

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13458 OF 2019

Ashok S/o Dagduji Thengal

... Petitioner

VERSUS

The Union of India and others

... Respondents

...
Mr. S.B. Joshi, Advocate for J.P. Legal Associates for petitioner
Mr. A.P. Bhandari, Advocate for respondent nos. 2 and 3
...

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

DATE : 15TH NOVEMBER 2021

PC :

1. By this petition, the petitioner has put forth prayer clauses (C), (D) and (E) which read thus:-

“(C) By issuing the Writ of certiorari or any other appropriate Writ, the impugned communication dated 19/08/2019 (**Exhibit “D”**) may kindly be quashed and set aside;

(D) By issuing the Writ of Mandamus or any other appropriate Writ, the Respondent No. 1 to 3 may kindly be directed to accept the appropriate caste certificate belonging to the Petitioner;

(E) 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 Retail Outlet dealership for location Village Ajegaon, Taluka Sengaon, District Hingoli; ”

2. We have noted the strenuous submissions of the learned Advocate for the petitioner. None present for the respondent - Union of India.

3. Shri Bhandari, learned Advocate representing respondent nos. 2 and 3 has contended that the two issues raised in this petition are no longer *res integra* and have been dealt with by this Court in the following orders / judgments:-

a) Dated 13-01-2020 in writ petition no. 9974 of 2019 (Rajendra Bapurao Hande Vs. Bharat Petroleum Corporation Ltd. and another),

b) Dated 08-03-2021 in writ petition no. 4208 of 2021 (Mohan Shivaji Tonde Vs. Government of India and another),

c) Dated 24-03-2021 in writ petition no. 2203 of 2020 (Nikhil S/o Dilipsing Rajput Vs. The Union of India and others),

d) Dated 18-06-2019 in writ petition no. 5812 of 2019 (Navnath S/o Shankar Badage Vs. Indian Oil Corporation Limited and anr.),

e) Dated 29-09-2021 in writ petition no. 1319 of 2020 (Swati W/o Raosaheb Latpate Vs. Government of India through its Ministry of Petroleum and Natural Gas and another).

4. Despite service of Court notice, respondent no. 4, the selected candidate, has not entered an appearance before the Court.

5. It is indisputed that on the date on which the petitioner applied in response to the advertisement for allotment of a retail outlet by the respondent petroleum company, viz., 22-12-2018, the petitioner did not have the caste certificate indicating his inclusion in the OBC category and the Advocate's declaration form, as required under Appendix III-B of the Brochure. The petitioner had the caste certificate indicating his inclusion in the nomadic tribe category in the State of Maharashtra. Tribe 'Hatkar' would fall in the OBC category as such inclusion was made under the Central list subsequent to the filing of his application. As such, he was not covered by the OBC category on the date of the advertisement, viz., 25-11-2018 and on the date of filing of his application, viz., 22-12-2018.

6. It is further an admitted position that the Advocate's declaration necessary to the applying candidate to establish his eligibility on the date of the filing of the application, was not available and, as such, the declaration was procured by the petitioner on 24-12-2018, which was after filing his application.

7. The judgments / orders cited by Shri Bhandari would squarely cover the case of the petitioner notwithstanding the strenuous submissions of Shri Joshi on behalf of the petitioner that clause 4(4) of the Brochure grants a candidate an opportunity to correct documents

if they suffer from any deficiency, within 21 days from the date of production of the documents. We are afraid that the said submission cannot be accepted for the reason that clause 4(4) of the Brochure deals with the correction of documents, if they suffer any deficiency. This would not apply to the documents prepared or acquired from statutory authorities after the filing of the application form since it was established that on the date of the filing of the application form, he was ineligible, as he did not have this document.

8. The orders/judgments cited by Shri Bhandari have been considered in a judgment recently delivered by this Court on 29-09-2021 in writ petition no. 1319 of 2020 filed by Swati W/o Raosaheb Latpate (*supra*). The relevant paragraphs bearing nos. 6 to 10 read as under:

“6. An identical issue has been dealt with by a Co-ordinate Bench of this Court vide judgment dated 08-03-2021, delivered in **Civil Writ Petition No.4208 of 2021**, filed by **Mohan Shivaji Tonde Vs. Government of India and Another**, at Aurangabad. Paragraph Nos. 17 to 20 of the said judgment read as under :-

“17. Coming to the issue with respect to the caste certificate being NT, the arguments taken by the respondent no.2 appear to be tenable. The specific eligibility criteria contained in Clause-4 (vi)(b) of the brochure requires that candidates belonging to OBC should be recognized as such by the concerned State only location has been advertised. Not only that the note on page 12 of the brochure referred to above, clearly requires the petitioner to be in possession of a valid certificate on the date of application. Admittedly, the petitioner was not in possession of the required OBC certificate as on the date of the application. The application for the retail outlet was made on 22-12-2018, whereas the OBC certificate was obtained on 02-02-2020 pursuant to application made on 31-01- 2020 clearly indicating that the required certificate was not even issued to the petitioner let alone it being in possession of the applicant and valid as on

the date of the application. We also observe from page 62 of the brochure that the required declaration in Appendix VII-A, which is a standard format required for OBC category certificate as required under the specific eligibility criteria pursuant to the 2nd respondent's letter dated 26-06-2019 does not appear to have been submitted. But only the caste certificate dated 09-06-2003 indicating the petitioner belonging to NT(D) Vanjari category appears to have been submitted along with VII-B declaration described earlier. We are therefore, unable to accept the submissions made on behalf of the petitioner.

18. Coming to the argument of the learned counsel for the petitioner that the petitioner was declared selected candidate pursuant to communication dated 26-06-2019 and that the defendant's communication dated 21-01-2021 is a frustration of right created in his favour. We note from the communication dated 26-06-2019 which intimated that the petitioner had been declared selected based on a draw of lots, that the same is clearly a preliminary intimation and is subject to the compliance of terms and conditions. For the sake of convenience, the said paragraph in the communication dated 26-06-2019 is quoted as under :

"This is only a preliminary intimation towards your selection for Retail Outlet dealership. However, the award of the dealership is subject to compliance of terms and conditions of the Corporation in this regard ".

19. Thus, the communication specifically informs the petitioner that his selection is only a preliminary intimation subject to the terms and conditions. We are therefore unable to accept the submission of the counsel that a right has been created in favour of the petitioner.

20. Also to keep harping that the petitioner had a certificate of Nomadic Tribe, which under the central list of OBCs in Maharashtra is at serial no.146 and therefore, he already had the social status of OBC and it would not be material as to when the said certificate is obtained, is also fallacious. This is because despite the terms of the brochure requiring the petitioner to be in possession of a valid OBC certificate in form VII-A from the concerned State in which the location has been advertised as on the date of application, the petitioner has obtained the same only on 02-02-2020, pursuant to an application dated 31-01-2020, which is after date of rejection viz. 21-01-2020. The petitioner has after he obtained the Nomadic Tribe certificate in 2003, had obtained the OBC certificate only on 02-02-2020 to make out a case against the rejection of his claim. Nothing had prevented the petitioner to approach the authority to obtain the OBC certificate earlier. Being therefore in respectful agreement with the views expressed by this court in the case of Navnath Shankar Badage (supra), we are unable to accept the

contention of the learned counsel for the petitioner that once the social status has been declared, then it is immaterial as to when the certificate is issued. This is more so because we are dealing with the case of a tender where several candidates would apply and only the ones who comply with the specific terms of the said tender would be eligible to be issued the letter of intent. If the petitioner is allowed on the basis of the arguments of the learned counsel to proceed further in the process, it would place similarly rejected candidates who are unable to approach this court on an unequal footing, which cannot be permitted.”

7. In ***Vidarbha Irrigation Development Corporation Vs. Anoj Kumar Agarwal***, [2019 (2) SCALE 134], the Hon’ble Apex Court has held that it is clear that the words used in a tender document cannot be ignored or treated as redundant or superfluous. They must be given a meaning and their necessary significance.

8. In similar set of facts, this Court has delivered a judgment on 24th March, 2021 in ***Writ Petition No. 2203 of 2020*** filed by ***Nikhil s/o Dilipsing Rajput Vs. The Union of India and Others***, at Aurangabad. This Court considered the issue in the light of clause 4(vi)(b) of the Brochure - Selection of Dealers for Regular and Rural Retail Outlets dated 24-11-2018, wherein the Petroleum Company has mandated 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. In clause (4)(1) of the Brochure, it is provided that “*All certificates/documents required for meeting Eligibility/Specific eligibility criteria should be in possession of the applicant and valid as on date of application*”.

9. It was therefore concluded in paragraph No.7, 8 and 9 in ***Nikhil s/o Dilipsing Rajput*** (Supra) as under :-

“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 petitioner has herself pleaded in paragraph No.4 that she was asked to submit an online application on or before 22-12-2018. It is beyond debate that she received OBC certificate on 24-12-2018. Dealing with a cut off date, this Court in **Nikhil s/o Dilipsing Rajput** (supra) held in paragraph No.12 as under :-

"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."

9. In view of the above, we do not find any reason to take a different view than the views taken by this Court in the above cited orders. This petition, therefore, fails and is consequentially dismissed.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

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