

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

WRIT PETITION NO. 4052 OF 2021

Gokul S/o Kisan Mali,
Age; 44 years Occ; Business and
Agriculture,
R/o; Astha Tq. Bhoom,
District: Osmanabad.

...PETITIONER

V E R S U S

1. The Union of India
Through the Secretary,
Govt. of India, Department of
Petroleum and Natural Gas,
Parliament House, New Delhi.

2. The General Manager,
Hindustan Petroleum Corporation Ltd.
17, Jamshedji Tata Road, Charchgate,
Mumbai 400020.

3. The Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Regional Office, Near Pakni Railway Station
Pakni Depot, Tq. & Dist. Solapur-413242.

...RESPONDENTS

.....
Advocate for the petitioner : Mr. P.R.Katneshwarkar h/f Mr. V.S. Undre
AGP for the Respondent Nos. 3 : Mrs. Anjali (Bajpai) Dube
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED DATE : 22.08.2022
PRONOUNCEMENT DATE : 26.08.2022**

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.
2. Rule made returnable forthwith. With consent of the learned Advocates for the respective parties, heard finally at the state of admission.
3. By present petition the petitioner challenges communication dated 20.01.2021 by which his candidature for allotment of retail outlet dealership has been found ineligible.
4. The respondent Corporation had issued an advertisement calling for applications for allotment of the retail outlet dealerships at several locations. At Sr. No. 216 of the advertisement, following location was indicated :

"216 - From Chinchpur Phata towards varadvade within 1 KM on LHS on Bhoom Varadvade Road, Taluka Bhoom, Revenue District: Osmanabad."

The type of RO in respect of the location was described as "Rural".

5. As per the Guidelines on selection of Dealers for Regular and Rural Outlets (hereinafter 'the Guidelines'), the applicants are classified in three groups :

"Group -1 : Applicants having suitable piece of land in the advertised location/area either by way of ownership/long term lease for a period of minimum 19 years 11 months or as advertised by the OMC."

Group -2 : Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months"

or as advertised by the OMC.

Group -3 : Applicants who have not offered land in the application."

6. Clause-1 of the Guidelines deal with the identification of locations and provides as under :

Clause- 1 : Identification of locations :- Locations for setting up Retail Outlets are identified by the respective oil company based on commercial/minimum volume considerations. Accordingly, Regular and Rural outlets are set up by Oil Marketing Companies (OMC) as under :-

i) Regular ROs: Locations on Highways (National Highways/State Highways etc.) & Urban/Semi-urban areas (Within Municipal Limits of a town)."

7. The petitioner entered into the registered lease deed with the land owner in respect of land situated in Gut No. 132, village Astha, Taluka Bhoom, District Osmanabad and thereafter submitted his application for allotment of retail outlet dealership in respect of location at Serial No. 216. He claims to have qualified for draw of lots and accordingly he remitted the online amount towards initial security deposit. The petitioner received letter dated 16.08.2019 intimating that the Land Evaluation Committee would visit the site for inspection on 20.08.2019. The date of visit was later on rescheduled to 14.12.2019. It is claimed that he was required to shift the High Tension Line passing through the land on the advice of the Land Evaluation Committee and that therefore, he was required to incur huge expenditure for shifting of the same through Maharashtra State Electricity Distribution Company Ltd.

8. By the impugned communication dated 20.01.2021 the petitioner's application for allotment of RO dealership came to be rejected for following reason :

"Location advertised in E (Rural) class Market. As per DSG-2018, Rural RO cannot be developed on National/State/Coastal Highways, Express ways, A, B & C Class markets, Areas covered under Municipal limits of a town. Offered land is located on SH 155. Hence, as per DSG 2018 offered land is not suitable for Rural Market."

9. Even after rejection of the petitioner's candidature, it was further conveyed to him that, "however, his candidature can be considered for selection along with Group 3 applicants as per guidelines". Thus, the petitioner's application for allotment of RO dealership at the site suggested by him came to be rejected on the ground that the said site was located on State Highway-155. According to the respondent Corporation, the rural RO cannot be allotted on the State Highway. However, even though, the petitioner's application for allotment of RO at the site suggested by him was rejected, the respondent Corporation showed willingness to consider the same in Group -3 i.e. "Applicants who have not offered land in the applications". This means that in Group -3, the petitioner's case was to be considered along with those applicants who had not offered any land in their application and who were supposed to offer the land only after allotment of RO dealership. The petitioner has impugned the said decision dated 20.01.2021 in the present petition.

10. Appearing for the petitioner Mr. Kateneshwarkar, learned

Counsel has contended that the decision of the respondent Corporation is arbitrary. He submitted that the entry No. 216 viz. *"From Chinchpur Phata towards Varadwade within 1 KM on LHS on Bhoom Varadvade Road, Taluka Bhoom, Revenue District: Osmanabad."* in the advertisement clearly indicated that the location was bound to be on the State Highway. He submits that the road from Chinchpur Phata towards Varadwadi itself is the State Highway and despite this, the respondent Corporation included the site in rural category. He submits that the reason for rejection therefore is totally arbitrary. He further submits that acting on the representation made by the respondents, the petitioner was required to incur huge expenditure for shifting of High Tension Line from the plot. In support of his contention Mr. Katneswarkar has relied upon the decisions of this Court in **"1) Suvarna Shrikrishna Deore vs. Bharat Petroleum Corporation Ltd. and Anr. Writ Petition No. 1148 of 2022 decided on 08.07.2022 and 2) Laxman s/o Gorakh Waghmare Vs. The Union of India and Ors. Writ Petition No. 6254 of 2020 decided on 23.11.2021."**

11. Per contra, Smt. Bajpai (Dube), learned Advocate appearing for respondent No. 3 opposes the petition submitting that the decision taken by the respondent Corporation is in strict adherence to the guidelines. She contradicted the contention of learned Advocate Mr. Katneshwarkar, that the location of the site at Sr. No. 216 was such that the same was bound to fall on State Highway. She submitted that

the respondent Corporation is able to allot RO in respect of location at Sr. No. 216 to another bidder, whose land does not fall not on the State Highway.

12. Rival contentions of the parties fall for our consideration.

13. There is no dispute that the location at Sr. No. 216 of the advertisement was identified as "Rural" under Clause 1 of the Guidelines Rural Location cannot be on a Highway and is required to be outside the limits of the town. The petitioner was aware that the location of the plot offered by him is situated on the State Highway - 155. This position is not disputed by the petitioner in any manner. Therefore, the land offered by the petitioner was clearly outside the purview of clause 1 (ii) of the Guidelines.

14. Perusal of the application submitted by the petitioner (produced at Exh.-C) (page No. 68 of the petition) shows that he applied in Group-1 i.e. falling under the category of applicants having suitable piece of land in the advertised location/area by way of ownership/ long term lease. Once the application is submitted in Group -1, the land must adhere to the requirements of Clause in the Guidelines. Since the land of the petitioner is situated on State Highway- 155, the respondent Corporation has rightly rejected the petitioner's candidature.

15. We now deal with the contentions of Mr. Kateneshwarkar that there was mistake on the part of the respondent Corporation in

including the location at Sr. No. 216, in “Rural” category. He has submitted that the description of location at Sr. No. 216 was such that the same was bound to fall on the State Highway-155. It is, therefore, submitted that the respondent Corporation cannot be permitted to take the benefit of their own wrong by rejecting the petitioner’s candidature who was required to incur huge expenditure for shifting High Tension Line on their advice. Smt. Bajpai (Dube), countered this submission by urging before us that the other lands not falling on the State Highway were eligible for being considered for location at Sr. No. 216 of the advertisement. She submitted that another bidder has been allotted RO dealership in respect of the location at Sr. No. 216 of the advertisement. In fact, Mr. Katneshwarkar has tendered across the bar, a copy of the letter dated 01.12.2021, by which one Mr. Balasaheb Adlinge has been allotted RO dealership in respect of the location at Sr. No. 216 in OBC category. The petitioner has not challenged the said allotment. Be that as it may, such allotment completely demolishes the case of the petitioner that the respondent Corporation committed a mistake in classifying the location at Sr. No. 216, as “Rural”. We therefore, reject this contention raised by the petitioner.

16. Now, we deal with the decisions of this Court relied upon by Mr. Katneshwarkar. In **Suvarna Shrikrishna Deore** (supra), the selection of the petitioner therein for allotment of RO outlet was withheld on account of a mistake in describing the location as “SH-4” instead of “SH-14”. This Court held that the same was merely an

insignificant error, which did not result in any inequality leading to deprivation of any prospective applicant. We fail to understand as to how the said decision can assist the petitioner. In the present case, we have arrived at the conclusion that there was no mistake on the part of the respondent Corporation in describing the location at Sr. No. 216 in the advertisement.

17. The decision in **Laxman s/o Gorakh Waghmare** (supra) far from assisting the case of the petitioner, actually militates against him. In that case also, the letter of intent issued in favour of the petitioner therein was withdrawn on the ground that the land was situated at State Highway-159. Similar case of huge investment to make land suitable for the outlet was raised in that petition. This Court however rejected the petition by holding that :

"6. The location proposed by the petitioner, field survey No. 242 of village Govindpur, was on the State Highway. The Sub-Divisional Engineer, Public Works Sub-Division Kallamb in its letter dated 10.01.2020 has mentioned that field Gut No. 242 is located on the right side of the State Highway No. 208. The said Highway starts from 00 miles from Shivaji Square Kallamb and ends at Dhoki Petrol Pump.

7. The retail outlet dealership was for rural area is not disputed. The land offered by he petitioner was not satisfying the eligibility criteria. Offering unsuitable land disqualified him. The selection of location suitable to the business, is exclusively within the domain of respondent No. 2. Non compliance with the conditions laid down in the brochure, is a good ground to withdraw the letter of intent. The withdrawal of letter of intent is based on the location inspection. It was revealed that the location proposed by the petitioner was not as per the requirement published in the

advertisement. The petitioner has no legitimate right to claim the dealership, if compliance as required in the advertisement is not made.

8. So far as the claim of damages is concerned, it is outside the jurisdiction of this Court.

9. The petition is devoid of merit. Hence dismissed. No costs."

18. In the result, we do not find any infirmity in the decision of the respondent Corporation. In fact, the respondent Corporation has been more than fair in dealing with the petitioner's case. After rejection of his candidature in Group -1, the respondent Corporation considered his case in Group-3 on its own. In such circumstances, it cannot be said that the respondent Corporation has acted in arbitrary manner.

19. The petition of the petitioner is thus, devoid of any merit and the same is dismissed without any order as to costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE