



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

Writ Petition No. 12635 Of 2024

Rubina Sultana Nooruddin M. Younus Chaudhari

Age : 47 years, Occupation-Business,

R/o. Nalsab Galli, At Post : Paranda,

Gut No.33, Anand Vihar, Near Wood Ridge,

Tq. Paranda, Osmanabad.

.. Petitioner

Versus

1. The Union of India

Through its Secretary,

Urban Development Department,

Mantralaya, Mumbai-32.

2. Territorial Manager (Retail),

Bharat Petroleum Corporation Ltd. (BPCL),

BPCL Office, At Post, Akolkner,

Tq. and Dist. Ahmednagar - 414005.

.. Respondents

* Mr. Himmatsinh D. Deshmukh, Advocate for the Petitioner.

* Mr. Anand P. Bhandari, Advocate for Respondent No.2.

**CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ..**

DATE : 14th FEBRUARY 2025

PER COURT :

. Rule. Rule is made returnable forthwith. Heard both sides finally.

2. The Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India, seeking direction to

consider her candidature in Group-I for Regular and Rural Retail Outlet Dealership or to reconsider her clarification for the objections raised against her candidature.

3. Petitioner participated in selection process commenced by advertisement published on 28.06.2023 for selection of Dealers for Regular and Rural Retail Outlet (for short 'dealership'). She applied for the same from Group-I on 17.10.2023 banking on unregistered lease deed of a land at Autewadi, Taluka Shrigonda, District Ahilyanagar executed on 26.09.2023. She paid deficit stamp duty by soliciting orders of impounding on 09.01.2024. The Respondents notified shortfall in her application vide communication dated 23.02.2024. She removed those objections and clarified the Respondents on 20.02.2024.

4. The Respondents informed the Petitioner vide communication dated 15.07.2024 that her candidature was found to be non-responsive to the eligibility condition and she was placed in Group-III. Again she made correspondence with the Respondents. Lastly she received a letter dated 07.08.2024 by which the Respondents classified her in Group-III as the lease deed was unregistered. Being aggrieved the Petitioner has approached High Court.

5. Mr. H.D. Deshmukh, Advocate for the Petitioner, submits that the lease deed in question was impounded vide order dated 09.01.2024 relating it back to 26.09.2023, date of execution of lease deed which is sufficient compliance of the eligibility condition of Group-I. He would further submit that all the defects

were removed by the Petitioner and therefore her elimination from Group-I is arbitrary and highhanded. He would submit that her candidature should not have been categorized to Group-III. She is atleast eligible for consideration from Group-II. The action of the Respondents is highhanded, perverse and arbitrary.

6. Per contra, Mr. Anand Bhandari Advocate for Respondent No.2 would support the impugned action on the basis of affidavit-in-reply placed on record. He would submit that as per eligibility criteria to claim the dealership from Group-I, Petitioner should have armed with registered lease deed at the time of submission of her application. Her lease deed was neither registered, nor duly stamped. He would point out various provisions of the Brochure governing the selection process to buttress the submission that it is impermissible to shift a candidate to Group-II from Group-I. He would further submit that Petitioner was apprised of the shortfall and despite extending opportunity, she failed to remove the deficiencies. He would further submit that the lease deed needs to be in a prescribed format which is lacking. He would advert our attention to the undertaking given by the candidate as per Clause No.15 of the Brochure.

7. He has placed reliance on the judgments in the matters of **Bharat Petroleum Corporation Ltd. and Ors. Vs. Swapnil Singh**, Special Leave to Appeal (Civil) No.6928-6929/2015 and **Jayant s/o Shahuraj Sonawane Vs. Indian Oil Corporation Ltd. and Another**, Writ Petition No.2618/2020.

8. We have considered rival submissions of the parties.

Admittedly, Petitioner had applied from Group-I on 17.10.2023. On the same date, lease deed was executed which was unregistered. Impounding of the lease deed was at later point of time. By communication dated 15.07.2024, she was apprised of the objection pertaining to the lease deed and indication to classify her into Group-III. Only reason for classifying the candidature from Group-I to Group-III is non-registration of lease deed.

9. Our attention is invited to Clause 4 (vi) of eligibility criteria. Following is the relevant context :

4. Eligibility Criteria for Individual Applicants - Proprietorship/Partnership :

(vi) Land (Applicable to all categories):

The applicants would be classified into three groups as mentioned below based on the land offered or land not offered by them in the application form: -

Group-1: Applicants having suitable piece of land in the advertised location/area either by way of ownership/long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group-2: Applicants having Firm Offer for a suitable piece of land for purchase or long-term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group-3: Applicants who have not offered land in the application. Only applicable for locations advertised under SC/ST category.

Applications under Group - 3 would be processed/advised to offer land (**Annexure - D**) only in case no eligible applicant is found or no applicant get selected under Group - 1 & Group - 2.

In case land offered by all the applicants under Group 1 & Group - 2 is found not suitable/not meeting requirements, then these applicant/s under Group -1 & Group - 2 along with applicants under Group 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location /stretch, within a period of 90 days from the date of issuance of intimation letter to them through SMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period, or the land provided is found not meeting the laid down criteria, the application would be rejected.

10. Note 1 appended to eligibility criteria stipulated by Clause 4

is as follows :

“Note 1 : a. “Own” means having ownership by way of Registered Sale deed, Registered Gift deed, etc. or title of the property or registered long lease (as per individual OMC norms) in the name of applicant/family member/s as defined in 4 (vi) and 4 (vi) (h) above.”

11. Admittedly when the Petitioner submitted application, she was not armed with registered lease deed. It is not her case that lease deed was subsequently registered. It was only impounded vide order dated 09.01.2024. It is trite law that candidate of any selection process must hold eligibility on the date of his/her application. That means, when she applied from Group-I, she was not eligible. Impounding of document cannot dispense with the requirement of registration. Despite apprising her, she failed to comply with the deficiencies which resulted in her elimination from Group-I and classification to Group-III.

12. Learned Counsel Mr. Anand Bhandari has referred to judgment of the Supreme Court in the matter of Bharat Petroleum Corporation Ltd. (supra). In that case, the Respondent was aspiring for LPG distribution-ship who had submitted application on 13.09.2011. During verification, it was found that lease agreement was registered on 21.12.2012. The allotment of distribution-ship was canceled. Writ Petition was filed before Single Judge which also came to be dismissed. Being aggrieved, appeal was preferred before Division Bench which was allowed. Therefore Petroleum Corporation was before the Supreme Court as appellant. In that case also as per the terms of Brochure, requirement was of registered lease deed. In that context, following observations are made :

“We have gone through the records of the case along with the assistance of learned counsel for the parties and we find that the brochure read with the application form is 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. The admitted position (which is also clear from the counter affidavit filed by the respondent in this Court) is that on 13th September, 2011 when the application for allotment was made, the respondent was neither the owner of any land nor had any registered sale deed/lease deed in her name. In fact, the lease deed came into existence only on 20th December, 2012 and that was registered on 21st December, 2012. Clearly, on the date of the application, the respondent was not eligible in terms of the brochure and the application form.”

. Ultimately appeal of the Petroleum Corporation was allowed. We find that ratio laid down by the Supreme Court is squarely applicable to the case in hand considering the conditions of eligibility and the fact that when Petitioner submitted application, she was not armed with registered lease deed.

13. Further reliance is placed on the judgment of Jayant s/o Shahuraj Sonawane (*supra*). In that matter, the Petitioner was held to be ineligible for Retail Outlet Dealership. Similar eligibility conditions existed in that selection process. A notarized agreement was submitted with the dealership application, whereas lease deed was registered at later point of time. Referring to the decision of the Supreme Court in the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society Vs. M. Tripura Sundari Devi, (1990) 3 SCC 655, it was held that if the appointment is made in this regard of the qualification in the advertisement then it would amount to fraud on public to appoint a person with inferior qualification. Following are further relevant extract :

“10. Although the aforesaid decision was rendered concerning an appointment

following public advertisement, there is no reason as to why the principle may not be applicable in the present case which also concerns selection and award of distributorship following public advertisement. It cannot be overemphasized that no selection and consequent appointment or award of dealership pursuant to a public advertisement can be made in disregard of the qualifications mentioned in the advertisement; if the qualifications are disregarded, it would amount to arbitrariness attracting scrutiny of the Court on the anvil of Article 14 of the Constitution.”

14. Applying the above ratio, we are of the considered view that the candidature of the Petitioner is rightly rejected from Group-I. Though Mr. Bhandari pointed out further parts of the above judgment, but that would not apply as in that case, the lease deed was subsequently registered and Section 47 was tried to be invoked.

15. The shifting of the Petitioner from Group-I to Group-III is also vehemently challenged. It is not permissible to shift applicants who are found ineligible from Group-I to Group-II. The following eligibility clause is relevant :

“n) Each applicant will have to declare, in the application form, the category under which offered land falls. However, it is advised that prior to declaring the category of the offered land in the application, each applicant in their own interest, should get the same verified through an advocate.

The Group under which the applicant's land falls, would be considered based on the declaration given in the application. However, this aspect will be verified by the OMC and in case it is found that the offered land is not in the group as declared by the applicant, the land will not be considered and the applicant will be made ineligible. However, in case of Group-2 applicants, if the offered land is found to be in Group-1 by the OMC, the candidature of such applicants will be considered for selection under Group - 2.

For locations advertised under SC/ST category, if it is found that the offered land is not in the group as declared by the applicant, the land will not be considered and the applicant will be moved to Group-3. However, if the applicant was originally in Group -3 or have already been

moved to Group 3 earlier, the candidate will be made ineligible. In case of Group-2 applicants, if the offered land is found to be in Group -1 by the OMC, the candidature of such applicants will be considered for selection under Group - 2.”

16. Our attention is adverted to undertaking to be given by the applicant as per Clause 15 which is as follows :

“I am aware that eligibility for Retail Outlet Dealership will be decided based on the information given in the application above. On verification by the Oil Company if it is found that the information given by me is incorrect/ false/ misrepresented, then my candidature will stand cancelled and I will be declared ineligible for the Retail Outlet Dealership.”

17. We find substance in the submission of Counsel Mr. Bhandari that when the Petitioner was not armed with registered lease deed, she should not have applied from Group-I. Rather she should have opted Group-II. However her information proved to be incorrect, incurring disqualification from Group-I. The stand taken by the Respondent No.2 by way of communication dated 15.07.2024 and 07.08.2024 is in consonance with terms of conditions of eligibility contained in Brochure. We do not find any arbitrariness or procedural lapses. We find no substance in the petition. Writ Petition is dismissed. Rule stands discharged.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

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