
(2002) 03 JH CK 0064
In the Jharkhand High Court
Case No : Writ Petition (C) No. 185 of 2002

Jayanti Kumari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 03 JH CK 0064

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Anil Kumar Sinha and S.N. Pathak, for the Appellant; Pradip Modi, for Respondent Nos. 2, 4, 5 and 6, Dilip Jerath, for respondent Nos. 1 and 3 and A.K. Kashyap, for the Respondent

Judgement

Tapen Sen, J.—Heard the parties.

2. The petitioner (Jayanti Kumari) has filed the instant writ application for a direction upon respondent No. 3 (Dealer Selection Board, Jamshedpur through Hindustan Petroleum Corporation Ltd.) restraining them from passing any final order in relation to the allotment of the dealership as according to the petitioner, she fulfilled all the requisite qualifications and was declared No. 1 in the interview for the same.

3. According to the petitioner, pursuant to an advertisement published vide Annexure 1, on 28.8.2000 and fulfilling all the necessary qualifications, the petitioner applied for dealership against column 26 of the advertisement. Subsequently, she was called for interview vide letter dated 6.9.2001 and on the day of interview she presented all necessary original documents for perusal of the interview Board.

4. The petitioner has stated that thereafter, she was waiting anxiously for the results when she received a letter from the Dealer Selection Board informing..... her

that they had received a complaint against her being selected as first empanelled candidate relating to her residence and also in relation to the annual income of her husband and, therefore, she was informed that she was not eligible for selection. However, she was requested to produce further documents before the Chairman, Dealer Selection Board on 10.10.2001 at Ranchi in support of her eligibility relating to her residence and income.

5. The petitioner has enclosed the complaint vide Annexure 5 which appears to have been sent by one Arun Kumar Singh (respondent No. 7) informing the Dealer Selection Board that the petitioner is a married lady having been married in the district of Gopalganj in Bihar and that her husband was an engineer working in Madhya Pradesh whose annual income was above Rs. 2 lacs. In the complaint it was further mentioned that her father's house was at Garhwa and she herself used to live with her husband. According to the complaint, therefore, her selection as the first empanelled candidate was not proper. According to petitioner, there was no secrecy maintained with the Dealer Selection Board as there was no reason to explain as to how the said respondent No. 7 could come to know that the result to the effect that petitioner has been selected as the first empanelled candidate.

6. However, the petitioner states that pursuant to Annexure 4 she appeared and filed her cause giving details and produced all documents in her favour vide Annexure 6. In the said cause she explained that she had been married after the last date of submitting her application to an average family in Gopalganj. She also stated that she had studied in Daltonganj and that she was living with her husband at Daltonganj. She also enclosed the original certificate issued by the Block Development Officer, Daltonganj showing her to be a resident of Daltonganj.

7. The petitioner states that on 31.10.2001 by Annexure 7, the second empanelled candidate i.e. respondent No. 8 along with respondent No. 7 were also called to appear for final hearing on 7.11.2001 at Jamshedpur. Although, according to petitioner, respondent No. 7, being not a member of the Scheduled Caste, could not have been called because the Dealership at Serial No. 26 of the Advertisement was reserved exclusively for the Scheduled Caste.

8. The petitioner states that on 31.10.2001 she filed a detailed show cause before the Chairman of the Board giving all details so that the dealership could be awarded to her. At para 14, the petitioner has stated that the respondent No. 8 is the brother of an Ex. MLA and that the respondent No. 4 had cancelled the residential/domicile certificate of the petitioner without notice and without giving her an opportunity of hearing.

9. According to petitioner, the original certificate was cancelled vide order dated 11.12.2001 as contained at Annexure 10 and pursuant thereto the respondent No. 3 issued a letter dated 17.12.2001. As per this letter the petitioner was informed that the residential certificate issued in her favour had been cancelled

by the Deputy Commissioner. Palamau and, therefore, before proceeding any further, a chance was being given to her to state it she had anything to say in the matter and, therefore, she was asked to meet the Chairman, Dealer Selection Board at Jamshedpur on 8.1.2002.

10. Feeling therefore, aggrieved, the petitioner has moved this court in this writ petition.

11. In this writ petition a counter affidavit has been filed by the respondent Nos. 4, 5 and 6 (i.e. Deputy Commissioner, Palamau, S.D.O., Palamau and B.D.O., Daltonganj). According to them, it is not, correct that the petitioner was not given an opportunity of hearing. They have said that against the order dated 11.12.2002 cancelling the residential certificate of the petitioner as contained at Annexure 10 to the writ petition the petitioner had moved the Deputy Commissioner, Palamau and the Deputy Commissioner had directed the S.D.O., Daltonganj to hear her and pass appropriate orders after due verification and, thereafter, after giving full opportunity to the petitioner and on perusal of the documents, an order was passed on 4.7.2002 by the S.D.O., Daltonganj cancelling the residential certificate. The order dated 11.12.2002 has been brought on record by the respondents vide Annexure A to the counter affidavit.

12. According to these Respondents, the order dated 4.1.2002 was, therefore, within the knowledge of the petitioner but she has suppressed the same, at para 5 they have said that in the instant case on scrutiny and after hearing the petitioner it was found that the petitioner had obtained residential certificate on earlier occasion fraudulently and, therefore, the same was cancelled.

13. The respondent No. 8 (Radha Prem Kishun) has also filed a counter affidavit wherein he has also repeated the statement of the respondent Nos. 4, 5 and 6 to the effect that the petitioner has suppressed the order dated 4.1.2002. According to them, the advertisement at Sl. No. 26 was issued calling for application from scheduled caste candidates only and as per the said advertisement the applicant was required to be the resident of Palamau District. According to the respondent No. 8 he is a permanent resident of Palamau and he had also applied for dealership and was called for interview. At para 7(v) he has stated that he came to know the result of the interview and came to know that his name was at Sl. No. 2 while the name of petitioner was at Sl. No. 1. According to him, the petitioner is not a resident of Palamau District and she is a married lady and her husband is a resident of Gopalganj in the State of Bihar and that her husband has been working as an engineer in the Bharat Heavy Electricals Limited, Piplani, Bhopal (M.P.) and his annual income is more than Rs. 2 lacs. According to him, the petitioner is a resident of Garhwa but not the resident of Palamau and after marriage she became the resident of Garhwa. He has also stated that a dealership already stands in the name of her brother for the district of Garhwa. According to the respondent No. 8, the residential certificate of the petitioner was obtained on the basis of wrong informations and she does not come within the definition of a local resident. According to respondent No. 8, at para 7(vii),

there is no land or basgit purcha in the name of the ancestors of the petitioner. Various other statements have been made by the respondent No. 8 to support his contention that the petitioner is not a resident of Palamau.

14. The petitioner has filed a supplementary affidavit wherein at para 4 she has stated that the requirement of eligibility was only residence at a place to the extent where the applicant ordinarily resides and that the eligibility of the applicant was not to be decided on the basis of holding of lands recorded in the last survey records of rights or purcha. She has stated that since 1986 her family is residing at Sudna Industrial Estate at Daltonganj in which a block of land was allotted to the family of the petitioner. The petitioner's mother and brother also purchased some lands at Daltonganj in which shops were constructed and the family had the intention to permanently reside at Daltonganj since 1986 and, she is ordinarily residing at Daltonganj as a resident u/s 20 of the Representation of People Act, 1950 and the names of the parents were recorded in the voters list since 1988. She has also stated that her family was residing at Daltonganj, Sudna Industrial Estate and that the Scheduled Caste Certificate granted to her as an ordinary resident of Sudna, Daltonganj has not been challenged by any person. The petitioner has further stated at para 7 of this supplementary affidavit that her family had also acquired land at Daltonganj and has constructed shops which indicated a clear intention of the family to permanently reside at Daltonganj. According to her, the respondent No. 8, an Ex. MLA and who happens to be the brother of the second candidate had approached the Deputy Commissioner, Palamau complaint that the residential certificate had been wrongly issued to her and under political influence of an Ex. MLA, Deputy Commissioner, Palamau had orally ordered the S.D.O., Daltonganj, to explain as to how residential certificate had been issued in her favour and upon such oral orders the S.D.O., Daltonganj had submitted his report on 20.11.2001 which showed that the petitioner's family had been residing at Sudna. A photocopy of that report dated 20.11.2002 has been marked Annexure 15.

15. In the rejoinder to the counter affidavit of the respondent No. 8, she has stated that at the time of the advertisement she was unmarried living with her parents at Daltonganj and, therefore, had every right to be a candidate for allocation of distributorship and merely because she got married, that can not be a ground to discard her from such allotment although her marriage took place after the advertisement. She has also stated that at the time of preparation of the last voters list, she was a minor as such her name was not included but the name of her parents were clearly included showing that they were the residents of the area for the last twenty-years. She has also stated that the definition of the word "resident" can not be supplemented or equated with Basgit Purcha. She has also repeated that the cancellation of her residential certificate by the Deputy Commissioner was made under political pressure.

16. In her rejoinder to the counter affidavit of the respondent Nos. 4, 5 and 6, the petitioner has further stated at para 5 that her residential certificate had

been issued on the recommendation of the B.D.O., Daltonganj as also of the S.D.O., Sadar, Daltonganj as would be evident from pages 28 and 29 of the writ petition which clearly showed that she was a resident of that place.

17. The writ petitioner has interpreted the edibility criterion as being not that a particular person should be of a particular district but that the eligibility criterion is that a person should be a resident/citizen of India. According to the petitioner, it is true that at the top of the advertisement it has been mentioned that residents of the districts mentioned therein can only apply and by inserting District Palamau at Sl. No. 26 only a person being a resident of Palamau could have applied but, according to petitioner, such a districtwise criterion is totally arbitrary and is hit by Article 14 of the Constitution of India specially when on the right hand side of the same advertisement it is clearly mentioned that the applicant must be a citizen of India. However, such submission must fail in the instant case because at Column No. 4 it is mentioned that for the purposes of the outlet/distributorship for Palamau, the same is reserved for a Scheduled Caste candidate. In order to promote the Schedule Caste candidates, this contention appears to have been inserted and, therefore, it can not be said to be unreasonable vis-a-vis Schedule Caste candidates. So far as the contention that one must be an Indian by nationality, the same is on the right hand column but at the top it mentions the fact that this would be for location other than the Scheduled Caste/ Scheduled Tribe category.

18. The aforementioned submission that she being a citizen of India, such district wise criterion is hit by Article 14 of the Constitution of India is, therefore, rejected for the reasons stated above.

19. The petitioner has stated amongst other things that her mother Smt. Sumitra Devi was a lease holder of the industrial area from a period prior to 1986 and in the year 1988 she got ownership of the aforesaid area and since then she has been continuing to be in possession. She has also stated that in all her academic certificates, she had been shown to be a resident of Sudna, Daltonganj. Palamau and whatever properties that her father and mother had, such a through sale deed No. 11708 dated 2.12.1994 showed her family to be a residents of Daltonganj. She has further stated that right from 1986 till date she was living with her parents and that in the caste certificate as also in her certificate of residence, she had been shown to be a resident of Sudna, Daltonganj, District Palamau. These facts were looked into by the S.D.O. and he concluded, after having heard the parties concerned that having ownership of an industrial area can not establish residence. He has further found that save and except nine shops in that industrial area there was no residential house. He has also stated that the name of the petitioner was not to be found in either the ration card or in the voters list and finally came to a conclusion that merely academic certificates can not prove and establish residence because if that be so, then any candidate studying in any part of the country will start claiming that he/she is a resident of that place.

20. On the other hand, the petitioner has stated that she was married on 9.12.2000. In support of her contention she has annexed photocopy of her marriage card as Annexure 1 appended to her rejoinder to the counter affidavit of the Respondent No. 8 showing her marriage day as 9.12.2000. This document has been filed in reply to the counter affidavit of respondent No. 8 in which he had also produced a photocopy of a marriage card showing her date of marriage as 19.4.2000. According to the respondent No. 8, therefore, the marriage took place on 19.4.2000 and , therefore, before the last date of filing the application on 12.10.2000, whereas according to the petitioner, the marriage took place on 9.12.2000, i.e., after the last date of filing the application.

21. These are the question of facts which can not be decided in this writ petition.

22. On 12.3.2002 a supplementary counter affidavit was field by the Dealer Selection Board wherein they have attached a newspaper publication published in the Hindustan Times on 9.3.2002 (i.e. after the order was reserved in this case) in which Parliament of India. Loksabha Secretariat, New Delhi, standing committee of Petroleum and Chemicals has issued a notice to the effect that Parliament Standing Committee on Petroleum and Chemicals headed by Sri Mulayam singh Yadav had constituted a sub-committee to look into the complaints of non-observance of guidelines laid down by the Government in relation to the allotment of retail outlets and LPG distributorship by the dealer selection board. This no doubt relates to non-observance of guidelines. But this is a case where according to the petitioner, the respondents have disentitled her after having found her to be fully qualified. This Court is of the opinion that, therefore, this is not applicable in this case.

23. To sum up, it appears that the major thrust of the arguments of the Respondents including the respondent Nos. 7 and 8 is that a lady candidate although could have been found eligible on all counts and having been selected as the first empanelled candidate should be disentitled only because of her marriage as a result whereof she is deemed to have lost her status of being a resident of the district or area or place of her parents. This appears to be an extremely harsh proposition in as much as the word "residence" does not connote the place of origin. On the other hand the word "residence" is a flexible word which has many interpretations. This word "residence" means the bodily presence and the intention of remaining in a place, to sit down, to stay in a place, to settle, to remain and is made up of fact and intention. It is a combination of acts and intentions the fact of abode and the intention of remaining. It implies some thing which is more than mere physical presence and some thing less than domicile. "Residence" means living in a particular locality and it simply requires the bodily presence of an inhabitant in a given place but is not synonymous with domicile though the two are closely related to each other. A person has only one legal domicile at one time but he may have more than one residence. The residency requirements, therefore, must not to be so stringent so as to violate the due process or equal protection of laws. The word "residence"

when used as a Noun, means a dweller, habitant or occupant; one who resides or dwells in a place for a period of more or less duration. The word "resident" has many meanings in law and merely because a lady gets married and goes to her husband's house does not mean that she loses her intention of returning to her initial residence.

24. Mere landed property is not a factor to determine a residence of a person. What is relevant is the continuous living at a particular place. It can not be disputed that the petitioner at least till the time of her marriage, was a resident of Daltonganj, Palamau and merely because she got married it can not be said that she has permanently and totally lost her status of a resident of Palamau. Who can say whether she still has the intention of returning to Palamau? Who can guarantee that once she is married she would continue to live for ever with her husband ? God forbid, but society has changed - there are cases leading to divorce and matrimonial disputes which some time forces the women-folk to abandon their matrimonial homes. These are all presumptive factors, but this court can not help but think out aloud. Additionally, another factor which perplexes this Court is as to why all these happened after the petitioner was selected as the first empanelled candidate? Annexure-4 is a clear pointer to the fact that a complaint was received against the petitioner for her being selected as the first empanelled candidate and the only two objections against her were that her husband was staying in Bhopal and that her parental house was at Garhwa.

25. Yet another objection that has apparently been taken is that the petitioner's own brother holds an LPG distributorship. This should not be a factor because under Clause 1.2.8 of the guidelines, it has been mentioned that no person shall be awarded a new dealership if he or she has any close relative and who already holds a letter of in-tent. These close relatives have been mentioned at Column "C" thereunder which reads as follows :--

(c) Brother/Brother's wife (Not applicable for women applicants)"

In other words, even if there was a brother holding a distributorship or dealership, the same would not come in the way of a woman applicant as the guidelines itself.

26. Another aspect of this case is that at the time of selecting the petitioner, all necessary enquiry etc. must be deemed to have been completed. How is it, therefore, that after she was selected, objections in the nature of complaints were entertained?

27. In their counter affidavit, the respondent Nos. 1 and 3 i.e. the Union of India and the Dealer Selection Board, Jamshedpur have stated that the writ petition is premature and no decision has been taken as yet in the matter and that instead of appearing before the Chairman of the Dealer Selection Board, the petitioner has chosen to move this Court through the instant writ petition. Their further submission is that in view of Annexure-II appended to the writ petition the writ

petitioner should have first approached them instead of moving this Court. According to them, in the guidelines published by the Government of India, Ministry of Petroleum and Natural Gas, which was produced during the course of argument in Court. Let it be kept on record. It is provided therein under Clause 1.2.8 that no person shall be awarded a new Dealership/Distributorship if he or she or any of his or her close relatives including step relatives already holds letter of intent or Dealership/Distributorship of any Company. According to them petitioner's own brother has an LPG Distributorship at Garhwa being a resident of Garhwa. To sum up, these respondents have stated that there is a fulfilled Grievance Redressal Cell as per Clause 3.15 and, therefore, the petitioner would be well advised to move the Grievance Redressal Cell in case final decision is taken against her.

28. So far as the objection to the effect that the petitioner's husband has a gross income of Rs. 2,00,000/- per annum, it is obvious that this income is to be computed after taking into consideration the income of self, spouse and dependent children but this will have to be interpreted as the gross income of the candidate concerned and not the gross income of a person who is not an applicant/candidate.

29. Be that as it may, and in view of the specific stand of the Dealer Selection Board that there is an alternative forum before the Grievance Redressal Cell, the petition is being disposed off by giving liberty to the petitioner to raise all these points before the said Grievance Redressal Cell by filing a detailed representation within a period of two weeks and the said Grievance Redressal Cell in its turn shall take into consideration every aspect of the matter including observations made in this Writ Petition and shall pass a reasoned order in accordance with law within a period of two months from the date of receipt of such representation, after hearing all the parties concerned.

30. With the aforementioned observations, this Writ Petition stands disposed off.