
(2011) 09 PAT CK 0140
In the Patna High Court
Case No : C.W.J.C. No. 2760 of 2002

Dilip Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0140

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Learned counsel for the petitioner, learned counsel for the State of Bihar and learned counsel for the Hindustan Petroleum Corporation Limited (hereinafter referred to as "the Corporation" for the sake of brevity) and its authorities have been heard in detail. Neither any counter affidavit has been filed on behalf of respondent No. 6, nor anyone has appeared on his behalf even though notices were sent and had been validly served upon him and the name of his learned counsel vide vakalatnama dated 15-5-2002 is appearing on the daily cause list.

2. This writ petition has been filed by the petitioner challenging order dated 11-1-2002 (Annexure-1) by which the Chairman, dealer Selection Board, Patna (respondent No. 4) dismissed his petition filed pursuant to order dated 10-8-2001 (Annexure-4) passed by a bench of this Court in CWJC No. 10235 of 2001.

3. The short facts of the case is that on 26-9-2000 a notice was issued in the "Hindustan" daily Hindi Newspaper by the Corporation inviting application for appointment of retail outlet dealers for several places, including Gaya Bye-pass Road, which is the location in dispute in the instant writ petition. In the said notice, it was specifically mentioned that the applicant must be of the area where the retail outlet was to be established. The petitioner being the resident of the said area applied in the prescribed format and within the prescribed time before the authority concerned for appointment of retail outlet dealer of the Corporation for Gaya Bye-pass Road. Respondent No. 6, who the resident of district of

Garahwa, but at the relevant time was posted at Gaya from 10-8-1999 as Junior Electrical Engineer (General), also applied for the aforesaid proposed location.

4. All the applicants, including the petitioner and respondent No. 6 appeared before the Dealer Selection Board in April, 2001 and the merit list was prepared by the Board in which respondent No. 6 was placed at serial No. 1 whereas the petitioner was placed at serial No. 2. This order of the Board was challenged by the petitioner in CWJC No. 10235 of 2001 which was considered by a Bench of this Court and was disposed of vide order dated 10-8-2001 (Annexure-4) after finding that the writ petition was premature as nothing had been brought on record to show that the dealership had been granted in favour of any one. It was also observed that the petitioner may file his objection for exclusion of respondent No. 6 from the merit list before the Chairman, Dealer Selection Board who shall consider the same and dispose it of before grant of dealership, if not already granted, by a reasoned order in accordance with law.

5. Immediately thereafter, the petitioner filed his detailed objection dated 24-8-2001 (Annexure-5) before the Chairman, Dealer Selection Board. The petitioner also filed another application on 18-10-2001 (Annexure-6) annexing therewith the order of Anchal Adhikari, Gaya Town dated 6-10-2001 by which the earlier Residence Certificate of Gaya dated 30-10-2000 granted to respondent No. 6 was cancelled as he was found to be resident of the District of Garahwa, which was also apparent from notification of the Bihar State Electricity Board dated 12-11-1999 (Annexure-7) in which respondent No. 6 was shown at serial No. 49 having Garahwa as his Home District.

6. The said application of the petitioner was rejected by the Chairman, Dealer Selection Board vide his impugned order dated 11-1-2002 (Annexure-1) on the ground that respondent No. 6, being the Junior Engineer in the Bihar State Electricity Board posted as Gaya at the relevant time, will be deemed to be the resident of Gaya and hence there would be no hindrance in his appointment as a dealer for the aforesaid place. However, it was found in the said order that respondent No. 6 had himself given an undertaking before the Corporation that the said Corporation under its policy will not appoint as dealer/distributor if he was employed and hence he would produce proof of acceptance of his resignation by his employer, namely the Bihar State Electricity Board before issuance of letter of intent for the said dealership. Hence, the Chairman, Dealer Selection Board in his aforesaid impugned order directed that letter of intent may be issued to respondent No. 6 but before its issuance respondent No. 6 must submit his resignation letter and order of acceptance of his resignation from his employer, namely Bihar State Electricity Board and if he did not produce it, the Corporation will be free to cancel the letter of intent etc.

7. The aforesaid facts are not in dispute. It is also not in dispute that respondent No. 6, who was transferred and posted at Gaya in the year 1999, was transferred from Gaya to Aurangabad in the year 2004 and even after service of notice of the instant writ petition he did not appear in the case nor he had shown any interest

in the matter even before the Corporation. Furthermore, there is nothing to show that in compliance of the impugned order dated 11-1-2002 (Annexure-1) respondent No. 6 had produced his letter of resignation addressed to his employer or any order of the Bihar State Electricity Board showing acceptance of his resignation.

8. It is clear from the record of this Court that against the impugned order of the Chairman of the Board (respondent No. 4) dated 11-1-2002 (Annexure-1) the instant writ petition was filed by the petitioner immediately thereafter on 20-2-2002 and by an interim order dated 21-3-2002, a Bench of this Court directed the respondent-authorities not to issue any letter of intent in favour of respondent No. 6 until further orders, if not yet issued.

9. It is the specific case of respondents that Government of India, Ministry of Petroleum & Natural Gas vide its letter dated 9-8-2002 communicated the policy decision of the Government in public interest and directed all the Public Sector Oil Companies to cancel all the Petrol Pumps and Kerosene Dealerships made under the recommendation of the Dealer Selection Boards since 1-1-2000 forthwith. It was also stated that pursuant to Article 146-A of the Articles of Association of the Corporation it was required to give immediate effect to such directives from the Government of India and hence the Corporation vide order dated 13-8-2002 (Annexure-B to the counter-affidavit of the Corporation) withdrew letter of intent dated 15-4-2002 issued by the Corporation in favour of respondent No. 6 and directed it to be treated as cancelled with immediate effect.

10. Learned counsel for the respondents has also claimed that: Government of India, Ministry of Petroleum and Natural Gas received reports alleging irregularities in allotment of retail outlets, LPG distributorship and SKO-LDO dealership and hence it issued order dated 9-8-2002 directing all the Oil Companies to cancel all the allotments made in regard to the retail outlet, LPG distributorship and SKO-LDO dealerships on the recommendations of Dealer Selection Board since 1-1-2000 forthwith except in case of under "Operation Vijay Scheme". This order was the subject-matter of challenge before the Apex Court in its Civil Original Jurisdiction in Transferred Case No. 100 of 2002 (AIR 2009 SC 1684) (Mukund Swarup Mishra v. Union of India) and in that case the Apex Court constituted a committee for considering all the 417 cases in which allegations were made, out of which there were 32 cases from Bihar. The Committee submitted its report on the basis of which some cancellations were set aside and some cancellations were upheld by the Apex Court in its order dated 7-11-2008 while deciding the aforesaid case. However, the said matter before the Supreme Court was regard 413 cases including 32 from Bihar, but neither the petitioner nor the proposed location in question was amongst them, hence the said matter has no effect at all on the instant case which has to be considered only in view of the incompetency of the first empanelled candidate, namely respondent No. 6. In this connection, the case law relied by learned counsel for the respondents in case of Onkar Lal Bajaj Vs. Union of India (UOI)

and Another etc. etc., is not applicable to the facts and circumstances of this case.

11. From the record of this case, it is also apparent that the letter of intent issued by the Corporation in favour of respondent No. 6 had no legal effect also as it was issued on 15-4-2002 by the concerned authority in utter violation of the specific interim order of this Court dated 21-3-2002 by which the Corporation and its authorities were restrained from issuing any letter of intent in favour of respondent No. 6, if not issued till that date.

12. So far the word resident is concerned the Chamber Dictionary defines it as dwelling in a place for some time and residing on one's own estate and not having migrated, whereas Webster's Dictionary defines it as a place where a person dwells permanently and for any length of time and the Oxford Dictionary defines it as a place where a person dwells permanently or for considerable time, to have one's stay or usual abode, to live in or at a particular place.

13. From the aforesaid definitions, it is quite apparent that a residence of a person can be permanent and temporary, out of which permanent residence means a place where a person is permanently dwelling or has been permanently settled down, whereas a temporary residence means a place where a person is residing for a short period only for some specific purpose. As per the definitions, it is quite apparent that the residence of a person can be said to be his permanent dwelling and it included his present residence if it is coupled with the fact of animus manendi or an intention to stay for a considerable period.

14. It may be noted that while deciding the question of residence either "permanent" or "temporary" defacto or de jure; and actual or constructive, it is necessary to see the purpose for which it is required. For such an agency which is the subject-matter of this writ petition it requires full time working dealer which would not be possible by a person if he is not the permanent resident of the area concerned and is permanent resident of another place or if his temporary place of residence is shifting in quick succession, merely to work through his servants or agents. Hence, a person having merely casual connections or temporary residence in that area who is bound to be transferred at short intervals cannot be included within the definition of "resident" for the said purpose. In this regard, reference may be made to a decision of the Apex Court in case of Bhagwan Dass and Another Vs. Kamal Abrol and Others,

15. From the eligibility criteria for award of dealership/distributorship, it transpires that in Part-I, the applicant is required to be the resident of the advertised location and adjoining district as mentioned in the advertisement, whereas in Part II thereof the applicant was required to produce separately a residence certificate issued within previous six months of the date of application duly signed by the Government authorities. The advertisement also provided that preference had to be given to the persons of the District where the required location is situated. In the said circumstances, the term "ordinarily resident"

used here will have the same meaning as has been given in Section 20 of the Representation of the People Act, 1950 which specifically provides that person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency, but for his having such service qualification, he would have been ordinarily resident on that date.

16. In the said circumstances, it is quite apparent that respondent No. 6 was transferred and was temporarily posted at Gaya in the year 1999 only for the requirement of his service and was transferred from thereafter sometime in the year 2004 and hence his stay at Gaya being only for the purposes of his service he cannot be legally assumed to be an ordinary resident of Gaya because except for his service he would not have been residing at Gaya either permanently or temporarily; de facto or de jure; actually or constructively; especially when there is nothing to prove anything to the contrary.

17. However, in any view of the matter, the residence certificate wrongly issued by the authority concerned on 30-10-2000 having been cancelled by the said authority on 6-10-2001 and letter of intent issued by the respondent-Corporation in favour of respondent No. 6 on 15-10-2002 having been withdrawn and cancelled by the Corporation vide letter dated 13-8-2002 and respondent No. 6 not having raised any objection thereto at any stage and before any forum, the said respondent No. 6, who was the first empanelled candidate, has no claim left in the matter which is now only between the Corporation and the petitioner who was the second empanelled candidate.

18. In a similar matter, the Apex Court in case of Smt. Moumita Poddar Vs. Indian Oil Corporation Ltd and Another, had specifically held that if the letter of intent issued to the first empanelled candidate is cancelled for any reason it will be given to the next candidate in the merit list. Hence, there is no occasion for setting aside the entire procedure and steps taken by the authorities for such selection inspite of the fact that much time has lapsed since the merit list was prepared. This plea of the respondents cannot be legally entertained, especially when the petitioner has taken due steps in filing this writ petition and is prosecuting this writ petition since 2002 and any fresh procedure for selection is bound to seriously prejudice the petitioner, who was duly placed at serial No. 2 in the panel/merit list and for making such selection no period has been prescribed either in the advertisement or in the brochure or even in the by-laws. In this regard, reference may be made to a decision of the Apex Court in case of Smt. Monika Gupta Vs. Union of India (UOI) and Others, as well as a decision of a Bench of this Court in case of Anil Kumar Singh Vs. Union of India (UOI) and Others

19. In the aforesaid facts and circumstances, this writ petition is allowed. The impugned order dated 11-1-2002 (Annexure-1) passed by the Chairman, Dealer Selection Board (respondent No. 4) is quashed and the respondent-Corporation and its authorities are directed to appoint the petitioner, who was empanelled at serial No. 2 in the selection list and who has been found otherwise competent

and issue letter of intent and complete all the other formalities in his favour for appointing him as retail outlet dealer of the Hindustan Petroleum Corporation Ltd. for the proposed location at Gaya Bye-pass Road.