

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

WRIT PETITION NO.3108 OF 2021

Rajendra Bahirnath Pandit

.. PETITIONER

VERSUS

The Union of India
and others

..RESPONDENTS

.....

Mr. M.S. Taur, Advocate for the petitioner
Mr. A.P. Bhandari, Advocate for respondents 2 and 3
Mr. M.V. Salunke h/f V.D. Salunke for respondents 4 & 5.

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**CORAM : DIPANKAR DATTA, CJ &
 MANGESH S. PATIL, J.**

DATE : 30/09/2021

PC. :-

1] Bharat Petroleum Corporation Limited (hereafter “the Corporation”, for short) invited applications from Scheduled Caste candidates for retail outlet distributorship at village Devgaon, Tq. Newasa on Kukana Ghodegaon road, District Ahmednagar. The respondent no.4 was selected by the Corporation for such distributorship. The petitioner complained to the Corporation that the respondent no.4 ought not to have been selected firstly, on the ground that he

did not belong to Group-1 under paragraph 4 (v) of the brochure for selection of dealers for regular and rural retail outlets of the Corporation dated 24th November 2018 (hereafter “the brochure” for short) as well as the land offered by the respondent no.4 did not abut the road boundary as required in terms of paragraph 4(v) (l)(i) of the brochure.

2] The Territorial Manager (Retail), Ahmednagar of the Corporation informed the petitioner, by a communication dated 18th November, 2019, that his complaint had been duly considered and was not found to be tenable; hence, while filing the complaint and treating the matter as “closed”, the complaint fee remitted by the petitioner was forfeited.

3] This communication dated 18th November, 2019 is challenged by the petitioner by instituting the present writ proceedings.

4] We have heard learned advocates appearing for the petitioner, the Corporation and the respondent no.4. We have also perused the impugned communication dated 18th November, 2019.

5] The communication dated 18th November, 2019 of the Territorial Manager deals with the first ground of objection raised by the petitioner in his

complaint dated 27th July,2019 but does not consider, not to speak of refer to, the other ground of objection. Mr. Bhandari, learned advocate for the Corporation submits that the reason why the second objection of the petitioner is also not tenable has been pleaded in the reply affidavit.

6] Law is well-settled that validity of an order, when challenged, has to be tested on the basis of the reason assigned in such order. Having not furnished reason in support of rejection of the second ground of objection raised by the petitioner, the Corporation cannot be allowed to introduce reasons in support thereof by way of an affidavit. It is on this short ground that we propose to interfere bearing in mind the decisions of the Supreme Court reported in *AIR 1952 SC 16 [Commissioner of Police,Bombay Versus Gordhandas Bhanji]* and in *AIR 1978 SC 851 [Mohinder Singh Gill and another Versus The Chief Election Commissioner, New Delhi and others]*.

7] In the result, the communication dated 18th November, 2019, insofar as it does not consider the petitioner's second ground of objection, is declared to be *non-est* in the eyes of law. Since the petitioner has now been informed of the reason for which the second ground of objection, according to the Corporation, is not tenable, we grant the petitioner liberty to produce

evidence before the Territorial Manager within a period of 4 weeks to demolish such reason and for upholding the second ground of objection. Once such evidence is received, the Corporation shall proceed to hear the petitioner as well as the respondent no.4 and pass an appropriate reasoned order as early as possible but in any case, within a month of hearing the parties. All other contentions are left open.

8] Since the second objection relates to a dispute as to whether the plot of land offered by the respondent no.4 abuts the road boundary, it is essentially a question of fact. Thus, the resultant decision of the Corporation in terms of this order, if adverse to the interest of any of the private parties, may be challenged before the appropriate civil court in accordance with law.

9] With these directions, the writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[CHIEF JUSTICE]

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