

(2024) 05 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No.2666 Of 2021

Shubham Sunil Pore

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 05 BOM CK 0020

Hon'ble Judges : A. S. Chandurkar, J; Jitendra Jain, J

Bench : Division Bench

Advocate : Vishwanath S. Talkute, Priyanka B. Chavan, Sunil Gangan

Final Decision : Disposed Of

Judgement

Jitendra Jain, J

1. Rule. Ms. Priyanka B. Chavan, learned Assistant Government Pleader waives service for respondent no.1-State and Mr. Gangan, learned counsel for respondent nos.2 and 3. By consent of the parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the communication dated 23rd June 2021 issued by respondent no.2 to the petitioner informing that respondent no.2 has decided to drop the advertised location "On Satara-Pandharpur Road (NH548C) within 5 km from Mhaswad bus stand towards Pandharpur."

Briefs facts :-

3. Respondent no.2 had issued a notice for appointment of Regular/Rural Retail Outlet (Petrol Pump) Dealerships. The applicants were to make online application by 24th December 2018. One of the locations prescribed for the said dealership was in District Satara "On Satara-Pandharpur Road (NH548C) within 5 km from Mhaswad bus stand towards Pandharpur" and selection of the applicants were to be by a draw of lots. Pursuant to the said advertisement, the petitioner, on 8th

December 2018, made an application for dealership at aforesaid location. On 14th June 2019, respondent no.2 informed the petitioner that he has been selected as per draw of lots for petrol pump dealership. Respondent no.2 also called upon the petitioner to submit various documents. The petitioner complied with the said requisition. However, on 1st September 2020, respondent no.2 informed the petitioner that on a visit of the site, it was found that the same is not meeting the required norms since land is not in advertised area. Therefore, the petitioner was informed about his ineligibility. The petitioner, thereafter, approached the Grievance Committee of respondent no.2 and the said Grievance Committee on 23rd June 2021 informed the petitioner that they had dropped the advertised location "On Satara-Pandharpur Road (NH548C) within 5 km from Mhaswad bus stand towards Pandharpur." The reason given for dropping was that 1.5 km from Mhaswad bus stand falls on National Highway 548C but balance 3.5 km towards Pandharpur falls on National Highway 548E and therefore, there being an ambiguity in the advertisement, respondent no.2 decided to withdraw the said advertised location. It is on this backdrop, the petitioner is before us.

4. The petitioner submits that there is no ambiguity in the advertised location since the site is located towards Pandharpur within 5 km from Mhaswad bus stand. The petitioner further submitted that it is unfair on the part of respondent no.2 to cancel the advertised location.

The petitioner submitted that on an identical fact situation, Aurangabad Bench of this Court in the case of Manisha Atul Borse Vs. Hindustan Petroleum Corporation Ltd. & Anr. Writ Petition No.7727 of 2018 decided on 13th February 2019 has quashed a similar communication and directed the respondents therein (HPCL) to consider the eligibility of the petitioner therein. The petitioner, therefore, submitted that since the facts of the present petition are similar, he prayed for an identical order.

5. Per contra, the counsel for respondent no.2 informed that they have decided to drop the advertised location on account of ambiguity in the advertisement since a part of 5 km area towards Pandharpur falls in NH548C and balance falls in 548E and the location of the petitioner's site is in NH548E. The counsel further submitted that no right accrues in favour of the petitioner to seek a direction against respondent no.2 to enter into the contract since it was only by a draw of lots that he came to be selected and there is no concluded contract. Respondent no.2 further submitted that they have not opened the other applications and therefore they do not know the status of other applicants. Furthermore, respondent no.2 further submitted that on account of ambiguity, there could be a situation where many people may not have applied. In any case, as and when respondent no.2 will freshly advertise the said location, the petitioner is free to make an application and same would be considered on its own merits.

6. We have heard the learned counsel for the petitioner and respondent no.2 and with their assistance have perused the documents annexed to the petition and reply filed by respondent no.2 which were brought to our notice in the course of

hearing.

7. There is no dispute that the location advertised was "On Satara-Pandharpur Road (NH548C) within 5 km from Mhaswad bus stand towards Pandharpur." There is also no dispute that the total stretch of 5 km towards Pandharpur from Mhaswad bus stand does not fall within NH548C but a part of it i.e. 1.5 km falls within NH548C and balance 3.5 km falls in NH548E. The site of the petitioner is on NH548E. Admittedly, the petitioner's site is falling in NH548E towards Pandharpur. The said site NH548E is not advertised by respondent no.2. There is an ambiguity in the advertised posts. Therefore, it is to avoid the ambiguity that respondent no.2 has decided to drop the advertised location. On a perusal of the advertisement, there is no doubt that the location of the site is of paramount importance and if there is any ambiguity in the said location, certainly the parties cannot be said to be *ad idem* and therefore, even if the petitioner has been selected albeit on draw of lots and has complied with the documents required and payment of fees, still it cannot be said to be a concluded contract between the parties nor there could be any expectation on this count since on realisation of the said ambiguity, respondent no.2 decided to drop the advertised location. In our view, the action of respondent no.2 cannot be said to be arbitrary or unfair. Admittedly, there is no malafide attributed to respondent no.2 by the petitioner.

8. The decision relied upon by the petitioner in case of Manisha Atul Borse (*supra*) is based on the facts of that case. In that case, there was no dispute with respect to the exact location namely, Gondegaon. However, the error was with respect to the fact that in the advertisement, instead of Gondegaon, Taluka Soygaon's location was advertised as Gondegaon, Block Kannad. However, the village "Gondegaon" was not in dispute and there was only one Gondegaon village. It was on this fact that since the location was identified, the Co-ordinate Bench directed the HPCL to consider the petitioner's application and action to re-advertise was quashed. In the case before us, there is an ambiguity in the advertised location inasmuch as the location in the advertisement is NH548C within 5 km from Mhaswad bus stand but from Mhaswad bus stand only 1.5 km was covered by NH548C and the petitioner's site is located on NH548E which was not advertised.

Therefore, in our view, the decision of the Aurangabad Bench is distinguishable on facts.

9. In view of above, we are not inclined to interfere in exercise of Writ jurisdiction. It is open for the petitioner to participate in the fresh advertisement.

10. The writ petition stands disposed of. Rule discharged. No costs.