

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

WRIT PETITION NO. 9504 OF 2019

MEENAKSHI RAJKUMAR SONAWANE,
Age : 50 Years, Occu. : Agri and household,
R/o 1, Renukamai complex, Near
Railway Crossing, Devanagari,
Darga Road, Aurangabad. .. Petitioner

Versus

The Regional Officer,
Hindustan Petroleum Corporation Ltd.
Aurangabad Retail Regional Office,
Plot no. G-39, Town Center,
Cidco, Aurangabad. .. Respondent

Shri Vishal A. Bagdiya, Advocate for the Petitioner.
Mrs. Anjali Bajpai-Dube, Advocate for the Respondent.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.
DATE : 23.09.2022.**

JUDGMENT (*Per Sandeep V. Marne, J.*) :

1. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.
2. The petitioner assails the communication dated 29.06.2019, by which her candidature for allotment of retail outlet dealership has been turned down.
3. The respondent-corporation had issued an advertisement dated 24.11.2018 for allotment of Retail Outlet Dealership (R.O. Dealership) at various locations specified in the advertisement. The subject matter of the present petition is the location “on any

side of Rohilagad Phata, within 5 Kms. on NH-11 (Aurangabad-Beed Highway) on LHS, Tq. Paithan, Dist. Aurangabad reserved for SC category'. The petitioner applied on 29.11.2018 in pursuance to the advertisement for the aforementioned site. She mentioned in her application form that she was offering land and that she was in possession of the land documents to qualify her candidature under Group 1. Under Group 1, applicants were required to offer suitable piece of land in the advertised location/area either by way of ownership or long term lease. Under Group 3, applicants could apply without offering any particular land. On the basis of the information furnished by the petitioner in her application, her candidature was considered and she was selected in the draw. The Application Scrutiny Committee (ASC) conducted verification of supporting documents and sought documents from her by e-mail dated 05.02.2019. On conducting verification, it was found that she had submitted consent letter dated 11.02.2019 and advocate's letter dated 19.02.2019. Both the documents were executed subsequent to the date of submission of application dated 29.11.2018. Therefore, by the impugned communication dated 29.06.2019, she was informed that her candidature was found ineligible in Group 1 as her land documents were not valid. However, it was informed that her candidature may get considered for selection along with Group 3 applicants. The communication dated 29.06.2019 is subject matter of challenge in the present petition.

4. Appearing for the petitioner, Mr. Vishal Bagdiya, the learned counsel has submitted that the petitioner did possess the two documents being (i) Appendix III-B (advocate's letter) and (ii) Appendix III-A (for offer of land) were executed on

27.11.2018. After receipt of e-mail dated 05.02.2019, the petitioner did submit both the documents executed on 27.11.2018 to the respondent-corporation. To buttress his contention that the documents at Appendix III – A being a notarized affidavit was indeed executed on 27.11.2018, he would invite our attention to the notary register of 27.11.2018 containing entry of execution of document by the petitioner. He would further submit that despite the two documents dated 27.11.2018 being submitted in pursuance of demand by the respondent-corporation, the officer of the respondent-corporation personally called the petitioner informing her that Appendix III – A and Appendix III – B are required to be executed after 05.02.2019 i.e. after the date of letter by which documents were called for. In pursuance of such information given to her by the officer of the corporation, the petitioner executed fresh documents being Appendix III – A on 11.02.2019 and Appendix III – B on 11.02.2019. Said documents executed on 11.02.2019 were submitted to the respondent-corporation. He would therefore submit that the petitioner fulfilled the condition of land documents and has been erroneously found ineligible by the respondent-corporation.

5. Per contra, Smt. Anjali Bajpai-Dube, learned counsel appearing for the respondent-corporation would submit that the petitioner submitted only documents executed on 11.02.2019 after receipt of the e-mail dated 05.02.2019. She invites our attention to various terms and conditions of the guidelines as well as application form under which the petitioner was required to possess the documents at Appendix III – A and Appendix III – B as on the date of the application. She would submit that the petitioner was clearly given to understand that she was required

to possess land documents as on the date of application form. But same were to be submitted as and when demanded by the respondent-corporation. She would submit that since documents at Appendix III – A and Appendix III – B were executed after the date of application form, the same have rightly been ignored by the respondent-corporation. Despite rejection of petitioner's candidature for R.O. allotment under Group 1, the respondent-corporation had shown willingness to consider her candidature for Group 3 allotment. She relies upon the decision of this Court in the case of **Rajendra Bapurao Hande Vs. Bharat Petroleum Corporation Ltd. and another** in Writ Petition No. 9974 of 2019 dated 13.01.2020.

6. We have heard the learned counsel for the parties and perused the records.

7. We would first refer to the relevant terms and conditions of the guidelines and of the application form, which would be relevant for deciding the issue involved before us. Clause 4(v) of the guidelines provide for classification of applicants into three groups as under :

4. ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS – PROPRIETORSHIP / PARTNERSHIP.

(i) ...

(v) Land (Applicable to all categories) :

The applicants would be classified into three groups as mentioned below based on the land offered or land not offered by them in the application form.

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.

8. Clause 4(v) (a) provides as under :

a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application.

9. Clause 4(v) (d) provides as under :

d) The applicant(s) under Group-1 should have documents to establish ownership of land offered for the Dealership as **on date of application**, such as :-

- . Khasra / Khatauni or any equivalent revenue document or certificate from revenue official confirming status of the ownership of the land.
- . Registered Sale deed/Registered Gift deed.
- . Registered Lease deed for a minimum period of 19 years and 11 months (as advertised by respective oil company).
- . Any other type of ownership/transfer deed documents.
- . Lease agreement or firm allotment letter issued by Government/Semi Government bodies

10. Clause 4(v) (k) provides as under :

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 the 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.

11. Thus under the guidelines, the applicants were required to possess entire documents of ownership of the land offered for the dealership, “as on date of application”. However, the same are required to be furnished to the respondent-corporation as and when advised.

12. Now we refer to the relevant terms and conditions of the application form submitted by the petitioner. The Note in the application form reads as under :

Note : in case land belongs to member of Family/Others, notarized affidavit as per Appendix- III A should be available which is to be submitted when asked by Hindustan Petroleum Corporation Ltd.. Each applicant should have a 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) before submitting the application.

13. Further clause 15 of the application form deals with the undertaking to be given by the applicant and sub clause (b) thereof reads as under :

b. I also confirm that I am in possession of the supporting documents in original in respect of the information given by me in this application and if selected, failure to present these documents in original will result in cancellation of selection due to submission of false/unsupported information in this application.

14. By this undertaking in the application form, the petitioner was clearly made to understand that she was required to possess Appendix III – A and Appendix III – B while submitting the application and that the same were to be furnished to the respondent-corporation when asked.

15. Perusal of various averments made in the petition would show that the petitioner never pleaded the theory of officer of the respondent-corporation calling her upon to prepare fresh documents at Appendix III – A and Appendix III – B after receipt of e-mail dated 05.02.2019. We would reproduce para Nos. 8, 9 and 10 of the petition as under :

08. The petitioner says and submit that, the Petitioner was declared as the successful candidate in the Draw of Lots conducted on 04/02/2019 by the respondent and according the respondent by mailed dated 05/02/2019 to the Petitioner demanded the amount of Rs. 30,000/- towards initial Security Deposit and further demanded some paper as per the list mentioned in the said mail.

09. The Petitioner says and submit that, the Petitioner has submitted all the paper with the respondent on 13/02/2019 as per the list dated 05/02/2019 demanded by the respondent.

10. The Petitioner says and submit that, the respondent without hearing the Petitioner and without giving any opportunity to the petitioner and without considering the documents submitted on 13/02/2019 the respondent by the order dated 29/06/2019 which was mailed by the respondent to the Petitioner has declared as the ineligible to the Petitioner on the Ground that the, Land Documents submitted by the petitioner are not valid for considering the offered land under Group 1.

16. In fact, in her petition, the petitioner never referred to the documents at Appendix III – A and Appendix III – B which were executed on 11.02.2019, nor produced the same. Said documents are brought on record by the respondent-corporation along with its affidavit in reply. The petitioner thus, painted a picture in the petition as if the documents at Appendix III – A and Appendix III – B executed on 27.11.2018 were the only

documents that were executed and submitted to the respondent-corporation. After filing of the affidavit in reply by the respondent-corporation and production of documents of Appendix III – A and Appendix III – B dated 11.02.2019, the petitioner has filed rejoinder and has attempted to improvise the theory by incorporating para Nos. 3 and 5 in the rejoinder affidavit. Same are reproduced as under :

3. I say that, in pursuant to the said email the petitioner has submitted the documents on 13.02.2019. That the receipt of the same is also given by the officer of respondent to the petitioner. The petitioner say and submit THAT, the petitioner has submitted the document on 13.02.2019 are annexed with the petition at page No. 94 to 97. The said documents were of dated 27.11.2018. The said documents were already in the possession of the petitioner and the said documents were very well in possession before submission of the application for selection of RO Dealership.

5. I say that, the officer of respondent after submission of papers on 13.02.2019 has called the petitioner and has informed the petitioner that the advocate letter and affidavit i.e. III-B and III-A must be of dated 5.02.2019 or of the date of thereafter, and considering the request and instructions of the officer of the respondent the petitioner has submitted said documents to the respondent as per their requirement.

17. If the documents of Appendix III – A and Appendix III – B were executed on 11-02-2019 and submitted by the petitioner, the same ought to have been disclosed by her in her petition. Far from disclosing the same, the petitioner chose to suppress those documents. Rather she produced on record the documents of Appendix III – A and Appendix III – B allegedly executed on 27.11.2018 to paint a picture as if those were only documents that were submitted by her to the respondent-corporation.

Therefore, the story woven by the petitioner in her rejoinder by way of afterthought appears to be clearly unbelievable.

18. The petitioner was aware of the terms and conditions of the guidelines as well as specific condition stipulated in the application form. She was required to possess Appendix III – A and Appendix III – B “*as on the date of application*”, which were required to be submitted as and when called for by the respondent-corporation. If the petitioner indeed possessed the documents of Appendix III – A and Appendix III – B on the date of submission of her application i. e. on 29.11.2018, there was no reason for her either to execute the very same documents on 11.02.2019 or to submit them to the respondent-corporation. She has not disclosed the name of the officer, who allegedly asked her to execute the documents afresh or to submit the same. Therefore, we refuse to believe the theory put forth by the petitioner.

19. We therefore find that the respondent-corporation has rightly rejected the application of the petitioner. She was required to submit only those documents which were available and executed before the date of application i. e. 29.11.2018 when called for by e-mail dated 05.02.2019. As averred by the respondent-corporation in its affidavit in reply she submitted only the documents which were executed on 11.02.2019. The respondent-corporation has therefore rightly rejected her candidature.

20. In similar case of **Rajendra Bapurao Hande** (supra), this Court has held as under :

6. At the time of filling the application online, the petitioner is not required to submit the documents. It is on the basis of the information given by the petitioner in the application, the respondent Corporation processes the papers. The petitioner, in no uncertain words, represented that he is to be considered in Group-1 and that he possesses Advocate's declaration to that effect. If the petitioner would have represented as on the date of filing of the application that the petitioner was not possessing the Advocate's declaration/ letter, the petitioner's application could not have been considered from Group-1. However, the petitioner represented that he possesses the Advocate's letter and on the basis of that letter, the petitioner said his land offered, be considered in Group-1. On the basis of such representation, the petitioner was considered in Group-1. It is not disputed that as on the date of the application filled in by the petitioner viz. 25.12.2018, the petitioner was not possessing the Advocate's declaration. The petitioner could get Advocate's declaration on 24.06.2019.

7. The petitioner did not fill in the correct information in the application. This Court cannot exercise the jurisdiction in favour of a person who has filled in correct information and made wrong representation.

21. We would have stopped here by dismissing the petition. However, the conduct displayed by the petitioner before us does not commend us. We have reproduced the relevant pleadings in the petition and the rejoinder hereinabove. From the pleadings in the petition, it is abundantly clear that the petitioner suppressed the factum of execution of Appendix III – A and Appendix III – B on 11.02.2019 and/or submission thereof to the respondent-corporation. After being exposed by way of filing of affidavit in reply, she attempted to improvise upon the story by engineering the theory of unnamed officer of the respondent-corporation calling upon her to execute fresh documents and submit the same. We have already refused to believe her story.

Mr. Bagdiya has repeatedly invited our attention to the notary register to impress upon us that the Appendix III – A and Appendix III – B were indeed executed on 27.11.2018. Though we have our own doubt about the execution of the said documents on 27.11.2018, we would not like to dwell more on that issue and initiate further enquiry in that respect. Suffice it to say that if the said documents were indeed executed on 27.11.2018 and submitted to the respondent-corporation after receipt of e-mail dated 05.02.2019, there was absolutely no reason for the petitioner to again execute those documents on 11.02.2019. Therefore while not taking the matter further with regard to genuineness of execution of Appendix III – A and Appendix III – B on 27.11.2018, we would not permit her to go scot-free in respect of suppression and misleading the Court. We are of the view that the Petitioner has grossly abused process of law. Therefore, while dismissing present petition, we deem it appropriate to impose costs on her.

22. We therefore, proceed to pass following order.

O R D E R

- A. The petition of the petitioner is dismissed with costs of Rs. 10,000/- (Rs. Ten thousands only).
- B. Rule is discharged.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]