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

WRIT PETITION NO.5812 OF 2019

Navnath s/o Shankar Badage ... PETITIONER

VERSUS

Indian Oil Corporation Limited & anr.... RESPONDENTS

.....
Shri N.S. Tekale, Advocate for petitioner
Shri A.P. Bhandari, Advocate for respondents
.....

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

DATED : 18th JUNE, 2019.

ORAL ORDER :

Heard learned counsel for the petitioner, learned counsel Mr. Bhandari for respondents No.1 and 2 (hereinafter referred to as the Corporation for the sake of brevity). The petitioner, by way of present writ petition, challenges the communication dated 3.5.2019, whereby the claim of petitioner for grant of retail outlet dealership at SH No.238 from Kedarpur Patil to Ambulga (Bu) Pati Left side from KM Stone 107 to KM Stone 109 under O.B.C. category, is turned down/ rejected.

2. It is the case of the petitioner that, an advertisement was issued by the respondent Corporation in various leading

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newspapers, calling upon the interested parties to submit their applications before 24.12.2018 for retail outlet dealership at various places referred to in the advertisement. A copy of the advertisement is placed on record at Exhibit B. Insofar as the present petitioner is concerned, the petitioner submitted his application for location mentioned from Sr.No.121 to 165 and Sr.No.1819 to 2434, namely Sr.No.238 from Kedarpur Patil to Ambulga (Bu) Pati Left side from KM Stone 107 to KM Stone 109. The petitioner submitted his claim as an interested applicant from O.B.C. category. On 26.1.2019, the petitioner was informed through a communication that he has been qualified for draw of lots for creation of retail outlet dealership and further he was requested to remain present along with photo identity card issued by any Government Department on a scheduled date i.e. on 7.2.2019 at 12.00 Hrs. at the address referred to in the communication. On 8.2.2019, another communication was received by the petitioner stating that the petitioner has been selected.

3. The petitioner further submits that, on 3.5.2019, the petitioner was informed that his candidature has not been found to be eligible for retail outlet dealership on the basis of documents submitted by him. The learned counsel appearing for the petitioner vehemently submitted before us that the

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communication dated 3.5.2019 requires to be quashed and set aside as the same is unsustainable on various grounds. It was the submission of the learned counsel for the petitioner that when the Corporation itself informed the petitioner by communication dated 8.2.2019 that the petitioner has been declared as a selected candidate, the communication dated 3.5.2019 only stating the ground that on the basis of document the petitioner has not been found eligible, is nothing but frustrating a right created in favour of the petitioner.

4. The another ground submitted by the learned counsel for petitioner is, in the year 2008, a caste certificate was issued in favour of the petitioner that the petitioner belongs to "Gondhali" Sr.No.10 caste, which is recognised as Nomadic tribe. It is then submitted by the learned counsel that, due to the subsequent change in scenario, the petitioner was granted caste certificate to the effect that the petitioner is a person belonging to the category of Other Backward Classes. Thus, it was the submission of the learned counsel that, the caste certificate issued to the petitioner was in view of change in scenario insofar as social status is concerned and on this ground the candidature of petitioner could not have been rejected by the Corporation.

5. Though the submission of the learned counsel

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appearing for the petitioner looks very attractive at the first blush, considering the documents place on record and the reply filed by the Corporation as well as considering the submission of Mr. Bhandari, the learned counsel appearing for the Corporation, we are unable to persuade ourselves to accept the submissions of the counsel appearing for the petitioner. The first submission of the counsel that the Corporation informed the petitioner by way of a communication dated 8.2.2019 that the petitioner has been selected and was declared as a selected candidate. As such, a right which was created in favour of the petitioner would not have been nullified by the Corporation under communication dated 3.5.2019. We find a basic fallacy in these submissions for the reason, the reading of the document dated 8.2.2019 by the petitioner is only a piecemeal reading of the document. As such, the petitioner, by misreading the document, makes an attempt to create an impression that a right is accrued in favour of the petitioner. On perusal of the document dated 8.2.2019, it clearly reveals that the selection of the petitioner is a conditional selection. This fact is made clear in the document with the statement, "This is only a preliminary intimation towards your selection for Retail Outlet dealership. However, the award of the dealership is subject to compliance of terms and conditions of the Corporation in this regard."

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6. Thus, when the communication specifically informs the petitioner that his selection is conditional one, we are unable to accept the submission of the counsel that a right was created in favour of the petitioner.

7. Now, coming to the another submission of the counsel that due to the change of policy the petitioner who was initially granted a caste certificate belonging to Nomadic Tribe category and subsequently as a candidate belonging to Other Backward Classes category and for this change, the candidature of the petitioner could not have been rejected, even this submission is having a fallacy in it. The change effected under the Government policy is in the year 1999. The first caste certificate issued in favour of the petitioner is 29.8.2008. The petitioner kept silence for long eleven years and then suddenly was awaken so as to obtain the certificate by submitting an application to the authority, that too after the advertisement published in the newspaper on 18.12.2018. The petitioner was granted certificate on 29.1.2019. This sequence of events clearly shows that the petitioner, only with a view to stake his claim for the dealership, as a candidate belonging to O.B.C. category, submitted an application post-advertisement and then by receipt of the certificate dated 29.1.2019, is trying to make out a case against rejection of his claim. Nothing had prevented the

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petitioner if the scenario was changed in 1993 to approach the authority after his first certificate which was received by him in 2008, but the opportune time selected by the petitioner for obtaining the certificate dated 29.1.2019 that he belongs to O.B.C. category itself creates a doubt on the bonafides of the petitioner.

8. Mr. Bhandari, learned counsel appearing for the respondent Corporation was justified in inviting our attention to the affidavit-in-reply so as to submit the stand of the Corporation before us and more particularly paragraphs No.5 and 6 of the affidavit-in-reply. Paragraphs No.5 and 6 of the affidavit-in-reply read thus :

“5. I say that, Clause (4) (vi) (b) of the Brochure for selection specifically contemplates that, “the candidates will be required to submit as and when advised by the Oil Company, **a certificate issued by the competent authority notified by the Government of India and/or by the concerned State** in which the location has been advertised **certifying that the candidate belongs to Other Backward Classes recognized as OBC by a Resolution/ Gazette Notification** issued by the Government of India (Central Government/ State Government).”

6. I say that, there is specific note in clause No.4 of the brochure, which specifically states that, 1. All

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certificates/ documents required for meeting Eligibility/ Specific Eligibility Criteria should **be in possession of the applicant and valid as on the date of application."**

9. At the cost of repetition, we say that, the clause No.4 of the brochure states that all the certificates/ documents required for meeting eligibility/ specific eligibility criteria should be in possession of the applicant and valid as on the date of application, the entire attempt of the petitioner to show that he is a candidate belonging to O.B.C. category is of no consequence and we can safely say that this is only a futile attempt or an afterthought theory of the petitioner.

10. Considering all these facts, we are of the clear opinion that the petition is devoid of merits and deserves to be dismissed at this threshold and the same is accordingly dismissed.

(R.G. AVACHAT)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-