



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

WRIT PETITION NO.4844 OF 2021

Yashwant s/o. Ganpat Umare,
Age : 44 years, Occu: Business,
R/o At Post Lohgaon, Tq.Biloli,
Dist. : Nanded.

...PETITIONER

-VERSUS-

1. The Union of India.
Through it's Secretary,
Ministry of Petroleum and
Natural Gas, Shastri Bhavan,
New Delhi-110001.
2. The General Manager,
Bharat Petroleum Corporation Ltd.,
Bharat Bhavan No.1, 1st Floor,
Ballard Estate, Mumbai-400001.
3. Regional/ Territory Coordinator (Retail),
Solapur, Bharat Petroleum Corporation Ltd.,
POL Depot, Near Pakni Railway Station,
Pakni Post, North Solapur,
Solapur-413255.
4. Bhimrao Vitthalrao Ruikar,
Age : 58 years, Occu.: Agril,
R/o At Post Lohgaon, Tq.Biloli,
District : Nanded.

...RESPONDENTS

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Shri Sushant V. Dixit, Advocate for the Petitioner.
Shri Bhushan B. Kulkarni, Standing Counsel for Respondent
No.1/ UoI.
Shri Anand P. Bhandari, Advocate for Respondent Nos.2 and 3.
Shri Upendra B. Bilolikar, Advocate for Respondent No.4.

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**CORAM : MANGESH S. PATIL
&
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 12th November, 2024

JUDGMENT (Per Prafulla S. Khubalkar, J.):

Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has filed the instant petition challenging the communication dated 25.08.2020 (Exhibit M) issued by respondent Nos.2 and 3/ BPCL by which, the petitioner's candidature for allotment of Retail Outlet Dealership of petrol pump at site No.1028 from Group I category is rejected. The petitioner has also raised challenge to the allotment of Retail Outlet Dealership in favour of respondent No.4 by alleging that the land offered by respondent No.4 does not fulfill any parameters as required under the advertisement.

3. Brief facts leading to the filing of the instant petition can be summarized as under:-

(a) Respondent Nos.2 and 3 floated an advertisement dated 25.11.2018 inviting applications from eligible persons for

allotment of Retail Outlet Dealership of petrol pump at various locations including site No.1028 i.e. within two kilometers from Lohagaon Bus Stop towards Biloli on Narsi-Biloli road, District Nanded. The detailed procedure regarding eligibility and allotment with terms and conditions was mentioned in the Brochure for selection of dealers as stated in the advertisement.

(b) In response to the advertisement, the petitioner submitted his online application on 25.12.2018 along with the documents in support of his candidature.

(c) In response to the application submitted by the petitioner, the Territory Manager of BPCL i.e. respondent No.3 issued a letter dated 03.02.2019 informing the petitioner that he was qualified for draw of lots.

(d) It appears from the record that the draw of lots was held on 24.06.2019.

(e) The petitioner was informed vide the communication dated 26.06.2019 by respondent No.3 that based on the draw of lots, he was declared as selected and it was specifically mentioned that it was only preliminary intimation towards selection and that award of dealership was subject to compliance of terms and conditions of the BPCL. By another

communication of the same date, the petitioner was called upon to submit necessary documents. In response to these letters, the petitioner submitted his documents on 02.07.2019.

(f) By letter dated 09.08.2019 (Exhibit E) issued by respondent Nos.2 and 3, the petitioner was informed regarding necessity of compliance of further documents, mentioning particularly specific four points including the point with respect to area of the land offered. This letter specifically mentioned that in case the rectified documents pertaining to the land offered were not submitted, the candidature may be considered along with the applicants in Group III as per the guidelines. In response to this letter, the petitioner submitted his reply dated 27.08.2019 (Exhibit F) mentioning therein his clarification about the land and stated that the lease was for total land of 20 Are from Gat No.245 and Gat No.246 and the same to be considered. Having not satisfied, respondent No.3 issued further letter dated 11.10.2019 for further compliance.

(g) By letter dated 12.08.2020 (Exhibit K), respondent No.3/ Territory Manager of BPCL conveyed to the petitioner, on the basis of the report of the Land Evaluation Committee, that the land offered by the petitioner was coming under Gat Nos.245

and 246 of village Lohgaon. It was informed that as per the Lease Deed and Mojni submitted by him, the land offered by him in Gat No.245 was having frontage of only 24 meters and balance land from Gat No.246 was not abutting the road. As such, the Land Evaluation Committee was unable to find required minimum frontage as per the advertisement. By this letter, the petitioner was asked to submit a clarification regarding compliance of minimum frontage as per the advertisement. In response to this letter, the petitioner submitted the letter dated 20.08.2020 (Exhibit L) thereby, giving his clarification that additional land from adjacent Gat No.247 could be offered as was conveyed to him by the owner of that land Smt.Archana Murshetwad. Along with this letter, the petitioner submitted the affidavit of Smt.Archana wherein, she had expressed her readiness to offer additional land.

(h) To substantiate his claim, the petitioner had submitted with respondent Nos.2 and 3 the document in the nature of the sale deed dated 19.05.2020 with respect to the land Gat No.247 admeasuring 0 Hector 03 Are, executed in favour of Smt.Archana Madhavrao Murshetwad. The petitioner also submitted a notarised document of Lease Deed dated 21.08.2020

with respect to the land bearing Gat No.247 admeasuring 0 Hecter 03 Are, executed by Smt.Archana Murshetwad in favour of the wife of the petitioner.

(i) Thereafter, with respect to the application of the petitioner for award of Retail Outlet Dealership, the Territory Manager of BPCL i.e. respondent No.3 issued a letter dated 25.08.2020 (Exhibit M) thereby, informing the petitioner that the Land Evaluation Committee found that the land offered by him was not meeting the required norms since the land offered in Gat No.245 was having only frontage of 24 meters and the balance land from Gat No.246 was not abutting the road. Hence, the land was not having minimum frontage as per the Government Mojni. It was also informed that in view of this, the petitioner's candidature from Group I has been found ineligible and that his candidature could be considered along with Group III applications.

4. The petitioner has raised challenge to this letter dated 25.08.2020 by which, his application from Group I is rejected and he is categorized in Group III.

By way of amendment to the petition, the petitioner

has also raised challenge to the allotment of Retail Outlet Dealership in favour of respondent No.4 alleging that the land offered by respondent No.4 does not meet the parameters since a High Tension Line is passing over the land bearing Gat No.229 and that the said land is adjacent to a dam.

5. Respondent Nos.2 and 3 have filed their affidavit in reply dated 23.10.2020 by which, the petition is opposed. They have relied upon specific terms and conditions of the advertisement and the Brochure which require that the eligibility with respect to the land has to be fulfilled on the date of the application. The respondents have placed reliance on clause 4(v) of the Brochure with respect to the requirement of eligibility of land.

6. By additional reply dated 10.01.2023 filed by respondent Nos.2 and 3, it has been stated that the Land Evaluation Committee of the respondents had visited the site offered by respondent No.4 and it was found that the High Tension Line was located beyond the offered land and that a Low Tension Line was passing over the land offered by respondent

No.4. It is stated that the land offered by respondent No.4 is meeting the eligibility norms and, therefore, the candidature of respondent No.4 was considered. Along with this reply, the report of the Land Evaluation Committee (Exhibit R-3) with respect to the land of respondent No.4 is also placed on record, which consists of a layout sketch of the land offered by respondent No.4 specifically pointing out the location of High Tension Line and the Low Tension Line.

7. After hearing the arguments of both sides and perusing the record, we find that the Brochure for selection of dealers, through the tender notice floated by respondent Nos.2 and 3 stipulated all necessary terms and conditions regarding eligibility and other particulars necessary for allotment of a Retail Outlet. Pertinent to note, the advertisement containing the brochure mentions specific clauses regarding eligibility criteria with respect to the requirement of the land. Clause 4(v) of the brochure specifically mentions Groups I, II and III depending upon categorization of the lands offered by the applicants. So also, item (l) of sub-clause (v) of Clause 4 mentions further details about eligibility with respect to the land specifying the

requirements to be fulfilled 'as on date of application'.

8. During the course of arguments, the counsel for the petitioner strenuously emphasized upon his eligibility on the basis of the land offered by him i.e. Gat Nos.245 and 246 and readiness to offer the land from Gat No.247 and, therefore, contended that he fulfills the eligibility as regards the requirement of the land. Pertinent to note, the lease deed dated 21.08.2020 relied upon by the petitioner is a notarized document. As per the dimensions specified in the advertisement (Exhibit A) with respect to site No.1208, regarding eligibility of the land in Group I, the requirement was that the candidate should have suitable piece of land admeasuring 35 meters by 35 meters either by way of ownership or a long term lease for a minimum period of 19 years and 11 months, having frontage of 35 meters. In accordance with Clause 4(v) sub clauses (a), (d) and (l) of the Brochure, it is specifically provided that it should be the responsibility of the applicant to ensure that the eligibility is fulfilled 'as on date of application'. The land offered by the petitioner in this case is not fulfilling the necessary parameters being that neither it is the land of ownership or of lease for a

period of 19 years by way of registered document in the name of the petitioner, nor is the land meeting the requirement of dimension of 35 x 35 meters. On a specific query in this regard, during the course of argument, it was pointed out by the petitioner that adjacent land from Gat No.247 could also be offered to meet necessary requirement. However, even perusal of the map as submitted by the petitioner before respondent Nos.2 and 3, which is at Exhibit I to the petition, also shows that in any case, the land offered by the petitioner i.e. Gat Nos.245, 246 and 247 will not meet necessary dimension of 35 by 35 meters and, therefore, the petitioner's contention that he fulfills necessary requirement of land, cannot be accepted.

9. Pertinent to note, a perusal of the terms and conditions as stated in the Brochure, in several clauses, reveals that the eligibility with respect to the land was required to be tested 'as on date of application'. In this case, the petitioner had submitted the application on 25.12.2018, on which date, the petitioner was not fulfilling the eligibility criteria with respect to availability of land. Subsequent attempts on the part of the petitioner to offer additional land from Gat No.247 can also not

be of any help since neither the petitioner is fulfilling criteria, nor can it be said that he fulfilled the eligibility criteria on the date of the application. Therefore, the contention of the petitioner regarding fulfillment of the eligibility criteria of the land, cannot be accepted. In any case, the petitioner cannot claim as of right that the respondents must accept his offer regarding possibility of availability of land.

10. In somewhat identical facts, the Honourable Supreme Court of India, in Civil Appeal Nos.6928-6929/2015 decided on 08.09.2015 (***Bharat Petroleum Corporation Limited vs. Swapnil Singh***), observed that the respondent had only a notarized lease agreement dated 13.09.2011 in his possession on the date of submission of his application on 13.09.2011. The registered lease deed came into existence only on 20.12.2012, which was registered on 21.12.2012. It was, therefore, observed that on the date of the application, the respondent therein was not eligible in terms of the brochure since he only had a notarized lease deed dated 13.09.2011, instead of a registered lease deed, on the date of submission of his application. The Honourable Supreme Court thus held that the

guidelines were absolutely clear in the sense that the applicant must be the owner of the specified area of land or must have a registered lease deed of the specified area of land on the date of application. Accordingly, it was observed that the respondent was not eligible on the date of application i.e. 13.09.2011 and no fault can be found with the decision regarding rejection of the candidature of the respondent therein taken by the BPCL Authorities.

11. As regards challenge to the allotment of Retail Outlet Dealership in favour of respondent No.4 is concerned, the petitioner's contention that a High Tension Line is passing over the land offered by respondent no.4 bearing Gat No.229, cannot be accepted in view of the report of the Land Evaluation Committee filed at Exhibit R-3 along with the reply dated 11.01.2023 filed by respondent Nos.2 and 3. In view of the report of the Land Evaluation Committee, it becomes clear that the land of respondent No.4 fulfilled necessary criteria since the layout sketch of the land shows that High Tension Line is not passing over the land offered by respondent No.4, although Low Tension Line is passing over the land. In this regard, the decision of

respondent Nos.2 and 3 about allotment of the Retail Outlet Dealership in favour of respondent No.4, based on their own Land Evaluation Committee's report, cannot be questioned. In view of the fact that respondent Nos.2 and 3 have found the land offered by respondent No.4 to be suitable, the contentions of the petitioner cannot be accepted.

12. Pertinent to note that the petitioner has not filed any counter affidavit to controvert the stand taken by respondent Nos.2 and 3 in their additional affidavit dated 10.10.2023. Thus, the challenge raised by the petitioner to the allotment of Retail Outlet Dealership in favour of respondent No.4, is also unsustainable.

13. In the entire conspectus of the matter, the Writ Petition is devoid of substance and it is liable to be dismissed.

14. The Writ Petition is dismissed, with no order as to costs. Rule is discharged.