
(2007) 08 PAT CK 0167
In the Patna High Court
Case No : CWJC No. 3866 of 2006

Nutan Devi

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Citation : (2008) 1 PLJR 219

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard the counsel appearing for the parties. Petitioner has filed this application for quashing the selection of respondent No. 4 as an operator of Kisan Sewa Kendra in village-Shankerpur, District-Madhepura.

2. It has been alleged by the petitioner that respondent No. 4 has committed fraud and claiming herself to be a resident of village-Shankerpur, managed to get issued a residential certificate in her favour, Respondent Nos. 2 and 3 being misled by this residential certificate has selected the respondent No. 4 for operating Kisan Sewa Kendra. Respondent No. 4 is married to one Dr. Ajay Kumar Singh, resident of Village-Sonepura in the District of Saharsa. Her name stands in Voter list of Village-Sonepura in the District of Saharsa. For all practical purposes she is a resident of Sonepura in spite of that she got issued residential certificate in her favour as she stated that she resides with her father at Madhepura.

3. The petitioner made a complaint to the Sub-Divisional Officer, Madhepura regarding the issuance of residential certificate in favour of respondent No. 4. Considering the said complaint the Sub-Divisional Officer, Madhepura by order dated 12.7.2006 cancelled the residential certificate issued in favour the respondent No. 4. The respondent No. 4 thereafter filed an application before the District Magistrate, Madhepura against the order of cancellation. The District

Magistrate, Madhepura directed the Sub-Divisional Officer, Madhepura for recalling the order dated 12.7.2006, i.e., cancellation order. The Sub-Divisional Officer, Madhepura on such direction, by order dated 14.10.2006 recalled the order dated 12.7.2006 and "restored the residential certificate of respondent No. 4. The Indian Oil Corporation and its Senior Manager considering the cancellation of the residential certificate, passed an order whereby the dealership licence of respondent No. 4 was cancelled and they also stopped supplying petroleum products at Kisan Seva Kendra being operated by respondent No. 4.

4. The respondent No. 4 appeared and has filed interlocutory application for vacating the order dated 27.4.2007 of stay granted in favour of the petitioner by this Court. The stay order was vacated by order dated 1.6.2007. The respondent Nos. 2 and 3 were also directed to restore supply of petroleum product to the retail outlet of respondent No. 4.

5. Counsel appearing for the petitioner submits that the order dated 14.10.2006 passed by the Sub-Divisional Officer, Madhepura, recalling his earlier order dated 12.7.2006 is without jurisdiction and it is not an order passed in accordance with law.

6. The residential certificate of respondent No. 4 has been restored without holding any enquiry and without assigning any reason. The Sub-Divisional Officer, Madhepura in his earlier order dated 12.7.2006 had assigned reason for cancellation of the residential certificate but the recalling order is completely silent. It is merely an order passed on the direction of the District Magistrate as such not a valid order. The submission made by the counsel for the petitioner cannot make the order passed by the Sub-Divisional Officer without jurisdiction simply because the reason has not been assigned. The District Magistrate, Madhepura, after holding an enquiry issued direction to the S.D.O. for recalling the cancellation order. The order dated 14.10.2006 is based on the direction of the District Magistrate. For no reason it can be said to be illegal or an order without jurisdiction. Fact is that the cancellation order was issued by the S.D.O., Madhepura, simply on the complaint made by the petitioner, even though the residential certificate was issued in favour of the respondent No. 4 after holding enquiry and considering all relevant documents in respect of the claim of respondent No. 4.

7. One of the grounds taken by the petitioner for cancellation of residential certificate is that respondent No. 4 is married to Dr. Ajay Kumar Singh and he is resident of Village-Sonepura, in the District of Saharsa, as such respondent No. 4 cannot be resident of Madhepura. In reply to this counsel for respondent No. 4 has stated that respondent No. 4 even after her marriage continued to reside with her father alongwith her children. The reason being that the service of her husband is transferable and the education of her children would have been affected on account of frequent transfers of her husband. In support of her claim that she resides at Madhepura, the respondent No. 4 had produced L.I.C. Policy, Ration Card, Identity Card provided by the Election Commission of India, Kisan

Vikas Patra, the ownership of the document of Car and also the sale deed in her name with regard to the landed property at Madhepura. It has also been submitted by the respondent No. 4 that much before the publication of advertisement for Kisan Sewa Kendra she had applied for cancellation of her name from Voter list of Village-Sonepura and duly an order was passed in this respect. Now she is no more a voter of Village-Sonepura rather she is voter of Shankerpur in the District of Madhepura. Submission of the counsel appearing for respondent No. 4 is that for all practical purposes respondent No. 4 is resident of Madhepura. There was no reason for cancellation of her residential certificate earlier issued in her favour.

8. Counsel appearing for the petitioner has placed reliance on two decisions in order to corroborate his stand that the word "residence" means actual place of residence and not a legal and constructive residence. The reliance has been placed on Anil Kumar Singh Vs. Union of India (UOI) and Others

9. I find that in the decision reported in Anil Kumar Singh Vs. Union of India (UOI) and Others while discussing the word "residence" reliance has been placed on a decision of the Supreme Court reported in Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey, wherein it has been held:--that

"the word "residence" must mean the actual place of residence and not a legal and constructive residence. It certainly does not connote the place of origin. The word "residence" is flexible one and has many shades of meaning but it must take its colour and content from the context in which it appears and cannot be read in isolation."

10. This finding indicates that the word "residence" can have different meaning in different context. In the present context it is relevant that residential certificate was for the purpose that the person who is selected for operating Kisan Sewa Kendra must reside permanently at that place. This fact is apparent from the submissions as well as the documents of the respondent No. 4 that she resides at Madhepura and there should not be any reservation in selecting her as an operator of Kisan Sewa Kendra.

11. Counsel appearing for Indian Oil Corporation has submitted that for selecting dealers of Kisan Seva Kendra, terms and conditions were mentioned in the advertisement one of the conditions was that the applicant must furnish residential certificate issued by the competent authority. In the present case respondent No. 4 was selected as she fulfilled all terms and conditions and also produced residential certificate issued by the competent authority. Subsequently when on complaint of the petitioner the residential certificate was cancelled, the Indian Oil Corporation also cancelled the dealership licence and stopped supplying petroleum products. On the direction of the District Magistrate residential certificate has already been restored in favour of respondent No. 4. A direction of this Court was also there for restoration of supply of petroleum products to the retail outlet of respondent No. 4. The Indian Oil Corporation and

its officials have no reason now for refusing restoration of the dealership of respondent No. 4 and in continuing supply of petroleum products to Kisan Seva Kendra being run by Respondent No. 4.

12. Considering the submissions of the parties as well as discussions made above, I find that the District Magistrate, Madhepura, rightly directed the Sub-Divisional Officer, Madhepura, for recalling the cancellation order, the S.D.O., Madhepura, had issued a residential certificate after proper enquiry and he should not have cancelled it simply on complaint of the petitioner. Respondent No. 4 is permanently residing at Madhepura which is corroborated by the documents produced before the Selection Committee as well as before the S.D.O., Madhepura, for issuance of residential certificate. Since the controversy has settled down during the pendency of the writ application itself as such no further direction is needed to any of the respondents. This application is dismissed.