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

937 WRIT PETITION NO.6994 OF 2021

Mr. Kailash s/o Shankarrao Samge,
Age: 38 years, Occu: Business,
R/o. Samge Niwas,
Near Talwes Road, Parkatti Galli,
Tal. Udgir, Dist. Latur Maharashtra - 413 517 ...PETITIONER

VERSUS

1. Bharat Petroleum Corporation Limited,
Through its Managing Directors,
A company duly registered Under
the Companies Act, 1956,
Having Head office at Bharat Bhavan,
4 and 6 of Currimbhoy Road, Ballard
Estate, Mumbai – 400 001, Maharashtra
2. Union of India,
Through Secretary
Ministry Of Petroleum and Natural Gas,
Government of India,
Having Office at, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110001 ...RESPONDENTS

...

Mr Sankalp Golatkar a/w Mr A. M. Reddy, Advocates for
petitioner;
Mr A. P. Bhandari, Advocate for respondent No.1;
Mr R. R. Bangar, ASGI for respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 27th October, 2021

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has put forth prayer clauses (b), (c) (d) and (e), which read as under :

“(b) To issue appropriate Writ, or Order or Direction in the nature of Mandamus, directing the Respondent an order of injunction on the publication of any new advertisement for installation or allotment of any new Retail Outlet Dealership in Udgir Tehsil of Latur district with location number- 1137 for BPCL for which the Petitioner had filed an application and was unfairly disqualified eventually until this matter is sub judice.

c) To issue appropriate Writ, or Order or Direction in the nature of Mandamus directing an investigation on the procedure carried by the Respondent and its authorities in the event of draw of lots and the allotment of Retail Outlet Dealership of Petrol pump.

d) To issue appropriate Writ, or Order or Direction in the nature of Mandamus directing the Respondent to conduct the procedure for allotment of Retail Outlet Dealership for the aforementioned advertised stretch in which the application of the Petitioner has been unfairly disqualified.

e) To issue an order or direction of costs directing the Respondent to balance the amount incurred by the Petitioner in the process of allotment of Retail Outlet

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Dealership which extended over the period of two years due to the mishandling of the particular matter by the Respondent and to cover legal expenses incurred by the Petitioner in filing this Writ Petition.”

3. The undisputed factors are as under :-

- a) The respondent – Corporation had published an advertisement dated 25/11/2018, calling for applications for allotment of the Retail Outlet for different areas;
- b) The petitioner had applied for the areas falling under Districts Ahmednagar, Jalna and Aurangabad, on 20/12/2018;
- c) The petitioner offered two parcels of land falling in Survey Nos.25 and 27;
- d) By draw of lots held in June 2019, the petitioner was selected;
- e) On 21/06/2019, the petitioner received an intimation through an E-mail, informing him of his provisional selection in Group-1;
- f) Group-1 pertains to those applicants who are the title holders of the lands offered for the Retail Outlet;

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g) The land owned by the father can also be offered by an applicant, provided there is a change of ownership so as to fall in by Group-1;

h) The petitioner deposited Rs.50,000/- via on-line payment on 28/06/2019;

i) Father of the petitioner executed two notarized affidavits dated 03/07/2019 and 02/11/2019, declaring that the petitioner is the member of his family and the land in Gut Nos.25 and 27 can be offered for the Retail Outlet;

j) By the impugned communication dated 20/04/2021, the petitioner was informed that his candidature has been found ineligible to the extent of his inclusion in Group-1 and that his candidature can be considered in Group-3.

4. The learned Advocate for the petitioner has strenuously canvassed that on the day of field verification, his father had executed the two affidavits and, therefore, this should be considered as sufficient compliance of the requirements of the Corporation. It is then submitted that an opportunity of hearing was not afforded to the petitioner before issuing the impugned order. It is further submitted that Corporation should have raised

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an objection at the time of the field verification and, therefore, the rejection of the candidature of the petitioner, is an afterthought.

5. The learned Advocate representing the Corporation draws our attention to the brochure, in which, the requirements as regards the land and supporting documents, is provided. The Note below Clause-13 of the Application Form of the petitioner, reads as under :

“Note: In case land belongs to member of Family/Others, notarized affidavit as per Appendix – III A should be available which is to be submitted when asked by Bharat Petroleum Corporation Ltd. Each applicant should have a confirmatory letter from an advocate (Appendix - III B) giving details of the current ownership, documents relied upon and the category under which the land falls (Group 1 or Group 2) before submitting the application.”

6. He then draws our attention to the Clause-15(b), which reads as under :-

“15-b. I also confirm that I am in possession of the supporting documents in original in respect of the information given by me in this application and if selected, failure to present these documents in original

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will result in cancellation of selection due to submission of false/unsupported information in this application.”

7. He, therefore, submits that the notarized affidavits were required to be kept ready before the submissions of the application so as to render the petitioner eligible at the time of tendering his application. Clause 15 (b) is an undertaking by the petitioner, declaring by way of a confirmation that he is in possession of the supporting documents in original in respect of the information given by him in the Application Form.

8. He contends that these Clauses found in the Application Form are by way of a declaration and failure to have such documents before tendering the Application Form, is interpreted by this Court vide order dated 13/01/2020, delivered in Writ Petition No.9974/2019, filed by Rajendra Bauprao Hande versus BPCL and another, at Aurangabad. He then points out another order delivered by this Court, dated 21/06/2021 in Writ Petition No.7597/2020, filed by Kuberrao Gyanbarao Hakke versus The Union of India and others. Placing reliance on these orders, he submits that this Court had concluded that though the documents are necessary to be verified subsequently, all these documents

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must be possessed by the applicant so as to render him eligible at the time of filing of the application.

9. In Rajendra Bapurao Hande (supra), this Court dealt with the deficiency of the Advocate's declaration regarding the ownership of the title of the property. This was not available with the petitioner when the application was tendered on-line. It was noted that though at the time of filing the on-line application, the petitioner is not required to submit the documents, these documents have to be in his possession so as to be placed in Group-1 and if such documents are not available at the time of the filing of the application, the petitioner cannot be considered for Group-1 category.

10. Similar is the view taken by this Court in Kuberrao Gyanbarao Hakke (supra), wherein this Court relied on a specific clause in the brochure that, if a necessary document which is to be available at the time of filing of the application, is not available or in existence, the applicant cannot be held to be eligible as on date of the filing of the application.

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11. In view of the above, we do not find that this petition deserves to be considered and being devoid of merits, the same is dismissed.

12. In view of the dismissal of this petition, we do not find any need to entertain the prayers at Clause (c) and (d). Consequentially, there is no reason to entertain prayer clause (e) since these are the matters which are to be dealt with by the Corporation and considering that such allotments are undertaken by the Corporation across the nation, consumption of time to complete the formalities at different stages and different levels, is natural. On this count, it needs to be left to the Corporation to device it's procedure so as to complete the exercise of selection and appointment of the Retail Outlet Dealership.

13. Rule is discharged.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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