

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

902 WRIT PETITION NO.6127 OF 2020

SANJAY BALCHAND PACHLORE
VERSUS
THE UNION OF INDIA AND OTHERS.

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Advocate for Petitioners : Mr. U.S. Sawji
Advocate for Respondent no.1 : Mr. R.B. Bhosale
Advocate for Respondent nos.2 to 4 : Mr. A P Bhandari
AGP for Respondent no.5 : Mr. A R Kale
Advocate for Respondent no.6 : Mr. A.N. Barhate Patil

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated : April 11, 2023

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PER COURT :-

1. Heard.
2. Challenge in the petition is to the selection of respondent no.6 as retail outlet dealer for respondent nos.2, 3 and 4 Bharat Petroleum Corporation / Oil Company.
3. The facts, necessary for deciding the petition, are as under :-

The aforesaid respondents/Oil Company since was intending to open a retail outlet in rural area, invited applications from the candidates, who were belonging to OBC category as the location was reserved for such category.

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Accordingly, petitioner, respondent no.6 and other 8 candidates applied for their selection. Selection was by draw of lots. In such selection process, respondent no.6 came to be selected, whereas, candidature of the petitioner as a sequel of above came to be rejected. As such, present petition.

4. The contentions of Mr. Sawji, learned counsel for the petitioner are that, the respondents oil company has followed illegal procedure in the matter of drawing of lots as no transparency was maintained. According to him, computerized lots were drawn. He would further urge that the information sought by the petitioner was neither supplied inspite of there being an application under the Right to Information Act. According to the brochure containing guidelines, regulation for selection mandates verification of documents of the candidate and application of respondent no.6 was considered on two issues; a] land which was offered by respondent no.6 is meant for agricultural use and, b] the same was given on lease to respondent no.6 by erstwhile owner without there being any consideration and as such the contract between respondent no.6 and erstwhile owner is illegal. His further challenge to the selection of respondent no.6 is illegal submission of the
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caste validity certificate and failure of the respondents/oil company to verify the same at the time of scrutinizing the candidature. Based on above and drawing support of the order of this court in the matter of **Kiran Sahebrao Salve Vs. Hindustan Petroleum Corporation Ltd., through Manager and another in Writ Petition No.9956 of 2019, Namrata Sandip Dongre Vs. The Union of India and others in Writ Petition No.5099 of 2019 dated 20.1.2020 and Sumit Ashokkumar Purohit Vs. Bharat Petroleum Corporation Ltd., through it's Chairman Bharat Bhawan and another Vs. in Writ Petition No.6234 of 2019**, learned counsel Mr. Sawji would urge that selection of respondent no.6 is liable to be set aside and writ of mandamus be issued thereby directing respondent nos. 3 to 5 to select the petitioner for the retail outlet in question and award dealership in his favour.

5. While countering the aforesaid submissions, learned counsel for respondent nos.2 to 4 Mr. Bhandari and Mr. Barhate appearing for respondent no.6 support the selection process. According to Mr. Bhandari entire transparency in the selection process was maintained and draw of lots were drawn through computer process. He would further urge that, it is
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not mandatory to submit his validity certificate and as such challenge raised by the petitioner is not germane to the cause to that extent. He would further urge that respondents have verified the documents of respondent no.6 and found him to be qualified for the purpose of participating in the selection process for the retail outlet in question. According to Mr. Bhandari, even if the land in question shall be used for the purpose of agriculture only, however, there is no embargo in the lease itself that the land shall be converted subsequently for NA use.

6. Learned counsel for respondent no.6 would urge that respondent no.6 shall take responsibility of converting the land to N.A. use, in case, if so required before executing the lease deed in favour of respondents/oil company. Apart from the above, he would urge that all documents necessary for the selection were duly supplied.

7. We have considered the submissions.

8. As far as claim of the petitioner qua drawing of lots and failure of the respondents to maintain transparency is concerned, the petitioner was aware of such procedure being
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adopted by the respondents/oil company and has proceeded to participate in the selection process. It is only after he was not selected, by way of after thought, the petitioner has come out with the pleadings of non-maintenance of transparency. Apart from above, petitioner not only was offered inspection of the record by the oil company in the matter of selection process under challenge, but also provided requisite documents under the Right to Information Act. As such, it is to be unfair that respondents/oil company has not maintained transparency in the matter of selection of candidate for operating retail outlet.

9. As far the issue of caste certificate is concerned, the same is governed by the brochure. If we appreciate the conditions and the requirement under the brochure, particularly, clause no.4 which are dealt with the eligibility criteria for individual applicant, the candidate is required to produce caste certificate as and when so called by the oil company to do so. Admittedly, respondent no.6 was not only holding the caste certificate but also holding validity certificate. The petitioner though has tried to question the legality/validity of caste certificate, however, in absence of there being any challenge and in absence of there being caste scrutiny committee being party respondent to the
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petition, such challenge cannot be entertained at the behest of the petitioner. Once, the respondents/oil company has verified the documents of respondent no.6 about his participation as a candidate belonging to OBC category, the petitioner cannot question such decision in absence of there being any supportive material.

10. As far as the recitals in the lease-deed is concerned, admittedly, the lease-deed is a registered document which contains a recital as regards use of the land for the purpose of agriculture, however, in the recitals neither there is any embargo on the right of respondent no.6 to apply for conversion of land to NA use; nor there is any specific guideline in the brochure which put embargo on the right of the oil company to accept the proposal of agricultural land at the time of deciding and qualifying the candidature. It is purely within domain of oil company to accept or reject the proposal of the land as it is within their power to decide the feasibility and suitability of such land. Once, land of respondent no.6 was found to be suitable for installation of outlet, rightly so canvassed by the counsel for respondent no.6, it shall be his duty to get the said land converted to NA use.

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11. In the case in hand, respondent no.6 has already got such conversion and as such is entitled to use the land for the purpose of retail outlet.

12. In this background, the above illegality can be noticed in the selection process of respondent no.6 by respondent no.3 to 5 that being so, writ petition fails, stands disposed off. Pending civil application also stands disposed off.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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