
(2015) 04 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 411 of 2014

Nandita Das

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 GLT 644

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : S.S. Dey, Senior Advocate and M. Nath, for the Appellant; P.J. Saikia and A.K. Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J.—Heard Mr. S.S. Dey, learned senior counsel assisted by Mr. M. Nath, learned counsel for the petitioners. Also heard Mr. P.J. Saikia, learned counsel appearing for the respondents. The pleaded case of the petitioner is that she is an educated lady entrepreneur and a permanent resident of village-Galdighala in the district of Nalbari and she belongs to scheduled caste community. After her marriage, she started living permanently in the marital home at the address given in the cause-title, which is No. 3 Bortola, located about 6.5. K.M. away from her permanent place of residence. It is pleaded that she also has landed property covered by Periodic Patta No. 62 in Dag No. 259 and a family residence at village-No. 3 Bartolla, where part of her extended family stay and the petitioner also occasionally goes and stays in the said residential accommodation.

2. An advertisement was issued by the respondent Bharat Petroleum Corporation Ltd., on 16.9.2010 (wrongly written as 16.9.2011 in the writ petition) inviting applications for appointment of distributor of Rajiv Gandhi Gramin LPG Distributor System, in as many as 35 locations of Assam including village-No.3 Bortolla which is listed at serial No. 22 therein. Distributorship for village- No. 3

Bortolla was reserved for scheduled caste persons only.

3. It is the case of the petitioner that having fulfilled the requisite eligibility criteria as laid down in the advertisement as also in the Brochure of selection of Rajiv Gandhi Gramin LPG Vitrak (RGGLV), she submitted her application accompanied by all necessary certificates and testimonials. Final selection of distributorship is required to be done by way of lottery from amongst the applicants whose applications were found to be in order in terms of the eligibility criteria and accordingly, lottery for location No. 22 i.e. village-No.3 Bortolla was required to be held. A letter dated 14.10.2011 was issued to the petitioner by respondent No. 3 informing her that she had qualified for selection of distributor for RGGLV by draw of lotteries to be held on 8.11.2011 and accordingly, she was requested to be present along with her photo identity card, etc. On 8.11.2011, date of draw was deferred to 17.11.2011. On 17.11.2011, draw was held at 10.30 A.M. and she was declared to be the lucky winner. She was informed verbally that final letter appointing her as distributor will be issued to her later on. In the meantime, the authority had verified the location site of the petitioner for distributorship and as there was no question about the authenticity and genuineness of the various certificates submitted by the petitioner along with her application supporting her eligibility, she was expecting to receive formal letter appointing her as distributor. However, she was served with a letter dated 20.12.2013 issued by respondent No. 3 informing her that during field verification of the accuracy of the data given by the petitioner, it was found that she was not a resident of the advertised location which was also confirmed by the Additional Deputy Commissioner, Nalbari vide verification report dated 25.3.2013 and considering the same, her candidature for RGGLV for village-No. 3 Bortolla was rejected.

4. The petitioner, immediately, upon receipt of the said letter dated 20.12.2013 submitted an application on 24.12.2013 before the SPIO, Office of the Deputy Commissioner, Nalbari for furnishing her a copy of the verification report dated 25.3.2013 which, however, was not furnished.

5. On 26.1.2014, an advertisement was issued in Asomiya Protidin, a daily newspaper, notifying that fresh allotment process for some locations including village-No. 3 Bortolla would be convened on 30.1.2014.

6. Challenging the letter dated 20.12.2013, (Annexure-6), verification report dated 25.3.2013 issued by the respondent No. 3 as well as the advertisement for fresh allotment process published in Asomiya Protidin (Annexure-7) so far as it relates to No. 3 Bortolla, this writ petition is filed along with a prayer for a direction to the respondents to allot the distributorship of RGGLV at village-No. 3 Bortolla in favour of the petitioner.

7. While issuing notice, by an order dated 29.1.2014, it was provided by way of an interim measure that allotment of distributorship of RGGLV location village-No. 3 Bortolla, Nalbari district in category "SC" shall not be finalized.

8. The respondents have filed an affidavit. In the said affidavit, amongst others, it is stated that based on the information supplied by the petitioner, her candidature was accepted as one of the eligible candidates. While stating that the applicant is not required to submit any document other than those which have been mentioned in the application, all the supported documents are checked and verified only after the candidate is selected in the lottery during field verification. There were various public complaints with regard to residential status of the writ petitioner alleging that she is not a permanent resident of the village in question and therefore, the respondent No. 2 requested the Deputy Commissioner, Nalbari to verify the residential certificate produced by the writ petitioner, and after several reminders the Additional Deputy Commissioner, vide his letter dated 25.3.2013, informed that the petitioner is not a permanent resident of No. 3 Bortolla and thereafter, based on the said verification report, letter dated 20.12.2013 was issued by the respondent No. 3.

9. An affidavit in reply was filed by the writ petitioner. In the said affidavit, it is stated that the petitioner was in possession of the land purchased by her since 2009 by way of an agreement for sale/settlement deed dated 23.10.2009 (Annexure-8). It is further averred that the complaints were generated by unsuccessful candidates to deprive the petitioner from getting the distributorship.

10. Mr. S.S. Dey, learned senior counsel for the petitioner has submitted that in the report of the Additional Deputy Commissioner dated 25.3.2013, based on which, letter dated 20.12.2013 rejecting the candidature of the petitioner was issued, it was held that while the petitioner is not a permanent resident of village-No. 3 Bortolla, she may be considered as resident of village-No. 3 Bortolla. It is submitted by him that the respondents had confused residence with permanent residence and the same had resulted in rejecting the candidature of the petitioner. In this connection he has referred to a judgment of the Apex Court in the case of Election Commission of India and Another Vs. Dr. Manmohan Singh and Others, AIR 2000 SC 231 : (1999) 9 JT 367 : (1999) 7 SCALE 287 : (2000) 1 SCC 591 : (1999) 5 SCR 70 Supp : (1999) AIRSCW 4331 : (1999) 9 Supreme 527 . He has submitted that the complaints were generated by the other candidates. It is also submitted that the petitioner had executed an agreement on 23.10.2009 in respect of a plot of land in Dag No. 259 of Patta No. 62, measuring 3 kathas which the petitioner had subsequently purchased vide Sale Deed No. 2006/10, registered on 1.10.2010. Accordingly, he submits that the petitioner fulfils the eligibility criteria and rejection of the candidature by the respondents is not sustainable in law.

11. Mr. P.J. Saikia, learned counsel appearing for the respondents, on the other hand, contends that in her application the petitioner had mentioned her address as village and P.O.- No. 3 Bortolla and accordingly, her application was processed. She had purchased the plot of land covered by Patta No. 62 of Dag No. 259 in Bortolla Revenue Circle after about 15 days from the date of publication of the advertisement and thus, she was not a resident of the advertised location. There

were large numbers of complaints relating to the residential status of the writ petitioner because of which the Deputy Commissioner, Nalbari was requested by a letter dated 24.9.2012 to verify the Residential Certificate produced by the writ petitioner. Field verification was also conducted and during such field verification it was found that the information supplied by the petitioner was not correct and therefore, also taking note of the report of the Additional Deputy Commissioner dated 25.3.2013, application of the writ petitioner was rejected. It is submitted that there is not merit in the writ petition.

12. I have considered the submissions of the learned counsel for the parties and have perused the materials on record as well as the records produced by Mr. Choudhury.

13. RGGLV is a scheme for distribution of LPG in rural areas with the objective of providing income generating opportunity to youth and empower women at the village level, where there is potential of sales of more than 600 LPG cylinders per month but less than 2500 cylinders and in areas which are commercially not viable to set up a regular distributorship. There is a manual of Oil Industry for selection of RGGLV containing the concept of RGGLV, procedure for identifying location, advertisement and selection process for commissioning of RGGLV. An important feature of the scheme is that proprietor of RGGLV himself operates it, and if need be, he may employ one person for assistance. He will not be eligible for any other employment. Selection is to be done by draw from all the eligible qualified candidates. The RGGLV selection will be in two stages for the locations advertised with the first stage being scrutiny of documents attached along with the application by a Committee known as Level 1 Committee and the second stage being by draw of lots out of all eligible applicants securing minimum qualifying marks which is 60 % for locations reserved for SC/ST category and minimum 80% marks for all other category locations. Field verification will be carried out for the selected candidate and if the information given by the application by the applicant is found to be correct, letter of intent will be issued to the selected candidate. Clause 6 of the Manual prescribes the eligibility criteria Clause 6.1.(ii) provides that the applicant applying for RGGLV should be a resident of the town/village(s) of the advertised RGGLV location. Clause 6.1(vii) provides that the applicant should own a suitable land (plot) of minimum of 20 metre x 24 metre in dimension at the advertised RGGLV location for construction of LPG cylinder storage godown. It is the common case of the parties that in the advertisement dated 16.9.2010, Clauses referred to 6.1(ii) and 6.1(vii), amongst other criteria, were included. Clause 19 of the Manual lays down the Grievance/ Complaints Redressal System laying down the procedure how any complaint received against any selection of RGGLV are to be disposed of.

14. During field verification, credentials of the applicants were verified according to the format at Appendix-O. In connection with Residence Certificate issued by the Circle Officer, Barkhetri Revenue Circle, many complaints were received which necessitated making of a request to the Deputy Commissioner, Nalbari, to

verify the Residence Certificate.

15. It will be appropriate at this stage to reproduce the relevant extract of the letter dated 25.3.2013 and the letter dated 20.12.2013 for better appreciation:

"Letter dated 25.3.2013

"Sir,

With reference to subject cited above, I have the honour to furnish the following points:

1. Advertisement for LPG distributorship under Rajiv Gandhi Gramin LPG Vitrak (RGGLV) was published in Newspaper on 16.09.2010.

2. Smti. Nandita Das, W/o. Sri Bhabesh Das purchased a plot of land on 01-10-2010 in the village: No. 3 Bartala under Barkhetri Revenue Circle in the district of Nalbari.

3. Thereafter, she constructed an Assam type house comprising of 2(two) rooms alongwith attached bathroom.

She has electric connection in the newly constructed house with Digital Meter Box.

4. Her name does not appear in the Electoral Roll of No. 3 Bartala village as per record available. Her name appears in the Electoral Roll of village Galdighala.

5. In your advertisement there was a condition that the candidate applying for LPG distributorship under Rajiv Gandhi Gramin LPG Vitrak should be a resident of the town/village(s) of the advertised RGGLV location. Smti. Nandita Das purchased a plot of land and constructed an Assam type house at No. 3 Bartala village with a view to fulfill the condition. But she did all these after publishing of the advertisement. It appears that her aim is to stay at the advertised location and to function the work of distributorship smoothly.

In the light of the above, it may be concluded that Smti. Nandita Das, W/o. Sri Bhabesh Das is not a Permanent Resident of No. 3 Bartala village, but since she has immovable landed property in her name at No. 3 Bartala village, she may be considered as Resident of Village No. 3 Bartala."

Letter dated 20.12.2013

"Please refer to your application No. RNJBAROI

We regret to inform you that during field verification of the accuracy of the data given by the candidate in the application form, it is observed that

- You are not a resident of advertised location - No. 3 Bartolla.

The same was also confirmed by ADC, Nalbari vide verification report No. NA.23/2013/6 dt. 25.03.13.

In view of the same, your candidature for RGGLV location: No. 3 Bortolla, Nalbari district, Assam is rejected."

16. In the report of the Additional Deputy Commissioner, two things stand out - (i) the petitioner's name does not appear in the electoral roll of No. 3 Bortolla village and her name appears in the electoral roll of village-Galdighala; (ii) a plot of land was purchased by her after publishing of the advertisement and an Assam Typed house comprising of two rooms along with bathrooms were constructed. By the said report, because she had purchased the said property at No. 3 Bortolla, it was opined that the writ petitioner may be considered as a resident of No. 3 Bortolla. It is only his opinion on the basis of facts which is not conclusive. What is important is the unraveling of facts during enquiry.

17. In the writ petition in Paragraph 3, it is stated as follows:

"After her marriage she has started living permanently in her marital home at the address furnished in the Cause Title. However, she also has landed property and a permanent residence at village-No. 3 Bortolla, which is situated about 6.5. K.M. away from her permanent place of residence, i.e., village-Galdighala."

18. In the Cause-Title, petitioner has given her address as follows:

"Resident of Village and P.O. No. 3 Bortolla."

19. In the affidavit-in-reply, in Paragraph 4, it is stated by the writ petitioner that after her marriage, she has been, for all purposes, living in her marital home at village-Galdighala and since 2009, is also owing and possessing a plot of land at No. 3 Bortolla wherein she has got a house as well as cash crop cultivation where her family members are residing since early 2010. She also resides very often in the house at village-No. 3 Bortolla and therefore, for all intents and purposes the petitioner is a resident of No. 3 Bortolla village, at least from 23.10.2009.

20. The petitioner has not brought on record any material to show that her family had any residence at village-No. 3 Bortolla. The fact that the petitioner claims herself to be a resident of No. 3 Bortolla village since 23.10.2009 i.e. by virtue of a document purported to be an agreement for sale of land dated 23.10.2009, necessarily pre-supposes that prior to the purchase of the said land, the petitioner was not a resident of village-No.3 Bortolla. Where is her marital home? -at No. 3 Bortolla or village-Galdighala? It is claimed by her that her permanent place of residence is at village-Galdighala. By purchasing a plot of land at village-No. 3 Bortolla, she may have fulfilled the criteria of having a plot of land in terms of Clause 6.1 (vii), but the question is whether the petitioner is a resident of the town/village of the advertised RGGLV location, i.e. village-No. 3 Bortolla. There is, apparently, no basis for the Residence Certificate issued by the Circle Officer, Barkhetri Revenue Circle. In the sale deed dated 1.10.2010, which was placed before the Court at the time of hearing by the learned counsel for the petitioner, and which is also available in the record produced by Mr. Saikia, there is no reference to the earlier agreement for sale dated 23.10.2009. Consideration

of Rs. 30,000/- was paid on that date and possession was also delivered on that date, i.e. on 1.10.2010. In the said agreement for sale, possession was stated to have been delivered on receipt of consideration amount of Rs. 50,000/- per bigha for 3 kathas of land. There is incongruity and lack of consistency. The agreement for sale also does not inspire confidence as the Non-Judicial Stamp Paper used for the aforesaid purpose was apparently issued way back on 21.9.89.

21. In the context of Representation of People Act, 1951, in the case of Election Commission of India (supra), the Election Commission, while challenging the order of this Court, however, accepted the meaning of the words "ordinarily resident", as assigned by this Court which was to the following effect:

"87. Accordingly, this writ petition is disposed of holding as follows:

(i) That the "ordinarily resident" in a constituency as mentioned in the Representation of the People Act, 1950 shall mean a habitual resident of that place or a resident as a matter of fact in regular, normal or usual course. It means an usual and normal resident of that place. The residence must be permanent in character and not temporary or causal. It must be as above for a considerable time, he must have the intention to dwell permanently. He must have a settled abode at that place for a considerable length of time for which a reasonable man will accept him as the resident of that State."

22. There is no acceptable material on record to, prima facie, indicate that the petitioner was a resident of village-No. 3 Bortolla. In order to successfully invoke the extra-ordinary jurisdiction under Article 226 of the Constitution of India, the writ petitioner must be able to provide materials to, prima facie, satisfy the Court on facts on which the writ petitioner rests his case. In the considered opinion of the Court, the writ petitioner has failed to discharge that burden and that apart, contradictory stand has been taken with regard to her residence. Merely because before submission of the application the petitioner had purchased a plot of land, having regard to the object of RGGLV, it will be impermissible to hold that by virtue of such purchase after publishing of the advertisement, one becomes a resident in that place, as opined by the Additional Deputy Commissioner, Nalbari. The respondent authorities considered the facts as revealed from the report of the Additional Deputy Commissioner and accordingly, rejected the candidature of the petitioner holding that she is not a resident of the advertised location. The opinion expressed by the Additional Deputy Commissioner, Nalbari, on the basis of the facts was not accepted, and rightly so, by the respondents. In view of the above discussions, I find no merit in this writ petition and accordingly the same is dismissed.