

(2002) 07 AHC CK 0121
In the Allahabad High Court
Case No : C.M.W.P. No. 5931 of 2002

Ashok Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 AWC 2448 : (2002) 2 UPLBEC 1755

Hon'ble Judges : S.R. Singh, J;S.P. Mehrotra, J

Bench : Division Bench

Advocate : A.P. Sahi, G.K. Singh and R.N. Singh, for the Appellant; Naveen Sinha, Satyendra Nath and S.K. Rai and Virendra Pratap, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The challenge herein is to the validity of the impugned order dated 23.1.2002 whereby the selection of the petitioner (empanelled candidate No. 1) for retailed outlet at Atraulia in District Azamgarh has been cancelled on a complaint made by the respondent Smt. P. Pandey. The operative part of the Impugned order has been annexed as Annexure-17 to the writ petition whereas the entire order passed by the Dealer Selection Board (in short "D.S.B.") has been filed along with Civil Misc. Amendment Application dated 25.2.2002 which was allowed vide order dated 16.3,2002.

2. It is not disputed that the location at Atraulia in District Azamgarh was advertised for retail outlet dealership of B.P.C.L. for the open category candidates. One of the essential conditions of eligibility, as per office memorandum No. 39012/1/1999-I.O.C., Government of India, Ministry of Petroleum and Natural Gases, Shastri Bhavan, New Delhi dated 9th October, 2000, a copy of which has been annexed as Annexure-4 to the writ petition, was that, "Residents of the district in which location is advertised will only be eligible". According to the self same office memorandum, residence certificates should be issued within six months of the date of advertisement by the Revenue

Officer not below the rank of Tahsildar or Deputy Tahsildar, in-charge of the area or the Commissioner of Police/Deputy Commissioner of Police. In support of his/her being a resident of that district, such certificate was required to be produced as a proof of residence for all categories of candidates. Another eligibility requirement was that the gross income of candidate should not exceed Rs. 2 lacs per annum in the previous financial year. The income for this purpose, as stipulated in Section 1.2.71 of the office memorandum aforesaid, "will include that of self, spouse and dependent children" and if the candidate is dependent on parents, then their income will also be taken into consideration for computing total Income. It was further provided therein that any ex-gratia income or any such one time lump-sum income which not being of recurring nature would not be considered for the purpose of computing the gross income limit by the Office Memorandum aforesaid.

3. The petitioner as well as respondent No. 5 and a third person were selected for allotment of dealership of retail outlet at Atraulia in district Azamgarh. The petitioner was selected as empanelled candidate No. 1 while the 5th respondent as empanelled candidate No. 2. It appears that after publication of the result, the 5th respondent made a complaint dated 18.5.2001 to the Dealer Selection Board, Lucknow-IV questioning the selection of the petitioner alleging therein that he happened to be the resident of Lucknow but for the purpose of getting the dealership, he submitted two residence certificates : one in proof of being resident of district Azamgarh and other in proof of being the resident of district Mau. It was accordingly, alleged in the complaint that one person cannot be resident of two districts at a time. The petitioner, it was alleged, with a view to getting retail outlet dealership at Atraulia in district Azamgarh and another location in district Mau had fraudulently obtained residence certificates from two districts one from Azamgarh and other from Mau. In the circumstances, therefore, it was prayed that the selection of the petitioner be cancelled. It would appear that the 5th respondent, Smt. P. Pandey filed a writ petition being Civil Misc. Writ Petition No. 2700 (M/B) of 2001, Smt. Pratima Pandey v. Ministry of Petroleum and Ors., which came to be disposed of vide order dated 14.6.2001 by the Vacation Judge of the Lucknow Bench with the direction to the petitioner therein to file a comprehensive objection along with certified copy of the writ petition before the Dealer Selection Board, Lucknow on or before 30.6.2001 with the command superadded that if comprehensive objection along with the certified copy of the order was filed before the concerned authority, the same would be disposed of by a reasoned order preferably within six weeks exercising unfettered discretion without being influenced by any observation made by the Court in its judgment dated 14.6.2001.

4. The 5th respondent who had earlier filed a complaint, dated 18.5.2001 preferred another representation dated 26.6.2001 after the judgment of the High Court wherein the main objection raised was that the petitioner Ashok Kumar Singh was not eligible for being considered for allotment of dealership of retail outlet at Atraulia in district Azamgarh on the ground that he had been residing at

Lucknow for last several years and was neither a resident of Azamgarh nor of Mau. It was further asserted therein that the petitioner was ineligible also on the ground that his income was much more than the prescribed limit of Rs. 2 lacs in the relevant year. An enquiry was conducted by Sri Nikhil Kumar Singh, S.O.S., Lucknow, who found that the petitioner was residing at 3/116 Vinay Khand, Vidhyakpuram, Gomti Nagar, Lucknow. It was also found that the petitioner happened to be a registered contractor with the Public Works Department and address given in the registration certificate dated 19.8.2000 was Mohalla Kota, Azamgarh. It was further found by the enquiry officer, Sri Nikhil Kumar Singh that the petitioner held a ration card earlier in his name which ration card was attached to the shop of one Shyam Sunder Sharma, a Fair Price Shop Dealer of Gomti Nagar, Lucknow but the said ration card was cancelled on 16.5.2000. Further finding recorded by Sri. Nikhil Kumar Singh, S.O.S., Lucknow, was that Smt. Usha Singh, the wife of the petitioner Ashok Kumar Singh, was running a Beauty Parlour in the same residential house at Lucknow. However, after receipt of the report of Sri Nikhil Kumar Singh, the Dealer Selection Board considered it appropriate to get a report by some more responsible officers like Chief Managers and accordingly, a team of investigation consisting of S/Sri D.N. Mathur and H.K. Rajore, Chief Managers was constituted vide order dated 4.1.2002 to go into the complaint of 5th respondent Smt. P. Pandey and submit a report after proper enquiry and verification. The said team found the report submitted by Sri Nikhil Kumar Singh as correct and the team accordingly submitted its own report to the Chairman, Dealer Selection Board. The Dealer Selection Board vide order impugned herein set aside the selection of the petitioner as empanelled candidate No. 1 and directed further action to be taken by the concerned authority in accordance with the relevant guidelines and laws.

5. We have heard Sri R.N. Singh, senior counsel appearing for the petitioner, Sri Naveen Sinha, senior advocate appearing for the 5th respondent, Sri Satyendra Nath for respondent Nos. 2 and 3 and Sri S.K. Rai, learned counsel representing the respondent No. 1. Shri R.N. Singh contended firstly, that the petitioner happened to be a permanent resident of Azamgarh and the fact that he has a house in Lucknow as well would not make him ineligible for dealership for retail outlet at location Atraulia in district Azamgarh ; secondly, that the order impugned herein had been passed in breach of principle of natural justice ; and thirdly, that the conclusion arrived at by the Dealer Selection Board in respect of the petitioner's ineligibility is based on consideration of irrelevant materials such as the residence certificate issued by the District Magistrate, Mau which, according to the learned counsel was of no relevance inasmuch as on the date of grant of dealership, the only residence certificate that could be relevant was the one granted to the petitioner with regard to his permanent residence at Azamgarh. Sri Naveen Sinha appearing for 5th respondent, inter alia, submitted that mere empanelment did not confer any right to be appointed as dealer of the retail outlet in question ; that the petitioner had furnished two residence certificates one from district Azamgarh and other from district Mau and if on

consideration of valid materials on record, the Dealer Selection Board came to the conclusion that one of the two certificates was bound to be incorrect, then no interference should be made by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India ; and fourthly, that the order impugned herein was passed after following a fair and reasonable procedure and, therefore, in the fact situation of the case, no interference by this Court under Article 226 of the Constitution of India is warranted in the absence of any material error in the decision making process.

6. We have given our anxious consideration to the submissions made at the Bar. The legal position well-settled is that mere empanelment does not confer any right to be appointed as a dealer for retail outlet. It is also borne out from the record that the Dealer Selection Board has acted in a fair and reasonable manner and a fact finding enquiry was made before setting aside the selection of the petitioner for retail outlet at Atraulia in district Azamgarh. As stated herein above, the enquiry was initially made by Sri Nikhil Kumar Singh, S.O.S., Lucknow and then by the team consisting of two Chief Managers, namely, S/Sri D.N. Mathur and H.K. Rajore. The fact that the petitioner holds a house at Gomti Nagar, Lucknow is not disputed. It is immaterial that he happens to be the co-owner of the said house along with his brothers. It is also not disputed that his wife is running a beauty parlour and his children are residing at Lucknow. The petitioner held a ration card which was attached to a fair price shop dealer of Gomti Nagar, Lucknow. The ration card was no doubt cancelled on 16.5.2000 but this fact was taken into reckoning by the Dealer Selection Board in its order impugned herein. The petitioner had applied for the location in question on 22.10.2000 against the advertisement made on 7.10.2000. It is true that the petitioner's ration card on the date of application was not valid and had been cancelled. However, it came to be cancelled only on 16.5.2000, i.e., before about five months from the date of filing the application form. These circumstances were taken into consideration by the Dealer Selection Board besides the fact that the petitioner and his wife and children were recorded in the voter list of Nagar Nigam Nirvachan-2000 at Lucknow and there was nothing to show that any change was subsequently made in the voter list. Thus, the petitioner and his wife "continued to be in voter list of Nagar Nigam, Lucknow," The residence certificate dated 18.6.1998 was issued by the concerned authority of district Mau showing that the petitioner was permanent resident of Tehsil Sadar district Mau, which was confirmed by the District Magistrate, Mau on 15.6,2001. It is not disputed that the petitioner had earlier applied for retail outlet location of Amila town in district Mau on 25.6.1998 on the basis of the residence certificate dated 18.6.1998 issued by the District Magistrate. Mau and the petitioner had applied for the same location on 9.10.2000. At the same time, he obtained residence certificates dated 25.6.1998, 13.9.2000 and 10.5.2001 showing him as resident of Azamgarh. These facts found by the enquiry officer/enquiry committee have not been controverted. The aforesaid residence certificates were not filed by the petitioner along with his application dated 22.10.2000 against the re-

advertisement for the location at Atraulia in district Azamgarh. The interview earlier due in May, 1998, was postponed and the location was re-advertised on 7.10.2001. The Dealer Selection Board has come to the conclusion that "The time gap between the certificate of residence at Mau and that of Azamgarh is about a month, i.e., his residence shown at Mau in June and at Azamgarh in May of the same year, i.e., 1998. Hence, residence certificate(s) of one of the two districts, namely Mau and Azamgarh is bound to be incorrect. But that will not necessarily mean that he is resident of one of these two districts. The remaining certificates dated 13.9.2000 and 10.5.2001 for his residence are of Azamgarh district. In the instant case, it is asserted by the complainant that place of his residence, in fact, happened to be Lucknow, And further, "The fact that he is living at Lucknow for the purpose of schooling of his children will not entitle him to apply for dealership of the subject location which is situated in a different district Azamgarh." These facts coupled with the fact that the wife is running a beauty parlour in same residential house at 3/116, Vinay Khand, Vidhyakpuram, Gomti Nagar, Lucknow, were taken into consideration by the Dealer Selection Board in arriving at the conclusion that the petitioner, at the relevant time, was the resident of House No. 3/116 Vinay Khand, Vidhyakpuram, Gomti Nagar, Lucknow and the contrary version is not correct. The requirement in the office memorandum dated 9.10.2000 (Annexure-4 to the writ petition) that "residents of district in which location is advertised will only be eligible" so far as open category candidates are concerned was in the opinion of D.S.B. not fulfilled by the petitioner. The condition, in our opinion, requires actual residence in the district in which location is advertised. It is well-settled that this Court is not sitting in appeal. The view taken by the Dealer Selection Board, in the fact situation of the case, is neither illegal nor perverse and the decision-making process too does not suffer from any infirmity. It is well-settled in judicial review of an administrative action what is reviewed is not the correctness of the decision but the legality of the decision making process. The said power of judicial review cannot be a power of appellate authority permitting the High Court to re-appreciate the evidence and supplant the conclusion of the administrative authority by its own conclusion. In *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , it has been held that, "however, judicial review under Article 226 cannot be converted into appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process". The Supreme Court has placed reliance on the observation made by Lord Hailsham in *Chief Constable of North Wales Police v. Evans* (1982) 1 WLR 1155, holding that, the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a manner which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court." The affidavit dated 3.1.2002 (Annexure-14 to the writ petition) filed by the petitioner before the B.P.C.L., Lucknow during enquiry by Sri Nikhil Kumar Singh supports the facts found during the course of enquiry. The Dealer Selection Board in the instant case, has acted in a fair and reasonable manner and,

therefore, the Impugned decision cannot be said to be arbitrary. In our opinion, no interference is warranted under Article 226 of the Constitution of India.

7. Before parting, it is necessary to deal with two more submissions made by Sri R.N. Singh, learned senior counsel appearing for the petitioner. He contends that the person may have two residences-one permanent and the other temporary. The petitioner, the contention proceeds, is permanent resident of Azamgarh, while he has been temporarily residing in Lucknow on account of family circumstances. Sri R. N. Singh places reliance on the following decisions :

(1) Dr. Yogesh Bhardwaj Vs. State of U.P. and others,

(2) Union of India and Others Vs. Dudh Nath Prasad,

8. In Dr. Yogesh Bhardwaj (supra), the Apex Court was dealing with a notification dated August 19, 1983, providing for reservation of seats and prescribing a residence qualification for selection to the M.D.S. Course. Clause (4) of the said notification which laid down the requirement of bona fide residence in Uttar Pradesh read as follows :

"4. For the purpose of this order the expression "bona fide resident of Uttar Pradesh" shall mean :

(a) a citizen of India, the domicile of whose father is in Uttar Pradesh and who himself is domicile in Uttar Pradesh ; or

(b) a citizen of India, the domicile of whose father was not in Uttar Pradesh but who himself has resided in Uttar Pradesh for not less than five years at the time of making the " application."

Thus, while Sub-clause (a) of Clause (4) used the expression "domicile in Uttar Pradesh". Sub-clause (b) of the said clause used the expression "resided in Uttar Pradesh".

9. The Apex Court pointed out (paragraphs 12, 13 and 14 of the said A.I.R.) that "domicile" is a concept of private international law. This concept of private international law is inapplicable to the construction of the aforesaid Clause (4) because no foreign element, i.e., contract with any system of law other than Indian is involved herein. A man who is domicile in India is domiciled in every State in India. He is "domiciled" in the whole of this country, even though his permanent home may be located in a particular spot within it. The full import of domicile is, therefore, inapplicable to the construction of Clause (4)." The expression "domicile" for the purpose of Clause (4) was to be understood in limited sense in order to distinguish it from the expression "residence". In this limited sense, "domicile" means physical residence coupled with the intention to settle down in Uttar Pradesh. On the other hand, "residence" requires only bodily presence in Uttar Pradesh. Thus, the element of intention distinguishes "domicile" from "residence".

10. Applying the aforesaid distinction, the Supreme Court held that the appellant

in the said case did not fulfil the requirement of "domicile" mentioned in Sub-clause (a) of Clause (4) because the appellant came to the State of Uttar Pradesh with a predetermined mind, namely, to complete the chosen course of studies and return to the State which had nominated him for the purpose. Thus, the element of intention to settle down in Uttar Pradesh was missing. However, the Supreme Court held that the appellant fulfilled the requirement of residence in Uttar Pradesh mentioned in Sub-clause (b) of Clause (4) because the appellant resided in the State of Uttar Pradesh for the required period even though the residence was specifically for the purpose of undergoing a course of studies and finally returning to his home State. Hence, the Supreme Court held that the appellant in the said case fulfilled the requirement of "bona fide resident of Uttar Pradesh".

11. It is relevant to quote paragraphs 15, 16, 17 and 23 of the decision of the Apex Court in Dr. Yogesh Bharadwaj (supra) :

"15. "Domicile" for the purpose of Clause (4) must, nevertheless, be understood and applied in a limited sense and in contradistinction to "residence", for that clause uses both the expressions and demands compliance with either of them with reference to the State of Uttar Pradesh. Unlike "residence" which is only bodily presence, "domicile" in this context must necessarily mean physical residence coupled with the intention to settle down in Uttar Pradesh, although, being confined to a particular region rather than the whole area of operation of the territorial legal system and lacking in any foreign complexion or unconcerned with any foreign element, the animus manendi required for the purpose of Clause (4) is much less in quality and contents than what is required in Private International Law. Sub-clause (a) of Clause 4 prescribes no minimum length of residence or minimum degree of intention, and, however short or insignificant the two elements may be, their combination, in whatever proportion, is sufficient to constitute "domicile" for the purpose of Clause 4 (a).

16. In the present case, the appellant came to the State of Uttar Pradesh with a predetermined mind, namely, to complete the chosen course of studies and return to the State which had nominated him for the purpose. Having regard to the time and duration, the object and obligation, and the uncontroverted facts, the appellant was undoubtedly a bona fide student who resided in Uttar Pradesh for over five years, but whose residence did not acquire the attributes of "domicile" within the meaning of Clause 4 (a). The question then is whether the appellant is a "bona fide resident of Uttar Pradesh" within the meaning of Clause 4 (b).

17. Residence is a physical fact. No volition is needed to establish it. Unlike in the case of a domicile of choice, animus manendi is not an essential requirement of residence. Any period of physical presence, however short, may constitute residence provided it is not transitory, fleeting or casual. Intention is not relevant to prove the physical fact of residence except to the extent of showing that it is not a mere fleeting or transitory existence. To insist on an element of volition is

to confuse the features of "residence" with those of "domicile".

23. Viewed in this light, we have no doubt that the construction placed by the High Court upon Sub-clause (b) of Clause 4 of the notification is unsustainable. In our opinion, a person, such as the appellant, who resided in the State of Uttar Pradesh specifically for the purpose of undergoing a course of studies for not less than five years, albeit with the intention of finally returning to his home State, also comes within the meaning of the expression "bona fide resident" as defined in the said clause."

From the aforesaid proposition laid down by the Supreme Court, it is evident that "residence" is a physical fact. It requires bodily presence or physical presence at a particular place. The length of physical presence may be short but it should not be transitory, fleeting or casual. Intention is not relevant for deciding "residence" of a person.

12. Applying this test, it is evident that the petitioner Ashok Kumar Singh in the present case was "resident" of Lucknow because it is fully evident on the record that the petitioner was at the relevant time physically residing in Lucknow. Whatever might have been the intention or object of the petitioner in so residing at Lucknow, was not relevant for deciding as to whether the petitioner was at the relevant time "resident" of Lucknow. Since physical presence or bodily presence in a particular district was necessary so as to be "resident" of that district, and since the petitioner was at the relevant time physically residing at Lucknow, the petitioner could not at the same time be physically residing at Azamgarh, and as such, the petitioner could not be "resident" of Azamgarh so as to fulfil the requirement of the office memorandum dated 9th October, 2000, regarding residence in Azamgarh.

13. In *Union of India and Ors. v. Dudh Nath Prasad* (supra), the Supreme Court was dealing with paragraph 5 of the Instructions to the candidates contained in the pamphlet issued for the Indian Administrative Service, etc. examination, 1966. The question for consideration was as to what was the meaning of the term "ordinarily reside" occurring in the note to the said paragraph 5 of the Instructions. The Supreme Court laid down as follows (paragraphs 8, 9, 13, 14, 15, 25 and 26 of the said A.I.R.) :

"8. According to para 5 of the "Instructions", the Scheduled Caste Certificate has to be issued by the District Officer or the Sub-Divisional Officer, etc. of the district in which the parents of the candidate "ordinarily reside". If the candidate himself is residing, for the purpose of his education, elsewhere, he is still required to produce the certificate of the District Officer, etc. of the district in which his parents were "ordinarily residing". If, however, both the parents were dead, the candidate could submit the certificate of the District Officer, etc. of the district in which the candidate himself was ordinarily residing otherwise than for the purpose of education.

9. Applying the requirements set out in paragraph 5 of the "Instructions" to the

facts of this case, it will be found that since the parents of the respondent were admittedly, living in district Howrah for more than 30 years before the examination in question was held, the District Officer or, for that matter the Sub-Divisional Officer in the instant case could legally issue the caste certificate and also certify that his parents were "ordinarily residing" in district Howrah. The mere fact that the respondent, for purposes of education, stayed in the State of Bihar and Graduated from a college in that State would not affect the status of his parents who were already living in district Howrah for more than 30 years and consequently could be treated as ordinarily residing in district Howrah. Their status would not be affected by the Temporary residence of the respondent, for the purpose of his education, in the State of Bihar. In such a situation, the respondent had no option but to obtain the certificate from the Sub-Divisional Officer, Howrah, as he could not have deviated from the "Instructions" already issued by the U.P.S.C.

13. The word "reside" has been defined in the Oxford Dictionary as "dwell permanently or for a considerable time to have once settled or usual abode ; to live in or reside at a particular place. "The meaning, therefore covers not only the place where the person has a permanent residence but also the place where the person has resided for a "considerable time."

14. In Black's Law Dictionary, 5th Edition, the word "reside" has been given the following meaning :

"Live, dwell, abide, sojourn, stay, remain, lodge ; to settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile ; specifically to be in residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right."

In the same Dictionary the word "residence" has been defined as under :

"Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently. Bodily presence and the intention of remaining in a place, to sit down, to settle in a place, to settle to remain, and is made up of fact and intention, the fact of abode and the intention of remaining and is combination of acts and intention. Residence implied something more than mere physical presence and something (sic) than domicile."

15. If the two meanings referred to above are to be read along with the word "ordinarily", it becomes clear that a person, before he can be said to be "ordinarily residing" at a particular place, has to have an intention to stay at that place for a considerably long time. It would not include a flying visit of a short or casual presence at that place.

25. In view of the above, the concept of "domicile" as canvassed by learned

counsel for the appellants with reference to change of nationality or change of domicile from one country to another, cannot be imported in the present case. Moreover, Domicile and "Residence" are relative concepts and have to be understood in the context in which they are used, having regard to the nature and purpose of the statute in which these words are used. We are principally concerned with the expression "ordinarily reside" as used in the note to paragraph 5 of the "Instructions" and the expression "ordinarily resident" used in Section 20 of the Representation of the People Act, 1950. This Act and the Representation of the People Act, 1951, both deal with the election matters including delimitation of constituencies, right to contest the election as also right to vote in a constituency.

26. We have already explained the meanings of the words "ordinarily resident" and have found that notwithstanding that the warrants or the respondent lived at one time in a village in district Siwan in the State of Bihar and that they owned some property also there, they had shifted to the State of West Bengal long ago and had been living there since then. For all intents and purposes, therefore, they be treated to be "ordinarily residing in the State of West Bengal." For the State of West Bengal, the President, in exercise of his powers under Article 341(1) read with Article 366(24) had already declared "Nuniya" Caste as a Scheduled Caste and, therefore, the respondent was, rightly treated to be a Scheduled Caste candidate and was rightly appointed against a reserved vacancy, after being declared successful at the examination held by the U.P.S.C. for the Indian Administrative and Allied Services in 1966."

The aforesaid decision of the Supreme Court as noted above, was dealing with the expression "ordinarily reside". Thus, here the word "reside" was qualified by the requirement "ordinarily". It was in this context that it was held that for being ordinarily resident, it was necessary that residence should be for "considerable time". This case further shows that as the parents of the respondent were residing in district Howrah for more than 30 years, they were treated to be ordinarily resident in that district. Hence, this case also shows that for being "resident" of a particular district, physical presence in that district is necessary.

15. In view of this decision also, it is evident that as the petitioner Ashok Kumar Singh in the present case was at the relevant time physically residing at Lucknow, he was "resident" of Lucknow, and in the circumstances, he could not be "resident" of Azamgarh so as to fulfil the requirement of the said office memorandum dated 9th October, 2000.

16. Sri R.N. Singh, learned senior counsel for the petitioner further contended that the office memorandum (Annexure-4 to the writ petition) was issued on 9th October, 2000, while the original application was submitted by the petitioner in the year, 1998, and as such, the requirement contained in Sections 1, 2, 5, 3 of the said office memorandum regarding open category candidate to be "resident" of the district in which location is advertised, cannot be applied in the present case. Sri R. N. Singh places reliance on a communication dated 14th June, 2000

of the Ministry of Petroleum and Natural Gas, Government of India, occurring at page 52 of the writ petition. This contention of the learned senior counsel for the petitioner cannot be accepted. It is noteworthy that no such plea was taken by the petitioner in the writ petition. On the contrary, the petitioner himself placed reliance on the said office memorandum dated 9th October, 2000 (Annexure-4 to the writ petition). Reference in this regard may be made to paragraphs 5, 6 and 21 of the writ petition and ground Nos. (ii) and (iv) of the writ petition.

17. Even otherwise, the office memorandum dated 9th October, 2000, laying down the guidelines for selection of retail outlet dealers/L.P.G. Distributors/S.K.O.-L.D.O. dealers, was issued in supersession of earlier communication. Hence, guidelines as contained in the said office memorandum dated 9th October, 2000, were operative at the time of consideration of the application of the petitioner, and as such the said office memorandum dated 9th October, 2000, was applicable to the present case. Hence, the requirement of Section 1, 2. 5. 3 of the said office memorandum was required to be fulfilled by the petitioner, and the contention to the contrary raised on behalf of the petitioner cannot be accepted.

18. As regards the said communication dated 14th June, 2000, occurring at page 52 of the writ petition, it is relevant to note that the said communication deals with the question as to what should be the date of eligibility when re-advertisement of the dealership/ Distributorship is made. It is necessary to refer to the said communication as Section 3.2.2 of the said office memorandum dated 9th October, 2000, itself deals with this question. Section 3.2.2 lays down as follows :

"3.2.2. Exceptions : In those cases where applications had been invited earlier but interviews could not be held or where interviews were held but merit panels were not displayed, fresh applications may be called for in such cases by the respective oil marketing companies. The applicants who had applied earlier may be required to submit applications on the fresh forms with the Xerox copies of the receipt of money paid earlier. The earlier applicants should not be asked to deposit fresh application fee. The date of eligibility for the applicants who had applied earlier, would continue to be the date when the earlier applications were called for, while for the new applicants, date of eligibility would be the same as indicated in the fresh advertisement calling for applications. This may be clarified in each advertisement calling for fresh applications. These instructions may be brought to the notice of all concerned in your organization for strict compliance."

19. This provision contained in the said office memorandum dated 9th October, 2000, shows that the date of eligibility for the applicants who had applied earlier, would continue to be the date when the earlier applications were called for. Thus, this provisions deals with the question of "date of eligibility". However, as regards the contents or requirements of eligibility, the same would evidently be governed by the office memorandum dated 9th October, 2000. In other words, it will have to be seen as to whether the applicants who had applied earlier fulfilled

the requirement of eligibility as contained in the said office memorandum dated 9th October, 2000, on the date when earlier applications were called for. Hence, while the requirement of eligibility would be those contained in the said office memorandum dated 9th October, 2000, the date of the fulfilment of those requirements would be the date when earlier applications were called for.

20. In the present case, it appears from the writ petition that the earlier advertisement was issued on 30th September, 1998, in response to which the petitioner submitted his application. A fresh advertisement was issued on 7.10.2000.

21. In view of the requirement of Section 3.2.2 of the said office memorandum dated 9th October, 2000, it is evident that the date of eligibility in the present case was 30th September, 1998 when the earlier applications were called for, and the petitioner was required to show with reference to the said date that he fulfilled the requirements of eligibility as contained in the said office memorandum dated 9th October, 2000 (Annexure-4 to the writ petition).

22. In view of this position, the petitioner was required, inter alia to fulfil the requirement contained in Section 1.2.5.3 of the said office memorandum dated 9th October, 2000 with reference to the date of earlier advertisement, namely, 30th September, 1998.

23. As is evident from the record, particularly in view of the own affidavit of the petitioner (Annexure-14 of the writ petition), the petitioner was at all relevant times physically residing in Lucknow and as such the petitioner was resident of Lucknow. In the circumstances, the petitioner could not at the relevant time be physically residing in Azamgarh, and as such, the petitioner did not fulfil the requirement of resident as contained in Section 1.2.5.3 of the said office memorandum dated 9th October, 2000, and was thus not entitled for allotment of retail outlet dealership at Atraulia district Azamgarh.

24. In the result, the writ petition fails and is dismissed. The interim order dated 15.5.2002 stands discharged.