

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

WRIT PETITION No. 3586 of 2018
WITH CIVIL APPLICATION NO. 11013 of 2019

Kakasaheb Vitthal Jadhav,
age 52 years occupation agriculture
R/o Ghatshendra Taluka Kannad Dist. Aurangabad

...Petitioner

VERSUS

1. The Union OF India
through its Secretary,
Petroleum Ministry, New Delhi
 2. The Executive Director Retail,
Indian Oil Corporation,
Indian Oil Bhavan, G-9, Ali Yavar Jung Marg,
Bandra (E), Mumbai – 400 051
 3. Chief Area manager,
Indian Oil Corporation Ltd.,
Abhis Tower, 1st Floor, behind Baba Petrol Pump,
Mahavir Chowk, Aurangabad – 431001
 4. Ashok Prakash Nagode,
age major occup. agriculture
R/o Ghatshendra Taluka Kannad Dist. Aurangabad
- ...Respondents**

Mrs. V.A. Shinde-More, Advocate for petitioner
Mr. D.G. Nagode, Advocate for respondent No.1.
Mr. A.P. Bhandari, Advocate for respondents No.2 & 3
Mr. M.S. Taur, Advocate for respondent No.4

CORAM : PRASANNA B. VARALE

AND

AVINASH G. GHAROTE, JJ.

DATE : 11th September, 2019

J U D G M E N T (Per : Avinash G. Gharote, J.) :

1. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. By the present petition, the petitioner challenges the communication dated 01/03/2018 at Exh. 'I', whereby the candidature of the petitioner for L.P.G. distributorship at the advertised location - Kasod Dist. Aurangabad, came to be rejected on the grounds:

- (i) that the petitioner did not meet the minimum educational eligibility criteria, inasmuch as per the mark-sheet submitted by him, it was found that he had not passed the 10th examination. The Matriculation Certificate dated 23/12/2017 issued by the Armed Forces Services, as submitted by the petitioner, was after the last date of submission of the application.
- (ii) That the petitioner had applied under sub-category I i.e. "Widows/dependants of Personnel of Armed Forces/ Central Paramilitary Forces/Central or State Special Forces who dies while performing their duties", whereas, the petitioner had submitted eligibility certificate issued by the DGR for the sub-category - II i.e. "Disabled Personnel of Armed Forces

or Central/Paramilitary Forces/Central or State Special Forces while performing their duties”.

3. It is an admitted position that in the application form, it was specifically mentioned that the candidate has to tick-mark in the applicable box against the sub-category to which he or she belongs and has to submit respective eligibility certificate at the time of verification of the documents,

4. It is contended by the petitioner that he had filled the application form No. IOC03214003914092017 on 14/09/2017 through online process and had applied under sub-category “Disabled Personnel of Armed Forces or Central/Paramilitary Forces/Central or State Special Forces while performing their duties”. The petitioner has annexed at Exh. ‘B’ a copy of application form submitted by the petitioner through online process, which is claimed to have been downloaded by the petitioner. It is further contended that the petitioner has annexed the documents for sub-category II.

5. It is further contended that respondents No.2 & 3 consequent to scrutiny of the application of the petitioner, informed the petitioner that he had qualified for the draw of lots for selection for LPG distribution and had directed him to remain present on 15/12/2017 at the Regional Office of respondents

No.2 & 3. It is contended that on 15/12/2017 for the first time, when the petitioner had been to the office of respondent No.3, he came to know that by mistake the company had listed his name in sub-category I instead of sub-category II, copy of which is annexed to the petition at Exh. 'C' page No. 23. The petitioner, thus, contends that immediately before the start of the process of draw of lots, he had informed the Company Officers about the so called mistake and had also shown copy of his downloaded application, where there was no tick-mark on any type of sub-category. It is contended that at that time, he was permitted to participate in the draw of lots from sub-category II. In the draw of lots, the petitioner was declared successful, which is claimed to be reflected from letter dated 16/12/2017 at Exh.'D' and was called upon to deposit an amount of Rs. 40,000/- and submit the relevant documents as listed therein for verification, consequent to which, the petitioner has deposited an amount of Rs. 40,000/- with respondent No.2 on 20/12/2017 vide Exh. 'F' to the petition. It is further contended that consequent to the submission of required documents on 20/12/2017 and the payment, a site inspection was carried out on 23/01/2018 by the Officers of the I.O.C.L. It is, thus, contended that impugned letter dated 01/03/2018, therefore, came as a shock to the petitioner. It is further contended that the communication dated 01/03/2018 is

without any notice and without hearing the petitioner. It is further contended that the petitioner had applied for sub-category II and the consideration of his candidature under sub-category I was illegal. It was, thus, contended that the communication dated 01/03/2018 was required to be quashed and set aside and respondent No.3 be directed to award LPG distributorship in favour of the petitioner.

6. Respondents No.2 & 3 have filed their affidavit-in-reply on 12/12/2018 and has submitted that the petitioner had filled-in the online application form in sub-category I and not in sub-category II. The copy of the online application as submitted by the petitioner was filed on record as Exh.'R-2' which showed a tick-mark against sub-category I. It was further submitted that even the Interse priority list at Exh,'C', as annexed to the petition, demonstrated that his name was included in sub-category I and not in sub-category II. It was, therefore, submitted that the candidature of the petitioner was throughout considered under sub-category I and as a consequence when the documents filed by the petitioner failed to meet the requirements of sub-category I, his candidature was rightly rejected by the impugned communication dated 01/03/2018.

7. Mrs. V.A. Shinde, learned Counsel for the petitioner,

strenuously urged before us that the petitioner had applied in sub-category II and not in sub-category I and, therefore, consideration of the candidature of the petitioner in sub-category I by respondents No.2 & 3 was incorrect. The learned Counsel further urged that the consequent actions of respondents No.2 & 3 in permitting the petitioner to participate in the draw of lots, receiving an amount of Rs. 40,000/- and inspecting the site on 23/01/2018, all indicated that respondents No.2 & 3 were aware that the candidature of the petitioner was in sub-category II and not in sub-category I. It is, therefore, vehemently argued by learned Counsel Mrs. Shinde that the action on the part of respondents No.2 & 3 in rejecting the candidature of the petitioner by the impugned communication dated 01/03/2018 was unsustainable in law and, therefore, was required to be quashed and set aside.

8. Mr. A.P. Bhandari, learned Counsel for respondents No.2 & 3 has opposed the submissions of the learned Counsel for the petitioner. He contends that filling of the application form online is a conscious act on the part of the petitioner. He further contends that the indication of a choice as to the sub-category in the online application, is a mandatory field, and without indicating/filling the choice in the application form as to the selected sub-category, the system does not accept the application

at all. He, therefore, contends that the petitioner made a conscious decision by tick-marking sub-category I in the application form and his candidature was, thus, accordingly throughout considered in sub-category I. To buttress his argument Mr. Bhandari invites our attention to the copy of the application form of the petitioner as uploaded by him, which is filed on record as Exh. R-2 alongwith the affidavit-in-reply of respondents No.2 & 3, perusal of which indicates that there is a tick-mark against sub-category I. Mr. Bhandari, therefore, contends that it was in consonance with the option indicated by the petitioner of sub-category I that his candidature was considered throughout as such by respondents No.2 & 3 and all consequent actions of respondents No.2 & 3 are in consonance thereof. Mr. Bhandari then contends that when the documents submitted by the petitioner were physically verified, and found to belong to sub-category II, his candidature was rightly rejected by the impugned communication. He, therefore, submits that there is no merit in the petition and the same deserves to be dismissed.

9. Mr. D.G. Nagode, learned Counsel appearing for respondent No.1 and Mr. M.S. Taur, learned Counsel appearing for respondent No.4 have supported the arguments of Mr. A.P. Bhandari, learned Counsel for respondents No.2 & 3.

10. At this stage, the learned Counsel for the petitioner invited our attention to Civil Application No. 11013 of 2019 and contended that she has filed an application for amendment of the petition, whereby the petitioner wishes to bring on record contentions to the effect that respondent No.4 is not eligible to be awarded the distributorship. The application is opposed by the learned Counsel for the respondents. We have perused the application. We find that it is not in proper form and does not indicate the nature of the amendment sought to be made. That apart, the proposed amendment merely contains averments against respondent No.4. It is a trite position of law that the petitioner has to stand and fail on his own averments and any defect in the eligibility of or award of work to respondent No.4 can be of no assistance to the petitioner. The application is, therefore, without any substance and is hereby rejected.

11. We have carefully perused the entire record and considered the rival contentions of the learned Counsel for the respective parties. We find that the plea on behalf of the petitioner that he had applied for LPG distributorship in sub-category II and respondents No.2 & 3 have by mistake or otherwise considered his candidature in sub-category I, is misconceived, untenable and cannot be upheld. This is so for the

reason that in an online process, where the filling up/tick-marking of a particular field is mandatory, the process of accepting the application online cannot proceed without the mandatory field being filled in. The application form of the petitioner filed on record by respondents No.2 & 3 alongwith their affidavit-in-reply categorically demonstrates that the petitioner had tick-marked opposite sub-category I and accordingly his candidature was considered in sub-category I by respondents No. 2 & 3 and when they found in physical verification of the documents that the petitioner did not satisfy the requirement, his candidature was rightly rejected by respondents No.2 & 3.

12. The plea as sought to be raised by the petitioner, in fact, falls flat in the face of the averment made in the second sub-paragraph of paragraph 6 of the petition, which is quoted as under:

" 6. ----- Immediately before started the process of draw of lots petitioner informed to the company's officers that he has submitted the application from sub category II, however, his name shown in sub category I. Petitioner also show his down loan application form which he has submitted through online process to the officers where there is no tick mark on any type of sub category."

This clearly indicates the contradictory stand of the petitioner. On the one hand, by the above averment made on oath in the petition, the petitioner states that he had not tick-marked on any type of sub-category, on the other hand, he raises a plea, that he had applied under sub-category II in the online process. These are self-destructive pleas on the part of the petitioner. If the petitioner has not tick-marked on any sub-category, as per his plea in paragraph 6 of the petition, then his candidature cannot be considered at all in absence of indication of choice, as to the category, in which he applies. So also, in case the petitioner has tick-marked on sub-category I, his candidature cannot be considered in sub-category II. This being the position, as emanating from the record, there is no merits in the arguments of the learned Counsel for the petitioner that respondents No.2 & 3 have incorrectly considered the candidature of the petitioner in sub-category I, instead of sub-category II. Thus, in our considered view, there is no merit in the petition and the same ought to fail and, thus, the petition is hereby dismissed.

13. Needless to say that interim relief granted in terms of prayer clause (D) by order 09/04/2018 stands vacated.

14. Rule is discharged.

15. At this stage, the learned Counsel for the petitioner prayed for continuation of the interim relief for a period of four weeks. However, considering the reasons recorded above for dismissing the petition, the prayer for continuation of the interim relief is rejected.

(AVINASH G. GHAROTE, J.) (PRASANNA B. VARALE, J.)

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