineligibility of the petitioner and the other two applicants. The petitioner could not have been placed in Priority list No.1 which was available only for the applicants residing in the concerned Gram Panchayat of the advertised location. Similar grievance was also made by another applicant. Pursuant to such grievance made by them, a fresh draw was conducted for eligible candidates of *inter se* Priority list 1. During field verification it was found that the petitioner was not a resident of the concerned Gram Panchayat and therefore his candidature was rightly rejected.

9. We have perused the papers. There is no dispute about the fact that the respondent nos. 1 and 2 had published an advertisement seeking applications from candidates desiring of having distributorship for L.P.G. and about the petitioner having submitted his application for Durgam Kshetriya Vitrak distributorship for the place Wida, Tq. Kaij, District Beed. There is also no dispute about the fact that candidature of the petitioner was accepted and he was placed in *inter se* Priority list-1. There is also no dispute about the fact that there are three *inter se* Priority lists for Durgam Kshetriya Vitrak as per the brochure:

- 1] List -1 comprises of eligible applicants residing in the concerned Gram Panchayat of the advertised location,

- 2] List-2 comprises of the eligible applicants residing in the concerned revenue sub-division of the advertised location, and
- 3] List-3 consists of eligible applicants not residing in the concerned Gram Panchayat or in the concerned revenue sub-division of the advertised location.

10. According to the respondent nos. 1 and 2 the petitioner is not resident of Wida Gram Panchayat and was ineligible for being placed in *inter se* Priority list -1. They have also contended that he ought not to have opted for that list and had made misrepresentation although he is resident of place Sarni (Sangvi), Tq. Kaij, District Beed. Perusal of copy of his application (Annexure-A) clearly shows that he has not made any misrepresentation. He has specifically mentioned his place of residence as Post Sarni (Sangvi), Tq. Kaij, District Beed by mentioning that he was applying for location Wida. A minute perusal of the application nowhere discloses that there is any column which enables the applicant to choose the category of list in which he intends to fit in. Therefore there is absolutely no substance in the contention of the respondents about he having made any misrepresentation.

11. It is quite apparent that the respondent nos. 1 and 2 had during scrutiny placed the petitioner in Priority list-1 even though he had specifically disclosed in the application itself that his place of residence was Sarni

(Sangvi), Tq. Kaij, District Beed and was not a resident of Wida Gram Panchayat. The respondents could not demonstrate as to how the petitioner can be blamed for their act of placing him in Priority list-1, when he was not apparently eligible to be placed as such.

12. But the fact remains that the petitioner is not a resident of village Wida for which the distributorship was advertised and could not have been placed in Priority list-1.

13. The learned advocate for the petitioner, faced with the situation tried to salvage some ground by pointing out that as per the Note-1 to Column -4 and Appendix-2 to the application, in case of Durgam Kshetriya Vitrak the location for godown land should be within the village/cluster of village limits as per the advertised location. The petitioner had clearly mentioned in the Appendix-2 that he owns the land of the requisite dimension bearing survey no.442/4 at village Wida which is at a distance of 1 k.m. from the advertised location and was thus eligible to apply as Durgam Kshetriya Vitrak but the respondent nos. 1 and 2 have wrongly and illegally refused to consider this aspect.

14. No doubt, as per the Note-1 to Column-4 and Note to the Appendix-2, irrespective of the place of residence a person applying for distributorship for Durgam Kshetriya Vitrak category is eligible if his land for

godown is located within the village limits of the advertised location. The petitioner was eligible to apply under that category since he has mentioned about his property situated within 1 k.m. distance of the advertised location.

15. However the dispute herein is not as to if the petitioner was otherwise eligible to apply for the distributorship. The dispute is about his being eligible to stand in Priority list -1 which is only meant to such applicants who are having place of residence within the limits of the village of the advertised location. When admittedly he does not reside within the village limits of Wida which was the advertised location, he was not eligible to be considered from Priority list-1 and could have been appropriately placed in Priority list-2 which is meant for the applicants residing in the concerned revenue sub-division of the advertised location since he is resident of village Sarni (Sangvi), Tq. Kaij, District Beed which also falls in Taluka Kaij in which the place of advertised location Wida situates.

16. Upshot of the discussion is that though there is no substance in the contention of the respondents that the petitioner had indulged in misrepresentation, even otherwise, on an independent scrutiny, he was not eligible to claim advantage of being placed in the Priority list-1. Consequently no fault can be found in the respondent nos. 1 and 2 resorting to redraw excluding his candidature.

17. Similarly merely because the respondent nos. 1 and 2 have stated in their affidavit-in-reply about the petition having falsely claimed to be placed in Priority list-1 when in fact he had not made any such request, and there was no misrepresentation by him, making such statement which is factually incorrect would not *per se* be sufficient to direct a prosecution against them by resorting to Section 340 of the Code of Criminal Procedure.

18. It is view which we are taking, we do not find that merely because the respondent nos.1 and 2 have proceeded to hold a redraw they were intending to commit breach of the interim order passed in Writ Petition No.2503 of 2018 so as to constitute contempt of this Court. We do not see any sufficient and cogent reason to take cognizance of the alleged steps taken by them for going ahead with the redraw, more so when no formal contract has been entered into by them with the respondent no.3/Intervenor.

19. The Writ Petition is dismissed and all the Civil Applications including Civil Application No.3900 of 2018 in Writ Petition No.2503 of 2018 are disposed of. The Rule is discharged.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]

20. At this stage Mr. Mantri the learned advocate submits that interim order was operating for more than one year. The same be continued for three months.

21. Mr. Kulkarni the learned advocate for the respondents opposes the said request.

22. Considering the fact that the interim order was in force we extend the interim order for a period of four weeks. Needless to state that on lapse of four weeks such interim order shall come to an end.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]