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

14 WRIT PETITION NO.7597 OF 2020

KUBERRAO GYANBARAO HAKKE
VERSUS
THE UNION OF INDIA AND OTHERS

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Mr V. V. Ingale, Advocate for petitioner;
Mr A. B. Dhongade, Standing Counsel for respondent No.1;
Mr A. P. Bhandari, Advocate for respondent Nos.2 & 3

**CORAM : RAVINDRA V. GHUGE
AND
AVINASH G. GHAROTE, JJ.**

DATE : 21st June, 2021

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B),
(C) and (D) as under :

“B) By issuing Writ of Certiorary of any appropriate Writ the impugned communication dated 14.08.2019 & 16.09.2020 may kindly be quash and set aside.

C) By issuing Weir of Mandamus or any other appropriate Writ the Respondent Nos.1 to 3 may kindly be directed to accept the appropriate cast Certificate belonging to the Petitioner.

D) By issuing Writ of Mandamus or any other writ in the nature of Mandamus the Respondent No. 1 to 3 may kindly be directed to declare the petitioner eligible for

(2)

Retail Outlet Dealership for location Dongarkheda, on National Highway No. 161, Taluka Kalamnuri, Dist. Hingoli.”

2. The petitioner, pursuant to an advertisement dated 25/11/2018, issued by respondent No.2, had applied on 18/12/2018 for seeking a Retail Outlet (Petrol Pump) in rural areas. One of the conditions was that the said Retail Outlet was reserved for the persons belonging to the OBC category. There is no dispute that the petitioner belongs to the ‘Hatkar’ tribe which is recognized as Nomadic Tribe (C) at Sr. No.29(7) vide State Government Resolution dated 25/05/1990. As per the Central Government Resolution, ‘Hatkar’ tribe is recognized as OBC at Sr. No.215 as per the Central Government Gazette 12011/68/93-BCC ©, dated 10/09/1993. It is equally undisputed that the petitioner had applied pursuant to the advertisement on 18/12/2018 and he got his tribe certificate on 19/08/2019.

3. The grievance of the petitioner is that he was selected for the Retail Outlet, but was not granted the Outlet on the ground that the opinion of the Advocate, in short, an Advocate’s certificate/declaration, was not on record when he applied and he did not have the OBC certificate on the date of application. As such, the Advocate’s opinion

(3)

as per Appendix III B being absent and the applicant having no OBC certificate, his selection did not fructify into a grant of a Retail Outlet.

4. Since Shri. Bhandari, learned Advocate usually represents the Indian Oil Corporation Limited, we requested him to take instructions and assist the Court. After the matter was called out post lunch, Shri. Bhandari tenders before us a compilation of two judgments. This Court had delivered an order on 18/06/2019 in Writ Petition No.5812/2019 filed by Navnath Shankar Badage versus Indian Oil Corporation Limited & anr. The second order is dated 13/01/2020 delivered in Writ Petition No. 9974/2019, filed by Rajendra Bapurao Hande versus Bharat Petroleum Corporation Limited and anr. Shri. Bhandari further adds that this Court has also delivered an order on 24/03/2021 in Writ Petition No.2203/2020 filed by Nikhil Dilipsing Rajput versus The Union of India & ors.

5. It is obvious from these orders that this Court has consistently taken a view that an applicant would be eligible to apply for a Retail Outlet pursuant to an advertisement, only if he is eligible on the date of the application. A defect as on the date of the application is construed

(4)

to be a disqualification. On the date the petitioner herein applied i.e. 18/12/2018, he neither had the Advocate's opinion as required in Appendix III B as regards grouping of land, inasmuch as, he did not have the OBC certificate.

6. In view of the above, this petition is devoid of merit as the impugned communications dated 14/08/2019 and 16/09/2020 do not appear to be perverse or illegal. This petition is, therefore, dismissed. No order as to costs.

7. The learned Advocate for the petitioner prays for refund of the security deposit of Rs.40,000/- that he had tendered after his name featured in the probable select list. Shri. Bhandari submits that there is a specific clause in the brochure with regard to the application for Retail Outlets that, if any content of the application filed by the applicant is found to be untrue/false and incorrect, the security deposit amount would be forfeited. The learned Advocate for the petitioner submits that the brochure containing such clause is not produced by him on record. As such, we are leaving it open to the petitioner to approach respondent Nos.2 and 3 for such refund and in the event of

(5)

such an application having been filed, these respondents shall deal with the said application on its own merits in accordance with the terms and conditions set out in the brochure that would be applicable to the petitioner.

(AVINASH G. GHAROTE, J.)

(RAVINDRA V. GHUGE, J.)

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