



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

WRIT PETITION NO. 8708 OF 2024

Vasant S/o Sitaram Chaudhari
Age: 54 years, Occu. Agri.,
R/o. C/o Ramesh Bajirao Kangune,
Shimpi Galli, Shrigonda,
District Ahmednagar

... PETITIONER

VERSUS

1. Indian Oil Corporation Ltd.,
Indian Oil Bhavan, G-9,
Ali Yavar Jung Marg,
Bandra East, Mumbai – 400 051

2. Indian Oil Corporation Ltd.,
Aurangabad Divisional Office,
“Indian Oil Bhavan”,
Plot No.99, Jyoti Nagar,
Aurangabad 431 005

... RESPONDENTS

....
Mr. S. B. Solanke, Advocate for the Petitioner
Mr. A. P. Bhandari, Advocate for the Respondents
....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 19.09.2024
PRONOUNCED ON : 30.09.2024**

JUDGMENT (PER – Y. G. KHOBRAGADE, J.) :-

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

2. By the present Writ Petition under Article 226 of the Constitution of India, the Petitioner prays for issuance of writ of certiorari or any other Writ for quashment of orders dated 06.05.2024 as well as the order dated 01.07.2024, thereby the Petitioner declared ineligible for allotment of Retail Outlet Dealership (in short ROD) on the ground that, the petitioner has not purchased stamp paper in the name of deponent, though he was directed to rectify deficiency as per Clause “v” of the general conditions of advertisement.

3. In short it is the case of the Petitioner that, on 28-06-2023, the Respondents Indian Oil Corporation Limited (IOC) published the advertisement and invited applications for retail outlet at various places in the State of Maharashtra, including the location within three kms from intersection of NH 35 and Dahivel Samode Road towards Navapur on Right Hand side of NH 53 while moving from Dhule to Navapur under the Scheduled Tribe (S.T.) category. The Respondents published a brochure in respect of process for

selection of dealers for regular and rural retail outlet on 10.06.2023. In response to advertisement, on 17.10.2023, the Petitioner submitted the application for allotment of Retail Outlet dealership from S.T. category in Group-2 as he belongs to "Kokni", which is recognised as Scheduled Tribe, along with caste validity certificate. On 22.02.2024, the Respondent No.2 issued a communication and informed the Petitioner about his provisional selection to award retail outlet dealership at the above location and directed the Petitioner to submit relevant documents before 03.03.2024. In pursuant to said communication, the Petitioner submitted all the relevant documents, however, vide communication dated 12.04.2024, the Respondent No.2 informed the Petitioner that the documents in respect of land ownership/lease right, are defective, therefore, he was directed to rectify the said deficiencies on or before 03.05.2024.

4. Accordingly, the Petitioner submitted the Notarized affidavit Appendix III-A of Shri Kanhaiyalal Shravan Mali and Shri Ramesh Sakharam Mali on the Non Judicial stamp of Rs.100/-, however, the Petitioner failed to submit required documents prior to cut-off date i.e. 03.05.2024. Therefore, on 06.05.2024, Respondent No.2 issued a communication (Exh."E"), stating that the Petitioner

failed to produce required documents within specified time. Therefore, his candidature stands cancelled with understanding that, if the Petitioner is having any grievance, in that event, he may submit his grievance by representation to the authorities by 16.05.2024.

5. The learned Counsel appearing for the Petitioner submits that, on 08.05.2024, the Petitioner immediately submitted his grievance with the Respondents, stating that though in draw held on 21.02.2024, he was selected and after receipt of e-mail, he complied with all documents, but he could not understood the meaning of deponent. Therefore, due to over-sight, he committed mistake while writing the name in Appendix III-A Affidavit and prayed for allotment of dealership. However, on 01.07.2024, the Respondents passed the impugned order and rejected his candidature on the ground that the Petitioner has not purchased stamp paper (affidavit) in the name of the deponent i.e. petitioner though he was called upon to to rectify deficiencies.

6. The learned Counsel appearing for the Petitioner further canvassed that the Format Appendix-III affidavits are in the name of Shri Kanhaiyalal Shravan Mali, Shri Ramesh Sakharam Mali and both

the stamp papers are purchased in the name executant of the affidavit. Therefore, it is bonafide mistake, occurred due to misunderstanding of the Petitioner, which is curable and it cannot result in the cancellation of allotment of retail outlet dealership.

7. Per contra, Adv. Bhandari, the learned counsel for the Respondents canvass that, the Petitioner submitted an application for retail outlet dealership under the S.T. category from Group No.1. On 22.02.2024, the Respondent issued a communication informing about provisional selection of the petitioner, however, on scrutiny, certain deficiencies were noticed, therefore, vide communication dated 22.02.2024, the Petitioner was called upon to remove deficiencies including affidavit Appendix-III. Therefore, it was expected from the Petitioner to produce all original documents/affidavits, which could have been uploaded on portal, however, the Petitioner did not remove deficiencies and no documents produced/uploaded on web site till 03.03.2024 in spite intimation was given about cancellation of his candidature on failure to remove the deficiencies. Thereafter, again on 12-04-2024, the Respondents issued letter intimating that the stamp papers for the affidavits required to be purchased and signed by the deponent itself, and if, there are more than one land owners, in

that event, the Appendix-III Form should be of all the co-owners of the land. The communication dated 12.04.2024 further specified that the candidature of the Petitioner would be rejected without any further notice, in case he fails to upload the above corrected/rectified documents within stipulated period. However, the Petitioner failed to submit the required documents prior to cut off date. Therefore, under the impugned order dated 06.05.2024, the Petitioner was informed about rejection of his candidature.

8. The learned Advocate appearing for the Respondents further canvassed that as per clause “v” of the general conditions of brochure, all affidavits required to be submitted in original and should be of a date after the date of advertisement, stamp paper should be of appropriate value as applicable and it should be purchased in the name of the deponent only. But the Petitioner failed to submit the required original documents, which resulted cancellation of the selection. Therefore, the impugned order does not suffer any infirmity and prayed for dismissal of the Petition.

9. It is an admitted fact that Respondent No.1 published the advertisement on 28.06.2023 including location Nos. 2 to 9 within 3

kms from intersection of NH 53 and Dahivel Samode road towards Navapur on right hand side on NH 53 while moving from Dhule to Navapur. It is also an admitted fact that the said location is reserved for the candidates belonging to the S.T. category.

10. It is also an admitted fact that, on 17.10.2023, the Petitioner submitted his candidature from Group - I. He was initially informed vide communication dated 22.02.2024 about his provisional selection and the Petitioner was called upon to submit various documents including affidavit in Appendix - III, which were to be uploaded on portal by 03.03.2024. However, the Petitioner failed to submit the required documents on or before the prescribed date. Therefore, again vide communication dated 12.04.2024, the Petitioner was called upon to submit the said affidavit Appendix - III and the stamp papers were to be purchased by the deponent and signed by the deponent only.

11. It was further directed the Petitioner that if there are more than one land owner, in that case, Appendix - III required to be submitted by all all co-owners of the land. However, the Petitioner failed to submit the required documents prior to cut off date.

Therefore, the Petitioner was informed vide impugned order dated 06.05.2024 about rejection of his candidature, because of the Petitioner has not purchased the stamp papers (affidavit) in the name of the deponent. Therefore, the Petitioner submitted his representation on 08.05.2024. Since the Petitioner failed to submit the desired documents within the stipulated period, therefore, as per Clause - “v” of the general conditions of the brochure, the candidature of the Petitioner is rejected under the impugned order. Clause (v) provides that, all affidavits should be submitted in originals and should be a date after the date of advertisement, stamp paper should be of appropriate value as applicable in the concerned stated and should be purchased in the name of deponent and failure to submit the same can result in cancellation of selection. Clause 23 of the brochure provides that, the deficiencies in the application form of the retail outlet dealership, not rectifiable and as per clause (k), the Petitioner failed to rectify deficiencies within the stipulated period.

12. Needless to say that when the terms of a tender/ advertisement are so specific as have been described above, there is no room for giving a go by to the same especially in matters of public tenders as this one. The words used in the advertisement or the

brochure could not be ignored and they must be given meaning and their necessary significance.

13. In this context paragraphs 15 and 16 of a recent decision of the Supreme Court in the case of ***Vidarbha Irrigation Development Corporation Vs. Anoj Kumar Agarwal, 2019(2)SCALE134*** are apt and can be quoted as under :

“15. It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous- they must be given meaning and their necessary significance. Given the fact that in the present case, as essential tender condition which had to be strictly complied with was not so complied with, the Appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.

16. A subsidiary contention has been raised that even the bank guarantee subsequently furnished was for a period of 39 months and not for 40 months. This need not be gone into in view of our finding on the first point”.

14. It may not be out of place to mention here that the advertisement by the public corporation is for award of dealership of a petrol pump and as such is a contractual matter. We are therefore, reminded of the principles laid down by the Supreme Court to the

extent judicial review can be invoked in such matters. Paragraph 19 of the decision of the Supreme Court in the case of ***Bakshi Security and Personnel Services Private Limited Vs. Devkishan Computed Private Limited and others***, (2016) 8 SCC 446 summarises these principles and the same is quoted as under :

“19. It is also well to remember the admonition given by this Court in Michigan Rubber (India) Limited v. State of Karnataka and Others, in cases like the present, as under:- (SCC p.228, para 21)

21. “In Jagdish Mandal vs. State of Orissa, the following conclusion is relevant : (SCC p. 531, para 22)

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made ‘lawfully’ and not to check whether choice or decision is ‘sound’. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and

business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say: ‘the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached’;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/ contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

15. Therefore, considering the law laid down by the Hon'ble Supreme Court in case of ***Vidarbha Irrigation Development Corporation*** and ***Bakshi Security and Personnel Services Private Limited*** cited (supra), as well as considering the fact that the

Petitioner failed to submit Appendix-III within the stipulated period, it cannot be said that the impugned orders dated 06.05.2024 and 01.07.2024, are illegal, bad in law. Therefore, we do not find that this case is made out for interference to exercise the writ jurisdiction under Article 226 of the Constitution of India.

16. In view of the above discussions, **the Writ Petition is dismissed.** Rule is discharged.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS