IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13556 OF 2018

Yogeshwar Sahebrao Aher ... Petitioner

Versus

Indian Oil Corporation Limited & Ors. ... Respondents

Mr.G.R.Agrawal for the Petitioner.
Mr.Sunil Gangan a/w. Mr.Jayesh Mestry, Mr.Swapnil Shikhare I/b. GMG Law Associates for Respondent No.1.
Ms.Neha Bhide B Panel Counsel for the State.

CORAM : AKIL KURESHI &

S.J. KATHAWALLA, JJ.

DATE : 23RD JULY, 2019

P.C.:

1. The petitioner has challenged a communication dated 1st October, 2018 as at Annexure-N to the Petition, under which he was informed by the Indian Oil Corporation Limited ('**IOC**' for short) that " *We regret to inform you that your candidature has not been found to be eligible for RO Dealership as per observations by our Field Verification Committee, wherein it has been found that minimum funds requirement for eligibility, in this case Rs.12 Lakhs, was not available on the date of affidavit dated 15.11.2014, though it was available on the cut off date of application. It is imperative that the minimum fund requirement should be available on both the date*

of affidavit as well as cut off date of application."

2. Brief facts are as under :

3. The IOC required to appoint the distributors for sale of its petroleum products. A tender was therefore floated under an advertisement dated 22nd October, 2014, for such purpose inviting interested eligible candidates to apply. The petitioner applied for a distributorship in the rural area. One of the conditions of the tender was that the applicant must have sufficient finances. For rural area distributorship, the amount of fund required with the applicant was Rs.12 Lacs. Such fund can be shown in any of the multiple modes, such as in savings bank account, deposit with bank, national saving certificate and the like. One of the clauses of the tender was that such fund should be available with the applicant on the date of the affidavit.

4. The applicant had to file a necessary form supported by affidavit in prescribed proforma. The petitioner applied for the distributorship, which was supported by an affidavit dated 15th November, 2014. The petitioner declared availability of sum of Rs.13,50,755/-. This amount was broken up in two parts, a sum of Rs.2,00,755/- was shown in savings bank account and the rest was in the nature of fixed deposits in Bank of Baroda.

5. Some of the declarations that he made on affidavit was as under :

> *"a) That the funds as detailed in Clause No. 10 of the application form pertaining to finance and affidavit submitted by family members for provision of finance attached along*

> *with application form (if applicable) are available with me as on date. I also understand that the minimum fund required, as per the advertisement, should be available with me as closing balance on cut-off date for submission of application for eligibility. The original documents in support of the claim would be made available to the Corporation at the time of Field Verification.*
>
> *e) I am also aware that in case it is found at any stage, that any of the financial instruments / accounts / funds, etc. offered by me for finance is offered by any other applicant for the same location in the advertisement, then my candidature for RO dealership will be rejected and if selected then the same would be liable for cancellation."*

6. He further declared that "*17. That if any information / declaration given by me in my application or in any document submitted by me in support of application for the award of the RO dealership or in this affidavit shall be found to be untrue or incorrect or false, INDIAN OIL CORPORATION LTD. would be within its rights to withdraw the letter of intent / terminate the dealership (if already appointed) and that I would have no claim, whatsoever, against the Corporation for such withdrawal / termination."*

7. On 5th March, 2015, the IOC pointed out to the petitioner that he was not found eligible since he did not have minimum funds of Rs.12 Lacs. He was, however

given ten days' time to make representation. In response to this communication, the petitioner replied under letter dated 17th March, 2015, in which he pointed out that in addition to the funds shown by him in the affidavit, he had a fixed deposit of Rs.3 Lacs in Bank of Baroda, which he had forgotten to mention. If this is taken into account, the requirement of availability of funds of Rs.12 Lacs would be met with. The IOC conveyed its final decision to the petitioner on 1st October, 2018 holding him disqualified, upon which this Petition is filed.

7. Having heard the learned advocates for the parties and having perused the documents on record, it emerges as an undisputed position that on the date of the filing of the affidavit, the petitioner did not show the availability of funds of Rs.12 Lacs, which was mandatory condition of eligibility. In his affidavit, he declared availability of total sum of Rs.13,50,755/-. This comprises of a balance of Rs.2,00,755/- in his savings account of Bank of Baroda. However his passbook of the said account shows that he had made cash deposit of Rs.2 Lacs on 17th November, 2014. Thus, on the date of filing of the affidavit, he did not have the availability of the said sum of Rs.2 Lacs. Ignoring the same, he had shown only availability of Rs.11,50,755/-, which was clearly short of the minimum requirement of Rs.12 Lacs. The IOC was therefore justified in holding him ineligible. Contrary what was argued before us by the learned advocate for the petitioner, placing reliance on the judgment of Division Bench of this Court (Nagpur Bench) in the case of ***Khare and Tarkunde***

Infrastructure Private Limited Vs. The State of Maharashtra and Ors.[1], this is not mere technical error of oversight. In clear terms, the petitioner included the additional sum of Rs.2 Lacs in his saving bank account in a declaration that he made on 15th November, 2014 on affidavit, knowing it to be untrue. He deposited the sum of Rs.2 Lacs only after sewering in the affidavit.

8. Apart from not fulfilling the requirement of availability of the minimum funds on the date of filing of the affidavit, he had also made false declaration which as per Clause 17, would automatically disqualify him. His assertion that he had independent other source, was neither verified nor can be asked to be verified.

9. In the result, the Petition is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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1 2015 (2) ALL MR 550