
(1996) 05 P&H CK 0194
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. NO. 6317 of 1995

Rattan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 117 PLR 787 : (1996) 3 RCR(Civil) 100

Hon'ble Judges : K.K. Srivastava, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : S.C. Kapoor and Arun Jain, for the Appellant; P.S. Patwalia, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner complains that the action of the respondents in allotting "the Distributorship of Indane Gas" to Respondent No. 4 is illegal and arbitrary. He prays that the allotment be quashed and that the agency be allotted to him. A few facts may be noticed.

2. On July 10, 1981, the Indian Oil Corporation invited applications for allotment of distributorship of Indane Gas at Batala. The petitioner was one of the applicants. He was interviewed. He was placed at No. 2 in the merit list. The distributorship was allotted to Mrs. Priya Sekhri who had been placed at No. 1 in the merit list. Aggrieved by this action, the petitioner filed Civil Writ Petition No. 3363 of 1982 in the High Court of Delhi. Vide Order dated December 21, 1982, their Lordships were pleased to dismiss the writ petition. The petitioner then filed SLP (Civil) No. 7639 of 1983 in Hon'ble the Supreme Court of India. Their Lordships were pleased to dismiss this petition vide order dated September 30, 1983 with the following observations;

" The SLP is dismissed. The Indian Oil Corporation Ltd. will consider the case of the petitioner sympathetically if he makes another application for dealership of

L.P.G."

3. On February 1, 1993, the Corporation again invited applications for the allotment of a distributorship of Indane Gas at Batala. The petitioner again submitted his application. He was interviewed on October 18, 1993 by the Selection Committee. He also submitted a representation to the Chairman pointing out that directions for sympathetic consideration of his claim had been given by their Lordships of the Supreme Court. He submitted two more representations thereafter. However, vide letter dated October 19, 1994, the petitioner was informed that the case regarding the allotment of Agency had been finalised by the Oil Selection Board, Chandigarh. The representation submitted by him was forwarded to the Board. Ultimately, the distributorship was allotted to Respondent No. 4. The petitioner alleges that the fourth respondent was not eligible as he had not been residing in Batala for five years preceding the submission of application and that the action of the respondents is wholly illegal, arbitrary and unfair. Consequently, he has filed this Writ Petition.

4. In response to the notice of motion issued by the Court, two separate written statements have been filed by Respondents No. 3 and 4. In the written statements filed on behalf of the Selection Board (Respondent No. 3), it has been inter alia stated that the petitioner's claim was "considered sympathetically" but he was not found suitable. The Board had "awarded marks according to the performance of the candidate at the time of interview by each of the participating members under different heads viz. personality, business ability, salesmanship, capacity to arrange finance and capability to provide facilities, Full time working dealer, General assessment and extra-curricular activities." The averment that respondent No. 4 was ineligible has been denied. Accordingly, it has been prayed that the writ petition be dismissed.

5. In the written statement filed by respondent No. 4, certain preliminary objections have been raised. It has been inter alia alleged that in the writ petition as originally filed, the petitioner had not impleaded him as a party. It was only in November 1995 that an application for amendment of the writ petition was filed in which he was impleaded as a respondent. It has been issued in his favour on February 18, 1994. Thereafter, on August 24, 1994, the Corporation had appointed him as a distributor at Batala. On September 22, 1994, the Agency was commissioned. On this basis, the petitioner alleges that the challenge to the allotment of distributorship has been made after a period of more than a year and that the writ petition deserves to be dismissed on the ground of delay and laches. It has also been pointed out that the petitioner had purposely given a wrong address and manipulated a report from the Process Serving Agency that he (the fourth respondent) had refused to accept notice. On the basis, the petitioner had procured a wrong order for stay of operation of the Agency from the Court. On merits, it has been pointed out that the respondent is a permanent resident of Batala. He did his Primary, Middle and Higher Secondary from the DAV Higher Secondary School, Batala. Thereafter, he passed the 10 + 2

examination while studying at B.U.C. College, Batala. The family of the respondent has its permanent residence at Batala. He goes on to state that he never had "any residence at Delhi" and whenever he visited Delhi, he used to put up alongwith his father in two-room accommodation. He had taken up a job with M/s NEC Engineers Private Limited which was for liaison with N/s Sarbjit Machine Tools at a monthly salary of Rs. 2000/- only. Most of the time, he was residing at Batala. He points out that the correct position had been explained by him at the time of interview. Various other averments made in the petition have been controverted.

6. The petitioner filed Civil Misc. application No. 9848 of 1996 with which he placed on record a certificate dated October 10, 1995 issued by the Election Officer, National Capital Territory of Delhi, Kashmere Gate, Delhi to show that respondent No. 4 had been residing at House No. 21, Block No. 8, Nehru Nagar, New Delhi. Notice of this application was given. We allow this application and take the certificate produced as Annexure P.13 on record. In response to this, Respondent No. 4 has filed Civil Misc. application No. 10419 of 1996 to place on record an additional affidavit. The averments in the Civil Miscellaneous application No.9848 of 1996 have been controverted. The respondent has produced an extract from the Voters-List of 1995 wherein his name is duly recorded as a voter.

7. We have heard learned counsel for the parties.

8. Mr. Arun Jain, learned counsel for the petitioner has submitted that in accordance with the directions given by their Lordships of the Supreme Court-in SLP (Civil) No. 7639 of 1983, the petitioner had a right to sympathetic consideration of his claim. According to the learned counsel, the direction implied that the petitioner shall be granted an Agency. He further submitted that Respondent No.4 was wholly ineligible for allotment of the Agency as he had been residing in Delhi since October 19, 1992 when he had joined service with M/s NEC Engineers Private Limited.

9. On the other hand, Mr. S.C. Kapoor, learned counsel for the Respondent-Corporation and the Selection Board submitted that the petitioner's claim having been duly considered, the petitioner can have no legitimate grievance which may be remediable through the present proceedings. He further submitted-that Respondent No. 4 was fully eligible and that the selection made by the Board calls for no interference. Mr. Kapoor also gave us the photo copies of the applications submitted by the petitioner as well as respondent No. 4. He also produced the comparative statement of the performance of the candidates interviewed by the Board and the recommendations made by it.

10. Mr. P.S. Patwalia, learned counsel for respondent No. 4 emphasised that there was no basis to challenge the eligibility or the selection of the said respondent and that the petition deserves to be dismissed on the ground of delay and laches. Mr. Patwalia also produced before us a photo copy of the letter dated

September 29, 1992 by which a job had been offered to respondent No. 4 by his employer.

The two questions that arise for consideration are:-

- (i) Was Respondent No. 4 ineligible for the grant of a distributorship?
- (ii) Is the action of the respondents arbitrary, unfair and contrary to the directions given by their Lordships of the Supreme Court in their order dated September 30, 1983?

Reg. (i)

A perusal of the pleadings of the parties clearly shows that Respondent No. 4 has a permanent residence at Batala. He has had most of his education at Batala. He was given a job by M/s NEC Engineers Private Limited on September 29, 1992 as "Trainee Export Executive" on a stipend of Rs. 2000/- per month. A photo copy of the letter of appointment as produced by the counsel for respondent No. 4 is taken on record as Mark "X". A perusal of this document shows that the fourth respondent was to look after "the supply of material from the vendor M/s Sarbjeet Machine Courts, G.T. Road, Batala." It was further provided that he will "remain in touch with the Head Office at New Delhi regularly while stationed in Batala."

12. It is true that in the advertisement, it had been stipulated that the applicant should be a resident of the concerned District for a period of not less than five years immediately preceding the date of the application the obvious purpose was to ensure that the candidate belonged to the area. However, it was not a necessary pre-condition that he should have resided in the town. The Fourth respondent had been admittedly residing in Batala for a long time. The joining for training which did not debar him from staying at Batala cannot lead to the inevitable conclusion that the respondent had left his permanent place of residence. Furthermore there is no clear evidence before us which may conclusively establish that the fourth respondent had become a permanent resident of Delhi. Even if it is assumed that he spent most of his time in Delhi from October 1992 to March 1993, it cannot be said that he had ceased to be a resident of Batala.

13. Mr. Arun Jain was at pains to point out that the fourth respondent had been registered as a voter in Delhi. The respondent denies it. Even if it is assumed that the fourth respondent had been registered as a voter in Delhi, we are of the view that this may have happened on account of his presence in Delhi on a particular day. It cannot, however, imply that the respondent had ceased to be a resident of Batala. Mr. Jain also pointed out that the respondent had a Motor Cycle which was registered in Delhi. The fact has been explained by the respondent. It has been pointed out that the Motor-cycle belongs to his brother-Jagdeep Singh who had resided in Delhi.

14. Taking the totality of circumstances into consideration, we find that on the

basis of the evidence before us, it cannot be conclusively held that the fourth respondent was not a resident of Batala for five years preceding the submission of the application. There is a dispute on facts which cannot be decided in these proceedings. Prima facie, we find no ground to interfere with the conclusion of the authorities that the fourth respondent was eligible for the allotment of Distributorship.

Reg (ii)

Mr. Arun Jain contended that the action of the respondents in rejecting the petitioner was arbitrary and unfair. According to the learned counsel, the direction given by their Lordships of the Supreme Court implied that the petitioner had a right to be selected.

16. It is undoubtedly correct that vide order dated September 30, 1983 their Lordships were pleased to direct the Corporation to consider the petitioner's claim sympathetically. The Corporation was bound to do so. However we venture think that the implication of the direction was only that in case, two candidates were equally meritorious, the petitioner may be preferred. Their Lordships, in our view, could not have intended that howsoever meritorious the other candidates may be, only the petitioner had to be selected. If this were to be so, their Lordships could have clearly indicated that. They did not. Still further, we find from the record that the petitioner's claim was duly considered. After consideration, it was found that not only respondent No. 4 but even various other candidates were more meritorious than the petitioner. The Board had interviewed as many as 129 candidates. It has finally selected the fourth respondent. It has not even been suggested that any of the members was biased against the petitioner or that they were favourably inclined towards respondent No. 4. In fact, we find that one of the members is a retired Judge of this Court. Another member was a retired Brigadier from the Army. We find nothing on record to show that the petitioner was arbitrarily rejected or that the selection was unfair.

17. We have also seen the applications submitted by the petitioner and respondent No. 4. The photocopies as supplied to us are placed on record as Mark "Y" and mark "Z" respectively. The petitioner is a Science Graduate. He has thereafter passed the examination leading to the degree of Bachelor of Education. He is working as a Teacher in the Government Middle School, Bhagowal against a temporary post for the last about eight years. As against this, respondent No. 4 is a qualified Engineer in Computer Science. The burden to judge the comparative merit of the two candidates was on the Board. However, prima facie, it cannot be said that there is such a wide disparity between the two candidates that the action of the Board in selecting one of them may be per se arbitrary or unfair.

18. In view of the above, we reject the contention of the leaned counsel for the petitioner that the selection of respondent No. 4 was arbitrary or against the directions of their Lordships of the Supreme Court.

19. There is another aspect of the matter. Admittedly, the letter of Intent had been issued in favour of Respondent No. 4 in February, 1994. He was given time to make arrangements as stipulated in the letter. After he had done the needful, the Agency was allotted to him in August 1994. It was actually commissioned on September 22, 1994. The writ petition had undoubtedly been filed on April 28, 1995 but the challenge to the allotment of Agency in favour of the respondent was made for the first time only in November 1995. This was obviously done long after the letter of Intent had been issued to the fourth respondent. In the meantime, the respondent had made arrangements for setting up a godown and also an office for the Agency. An un employed Engineering Graduate had spent substantial amount of money Cancellation of the allotment at this stage would cause avoidable hardship and result in injustice. We are not inclined to interfere at this stage.

20. In view of the above, we find no ground for interference under Article, 225 of the Constitution. Accordingly, we dismiss the writ petition. However, we make no order as to costs.