

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

WRIT PETITION NO.2203 OF 2020

Nikhil s/o Dilipsing Rajput,
Age 29 years, Occu: Nil,
R/o Daulat Smruti, Nana Chowk,
near Ganpati mandir, Bazar Peth,
Pimpalner, Tq. Sakri,
Dist. Dhule.

... Petitioner

Versus

1. The Union of India,
Through Ministry of Petroleum
& Natural Gas, New Delhi.
2. General manager,
Indian Oil Corporation Ltd.,
Indian Oil Bhavan, G-9, All
Yavar Jung Marg, Bandra (East),
Mumbai - 400051.
3. Region Manager,
Indian Oil Corporation Ltd.,
Aurangabad Divisional Office.
Plot No.99, Indian Oil Bhavan,
Jyoti Nagar, Aurangabad.
4. Swapnil s/o Sambhaji Pagare,
Age Major, Occu: selected candidate,
R/o Muktai Bangla, Near Vidya Wardhini
Arts, Commerce & Science College,
Sakri Raod, Vidhya Vihar Colony, Dhule,
Maharashtra-424001.

... Respondents

...

Advocate for Petitioner : Shri Sushant C. Yeramwar
Advocate for Respondent No.1 : Shri D. G. Nagode
Advocate for Respondent Nos. 2 & 3 : Shri A. P. Bhandari
Advocate for Respondent No.4 : Shri D. S. Bagul

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**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.**

DATE : 24TH MARCH, 2021

ORAL JUDGMENT [PER RAVINDRA V. GHUGE] :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clause (B) and (C) as under :

“B) To quash and set aside letter dated 10.01.2020 and direct the respondents to grant retail outlet dealership at location No.2006 in Dhule District pursuant to advertisement dated 25.11.2018 and selection dated 27.06.2019 by issuing appropriate writ, orders or direction as the case may be.

C) To grant stay to letter dated 10.01.2020 and direct the respondents to grant retail outlet dealership at location No.2006 in Dhule District pursuant to advertisement dated 25.11.2018 and selection dated 27.06.2019 pending hearing and final disposal of the present writ petition.”

3. The petitioner is aggrieved by the communication dated 10-01-2020 addressed to him by the Head of the Divisional Office, Indian Oil Corporation, Ltd., which is respondent No.2 herein. By the impugned communication dated 10-01-2020, the petitioner was informed that his candidature has not been found to be eligible for Retail Outlet (R.O.) dealership on the basis of the documents submitted by him for the reasons as were detailed as under :

“a) Appendix III A and Appendix III B is of offer date of filing

application Eligible Certificate for the category Appendix VII A not submitted."

4. By the order dated 04-02-2020, passed by this Court, ad-interim protection was granted to the petitioner by directing that *"respondents may proceed further with the process, however, shall not issue final allotment order."* Respondent No.4 herein was the selected candidate. Owing to the interim order of this Court, though respondent No.4 was held to be eligible and was selected for grant of R.O. dealership, respondent Nos. 2 and 3, the company, have not yet issued the final order of allotment.

5. It is undisputed that, clause (4)(vi)(b) of the Brochure for the selection of the candidates for the R.O. dealership specifically provides that *"the candidates will be required to submit as and when advised by the Oil Company, a certificate issued by the competent authority notified by the Government of India and/or by the concerned State in which the location has been advertised certifying that the candidate belongs to Other Backward Classes recognized as OBC by a Resolution / Gazette Notification issued by the Government of India (Central Government/ State Government)"*

6. It is equally undisputed that the note below clause 4 of the Brochure specifically states that *"1. All certificates/ documents required for meeting Eligibility / Specific Eligibility Criteria should be*

in possession of the applicant and valid as on the date of application.”

7. It is, therefore, beyond debate that the documents which are to be supplied with the application form and which can be tendered (hard copies) within such period as may be permitted by the company, should be in possession of the applicant on the date of his application, to indicate that when he applied for the R.O. dealership, he was fulfilling the eligibility criteria as prescribed by the company.

8. It is, therefore, clear from the rules made applicable by the company that on the date of the application by an interested candidate seeking R.O. dealership, he should be in possession of all the documents required, including the caste certificate, as the cut-off date for considering eligible candidates was 22-12-2018. We have no hesitation in concluding that on 22-12-2018, candidates who possessed these documents and the caste certificate were eligible and those candidates who did not possess any of the required documents and importantly, the caste certificate, on the date of application, were obviously ineligible candidates.

9. The learned advocate for the petitioner submits, on the basis of the record, that he had received a communication dated 27-06-2019, by which he was given ten days' time for submitting

the said documents and for remitting Rs.40,000/- as a security deposit, on-line. He concedes, on the basis of the record, that the petitioner did not have Appendix III B (Advocate's letter) along with appendix III A (For offer of land), as on 22-12-2018, which was the cut-off date for entering applications for R.O. dealership by interested candidates. He frankly submits on the basis of the record that these two documents are dated 03-07-2019 and they were prepared after the petitioner received the communication dated 27-10-2019, for tendering the said documents. He also submits, on the basis of the record, that the Eligibility Certificate for OBC category was not in his possession, when he applied on 22-12-2018 and the R.O. dealership at issue, was reserved for candidates belonging to the OBC category.

10. The Company has entered an affidavit-in-reply on behalf of respondent Nos. 2 and 3 and have stated in paragraph No. 04 as under :

"04. I say that, there is no dispute regarding the following facts.

A. Advertisement dated 25-11-2018 was issued for allotment of Regular and Retail outlet in various parts of Maharashtra, including for location "From Pimpalner Post Office towards Navapur within 2 KM" from OBC category.

B. Petitioner has filed application on 22.12.2018 and he is declared to be selected for establishment of dealership. Clause No.9 of the application states that, the Advocate of the applicant has certified the land to be

belonging to Group-1.

C. The applicant has offered land owned by his father Mr. Dilipsing Rajput (page 17).

D. In the draw of lots held on 26.06.2019. The petitioner was successful and was informed of his preliminary selection, subject to compliance of norms (Page 20).

E. Petitioner submitted opinion of Advocate Mr. Dnyaneshwar Ekhande, dated 03.07.2019 (page 29) and affidavit of his father dated 03.07.2019 (page 30 to 34).

F. The petitioner has submitted caste certificate of OBC category dated 02.07.2019.

G. Candidature of the petitioner came to be cancelled by the communication dated 10.01.2020, candidature of the petitioner is rejected on the ground that, the caste certificate submitted is later than the date of advertisement and Appendix III-A and III-B are of a date after the date of filing of the application.

H. Petitioner possesses certificate of belonging to "Rajput Bhamta" (OBC) Caste. However, the same is issued on 02.07.2019 (Page 36).

I. The certificate at page 12 of petition is dated 28.08.2006. However, the same certifies that, the petitioner is belonging to Vimukta Jati and there is no certification of OBC status."

11. It is further submitted in the affidavit-in-reply in paragraph Nos. 04 (2nd paragraph with the same number) and 05 as under :

"04. I say that, as the petitioner has failed to satisfy the requirement of possessing the OBC certificate, as applicable on the date of submission of the application, the candidature of the petitioner came to be cancelled.

The petitioner has relied upon the earlier certificate dated 28.08.2006. However, said certificate is recognizing the petitioner as a person belonging to Vimukta Jati. Furthermore, subsequent certificate submitted by the petitioner is secured after submission of application.

05. I say that, Clause (4)(vi)(b) of the Brochure for selection specifically contemplates that, “the candidates will be required to submit as and when advised by the Oil Company, **a certificate issued by the competent authority notified by the Government of India and / or by the concerned State** in which the location has been advertised **certifying that the candidate belongs to Other Backward Classes recognized as OBC by a Resolution / Gazette Notification** issued by the Government of India (Central Government / State Government)”

12. In some what similar facts, in Writ Petition No.9974 of 2019 filed by Rajendra Bapurao Hande Vs. Bharat Petroleum Corporation Ltd. And Another, the learned Division Bench of this Court has noted that some of the documents, that were required as a part of the eligibility criteria on the date of entering the application by the interested candidate, were not available with the petitioner and those were prepared after the cut-off date. This Court, therefore, held that such a candidate would not be eligible. In Writ petition No. 5812 of 2019, filed by another similarly placed candidate Navnath s/o Shankar Badage Vs. Indian Oil Corporation, Ltd. and Another, the learned Division Bench of this Court delivered an order on 18-06-2019, holding the same view.

13. In view of the above, we do not find that the company has committed any error in conveying to the petitioner, vide the impugned communication dated 10-01-2020, that he was found ineligible for being considered for the grant of R.O. dealership. This petition, being devoid of merits is being dismissed. Rule is discharged.

14. The learned advocate for the petitioner submits on instructions, that this order be kept in abeyance for a period of eight weeks and the ad-interim protection granted by this Court on 04-02-2020, may be continued. The learned advocate for the company and the learned advocate for the beneficiary respondent No.4 submit that the grant of R.O. dealership is for a particular spot on a high-way and by the ad-interim order of this Court, the said dealership could not be made operational, much to the discomfort / inconvenience to the public at large. Consistently, the learned Division Bench of this Court has taken the view as has been taken by this Court in this judgment.

15. The Learned advocate for respondent No.4 submits that he is prepared to enter an affidavit in this Court and supply a copy of the same to the company at it's office at Aurangabad, within 10 days from today, declaring that in the event the petitioner approaches the Hon'ble Apex Court and in the event he secures a

favourable order thereby dis-entitling respondent No.4 for being granted the R.O. dealership, no equities would be created in his favour, if the company now grants the dealership by virtue of the dismissal of this petition and he would abide by the orders of the Hon'ble Apex Court.

16. In view of the above, we reject the request of the petitioner for continuing the ad-interim order considering that the public at large is the beneficiary of the allotment of the dealership and we clarify that respondent No.4 shall enter an affidavit as stated above, within ten days from today in this Court with a copy to the company.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)