

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

WRIT PETITION NO. 7889 OF 2016

Gangadhar Manjitrao Sultane

..PETITIONER

VERSUS

The Union of India and Others

..RESPONDENTS

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Mr. D.P. Palodkar, Advocate for petitioner

Mr. S.B. Deshpande, A.S.G.I. for respondent nos. 1 and 5

Mrs. Anjali Dube-Bajpai, Advocate for respondent no.2

Mr. S.R. Pande, Advocate for respondent no.3

Mrs. G.L. Deshpande, A.G.P. for respondent no.4

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CORAM : PRASANNA B. VARALE AND

R.G. AVACHAT, JJ.

DATED : 22nd JULY, 2019

PER COURT :

Heard Mr. Palodkar, learned Counsel for petitioner, learned A.S.G.I. for Respondent Nos.1 and 5, Mrs. Anjali Dube-Bajpai, learned Counsel for Respondent No.2 – Hindustan Petroleum Corporation Ltd. (hereinafter referred to as “the Corporation” for the sake of brevity), Mr. Pande, learned Counsel for Respondent No.3 - Marathwada Board of Technical Education (hereinafter referred to as “the Institute” for the sake of brevity), learned A.G.P. for Respondent No.4.

2. Petitioner is before this Court raising challenge to order dated 27th March, 2015, whereby Respondent No.2 – Corporation has rejected the claim

submitted by petitioner by an application, for awarding Retail Outlet Dealership.

3. Mr. Palodkar, learned Counsel submits that Respondent No.2 – Corporation issued an advertisement in the newspaper on 26th October, 2014 calling upon the interested parties for awarding retail outlets for its petroleum products at various places in the State of Maharashtra. Petitioner was possessing necessary infrastructure and desires to get such retail outlet for location at Sr. No.551 from open category. Said location is situate within 2 kms. from Andheri bus stop towards Sillod on Andheri – Sillod road, Dist. Aurangabad. Learned Counsel further submits that by providing all necessary information in the proforma application along with the requisite processing fees, the application was submitted by petitioner. Petitioner was hopeful of a positive decision in his favour. Learned Counsel then submits that the application of petitioner was rejected on the sole ground that petitioner does not have required educational qualification. By inviting our attention to a copy of the application submitted by petitioner to the Senior Regional Manager on 07th April, 2015, learned Counsel for petitioner submits that petitioner is holding certificate of one year's Diploma in Mechanical Engineering from Respondent No.3 - Institute. He submits that said Institute is having Registration No. F/1290 and is a recognised board under the Government of Maharashtra. Learned Counsel,

thus, submits that petitioner is fulfilling the requisite educational qualification criteria.

4. As there was no response to the application, petitioner approached the Senior Regional Manager of Respondent No.3 – Corporation under Right to Information Act. By a communication dated 19th February, 2016, it was informed to petitioner that during verification of the documents with the original documents, it was found that the certificate of Diploma in Engineering furnished by petitioner was for one year only. It was also informed to petitioner that his educational qualification is not in conformity with the requirements of the Retail Outlet Dealership Guildelines and petitioner can avail remedy of an appeal, if he desires.

5. Petitioner again submitted a representation to the Senior Regional Manager on 01st April, 2016. A copy of the same is placed on record at Exh. “G”. The submission in the representation is that Respondent No.3 – Institution is affiliated to one Global Open University, Nagaland. As such, the diploma awarded to petitioner is in conformity with prerequisites in respect of academic qualifications. As such, petitioner be issued letter of intent so as to serve Respondent No.2 – Corporation. As the representation was pending consideration for a considerable period, petitioner left with no choice but to approach this Court challenging letter dated 27th March, 2015.

6. In support of his submissions that petitioner is duly qualified person, Mr. Palodkar invited our attention to the documents placed on record at page 98 under the caption Global Open University, Nagaland, Certificate of Academic Authorisation and Certificate of Registration. The Certificate of Registration is under the caption of Elite Certifications Pvt. Ltd. and the certificate states Respondent No.3 – Institute has been assessed by Elite Certifications Pvt. Ltd. and has been found to operate as a quality management system confirming to Standard ISO 9001:2008. Then it refers to two dates i.e. date of issue and date of expiry. Mr. Palodkar also relied on other document carrying the caption TGOU – Dr. Zakir Husain National Community College. This is a communication addressed to Secretary of Respondent No.3 – Institute and the signatory to the document is one Mr. Uttam Kumar Singh claiming himself to be Pro-Chancellor. Thus, on placing heavy reliance on these documents, Mr. Palodkar made an attempt to place before us communication dated 27th March, 2015 is unsustainable as the claim of petitioner be considered for allotment of retail outlet.

7. Per contra, Smt. Dube, learned Counsel for Respondent No. 2 - Corporation vehemently opposed the claim of petitioner by referring the affidavit-in-reply filed on behalf of Mr. George Thomas working as Deputy Manager, Hindustan Petroleum Corporation Ltd., Aurangabad.

8. Mr. Pande, learned Counsel for Respondent No.3 – Institute sought time for filing affidavit-in-reply considering the sequence of events viz. notice is issued by this Court on 25th July, 2016, on 30th August, 2018 notice was re-issued to Respondent No.3 and as no reply is filed till 21st June, 2019, this Court was pleased to pass the order of posting the petition on the next date. Further it was made clear that in view of order dated 30th August, 2018 passed by this Court, parties are put on notice that if it is convenient for this Court, petition will be heard finally at the admission stage itself. Thus we are of the opinion that inspite of sufficient opportunities granted to Respondent No.3, Respondent No.3 for one or the other reason failed to file reply to petition and no purpose would be served by granting time to Respondent No.3, except delaying petition. With this backdrop, we have taken up the petition for final disposal with consent of parties.

9. The submission of Mr. Palodkar was that petitioner is possessing requisite qualification and certificate of diploma in engineering awarded by Respondent No.3 – Institute is in consonance with satisfying the requisite criteria under the rules of Respondent No.2 – Corporation. As the controversy revolving around this particular eligibility criteria, it would be necessary for us to refer to the said criteria and the same is referred to in affidavit-in-reply filed on behalf of Respondent No.2. The same statement to the effect in affidavit-in-reply reads thus :-

For Regular Ros: Have minimum any one of the following educational qualification awarded by any of the universities incorporated by an Act of the Central or State Legislature in India or any other educational institution established by an Act of Parliament or declared to be deemed as a University under UGC Act 1956, or possess an equivalent qualification recognized by the Ministry of HRD, Govt. of India.

- * *Graduation in any field.*
- * *Chartered Accountant*
- * *Company Secretary.*
- * *Cost Accountant*
- * *Diploma in Engineering*

10. It is more than clear from perusal of rule that the educational qualification i.e. either the certificate or diploma is to be awarded by (i) university incorporated by an Act of Central or State Legislature in India, (ii) educational institution established by Act of Parliament, (iii) the institute declared to be deemed as university under UGC Act of 1965 or (iv) recognized by Ministry of Human Resources Department, Government of India. In the present case admittedly Respondent No.3 – Institute is not the deemed university nor its qualification is recognized by Ministry of Human Resource Department, Government of India and the submission that Respondent No.3 – Institute would fall in first category cannot be accepted for the simple reason that the document placed on record nowhere show that this Respondent No.3 – Institute itself is affiliated to any of the university recognized or incorporated by an Act of Central or State Legislature. The documents placed

on record show that the broacher published by Respondent No.3 – Institute states that it is affiliated to (i) approved by Human Resource Department, Delhi, (ii) approved by Public Health Department, Mumbai, (iii) approved by TGOU & ZHNCC recognized by UGC Ministry of Human Resource Department, Government of India.

11. The documents on which Mr. Palodkar, learned Counsel placed reliance at page no.98 is a certificate issued to Respondent No.3 under the caption Certificate with Academic Authorisation and this is a certificate issued by Dr. Zakir Hussain National Community College. Nothing is placed on record to show that whether Respondent No.3 – Institute itself independently was affiliated to any statutory university. Mr. Palodkar also made an attempt to place reliance on a communication placed on record at page no. 104. This is a communication to one Ms. Priyanka Pahwa, Patiala issued through Deputy Educational Advisor (DL) CPIO. Queries under Right to Information Act were put to the Ministry of Human Resources Department, Department of Higher Education are :-

(i) whether Global Open University, Nagaland has a right to offer Diplomas, Bachelor, Master and Doctorate Degree through the online mode;

(ii) what will be status and validity of the Degree/Diplomas Certificates awarded by the Global Open University, Nagaland to students after completion of these courses.

The replies to these questions are as :-

(i) the Global Open University, Nagaland has been established by an Act of State Legislature and is empowered to award degrees as specific of under Section 22 of the UGC Act, 1956;

(ii) the Global Open University, Nagaland has been established by any Act of State Legislature and is empowered to award degrees as specific under Section 22 of the UGC Act, 1956.

12. What emerges from these documents is only recognition to degrees and diplomas awarded by the very university i.e. the Global Open University, Nagaland. It is not the case that petitioner was a student of such Global Open University, Nagaland and has obtained either degree or diploma certificate from this university i.e. Global Open University, Nagaland. The case of petitioner is that he was admitted in Respondent No.3 – Institute, which is affiliated to Global Open University, Nagaland. Now in the broacher published by Respondent No.3 nowhere makes a statement that it is affiliated to this university. It only states that it is approved by Human Resources Department, Delhi, Public Health Department, Mumbai and makes a reference of approval of some colleges at this stage to be affiliated to this Global Open University, Nagaland. Though Mr. Palodkar made an attempt to heavily rely on these documents of certificate of academic authorisation and certificate of registration, in our opinion, these documents are of no consequence, least to

support the claim of petitioner. The certificate issued by one Elite Certification Pvt. Ltd. nowhere states that from which source this company received authorization to assess education institution and award the certificate standard as ISO 9001. The certificate of registration issued by this Elite Certification Pvt. Ltd. refers two dates i.e. date of issue and date of expiry. Even assuming this certificate means for some sequence or purposes for maintenance of management standards by itself, this certificate would not permit us to accept the submission of petitioner that Respondent No.3 – Institute was affiliated to Global Open University, Nagaland and as such petitioner is possessing the requisite qualification or eligibility criteria under point no. 4(iv)(b) of the guidelines.

13. In the affidavit-in-reply filed on behalf of Respondent No.2 – Corporation, an additional ground is raised and it is stated that the certificate course completed by petitioner was of only one year, whereas the equivalent diploma course is of three years. It may not be necessary for us to deal with this ground as we could not find any material to satisfy ourselves that petitioner was a student of diploma course of such an institute which is either affiliated to an university incorporated by an Act of Central or State Legislature or an admitted institute established by an Act of Parliament or a deemed university under UGC Act. It is possible that petitioner sought admission from Respondent No.3 – Institute under an impression created by

Respondent No.3 – Institute and petitioner was made to believe and then subsequently this misrepresentation of facts put petitioner in some sufferance or prejudice. Petitioner may approach the competent authorities for redressal of his grievance of that nature. Certainly that grievance is not before us for consideration in the present petition.

14. Considering these facts, we are of the opinion that petition is devoid of merits. In our opinion no error is committed by Respondent No.2 – Corporation. Petition, thus meritless, deserves to be dismissed and same is accordingly dismissed.

(R.G. AVACHAT, J.)

SSD

(PRASANNA B. VARALE, J.)