

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

WRIT PETITION No. 6711 of 2019

Vimal W/o Vijay Gatole,
age 24 years occupation household and Agri.
R/o at P.O. Bawne Pangri Tal. Badnapur Dist. Jalna
...**Petitioner**

VERSUS

1. The Union OF India
through its Secretary,
Ministry of Petroleum and Natural Gas,
Shastri Bhavban, New Delhi – 110001
2. The Chairman,
Bharat Petroleum Corporation Limited,
Bharat Bhavan 4 & 6 Currim Bhoy road,
Ballard Estate, Mumbai 400001
3. The Territory Manager,
Bharat Petroleum Corporation Limited
having office at Akolner Tal. and Dist. Ahmednagar
...**Respondents**

Mr. G.N. Kulkarni, Advocate for petitioner
Mr. S.B. Deshpande, Standing Counsel for respondent No.1
Mr. A.P. Bhandari, Advocate for respondents No.2 & 3

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. The present petition challenges the communication dated 14/05/2019 issued by respondent No.3 rejecting the application of the petitioner submitted for grant of retail outlet/dealership at Jalna-Rajur-Bhokardan road from village Pir Pimpalgaon to village Bawne Pangri Tal. Bhokardan Dist. Jalna from O.B.C. category.

3. The following position is undisputed between the parties, in the light of the averments in the petition and the reply-in-affidavit filed by respondents No.2 & 3 on 22/07/2019:

(I) Respondent No.3 had published an advertisement on 25/11/2018 in local newspapers, inviting applications for grant of retail outlet/dealership at various places, of which the one stated in para supra, was one.

(ii) The application was to be made online upto 26/12/2018, which was so made by the petitioner on 23/12/2018, which having been found to be in order, was accepted, and consequently, she was declared to be selected for establishment of the dealership, which was subject to verification of the documents.

(iii) The petitioner was called upon to deposit requisite amount as per guidelines and accordingly she has deposited an amount of Rs. 40,000/-.

- (iv) The petitioner, however, received the communication dated 14/05/2019, whereby she was communicated that her candidature had not been found to be eligible for R.O. dealership on the basis of the documents submitted by her.

It is this communication dated 14/05/2019, which is impugned in this writ petition on the grounds that the rejection was contrary to the principles of natural justice; the communication dated 14/05/2019 did not disclose the reason for rejection. The learned Counsel for the petitioner further states that the petitioner at the time of filling the online application form was accompanied by her brother, who was also uneducated and upon information being elicited for filling the online form, his PAN No. came to be inserted in place of PAN No. of the petitioner. It is contended that this was unintentional and was by way of a pure mistake. It is further contended that this was a curable defect, as contemplated by note 4 as contained in clause (4) of the brochure issued by respondent No.3, which reads as under:

" The selected candidate would be given opportunity to provide the rectified/corrected documents under rectifiable deficiency within 21 days' time. If the selected candidate fails to provide the required/corrected/rectified certificates/documents, within 21 days, his/her candidature would be rejected under intimation through SMS/e-mail."

4. It is, therefore, submitted that mention of incorrect PAN No. in the application, would be a rectifiable deficiency and, therefore, the rejection of the candidature of the petitioner by the impugned order was not proper and, therefore, was liable to be quashed and set aside and respondents No.2 & 3 be directed to process the application of the petitioner further for grant of retail outlet/dealership.

5. The learned Counsel for respondents No.2 & 3 admits that the rejection of the candidature of the petitioner was only on the ground of incorrect insertion of PAN No. in her application. He has opposed the above proposition contending that the incorrect mention of the PAN No. in the application cannot be said to be a curable defect or a "rectifiable deficiency", inasmuch as it is her contention that the PAN No. of the applicant has significance in relation to the financial status of the applicant and so also, the credentials of the applicant, which are to be verified for judging the capacity to deposit requisite non-refundable deposit and other amounts, as specified in the application. He, therefore, submitted that the rejection was proper and the petition needs to be dismissed.

6. We have considered the rival contentions and we find that the brochure at Exh. 'F' in note 4 as contained in clause (4) thereof, as quoted above, permits curing of defects after selection

of the candidates, within 21 days' time, even in respect of documents, which can be rectified/corrected within the above period by the candidate. The brochure does not define the expression "rectifiable deficiency", however, when note 4 of clause (4) permits even documents to be corrected/rectified within the time as mentioned therein, there is no reason why incorrect mention of the PAN No. cannot be corrected. We, therefore, hold that the expression, "rectifiable deficiency" would mean and include the correction of the PAN No., in the present case. The expression, in absence of it being defined, in a given case, may be capable of being given an expanded meaning, however, for the purpose of the present petition, it covers the defect sought to be rectified. The contention of the learned Counsel for respondents No.2 & 3 that the PAN No. of the applicant has a significance for judging the financial capacity of a candidate, may be worthy of consideration, however, that alone cannot be a criteria of the financial well being of a candidate, as it is permissible for a candidate to raise money by all legal means possible for the purpose of establishing the R.O. outlet/dealership. In fact, it is material to state here that consequent to the selection of the petitioner, she has on 6/02/2019 deposited an amount of Rs. 40,000/- with the B.P.C.L. on account of initial security deposit (ISD) for selection of R.O. dealership, which position is not disputed by respondents No. 2 &

3. That apart, alongwith the application, an affidavit in Appendix-XA is required to be submitted by an applicant, which contains clause (11)(a), which being material is reproduced as under:

" 11 a) In case I am selected for RO dealership, I undertake to arrange funds required for development of desired infrastructure and facilities at the outlet allotted and the working capital for operation of the outlet as mentioned in the Advertisement for the location.

b) I am also aware that in the event of my inability to arrange the said funds, as mentioned in para (a) above, the allotment shall be withdrawn and I will have no claim/damages whatsoever against the Oil Company."

This clearly indicates that an applicant is not required to be possessed of sufficient funds before making the application for R.O. outlet/dealership and the requisite funds can be arranged later-on. Thus, the argument advanced by Mr. Bhandari, learned Counsel for respondents No.2 & 3 as to the significance of PAN No., is not acceptable and cannot be a ground for rejecting the candidature of the petitioner.

7. The plea of absence of hearing before issuance of the impugned letter dated 14/05/2019 is fallacious for the reason that, what are being considered are only the documents as

submitted by the petitioner, and not otherwise. If the documents do not fill in the required parameters then there is no question of any hearing as the requirements/criteria/parameters are already set forth beforehand and the petitioner/applicant is fully aware of the nature of documents to be submitted. Verification of documents vis-a-vis the set parameters is normal/general/routine exercise and no issue of any hearing arises before or consequent upon such verification, so as to permit raising a plea of violation of principles of natural justice. This Court in the case of ***Seema Raju Pol Vs. B.P.C.L. - 2016(3) Mh.L.J, 471***, relied upon by the learned Counsel for the petitioner, has not set aside the impugned action of the respondents therein, on this ground and, therefore, the same is not applicable in support of the plea of violation of principles of natural justice, on the facts of the present matter.

8. Mr. Bhandari, learned Counsel for respondents No.2 & 3, has also made a statement at the bar that respondents No.2 & 3 have held a draw of plots on 10/09/2019, in which some person has been selected, in the light of which the present petition cannot be entertained. The argument needs to be rejected for the reason that respondents No.2 & 3 were already aware that the matter is sub-judice before this Court and ought not to have acted in a manner so as to prejudice the proceedings

before this Court. This being the position, anything done by respondents No.2 & 3 would naturally be subject to the result of the present petition and no right can be said to have been created in any third person contrary to what is being decided herein.

9. In the result, the petition succeeds. The impugned communication dated 14/05/2019 at annexure 'E' to the writ petition is hereby quashed and set aside and respondents No. 2 & 3 are directed to process the selected candidature of the petitioner further by permitting the petitioner to cure the defect in the PAN No.

10. Rule is, therefore, made absolute in the above terms.

11. Needless to mention that in view of disposal of the writ petition, civil applications No. 9598/2019 does not survive.

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

Madkar