

(2003) 04 AHC CK 0125
In the Allahabad High Court
Case No : C.P.W.P. No. 24966 of 2001

Anurag Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Citation : (2003) 3 AWC 2542

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : V.K. Shukla, D.P. Mishra and A.K. Mishra, for the Appellant; P. Padia, J.P. Gupta, A.K. Singh, K.K. Roy and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned select list dated 15.6.2001 Annexure-5 to the writ petition and for a mandamus directing the Selection Board to re-advertise the retail outlet of village Sohanpur, district Deoria.

2. Heard the learned counsel for the parties.

3. An advertisement appeared in the newspaper on 25.8.2000 inviting applications for eligible candidates for running retail outlet/kerosene/L.D.O. dealership and L.P.G. distributorship. True copy of the advertisement is Annexure-1 to the writ petition. The petitioner applied for consideration of his candidature against the advertisement and he has alleged in paragraph 3 of the writ petition that he fulfilled all the conditions. He also produced the lease deed dated 7.9.2000 before the Selection Board at the time of interview and hence he claimed that he was entitled to preferential treatment on account of the fact that he owned land on the site where the proposed retail outlet was to be given. Interview letter was given to the petitioner and 14.6.2001 was the date of interview. It is alleged in paragraph 4 of the writ petition that the members of the Oil Selection Board were pre-determined and had made up their minds to

allot the petrol pump in favour of one particular incumbent who had applied in contravention of the guidelines mentioned in the advertisement. True copy of the interview letter dated 21.5.2001 is Annexure-2 to the writ petition. Photocopies of the documents produced by the petitioner at the time of the interview are Annexures-3 and 4 to the writ petition.

4. It is alleged in paragraph 6 of the writ petition that no person can be granted dealership if his close relative is holding dealership or distributorship or letter of intent. In paragraph 7 of the writ petition it is alleged that one Smt. Urmila Singh, respondent No. 5 had applied for allocation of retail outlet at village Sohanpur, district Deoria. It is alleged that she was not eligible because her father-in-law Rajendra Prasad was already owning one retail outlet of Hindustan Petroleum Corporation in the name of Sri Ram Automobiles, Rampur Bujurg, district Deoria. It is alleged in paragraph 10 of the writ petition that a large scale of corruption has prevailed in the matter of selection of dealers of the retail outlets and guiding factors have been ignored by the Selection Board. True copies of the representation made in this connection are Annexures-6 and 7 to the writ petition. It is alleged that Smt. Urmila Singh was not eligible for grant of dealership for the reasons already mentioned above since her father-in-law was already having a retail outlet.

5. In this connection on 12.7.2001, the Court granted an interim order directing that the letter of intent shall not be issued to respondent No. 5.

6. A counter-affidavit has been filed by the respondent Nos. 2 to 4 and we have perused the same. It is alleged that the licence given to the petitioner's father-in-law is different from the grant of retail outlet. However, it is denied that the respondent No. 5 comes within the prohibited degree of relationship as claimed by the petitioner.

7. A counter-affidavit has also been filed by Smt. Urmila Singh and we have perused the same. It is reiterated in paragraph 9 of the counter-affidavit that the respondent No. 5 was not disqualified for applying.

8. Several submissions have been made by the learned counsel for the petitioner but, in our opinion, the very first submission is enough for allowing this writ petition.

9. The terms and conditions for grant of licence are mentioned in the booklet, copy of which is Annexure-4 to the writ petition. It has mentioned therein that :

"No person shall be awarded a new dealership/distributorship if any of the following close relatives (including step relations) of the person already holds a letter of intent or a dealership/ distributorship of M.S./H.S.D./Kerosene/L.D.O./ L.P. G. of any Public Sector Oil Company.

(i) Spouse

(ii) Father/Mother

(iii) Brother/Brother's wife

(iv) Son/daughter-in-law."

10. Admittedly Smt. Urmila Singh is daughter-in-law of one Sri Rajendra Prasad who already held a retail outlet of Hindustan Petroleum which is admittedly a Public Sector Oil Company. The question is, therefore, whether Smt. Urmila Singh is disqualified.

11. The terms and conditions of the grant of dealership which are mentioned in Annexure-4 of the writ petition, no doubt states that if a daughter-in-law holds a dealership, then the father-in-law is disqualified. If a literal or narrow meaning is given to this condition, it will mean that while a father-in-law will be disqualified, the daughter-in-law will not be disqualified.

12. However, in our opinion, a literal interpretation is not to be given to that provision but the intention has to be seen.

13. As Lord Denning has pointed in his book "Discipline of Law" (in Chapter-II) the modern method of interpretation is to see the intention and not go by the literal meaning.

14. As held by the Supreme Court in Administrator, Municipal Corporation v. Dattatraya Dahankar JT1991 (4) 500 ; Directorate of Enforcement Vs. Deepak Mahajan and another, vide para 31 ; Hindustan Liver Ltd. v. Ashok Vishnu Kate JT 1995 (6) 625 vide paras 41 and 42 ; Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, and Udai Shanker Singh Vs. Branch Manager, L.I.C. and others, the Courts often adopted a purposive instead of literal approach.

15. The intention of the criteria for award of dealership was that if a close relation is already holding a dealership, then the person should not be granted a dealership. The relationship between the father-in-law and daughter-in-law has been expressly declared to be a close relationship. If a father-in-law is a close relation to his daughter-in-law, then the vice versa is also true, that is to say, the daughter-in-law is a close relation to the father-in-law.

16. In view of the above, we are clearly of the opinion that the grant of the dealership in question to respondent No. 5 was illegal and it is hereby quashed. The select list dated 15.6.2001 so far as it relates to the respondent No. 5 it set aside. The respondent Nos. 2, 3 and 4 is directed to grant the dealership in question afresh in accordance with the relevant rules and after advertising it in two well known newspapers having wide circulation and thereafter calling for public tender/public auction so that all eligible persons may apply. The petition is allowed.

17. Before parting with this case, we constrained to say that there are numerous complaints that retail outlets and dealerships of this nature were granted on

extraneous considerations. The authorities concerned should thoroughly investigate all such cases where there are complaints and pass appropriate orders accordingly.