

(2019) 07 UK CK 0028
In the Uttarakhand High Court
Case No : Second Appeal No. 140 Of 2016

Jaydeep

APPELLANT

Vs

Regional Manager, Indian Oil Corporation & Others

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 9
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 UK CK 0028

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Ajay Veer Pundir, V.K. Kohli, I.P. Kohli

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. The appellant before this Court is the plaintiff in a Suit, being Suit No. 2 of 2013, Jaydeep Vs. Regional Manager and others, wherein, in the plaint, he has prayed for cancelling the LPG Distributorship Licence, which has been wrongfully granted to the respondents and has prayed for that the distributorship licence for Gram Panchayat Churiyala may be granted to him.

2. The brief facts which has been pleaded by the plaintiffs is that the respondents had issued an advertisement in Amar Ujala on 21st January, 2011, wherein, they have invited the application from the probable candidates for getting the licence of distributorship of LPG for Gram Panchayat Churiyala andn for many such other places; in the said advertisement Churiyala appeared at S.No.24, under the scheme called as Rajiv Gandhi Gramin LPG Distribution Yojna. The said advertisement provided that the probable candidates, who are eligible in accordance with the terms and conditions contained under Clause 3 (Kha) of the said advertisement, they have to submit their application to be considered for the grant of distributorship licence by 23rd February, 2011.

3. The main argument, which was raised by the learned counsel for the appellant is to the effect that in accordance with the clause 3 (kha) as provided in the advertisement, it contemplated that the persons who applies in pursuance to the advertisement in relation to a particular site, in question, for the grant of distributorship of LPG has had to be the resident of same kasba/ village. Clause 3 (Kha) reads as under :-

"उस कस्बे/गांव का निवासी होना चाहिए जिसके लिए आरजीजीएलवी लोकेशन का विज्ञापन दिया गया है।"

4. The contention of the appellant is that he after finding himself to be eligible in accordance with the Clause 3 (kha) of the advertisement, has submitted his application well within the specified time and, since, he satisfies the condition, i.e. being the resident of the area, as his permanent resident happens to be of village Phakarhari, Churiyala, Tehsil, Roorkee, District Haridwar. The main challenge to the grant of distributorship licence to respondent No. 3 had been on the ground that respondent No. 3, in fact, happens to be the resident of village Sherpur, Tehsil Saharanpur and thus, since he is not being the resident of Gram Panchayat Churiyala, Tehsil Roorkee, he would not be eligible to participate in grant of distributorship licence in pursuance to the advertisement dated 21st November, 2011. His argument is to the effect that the very fact that the respondent No. 3 happens to be the resident of District Saharanpur, he renders himself to be ineligible to be considered for the grant of the distributorship licence of LPG under the advertisement.

5. Another ground which has been taken by the learned counsel for the appellant is to the effect that the respondent No. 3 ought not to have been considered for the grant of the distributorship licence as his candidature outrightly deserved rejection for the reason being that the documents which he has supplied and annexed with his application for the purposes of grant of licence and, in particular, the permanent resident certificate, these are the documents which have been fraudulently prepared by him in collusion with revenue officials so as to make himself eligible to be considered for the grant of distributorship licence.

6. In support of his contention, the learned counsel for the plaintiff/appellant further submits that after the grant of licence to the respondent No. 3, he made a further probe and then he had received and collected certain information under the Right to Information Act from the office of the Tehsildar to the effect that the certificate which the respondent No. 3 has filed alongwith his application for the grant of licence, in fact, were showing respondent No. 3 as to be the permanent resident certificate of Gram Panchayat Churiyala, which, in fact, was never issued from the Office of the Tehsildar and, hence, on that very ground itself, since the application on the basis of which, the licence has been granted to the respondent No. 3, was based on the ground of procuring a document which was ultimately found to be fraudulent certificate itself was sufficient to cancel the licence granted in his favour.

7. Thirdly, the plaintiff submits that as per his case, which he has pleaded before

the Court below in support of his contention to show that respondent No. 3 is not the resident of Gram Panchayat Churiyala, he had also placed on record as evidence the electoral roll of the Gram Panchayat of village Sherpur, Shahpur, District Saharanpur, wherein, in the said panchayat electoral list, the name of the respondent No. 3 appears at serial No. 374 and that of his wife's name appears at serial No. 375. Hence, in view of the aforesaid information which was supplied to him and was placed on record on 17.02.2012 before the Court below, that would render the respondent No. 3 as to ineligible even to be considered for grant of distributorship licence, as it would be violative of Clause 3 (kha) of the advertisement dated 21.01.2011 and ultimately have an effect of deceiving the very purpose of the entire project which was floated by the State Government for the purposes of benefiting the residents of the area for their social and economic development.

8. On the basis of the same, the plaintiff / appellant had instituted a suit before the Civil Judge (Junior Division), Rookree, District Haridwar, which was registered as Suit No. 2 of 2013, Jaydeep Vs. Regional Manager and others. The same was contested by respondent No. 1 and as far as respondent No. 3 is concerned, the matter has proceeded ex parte, on the basis of the fact that despite of service of the notice. By the order dated 17th September, 2013, the defendant/respondent No. 3 had not put in appearance nor has contested the matter on the merits. Hence, the learned Trial Court passed an order on 17.09.2013 and had proceeded to decide the suit ex parte as against him.

9. In support of his contention, the plaintiff/appellant has filed voluminous documentary evidence pertaining to the list of documents, paper No. 7 Ga-1, which was issued by the Indian Oil Corporation on 25th August, 2001 and paper No. 8-Ka-1 as well as the two certificates, paper No. 10, which the appellant had received under the Right to Information Act on 21st January, 2012. Apart from it, he has also placed on record, the family register, paper No. 9 Ka-1 and 10 ka-1, issued by the competent authorities of Saharanpur as well as he has placed on record, paper No. 12-Ga, which also happens to be the voter list of the Vidhan Sabha kshetra of Saharanpur, of which, the respondent No. 3 was the resident, which included the name of respondent No. 3 and his family members as to be voters of the Vidhan Sabha Area.

10. Based on the aforesaid documents, coupled with the report which was submitted by the plaintiff/appellant under the Right to Information Act, he had submitted that under the scheme of Rajiv Gandhi LPG Distributorship, which was placed on record as paper No. 17-Ga-1 and 17-Ga-3, which had a particular objective to be attained which was to provide an employment and development of the specified area and it intended to benefit the people or the resident of the specified area where the distributorship was proposed to be granted in pursuance to the advertisement of 21st November, 2011. Thus, as per the evidence brought on record, the respondent No. 3 was non suited since being the resident of Saharanpur.

11. His argument is to the effect that since the respondent No. 3, apparently as per the documents, which was brought on record, he was not resident of Gram Panchayat Churiyala and the document which he has filed in his support and in particular the information which he has received under the Right to Information Act, are unflinching documents which show without any persisting doubt that the respondent No. 3 had never been the resident of Gram Panchayat Churiyala, but, as a matter of fact, the voter list and other documents on record which goes to show that since he being the resident of District Saharanpur, would be ousted and non suited for grant of distributorship in view of the provisions contained under Clause 3-Kha of the advertisement issued by the respondent No. 1.

12. Apart from it, the appellant has also adduced the oral evidences by way of his affidavit in examination in chief, paper No.24 Ka and had recorded his statement as PW1 and the statement of one Mr. Pahal Singh as PW2.

13. Before venturing further, it would be relevant to mention that for purposes of raising a challenge to the grant of the LPG distributorship to respondent No. 3, the appellant has also approached to this Court by filing a Writ Petition No. 714 of 2012, Jaideep Vs. State of Uttarakhand and others, which was dismissed by this Court by an order dated 24th April, 2012, wherein, the Coordinate Bench of this Court had passed the following orders :-

"Disputed questions of facts are involved in the present writ petition , which cannot be scrutinized in exercise of writ jurisdiction. I am not inclined to entertain the writ petition. The petitioner may approach appropriate Forum for redressal of his grievance.

The writ petition is dismissed in limine."

14. The High Court declined to interfere in the Writ Petition as against the grant of distributorship licence to respondent No. 3, on the ground that the nature of the dispute which was being agitated by invoking Article 226 / 227 of the Constitution of India, it entails an appreciation of evidence and also venturing into the question of fact which was involved in the case at hand and which required an appreciation of the fact and other voluminous evidence and thus, the High Court declined to interfere leaving it open to the plaintiff to approach before the appropriate forum for redressal of his grievance.

15. Consequently, appellant invoked Section 9 of the Code of Civil Procedure. The appellant filed the Suit on 01.01.2013, before the Civil Judge (Junior Division), Roorkee, Haridwar, which was registered as Original Suit No. 2 of 2013, Jaideep Vs. Regional Manager IOC and others. In the Suit the appellant sought the following reliefs :

"अ- यह कि डिक्री आदेशानुसार निषेधाज्ञा बहक वादी बरखिलाफ प्रतिवादीगण इस आशय की सादिर फरमायी जाये कि विद्वान न्यायालय प्रतिवादी नं0 1 व 2 को आदेशित करे कि प्रतिवादी नं0 2 व 2 प्रतिवादी नं0 3 की राजीव गांधी ग्रामाण एल0पी0जी0 गैस वितरक की नियुक्ति निरस्त करके वादी को राजीव गांधी ग्रामीण एल0पी0जी0 गैस वितरक के रूप में नियुक्त करने के आदेश पारित करे अगर प्रतिवादी नं0 1 व 2 विद्वान न्यायालय के आदेश का पालन करने में कासिर रहे

तो ऐसी दशा में विद्वान न्यायालय अपनी किसी सक्षम एजेन्सी द्वारा अपने आदेश का पालन सुनिश्चित कराये।

ब- यह कि वाद व्यय वादी को प्रतिवादीगण से दिलाये जाये।

स- यह कि अन्य कोई अनुतोष जिसको पाने का वादी राय अदालत में मुसतक हो वह भी दिलाया जाये।"

16. The matter proceeded before the Trial Court based on the evidence which was produced by the plaintiff, which remained uncontroverted because the respondent No. 3 had never put in appearance nor he has controverted the evidence which was produced by the plaintiff to show that he was not the resident of District Saharanpur and hence, he was not non suited in terms of the advertisement dated 21st January, 2011. But, the learned Trial Court, while wrongfully interpreting the impact of the judgment dated 24th April, 2012, Jaideep Vs. State and others, rendered by Coordinate Bench of this Court in Writ Petition No. 714 of 2012, declined to interfere as against the grant of allotment in favour of respondent No. 3, on the ground that in accordance with the paper No. 29-ka, which was produced by the Indian Oil Corporation, it provided that under the Rules which was applicable, there was a Forum which was created by them and hence, the plaintiff, for the purposes of redressal of his grievance ought to have approached before the competent authority, i.e. Area Manager of the Indian Oil Corporation, for the redressal of his grievance as against the grant of distributorship licence to respondent No. 3. It is on that premise that the learned Trial Court had drawn an opinion that looking to the nature of the relief which was sought for and considering the import of the judgment dated 24.04.2012 of the High Court, the Trial Court has held that the instant suit as filed by the present plaintiff would not be tenable and for the purposes of redressal of his grievance, he ought to have approached before the forum which was created by the Indian Oil Corporation for redressal of the grievance against the grant of the distributorship licence.

17. Consequently, the learned Trial Court by the impugned judgment dated 28th July, 2014, though rendered ex parte order has dismissed the suit of the plaintiff, as against which, the plaintiff appellant had preferred First Appeal, being the First Appeal No. 28 of 2014, Jaideep Vs. Regional Manager and others before the Court of 1st Additional District Judge, Roorkee, Haridwar and the learned 1st Additional District Judge, Roorkee, Haridwar too vide its judgment dated 25th July, 2016, yet again reiterated the same findings which has been recorded by the learned Trial Court and while not agreeing with the argument as extended by the plaintiff/appellant before the Court below, the Appellate Court too had submitted that since there was a forum, which was made available to the plaintiff and the grant of a mandatory injunction, which is a discretionary relief, it cannot be granted under all set of circumstances and grant of decree of mandatory injunction would be dependent upon the condition involved for its adjudication of a right between the parties. The appellate court has drawn a conclusion that since the plaintiff was only an applicant in pursuance to the advertisement dated 21st November, 2012, the plaintiff had not developed any obligation as such as

against the defendant, that his application for the grant of distributorship licence ought to have been considered and he was mandatorily required to be granted with the distributorship licence merely because of the fact that he was a resident of Gram Panchayat Churiyala.

18. The opinion which has been drawn by both the Courts below pertaining to the status of the plaintiff, it goes without saying that once the plaintiff finding himself to be eligible in accordance with the terms and conditions, which was advertised by the respondent on 21st November, 2011, and his contention and record filed was eligible and since there has never been controversy to the effect that he was not the resident of Gram Panchayat Churiyala, in that eventuality, the respondent No. 3 could not have been even considered for grant of the distributorship licence when the evidence, which has been brought on record by the plaintiff, which remained unrebutted goes to show that he, i.e. the respondent No. 3 was the permanent resident of District Saharanpur, because of the family register as well as because of the fact that in the voter list of Gram Panchayat Churiyala as well as of Vidhan Sabha Kshetra, the name of respondent No. 3 appears in the list.

19. Apart from it, the fact about the fraudulent furnishing of the permanent resident certificate also remained un-rebutted and there was no evidence to the controversy, which goes to show that as per the information received on 17.02.2012, from the Tehsil, the plaintiff contention stood fortified from the fact that when it was informed that the certificate which was filed by respondent No. 3 along with his application, in fact, had never been issued from the office of Tehsildar. That in itself was a sufficient ground to render respondent No. 3 as to be non suited for the grant of distributorship licence which otherwise would in an event, if such a grant of licence is sustained, it would defeat the very purpose of scheme which has been floated by the State Government for providing the business opportunities to the local residents and that the scheme intends to benefit the people of the local area and also happens to be contrary to terms of Clause 3 (Kha) of the advertisement.

20. The very fact that the foundation of the application of respondent No. 3 was based upon the fraudulent document and even during the course of argument of the present Second Appeal or even before the Court below, so far as creation of the appropriate forum by the respondent for redressal of the grievance was never substantiated by the defendants by any piece of evidence or policy, as to under which provision the Indian Oil Corporation has created a forum for redressal of the grievance where a person aggrieved by the grant of distributorship licence can approach for the redressal of his grievance.

21. On considering the report which was placed on record before the Court below and which was supplied by the Office of the Tehsildar, once it was established that the respondent No. 3 candidature was non suited on account of the fact that he was not the resident of the area, and which stood proved by furnishing the voter list, which found place on record as paper No. 34-C, which goes to show that he was resident of village Shahpur of District Saharanpur and that in itself

would render the respondent No. 3 as to be non suited for even to be considered for the grant of distributorship of the licence of LPG for Gram Panchayat Churiyala.

22. Even, before this Court when the Second Appeal was being argued for admission, the Court had initially while summoning the lower court's record, had issued notices to the respondent No. 3 and there is an office report dated 30.12.2010 to the effect that the notices thus sent by this Court, though accepted by the father of respondent No. 3, but he refused to put the signature on the folio of receipt. Hence, it would be deemed that in view of the office report dated 3rd December, 2016, that the respondent No. 3 was served, but, still he has voluntarily chosen not to put appearance and contest the Second Appeal in the same fashion which was done by him at the time when the matter was pending before the Trial Court, due to which, it had to proceed ex parte against him.

23. In view of the fact that the candidature of respondent No. 3 was non suited as per the stipulation contained in the advertisement dated 21st January, 2011, he could not have been granted with the distributorship licence.

24. Consequently, the Second Appeal is allowed. The impugned judgment dated 28.07.2014, as rendered by the Civil Judge (J.D.), Roorkee, District Haridwar in O.S. No. 2 of 2013, Jaydeep Vs. Regional Manager and others for mandatory injunction and the judgment in Civil Appeal No. 28 of 2014, Jaydeep Vs. Regional Manager and others as rendered on 25.07.2016, by the 1st Additional District Judge, Roorkee, District Haridwar, are quashed. The Indian Oil Corporation is directed to undertake a fresh exercise for grant of distributorship licence of LPG for Gram Panchayat Churiyala, Tehsil Roorkee, District Haridwar, under the scheme which was advertised on 21.01.2011.