

(2003) 07 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 1921 of 2003

Dilip Kumar Sinha

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Citation : (2004) 2 PLJR 643

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Naveen Sinha and Rajesh Kumar Verma, for the Appellant; K.D. Chatterjee, for Corporation and A.K. Mishra and A.P. Sahay for Respondent No. 11, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition is filed challenging the order, dated 27.9.2002 (Annexure 1) passed by the General Manager, Indian Oil Corporation Limited (Marketing Division). The matter had gone to the General Manager to consider the question as to whether the Petitioner Dilip Kumar Sinha was ordinarily a resident of Nalanda at the material time. In the impugned order the General Manager held that at the material time the Petitioner was not the resident of Giriyak in the district of Nalanda. He was, therefore, not eligible for the retail outlet dealership at Giriyak; consequently, the dealership granted in his favour was cancelled.

2. The Respondent Oil Company issued an advertisement for grant of dealership for a petrol pump to be set-up at Giriyak in the district of Nalanda. The dealership was open only to persons who were ordinarily residing in Nalanda for the past five years. Both the Petitioner and Respondent No. 11 applied for the dealership in response to the advertisement. The Petitioner sought to satisfy the condition with regard to being a resident for the district by submitting a residence certificate showing him as a resident of village Giriyak, P.O. and P.S. Giriyak in the district of Nalanda. The residence certificate was issued by one

Bachha Nand Singh as Circle Officer, Giriyak, Nalanda. The certificate was issued in a printed form from a volume maintained in the circle office for the purpose; the certificate was, dated 24.3.1993 and against the column memo, the number 339 was filled-up in hand.

3. The Petitioner was selected for the grant of dealership by the Oil Selection Board, pursuant to which a letter of intent was issued in his favour on 4.5.1994. It was followed by the letter of appointment, dated 7.11.1994 and finally the execution of the dealership agreement on 26.12.1994.

4. Respondent No. 11 then filed before this Court CWJC No. 502 of 1997 challenging the grant of dealership to the Petitioner. The challenge was made on the ground that at the material time the Petitioner was not a resident of Nalanda. According to Respondent No. 11 (its petition in CWJC No. 502 of 1997), the present Petitioner was actually a resident of Patna and he had managed to obtain the residence certificate from Giriyak by fraudulent means. The writ petition was dismissed with certain observations by order, dated 4.5.1998 by a learned Single Judge. Respondent No. 11 then took the matter in appeal in L.P.A. No. 760 of 1998 which was disposed of by a division bench by order, dated 2.1.2001. The division bench directed Respondent No. 11 (Appellant in the appeal) to represent his case before the concerned authority who in turn was directed to dispose of the matter after giving an opportunity of hearing to the present Petitioner. The competent authority in the Oil Company was directed to "decide the question as to whether Respondent No. 9 (the present Petitioner) was ordinarily a resident of Nalanda at the relevant time or not in terms of the advertisement and documents appended with the same. The Respondent Oil Company assigned the matter to the General Manager, Marketing Division.

5. Before the General Manager the Petitioner submitted his reply to the objection raised by Respondent No. 11 and stated that besides the residence certificate, dated, 24-3.1993, he had no other document to establish his residence at Giriyak at the material time. On the other hand, Respondent No. 11 submitted a number of documents to show that the residence certificate, dated 24.3.1993 issued in favour of the Petitioner was fake. In those circumstances, the General Manager requested the District Magistrate, Nalanda to confirm the genuineness of the residence certificate issued in favour of the Petitioner. The District Magistrate got the matter investigated by the Subdivisional Officer, Rajgir who submitted his investigation report, dated 1.8.2002 which was forwarded to the General Manager. The Sub-divisional Officer in his report found and held that the Petitioner had wrongfully obtained the residence certificate and he was in fact not a resident of village and P.O. Giriyak in the district of Nalanda. The impugned order of the General Manager is fully based on the report of the Sub-divisional Officer, Rajgir, dated 28.8.2002.

6. Mr. Naveen Sinha, counsel appearing for the Petitioner submitted that the General Manager had erred in relying upon the report of the Sub-divisional Officer. Learned Counsel submitted that the matter had not concluded on the

submission of the report by the Sub-divisional Officer and taking objection to the S.D.O.'s report, the Petitioner had moved the Dist. Magistrate for re-investigation; that on his request the Dist. Magistrate had directed further investigation in the matter. Mr. Sinha submitted that though this fact was brought to the notice of the General Manager, he did not wait for further report after re-investigation on the ground that he had not received any intimation in this regard officially from the Dist. Magistrate.

7. Mr. Sinha pointed out that the re-investigation by the Addl. Collector, Nalanda had since then been completed and in his report, dated 10.10.2002 the Addl. Collector had found, on the basis of local enquiry, that the Petitioner was a resident of Giriyak at the material time. Mr. Sinha also relied upon certain reports that were made while the matter was at the stage of selection of candidates in which the Petitioner was found to be a resident of Giriyak. On the basis of the earlier reports and on the basis of the Addl. Collector's report, dated 10.10.2002 Mr. Sinha prayed that the matter be remitted to the competent authority in the Oil Company for further examination and consideration in the light of the subsequent report.

8. One thing that sticks out in this controversy, based purely on facts, is that each time an enquiry is made, it records a finding contrary to the previous report. It seems that the officials in the district administration are highly pliable and amenable to the wishes of either one or the other of the disputing parties.

9. In these circumstances, I. might have been inclined to direct further enquiry with strict guidelines and directions to the Dist. Magistrate. But, I do not feel", persuaded to do so because Mr. A.K. Mishra appearing for Respondent No. 11 pointed out certain inherent lacunae in the residence certificate relied upon by the Petitioner. With regard to the anomalies pointed out by Mr. Mishra, there is no satisfactory, much less convincing, explanation, The anomalies and the circumstances that make the validity of the residence certificate, dated 24.3.1993 highly suspect and doubtful may be enumerated as follows:

(i) The volume from which the printed certificate was issued from the office of the Circle Officer, Giriyak is lost and it was not traceable in the subsequent enquiries. It is evident that records are made to disappear only to prevent the truth from coming to light and in this case the needle of suspicion would point to the Petitioner as being responsible for the volume/book becoming traceless because it is he who is to benefit from the certificate, the validity of which is under examination.

(ii) The certificate is, dated 24.3.1993 and it is purported to have been issued under the signature of Bachha Nand Singh in his capacity as the Circle Officer, Giriyak. In the counter affidavit filed by Respondent No. 11, it is asserted (and it is not denied by the Petitioner) that during the period 1.4.1991 to 1.3.1994 one Banaras Pd. Singh was posted as the B.D.O., Giriyak and during the period 1.12.1992 to 31.11.1993 on Akhilesh Kumar Jha was posted as the Circle Officer,

Giriyak, Nalanda. Therefore, there was no question of issuance of residence certificate by Bachha Nand Singh who joined as Circle Officer, Giriyak block as late as on 1.12.1993.

(iii) It is further pointed out in the counter affidavit filed by Respondent No. 11 that a residence certificate issued to Md. Kausar Ali on 20.3.1993 was given memo No. 750. It was, therefore, quite unbelievable that the residence certificate issued to the Petitioner, three days later, should have memo No. 339.

(iv) Mr. Mishra also relied upon the voters' list of Danapur constituency in which the name of the Petitioner figures to contend that at the material time he was in fact a resident of Danapur in the district of Patna.

(v) He also pointed out that in his application to the Oil Company, for the purpose of correspondence, he had given an address at Patna namely, 11, Mangles Road, Patna.

10. I am prepared to discount the voters' list of Danapur and the Patna address given by the Petitioner for the purpose of correspondence. It is not unknown that a person's name may occur in the voters' list at two places and the Petitioner might have given a Patna address for the purpose of correspondence to ensure receipt of the important letters from the Oil Company. But the anomalies at serials (i) to (iii), unless explained satisfactorily, would be fatal to the Petitioner's case.

11. As noted above, there was no satisfactory explanation in regard to the anomalies at serials (i) to (iii) above. All that Mr. Sinha submitted was that it was for the State to explain the anomalies and not prepared or willing to accept this statement. As the Petitioner tries to derive benefit from the residence certificate, it is equally for him to offer some explanation, at least prima facie satisfactory, it not convincing or conclusive.

12. In view of the inherent anomalies in the residence certificate relied upon by the Petitioner, in my view, no useful purpose will be served by any further enquiry and the matter would only go in the see-saw manner. I, therefore, see no justification for any interference by this Court in this matter. This writ petition is dismissed.