

(1988) 12 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 510 of 1988

Kashi Nath Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-1988

Acts Referred:

Citation : (1989) 16 DRJ 310

Hon'ble Judges : Rabindranath Pyne, J; Gian Chand Jain, J

Bench : Division Bench

Advocate : A.P.S. Ahluwalia, Sanjeev Ralli, S.B. Ghosh, H.K. Puri, Tapas Ray and S.N. Jha, for the Appellant;

Judgement

G.C. Jain, J.

(1) As measure of rehabilitation, the Ministry of Petroleum and Natural Gas, Government of India, formulated a policy reserving 7.5 percent of the oil product agencies i.e. Lpg Agency, petrol pumps and kerosene oil agencies, for certain categories of defense personnel. Pursuant to this policy Indian Oil Corporation, respondent No. 4, issued an advertisement on or about 9/10/1985 inviting applications for awarding distributorship of Indane for Buxar, District Bhojpur, Bihar, from amongst the candidates belonging to (i) defense Personnel who are permanently and severely disabled either in war or in military duty during peace time, (ii) Widows and motherless dependents of defense Personnel whose husbands/guardians are killed while on military duty either in war or peace, (iii) Extremely deserving cases of ex-servicemen who have no means of livelihood. The advertisement prescribed the following eligibility conditions:

(A) Indian by Nationality; (b) Not less than 21 years of age and not more than 50 years of age on the date of application; (c) Minimum matriculate; (d) Resident of any district in the State; (e) Having family (as defined in the application form) income of not more than Rs.24,000.00 annually; (f) Having no close relative (as defined in the application form) as Dealer/Distributor of any Oil Company.

(2) In response to the said advertisement several applications were received by respondent No. 4 which were forwarded to the Oil Selection Board for evaluation.- Five candidates including the petitioner Squadron Leader Kashi Nath Singh (Retd.) and Sh. Janardan Choubey, respondent No. 9, were called for interview. The Oil Selection Board after interviewing the candidates formed a panel consisting of two candidates, namely Janardan Choubey, respondent No. 9 and one Anand Prakash. Ultimately Indian Oil Corporation, respondent No. 4 issued a letter of intent dated 15/1/1988, offering distributorship of Indane at Buxar to Janardan Choubey, respondent No. 9.

(3) Feeling aggrieved the petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ of certiorari or any other appropriate writ quashing the Letter of Intent dated 15/1/1988 issued to respondent No. 9 in respect of allotment of Lpg Agency at Buxar (Bihar) out of the reserved defense category quota and prohibiting respondents No. 2, 4, 5 and 6 from allotting the said agency in favor of respondent No. 9. He also prayed for a writ of mandamus or any other appropriate writ directing respondents No. 1 to 6 to allot the said Lpg Agency to the petitioner.

(4) It was averred that under the Policy for providing petroleum product agencies to disabled ex-servicemen, the Lpg agency could be allotted to (a) Widows of service officers; (b) disabled service officers and (c). other extremely deserving ex-officers. Respondent No. 9 did not fall in any of these categories, in as much as he was not an officer at the time of retirement from the army and was, Therefore, not eligible for allotment of the said agency. It was further pleaded that an applicant applying for allotment of Lpg Agency under the category of "extremely deserving cases of ex-servicemen who have no means of livelihood" under the policy was required "to obtain a certificate from the District Collector stating that the ex-serviceman is unemployed, has no means of livelihood either from landed property or agricultural land, and a certificate to this effect is to be obtained from Secretary ZSB/RSB also. Necessary eligibility certificate is issued by Director (SB) after ascertaining the eligibility of the individual." Respondent No. 9, who applied in the said category was employed as a clerk in the Eastern Railway Hospital, Mughalsarai since 10/2/1987 after having been duly selected by the Railway Service Commission, Patna against an ex-serviceman vacancy on the basis of certificate of unemployment/ex-serviceman rendered to him for the purpose by his Unit. Respondent No. 9 suppressed the fact to his employment as well as his real income and obtained false certificates from the Sub Divisional Officer, Bikramganj, Resettlement Officer Zila Sainik Board, Bhojpur (Arrah) and Assistant Director General Resettlement. In the circumstances he was not eligible for the allotment of the said agency. It was also alleged that the petitioner was the only eligible candidate to whom the Lpg agency could have been allotted.

(5) On behalf of the Union of India, respondent No. 1 and Director General Resettlement, respondent No. 3, a common affidavit was filed in reply. It was averred that under the new policy there was no distinct criteria for the allotment

of Lpg agency, petrol pump and kerosene oil agency. Lpg Agency could be allotted to an ex-serviceman. It was admitted that an applicant, who applied under the category of "extremely deserving cases of ex-serviceman who have no means of livelihood" was to obtain an eligibility certificate as alleged by the petitioner. In the present case respondent No. 9, Janardan Choubey, applied for the issuance of eligibility certificate vide his application and supported certificates issued by Zila Adhikari and Zila Sainik Board dated 3/10/1987 respectively. On the basis of these certificates and in accordance with the rules Director General Resettlement issued eligibility certificate in the course of performance of his normal duties. It was admitted that the petitioner made allegation regarding the correctness of the said eligibility certificate, but the case was being examined.

(6) Sh. Surendra Nath Sinha, Senior Law Manager of the Indian Oil Corporation Ltd., Eastern Region, Calcutta, filed counter affidavit on behalf of Area Manager, Indian Oil Corporation (Marketing Division) Patna, respondent No. 5. It was averred that respondent No. 9, Janardan Choubey was eligible for allotment of the Lpg Agency. No complaint was received by respondent No. 5 against respondent No. 9 prior to the filing of the present writ petition. It was admitted that an eligibility certificate from respondent No. 3 was required. It was, however, denied that there was any condition that the person concerned should be unemployed or in need of resettlement. It was averred that the Indian Oil Corporation did not impose any condition for obtaining unemployment certificate from the District Collector or Zila Sainik Board. The conditions which were laid down for the grant of Lpg agency had been specified in the advertisement. Ignorance was pleaded about the allegations regarding obtaining of false certificates by Sh. Janardan Choubey, respondent No. 9.

(7) Janardan Choubey, respondent No. 9, in his affidavit averred that after completing his B.Sc. he joined military service on 24/3/1976 as Craftsman (Trade Instrument Mechanic) and remained in service till 2/6/1984 when he was discharged on medical grounds. After discharge he was leading a miserable life when he saw the advertisement dated 9/10/1985 and applied for grant of Lpg agency. He was interviewed on 19/8/1987. After making the application in October, 1985 and before the interview he was in dire need of a job and in response to an advertisement he got a job of temporary clerk in the Eastern Railway (Medical (Dept.) at Mughalsarai office. The said job was temporary. He had submitted his resignation before applying for certificate of ex-serviceman unemployment on 13/10/1987. His registration was not considered till 15/11/1987 and he was asked to submit his resignation again which he did on 16/11/1987 and ultimately it was accepted with effect from 1/12/1987. He denied the averments that he was employed on the day when he made an application for grant of Lpg agency or on the day when he applied for ex-serviceman unemployment certificate.

(8) The first contention raised by learned counsel for the petitioner is that Lpg agency could not be granted to an ex-serviceman and could be granted only to

an ex-service officer. In support of this contention he relied on the policy in this behalf. The relevant portion read as under :-

"IN April, 1985, the Ministry of Petroleum further revised its policy which is in operation at present. As per this policy 7.5 per cent of oil product agencies, i.e. Lpg agencies. Petrol pumps and Kerosene Oil agencies, are reserved exclusively for :- (i) defense personnel who get permanently and severely disabled either in war or on military duty during peace time; (ii) Widows and motherless dependents (of defense Personnel) whose husbands/guardians are killed while on duty either in war or in peace; and (iii) Extremely deserving cases of ex-serviceman who have no means of livelihood. Priorities The agencies are considered for allotment on the following priority: Lpg Agencies (a) Widows of Service Officers. (b) Disabled Service Officers. (c) Other extremely deserving ex-officers. Petrol Pumps: (a) Disabled Service Officers. (b) Widows of Service Officers. (c) Other extremely deserving ex-service-men. Kerosene Oil Agencies: (a) Widows of JCOs/ex-servicemen. (b) Disabled JCOs and other disabled ex-servicemen. (c) Other extremely deserving JCOs/ex-servicemen.

(9) On perusal of the policy it is clear that 7.5 percent of the Lpg agencies, petrol pumps and Kerosene oil agencies were reserved exclusively for three categories of defense personnel. Category Iii was for extremely deserving cases of ex-servicemen who have no means of livelihood. From this part of the policy it is clear that an ex-servicemen who fall in category (iii) was eligible for allotment of Lpg agency. This was otherwise clear from the advertisement dated 9/10/1985 issued by the Indian Oil Corporation in this behalf.

(10) Learned counsel for the petitioner relied on the categories appearing under the heading "Priorities" Under this heading priority for Lpg agencies was (a) Widows of Service Officers, (b) Disabled service officers ; and (c) other extremely deserving ex-officers. As regards petrol pumps and kerosene oil agencies under the heading "Priorities" instead of ex-service officers, ex-servicemen were mentioned. It was, Therefore, argued that Lpg agency under category (iii) could be granted only to ex-service officers and not to ex-servicemen.

(11) On a careful consideration we do not accept this contention. Priority is entirely different from eligibility. Priority means the state of being earlier in time or preceding something else. It cannot be equated with eligibility. A man may be eligible though he may not be entitled to any priority. It may be added here that even the Union of India and the Director of Resettlement in their affidavit have stated that an ex-servicemen was entitled to the grant of Lpg agency under category No. (iii).

(12) It was then contended that an applicant under the category of "extremely deserving cases of ex-servicemen who have no means of livelihood" was required to obtain certificate from the District Collector stating that the ex-serviceman is unemployed, has no means of livelihood either from the landed property or

agricultural land and a certificate to this effect was to be obtained from Secretary, Zila Sainik Board/Rajya Sainik Board also. Necessary eligibility certificate was then to be issued by the Director (SE) after ascertaining the eligibility of the individual.

(13) The existence of this condition was admitted by Union of India and the Director of Resettlement in their affidavit. This condition is provided in the "Procedure for allotment of Oil Product Agency to defense Personnel". The Indian Oil Corporation in its affidavit also admitted that eligibility certificate from the Director of Resettlement was required to be produced. As a matter of fact the Area Manager, Indian Oil Corporation, Patna by his letter dated 14-10-87 (Annexure B-I to the petition) asked Janardan Choubey to produce a certificate from the Director General of Resettlement Govt. of India stating that he has no means of earning his livelihood. Respondent No. 9 has admitted that he obtained the certificate from the Director General of Resettlement and sent the same to Indian Oil Corporation. It has, Therefore, been proved that a candidate who applied under the category of "extremely deserving cases of ex-servicemen who have no means of livelihood" was required to furnish an eligibility certificate from the Director General Resettlement.

(14) As is clear from the counter affidavit of respondent No. 1 and 3 and the procedure for allotment of oil product agencies to defense personnel, Director General Resettlement was to issue the necessary eligibility certificate on the basis of certificates obtained by the applicant from the District Collector, Secretary, Zila Sainik Board/Rajya Sainik Board stating that the ex-servicemen is unemployed and has no means of livelihood either from landed property or agricultural land.

(15) In the present case Janardan Choubey, respondent No. 9, obtained a certificate dated 14/10/1987 from the Zila Sainik Board, Bhojpur (Annexure B-13 to the counter affidavit filed on behalf of respondents No. 1 and 3) stating that Janardan Choubey the ex-serviceman, was unemployed and had no means to earn his livelihood. A certificate to this effect was issued by the office of the office of the Sub Divisional Officer, Bikramganj on 23/10/1987 (Annexures C). Janardan Choubey thereafter made an application dated 10/11/1987 (Annexure E) to the Director General Resettlement, Ministry of defense, New Delhi for grant of an eligibility certificate which reads ;

"DEAR Sir, With due respect and humble submission I want to put the following few lines for your kind consideration and favorable action please. I am an ex-serviceman of Indian Army, Eme corp. I am unemployed and presently have no means to earn my livelihood. I require to submit a certificate of the above subject from you to the Indian Oil Corporation Ltd. Patna for Lpg distributorship at Buxar Distt. Bhojpur (Bihar). In this connection I have obtained certificates from the Collector Rohtas (Bihar) and Zila Sainik Board, Arrah, which is enclosed with this application. A copy of the letter issued by the Indane Area Office, Patna is enclosed with this application. Kindly arrange to issue a certificate of the above

subject as soon as possible. I will be obliged to you for this act of kindness. Thanking you. Yours faithfully, sd/- Dt. 10/11/87 Janardan Choubey"

(16) Thereafter an eligibility certificate was issued by the Director General, Resettlement on 11/11/1917 (Annexure D).

(17) The contention of learned counsel for the petitioner is that Janardan Choubey obtained the certificates from Zila Sainik Board Sub Divisional Officer, Bikramganj and Director General Resettlement by Misrepresentation and playing fraud in as much as he was not unemployed and was employed in the Eastern Railway (Medical Deptt.) Mughalsarai as a clerk. His eligibility certificate was Therefore no certificate in the eye of law and could not be acted upon. Consequently, Janardan Choubey respondent No. 9 was not entitled to the allotment of Lpg Agency at Buxar out of quota reserved for defense Personnel.

(18) On a careful consideration we find merit in this contention. Respondent No. 9 in his affidavit admitted that ho had obtained a job as a temporary clerk in this Eastern Railway (Medical Deptt.) at Mughalsarai and be resigned from the job which resignation was accepted with effect from 1/12/1987. It is thus clear that in October and November, 1987 when he made the application for grant of eligibility certificate and obtained unemployment certificate from the Zila Sainik Board, Sub Divisional Officer and the Director General Resettlement, he was not unemployed. These certificates were obtained by mis-representation and consequently bad no value.

(19) On behalf of the respondent No. 9 it was argued by learned counsel appearing for him that respondent No. 9, infact, had submitted his resignation from the said post before making an application for the grant of certificate of unemployment. The said resignation was not considered till 15/11/1987 when he was asked to submit his resignation again which he submitted on 16/11/1987 and it was ultimately accepted w.e.f. 1/12/1987. To prove that he bad submitted his resignation before making the application for grant of eligibility certificate, respondent No. 9 has produced a postal certificate (Annexure D to his counter affidavit). We find it very difficult to rely on this document in the absence of any other evidence from the Medical Supdt. Eastern Railway Hospital, Mughalsarai where respondent No. 9 was posted. Such postal certificates can be easily procured. We, consequently, hold that one of the necessary condition for the grant of Lpg agency to an applicant who fell in the category of "extremely deserving cases of ex-servicemen who have no means of livelihood", was to produce an eligibility certificate from the Director General Resettlement who was to grant the certificate on the basis of certificates from the District Collector and Secretary, Zila Sainik Board/Rajya Sainik Board stating that the applicant, ex-serviceman, was unemployed, and has no means of livelihood either from the landed property or agricultural land. This condition was not fulfilled in the case of Janardan Choubey and Therefore he was not entitled to the allotment of Lpg Agency at Buxar. The letter of intent dated 15/1/1988 allotting Lpg Agency to Janardan Choubey, respondent No. 9 at Buxar out of reserve defense category

quota is consequently liable to be quashed.

(20) The petitioner also sought a writ of mandamus directing respondents No. 1 to 6 to allot the said Lpg agency at Buxar to the petitioner as he was the only eligible applicant under the policy. We are afraid that this relief cannot be granted especially when all the applicants are not party to this petition.

(21) We consequently allow the petition partly and quash the letter of intent to allot the Lpg agency to Respondent No. 9 at Buxar (Bihar) out of the reserved defense category quota, dated 15/1/1988. The question of allotment of this Lpg Agency would be decided afresh by the Indian Oil Corporation in accordance with the policy in this behalf. Rest of the petition stands dismissed. In the special circumstances of the case the parties are left to bear their own costs.