(1996) 09 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 926 of 1996

Dalit Verg Jan Kalayan Samiti and another — APPELLANT

Vs

Hindustan Petroleum Corporation Ltd., Chandigarh and others — RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:
- Civil Procedure Code, 1908 (CPC) — Section 151
- Constitution of India, 1950 — Article 14, 226
- Writ Proceedings Rules, 1977 — Rule 32, 5

Citation : AIR 1997 P&H 147 : (1997) 1 RCR(Civil) 627

Hon'ble Judges : M.L. Koul, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Randip Singh Surjewala, for the Appellant; Anil Malhotra and J.S. Toor, for the Respondent

Judgement

Jawahar Lal Gupta, J.—Was respondent No. 3 ineligible for the allotment of a retail outlet for the sale of petroleum products? This is the primary question that arises for consideration in this writ petition. The pleadings of the parties may be noticed.

2. On October 24, 1994, the Hindustan Petroleum Corporation Ltd., respondent No. 1 issued an advertisement inviting applications for allotment of a retail outlet at Dariyapur in revenue district Hisar. A copy of this advertisement is at Annexure P-1 with the writ petition. The conditions of eligibility were laid down. It was inter alia provided that the applicant should be a "resident of any one of Hisar, Sirsa, Jind, Rohtak and Bhiwani districts in the State for a period of not less than 5 years immediately preceding the date of application." It was further provided that the "applicant should be having family (as defined in the application form) income of not more than Rs. 50,000/- annually (last financial year)." The applications had to be submitted on or before December 7, 1994. Respondent No. 3 was one of the applicants. He submitted his application on the prescribed pro forma along with the necessary documents on November 28, 1994. The various candidates were interviewed by the Oil Selection Board,

respondent No. 2, on April 26, 1995. The 3rd respondent was selected. A letter of intent, a copy of which has been produced as Annexure R-2/1 was issued to him on May 25, 1995. The outlet is said to have been actually commissioned on August 29, 1995.

3. On January 17, 1996, the petitioners filed this writ petition. The first petitioner is a society registered under the Societies Registration Act. It is said to have been constituted "for purposes of overseeing the welfare of the Dalits to ensure equitable and just distribution of State largesse among the Dalit sections as also to generally act as a watchdog". Petitioner No. 2 is also a member of the Scheduled Castes. The petitioners allege that the action of respondents 1 and 2 in allotting the retail outlet reserved for members of Scheduled Castes to respondent No. 3 is wholly illegal, as he was ineligible. The petitioners consequently pray that the letter of intent and the allotment of the outlet to respondent No. 3 be quashed and that the respondents 1 and 2 be directed to issue a fresh advertisement.

4. The petitioners allege that respondent No. 3 was ineligible for allotment of a retail outlet as he did not fulfil the requirements of residence and income as prescribed in the advertisement. According to the petitioners, the 3rd respondent was "a student of M.A. (History) in Punjab University, Chandigarh during the academic years 1992-93 and 1993-94". They rely on the marks sheet of the examination produced by the said respondent with his application form for the grant of a retail outlet. Having resided in Chandigarh during the aforesaid period, he did not fulfil the requirement of being a resident of any one of the five districts in the State of Haryana "for a period of not less than 5 years immediately preceding the date of application." Secondly, it has been alleged that the petitioner had claimed to be unemployed. He was, thus, dependent on his parents. He had produced a certificate from the United Commercial Bank, Fatehabad to the effect that he had a Savings Bank Account No. 2257 in which there was a balance of Rupees 1,77,128/-. He had also filed a certificate from the Tehsildar indicating that his father''s "income was Rs. 49,500/ - for the last financial year. According to the petitioners, the amount of Rs. 1,77,12s/- would carry an annual interest of Rs. 8,856.40 paise. Consequently, the 3rd respondent would have a family income of Rs. 58,356.40 paise which "exceeds the gross income limit of Rupees 50,000/-" as prescribed in the advertisement.

5. In the written statement filed on behalf of respondents Nos. 1 and 2, it has been pleaded that the cases of various applicants were considered on the basis of the information supplied by them and that there was nothing on the record of the Corporation to doubt the eligibility of respondent No. 3.

6. A separate written statement has been filed by respondent No. 3. He has inter alia pleaded that the averments made by the petitioners "are totally wrong". He had "passed his M.A. (History) examination as a private candidate from the Punjab University, Chandigarh in the capacity of a "Scheduled Caste candidate". The answering respondent remained in his village Baiterkha (Jind) and privately

prepared for the said examination." With regard to income, he has pointed out that "the respondent No. 3 has earned Rs. 6.25 as interest during the financial year 1993-94. As far as depositing of Rs. 1,77,128/- is concerned, the same was deposited on November 5, 1994. A true copy of the certificate in this respect by the Manager, United Commercial Bank, Fatehabad is annexed herewith as Annexure R-2/1. The total income of Rs. 49,500/- shown by the answering respondent was inclusive of the interest amount of Rs. 6.25 earned by him during the financial year 1993-94". It has also been stated that the amount of Rs. 1,77,000/ -having been deposited on November 5, 1994 it cannot be counted in the financial year 1993-94. Accordingly, it has been pleaded that he was fully eligible for the grant of a retail outlet and that the writ petition deserved to be dismissed.

7. The petitioners filed an application under Rules 5 and 32 of the Writ Rules, 1976, read with S. 151 of the CPC with a prayer for the issue of a direction to the Punjab University and the Bank to supply the correct information. Along with, an application for permission to file replication was also filed. In this replication, it has been stated that the petitioners have "now verified the facts" and the reply filed by respondent No. 3 is "patently false". It has been pointed out that the 3rd respondent had joined M.A. (History) classes as a regular candidate of the Punjab University, Chandigarh in the year 1990-91. Thereafter, he had taken the examination held in May, 1991. An extract from the Gazette Notification declaring the respondent''s result has been produced as Annexure P-4. The said respondent was "residing at Chandigarh during the Session 1990-91. Being a permanent and regular student of department of History, Punjab University, Chandigarh, the respondent was actually residing at Chandigarh and "was not a resident of village Bailerkha, district Jind, for the period of 5 years immediately preceding the date of application which is the mandatory condition contained in column 2(d) of the advertisement Annexure P-1......" It has been further pointed out that the 3rd respondent had not given this information in his application form and had mis-stated facts "in his written statement with a view to overreach and mis-lead this Hon''ble Court in order to hide his ineligibility" Reference has also been made to clause (7) of the application form wherein the 3rd respondent has stated that "if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of dealership/distributorship or in this affidavit shall be found to be untrue or incorrect or false, Hindustan Petroleum Corporation Ltd. would be within its rights to withdraw the letter of intent, terminate the dealership /distributorship (if already appointed) and that I would have no claim, whatsoever, against Hindustan Petroleum Corporation Ltd. for such withdrawal/ termination." On this basis, it has been pleaded that the dealership awarded to the 3rd respondent deserves to be terminated. It has also been pointed out that there are two material facts which show that the 3rd respondent is not a resident of village Bailerkha. Firstly, the application submitted by the respondent for the grant of the retail outlet had been prepared and verified at Hisar. Secondly, the

respondent has a bank account at Fatehabad which is at a distance of about 80 kilometres from village Bailerkha. According to the petitioners, it seems wholly illogical and impracticable for respondent No. 3 "to maintain a savings bank account af Fatehabad, district Hisar and operating the same unless and until he was actually residing at that place". According to the petitioners, the State Bank of Patiala, the Punjab National Bank and the Oriental Bank of Commerce as also the Jind District Central Co-operative Bank Ltd. have provided extensive facilities at a distance of only 4 kilometres from village Bailerkha. Still further, it has been pointed out that the declaration given by the 3rd respondent that the income of his family was only Rs. 49,500/- cannot be accepted in view of the fad that he had deposited "a very huge sum of Rs. 1,77,000/-in a savings bank account on 5-11-1994". It has also been pleaded that respondent No. 3 is guilty of perjury and has intentionally misstated facts with a view to mis-leading this Court. He is liable to be prosecuted in terms of the provisions of the Indian Penal Code for making a false statement before this Court. Various preliminary objections raised by the respondent with regard to the maintainability of the writ petition by way of public interest litigation and otherwise have also been controverted.

8. Respondent No. 3 has filed a rejoinder to the replication filed by the petitioners. The preliminary objections have been reiterated. It has been pleaded that no ground for initiation of any proceedings against the said respondent is made out. It has been admitted that "the answering respondent was a regular candidate of M. A. (History) Part-I during the year 1990-91. He could not get through the examination. Thereafter, the answering respondent chose to appear as a private candidate and ceased to be a regular candidate". He used to prepare "for his examination while residing in his village or at any other convenient place". He appeared in 1991-92 as a private candidate but again failed. In 1992-93, he passed the MA. Part-I examination. He passed the Part-II examination in the year 1993-94 as a private candidate. On this basis, it has been stated that "the stay of the answering respondent at Chandigarh during the year 1990-91 was not a stay excluding his stay from the place of original residence for any legal purpose". It was ''transitory or fleeting''. It cannot be "construed that the answering respondent had ceased to be an ordinary resident of his place of birth". Reference has been made to various decisions in support of this submission. The respondent has also produced a copy of the ration-card wherein his name appears as a member of the family of Mr. Bir Singh. An extract from the voters list has also been produced. It has been further pointed out that the amount of Rs. 1,77,000/- "was deposited in the bank in his account and was withdrawn on 7-11-1994". This amount had been arranged by him "with the help of his father by borrowing the amount" from various persons. The names of 10 persons from whom the respondent had borrowed the money have been given. It has been further stated that after withdrawal on November 7, 1994, it was returned to the parties, "with an assurance from them that they would lend the same as and when need be". The deposit was not "out of any earnings of the answering respondent and was only arranged for the purpose of demonstrating

financial capacity of the applicant". According to the respondent "having an account at a distant place from the place of residence does not constitute the ceaser of ordinary place of residence". He further states that detailed enquiries had been made before the retail outlet was allotted to him. He, accordingly, prays that the writ petition be dismissed.

9. We have heard learned counsel for the parties. The primary contention raised by Mr. R. S. Surjewala learned counsel for the petitioners is that respondent No. 3 did not fulfil the two conditions of eligibility regarding residence and income as stipulated in the advertisement. He was, thus, ineligible and could not have been allotted the retail outlet. The claim made on behalf of the petitioners was controverted by the counsel for the respondents. Mr. Malhotra appearing for respondents and 2 i.e. Corporation and the Selection Committee submitted that there was nothing before them on the basis of which it could have been held that the 3rd respondent was ineligible. Mr. J. S. Toor, learned counsel for respondent No. 3 submitted that the plea raised by the counsel for the petitioners regarding ineligibility cannot be sustained. He also contended that no ground for entertaining the petition by way of a public interest litigation was made out. Accordingly, the writ petition deserves to be dismissed. Counsel for both the sides placed reliance on various decisions.

The questions that arise for consideration are:--

(1) Is the writ petition maintainable?

(2) Did respondent No. 3 fulfil the condition of eligibility regarding income? and

(3) Did respondent No. 3 fulfil the requirement of residence as prescribed in the advertisement?

Reg.(1):

10. Mr. Toor, learned counsel for respondent No. 3 contended that the petitioners were not applicants for allotment of the retail outlet. Consequently, they had no locus standi to file the present writ petition. As such, the writ petition was wholly incompetent and deserved to be dismissed on this ground alone. Learned counsel placed reliance on various decisions which shall be presently noticed.

11. As already noticed, petitioner No. 1 is a registered society which has been constituted for the purpose of over-seeing the welfare of the Dalits. It works to ensure equitable and just distribution of the State largesse amongst the weaker sections of the society. It is acting as a watch-dog for the rights of the members of the weaker sections of the society. Petitioner No. 2 is a member of the Scheduled Castes. He is a resident of district Jind. The retail outlet was reserved for the members of the Scheduled Castes. According to the petitioners, the retail outlet has been allotted to a person who was totally ineligible. The petitioners are not mere "busy bodies". They are not invoking the jurisdiction of this Court with any mala fide objective. It has not even been suggested that there is any ill-will between the petitioners and respondent No. 3. They are not ventilating any

personal grievance. They have come to the Court with the object of ensuring that only an eligible person gets the retail outlet. They have approached the Court with the complaint that respondents 1 and 2 have acted arbitrarily and unfairly in allotting the retail outlet to an ineligible person. On a consideration of the matter it appears to us that the petitioners are only motivated by considerations of purity in administration. It is true that when an individual or organisation approaches the Court by way of a public interest litigation and it is found that it is only trying to vindicate a personal interest, the Court shall be reluctant to interfere. Public interest cannot be a garb for personal interests. However, such is not the situation in the present case. The petitioners are not claiming that the retail outlet be allotted to them. They are not seeking to enforce any personal right. Their only prayer is that respondent No. 3 being ineligible, the allotment of the retail outlet in his favour be set aside and that the respondent-Corporation should invite fresh applications and make the allotment from amongst the eligible candidates. It has not even been suggested that the petitioners have not come to the Court with clean hands.

12. Faced with this situation, Mr. Toor submitted that according to the decision of this Court in Sanjay Singh v. State of Punjab 1995 (3) All 689, public interest litigation is maintainable only if it is shown that the impugned action is violative of any of the rights enshrined in Part-III of the Constitution and relief is sought for its enforcement. Learned counsel is right in his submission. This is one of the tests laid down in the case. However, the petitioners fulfil this test. It is their case that the action of the respondent-Corporation in allotting the retail outlet to an ineligible person is arbitrary and unfair. It is, thus, violative of the provisions of Art. 14 of the Constitution. The petitioners are thus seeking the enforcement of Art. 14 by asking the Corporation to re-advertise and to make a fresh selection in accordance with the law. The test is duly satisfied in the present case. The learned counsel has also referred to the decision of a Division Bench of this Court in the Anti-Corruption and Social Welfare Organisation, Punjab v. Slate of Punjab 1996(1) All 175, In this case, the petitioners had challenged the action of the respondent in auctioning the octroi post for an amount of Rs.88,14,000/-. It was found by the Bench that the auction had been held after due notice and that it had been rightly affirmed. The bid was well above the reserved price of Rs. 88 lacs. One of the petitioners was willing to pay a higher amount, In this situation, the Bench had found that it was an effort to enforce personal interest and dismissed the petition. There is no quarrel with the proposition as enunciated in this case. The counsel also referred to the decision of their Lordships of the Supreme Court in Janata Dal Vs. H.S. Chowdhary and Others, . Reliance was placed on the observations of their Lordships in paragraph 66. It reads as under:--

"66. Though we have, in our country, recognised a departure from the strict rule of locus standi as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique, mo live to approach the Court for enforcement of the constitutional or legal rights of socially or economically dis-advantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of locus standi no ''rigid litmus test'' can be applied since the broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process."

These observations do not help the respondent in any way.

13. The material on record shows that the petitioners have no, personal interest. They are fighting for purity in administration. They have spared their time, money and energy for the good of the society. They have, thus, the ''standing'' to prosecute this case. The first question is answered accordingly.

Reg. (2):

14. It is the petitioners'' claim that the 3rd respondent had an annual family income of more than Rs. 50,000/-. Accordingly, he was not eligible to be considered for the allotment of the retail outlet. Is it so?

15. The 3rd respondent had fiied a declaration indicating that his father had an annual income of Rs. 49,500/-. In the application submitted by him, he had also stated against clause 13 that "I am a post-graduate and unemployed and I have Rs. 1,77,I28/- in my savings fund a/c (certificate attached) and! will devote full time in this business and this business will be my main source of income/ business". Consequently, it was the claim of respondent No. 3 that his family income was below Rs. 50,000/- and yet he had Rs. 1,77,128/- in his savings fund account. He had also filed an affidavit stating inter alia that "I am dependent on my parents and that the gross income viz. mine, that of my spouse, my dependent children and that of my parents put together does not exceed Rs. 50,000/- per annum (last financial year as detailed in the Income Declaration attached)". Before this Court, it has been pleaded that Rs. 1,77,000/- had been taken by him as a loan from 10 persons. It was deposited in the bank on November 5, 1994 and withdrawn on November 7, 1994. It, thus, appears that the plea as now taken in rejoinder is at variance with the declaration made by the respondent in the application form. Still further, it has not been indicated or even shown during the course of hearing as to how the family income of the respondent comes to the exact figure of Rs. 49,500/-. The source has not been disclosed. A copy of the ration-card produced by the respondent No. 3 with his

rejoinder shows that his father Shti Bir Singh was 70 years old at the time of the issue of the ration-card in the year 1994-95. This fact is apparent from the stamp on the ration-card which has not been indicated in the typed/translated copy. It may also be noticed that two other sons of Shri Bir Singh viz. Mukhtiar Singh and Dalvir Singh are also residing in the village with him. It was stated before us that Mukhtiar Singh was working as an Assistant in the Haryana State Electricity Board and Dalvir Singh was posted as a Sub-Divisional Engineer in district Sirsa. Be that as it may, the fact remains that there is an apparent contradiction between the statements made by the 3rd respondent in the application form and before this Court. On a perusal of the application form it is clear that the 3rd respondent had categorically claimed that his family income was Rs. 49,500/-. Yet, he had a deposit of Rs. 1,77,128/- in his savings fund account. The deposit was made by him in one day. Such a substantial amount of money could not have been available to him if his family income was only Rs. 49,500/- per annum.

16. Mr. Toor submitted that Rs. 1,77,000 had been taken as a loan. This amount was deposited on November 5, 1994 and the same was withdrawn on November 7, 1994. If this statement is accepted, then the statement in clause 13 of the application form was not correct. In this situation, the only possible inference is that either the statement in the application form was false or the statement made in the rejoinder is not correct. In either event, there is a cloud on the 3rd respondent''s eligibility/suitability. In view of the above, even the answer to this question has to be against the 3rd respondent.

Reg.(3):

17. One of the conditions of eligibility as laid down in the advertisement was that the candidate should be a resident of any one of the five districts in the State "for a period of not less than 5 years immediately preceding the date of application". According to Mr. Surjewala, learned counsel for the petitioners, the 3rd respondent had been admitted as a regular student at the Department of History, Punjab University, Chandigarh for the Session 1990-91. During this period, he had stayed at a Hostel in the Punjab University. He had not resided in village Bailerkha in district Jind for 5 years immediately preceding the submission of the application on November 28, 1994. He was thus not eligible for the allotment of the retail outlet. On the other hand, Mr. Toor, learned counsel for the 3rd respondent submitted that the stay in the hostel for a few months cannot mean that the respondent had ceased to be a resident of district Jind. The learned counsel submitted that a "fleeting or transitory" visit io a place outside district Jind cannot imply a change''in residence.

18. Resident, according to the Webster''s Third New International Dictionary means -- "one who resides in a place; one who dwells in a place for some duration..... "Residence means -- "the act or fact of abiding or dwelling in a place for some time; the act of making one''s home in a place". According to the Constitution, every citizen of India has only one domicile viz. the domicile of

India. However, every one is a resident of the place where he has a permanent home. According to Corpus Juris Secondum, the word "reside" is "flexible, elastic, slippery and somewhat ambiguous". It has been inter alia said that "the term imports a fixed abode for the time being, as contradistinguished from the place of temporary abode and that in order to entitle one to the character of a resident, there must be a settled fixed abode, and an intention to remain permanently, or at least for some time for business or other purposes". The term has been even judicially considered by their Lordships of the Supreme Court in Dr. Yogesh Bhardwaj Vs. State of U.P. and others, . Their Lordships were considering the provisions of clause (4) of the notification issued by she State of Uttar Pradesh laying down inter alia the conditions for eligibility of students for admission. Clause (4)(b) inter alia provided that the expression " ''a bona fide resident of Uttar Pradesh'' shall mean -- a resident of India and the domicile of whose father was not in Uttar Pradesh but who himself had resided in Uttar Pradesh for not less than 5 years at the time of making the application". The appellant before their Lordships had been nominated by the State of Himachal Pradesh to undergo the B.D.S. course in the State of Uttar Pradesh. He had successfully completed the course of studies and secured the B.D.S. degree. He had stayed in that State for over a period of 5 years. He wanted to be admitted in the subject of oral surgery. He was offered admission in another speciality. The reason for not granting admission in the speciality of his choice was that "he had to step down in favour of others who had come within the rule of preference as per the notification, dated August 19, 1983 issued under S. 26(5) of the U.P. State Universities Act, 1974, providing for reservation of seats and prescribing a residential qualification for selection to M.D.S. course". While reversing the decision of the Allahabad High Court, their Lordships were pleased to observe that "a person, such as the appellant, who resided in the State of Uttar Pradesh specially for the purposes of undergoing the course of study for not less than 5 years and albeit with the intention of finally returning to his town also comes within the meaning of expression ''bona fide resident'' "as defined in the said clause". They were also pleased to observe as under (para 17):--

"Residence is a physical fact. No volition is needed to establish it. Unlike in the case of a domicile of choice, animum 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''."

Thus, it is clear that the period of physical presence can constitute residence if it is not ''transitory, fleeting or casual''.

19. According to the advertisement, the applicant had to be a resident of one of the 5 districts as mentioned therein "for a period of not less than 5 years immediately preceding the date of application". Admittedly, the 3rd respondent

had not resided in district Jind during the year 1990-91. During that year, he was residing in the ''Hostel at Chandigarh''. It may be that he visited his home during holidays. However, just as in the case of Dr. Yogesh Bhardwaj Vs. State of U.P. and others, , it was held that he was a resident of Uttar Pradesh for a period of 5 years while he was studying, it cannot be said that the 3rd respondent was not a resident of Chandigarh while he was studying at the Punjab University. This stay was not ''casual''. It was not even ''fleeting'' or ''transitory''. He was residing in Chandigarh with the purpose of acquiring the education.

20. It is true that the requirement regarding residence should be liberally construed so as to ensure that the construction placed on the provision does not work "to the disadvantage of the citizen lawfully seeking legitimate avenues of progress within the country". However, it is clear in this case that the retail outlet has been reserved for the bona fide residents of the area. A classification, could have been made with the object of improving the conditions of the persons living in the area. With this object, it had been provided that the candidate should have resided in the area for a period of not less than 5 years immediately preceding the submission of the application. The purpose was to ensure that those who are not residing in the area should not get the benefit of reservation. This purpose could be achieved only by considering the claims of those who fulfilled the requisite qualification. Respondent No. 3 having admittedly stayed at Chandigarh during the year 1990-91, had not resided in district Jind at that time. Consequently, he was not a resident of that district for 5 years immediately preceding the date of the application.

21. Furthermore, it cannot be said that his stay in Chandigarh was only transitory. He was not visiting the town casually for attending to some urgent business. He had not been kidnapped and brought here. He had voluntarily chosen to study at Chandigarh and stay here in the year 1990-91.

22. Mr. Toor referred to the certificate dated November 28, 1994 issued by the Tahsildar, Nerwana to the effect that the 3rd-respondent had been a resident of Bailerkha, district Jind for the last 5 years. It appears that the respondent had not disclosed the factum of his education at Chandigarh. The certificate does not appear to be correct. Consequently, the claim that the visit was casual, transitory and fleeting cannot be sustained. Accordingly, the question is answered in the negative. It is held that the 3rd-respondent did not fulfil the condition of eligibility regarding residence.

23. The conduct of respondent No. 3 leaves a lot to desire. While submitting the application form, he had produced a certificate that he had been a resident of district Jind for the last 5 years. He did not indicate either in the application form or in the certificate that he had resided at Chandigarh in the year 1990-91 while studying at the Punjab University. Similarly, he had made a categorical statement in Clause 13 of the application form that he had Rs. l,77,I28/-in his savings fund account and produced a certificate from the Manager of the UCO Bank, Fatehabad, district Hisar to that effect. Admittedly, he did not have this money in

his account on the date of submission of the application. The amount had been withdrawn by him on November 7, 1994, and is alleged to have been returned to the persons from whom he had taken the loan. Thus, it appears that the 3rd-respondent has no regard for truth. His declaration that the information given in the application was true to his knowledge and belief was not correct. He had also stated that "any wrong information/ suppression of fact will disqualify me from being considered for the dealership/distributorship." He had certainly given inaccurate information and suppressed the facts. Consequently, he was not qualified to be considered for the award of he retail outlet.

24. It is true that the 3rd-respondent has already set up a retail outlet. The finances for this purpose are said to have been provided by the respondent-Corporation. However, in view of the conclusions as recorded above, it does not appear to be in the interest of justice to allow him to continue to operate the retail outlet. Reference may also be made to the decision of their Lordships of the Supreme Court in Smt. Rajbala v. Union of India, Civil Appeal (arising out of SLP (C) No. 15191 of 1994) which was decided on August 23, 1995. In this case, it was held by their Lordships that the declaration regarding the income being inaccurate, he "should cease to act as a dealer for the 2nd respondent, pursuant to the award of the dealership to him as aforesaid, on and from 1st September, 1995.....".

25. Accordingly, the writ petition is allowed. It is held that the 3rd-respondent was not eligible for the grant of the retail outlet. Consequently, the issue of letter of intent and the commissioning of the retail outlet were illegal. The respondent-Corporation shall issue a fresh advertisement and made the allotment in accordance with law.

26. Petition allowed.

