

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

WRIT PETITION NO.12670 OF 2017

Sushil Madhukar Sathe ..Petitioner

Versus

The Union of India and Ors. ..Respondents

**WITH
CIVIL APPLICATION NO.3059 OF 2022
IN
WRIT PETITION NO.12670 OF 2017**

Arun Vishnu Kanade ..Applicant

Versus

The Union of India and Ors. ..Respondents

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Mr. A. B. Kale, Advocate for the Petitioner.

Ms. Nikita N. Gore, Advocate for Respondent No.1.

Mr. Sanket S. Kulkarni, Advocate for Respondent No.2.

Mr. Sanjay D. Kotkar, Advocate for Applicant in CA.

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

DATE : 06th SEPTEMBER 2022.

FINAL ORDER (Per Sandeep V. Marne, J.):-

1. Rejection of petitioner's application for award of Retail Outlet Dealership at Brahmani village, Taluka Rahuri, District Ahemadnagar by way of communication dated 06.09.2017 is the subject matter of challenge in the petition. The land offered by the petitioner being situated on the

State Highway is the reason for rejection for award of dealership at the location advertised under 'Rural' category.

2. An advertisement was issued by Bharat Petroleum Corporation Limited on 09.07.2014 for award of Retail Outlet Dealership (R.O. Dealership) at various locations. At serial no.498 of the advertisement, the location of 'village Brahmani, Taluka Rahuri, District Ahemadnagar' was specified and the same was categorized as 'Rural' and reserved for S.C. category. The petitioner made an application in pursuance of the advertisement offering the land at Gut No.9 on Rahuri-Sonai road, Bus Stop, Brahmani. By the impugned order dated 06.09.2017, his application came to be rejected on the ground that the proposed land offered by him is situated on State Highway which does not conform to rural category.

3. By way of ad-interim order dated 15.11.2017, this Court directed the parties to maintain status quo. During pendency of the petition, letter dated 15.02.2018 was issued by respondent-Corporation calling upon the petitioner to offer alternate suitable land in the advertised location. Accordingly he offered alternate land at another location. By order dated 04.07.2018 this Court directed the respondent-Corporation to take appropriate decision and communicate the same to this Court.

4. In the meantime, one Mr. Arun Vishnu Kanade has filed Civil Application No.3059/2022 seeking direction to add him as party-respondent/intervenor. In his application, it is contended by the intervenor that he has been qualified for selection of R.O. Dealership in respect of the location of Brahmani village, Taluka Rahuri, District Ahemadnagar by way of communication dated 17.12.2019.

5. Appearing for the petitioner Mr. Kale, the learned counsel has submitted that the reason for rejection of petitioner's application for award of R.O. Dealership is arbitrary. He would submit that the advertisement did not specify that land cannot be on the State Highway in respect of the advertised location. He further submits that after consideration of petitioner's application, verification of his land was conducted and therefore, respondent-Corporation was estopped from citing a reason of location of land being on State Highway for rejection of the application subsequently. He would further submit that there is no record to show that the concerned road has been categorized as a State Highway. It is also submitted that even after offering the alternate land in pursuance of the letter dated 15.02.2018, the respondent-Corporation has not awarded the R.O. Dealership to the petitioner and instead offer is given to the intervenor. Mr. Kale, has also

highlighted the alleged discriminatory treatment given to the petitioner by inviting our attention to a chart at page no.85 of the paper book wherein award of allotment has allegedly been done in respect of other applicants in rural category even though their lands are allegedly situated on State Highways.

6. The petition is resisted by respondent no.2-Corporation by filing affidavit-in-reply. Mr. Kulkarni, learned counsel appearing for respondent no.2-Corporation has invited our attention to 'Brochure for Selection of Dealers for Regular and Rural Retail Outlets' (hereinafter referred to as 'Brochure'). Referring to the advertisement, Mr. Kulkarni would contend that every applicant was supposed to go through the terms and conditions of the Brochure before submitting the application. Mr. Kulkarni, relies upon paragraph no.1 of the Brochure in which it was specifically stated that for Rural R.Os., location cannot be on Highways. Referring to the letter dated 02.12.2016 by which the petitioner was declared as selected, Mr. Kulkarni would submit that there was a specific condition in the said letter that the same was merely a preliminary intimation and that the award of dealership was subject to compliance of terms and conditions of the Corporation. Countering the submission of Mr. Kale that the concerned road has not been declared as State Highway, Mr. Kulkarni would rely upon petitioner's letter dated

27.06.2017 admitting that the concerned road is a State Highway. He prays for dismissal of the petition.

7. Mr. Kotkar, learned counsel appearing for the intervenor has contended that the intervenor has been selected for award of R.O. Dealership at location Brahmani village, Taluka Rahuri, District Ahemadnagar. He has relied upon letter dated 31.05.2018 issued by the Deputy Engineer, Z.P., P.W.D, Rahuri certifying that the road on which the land offered by intervenor is situated is a village category road.

8. Rival Contentions of parties now fall for our consideration.

9. So far as the terms and conditions of the award of R.O. Dealership are concerned, the same are governed by the Brochure. Paragraph no.1 of the Brochure reads thus:

"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 / Rural outlets are set up by the Oil Companies as under:-

Regular ROs: Locations on Highways (NH/SH) and Urban/Semi Urban areas

Rural ROs: Locations in Rural areas but not on Highways (NH/SH)"

10. Thus in respect of Retail Outlets to be awarded at Rural locations, there is a specific

condition in the Brochure that the land shall not be situated either on National Highway or State Highway.

11. Mr. Kale, has submitted that the advertisement was silent about the condition of location on State Highway. We are not impressed by this submission as the advertisement specifically provided that the terms and conditions of award of R.O. Dealership are governed by the Brochure which was available in the office of the Corporation as well as on the website. Every applicant was expected to go through the terms and conditions of the Brochure. Therefore, it was not necessary for the respondent-Corporation to specifically highlight the condition of location of Rural R.O. not being on State Highway in the advertisement. All the applicants including the petitioner were expected to know that while making an application for award of Rural R.O., the land offered ought not to be located on National Highways or State Highways. Therefore, the contention of Mr. Kale in this regard is rejected.

12. The next contention of Mr. Kale that there is no record to show that the concerned road is a State Highway is stated only to be rejected. In his letter dated 27.06.2017, the petitioner himself has admitted that Taharabad-Rahuri-Sonai-Ghodegaon-Kukana road has been declared as State Highway by the State Government vide Circular dated

24.04.2012. In the light of this specific admission on the part of the petitioner, it cannot lie in his mouth that the concerned road is not a State Highway. We have also gone through the Government Resolution dated 24.04.2012. At Appendix-D to the said Government Resolution, list of roads declared as State Highways has been appended. Taharabad-Rahuri-Sonai-Ghodegaon-Chanda-Kukana road is at serial no.66 of the Appendix-D in which the road is numbered as State Highway No.66. There is thus absolutely no doubt that the concerned road is a State Highway.

13. The next contention of estoppel raised by Mr. Kale is on the basis of letters dated 20.09.2016, 10.11.2016 and 02.12.2016. By letter dated 20.09.2016, the petitioner was communicated that the Land Evaluation Committee would visit the site offered by him for inspection. It is submitted that after conducting such site inspection, the petitioner was communicated vide letter dated 10.11.2016 that he had qualified for draw of lot/bidding process for selection of R.O. Dealership. It is further submitted that result of draw of lots was communicated to him vide letter dated 02.12.2016 in which he was declared as selected. It is therefore submitted that the entire process was carried out after due verification of the fact that the land offered by the petitioner conformed to requirements in the advertisement. Mr. Kale, therefore, submits that

the respondent-Corporation is estopped from changing its stand and rejecting the application subsequently.

14. We do not find any merit in the plea of estoppel set up by the petitioner. It was nowhere communicated to him that the land offered by him was found suitable for award of R.O. Dealership. Even though, he was found selected in the draw of lots, it was specifically communicated that the same was merely a preliminary intimation and that award of R.O. Dealership was subject to the compliance of terms and conditions of the Corporation. We, therefore, do not find that any representation was made to the petitioner in any manner to the effect that the land offered by him was compliant of the conditions of the Brochure. On the contrary, the land has been held to be situated on State Highway and thus non compliant with the terms and conditions for award of R.O. Dealership at Rural location.

15. The next contention raised by Mr. Kale is that in respect of some locations Rural R.O. is awarded even though the lands are located on State Highways. This contention is premised on a chart produced by the petitioner at Exhibit-R-1 to the rejoinder. Firstly, the contents of the said chart do not indicate in any manner that the lands in respect of the said locations are indeed located on State Highway. Secondly, even if it is assumed

that there is any departure from terms and conditions of the Brochure, the same cannot be a ground for the petitioner to seek equal treatment. Right to equality is a positive concept and cannot be enforced in a negative manner. The award of R.O. Dealership is to be done in accordance with the terms and conditions of the Brochure. The respondent-Corporation being a public body is bound to follow scrupulously such terms and conditions. Therefore, the petitioner cannot insist that Rural R.O. Dealership must be awarded to him in violation of such terms and conditions. We, therefore, rejected the plea of discrimination.

16. So far as the plea of Mr. Kale about alternate land is concerned, we find that there are no pleadings on this aspect. The respondent-Corporation was fair enough to give an offer to the petitioner by letter dated 15.02.2018 for offering alternate land as no applicant was found eligible in the concerned group. Similar letters appear to have been issued to other applicants as well. Ultimately, the intervenor appears to have been found eligible for consideration of his land for award of R.O. Dealership at Brahmani village, Taluka Rahuri, District, Ahemadnagar. We express no opinion on the eligibility or otherwise of the intervenor in respect of his location. In absence of any pleadings and in absence of any prayer with regard to consideration of alternate land offered by the petitioner, we cannot go into that question.

The challenge in the present petition is restricted in respect of rejection of earlier land offered by the petitioner and we, therefore, would confine our decision only in respect of that challenge.

17. In the result, we do not find any merit in the petition. Writ Petition is dismissed without any orders as to costs.

18. In view of dismissal of the present Writ Petition, nothing survives in the Civil Application and the same is accordingly disposed of.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE