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(2010) 3 BomCR 580

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 6977 of 2009

Anita Koli		APPELLANT
	Vs	
The Union of India (UOI) and Others		RESPONDENT

Date of Decision: March 9, 2010

Citation: (2010) 3 BomCR 580

Hon'ble Judges: S.S. Shinde, J; A.M. Khanwilkar, J

Bench: Division Bench

Advocate: N.P. Patil Jamalpurkar and P.G. Rodge, for the Appellant; Alok Sharma for R. No. 1, V.G. Gangapurwala, for R. Nos. 2 to 4 and R.G. Godbole, for R. No. 5, for the Respondent

Final Decision: Allowed

Judgement

S.S. Shinde, J.
Heard Learned Counsel appearing for the respective parties.

2. Rule. By consent, Rule is made returnable forthwith. Counsel appearing for respective respondents waive notice. With the consent of the parties, heard finally at the stage of admission.

This Writ Petition is filed seeking directions to the respondent Nos. 2 to 4 to allot retail outlet dealership to the petitioner and for that purpose issue necessary letters/orders. It is also prayed that, the selection of respondent No. 5 for allotment of Retail outlet Dealership at Mohol, Dist. Solapur may be quashed and set aside.

3. It is the case of the petitioner that, she belongs to "Mahadeo Koli" caste, which is recognized as `Scheduled Tribe". Respondent Nos. 2 to 4 had issued an advertisement in daily Lokmat dated 21-04-2009 thereby inviting applications for allotment of retail outlet dealership at various places. In the said advertisement, it was advertised that one of the Retail Outlet at Mohol, Dist. Solapur was to be allotted to a person belonging to "Scheduled Tribe category".

In the said advertisement, it was specifically mentioned that, the candidate who desires to be considered from the reserve category, is required to produce the caste validity certificate at the time of interview, otherwise the application of the said candidate would be rejected. In this advertisement it was also mentioned that, after the interviews were conducted, a merit list would be published and in case anyone has any grievance about the said list, he could lodge the complaint within 30 days from the date of publication of the said list, to the respondent Authorities.

It is further case of the petitioner that, in pursuance to the advertisement dated 21-04-2009, the petitioner had applied to the respondent/authorities along with all necessary documents including caste validity certificate of the petitioner. After scrutinizing all the documents the Authorities by letter dated 29-07-2009 had called the petitioner and other similarly situated candidates for interview, which was scheduled to be held on 20-08-2009. In the call letter, it was specifically mentioned that the candidate was required to produce the original caste validity certificate granted by the Scrutiny Committee. It was also made clear that non production of the caste validity certificate may lead to disqualification/rejection of the candidature/application.

4. In pursuance to the said call letter, petitioner attended the said interview with all relevant original documents including the caste validity certificate. It is further case of the petitioner that, the respondent Nos. 1 to 4 selected respondent No. 5 for allotment of the said Retail Outlet Dealership instead the petitioner. According to the petitioner, respondent No. 5 has been selected though she does not fulfill the conditions stipulated in the advertisement as also in the call letter. The respondent No. 5 is not eligible to be selected for allotment of Retail Outlet Dealership because neither she possesses the caste validity certificate nor she produced/submitted the same along with her application or even at the time of interview.

After receiving information that, the respondent No. 5 is not eligible to be allotted the said Dealership at Mohol, Dist. Solapur, the petitioner, applied under the Right to Information Act, 2005 to the Caste Scrutiny Committee for Scheduled Tribes, at Pune asking for information about the respondent No. 5''s caste validity certificate. The Scrutiny Committee, in response thereto, by its letter dated 29-09-2009 informed the petitioner that, caste claim of respondent No. 5 is pending with the Scrutiny Committee. Therefore, the petitioner lodged a complaint before the respondent Nos. 2 to 4 on 21-08-2009 and brought to their notice that, the selection of respondent No. 5 is not just and proper and since the petitioner is second in the merit list the petitioner be granted the Retail Outlet Dealership at Mohol, Dist. Solapur. In spite of the said complaint/application the respondents have taken any action. Hence this Writ Petition.

5. Counsel for the petitioner submits that the advertisement in question specifically mentions that the Retail Outlet Dealership at Mohol, Dist. Solapur was to be allotted to the persons belonging to Scheduled Tribe category and such candidate to produce the caste validity certificate at the time of interview, otherwise the said application of the

candidate would be rejected. It was also mentioned in the said advertisement that, all necessary documents were to be annexed to the said application and once the application was submitted, the applicants would not be given permission to add, delete or modify contents therein. In the said advertisement it was also specifically mentioned that, no additional documents would be accepted or considered after the last date of submission of the application. It was also mentioned that, after conducting interviews, the merit list would be published and in case the aggrieved person can lodge the complaint within 30 days to the respondents authorities. It is further submitted that, in pursuance to the advertisement dated 21-04-2009, the petitioner has applied to the respondent authorities annexing all necessary documents including the caste validity certificate of the petitioner, and accordingly, on 29-07-2009 the petitioner attended the interview. In spite of fulfilling all conditions mentioned in the advertisement, respondent No. 5 was selected for allotment of Retail Outlet Dealership, though she is not eligible. According to the petitioner, respondent No. 5 did not possess caste validity certificate at the time of interview, and therefore, she should not have been considered for selection for the Retail Outlet Dealership at Mohol, Dist. Solapur. A communication by the authorities that the caste claim of respondent No. 5 is pending with the Caste Scrutiny Committee for validation, itself would demonstrate that, the respondent No. 5 was not in possession of original caste validity certificate at the time of interview. It is further submitted that, the advertisement dated 21-04-2009 was issued in Daily ''Lokmat'' published in the State of Maharashtra. The petitioner is resident of Aurangabad and respondent No. 5 is resident of Osmanabad. The respondent Nos. 1 to 4 carried out their activities in Marathwada, and therefore, this Court has jurisdiction to entertain this Writ Petition. Therefore, learned Counsel for the petitioner would submit that, this Writ Petition may be allowed.

6. Counsel for respondent Nos. 2 to 4 invited our attention to the reply affidavit and also additional affidavit filed on behalf of the said respondents. According to respondent Nos. 2 to 4, there is condition mentioned in the advertisement that the person holding the caste certificate issued by the competent authorities is entitle to fill in the application and to appear for interview.

7. Counsel for respondent Nos. 2 to 4 submits that, before the date of interview, upon requests made by some of the applicants the management has taken a decision that all eligible candidates be called for interview and be allowed to participate in the interview irrespective of availability of caste validity certificate. The reason for such decision was that the applications for certificates of the candidates were pending before competent authority for verification and the said verification would take a long time. It is further submitted that, the said selection of the candidates is purely provisional and subject to the production of caste validity certificate. It is further submitted that, the Indian Oil Corporation has already initiated necessary steps, in order to investigate the complaint of the petitioner dated 24-08-2009 and an officer has been nominated to investigate the said complaint. It is further submitted that, the petitioner has placed at serial No. 2 in the merit list published on 20-08-2009. Respondent No. 5 is at serial No. 1 in the merit list.

However, she has not been issued with the letter of intent, as the matter is under investigation. It is further submitted that, the present Writ Petition is premature, as no letter of intent is issued to any candidates and the issuance of letter of intent is subject to the production of caste validity certificate. Therefore, the Writ Petition deserves to be dismissed.

On behalf of respondent Nos. 2 to 4, relying on additional affidavit in reply, it is also submitted that, no injustice is caused to the petitioner. In view of the advertisement, no injustice is caused, as all eligible candidates were entitled to submit the application with the Caste Certificate, issued by the competent authority, as per Part-I. However, as per the advertisement the Caste validity certificate is required to be produced at the time of interview. The learned Counsel further invited our attention to para No. 7 of the additional affidavit in reply to contend that the matter was reviewed by Maharashtra State Office, Retail Office, Retail Sales Manager and Executive Director, in consultation with Head Office, and therefore, the action was advised to the effect that, in case of Scheduled Caste /Scheduled Tribe locations, all eligible candidates will be interviewed whether they have the caste validity certificate or not. However, letter of intent would be issued to the selected candidates, only on production of the caste validity certificate all other procedures to be followed as per the guidelines. Therefore, learned Counsel would submit that, it is only after interviews are held, merit panel is prepared of three eligible candidates in the order of merit, and thereafter, the field investigation report is called for in respect of the first candidate, who is first in merit list, and if everything is proper and according to guidelines, then the letter of intent is issued. It is further submitted that, issuance of letter of intent is subject to the production of the caste validity certificate. Therefore, learned Counsel would submit that, no injustice is caused to any of the eligible candidates and all the candidates, who were eligible from Scheduled Caste /Schedule Tribe category were called for interview. Therefore, learned Counsel would submit that, Writ Petition is devoid of any merits and same deserves to be dismissed.

8. Counsel appearing for the respondent No. 5 raised preliminary objection for entertaining Writ Petition on the ground that, the place where Retail Outlet Dealership is allotted, is not within the jurisdiction of this Bench and the interviews are held at Pune, and therefore, the present petition ought to have been filed and heard at Principle Bench. It is further submitted that, the respondent No. 5 stood first in merit list, and therefore, she was entitled to get Retail Outlet Dealership at Mohol, Dist. Solapur. It is further submitted that, field survey report taken by the respondent Nos. 2 to 4 also supports the claim of the respondent No. 5. It is further submitted that, under Rules, there is no provision for submitting validation certificate at the time of interview. It is further submitted that, if the petitioner is aggrieved by the order of respondent Nos. 2 to 4, in that event, the petitioner has alternative remedy by way of complaint before Indian Oil Corporation at the address of the customer service cell displayed at the nearest retail outlet of Indian Oil Corporation. Complaints can also be lodged on the website of Indian Oil Corporation, as a complaints against dealer''s selection. Therefore, learned Counsel would submit that, the writ Petition

is devoid of merits and same deserves to be dismissed.

9. We have heard the learned Counsel appearing for the respective parties at length. Firstly, We shall deal with the preliminary objection raised by the learned Counsel appearing for the respondent No. 5 that, this bench has no jurisdiction to entertain the Writ Petition in view of the fact that the allotment of Retail Outlet dealership is at Mohol, Dist. Solapur, which comes under the jurisdiction of Principal Bench and interviews were held at Pune, and therefore, Writ Petition should have been filed and heard at Principal bench. This plea merely deserves to be stated to be rejected, in view of the fact that, the advertisement was issued even at Aurangabad in Daily ''Lokmat''. Besides, the petitioner being ordinary resident of Aurangabad, had submitted his application from Aurangabad, which is within the jurisdiction of this Bench.

10. Reverting to the merits, we would like to refer to the undisputed facts involved in the present case. The Indian Oil Corporation Ltd., has issued brochure for selection of petrol/diesel retail outlet dealers on 01-07-2009. Under Clause 4.3 (B) (i) reservation is provided for Scheduled Castes/ Scheduled Tribes which care recognized under the Constitution of India. The said Clause 4.3.(B) (i) reads thus:

(i) Scheduled Castes/Scheduled Tribes (SC/ST) Those recognized as Scheduled Cast/Scheduled Tribes (SC/ST) under the Constitution of India, issued by a competent authority as under:

District Magistrate/ Additional District Magistrate/Collector/Deputy Commissioner/Addl. Deputy Commissioner/ Deputy Collector/1st Class Stipendiary Magistrate/City Magistrate (Not below the rank of 1st Class Stipendiary Magistrate/Sub Divisional Magistrate /Taluka Magistrate/ Executive Magistrate/Extra Assistant Commissioner. Chief Presidency Magistrate/Additional Chief Presidency Magistrate/ Presidency Magistrate. Revenue Officer not below the rank of Tahsildar.

Sub Divisional Officer of the area where the candidate and/or his family normally resides Administrator/ Secretary to Administrator/Development Officer (Lakshadweep) any other competent authority notified by the Government of India.

In Clause 10 of the said brochure there is a reference of application form to be filed before the respondents for dealership. The Clause 10 (a) reads thus:

(a) The application can be submitted on plain paper in the prescribed format as mentioned.

(b) ---

(c) ---

(d) ---

(e) ---

(f) ---

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

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

(i) Application received after the cut off date for any reason including postal delay, and those without accompanying valid documents like Affidavits, Certificates etc., application fee or incomplete in any respect will not be considered and no correspondence will be entertained by IOC in such cases whatsoever.

(j) The applications received are scrutinized after the cut off date for receiving the applications as given in the advertisement. In case of applications rejected at the time of scrutiny, the concerned applicant will be advised the reasons for rejection in writing and such applicants will not be called for interview.

On perusal of Clause (g) of the application form it shows that, no addition, deletion, or alteration will be permitted once it is submitted. It is further provided in Clause 10(h) that, no additional documents whatsoever will be accepted or considered after the cut off date of the application. The Clause 13 of the brochure provides for interviews. The Clause 13 of the brochure is reads thus:

The candidates should produce originals of the documents submitted by them with the application, at the time of interview failing which the applicants will be rendered ineligible. The candidates will also have to submit a fresh affidavit as per Annexure-A or Annexure-A 1 as applicable prior to the date of interview, failing which the candidate will be considered as ineligible for dealership. A Committee will be evaluate the candidates and select them based on the marks obtained on various parameters based on the documents submitted with the application form and their performance in the interview.

11. Plain reading of Clause 13 would make it clear that, the candidates are required to produce originals of the documents submitted by them with the application, at the time of interview, failing which the applicant will be rendered ineligible.

At this juncture it would be relevant to refer to the advertisement i.e. notice for appointment of Retail Outlet Dealers issued by Indian Oil Corporation Ltd. Clause No. 2 of the said advertisement is in respect of eligibility criteria. In the present case, the petitioner and respondent No. 5 have applied in pursuance to the said advertisement. The Clause 2(b) of the said advertisement reads thus:

Scheduled Caste/Scheduled Tribe Category (SC/ST):- Persons belonging to SC/ST category should submit a caste certificate of ''Scheduled Caste/Scheduled Tribe''

category issued by the competent authority.

(i) ---

The applicant(s) belonging to SC/ST category should ensure that the original caste validity certificate granted by the Caste Scrutiny Committee as per Gazette Notification issued by the Govt. of Maharashtra is produced at the time of interview, failing which their candidature/application shall be rejected.

12. It is not in dispute that, when the respondent No. 5 was interviewed she was not holding the caste validity certificate in her favour and the petitioner herein had submitted original caste validity certificate at the time of interview. The requirement, as stated in the advertisement, states in unambiguous terms that, at the time of interview the candidate should produce the original documents, of which copies are submitted along with application form. It would be relevant to refer to para No. 2 of the affidavit filed on behalf of respondent Nos. 2 to 4. It is admitted in para No. 2 that, it is true that, the caste validity certificate is necessary at the time of interview. Para No. 3 of the additional affidavit filed on behalf of respondent Nos. 2 to 4 filed by Deputy Manager, (Retail Sales), Indian Oil Corporation Ltd., Pune reads thus:

I further say that, Second part of the said Advertisement for Scheduled Castes/Scheduled Tribes category says that, Applicants belonging to Scheduled Castes/Scheduled Tribes Category, should ensure that the original Caste Validity Certificate, granted by the Caste Scrutiny Committee, as per the Gazette Notification, issued by the Government of Maharashtra is produced at the time of interview. Failing which, their candidature/applications shall be rejected.

Therefore, on undisputed facts, it is crystal clear that, at the time of interview of the petitioner and respondent No. 5, the petitioner had produced original caste validity certificate before the interview committee and respondent No. 5 did not produce the same. The contention raised by the respondent No. 5 that there is no Rule to submit caste validation certificate at the time of interview is required to be rejected in the light of Clause 2(b) mentioned in the advertisement.

It is also relevant to mention that, in Clause 10 of the brochure i.e. Application form, it is provided that no addition, deletion, alteration will be permitted in the application once it is submitted and no additional documents whatsoever will be accepted or considered after the cut off date of the application. Therefore, it follows that no addition, deletion, alteration was permissible in the application once it was submitted.

12. Though the learned Counsel appearing for the respondent Nos. 2 to 4 submitted that in the interest of candidates from Scheduled Castes/Scheduled Tribes, the respondents have decided to take interviews of the candidates irrespective of the facts that the original caste validity certificate was not available with them at the time of interview, we cannot accept this submission of the learned Counsel appearing for the respondent Nos. 2 to 4,

in view of the specific clauses in the brochure as well as advertisement prescribing the eligibility criteria for the candidates belonging to Scheduled Castes/Scheduled Tribes category.

13. Taking overall view of the matter and taking into consideration undisputed position that the condition enumerated in the advertisement clearly mentions that the candidate should submit original certificates including the caste validity certificate at the time of interview, and even call letters issued also mentions that the candidate should produced all original certificates at the time of interview, it is not open for the respondents to contend that it was not necessary to produce original caste validation certificate at the time of interview.

14 Learned Counsel appearing for the petitioner has placed reliance on the reported judgment of the Apex Court in the case of M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, . The Hon"ble Supreme Court in para No. 12 of the said judgment has held thus:

12. The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had began and, therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is justified because by reason of deletion of a particular condition the wider net will be permissible and a larger participation or more attractive bids could be offered.

Yet in another reported judgment in case of K. Manjusree Vs. State of A.P. and Another, the Hon"ble Supreme Court held that:

The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks as stated above. But if the Selection Committee wants to prescribed minimum marks for interview, it should do so before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

At this juncture, it would be relevant to refer to reported judgment in case of Hemani Malhotra Vs. High Court of Delhi, the Hon''ble Supreme Court held that:

The authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before commencement of selection process or after the selection process, the authority concerned cannot either during the selection process or after the selection process, add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. There is no good ground for reconsideration of proposition of law laid down in this regard in K. Manjusree Vs. State of A.P. and Another, . Prescription of minimum marks by the respondent High Court for viva voce, after written test was over, was illegal.

Therefore, it follows from the authoritative pronouncements of the Hon''ble Supreme Court cited supra, that the authority cannot either during the selection process or after the selection process alter or add an additional requirement/qualification or alter of any conditions already laid down for selection process.

15. In the instant case, it is admitted position that, at the time of interview, the petitioner was possessing caste validity certificate and respondent No. 5 was not holding caste validity certificate. In fact, as per the requirements, conditions mentioned in the brochure, advertisement and call letter for interview, as stated in foregoing paragraphs of this judgment, it was incumbent to have caste validity certificate at the time of interview itself. In that, it is stated in those conditions that, the applicants belonging to Scheduled Caste/Schedule Tribe should ensure that the original caste validity certificate granted by the Caste Scrutiny Committee to be produced at the time of interview, failing which their candidature or application shall be rejected. Therefore, the respondent No. 5 at the time of interview was not having caste validity certificate and was not eligible to be considered for the Retail Outlet Dealership at Mohol, Dist. Solapur. However, Respondent No. 5 was considered as the respondent Nos. 2 to 4 decided to relax the condition of having caste validity certificate at the time of interview, after the applications were processed and completed in all respects. In other words, the decision to relax the condition of producing caste validity certificate at the time of interview which pertained to eligibility/ conditions prescribed in the advertisement and brochure, was taken soon before the interview, and during the selection process which cannot be countenanced in the light of the judgments of the Hon''ble Supreme Court cited supra. Needless to mention that, many candidates similarly placed as the Respondent No. 5, who did not have caste validity certificates; could have participated in the process of selection for Retail Outlet Dealership, if the advertisement or the brochure were to clearly specify that position. Only then the respondent Nos. 2 to 4 could have allowed them to participate in interview in absence of caste validity certificate. The eligibility/condition of producing caste validity certificate after the selection process had began has obviously deprived opportunity to many other candidates similarly placed as that of the Respondent No. 5 who did not apply because of the contrary eligibility condition in the advertisement. Therefore, in our considered

opinion, it was not permissible for the respondent Nos. 2 to 4 to relax/waive the condition of producing caste validity certificate at the time of interview of the candidates.

16. We are of the considered opinion that, on the date of interview and actually when interview was held, the petitioner was the only candidate eligible for selection since he possessed the caste validity certificate. Therefore, the respondent Nos. 2 to 4 were not right in placing the respondent No. 5 at serial No. 1 in the merit list. The petitioner is shown second in the merit list and was the only candidate who fulfilled all the eligibility criteria/conditions laid down in brochure/advertisement. Therefore, the Retail Outlet Dealership at Mohol, Dist. Solapur should have been given to the petitioner.

17. Taking over all view of the matter and in the light of discussion here-in-above, we are of the considered opinion that, the petitioner is bound to succeed in this petition. Hence, the petition is allowed. Directions/order of the respondent Nos. 2 to 4 to allot the Retail Outlet Dealership in favour of respondent No. 5 and showing him in merit list at serial No. 1 is quashed and set aside. The respondent Nos. 1 to 4 are directed to give Retail Outlet Dealership at Mohol Dist. Solapur to the petitioner. Rule is made absolute in terms of prayer Clauses (B) & (C), which read thus:

(B) By appropriate Writ, order or directions, the selection of the respondent No. 5 for allotment of Retail Outlet Dealership at Mohol, Dist. Solapur may be quashed and set aside.

(C) By appropriate Writ, order or directions, the respondent authorities may be directed to allot the Retail Outlet Dealership to the petitioner and for that purpose issue necessary letters/orders in that regard.

Petition is allowed and disposed of on the above terms. The Civil Application, if any stands disposed of in view of the disposal of main Writ Petition.