



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

40 WRIT PETITION NO. 4154 OF 2024

SHANTARAM PRABHAKAR NELWADE

VERSUS

**THE BHARAT PETROLEUM CORPORATION LTD AND
OTHERS**

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Ms.Madhaveshwari S. Mhase, Advocate for the Petitioner.
Shri A.P. Bhandari, Advocate for Respondent Nos.1 and 2.
Shri Anil M. Gaikwad, Advocate for Respondent No.3.
Ms.Nikita N. Gore, Standing Counsel for Respondent No.4/UoI.

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**CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.**

DATE :- 22nd April, 2024

Per Court :-

1. The Petitioner has put forth prayer clauses B, C and D, as under:-

- “B) *By an Writ of Certiorari or appropriate Writ or order quash and set aside the communication dated 22/02/2024 rejecting the candidature of the petitioner, and for that purpose issue necessary orders.*
- C) *By an writ of Mandamus or appropriate writ or order direct the respondent no 3 to take steps to shift the high tension line which is a temporary line as per the application of the petitioner and for that purpose issue necessary orders.*
- D) *Pending hearing and final disposal of this Writ Petition, grant stay to the further proceeding*

with the second draw of lots for the allotment of retail outlet in Village Kondjigad and for that purpose issue necessary orders;”

2. Respondent Nos.1 and 2/ Bharat Petroleum Corporation Limited (BPCL) has already entered an affidavit in reply through the Territory Manager (Retail), BPCL, dated 15.04.2024.

3. Since the learned Advocate Shri A.M. Gaikwad is on the panel of Respondent No.3/ Maharashtra State Electricity Distribution Company Limited (MSEDCL), we requested him to assist the Court.

4. The issue before us is that the land offered by the Petitioner for allotment of a new Retail Outlet for distribution of petroleum products, was rejected by the BPCL with the following observations:-

- “1. Please refer to your application received by us as Application form No. BPC16939300633978 on the subject and our letter dated 25-Jan-2024 informing you about the visit of Land Evaluation Committee for evaluation of your offered land.*
- 2. This is to inform you that the Land Evaluation Committee visited the site offered by you on 25-*

Jan-2024 and found the same to be not meeting the required norms as mentioned below: 33KV high tension electric line is passing through the offered plot.

3. *In view of the above, we regret to inform you that your candidature has been found ineligible.”*

5. The contention of the Petitioner is that, the 33 KV high tension electric line is a dummy line.

6. The learned Advocate for the BPCL and the learned Advocate for the MSEDCL, submit that the dummy line does not mean or depict a defunct line. It is a line, which is kept in all readiness and if the occasion arises, an electric supply can run through such line on the said poles, in emergency. A petrol pump cannot be located below such high tension installation.

7. The learned Advocate for the BPCL submits that the brochure for selection of dealers for Regular and Rural Retail outlets, which is common to three petroleum companies, was published in June, 2023. As a matter of policy, parameters for suitability of the land are mentioned on internal page No.28 of the brochure and clause I(i), the 4th line, indicates that “*Land has*

no HT line (>11 KV) crossing”. If the land does not meet any of the parameters set out in the said clause, such land will not be considered and has to be rejected. Whether, a live installation or dummy installation, is not an issue, notwithstanding the fact that a dummy line is not to be understood in the literal sense of the term.

8. In, practically, identical set of facts, this Court [Coram : Prasanna B. Varale (as His Lordship then was) and Anil S. Kilor, JJ] have delivered an order on 19.12.2019 in Writ Petition No.12837/2019 (***Nitin Eknath Kshirsagar vs. The Union of India and others***), wherein, this Court concluded that in such circumstances, a Writ of Mandamus cannot be issued to the Petroleum Corporation. Paragraph Nos.3, 4 and 5 of the said order, read as under:-

“3. *This being the limited issue, we have gone through the material placed on record on the backdrop of the submission of the learned counsel and also heard Mr. Bhandari, learned counsel for the respondent Bharat Petroleum Corporation Ltd. Mr. Bhandari by inviting our attention to the copy of brochure placed on record and also his affidavit in reply submitted that the petitioner cannot take this stand before this Court for the simple reason that the brochure clearly refers to the eligibility*

criteria. Then our attention was invited to clause-H of the title selection procedure. Clause-H bears the title as 'Land Evaluation'. It may be useful for our purposes to refer the entire clause-H.

Clause- H: Land Evaluation :

The concerned Divisional / Regional Territory Office shall inform the selected candidate through e-mail/SMS at least 10 days before the day of visit by LEC for site evaluation. In case of no response/non-availability of the selected applicant, the candidature shall be cancelled under intimation to the selected candidate through SMS/e-mail.

Evaluation of the offered land will be carried out to ascertain land being it advertised area and suitable for development of RO- meeting norms. The parameters under which land will be evaluated by Land Evaluation Committee for suitability are :-

- * Land in advertised area / stretch*
- * Land dimensions as per requirement*
- * Land meets NHAI norms (for sites on NH)*
- * Land has no HT line (> 11 KVA) crossing.*

Land not meeting any of the above parameters will not be considered and will be rejected.

- 4. Now this clause-H point No.4 clearly refers to the evaluation of land, suitability and the per-requisite of land having no HT line (over 11 KVA crossing). This policy of Corporation is clearly reflected in clause-H. Not only the earlier part of clause-H but reiterating the*

policy in the closing statement of the clause-H, which reads that land not meeting any of the parameter will not be considered and will be rejected. It may not be out of place to state that clause-4 of the brochure refers to eligibility criteria for individual applicants that proprietorship / partnership and thus, the eligibility will have to be assessed on the date of submitting application to the respondent Corporation. Meaning thereby, if somebody takes stand that now after communication issued to the party expressing its eligibility, the party would be permitted to change the nature of the land and then put its claim before the Corporation for the retail outlet dealership. On this backdrop, it may be necessary for us to refer to the communication placed on record by the petitioner himself at Exhibit-G, page 117 of the petition, wherein the petitioner had requested the Energy Distribution Company to shift the KV line and expressing his willingness to bear the financial burden for shifting. This act is clearly post filing the application. The clear stand of the Bharat Petroleum Corporation Ltd. is reflected in affidavit in reply more particularly para Nos. 4, 5, 6 and 7.

5. *Considering all these facts, we are of the clear opinion that the petition is thoroughly meritless and deserves only dismissal. Accordingly, the petition is dismissed.”*

9. The learned Advocate Shri Gaikwad, who is on the panel of the MSEDCL, was requested to assist the Court. He submits that the mechanism for shifting of such an electricity installation is provided under the Maharashtra Electricity Work

of Licensees Rules, 2012. A procedure set out therein has to be followed by the Petitioner and thereafter, appropriate steps could be initiated.

10. We find that the above statement pertains to a future event of shifting of electricity poles/installations. However, keeping in view the judgment delivered by this Court in *Nitin Kshirsagar (supra)*, unless the application for an outlet is complete in all respects and without any deficiencies as on the date of filing of such application, this Court cannot entertain a request based on speculation.

11. In view of the above, **this Writ Petition is dismissed.**

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(R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)