

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

WRIT PETITION NO. 5810 OF 2019

Ratnamala Shrikrishna Jadhav

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. S.N. Pahune Patil, Advocate h/f Mr. N.J. Pahune Patil, Advocate for petitioner

Mr. V.S. Badakh, A.G.P. for respondent – State

Mr. A.P. Bhandari, Advocate for respondent no.2

Mr. D.S. Manorkar, Advocate for respondent nos. 4 and 5

Mr. S.N. Suryawanshi, Advocate for respondent no.6

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**CORAM : P.B. VARALE AND
R.G. AVACHAT, JJ.
DATED : 10th JUNE, 2019**

PER COURT :

Heard learned Counsel for petitioner. Considering the grievance raised in the petition and the order of this Court dated 21st May, 2019 passed by Vacation Judge of this Court, we deem it appropriate to take petition for final hearing and disposal at admission stage by consent of the parties.

2. Petitioner, in response to an advertisement issued by Respondent No.2 – Indian Oil Corporation (hereinafter referred to as “Corporation” for the sake of clarity), submitted his claim for retail outlet dealership at place Rolasgaon. Respondent No.2 – Corporation, by communication dated 22nd

April, 2019 informed petitioner that his application is received and Land Evaluation Committee will visit the site offered by him at the subject location for its inspection on 02nd May, 2019. Petitioner was accordingly informed to remain present with photo identity proof and other relevant documents. Land Evaluation Committee visited the location offered by petitioner on the scheduled date. On 04th May, 2019, Respondent No.2 – Corporation informed petitioner that site offered by petitioner was visited by Land Evaluation Committee and same was not meeting the required norms. Petitioner being aggrieved by said communication approached this Court by present writ petition.

3. Learned Vacation Judge in order dated 21st May, 2019 referred to the contentions raised by petitioner and the contentions as well as interim order reads thus :-

“1. Heard learned advocate Mr. Dhorde for petitioner, Mr. Bhandari for respondent No.2 and Mr. Manorkar for respondent Nos. 4 and 5. Liberty granted to delete respondent No.3 and correct the nomenclature of respondent No.5.

2. The applicant was the successful candidate for allotment of R.O. dealership at Rolsagaon but after the site visit, he has been disqualified. The order does not disclose reason but it was orally communicated and not disputed that the rules required that there should not be median opening within a distance of 300 metres., from the site. Whereas, there is a median opening at a distance of 290 mtrs. It is claimed that the said opening is not official and legal but it

is illegally opened by some person from the vicinity. If that is the case, the said opening is liable to be closed. In that case, the petitioner will not be disqualified. Mr. Manorkar seeks time to take instructions in this regard. Since the petitioner has been declared as successful candidate and this is the only ground for disqualification, the respondents are directed not to allot the said dealership to anybody else only with regard to Rolasgaon till the next date.

3. The learned advocate for the parties agree that they will come prepared on next date for arguments and will not seek adjournments except in the exceptional circumstances.

4. Issue notices to the respondents. The learned AGP waives service of notice for respondent No.1. Hamdast is allowed for service on other respondents. Stand over to 10.06.2019.”

4. Mr. Bhandari, learned Counsel for Respondent No.2 – Corporation by inviting our attention to the affidavit-in-reply filed on behalf of Respondent Nos. 4 and 5 submitted that the contentions raised by petitioner that median opening is illegal is denied by the competent authority i.e. National Highway Authority of India. He invited our attention to the submission that a representation was received by the authority and an independent engineer with the concessionaire on visit to the location submitted the report and it was suggested to place median opening at the km. 147+240 at Rolasgaon. As per this suggestion it was decided to keep median opening at km. 147+240 and this was done prior to the advertisement of Corporation. It is not in dispute that prior to issuance of advertisement it was decided to keep median opening at km. 147+240. It is also stated in the affidavit-in-reply that there is no

specific parameter for putting median opening on national highway. The subject of median opening is very volatile no strait jacket formula is prevailing for the same. The median opening is totally dependent on the need and requirement of the location. Therefore, the decision of placing median opening at a particular place is only after joint inspection of independent engineer and the concessionaire appointed by National Highway Authority of India.

5. Learned Counsel for petitioner vehemently submitted before us that clause 2.14 of Manual of Specifications and Standards refers to the median openings. It was further submitted by him that National Highway Authority of India is duty bound to keep median opening only at a distance of 300 meters. On going through the relevant manual, provision 2.14.1 under the head Median Openings reads thus :-

“2.14.1 Median openings shall not be spaced closer than 2 km. Additional controlled openings shall also be provided for inspection, and diversion of traffic during repair and rehabilitation.”

6. Bare perusal of this clause show that the contention raised by petitioner and the submission advanced by learned Counsel for petitioner are on a mis reading of the provision. Firstly this is part of a manual, as such it cannot be said that petitioner can take support from the manual as if it is a statute book. Secondly provision 2.14.1 speaks about a distance between

median openings as such we unable to accept the submission of learned Counsel for petitioner that authority viz. National Highway Authority of India is duty bound to keep median openings only at a distance of 300 meters. Once this fact situation is admitted, then the insistence of petitioner on a submission that the median opening was at the instance of villagers and it was an illegal median opening and also in breach of provisions of manual cannot be accepted. Another feature is petitioner's final selection was subject to Land Evaluation Committee's visit to location offered by petitioner. There is no dispute that petitioner was informed about Land Evaluation Committee's visit on scheduled date and Land Evaluation Committee on visiting location found that the location offered by petitioner was not as per the norms of Corporation. Accordingly petitioner was informed and his application was rejected.

7. We find no illegality or arbitrariness in decision of Respondent No.2 – Corporation. The decision of Corporation is based on Land Evaluation Committee's report and as per the norms prescribed by Corporation. Considering this aspect of the matter, we are of the opinion that petition is devoid of merits and deserves to be dismissed and same is accordingly dismissed.

(R.G. AVACHAT, J.)

(P.B. VARALE, J.)

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