

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

944 WRIT PETITION NO.14689 OF 2019

YASHWANTRAO CHAMPATRAO WATODE
VERSUS
BHARAT PETROLEUM CORPORATION LIMITED
THROUGH ITS MANAGER AND ANOTHER

...

Mr. Y.B. Bolkar, Advocate for the petitioner.
Mr. A.P. Bhandari, Advocate for respondents no. 1 & 2.

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CORAM : **SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 10th February 2021.

ORDER :-

1. It appears that advertisement had been issued on 25.11.2018 for appointment of retail outlet dealership at various locations including location no. 113 – at Purna. Petitioner had filed an application on 25.11.2019 referring to land gut no. 224 showing / claiming it to be from Purna. In draw of lots, pursuant to the process, petitioner was shown to be successful. On subsequent scrutiny, however, it surfaced that the land shown by the petitioner is not situated in Purna and is situated at village Surwadi in Taluka Purna. The place being different than Purna, it was not satisfying the requirements under the advertisement and particularly those of location and Group – 1, the petitioner's candidature had been shifted to Group-3.

Petitioner contends, *interalia*, that such a shifting straightaway without letting opportunity to him, is contrary to clause 4 (v) of the brochure dated 24th November 2018.

2. Learned counsel submits that as a matter of fact the petitioner does possess property in village Purna, however, under inadvertence, the documents of land in Surwadi had been submitted. In the circumstances, opportunity of rectification ought to have been given to the petitioner.

3. According to learned counsel for the petitioner, in case of rectifiable deficiency in document submitted, a candidate would be given opportunity to correct the mistake within 21 days, and in case, rectified documents are not submitted within stipulated time, rejection of the candidature could be justified. He further submits that if documents related to offered land are not submitted or the offered land cannot be accepted even after receiving rectified documents relating to the land, the applicant would be given intimation regarding consideration of his candidature alongwith Group – 3 candidates.

4. 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). Note 3 reads thus:

“Note 3 : Opportunity to offer alternate land after FVC/issuance of LOI

There are may be a situation, where the land offered by the candidate in the application (including land/alternate land offered by Group 3/Group 1 & Group 2 applicants) meets all the specifications as laid down in the advertisement and on the basis of which LOI has been issued or proposed to be issued and the LOI holder or the selected candidate to whom LOI is proposed to be issued would like to offer an alternate land, due to whatsoever reason, such land may be considered by OMC subject to the alternate land meeting all specifications and is within the advertised location/stretch.

In case applicant is selected and LOI has not been issued then on receipt of application from the selected candidate offering alternate land, Land evaluation of the alternate land will be done and if the land is found dutiable, then LOI will be issued mentioning the change in offered land.

In case alternate land is offered after issuance of LOI, a letter would be issued indicating acceptance of the alternate land offered, after Land evaluation (on land being found suitable) and this would be treated as addendum to LOI.

In case the alternate land offered by the selected candidate/LOI holder is accepted by the OMC and LOI/addendum to LOI is issued to the candidate, the alternate land accepted by OMC would be treated as final and no further changes shall be accepted (including the original site offered).

In case the alternate land offered by the selected candidate is found not meeting the laid down criteria, the selected candidate would be intimated on the same (through LOI) and LOI would be issued to the selected candidate referring to the originally offered land.

In case the alternate offered by the LOI holder is found not meeting the laid down criteria, the selected candidate would be intimated on the same (through LOI) and LOI would be issued to the selected candidate referring to the originally offered land.

In case the alternate land offered by the LOI holder is found not meeting the land down criteria, the LOI holder would be intimated on the same through addendum to LOI. In such case, the time period to make available the land (original site offered along with the application) would remain valid as mentioned in the LOI from the date of issuance of letter (addendum to LOI) intimating rejection of alternate land.

This opportunity would be available to the LOI holder up to 90 days from the issuance of LOI.

The above mentioned opportunity can be availed by the selected candidate (after clearing FVC) / LOI holder only once.”

5. Learned counsel for the petitioner in support of his submissions places reliance on a decision of Gujrat High Court (Single Judge) in *Bharat Sakarabhai Sorathiya vs State of Gujrat (2019 SCC Online Guj 6649)* . It appears that it was a case wherein the petitioner had offered a land about which there had been no registered lease deed initially, and in the circumstances, he had been put in Group – 3. Aggrieved thereby, the petitioner had been before the High Court and the High Court having regard to that subsequently the lease agreement had been registered it appears to have considered that the deficiency had been rectified.

6. 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.”

7. Note-3 above could 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 when it can be said that the land offered meets specifications required for selection.

8. Here in the present matter, as a matter of fact, the application does not satisfy the primary requirement of location of land under the advertisement. Subsequent change of land, as contended by petitioner, would not be possible as it would be a material change in representation with reference to which his candidature was considered. Since the petitioner had represented that his land is from Purna, his candidature had been considered and he had been able to secure status as a successful candidate. The land offered was not offered from the location advertised.

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

10. It would not be out of place to refer to a division bench decision dated 25th April 2019 in the case of *Irshad Hameed Khan Vs Indian Oil Corporation and another (writ petition no. 5022 of 2019)*, wherein it has been considered that the land offered had not been from the advertised location, the rejection of candidature / or decision to put in Group – 3 was not liable to be faulted with. It is discernible from the decision in the case of *Bharat Sakarabhai Sorathiya vs State of Gujarat* (supra) that there had not been question regarding location of land, as in the present case.

11. In the facts and circumstances, challenge to shifting of candidature of petitioner from Group – 1 to Group – 3 does not appear to be liable to be faulted with.

12. Petition, therefore, is not entertained and is rejected.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)

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