

(2022) 08 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 7889 Of 2022

Sandip Gorakh Naik

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Citation : (2022) 08 BOM CK 0043

Hon'ble Judges : Ravindra V. Ghuge, J; Arun R. Pedneker, J

Bench : Division Bench

Advocate : N.L. Choudhari, Sudha Chintamani, A.P. Bhandari

Final Decision : Dismissed

Judgement

Arun R. Pedneker, J

1) Rule. Rule made returnable forthwith. With the consent of parties, heard finally.

2) By the present writ petition, the petitioner is challenging the communications dated 6th October, 2021 and 25th October, 2021 issued by respondent No. 3 – Head of the Regional Office (Retail), Hindustan Petroleum Corporation Ltd., Nashik, rejecting the application of the petitioner for allotment of retail outlet dealership of respondent No. 2 – Hindustan Petroleum Corporation Ltd.

3) By advertisement dated 25.11.2018, respondent No. 3 sought applications for appointment of dealers of retail outlet for various locations. At Sr. No. 786 of the said advertisement, 'village Patonda, on NH-753-B', taluka Nandurbar is advertised. In response to the above advertisement, seven applications were received by respondent No. 3.

4) The petitioner filed his application on 21.12.2018 from Group-2 and offered land bearing Survey No. 19/2/B of village Dharajgaon for the retail outlet. It is the case of the petitioner that the respondent No. 3 sent e-mail to the petitioner on 9th January, 2020 and directed the petitioner to submit documents in respect

of land offered by him. In response to the said communication, the petitioner had submitted documents as per the directions of respondent No. 3 on 27th January 2020 and 24th March 2021. By communication dated 7th May 2021, respondent No. 3 informed the petitioner that the documents of land, supplied by the petitioner are in respect of village Dhirajgaon, while the advertisement for dealership is for village Patonda and since the land offered is of different village, respondent No. 3 would not consider his application.

5) Thereafter, on 1st June 2021, by e-mail communication, the respondent No. 3 again informed the petitioner that his application would be considered in Group-3 and further directed the petitioner to offer alternate suitable land within three months in the advertised location. The petitioner submits that he had offered land from advertised location at village Patonda bearing land Gat No. 84/1/28 vide his application dated 12th August, 2021. The petitioner states that by e-mail dated 2nd September, 2021, respondent No. 3 informed the petitioner that he is the only eligible candidate available and that he has been declared as successful and a preliminary intimation for the selection of retail outlet of dealership is issued to him, subject to compliance of the terms and conditions.

6) The petitioner further submits that although he had given all the required documents, respondent No. 3 again issued a communication dated 6th October, 2021 and informed the petitioner that he has submitted two sets of documents for the land offered, having Gat Nos. 84/1/28 and 19/2/B and both are hand written and are not original and therefore, the documents cannot be relied upon.

7) The petitioner submits that in view of the above communication dated 6th October 2021, the petitioner on 26th October 2021, approached respondent No. 3 and pointed out that there are some technical problems with the website of the company and he had submitted the original documents in the office of respondent No. 3 manually on 9th September, 2021 and requested for consideration of the said documents. The petitioner further submits that although he had submitted all the required documents, he has again received E-mail dated 25th October, 2021, wherein he was directed to update the bank details for refund of ISD till 24th November, 2021. The petitioner, therefore, challenged the impugned communications dated 6th October, 2021 and 25th October, 2021, rejecting his application for allotment of dealership of retail outlet.

8) In response to the petition, the respondent Nos. 2 and 3 have filed affidavit of Shri Shashank Govind Dabhane, Deputy General Manager of Hindustan Petroleum Corporation Ltd., Nashik. Respondent Nos. 2 and 3 submitted that advertisement for dealership of retail outlet was issued on 25.11.2018. The petitioner filed his application on 21.12.2018 from Group-2 and had offered land bearing Survey No. 19/2/B of village Dharajgaon. By communication dated 7th May 2021, the candidature of the petitioner is moved to Group-3 as no documents have met the eligibility criteria of Group-2. Again by the communication dated 1st June 2021, intimation was sent to all the candidates from Group-3, including the petitioner and the candidates were asked to submit

the required documents on online portal. In response to the said communication, the petitioner had filed an application dated 12.8.2021. In the said application, the petitioner had offered land bearing Gat No. 84/1/28 of village Patonda, District Nandurbar and he claimed himself to be belonging to Group-1. The petitioner also filed belatedly, the opinion in Appendix-III-B dated 8.9.2021 given by Mr. Sunil D. Jadhav, Advocate to substantiate his title on the land offered. It is contended by the respondents that the application for Group-1 category has to be accompanied by land owned by the petitioner himself. However, the petitioner has offered the land of outsider (who is not the family member of the petitioner). The affidavit of the owner in support of the application of the petitioner cannot be relied upon for application under Group-1 category. The petitioner had filed two sets of documents manually, which are not original and in any event, they ought to have been filed online.

9) The respondents, by communication dated 6.10.2021 informed the petitioner that the candidature of the petitioner is found to be ineligible for allotment of retail outlet dealership and by communication dated 25th October 2021, the respondents sought details from the petitioner to refund the security deposit.

10) We have considered the submissions and perused the documents filed by the petitioner as well as the respondents. The procedure for selection of dealers is stipulated in the brochure issued by respondent No. 2. The said brochure for selection of dealers at clause 4 (v) reads as under :-

“(v) 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.

Applications under Group 3 would be processed/advised to offer land only in case no eligible applicant is found or no applicant get selected under Group 1 & 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 3 months 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.”

11) On consideration and examination of the aforesaid clause 4 (v), we find that there are different requirements of land for retail outlet for Group-1, Group-2 and Group-3 applicants. We find that applicants in Group-1 should own suitable piece of land in the advertised location/area either by way of ownership or by way of long term lease of the said land, while in Group-2, applicant should have firm offer for a suitable piece of land for purchase or long term lease. The applicant, who do not have land or who do not have any offer for a suitable piece of land comes within Group-3.

12) We find that the petitioner had initially applied under Group-2 in it's application dated 21.12.2018. However, the land offered by the petitioner was of different village and the said application of the petitioner was found ineligible for Group-2 and thus the petitioner was moved to Group-3. Therefore, respondents were right in rejecting the application of the petitioner under Group-2 and transferring the petitioner's application in Group-3.

13) At page No. 8 of the said broucher, the following procedure needs to be followed by the applicants in Group-3, which is as under :-

“Note 2

In case of locations where the applicant has not offered the land in the application (Group 3) or if the offered land of all applicants under Group 1 & Group 2 got rejected due to not meeting the laid down criteria, then all such applicants shall be given an opportunity to offer land or alternate land (as the case may be) in the advertised location/stretch provided the applicant meet all other eligibility criteria.

A communication through SMS/e-mail would be sent to these applicants to offer land/ alternate land within a period of 3 months from the date of offer letter.

On receipt of advice to offer land from OMCs the applicant should submit land offer online and indicate the category under which the land falls (Group 1 or Group 2) on the basis of the confirmatory letter from an advocate (Appendix III B). Upon selection, the selected candidate would be required to submit all the relevant documents pertaining to the land offered along with consent letter in the form of affidavit (Appendix III A) and/or Power of Attorney (Registered), if applicable, along with confirmatory letter from an advocate (Appendix III B).”

14) Thus, from conjoint reading of clause 4 (v) and Note 2 above, it is evident that the applicant from Group-3 has to purchase suitable land at the dealership location or should have long term lease of the land or should have firm offer of land within a period of three months from the date of letter/communication by the respondents. Group-3 applicants are given fresh opportunity to offer alternate land within a period of three months and again apply under the category of Group-1 or Group-2. In pursuance of the said communication dated 1st June 2021, the petitioner again applied on 12th August, 2021 in Group-1.

Along with the said application, he annexed documents of land belonging to some other person. The petitioner also later filed legal opinion dated 8.9.2021 opining that the land offered in the application has a lease agreement with a provision to sub-lease the said land to the Oil Company and thus, the land offered is as per the requirement of the respondent company.

15) We find that the petitioner, while applying in Group-3 had opted to consider his application from Group-1 in second application dated 12th August 2021. He had offered the land belonging to some other person and thus was not qualified within Group-1. Further, legal opinion dated 8.9.2021 was forwarded much later and was not accompanying the application. The observation made in the judgment of this Court at Aurangabad Bench in the case of Rajendra Bapurao Hande Vs. Bharat Petroleum Corporation Ltd. and others in Writ Petition No. 9974/2019 dated 13.01.2020, wherein it is held that when a application for dealership of retail outlet is not accompanied by the advocates opinion, the application would be without necessary documents and defective and liable to be rejected, is squarely applicable to the present case.

16) Since the second application dated 12.8.2021 of the petitioner was under Group-1 and the documents submitted by the petitioner were not as per the requirement of Group-1, the respondents were entitled to reject the second application of the petitioner.

17) Thus, the writ petition is accordingly dismissed with no order as to costs. Rule is discharged.