

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

WRIT PETITION NO. 7608 OF 2018

Vanita w/o Pravin Gaikwad ... **Petitioner**
Age 40 years, Occu: Agriculture,
R/o: Kalpana Nagar, Moha Road,
Taluka: Kallamb Dist.Osmanabad

VERSUS

1. Union of India
Through ministry of Oil &
Natural Gas, New Dalhi
2. Hindustan Petroleum Corporation ... **Respondents**
Limited, 17-Jamshedji Tata Road,
Church Gate, Mumbai-400 020
3. Regional Manager,
HPCL, Solapur Regional Office,
Near Pakani Railway Station,
Pakani, Solapur 413 242
4. Jyoti w/o Balasaheb Gaikwad,
Age: Major, Occu: Housewife
R/o Kalpana Nagar, Moha Road,
Kallamb, Taluka: Kallamb
Dist. Osmanabad.

Mr.V.D. Salunke, ADvocate, i/by, Mr.R.D. Raut, Advocate
for the petitioner

Mr. D.G. Nagode, Advocate for respondent No.1

Smt.Anjali (Bajpai) Dube, Advocate for respondents 2&3.

Mr. P. K. Deshmukh, Advocate for respondent No.4

**CORAM : S. V. GANGAPURWALA &
 A. M. DHAVALA, JJ.**

RESERVED ON : 2nd May, 2019

PRONOUNCED ON : 7th June, 2019

JUDGMENT (Per A. M. Dhavale, J.):

1. Rule. Rule made returnable forthwith. With the

consent of the parties, the petition is taken up for final hearing.

2. The petitioner who is unsuccessful bidder in tender issued for retail petrol outlet by Hindustan Petroleum Ltd. (Respondent Nos. 2 and 3), assails order dated 16.06.2019, issued by respondent No.2 selecting respondent No.4 Jyoti Balasaheb Gaikwad.

3. Respondent No.2, on 26.10.2014, published advertisement calling applications for the retail outlet at Kallamb, District Osmanabad, reserved for S.C. category. Petitioner Vanita Pravin Gaikwad also submitted application for the retail outlet and she was declared qualified by letter dated 09.06.2016. However, on draw of lots held on 16.06.2016, respondent No.4 was declared as selected. The petitioner challenges selection of respondent No.4 on following grounds:

- i. Land offered by respondent No.4 belongs to Suman Gaikwad, mother-in-law of respondent No.4 and not to respondent No.4.
- ii. Land offered by respondent No.4 was the subject matter of Civil dispute being RCS No.766/2012 and

RCS.No.215/2016 pending in Kallamb Court. This fact was suppressed by respondent No.4.

iii. There was high tension electrical wire passing over the land offered.

4. On 28.06.2010, the petitioner made a complaint to the Grievance Committee. She also filed Writ Petition No. 10997/2016. On 16.08.2017, the complaint of the petitioner was rejected without giving her opportunity of hearing. The petitioner amended the writ petition to challenge the said order. There was interim order in her favour. The High Court allowed the writ petition and set aside the order of the Grievance Committee by order dated 08.12.2017 and remanded the matter.

5. The petitioner made representation before the Grievance Committee that title of Sumanbai, mother-in-law of respondent No.4, cannot pass to respondent no.4, by mutation entry only without executing a registered document. The mutation effected was illegal. Therefore, respondent No.4 was not having title to the land offered by her. Besides, respondent No.4 claimed that she was owner of 24R land but in RCS No.766/2012,

it was shown that she was in possession of 22 R land. The application for allotment of retail outlet submitted by respondent No.4 contains false information and therefore it should have been rejected. But the complaint filed by the petitioner came to be rejected. Meanwhile, one Neelawati Bhaskar Gaikwad had challenged the Mutation Entry in favour of respondent No.4 but the said suit was also dismissed. Decision of the Grievance Committee dated 18.04.2018 was communicated to the petitioner on 08.06.2018 and thereafter, on 08.07.2018 this writ petition is filed. The petitioner has prayed for rejection of the application of respondent No.4 for retail outlet and for direction to respondent No.2 to consider and accept the application of the petitioner.

6. Respondent No.4, the main contesting respondent, filed her affidavit dated 22.10.2018. She contended that RCS No.69/2010 filed against her and Sumanbai was withdrawn by the plaintiff Neelawati on 01.10.2010. Neelawati again filed RCS No.766/2012. The earlier suit was withdrawn without liberty to file fresh suit. On 17.07.2017, RCS No.766/2012 was dismissed in default as the said suit was not maintainable.

No high tension wire was passing over the land of respondent No.4. Certificate to that effect is issued by the MSEDCL. It is contended that the said property was joint family property of Sumanbai and she had transferred a share to respondent No.4 as a member of family. Such transfer requires no registration. Mutation of 2006 is legal and proper. The difference in area of land is also not relevant and significant and it has been explained. Respondent No.2 had properly verified the title of respondent No.4 and after getting convinced, had accepted the application of respondent No.4 for allotment of retail outlet. Respondent No.2 has acted after taking legal advice from enpanelled Advocates. Application of Respondent No.4 was proper and as per the guidelines dated 16.06.2016.

7. On rejection of complaint of the petitioner by the Grievance Committee, respondent No.4 sent Demand Draft of Rs.5 lakhs as security amount on 06.07.2018. and respondent No.2 requested the Collector, Osmanabad for giving NOC for storage of petroleum product of respondent No.4. MSEDCL Osmanabad has also issued no objection certificate on 29.08.2018. There was no

dispute about ownership of respondent No.4 to the land and hence the petition is devoid of substance.

8. Mr. B. Ravinder, Chief Regional Manager filed affidavit on behalf of Respondent No.2 Hindustan Petroleum on 30.08.2018. He contended that respondent No.2 had issued brochure for selection of new retail outlet dealership. It was approved by the Ministry of Petroleum and Natural Gas. The guidelines thereunder have been scrupulously followed. Respondent No.2 claimed that selection of respondent No.4 was an administrative action taken by respondent No.2 under the guidance of expert members. The petition involves disputed question of facts and therefore it is not maintainable. The Committee had issued letters to Tahsildar and DSLR seeking material documents and convinced that respondent no.4- Jyoti was the absolute owner of the land offered. Measurement map received from the DSLR was verified. Besides, RCS No.69/2010 was already withdrawn. There was mutation entry showing transfer of 24 R land in favour of respondent No.4. The petitioner was given due hearing by the Grievance Committee and thereafter orders came to be passed. Hence, the petition is devoid of merits.

9. Shri V.D. Salunke, the learned Advocate for the petitioner argued that it is mandatory for the applicant seeking retail outlet to fulfill all conditions as per the brochure. Respondent No.4 was not owner of the land offered. The land was belonging to her mother-in-law. Transfer effected by the mother-in-law was not a transfer in the eyes of law. The learned counsel relied on the judgment of the Apex Court in the case of Bharat Petroleum Corporation Ltd. Vs. Swapnil Singh in SLP Nos.15953-15954/2014 decided on 08.09.2015 and the Judgment of this Court in case of Leenatai w/o Manohar Idekar Vs. The Union of India in Writ Petition No. 1542/2017 to which one of us (A.M.Dhavale, J.) was a party. The learned Counsel also argued that there is suppression of material facts by respondent No.4 and Respondent No.2 could not have ignored the same. The land was not free from dispute and the suits were pending.

10. Per contra, Mrs. Anjaly Dube (Bajpai), learned Advocate for respondent Nos. 2 and 3 argued that respondent Nos. 2 and 3 have followed the guidelines and the procedure prescribed under the brochure. They have taken legal advice and have considered the

documents. The Grievance Committee has rightly rejected the complaint of the petitioner and no interference is called for.

11. Mr. P. K. Deshmukh, the learned Advocate for respondent No.4 argued that as held by the Apex Court in the case of **Digambar Adhar Patil Vs. Devram Girdhar Patil (Died)**, reported in AIR 1995 SC 1728, even family arrangement is enough to effectuate partition and no registered deed is required. Learned counsel relied on the amended guidelines showing that the land belonging to parents-in-law can be also offered and even if it is held that the land was belonging to mother-in-law of respondent No.4, there would be no technical problem. The learned counsel relied on the certificate issued by MSEDCL to submit that there was no high tension wire going over the land offered by respondent No.4. The petitioner, being unsuccessful candidate, has raised false pleas. In spite of due opportunity of hearing given to the petitioner, she falsely claimed that no opportunity was given to her by the Grievance Committee. Therefore, the petition deserves to be dismissed.

12. We have carefully considered the submissions

advanced and the rulings cited before us.

13. We find that there is no substance in the ground that there was high tension wire going over the land offered by respondent No.4. Certificate to the effect that there was such wire passing over the land offered has been issued by the Executive Engineer, MSEDCL dated 29.09.2018.

14. As far as pendency of the suits are concerned, RCS No.69/2010 was filed by Neelawati raising dispute about the land offered but the same was withdrawn before respondent No.4 had made application. Thereafter, Neelawati again filed RCS No.766/2012 and respondent No.4 also filed her written statement. The said suit was very much pending.(No record of R.C.S. No.715/2016 is produced before us). Whether it is false, frivolous or not tenable can be considered by the Court but it was bounden duty of respondent No.4 to disclose about the pendency of the suit. The same was not disclosed in the application. The Grievance Committee has not considered the objection about the pendency of RCS No.766/2012 and suppression of the said material fact by the respondent No.4. It is not a case that pendency was communicated and respondent No.2, inspite

of such penency of litigation, decided that prima facie respondent No.4 was the owner and in possession of the land and there was no hitch in considering respondent No.4's claim for allotment of retail outlet. The letter dated 09.07.2018 addressed by respondent No.2 to respondent No.4 clearly shows that suppression of material facts would result in cancellation of the allotment of retail outlet. With reference to suppression of material facts, Clause 21 under the Brochure reads as follows:

21. FALSE INFORMATION:

If any statement made in the application or in the document enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any state is found to have been suppressed/misrepresented /incorrect or false, then the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as a dealer, the dealership is liable to be terminated. In such cases, the candidate/dealer shall have no claim whatsoever against the respective Oil Company.

15. Apart from the above ground, we find that there is substance in the material ground argued by the learned Advocate for the petitioner that respondent

No.4 was not owner of the land offered. It must be mentioned that the application was submitted by respondent No.4 in the year 2014 and the rules prevailing at the time of filing of the application were subsequently amended in 2016. The respondent No.4 cannot take shelter of the rules subsequently amended in April, 2016, which permits offer of plot/land belonging to parents-in-law. As per brochure of July, 2014, respondent No.4 could not have offered the plot owned by her mother-in-law. Relevant rules reads thus:

4(vi): Land (Applicable to all categories:

The applicants would be classified into two groups as mentioned below based on the land offered by them in the application form:

Group 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership/longterm lease for a period of minimum 30 years.

Group 2: Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of 30 years.

The other conditions with respect of offering of land is as under:

(a)The land should be available with the applicant as on the date of affidavit and should have minimum lease of 30 years from the date or after the date of advertisement but not later than the date of affidavit.

(b) If the offered land is on long term lease, then the lease agreement should have a provision to sub-lease the land wherever the locations are advertised under the Corpus Fund Scheme,. Other Corporation owned sites (A/CC sites) and Company Leased sites.

(c)..

(d) The land owned by the family members (the family will comprise of the "Family Unit" as defined in Multiple dealership norm under clause 10 "Disqualification") will also be considered as belonging to the applicant subject to producing the consent letter in the form of affidavit (Appendix-VA) from the concerned member(s) of the "family unit".

(Group 1 and Group 2 are not applicable).

As defined in the brochure, "Own" means having ownership by way of Registered Sale deed, Registered gift Deed etc., or title of the property or registered long lease (as per individual OMC norms) in the name of applicant /Family Unit as defined in multiple dealership norm under Clause 10(Disqualification).

"Family unit" has been defined as under:

"Family Unit" in the case of married applicant, shall consist of individual concerned, his/her Spouse and unmarried son(s)/Daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In the case of divorcee, "Family Unit" shall consist of individual concerned, unmarried son(s) unmarried ' daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

16. From the above provisions it is crystal clear that as on the date of filing of the application, mother-in-law was not included in the family unit of the applicant.

17. Learned Advocate Mr. P. K. Deshmukh submitted that the land was belonging to joint family and mother-in-law of the applicant has transferred the said land in favour of her daughter-in-law by way of allotment of her share. The learned counsel submitted that even family arrangement is recognized for mutation entry between the coparceners and to confer right to a separate share and enjoyment thereof.

18. In the present case, admittedly, the land offered belonged to Sumanbai who was mother-in-law of respondent No.4. Sumanbai has transferred the land in favour of respondent No.4. Consent letter dated 04.04.2006 executed by Sumanbai was submitted before the revenue authority. It does not even remotely suggest a case of partition of joint family property or the family arrangement. No names of coparceners are shown. No share is given to husband of respondent No.4. No shares are shown. The letter shows that she was unable to attend the Government offices in connection with the land and therefore, she transferred the land in favour of her daughter in-law (Respondent No.4). The said letter, by no stretch of imagination, can be accepted as a document of

partition. There was absolutely no document to show that land was belonging to joint family. The revenue authorities erred in relying on such illegal transfer and effecting mutation entry in favour of respondent No.4.

19. In case of Digambar Adhar Patil's case(Supra), issue was regarding ceiling limit with respect to the land held by the owner or the tenant. There was a case of partition between the petitioner therein and his brother. The land of the petitioner as well as his son was within ceiling limit of 43 acres. The land was cultivated by the petitioner. The tribunal held that there was no document of partition. In this context, it was held that the entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the respondent and his brother to prove the factum of partition. Thus, the mutation entry even of a family arrangement is corroborative evidence to oral evidence of partition between coparceners which confers right to a separate share and enjoyment thereof. In the present case, however, there was no case of partition. The consent letter given by the

mother-in-law of respondent No.4 to the revenue authority do not show that the land was belonging to the joint family and there was oral partition between all the shareholders. The facts suggest that there was litigation in respect of the said properties against the mother-in-law for specific performance of contract and in order to overcome the same, the land was transferred by her to respondent No.4. Even if the contents of the consent letter are read as it is, there was no partition and allotment of share. Respondent No.4, on the date of application, was not the owner of the property nor the land was belonging to any member of the family as contemplated in the Rules under the Brochure of 2014 which were applicable to the facts of the case. Thus, respondent No.2 as well as the Grievance Committee erred in qualifying respondent No.4 for allotment of retail outlet, contrary to the terms and conditions in the brochure.

20. Learned Advocate Mr. V.D.Salunke rightly relied on the judgment of the Apex Court in the Case of Bharat Petroleum Corporation Ltd. & ors Vs. Swpnil Singh (Supra) to contend that it was absolutely clear that applicant must be the owner of the specified

area or land or must have a registered lease deed of the specified area of land on the date of application. In that case, it was held that subsequent execution of lease deed will not cure the defect and respondent was not eligible in terms of brochure and the application form.

21. In the case of Leenatai Manohar Idekar Vs. The Union of India and other (supra), applicant had relied on the letter executed by the owner authorizing applicant therein to utilize the said land but there was no registered sale deed. The deed was executed after the last date prescribed for submission of the application. Relying on the Apex Court Judgment in the Case of Swapnil Singh (supra), this Court held that the petitioner therein was not eligible on the date of application.

22. Though respondent No.2 claimed that it is an administrative order and there are no malafides, the settled rule is that the administrative orders also should not be violative of principles of equality under Article 14 of the Constitution of India. Administrative order should not be arbitrary and it should be in accordance with terms and conditions laid down for the

same. In this regard, we rely on the decision of the Apex Court in the case of Gohil Vishvraj Hanubhai & others Vs. state of Gujarat & others, in civil Appeal Nos. 5680-83 of 2017 decided on 28th April, 2017, wherein it is observed that:

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

67. But where an administration action is challenged as arbitrary under Article 14 on the basis of E.P. Royappa Vs. State of T.N., (1974) 4 SCC 3, (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury Test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary.

23. In the light of above, the impugned order of

selection of respondent No.4 by respondent no.2 for allotment of retail outlet and rejection of complaint of the petitioner by the Grievance Committee are not tenable and deserves to be set aside. However, merely because the respondent No.4 is disqualified, the petitioner has no right to get the allotment in her favour. Therefore the petition is partly allowed.

24. The order of selection of Respondent No.4 by respondent No.2 for allotment of retail outlet is quashed and set aside.

25. There will be fresh advertisement and fresh process for allotment of the retail outlet.

26. Rule is made absolute in the above terms.

27. Writ petition is accordingly disposed of. No costs.

(A. M. DHAVAL, J.)

(S. V. GANGAPURWALA, J.)

JPC