

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11166 OF 2019

Piyush Janrao Meshram

Age : 35 years, occ : nil

Tirupati Supreme Enclave,

L-3, L Wing, Jalan Nagar,

Aurangabad.

Petitioner

Versus

Bharat Petroleum Corp. Ltd.

Through its Head of Territory Office,

Bharat Petroleum Corp. Ltd.,

T.M. Retail, BPCL, At Post

Akolner, Taluka Ahmednagar.

Respondent

...

Mr. Chetan T. Jadhav, Advocate for the petitioner.

Mr. A.P.Bhandari, Advocate for the respondent.

...

**CORAM : PRASANNA B. VARALE &
AVINASH .G. GHAROTE, JJ.**

DATE : 9 September 2019.

ORAL ORDER :

1. The petition is heard for final disposal at the stage of admission with the consent of learned Counsel appearing for the respective party.

2. The petitioner challenges communication dated 30.08.2019 whereby the petitioner is informed that the documents

submitted by the petitioner are not valid for considering his offer.

The submission of Mr. Jadhav, learned Counsel appearing for the petitioner is that this communication results in rejection of the candidature of the petitioner for allotment of Retail Outlet / Dealership.

3. Few facts necessary for considering the challenge in the petition are stated, in brief, as follows :

The petitioner, in response to an advertisement published in newspaper "Daily Sakal" dated 25.11.2018, inviting offers for appointing Dealership for Retail Outlet (Petrol Pump), which was for various outlets in the Districts of Mumbai, Thane, Manmad, Ahmednagar, Nagpur, Pune, Solapur and Goa, had submitted his on-line application on 24.12.2018 at 17.40 hrs. The last date for submitting on-line application was 26.12.2018. By communication dated 18.07.2019, a copy of which is placed on record at Exh-E, the petitioner was informed that he was declared as successful candidate in draw of lots conducted on 15.07.2019 for selection of RO Dealership at the subject location i.e. Murma Phata towards Beed 3 Km Strech LHS on NH52 (Dhule-Solapur Highway), District Aurangabad. Perusal of the said communication dated 18.07.2019 shows that the petitioner

was informed to remit the amount of Rs. 30,000/- as initial security deposit with set of documents within stipulated period of ten days. List of the documents to be submitted finds place in the said communication and the document relevant for our purposes to consider the petition is the document referred to at Sr. No.5 i.e. copy of land documents in support of ownership / lease rights.

4. It is the case of the petitioner that the petitioner was possessing all the requisite criteria / conditions including documents referred to at Sr. No.5 in communication dated 18.07.2019. Mr. Jadhav, learned Counsel appearing for the petitioner, by inviting our attention to the document placed on record at Exh-C, submitted that this was the required document namely "Leave and Licence Agreement" between the petitioner and Mr. Sushil R. Bafna, Partner of Mauli Food Products, dated 21.12.2018, which was registered on 24.12.2018 at 4.32 p.m. It was the further submission of Mr. Jadhav that though this document was under the caption of "Leave and Licence Agreement", it was in fact a lease-deed for all practical purposes. He invited our attention to the terms of this document and more particularly to Clause 1.1 under the caption "Grant and Demise of the said property", wherein the period referred to is 240 months

i.e. 20 years and the period is specified from 15 December 2018 to 14 December 2038. He further invited our attention to term under caption “Usage” and more particularly Clause 4.1 and claimed that it entitles the petitioner licensee to use the premises for petrol pump / retail outlet for diesel and petrol purposes and thus this document can safely be treated as “Lease Deed” though it is under the caption “Leave and Licence Agreement”.

5. Mr. Jadhav, learned Counsel for the petitioner further submitted that though the document is captioned as leave and licence, it was the intention of the parties to create a lease and thus the petitioner, as a cautionary measure, immediately undertook an exercise of preparation of a Correction Deed to the agreement of leave and licence. By inviting our attention to the document placed on record at Exh-J, which is styled as “Correction Deed”, the learned Counsel submitted that in the very first clause of the said document there is an averment that in the earlier Deed dated 24 December 2018 captioned as 'leave and licence' having Registration Serial No. 9548/2018, the Correction Deed replaced the word “Leave and Licence Agreement” by the words “Lease Deed”. This Correction Deed is dated 5 September 2019 and thus the earlier document styled as

an agreement of leave and licence no longer remained a 'leave and licence', but stood converted to a 'lease' thereby satisfying the requirement of the Brochure. Mr. Jadhav, learned Counsel appearing for the petitioner further made a submission that without giving any opportunity of hearing to the petitioner, the respondent – Petroleum Corporation rejected the claim and this submission of Mr. Jadhav is based on a Brochure placed on record at Exh-N and more particularly in view of caption “Note 3” with regard to submission of documents by selected candidates. Thus, with these submissions Mr. Jadhav, learned Counsel for the petitioner prayed for allowing the petition in terms of prayer Clauses 'A' and 'B'.

6. Mr. Bhandari, learned Counsel appearing for the respondent – Bharat Petroleum Corporation Ltd. (in short “BPCL”) vehemently submitted that the entire attempt of petitioner in approaching this Court is nothing but an afterthought attempt. Mr. Bhandari, the learned Counsel submitted that the petitioner was well aware of the requisite criteria as this aspect of criteria is dealt with in detail in the Brochure of the Company and the petitioner himself has placed on record copy of the said Brochure. Mr. Bhandari invited our

attention to the eligibility criteria for individual applicants referred to in the Brochure and also to the specific caption Sub Clause (v) “Land (applicable to all categories)”. Mr. Bhandari submitted that the criteria as referred to in the Brochure in Sub Clauses (a) & (b) of Clause (v) makes it clear that the requirement is of a “Lease Agreement” and not any other document, as tried to be submitted by the petitioner and that the purpose of postulating a long term lease of not less than 19 years, was in view of the extensive construction being required for the creation of Retail Outlet in the nature of underground storage tanks, pipelines, pumping stores, etc. and so also obtaining licences under the Petroleum Laws and various other works of a permanent and semi-permanent nature to be done for erection, establishment and running of retail outlet for dispensing petrol and allied products. Mr. Bhandari then submitted that the document submitted to the respondent – BPCL was “Leave and Licence Agreement”, which did not satisfy the requirement. Mr. Bhandari, learned Counsel appearing for the respondent – BPCL, by inviting our attention to Clause-13 of the Agreement of leave and licence submitted that bare reading of the statement in Clause-13 will make it clear that by this agreement of leave and

licence no right of tenancy is created in favour of the Licensee. It would be material for our purposes to refer Clause 13.1, which reads as under :

Cl. 13.1. No provision of these presents shall be deemed to constitute a partnership or joint venture between the Parties. No provision of these presents shall constitute either Party as the legal representative or agent of the other, nor shall either Party have the right or any kind, expenses or implied, against, or in the name of, or on behalf of the other Party. It is mutually agreed and understood by the parties that this agreement shall never be constructed as tenancy agreement and no right of tenancy is created by this agreement in faovur of the Licensee.

7. Our attention was also invited to Clause 15 of the Agreement of leave and licence, which reads as under :

Cl.15. The validity, construction and performance of these presents shall be governed and interpreted in accordance with the laws of India. It is agreed and understood by the parties that this agreement shall never be constructed as tenancy agreement and no right of tenancy is created in favour of Licensee by this agreement. Licensee has no right to obtain loan by way of mortgaging the Licensed Premises.

8. Mr. Bhandari, learned Counsel appearing for the respondent BPCL in the light of Clauses 13.1 and 15 of the leave and licence agreement as quoted above, submitted that when the petitioner himself was aware of these clauses and the fact that the agreement of leave and licence is not creating any right of

tenancy in favour of the petitioner and thus does not comply with the mandatory requirement, an attempt to rectify that mistake by subsequent document namely, the Correction Deed dated 05.09.2019 is of no consequence as the requirement of having a lease was to be complied as on 26.12.2018, the last date of filing the application. Mr. Bhandari then submitted that even assuming the Correction Deed could be considered, however, it is nowhere stated in the so called Correction Deed that the petitioner made an attempt to delete the Clauses 13 and 15 of the Agreement in relation to not creating any tenancy right.

9. We find considerable merits in the submissions of the learned Counsel appearing for the respondent BPCL.

10. The requirement to be fulfilled appears to be of having the land available with the applicant as on the date of the application on a minimum lease of 19 years and 11 months, which could have been created only by way of duly executed lease deed registered in accordance with law. The agreement of leave and licence dt. 21.12.2018 registered on 24.12.2018 or for that matter the subsequent Correction Deed dated 05.09.2019 executed nearly 8 months after the last date of the submission of the on-line application which was 26.12.2018, by no stretch of imagination

can be held to comply with the requirement to be fulfilled of having a lease for minimum 19 years and 11 months. Thus, the petitioner, in absence of a lease in his favour as on 26.12.2018, the last date of submission of the application form, was illegible as has rightly been so found by the respondent.

11. Mr. Jadhav, learned Counsel appearing for the petitioner placed reliance on Clause – 4 of the Brochure contending that it provides for rectification and the execution of the Correction Deed would be covered under it. We are unable to accept the submission of Mr. Jadhav for the simple reason that Clause-4 of the Brochure provides opportunity to the petitioner of offering some time, more precisely 21 days for curing rectifiable deficiencies. Mr. Jadhav, learned Counsel for the petitioner was unable to show any material specifying the term 'rectifiable deficiency' and by no stretch of imagination we can say that the attempt of creation of the Correction Deed, in converting document under the title “Leave and Licence Agreement” in “Lease Deed” can be treated as “rectifiable deficiency”.

12. The reliance by Mr. Jadhav, learned Counsel for the petitioner on the case of ***Seema Raju Pol Vs. Bharat Petroleum Corporation Ltd., 2016 (3) Mh.L.J.471*** is

misplaced for the reason, that this was a case in which only at one place in the application, inadvertently, it was written as “spouse” instead of “sister-in-law”. The case of ***Amit Kumar Sharma Vs. Hindustan Petroleum Corporation Ltd., 2013 CJ (Raj) 1723***, relied by learned Counsel for the petitioner, deals with violation of the principles of natural justice, which again is not the position in the present matter. As already stated, in the instant case what was required to be submitted alongwith the application was a document of title or lease, as against which an agreement of leave and licence was submitted, which did not satisfy the requirement.

13. At the cost of repetition, we reiterate that we find that the Brochure read with the application form is absolutely clear in the sense that the applicant must be the owner of the specified area of the land or must have a registered lease deed of the specified area of the land on the date of application or otherwise should be covered by the terms of the Brochure relating to rectifiable deficiency. What is shown to us is a document styled as a leave and licence which was submitted by the petitioner in support of his entitlement, which contained a clause, that it did not create any tenancy, as against the requirement of a

document of title or registered lease deed. In this view of the matter, the agreement of leave and licence or the subsequent correction deed therefore does not advance the case of the petitioner any further. Therefore, it is quite clear that the petitioner was not eligible on the date of the application i.e. on 24.12.2018. Shri Bhandari, learned Counsel for the respondent BPCL has invited our attention, to the order of the Hon'ble Apex Court, in the matter of ***Bharat Petroleum Corporation Ltd. Vs. Swapnil Singh*** decided on 05.09.2015, which is squarely applicable to the present case.

13. On the backdrop of the above facts, we are of the opinion that the petition is devoid of any merit and deserves to be dismissed.

14. The petition is accordingly dismissed.

15. Though learned Counsel for the petitioner prayed for stay to the order of this Court, considering the fact that now the process of drawing lots is scheduled tomorrow itself and as we find no merit in the petition and accordingly the petition is dismissed, the prayer for stay is rejected.