(2017) 08 BOM CK 0212

In the Bombay High Court

Case No : 913 of 2015

Atul Tanaji Patil APPELLANT

Vs

The Union of India, & Ors. RESPONDENT

Date of Decision : 23-08-2017

Acts Referred:

Citation : (2017) 08 BOM CK 0212

Hon'ble Judges : Naresh H. Patil, Bharati H. Dangre

Bench : DIVISON BENCH

Advocate : S.G. Deshmukh, R.A. Shelke, Anurag Gokhale, D.R. Shah, Sunil Gangan, S.R. Ghanavat

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioner prays for following reliefs:-

(a) to issue a writ of Mandamus or any other appropriate Writ, order or direction in the like nature and to direct the Respondent No.2 and 3 to cancel the selection of the proposed firm of the Respondent Nos. 5 and 6 for grant of ''Retail Dealership'' made on the basis of the advertisement dated 14/9/2011;

(b) to issue a Writ of Mandamus or any other Writ, order or direction in the like nature and to direct the Respondent No.3 to follow new procedure of selection of the ''Retail Dealers'' by adopting the method of ''Draw of Lots'' mentioned in the Letter dated 23/6/2014 by which guidelines were issued to the Respondent No.3.

(c) to issue a Writ of Mandamum or any other Writ, order or direction in the like nature and to direct the Respondent No.3 not to approve ''Letter of Intent'' in favour of the proposed partnership firm of the Respondent Nos. 5 and 6 and if already approved, to direct the Respondent No.3 to cancel the same;

(d) to stop further proceedings on the basis of the selection of the proposed partnership firm of the Respondent Nos. 5 and 6 during the pendency of this

Petition;

3. The Marketing Division of Indian Oil Corporation Ltd. (IOC) published advertisement on 14th September, 2011 in the newspaper for appointment of retail outlet (petrol pump) Dealers within 3 km. from the Borpadle Phata on the left hand side of the Kolhapur-Ratnagiri Road. Pursuant to said advertisement petitioner submitted his application in the prescribed form on 14th October, 2011. It is contended that three applicants including the petitioner applied for the said dealership. The interview of the petitioner and other two applicants was scheduled on 27th December, 2012 at Vasco-Goa in the office of respondent no.4. One of the applicants namely Shri Anantsagar Vilas Medshinge was declared as disqualified. The petitioner secured 84 marks and respondents 5 and 6 (Partners) were awarded 85.75 marks in the interview. The petitioner alleges that the marks allotted to the partnership firm formed by respondents 5 and 6 was against the prescribed norms and the rules mentioned in the Brochure of the respondents. It is alleged that respondents awarded zero marks to the petitioner under the heading ''Ready availability of finance''. He submitted that while considering proposal of respondent firm, the company considered it liberally, however, while allotting marks to petitioner very rigid and mechanical approach was adopted.

4. The petitioner states that on 17th January, 2013 he filed a complaint before the Grievance/Complaint Redressal system of the respondent no.3. The petitioner raises several issues in the said application. It is the petitioner''s case that respondent no.3 company completely lost sight of the requirement of the frontage of the plot which was earmarked by respondents 5 and 6. It is alleged that the total land area was mentioned as 4425 sq. meters in the application of respondents 5 and 6. Said piece of plot was owned by respondents 5-Sou. Ashwini Uttam More admeasuring 4100 sq. meters which was purchased from the respondent no.6-Shri Sambhaji Mahadev More under registered sale deed dated 10th October, 2011. The required frontage was 45X65 meters. The plot selected by respondents 5 and 6 did not have the said frontage. The petitioner further alleges that respondents 5 and 6 submitted unregistered partnership deed on a Stamp paper of Rs.100/- which was said to be executed on 11th October, 2011 but on the last page the date of party signing the deed was mentioned as 19th August, 2005 at Kolhapur.

5. The complaint filed by the petitioner was decided by the Grievance Redressal Committee of respondent no.3 on 20th November, 2014. The petitioner states in Paragraph 13 and 14 of the petition as under:-

"13. The Petitioner states that the Petitioner is also challenging the selection of the proposed firm of the Respondent Nos. 5 and 6 on the ground that the same is not in consonance with the Guidelines issued by the Respondent No.2 to the Respondent No.3 time to time. The Petitioner states that in view of the Guidelines issued by Respondent No.2 to the Respondent No.3 dated 17/2/2014 and 23/6/2014 the whole procedure should have been cancelled and fresh advertisement should have been issued for the selection of the Retail Dealers.

14. The Petitioner states that the Respondent No.2 by its letter dated 17/2/2014 has issued guidelines for the selection of the Retail Outlet dealership for setting up of new ROs. The Petitioner states that in the said guidelines it is mentioned that the selections of the new Retail Outlets should be done though the Draw of Lots. The Petitioner states that the selection of the Retail Outlets in the present case has been made through the interview process and not through the process of Draw of Lots. The Petitioner states that the selection of the Retail dealers should have been through the draw of lots however it was made through old process without following the guidelines issued by the Respondent No.2 Ministry tot he Respondent No.3 Company. The Petitioner states that the whole process of selection of Retail Dealers in the present case is bad being contrary to the above guidelines. Hereto annexed and marked Exhibit-I is a copy of Letter dated 17/2/2014 issued to the Respondent No.2 to the Respondent No.3."

6. The petitioner further contends that respondent no.3 issued a communication to respondents 5 and 6 on 26th October, 2013 calling for explanation in respect of the dates appearing on the partnership deed. Respondents 5 and 6 submitted that there was typographical error in the said document and same would be corrected by enclosing the original copy of the partnership deed. But instead they submitted a new partnership deed which was executed on 26th December, 2012.

7. The petitioner placed reliance on revenue record in respect of the allegations made regarding dimension of the said plot which was selected by respondents 5 and 6 for starting retail outlet.

8. The Respondents 5 and 6 submitted their affidavit-in-reply. They denied the allegations made by the petitioners. It is submitted that they were selected in accordance with the procedure. Respondents 3 and 4 filed affidavit-in-reply. They contended in Paragraphs 11 and 12 as under:-

"11. With reference to paragraphs 9 and 10, in so far as frontage of the land offered by Respondent Nos. 5 and 6 is concerned, the same has been duly approved by these Respondents in their Investigation Report and it has been confirmed that land admeasuring 5474 sq. meters bearing Sy. No.33 is owned by both the partners of Respondent No.6. Out of 5470 sq. meters, 4100 sq. meters of land is in the name of Smt. Uttam More and the balance is in the name of Shri Sambhaji More. It is held that Smt. Uttam More has offered all her land admeasuring 4100 sq. meters for this Retail Outlet against the requirement of 2925 sq. meters. It is also held that the registered Saledeed of the land offered by Smt. More mentions the area of the land and that measured plot map has been duly certified by governmental authorities which shows that for an offered land, frontage is 47 meters. Therefore, the said land offered by Respondent Nos. 5 and 6 meets the criteria of frontage. It is denied that the land mentioned in the applications filed by Respondent Nos. 5 and 6 does not fulfill the criteria mentioned in the brochure of the Respondents. It is denied that the Evaluation

Committee conveniently rejected this issue as mentioned in the complaint. It is denied that on this ground, Respondent No.6-firm ought to have been disqualified.

12. With reference to paragraph 11, the issue regarding difference in the Partnership Deed is also dealt with by the Investigating Officer and it has been held that the Partnership Deed was executed on 17th October, 2011; whereas on the last page, it has been mentioned that both the parties have signed the Agreement on 19th August, 2005. This difference in date on the first page and on the last page of the Partnership Deep was questioned to Respondent Nos. 5 and 6, which explains that the reason for difference of date was a mistake because the first page clearly states the date as "17th October, 2011". The Stamp Paper is dated 27th September, 2011 and, therefore, the date mentioned as "19th August, 2005" on the last page is obviously an inadvertent error. On this ground, the explanation given by Respondent Nos. 5 and 6 was accepted by the Evaluation Committee of these Respondents. It is denied that the Partnership Deed was not genuine and Respondent Nos. 5 and 6 are not partners for selecting them as retails dealers. It is denied that the Evaluation Committee ought to have disqualified Respondent Nos. 5 and 6."

9. The Learned Counsel appearing for the petitioner submitted that the entire selection process gets vitiated due to violation of the procedure and conduct of the respondents 5 and 6. It was submitted that respondents did not follow selection process in the strict terms and were liberal while considering the case of respondents 5 and 6. The Counsel submitted that in fact the company had taken decision to select dealers by way of draw of lots.

10. The Counsel appearing for respondent nos.3 and 4 submitted that in accordance with the Brochure and terms and conditions stipulated in the advertisement, selection process was conducted; documents were verified; parties were interviewed and respondents 5 and 6 were selected.

11. The Counsel appearing for respondents 5 and 6 placed reliance on the affidavit-in-reply filed before this Court. Learned Counsel submitted that petitioner secured less marks than respondents 5 and 6. There was nothing wrong in respondents forming a partnership for applying allotment of petrol retail outlet. The plot which was offered to the company was fulfilling the required conditions. The Counsel further submitted that there was typographical error in the partnership deed, therefore, a corrected deed was submitted to the company which was accepted. It was a bonafide mistake and, therefore, the company permitted them to correct mistake and accordingly a corrected deed was submitted. On merits respondents 5 and 6 secured more marks than the petitioner and just to create certain hurdles petition has been filed due to which further steps could not be taken due to which retail outlet could not start.

12. We have perused the brochure and terms and conditions of advertisement. Subject clauses (c) and (d) of clause 21.0 of brochure issued by the Indian Oil

Corporation Ltd. regarding selection of petrol pump reads as under:

"(c) No addition/deletion/alteration will be permitted in the application once it is submitted.

(d) No additional documents whatsoever will be accepted or considered after the cut-off date of the application."

13. The petitioner has prayed for cancellation of the selection process and for initiating a fresh selection process by canceling the Letter of Intent issued in favour of respondents 5 and 6. This petition was filed in the year 2015. Further steps consequent to issuance of Letter of Intent were stayed by this Court by an ad-interim order dated 28th January, 2015. It is informed that said ad-interim order continuous even now. It is necessary to remember that advertisement was issued for the retail outlet in the year 2011.

14. The petitioners have raised issues relating to the method of allotment of marks, dimension of the plots, grant of marks in favour of respondents 5 and 6 and violation of essential conditions of the Brochure.

15. We find that in terms of the Brochure no addition, deletion, alteration was permitted in the application once it was submitted. Neither additional documents of whatsoever nature were to be accepted or considered after the cut off date of the application. There is no dispute that there was error in the partnership deed submitted by respondents 5 and 6 while they applied for retail dealership. The earlier partnership deed was shown to be executed on 17th October, 2011, however, on the last page of the deed different date i.e. 19th August, 2005 was mentioned. In response to the company''s communication respondents 5 and 6 clarified by a communication dated 1st November, 2013 which reads as under:

"We received your letter dated 26th October 2013 with above subject in reference to the dealership of a retail outlet at "within 3 km from Borpadalephata on LHS of Kolhapur-Ratnagiri Road".

We agree with your observation that partnership deed was executed on 17th October, 2011, however, on last page of deed shows different date i.e. 19th day of August 2005 and we regret to inform that it was a "typing error". So, we herewith confirm you that 17th October 2011 was the correct date of execution of deed which is the same on first page of deed.

We shall be very thankful for considering above clarification on difference in dates in deed and seek you support to nullify this observation.

We have corrected this error in deed and enclosing original copy for your reference.

We lookforward to hearing from you and anticipating IOC would issue us Letter of Intent for RO at earliest."

16. By submitting a original copy of the partnership deed they submitted a new

partnership deed executed on 26th December, 2012. In our considered view this was not permissible under the terms and conditions. This was the basic document to be filed at the time of initial application filed by respondents 5 and 6. They were given composite marks as a partnership concern. Therefore, the explanation tendered by respondents 5 and 6 that it is merely a correction deed cannot be accepted in view of the fact that proposed partnership deed was executed on 17th October, 2011.

17. As regards the dimension of the plot, we find some substance in the submissions of the petitioner. Based on the record placed before this Court, the petitioner submitted that it is true that Ministry of Petroleum had taken a decision to cancel all cases of distributorship allotment. The Company was to adopt a system of draw of lots. The said decision was communicated by the Government of India to the Director (Marketing) of the Oil Companies by communication dated 23rd June, 2014 which is at Exhibit J. The said communication reads as under:

"I am directed to say that the matter regarding the process of allotment of Retails Outlet (RO) dealership/LPG distributorship has been examined in the Ministry. OMCs are directed to cancel all cases of ROs/LPG distributorship allotments in the cases where interviews including original or re-scheduled or arising out of established complaints are pending as on date of issue of this letter. OMCs are advised that all such locations may be taken up afresh as per extant policy under new system of "draw of lots" by undertaking fresh process of selection.

This issue with the approval of MOS (I/C) P & NG."

18. We find that the said communication may not help the petitioner as by that time interview in this case was held, marks were allotted and Letter of Intent was also issued. In view of the record placed before this Court, reply filed and submissions advanced, we find that essential conditions in respect of the submission of application by the respondents 5 and 6 were not complied with. Respondent company was not entitled to accept fresh partnership deed executed later on i.e. on 26th December, 2012 while the earlier proposed partnership deed executed on 17th October, 2011 was on record. The petitioner''s application was processed based on the proposed partnership deed executed on 17th October, 2011 and not on the basis of 26th December, 2012. This issue goes to the root of the matter. The petitioner had brought to the notice above stated issues for the consideration of the company which were substantial in nature. The company ought to have minutely looked into the grievance of the petitioner and verified the record placed before issuing a Letter of Intent, more so, in the light of the fact that margin of marks secured by petitioner and respondents 5 and 6 was very thin. Petitioner secured 84 marks whereas respondents 5 and 6 jointly as proposed partners secured 85.75 marks. It is a matter of record that though the advertisement was issued for retail outlet in the year 2011, since last 5 to 6 years, retail outlet could not start. Taking into consideration the facts and

circumstances, the record placed before us, we are of the view that the entire selection process is required to be quashed and set aside. We pass following order:

O R D E R

(i) The Petition is allowed.

(ii) The selection process undertaken by respondent no.3 for appointment of retail outlet (petrol pump) Dealers,at location; within 3 kms from the Borpadle Phata on the left hand side of the Kolhapur-Ratnagiri Road, issued under the advertisement dated 14th September, 2011 is quashed and set aside.

(iii) The Letter of Intent issued by respondent no.3 in favour of respondents 5 and 6 is set aside.

(iv) Respondent No.3 company shall take appropriate decision consequent to the setting aside of the selection process.

(v) Rule is made absolute in the above terms with no order as to costs.

19. After pronouncement of the judgment, learned Counsel appearing for respondent nos.3, 5 and 6 pray for staying the operation of order for a period of four weeks. Learned Counsel appearing for petitioner opposes the prayer.

20. In the facts of the case, we are not inclined to accept the request made by the respondents. The prayer is rejected.

