

(1985) 12 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2134 of 1985

Mayank Kumar Jain

APPELLANT

Vs

Divisional Manager, Indian Oil Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 19-12-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1986 All 289

Hon'ble Judges : K.P. Singh, J;A. Banerji, J

Bench : Division Bench

Advocate : V.D. Ojha, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A. Banerji, J.—This writ petition has been filed by Sri Mayank Kumar Jain (hereinafter referred to as the petitioner) praying that the selection of Sri Sandeep Kumar as the Distributor of L. P. G. (Cooking gas) in Khatauni, district Muzaffarnagar by the Indian Oil Corporation Limited was bad in law and liable to be set aside in exercise of the powers of this Court under Article 226 of the Constitution.

2. Learned counsel for the petitioner contended that the advertisement issued by the Indian Oil Corporation Ltd. indicated giving of preference to any applicant who was a resident of town area of Khatauli where the distributorship was to be located. It was stated that the petitioner was a resident of town area of Khatauli and as such he was entitled to be given preference. It was further stated that Sri Sandeep Kumar, respondent No. 3 was not a resident of Khatauli. It was thus contended that on the basis of the above the petitioner was entitled to be appointed and not Sri Sandeep Kumar.

3. We have also heard Mr. Rajeshwari Prasad, learned counsel for respondents Nos. 1 and 2 and Sri Swami Dayal, learned counsel for respondent No. 3.

4. We have by judgment dated 14-10-1985 decided a similar petition filed by M/

s. Vishnupuri Upbhokta Sahkari Samiti Ltd. P. O. Khatauli, district Muzaffarnagar through its Secretary v. Divisional Manager, Indian Oil Corporation Ltd. and others in respect of the same L. P. G. cooking gas outlet in Khatauli. The appointment of respondent No. 3 was challenged in that petition too. One of the points taken in that petition was that the respondent No. 3 could not be appointed since he was not a resident of Khatauli. We had rejected the plea with the following words :--

"Clause Gha contains one of the essential requisites that a candidate must possess. (sic) It requires him to be a resident of district Mazaffarnagar. Respondent No. 3 is admittedly a resident of Muzaffarnagar. The question of preference would arise only where there was a tie between respondent No. 3 and the petitioner. One cannot claim preference being given to him when he is otherwise not selected."

5. It has come in the affidavit of Smt. Janki Amma, Chairman of the Oil Selection Board (North) that a preliminary selection of four candidates according to merits was made and the list shows the name of respondent No. 3 Sri Sandeep Kumar Singhal at the first place and the petitioner (Sri Mayank Kumar Jam) and Smt. Manjula Jam in the second place. Since the petitioner was not placed as tied up for the first place with Sri Sandeep Kumar Smghal, we do not see how any preference could be given to the petitioner for being appointed as Distributor for the outlet. The question of giving preference would only arise when the applicants are found equally suitable. However, if the intention was that the distributorship should be given to a person who was a resident of Khatauli, then eligibility clause would have said so. As the advertisement stands the respondent No. 3 was not excluded from the selection by virtue of the fact that he was not a resident of Khatauli. The advertisement was clear that the applicant "should be a resident of at least last three years m Muzaffarnagar Revenue District" The respondent No. 3 was thus eligible on the question of residence. Once he was found to have an essential requisite he was considered for selection and on the merits he was placed by the Selection Committee at the top of the list and, therefore, excluded others for the allotment of Distributorship. The petitioner cannot claim a Distributorship merely on the ground of being a resident of the town of Khatauli. Admittedly, he was also eligible, for Khatauli is in Muzaffarnagar Revenue District. As we have stated earlier if there was a tie for the first place between the respondent No. 3 and the petitioner, then in that event surely the preference would be given to him, but that is not the position in the present case. We are, therefore, not impressed by the above contention of the learned counsel.

6. We must also notice one more fact in the writ petition which has been reported in the counter affidavit of P. Janki Amma, Chairman of the Oil Selection Board. It is stated therein that although the petitioner applied along with Smt. Manjula Jain for the distributorship of L. P. G. outlet at Khatauli on the basis of existing partnership, but no mention had been made anywhere in the application

that there has been a partnership in existence between the petitioner and Smt. Manjula Jain. The application requires even the partners to apply individually and to appear at the interview together. Counter affidavit further states that the petition was without the concurrence of Smt. Manjula Jain and is, therefore, not maintainable. We have to mention this for the reasons that the application of the petitioner as partnership concern was otherwise not complete.

7. For the reasons indicated above this writ petition fails and is dismissed.