

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

940 WRIT PETITION NO.13963 OF 2019

Shri Parshuram s/o Vithal Mirase,
Age 55 years, Occu. Agriculture,
R/o. At Post Thara Tq. Kinvat
District Nanded.

Versus

- 1) The Executive Director (Retail),
Indian Oil Corporation, Indian Oil
Bhavan, G-9, Ali Yavar Jung Marg,
Bandra (E), Mumbai - 400051.
- 2) The Deputy General Manager (RS),
Indian Oil Corporation Limited,
Aurangabad Divisional Office, Plot
No.99, Indian Oil Bhavan, Jyoti
Nagar, Aurangabad – 431005.

...
Advocate for Petitioner : Mr. Yogesh B. Bolkar
Advocate for Respondents : Mr. A.P. Bhandari
...

**CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ
DATED : 10TH FEBRUARY, 2021**

ORDER:-

1. Heard learned counsel for the parties.
2. The position emerges that the petitioner had applied for allotment of petroleum dealership in response to an advertisement issued by respondent, based on an application for

an agreement to lease while pursuant to the brochure, particularly, clause-A the application would be considered on a declaration by the applicant about the category under which the offered land falls. It appears that the petitioner had declared candidature from Group-1 and accordingly had been considered and in the draw of lots, he was shown to be the selected candidate. However, on scrutiny, it was realized that his candidature cannot be considered from Group-1, which category requires having suitable piece of land either on ownership or on long term lease [for a period of minimum 19 years and 11 months, or more] and such requirement would not be said to be fulfilled by the petitioner since there being only registered agreement to lease in his favour by the prospective lessors. Finding aforesaid, pursuant to the guidelines under the brochure having regard to clause-I and the note thereunder, his candidature from Group-1 had been rejected and he had been put under Group-3.

3. He further refers to clause-ix under item E. Since the agreement to lease could have been rectified and a registered lease deed could have been entered into, such an opportunity ought to have been given pursuant to clause-ix, reading thus,

“ix. In case of rectifiable deficiency in the documents submitted, intimation to the selected candidate to submit the required corrected documents

within 21 days.”

4. Learned counsel for the petitioner purports to refer to and rely on the judgment of Single Judge of Gujarat High Court in the case of *Bharat Sakarabhai Sorathiya Vs. State of Gujarat, 2019 SCC OnLine Guj 6649*.

5. Learned counsel for the petitioner submits that before issuing impugned order and putting him in Group-3, Note 3 under the brochure ought to have been invoked, giving opportunity to offer alternate land after field verification of credentials (FVC)/ issuance of letter of intent (LOI).

6. Learned counsel for the respondents, Mr. Bhandari submits that the order has been passed in conformity with relevant applicable terms and conditions of the brochure. While it had been realized that the petitioner's offered land would not be said to be from Group-1 category, as referred to above his candidature had been put under Group-3. He further refers to that there were lot of other candidates, who had offered lands under Group-1. The further selection process would take place according to the guidelines given in the brochure, initially, for Group-1 candidates and then if there is no selection from said category, the selection procedure would move on to other categories.

7. The learned counsel draws our attention to the decision of the Supreme Court in the case of *Bharat Petroleum Corporation Ltd. & Ors. Vs. Swapnil Singh (Civil Appeal Nos. 6928 – 6929 of 2015)*, wherein, it had been observed that the brochure which showed that the applicant must be owner of the specified area of land or must have a registered lease deed. It had been considered that a notarized document would not advance the case of the candidate. Applicant was neither owner of the land nor does have registered lease deed in his name.

8. The decision of the Gujarat High Court in *Bharat Sakarabhai Sorathiya (supra)* appears to have been based on a different factual matrix that there had been an unregistered agreement of lease and further that there had been time allowed for it's registration under law. In such a case, the decision has been rendered, which may not be able to hold sway in present case.

9. Relevant Clauses of the brochure read thus:

“k) ***Each applicant will have to declare, in the application form, the category under which offered land falls. Supporting the above, 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), as on date of application, is also to be furnished as and when advised. The Group under which the applicant's land falls, would be determined based on the declaration given in the application and confirmatory letter from the advocate regarding the same.***

l) *It should be the responsibility of the applicant to ensure that as on date of application:-*

- i. *Offered land is of required dimension and abutting the Road boundary, after leaving Right of Way (ROW) line of the road.*
- ii. *The offered land is also not notified for acquisition.*
- iii. *Land owner is in Possession of the land from the beginning / edge of ROW line.*
- iv. *There is no other land including Govt. land between ROW and offered plot.*

Note : In case it is found at later stage that the offered plot is not meeting any of the above conditions then in such case the offered land would be rejected and candidate will be given opportunity along with applicants under Group 3 by intimation through SMS/e-mail.”

10. In the present case, the petitioner has not been able to show that with the agreement to lease, his offer can be shown to be falling in Group-1 category. While it is not the case that the documents suffered any lacunae as an agreement to lease. Going by the terms under the agreement to lease, the execution of the lease deed was contingent upon grant of dealership otherwise, it appears the parties did not intend to execute lease deed.

11. Note-3 would seldom have any application in present factual scenario. Neither the petitioner was issued LOI nor was proposed to be issued. Apart from that, it is not a case where it can be said that the land offered meets specifications required for selection nor it would be said that there was deficiency in the document which could be said to be rectifiable, to be covered under Clause-ix relied on behalf of the petitioner.

12. In the circumstances, it does not appear that the arguments on behalf of petitioner could be said to carry any water.

13. In view of aforesaid, the petition is not entertained and is rejected.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]

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