

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

WRIT PETITION NO.5026 OF 2022

Surekha Siddharth Gaikwad
Age : 36 years, Occu: Housewife,
R/o. Samrat School, Deepnagar,
Pandharpur, Wadgaon
Tq & Dist : Aurangabad – 431136

... **PETITIONER**

VERSUS

1. The Union of India,
Through Principal Secretary,
Ministry of Petroleum & Natural Gas,
Shastri Bhavan, Dr. Rajendra Prasad Road,
New Delhi-110001.

2. The Head of the Division,
Aurangabad Divisional Office,
Plot No.99, Indian Oil Bhavan,
Jyotinagar, Aurangabad-431005

... **RESPONDENTS**

...
Advocate for Petitioner : Mr. Devidas R. Shelke
Advocate for respondent No.1 – UOI : Mr. B.M. Dhanure standing counsel
h/f. Mr. A.G. Talhar, DSGI – UOI
Advocate for respondent No.2 : Mr. Anand P. Bhandari
...

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 01.02.2023

ORDER :

We have heard both the sides and perused the papers.

2. The petitioner is invoking the powers of this Court under Article 226 of the Constitution of India aggrieved by the communication dated 09.04.2022 whereby her application for award of Retail Outlet (RO)

dealership at Farola RHS on Aurangabad Road Towards Paithan District Aurangabad under SC category, pursuant to the advertisement dated 25.11.2018 of the respondent No.2, was informed that the land offered by her was not suitable site as was found by the Land Evaluation Committee on its visit on 28.03.2022.

3. The learned advocate for the petitioner would submit that an opportunity to the petitioner ought to have been extended to offer an alternate site. He placed heavy reliance on the communication dated 09.03.2016 whereby the Under Secretary to the Government of India in the Ministry of Petroleum and Natural Gas has issued a direction to all the Directors (Marketing) of the Petroleum Companies about such option to be given to the persons *inter alia* belonging to SC/ST women candidates under which the petitioner has submitted the application. He would also place reliance on Note Nos.2,3 and 4 of the Brochure for Selection of Dealers for Regular and Rural Retail Outlets issued by the Petroleum companies. The learned advocate also places reliance on the decision of the Supreme Court in the matter of **K. Vinod Kumar Vs. S. Palanisamy and Ors.; (2003) 10 SCC 681**, and the order of this Court in Writ Petition No.3213/2018 **Mangesh s/o Madhukar Gaikwad Vs. The Union of India and Others**, dated 15.01.2019 (Aurangabad Bench) wherein the communication dated 09.03.2016 has been relied upon holding the petitioner therein entitled to offer alternate land.

4. The learned advocate Mr. Bhandari for the respondent No.2

referring to the affidavit-in-reply submits that there is no dispute regarding the petitioner having applied for allotment of regular and retail outlet for the aforementioned location pursuant to the advertisement and that she had offered a piece of land which was not found to be compatible with the requirement of the advertised location by the Land Evaluation Committee. However, he submits that the petitioner's application has not been outrightly rejected. He would point out that in the impugned communication itself it was made clear that her claim would be considered from Group 3 and the respondent No.2 would certainly consider her claim depending upon the further selection process.

5. Mr. Bhandari would submit that petitioner's reliance on the communication dated 09.03.2016 is misplaced. Those guidelines in that communication specifically mentioned that those would govern the selection process pursuant to the advertisements released in 2014-15. Whereas, the current process is of the year 2018 which is governed by fresh brochure. He submits that even by following the Note Nos.2,3 and 4, the petitioner's claim can be considered only if it is found that the sites offered by other applicants from Group - 2 are found to be not meeting the requisite criteria, is an eventuality still to occur, inasmuch as, there are five other candidates from Group - 2 whose claims are still to be considered.

6. Mr. Bhandari would submit that the decisions being relied upon by the petitioner are not applicable to her case in the peculiar facts and circumstances.

7. At the outset it is necessary to note that though the petitioner seems to be under a perception that her application has been rejected outrightly, it is not factual so. The impugned communication only informs her that the land offered by her was found to be not fulfilling the norms of the advertised location. Para No.3 of that communication specifically informs her that her candidature would be considered along with the Group - 3 applicants as per the guidelines.

8. Be that as it may, the communication dated 09.03.2016 (supra) specifically mentions therein that the guidelines that was communicated to the Petroleum Companies by the Ministry of Petroleum and Natural Gas of the Government of India was applicable only in case of advertisement released in 2014-15. There is nothing on record to demonstrate that those guidelines were subsequently continued to be in place by some such subsequent circulations/communications. The decision in the matter of **Mangesh s/o Madhukar Gaikwad** (supra) was a matter which was expressly found to be covered by the aforementioned communication inasmuch as the advertisement therein was published on 10.12.2014. The petitioner cannot derive any benefit from this decision.

9. The petitioner's reliance on Note No.2 of the brochure containing the guidelines dated 24.11.2018 reads as under :

*“ **Note 2** : In case of locations where the applicant has not offered the land in the application (**Group 3**) or if the offered land of all applicants **under Group 1 & Group 2** got rejected due to not meeting the laid down criteria, then all such applicants shall be given an opportunity to offer land or alternate land (as*

the case may be) in the advertised location/stretch provided the applicant meet all other eligibility criteria.

A communication through SMS/e-mail would be sent to these applicants to offer land/ alternate land within a period of 3 months from the date of offer letter.

*On receipt of advice to offer land from OMCs the applicant should submit land offer online and indicate the category under which the land falls (Group 1 or Group 2) on the basis of the confirmatory letter from an advocate (**Appendix III B**). Upon selection, the selected candidate would be required to submit all the relevant documents pertaining to the land offered along with consent letter in the form of affidavit (**Appendix III A**) and/or Power of Attorney (Registered), if applicable, along with confirmatory letter from an advocate (**Appendix III B**).*

The applicants would be classified into two groups i.e. Group 1 & Group 2 based on the land offered by them.

In case the applicant(s) fail to offer alternate land within the specified period, the offer would be withdrawn and application rejected under intimation to the applicant(s) through SMS/e-mail.

Only one opportunity would be given to the applicant, either for offering land (if applicant has not offered any land along with application form) or for offering alternate land (if the land offered by the applicant is found to be not meeting the laid down criteria during Scrutiny/land evaluation/ rejection of land after selection, for applicants who have offered land along with the application.”

A bare look at this note clearly demonstrates that it is only when the lands offered by the applicants under Group - 1 and Group - 2 get rejected that all the applicants including the applicants from Group - 3 can be given an opportunity to offer alternate land at the desired location. Mr. Bhandari has submitted that there are other five applicants from Group - 2 whose claim is still to be considered. This note would come to the rescue of the petitioner on occurrence of an eventuality wherein the lands offered by all other applicants are similarly rejected being non-compliant.

10. Even logically, if the other applicants who are also in fray have

offered the land/s which is/are compatible with the desired location requirement, one wonders why the petitioner alone can be made entitled to offer an alternate land. A plain reading of this note clearly indicates that an opportunity to applicant whose offered land is found to be not meeting the criteria is entitled to offer an alternate land contingent upon the fact that the offer of other applicants has been similarly turned down on the ground that the lands offered by them are also not suitable. Therefore, the petitioner is not entitled to put up any claim to offer an alternate land in preference to the other applicants.

11. There are other contingencies also indicated in Note Nos.3 and 4 wherein an applicant is entitled to offer an alternate land in specific contingencies. These situations are only in the form of an option available to a successful candidate whose initial offered land is suitable/compatible with the requirements but he intends to offer some other land either before issuance of Letter of Interest and in some contingencies even thereafter. The petitioner's case, in our considered view, does not fall in these categories mentioned in Note Nos.3 and 4.

12. In the matter of **K. Vinod Kumar** (supra) in the peculiar facts and circumstances of the case where the applicant therein had submitted application for distributorship of LPG where the applicant was supposed to offer a place for godown and showroom and in the light of the instruction (g) it was observed that a suitable land can be offered within a period of two months from the date of selection. It is equally important to note that in

paragraph No.11 it was also clarified that the scope for judicial review in administrative matters is confined to the decision making process and does not extend to the merits of the decision taken. In the matter in hand, for the reasons discussed herein above, we have found that the petitioner's application is entitled to be considered only if the lands offered by other applicants are also found to be not suitable. Even the impugned communication, as is observed herein above, keeps that option alive.

13. There is no merit in the writ petition and it is dismissed.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)