
(2015) 11 CAL CK 0025
In the Calcutta High Court
Case No : W.P. 7199(W) of 2015

Bablu Dutta

APPELLANT

Vs

Indian Oil Corporation Limited and Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 CAL CK 0025

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Raghunath Chakraborty, M. Ahmed and Tanushree Das, for the Appellant; Pushpendu Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Subrata Talukdar, J.—The short question which this Court is required to answer in this writ petition is whether the selection of the private respondent No. 5 to the LPG Distributorship of the respondents-Indian Oil Corporation Ltd. (for short IOCL) under the Rajiv Gandhi Gramin LPG Vitrak (for short RGGLV) is legally sustainable or not.

2. Sri Raghunath Chakraborty, Ld. Counsel appearing for the petitioner submits that the advertisement for appointing LPG Distributor at Village- Kumra along with other locations within the District of North 24-Parganas was published on 24th May, 2013. Both the writ petitioner and the private respondent No. 5 along with other applicants applied and the last date for submitting the applications was 26th of June, 2013.

3. It is pointed out by Sri Chakraborty that at the time of submitting her application the private respondent No. 5 declared herself to be a housewife and was permanently residing at her matrimonial home at Village- Bamihati, Habra, District - North 24 Parganas. Taking this Court to several documents both in the writ petition and in the affidavit-in-replies filed on behalf of the writ petitioner, Sri

Chakraborty submits that the private respondent No. 5, one Pinki Ghosh got married to one Ajay Ghosh of Village- Bamihati on the 31st of May, 2009. On the 12th of July, 2013 a male child was born to the couple. The permanent address of the parents in the birth certificate of the child was given as Village- Bamihati (Ghoshpara) under P.S.- Habra, District- North 24 Parganas. The birth took place at Henry Grey Nursing Home and Polyclinic, also located at Habra.

4. Further taking this Court to the documents annexed to the affidavit-in-reply filed on behalf of the writ petitioner, Sri Chakraborty argues that the rice-eating ("Annaprasan") ceremony of the child was also held at the permanent residence of the private respondent No. 5 and her husband at Village- Bamihati as noted above. Sri Chakraborty argues that at no point of time after her marriage did the private respondent No. 5 stay at her paternal home at Village- Kumra. Therefore, Sri Chakraborty further argues that the private respondent No. 5 illegally represented before the respondents-IOCL while applying for the LPG Distributorship that her permanent address was at Village- Kumra, District- North 24-Parganas.

5. The second limb of Sri Chakraborty's submission is that after her marriage and upon taking the seven steps (Saptapadi) around the sacred fire, the "gotra" of the wife-private respondent No. 5 is converted to the "gotra" of her husband. In the absence of any other exceptional factors, the wife would be ordinarily held to be a part of her husband's clan treating her matrimonial house in the usual course as her permanent residence.

6. In support of his submissions Sri Chakraborty relies upon a decision of a Hon"ble Division Bench of this Court in MAT No. 2607 of 2007 which was pleased to hold, inter alia, that upon completion of the "Saptapadi" ritual the permanent residence of the wife automatically changes to the residence of her husband. Therefore, in the facts of this case when the private respondent No. 5 has claimed herself to be a housewife it must be concluded that at the material point of time when applying for the distributorship, the private respondent No. 5 was not a residence of the advertised location at Kumra.

7. Per contra, Sri Anjan Bhattacharyya, Ld. Counsel appearing for the private respondent No. 5 relying upon the affidavit-in-opposition filed on her behalf, submits that all the certificates of the concerned authorities show that the private respondent No. 5 has been a permanent resident of Village- Kumra. In this connection Sri Bhattacharya relies upon the certificates of the Prodhan, Kumra Gram Panchayat dated 17th June, 2013 as also of 26th February, 2014 and 16th April, 2014; the enquiry report of the AP & AO, Habra-I Development Block countersigned by the Block Development Officer (BDO), Habra-I Development Block dated 13th February, 2014; and the certificate of the SDO (Sadar) dated 13th January, 2014.

8. Next, Sri Bhattacharyya takes this Court to the Election Commission card held by the private respondent No. 5 as well as the tax receipts and the voters' roll to

demonstrate that the private respondent No. 5 was a permanent resident of Kumra. Relying on all the above noted documents Sri Bhattacharyya argues that the private respondent No. 5 duly fulfilled the residential criterion as advertised for the LPG Distributorship and therefore has been rightly awarded the distributorship.

9. Appearing for the respondents-IOCL, Sri Pushpendu Chakraborty, Ld. Counsel submits that the residential certificate of the SDO, Barasat (Sadar) dated 13th of January, 2014 was duly verified by the Field Verification Committee (for short FVC) of the IOCL and the private respondent No. 5 was found to be suitable in all respects for the distributorship. Sri Chakraborty further argues that the field verification was carried out in accordance with due procedure and the residential status of the private respondent No. 5 was confirmed to the Kolkata Area Office of IOCL by the SDO (Sadar), Barasat vide his memo dated 16th January, 2014.

10. Therefore, Sri Chakraborty argues that due process has been followed in appointing the private respondent No. 5 as a distributor at Village-Kumra. Sri Chakraborty also submits that having regard to disputed questions of facts, it is the Civil Court and not the Writ Court which can exercise jurisdiction.

11. Having heard the parties and considering the materials on record this Court is first required to notice the common eligibility criteria for all categories of applicants under the RGGLV guidelines. Clauses 6 (a) and (b) of the guidelines provide as follows:--

"6. Common Eligibility Criteria For All Categories.

Applicant applying for RGGLV should

a. Be an Indian citizen.

b. Be a resident of either of the Gram Panchayat (or the corresponding administrative/revenue structure as applicable in the respective State/UT) of the advertised RGGLV location or of the Taluka/Tehsil (or the corresponding administrative/revenue structure as applicable in the respective State/UT) of the advertised RGGLV location as on date of application. The applicant should submit the Residence certificate along with the application as per the format specified in the advertisement. For selection of RGGLV first preference will be given to the applicants residing in Gram Panchayat of the advertised RGGLV location, failing which applicants residing in the concerned Taluka/Tehsil of the advertised RGGLV location shall be considered."

12. From a bare reading of Clause 6 (b) (supra) of the RGGLV guidelines it stands to reason that at the time of applying for the distributorship the applicant applying (emphasis supplied) is required to be a resident of either the gram panchayat of the advertised RGGLV location or of the Taluka/Tehsil.

13. This Court is also required to notice that the advertisement was published on 24th May, 2013 and the last date fixed for submitting the forms was 26th June,

2013. It is also pertinent to mention that the birth certificate of the son of the private respondent No. 5 and her husband mentions the permanent residence of the private respondent No. 5 to be her matrimonial home at Village Bamihati and not Village-Kumra. It is also relevant to take notice of the fact that the only contemporaneous document produced by the private respondent No. 5 at the time when the advertisement was open for applicants to submit their forms is the certificate of the Prodhan, Kumra Gram Panchayat dated 17th June, 2013 ambivalently certifying that to the best of his knowledge (emphasis supplied) the private respondent No. 5 is a permanent resident of Village Kumra. The certificate of the Prodhan dated 17th June, 2013, inter alia, reads as follows:--

"She (Pinki Ghosh) has been residing to the above noted address permanently to the best of my knowledge".

14. This Court further finds that the other certificates and particularly the certificate of the SDO dated 13th January, 2014 which has been forwarded to the IOCL on 16th of January, 2014 are documents which are subsequent to the last date for filing the forms under the advertisement which was fixed on 26th of June, 2013. At the same time this Court also finds that by a communication dated 17th February, 2014 that is, also after the selection of the private respondent No. 5 at the final draw held on 27th November, 2013, the Chief Area Manager of IOCL wrote to the private respondent No. 5 stating, inter alia, as follows:--

"3.4. Shift your residence to KUMRA, KASHIPUR, Rudrapur, Mahisha Machalandapur (if you are presently staying away from the location) in order to personally operate the RGGLV as stated in para 3.3 above and give us a written undertaking to this effect."

15. From a conjoint reading of the guidelines and the documents as referred to above this Court finds that as on the date of applying for the distributorship, that is on and within 26th June, 2013, the private respondent No. 5 was required to be a permanent resident either of the gram panchayat or the Taluka/Tehsil of the advertised RGGLV location. The only contemporaneous certificate of that period is the certificate of the Prodhan dated 17th of June, 2013. To the mind of this Court the certificate dated 17th June, 2013 is mechanical and, states without certainty that to the best of the knowledge of the Prodhan the private respondent No. 5 is a permanent resident of Village Kumra. The name of the village and the word permanent are found to be incorporated by hand in the certificate dated 17th June, 2013.

16. To the further mind of this Court the certificate dated 17th June, 2013, even if read with the other documents such as the election identity card and the voters' list, does not confirm that as on the date of applying the private respondent No. 5 was actually permanently residing at Village Kumra. As already noticed earlier in this discussion the other documents and, particularly the certificate of the SDO (Sadar), Barasat which has been strongly relied upon by

IOCL, are all subsequent to the selection of the private respondent No. 5 to the distributorship.

17. On the other hand, the birth certificate of the son read with the venue put out by the parents for the rice eating ceremony - both being contemporaneous documents - demonstrate that at the relevant point of time of applying for the distributorship the private respondent No. 5 was putting it out to the public at large that her permanent residence is at her matrimonial house at Bamihati.

18. Having given its anxious consideration to the facts of this case this Court finds that it was necessary for the private respondent No. 5 to establish unambiguously that, as on the date of applying she was actually a resident of Village Kumra and not merely show such residency on paper.

19. The abovenoted view of this Court is bolstered by the post-selection communication dated 17th February, 2014 of the Chief Area Manager, IOCL calling upon the private respondent No. 5 to shift her address in the interests of her distributorship. Such post-selection advice is utterly against the due process advertised on 24th May, 2013 requiring the applicants to be permanent residents of the advertised location at the time of applying. In this connection this Court draws inspiration from an unreported decision in the matter of Rita Roy v. Union of India & Ors. numbered as WP 7915(W) of 2012.

20. The Hon''ble Apex Court was pleased to consider the aspect of residency in the context of grant of LPG dealership in its judgment reported in Bhagwan Dass and Another Vs. Kamal Abrol and Others, the Hon''ble Apex Court held as follows:--

"10. In Union of India and Others Vs. Dudh Nath Prasad, Division Bench of this Court has held that the word "resides" has to be interpreted in the context of the purpose of the statute in which the words "resides" is used. The word resident is read with word ordinarily hence making the phrase "ordinarily resident". It is clear that the 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 considerable length of time and it would not include a visit of a short or casual presence at that place.

11. From the aforesaid analysis it is apparent that the word "residence" is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of "residence". There are two classifications of the meaning of the word "residence". First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word "residence" as given in the Black Law Dictionary, 8th Edition. It is given that the word residence means bodily

presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage.

13. For the aforesaid reasons we are of the view that the High Court has committed an error in construing the term "resident of Kangra District" does not require a person to be a permanent resident of that place and his casual connection to the district would fulfill the necessary mandatory criteria provided in the ad. notice. As the approach of the High Court in deciding the second appeal against the appellant was based on its interpretation of the criterion of residence and as we have taken a different view of the matter, we set aside the judgment and decree passed by the High Court and remand the matter back to the Court for fresh consideration of the appeals in the light of interpretation given by us to the term "resident of Kangra". The appeals are disposed of accordingly with no order as to costs."

21. The point raised by Sri Chakraborty that in all cases involving disputed questions of fact jurisdiction is required to be exercised by the Civil Court and not the Writ Court, is answered by the Hon"ble Apex Court in its judgment in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, thereof read as follows:--

"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur this Court even went to the extent of holding that in writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of facts and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

27. From the above discussion of ours, the following legal principles instrumentality of a State arising out of a contractual obligation is maintainable.

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

22. Having regard to the above facts and law this Court is of the considered view that as on the date of applying for the distributorship the actual residence of the

private respondent No. 5 was her matrimonial home at Village Bamihati and not Village Kumra, the latter being only a paper identification. Therefore, the private respondent No. 5 failed to meet the test of residence under Clause 6 (b) of the eligibility criteria for appointment to the advertised RGGLV location. Accordingly, the selection of the private respondent No. 5 to the RGGLV distributorship at Village Kumra stands set aside.

23. The respondents-IOCL shall be now free to select for the advertised location in accordance with law.

24. WP 7199(W) of 2015 stands accordingly allowed.

25. There will be, however, no order as to costs.

26. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Later:

27. Sri Anjan Bhattacharya, Ld. Counsel appearing for the private respondent No. 5 prays for a stay of operation of the order. Such stay is opposed by Sri Mr. Ahmed, Ld. Counsel.

28. Let there be a stay of operation of the order for a period of three weeks from date.