

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.4017 OF 2021

Smt. Sharda W/o Arun Morghare Petitioner

versus

The Secretary Ministry of
Petroleum and Ors. Respondents

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- Mr. S.W.Sambre, Advocate for the Petitioner.
- Ms. K.Deshpande, AGP for the Respondent No.1.
- Mr. R.Joshi, Advocate for the Respondent No.2.

**CORAM : SANDEEP K. SHINDE AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 21st DECEMBER, 2022.

JUDGMENT (PER : SANDEEP K. SHINDE, J.)

1. Rule. Rule made returnable forthwith. With

consent of the parties, Petition is taken up for final hearing.

2. This Petition, under Articles 226 and 227 of the Constitution of India, challenges the communication dated 1st July, 2021, issued by the Head of Divisional Office, Nagpur Divisional Office, Indian Oil Corporation Limited ("IOCL", for short). By which, the candidature of the Petitioner for Retail Outlet Dealership on National Highway -6 from Nagpur to Raipur between KM Stone 458 to 468 in Group-I, was declared ineligible and petitioner has been placed in Group-3, as per guidelines.
3. The respondents in their reply have explained their policy as to the dealership of Retail Outlets. In terms of it, dealership of Retail Outlets are of three categories; namely Group-1; consisting of candidates having ownership of land; Group-2-consisting of candidates having "firm offer", of land; and Group-3-consisting of candidates not having any land. As such, candidates in Group-1, are given a priority over Group-2 and Group-3 candidates and candidates in Group-2 are given a priority over Group-3 candidates. The Petitioner, in pursuant to notice/advertisement issued by the IOCL inviting applications for dealership of the Retail Outlet, submitted

online application on 5th December, 2018 for the aforesaid location in Group-1 by furnishing ownership details of land, in Column No.13 of the form, details of which were as under :-

13. Land details — Group 1 (copy of proof of ownership of land would be required to be submitted as and when advised Indian Oil Corporation Ltd.)

Name(s) of the owner of Land/ Lease holder	Relation-ship of applicant	Date of registration of sale deed/gift deed/registered leased deed/date of mutation	Location of the land with respect to Reference point/Land mark (Specify land mark/ reference point and distance from the same)	Khasra/No.	Dimensions of land Frontage in metre	Depth in metre	Area (Sq.mtrs)
Plot No.1							
SHARDA MOTGHARE	SELF	05-12-2018	MUNDIPAR SADAK	320/4	35.00	45.00	1575.00

4. In terms of the Guidelines, the applicants under Group-1 were to establish ownership of land offered for the dealership as on date of application, whereas the land owned by family members would be considered as belonging to applicants (Group-1) subject to producing the consent letter in form of Affidavit (Appendix-IIIA) from the concerned family members. However, for Group-2

applicants, the “firm offer” of land would include the land offered from third party based on agreement to purchase/ long term lease and offer letter should be in form of Affidavit (Appendix-III A) alongwith the title documents to establish the ownership of land offered for the dealership. In addition thereto, in terms of sub-clause-k of Clause-4(v), each applicant was obliged to arrange for a conformity letter from Advocate (Appendix-III B) giving details of current ownership, documents relied upon and category in which the land falls, whether, Group-1 or Group-2, as on date of application.

5. In the case at hand, the petitioner submitted application through online mode on prescribed web portal on 5th December, 2018 declaring that offered land falls in Category ‘A’. As per the notice/advertisement, last date scheduled for submitting the online applications was 24th December, 2018. Thus, Petitioner’s application was in time. Here, although the Petitioner submitted online application on 5th December, 2018, conformity letter from advocate in Appendix-III-B was dated 12th August, submitted on 14th May, 2018. The respondents rejected the Petitioner’s candidature under Group-A, reason being conformity letter of advocate in Appendix-III-B was of later date, than the date of the application. Resultantly. the

Petitioner was placed under Group-3. To appreciate the controversy-fact in issue, we deem it appropriate to reproduce letter of rejection, which read as under;

"इंडियन ऑयल

Indian Oil

A Maharashtra Company

इंडियन ऑयल कॉरपोरेशन लिमिटेड Indian
Oil Corporation Limited Regd.
Office: Indian Oil Bhawan, G-9,
Ali Yavar Jung Marg, Bandra
(EAST), Mumbai - 400051

Ref: 15439893546251

To,

Ms. SHARDA MOTGHARE

Address: DATTA MANDIR ROAD LAKHANI

Date: 01-Jul-2021

District: BHANDARA

State: MAHARASHTRA

Pin Code: 441804

Subject: Application for award of RO dealership at On RHS on NH
6 from Nagpur to Raipur between KM stone 458 to 468 District. BHAN
DARA under OBC category Advertised on 25-Nov-2018

Dear Madam,

1. Please refer to your application received by us as Application form No.
15439893546251 on the subject,

2. Please also refer to our letter dated 10-Mar-2021 and wherein you were advised to submit certain documents.

3. However, it is observed that land documents submitted by you are not valid for considering the offered land under Group 1 for reasons as detailed below. Appendix IIIB is of later date than the date of application. (emphasis supplied)

4. In view of the above, we regret to inform you that your candidature has been found ineligible. However, your candidature may get considered for selection along with Group 3 applicants as per guidelines. (emphasis supplied)

Thanking you

Yours faithfully

For Indian Oil Corporation Ltd.

N.P. Rodge

Head of Divisional Office

Nagpur Divisional Office,
26, Akarshan Busiplex, 2nd & 3rd floor,
Central Bazar Road, Ramdaspeth,
Nagpur -440 010
0712-2441812"

6. Feeling aggrieved by the above communication dated 1st July, 2021 rejecting her candidature for dealership under Group-I and placing her under Group-III, the petitioner has approached this Court in its writ jurisdiction.

7. Mr. Sambre, learned Counsel for the petitioner, would submit, that in terms of sub-clause 'k' of Clause-4(v)

of the Guidelines, a conformity letter supporting the declaration contained in application, as to status of “offered land” calls for meaningful reading in the spirit of the Guidelines and not superficial. Mr. Sambre, submitted, simply because, Advocate’s conformity letter was dated 12th December, 2018, and application was made on 5th December, 2018 it would not constitute valid reason to reject petitioner’s candidature under Group-1. Mr. Sambre, would argue, “Note” appended to Sub-clause-(I) of Clause-4(v) of the Guidelines, clearly convey, that unless it is found at the later stage that, land offered, is not meeting any condition, then in such case, offered land, would be rejected and candidature will be given opportunity alongwith the applicants under Group-3. Mr. Sambre, learned Counsel would, therefore submit that, offered land can be rejected either for want of clear title and/or its’ suitability and not otherwise. Lastly, Mr. Sambre submitted that, though Advocate’s letter was dated 12th December, 2018, respondents ought to have construed it, as issued on the date of the application i.e. 5th December, 2018, particularly when, petitioner’s title to the offered land and its’ suitability, was not disputed. On these grounds, Mr. Sambre, seeks to quash the impugned decision.

8. On the other hand, Mr. Joshi, learned Counsel

would justify the impugned communication/decision of the respondents. He would submit, in terms of the Guidelines and in-particular sub-clause 'k' of Clause-4(v) thereof, the conformity letter must affirm petitioner's title to the offered land, as on the date of the application. Mr. Joshi, would argue, Advocate Mr. Rakesh Saxena, affirmed petitioner's title to the offered land, on 12th December, 2022 i.e. after 5th December, 2022. Mr. Joshi, would submit that, this being material defect, the decision of the respondents cannot be faulted with. Mr. Joshi, would further submit that, this defect was not rectifiable and it being an administrative decision of the respondents, this Court may not interfere with the impugned communication or make the deficiency, rectifiable. Mr. Joshi, sought rejection of petition, on these grounds.

9. We have carefully considered submissions advanced by the learned counsel appearing for the respective parties and also perused notice, guideline and advertisement which regulate selection of the dealers for the Regular and Rural Outlets.

10. The impugned communication conveys the administrative decision of the Respondents. Settled law is, that in proceedings and the decisions taken in

administrative matters, the scope of judicial review is confined to decision making process and does not extend to merits of the decision taken. In other words, while exercising judicial review of administrative decision, primary concern of the Court is to see, whether there is any infirmity in the decision making process or whether it is vitiated by malafide unreasonableness and arbitrariness.

11. In the case at hand, Petitioner has not alleged malafides against the Respondents. Her case is, respondents have misconstrued or had misunderstood their own policy as relates to the submission of Appendix-III-B i.e. Advocate's letter by the applicants. To appreciate petitioner's case, we deem it appropriate to reproduce relevant Guideline-4(v), which reads as under;

4. ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS-PROPRIETORSHIP / PARTNERSHIP

Common Eligibility Criteria for all Categories applying as individual (as on date of application unless mentioned otherwise)

(i) **Citizenship**

(ii) **Residential Status**

(iii) **Age**

(iv) **Educational qualification**

(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.

Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant get selected under Group 1 & 2.

In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group 1 & Group 2 along with applicants under Group 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location / stretch, within a period of 3 months from the date of issuance of intimation letter to them through SMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected.

The other conditions with respect to offering of land are 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.

b) If the offered land is on Long term lease, then the Lease agreement should have a provision to sub-lease the land wherever the locations

are advertised under Corpus Fund Scheme (CFS), Other Corporation Owned Sites ("A"/ "CC" sites).

In case it is observed that the lease agreement for the land offered by the selected applicant does not have a provision to sub-lease the land, in such cases the selected applicant would be provided 21 days' time from the date of intimation through SMS/e-mail to make suitable amendment / addendum to the lease agreement and submit the same to the concerned OMC.

c) For Dealer owned sites ("B"/"DC" sites), the applicant should ensure that the land arranged by the applicant is either registered in the applicant's name or leased in favour of the applicant for a minimum period of 19 years and 11 months (as advertised by respective oil company), before issuance of LOA as per the conditions of LOI.

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 document.
- Lease agreement or firm allotment letter issued by Government / Semi Government bodies

e) the land owned by the family member(s) will also be considered as belonging to the applicant (Group-1) subject to producing the consent

letter in the form of affidavit (Appendix III A) from the concerned family member (s).

For this purpose family members would comprise of:

- (i) Self
- (ii) Spouse
- (iii) Father/Mother including Step Father/Step Mother.
- (iv) Brother/Sister/Step Brother/Step Sister
- (v) Son/Daughter/Step Son/ Step Daughter
- (vi) Son-in-law / Daughter-in-law
- (vii) Parents-in-law
- (viii) Grand Parents (both maternal & paternal)

f) For Group 2 applicants, the "firm offer" of land will include land offer from third party based on Agreement to purchase/long term lease (as per terms and conditions of the OMCS). Offer letter should be in the form of an Affidavit (Appendix III A) along with documents, mentioned in Clause (d) above, to establish the ownership of land offered for the Dealership.

g) In case offer letter is from Power of Attorney holder (Registered), Offer letter should be in the form of an Affidavit along with copy of POA and along with documents, mentioned in Clause (d) above, to establish the ownership of land offered for the Dealership.

h) The eligibility of applicant with regard to the Land (Group 1 or Group 2) will be decided by Oil Company with reference to a confirmatory letter from an advocate (Appendix III B) to be arranged by the applicant.

i) In case the applicant or family member(s) own the land jointly with third person, the consent letter in the form of an Affidavit (Appendix III A) or Power Of Attorney (Registered) clearly authorizing the applicant

for such use of land from third person is also required.

j) Various situations of ownership for defining owned / firm offer are as under:

S.No.	Situation of ownership	Share of applicant in land	Additional documents required	Evaluation as
GROUP 1				
1	Self	Full	Nil	Owned
2	Self with members of family or owned exclusively by family members	Part/Nil	Consent letter in the form of affidavit from members of family- Appendix IIIA	Owned
3.	. Self with other owners	Part	If the share of the applicant and/or family members is more than or equal to land required by the company.	Owned
	. Family members with other owner(s)	Nil	Consent letter on stamp paper or an affidavit or Power of Attorney from all co-owner(s) should be provided	
	.Self with family members and other owners	Part	— Appendix-III A	
4	Land owned by Government/Semi-Government bodies	Full	Allotment Letter from the Government/Semi-Government bodies in the name of Self with specific mention for use of petrol pump.	Owned
GROUP2				
5	Land owned by third party in part or full	Part/Nil	Consent letter in the form of affidavit/Power of Attorney from other owner(s)- Appendix III A	Firm offer

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.

m) Verification of the supporting documents submitted by the selected candidate, post selection, will be carried out at the time of Scrutiny/Field Verification of Credentials (FVC)"

12. The policy guidelines, clearly imply, the suitability of offered land and applicants' title to it, are inflexible

conditions for selection of dealers for Regular and Rural Outlets. Clause-(v) vis-a-vis, Group-1, fortifies this fact. Sub-clause 'h' as highlighted above, convey that eligibility of applicants with regard to the land (Group-1 or Group-2), will be decided by the respondents with reference to conformity letter from Advocate (Appendix-III B). Herein, conformity letter issued by Shri. Rakesh Kumar Saxena, reads as under :

"To,

The Divisional Manager/Territory Manager/Regional Manager Indian Oil Corporation Ltd.

Dear Sir,

Subject:- Details of land offered by my client

1. This is to inform you that, I have perused the documents pertaining to the land at Survey No./Gat No. 32,4 having area situated at Mundipar/Sadak, Khasra/Khatuni No. 10039 at village Mundipar/Sadak, P.C. No. 14, Tah. Sakoli, Distt. Bhandara offered by Mrs. Sharda w/o. Arun Motghare, who has applied for Retail Outlet dealership of M/s. Indian Oil Corporation Ltd for the location, on RHS on National Highway No. 6 from Nagpur to Raipur between KM Stone 458 to 468, Mundipar/Sadak, Tah. Sakoli, Distt. Bhandara and that this land falls in the advertised area/stretch.

2. I have perused and understood the definition for member of family for selection of dealer for Regular and Rural Retail Outlets, pertaining to land parameter under the Clause 4 of ELIGIBILITY CRITERIA FOR APPLICANTS in the Brochure, which explains how particular piece of land falls under Owned Land Category (Group 1) or Firm

Offer Category (Group 2).

In my opinion and as per the requirement of OMC (Indian Oil Corporation Ltd), the piece of land offered by my client falls under :

Group 1 YES

Group 2 NO

Bhandara

Dated 12/12/2018

Yours Thankfully,

(Adv R. K. Saxena) R. K. Saxena

Opp. Bus Stand BHANDARA-441204

Advocate"

13. It is implicit from sub-clause 'k' highlighted above, that Advocate shall affirm the title/ownership of the applicants offered land, as on date of application. Herein, Advocate Mr. Rakesh Saxena on 12th December, 2018, confirmed that land offered by the petitioner falls under Group-1. Advocate Mr. Rakesh Saxena, affirmed petitioner's title to the said land, relying on title deed, that was disclosed in Column-13 of the application. In any case, it is not the respondent's case, that offered land was not meeting the conditions as to its suitability or title. Moreover, policy guidelines, do not suggest that, conformity letter dated 12th December, 2018 being issued

of later date than the date of the application (5th December, 2018) caused prejudice, particularly when the last date for submitting application was, 24th December, 2018.

14. Above all, it could be seen from the Guidelines that, applicants under Group-1, would establish ownership of land offered for dealership, as on the date of the application, by producing documents such as registered sale-deed, registered lease-deed of minimum period of 19 years or such other documents. Guidelines, also provide that, in case land offered by the applicants under Group-1 and Group-2, if found not suitable/not meeting with the requirements, then the applicants would be advised to provide suitable land within a period of 3 months from the date of issuance of intimation to them. Further provides, in case, the applicants fail to provide suitable land within the prescribed period or the land provided is found not meeting the laid down criteria, the application would be rejected. Thus, qua, suitability of the land offered, the applicants have been given/offered opportunity to provide alternate suitable land within three months, if land offered at the time of making the application, was found not suitable. However, such laxity has not been extended to the cases, where title of the land affirmed by

the Advocate was of later date, than the date of the application. However, one may argue, this being a policy decision of the respondents, the Court cannot interfere in the writ jurisdiction. In any case, although the applicants under Group-1, has to independently establish ownership of land on the basis of documentary proof, we are unable to understand as to how the supportive document, i.e. letter from Advocate affirming the title of the applicants to the land offered, would be decisive, for rejecting the eligibility of the applicants. More so, as to how Certificate/letter from Advocate, of later date, would render the applicant ineligible, if title documents, otherwise establishes, applicants' title to the land offered by him for dealership. Infact, we are of the view that, Advocate's letter in Appendix-IIIB, of later date, affirming petitioner's title to the land would ensure and assure the respondents, that after the petitioner made declaration as to her title (herein, on 5th December, 2018) was good, till the Certificate issued by Advocate, Mr. Rakesh Saxena. If that be so, how it would matter if Advocate's letter in Appendix-IIIB was of later date than the date of the application. Therefore, insistence of the respondents that, Appendix-IIIB, must be as on the date of the application, which in this case was, 5th December, 2018, was without rational. As such, in context of the policy guidelines of the

respondents reproduced above, interpretation sought to be placed thereon by the Head of Divisional Office of IOCL, that the Appendix-III B from Advocate being of later date than the date of application and therefore the petitioner was not eligible under Group-I, was not only incorrect decision, but it was unjust and arbitrary. We do not see any rational for placing such interpretation on clauses of the policy. Therefore, though such defect was categorised, as “non-rectifiable”, we are of the view, the impugned communication being unreasonable, unjust and arbitrary, we quash and set aside the same and direct the respondents to place the petitioner’s candidature under Group-I.

15. Petition is allowed and the Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(SANDEEP K. SHINDE, J.)

**NEETA
SHAILESH
SAWANT**

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