

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

902 WRIT PETITION NO.12837 OF 2019

NITIN EKNATH KSHIRSAGAR
VERSUS
THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. V. S. Undre
Advocate for Respondent No.1 : Mr. R. B. Bhosale
Advocate for Respondent Nos. 2 & 3 : Mr. A. P. Bhandari

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**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 19th DECEMBER, 2019.

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PER COURT :

1. The petitioner is before this Court challenging circular dated 23.09.2019, whereby respondent Nos. 2 and 3 expressed their regret for declaring the candidature of petitioner as 'ineligible'.

2. We may refer to certain facts in brief so as to deal with the issue raised in the petition. On an advertisement, issued by the respondent Oil Company, calling applications / proposals from the interested persons for granting retail outlet dealership at village Kamegaon, the petitioner, being an interested person, participated in the process of selection. The petitioner submitted his application with all requisite

documents. On scrutiny of the applications, the petitioner was preliminary selected in the draw of lots and was informed to remain present with respondent Nos. 2 and 3 on 19.06.2019. By communication dated 29.06.2019, the petitioner was also selected for retail outlet dealership at village Kamegaon. It is the submission of the learned counsel appearing for the petitioner that receipt to communication dated 23rd September, 2019, whereby the petitioner is informed about his ineligibility. It was also the submission of the learned counsel for the petitioner that reason assigned in the communication dated 23rd September, 2019 more particularly clause-2 of the communication could not have been applied in case of the petitioner as there was no such earlier intimation to the petitioner or a notice issued to the petitioner for declaring the eligibility on the said criteria or condition.

3. This being the limited issue, we have gone through the material placed on record on the backdrop of the submission of the learned counsel and also heard Mr. Bhandari, learned counsel for the respondent - Bharat Petroleum Corporation Ltd. Mr. Bhandari by inviting our attention to the copy of brochure placed on record and also his affidavit in reply

submitted that the petitioner cannot take this stand before this Court for the simple reason that the brochure clearly refers to the eligibility criterias. Then our attention was invited to clause-H of the title selection procedure. Clause-H bears the title as 'Land Evaluation'. It may be useful for our purposes to refer the entire clause-H.

Clause- H : Land Evaluation :

The concerned Divisional / Regional Territory Office shall inform the selected candidate through e-mail/SMS at least 10 days before the day of visit by LEC for site evaluation. In case of no response/non-availability of the selected applicant, the candidature shall be cancelled under intimation to the selected candidate through SMS/e-mail.

Evaluation of the offered land will be carried out to ascertain land being it advertised area and suitable for development of RO- meeting norms. The parameters under which land will be evaluated by Land Evaluation Committee for suitability are :-

- * Land in advertised area / stretch
- * Land dimensions as per requirement
- * Land meets NHAI norms (for sites on NH)
- * Land has no HT line (>11 KVA) crossing.

Land not meeting any of the above parameters will not be considered and will be rejected.

4. Now this clause-H point No.4 clearly refers to the evaluation of land, suitability and the per-requisite of land having no HT line (over 11 KVA crossing). This policy of Corporation is clearly reflected in clause-H. Not only the earlier part of clause-H but reiterating the policy in the closing statement of the clause-H, which reads that land not meeting any of the parameter will not be considered and will be rejected. It may not be out of place to state that clause-4 of the brochure refers to eligibility criteria for individual applicants that proprietorship / partnership and thus, the eligibility will have to be assessed on the date of submitting application to the respondent Corporation. Meaning thereby, if somebody takes stand that now after communication issued to the party expressing its eligibility, the party would be permitted to change the nature of the land and then put its claim before the Corporation for the retail outlet dealership. On this backdrop, it may be necessary for us to refer to the communication placed on record by the petitioner himself at Exhibit-G, page 117 of the petition, wherein the petitioner had requested the Energy Distribution Company to shift the KV line and expressing his willingness to bear the financial burden for shifting. This act is clearly post filing the application. The clear stand of the Bharat Petroleum

Corporation Ltd. is reflected in affidavit in reply more particularly para Nos. 4, 5, 6 and 7.

5. Considering all these facts, we are of the clear opinion that the petition is thoroughly meritless and deserves only dismissal. Accordingly, the petition is dismissed.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

vsm/-