
(2003) 05 AHC CK 0148

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15957 of 2003

Sangeeta Singh

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 29-05-2003

Acts Referred:

Citation : (2003) 05 AHC CK 0148

Hon'ble Judges : M.Katju, J and R.S.Tripathi, J

Final Decision : Dismissed

Judgement

M. Katju, J.—By means of this writ petition the petitioner has prayed for a mandamus directing the District Magistrate, Basti to issue final No Objection Certificate in the light of the Government Order dated 18122002 so that the petitioner may be able to carry on dealership of kerosene oil. The petitioner has also prayed that the respondents be directed not to modify/cancel the order dated 18122002.

Heard learned Counsel for the parties.

2. It is alleged in paragraph 2 of the petition that in pursuance of an advertisement dated 2462001 inviting applications for allotment of dealership of Kerosene Oil by respondent No. 4 Bharat Petroleum Corporation, the petitioner also applied. It is alleged that the petitioner was duly qualified in all respects and was an educated unemployed graduate. One of the conditions of eligibility was that the applicant should be a resident of district Basti for at least a period of six months prior to the making of the application. The other condition was that the application or if he/she is dependent on his/her parents then the gross income for the relevant year ought not to be more than Rs. 2 Lakhs. It is alleged in paragraph 5 of the petition that the petitioner was eligible as she was staying with her father at Basti.

3. The petitioner was married to Vinay Kumar Singh son of Sri Surendra Pratap Singh resident of Kasba Badalganj, district Gorakhpur on 6122000. It is alleged

in paragraph of the petition that immediately after the petitioner's marriage her father-in-law was murdered in a dacoity on 11122000 and a case under Section 396, IPC is pending. Due to this tragic event and superstitions the family members of the petitioner's husband labelled the petitioner as an unlucky woman for the family. It is alleged in paragraph 9 of the petition that in such surcharged atmosphere the petitioner could not live at her in-laws house and returned to her parental house in district Basti and started living with her father. It is alleged in paragraph 10 of the petition that her husband followed her to Basti where, both of them are living. It is alleged that both petitioner and her husband are unemployed and hence the petitioner applied for the dealership to the Oil Selection Board. It is alleged in paragraph 12 of the petition that the respondent No. 5 who is an active member of the ruling party and is also holding the post of Chairman of the District Cooperative Kraya Vikraya Samiti Ltd. Basti lodged a complaint before the Chairman of the Oil Selection Board dated 2442001 alleging that the petitioner was a married lady and was living with her husband at Gorakhpur and hence was not eligible for the dealership in question. It was further alleged that the income of the father of the petitioner was beyond the upper limit fixed in the advertisement. True copy of the complaint is Annexure1 to the writ petition. Similar complaints to other officers were also made who made enquiries and also approached the petitioner regarding the complaint and provided her a copy of the same. It is alleged in paragraph 16 of the petition that a Member of Parliament who had earlier made a complaint later withdrew. However, the Oil Corporation Selection Board held enquiries regarding this complaint as is evident from the letter dated 3152001 addressed by the Chairman of the Selection Board to the General Manager of the Oil Corporation vide Annexure3 to the writ petition.

4. It is alleged in paragraph 20 of the petition that the Naib Tahsildar and the concerned Lekhpal examined the complaints and both reported that the petitioner was living with her father. Copies of the reports are Annexure4 and 5 to the writ petition. It is alleged in paragraph 21 of the petition that the District Magistrate also enquired into the matter and the LIU submitted a report that the petitioner was living with her father at Basti vide Annexure6 to the writ petition. The Chief Minister also asked the District Magistrate, Gorakhpur to submit a report and the District Magistrate assigned the work to the SDM, Gola, district Gorakhpur who reported on 1672001 that the petitioner was living with her father and husband at Basti vide Annexure7 to the writ petition. In the meantime letter of Intent was issued to the petitioner by the respondent No. 4 on 982001 vide Annexure8 to the writ petition. It is alleged in paragraph 24 of the petition that the petitioner has purchased three plots of land for this purpose vide Annexure9 to the writ petition. The petitioner was given No Objection Certificate for setting up a dealership at the acquired plots from the Department of Explosives, Agra. It is alleged in paragraph 27 of the writ petition that the petitioner was awaiting final No Objection Certificate from the District Magistrate, Basti when she received the order dated 5102001 by which the domicile

certificate granted to her was cancelled on the direction of the Commissioner and Secretary Revenue Board vide Annexure10 to the writ petition.

5. It is alleged in paragraph 28 of the petitioner that the order dated 5102001 was passed behind the back of the petitioner without offering any opportunity of hearing to her. Hence she filed Writ Petition No. 33145 of 2001 in this Court and the Court passed a Stay order on 10102001. Thereafter affidavits were exchanged and the petition dismissed by judgment dated 1311 2002, which has been quoted in paragraph 29 of the writ petition and has also been annexed as Annexure11 to the writ petition. A perusal of the judgment of the Division Bench of this Court in Writ Petition No. 33145 of 2001 dated 13112002 shows that the petition was dismissed on the ground that a finding of fact has been recorded in the enquiry that the petitioner does not live in Basti but she is living in Gorakhpur with her husband. This was a finding of fact based on relevant materials and after giving opportunity of hearing to the petitioner. Hence this Court held that it cannot interfere with this finding of fact in writ jurisdiction. It may be mentioned that the aforesaid writ petition was dismissed in view of the report of the Task Force Committee. It is alleged in paragraph 31 of the writ petition that other authorities had given report in favour of the petitioner and hence the respondent No. 5 exerted political pressure to get the matter enquired through a Task Force Committee to harass the petitioner. Hence the petitioner made a representation to the State Government vide Annexure12 to the writ petition. It is alleged in paragraph 32 of the writ petition that many authorities had given reports in favour of the petitioner and hence the respondent No. 5 by exerting political pressure got an order dated 1792001 issued by the Commissioner Basti Division whereby a direction was given to reenquire the matter through the Task Force Committee. True copy of the said order dated 1792001 is Annexure13 to the writ petition.

6. It is alleged in paragraph 34 of the petition that the Principal Secretary, Revenue U.P. considered the representation of the petitioner and passed an order dated 2292001 vide Annexure14 to the writ petition stating that since the matter has already been enquired into by the District Magistrate, Basti who was the competent authority to give domicile certificate, hence there was no need to get it enquired into by the Divisional Task Force. Subsequently the order dated 5102001 vide Annexure10 was cancelled by the respondent No. 1 vide order dated 18122002 Annexure15 to the writ petition. True copy of the Government Order dated 1812000 framing the guidelines for issuing domicile certificate is Annexure16 to the writ petition. It is alleged in paragraph 37 of the writ petition that the Commissioner, Basti Division has misinterpreted the judgment of this Court dated 13112002 Annexure11 to the writ petition and has written a letter dated 412003 to the State Government alleging that the order of the State Government dated 18122002 is not in accordance with the judgment of this Court dated 18122002. Hence it needs to be reviewed. True copy of the letter dated 412003 is Annexure17 to the writ petition. It is alleged that the respondent No. 5 had written several letters to various authorities in this

connection and the petitioner had apprehension that the order dated 18122002 may be modified in view of the pressure of the respondent No. 5. It is alleged that the sole motive of the respondent No.5 is to somehow get the dealership of the petitioner cancelled.

7. An amendment application has also been filed challenging the order dated 952003 by which the petitioner's Agency has been cancelled. A copy of the order dated 952003 is Annexure1 to the application. We have perused the order dated 952003 which States that it has been passed in pursuance of the judgment of the High Court dated 13112002.

A counteraffidavit has been filed by the respondent No. 5.

8. In paragraph 4 of the same it is stated that in the advertisement published on 2462000 for award of dealership of Kerosene Oil in Basti City one of the conditions was that the applicant should be resident of Basti. The respondent No. 5 and petitioner had both applied and they were interviewed by the Dealer Selection Board, Allahabad on 1742001. On that very date the respondent No. 4 informed that the petitioner has been placed at Serial No. 1 and the answering respondent No. 5 at Serial No. 2. The respondent No. 5 made enquiries and came to know that the petitioner is resident of Gorakhpur and she is residing there and without showing the name of her husband she has obtained resident certificate from the SDM, Basti, Hence the respondent No. 5 made a complaint to the Chairman Dealer Selection Board, Allahabad and also to the General Manager of the Bharat Petroleum Corporation and also to the Commissioner, Basti. It is alleged that the report regarding residence certificate has not been submitted by the concerned Lekhpal and the Income Tax Certificate was also not issued by the concerned authority. The respondent No. 5 filed an Electoral Roll of Bashalganj, Gorakhpur in which the petitioner's name is at Serial No. 1249. The respondent No. 5 has made an application on 2952001 to the Principal Secretary, Revenue Department, U.P. for getting the matter enquired into with regard to the fictitious report residence certificate and Income tax certificate. On that application the Principal Secretary by order 2952001 directed the Divisional Task Force to enquire into the matter and submit a report. Despite this order the matter was not enquired for a long time, and hence the respondent No. 5 made an application to the Revenue Ministry on which the Revenue Ministry by order dated 1072001 directed the Principal Secretary Revenue to get the matter enquired into by the Task Force which should submit a report. Hence in view of the order of the Minister the Principal Secretary by letter dated 1172001 directed the Commissioner Basti that the Government has taken a serious view and it desired that the enquiry be concluded within seven days and report be submitted vide Annexure1 to the counteraffidavit. In pursuance of the order dated 2952001 and reminders dated 1172001 the Divisional Commissioner, Basti constituted a Task Force Committee headed by the Additional Commissioner (Administration) vide AnnexureCA2 to the counteraffidavit. The said Task Force Committee examined witnesses on various dates and they were crossexamined also vide

AnnexureCA3 to the counteraffidavit. It is alleged in paragraph 21 of the counteraffidavit that the petitioner intentionally and deliberately during the course of enquiry fabricated some false documents and submitted the same in evidence before the Task Force Committee. She filed false and fabricated marriage invitation cards, school teaching certificate etc. The respondent No. 5 in support of his filed the voters list of the year 1999 of district Gorakhpur vide Annexures7 and 8 to the affidavit.

9. It is alleged in paragraph 22 of the counteraffidavit that the voters list beyond any shadow of doubt shows that the marriage of the petitioner with Vinay Singh has taken place before the year 1999 and they were both living in district Gorakhpur. The respondent No. 5 also filed a certificate of the Sabhasad, Nagar Palika, Basti before the Task Force Committee, Basti. It is alleged in paragraph 24 of the affidavit that the Task Force Committee after scrutinizing the evidence submitted an enquiry report dated 22/9/2001 before the Divisional Commissioner Committee, Basti. The Committee recorded a categorical findings that the petitioner has filed false and fabricated documents and her marriage took place before the preparation of the voters list of the year 1999. The Task Force Committee has also recorded a finding that the Lekhpal had given his report without any enquiry merely on the statement of the petitioner's father. A copy of the enquiry report of the Task Force Committee is AnnexureCA9 to the affidavit. The said enquiry report was forwarded to the District Magistrate, Basti by the Commissioner and to the Secretary, Revenue Department, U.P. vide, letter dated 1/10/2002. In pursuance of this letter the SDM, Basti cancelled the domicile certificate of the petitioner vide order dated 5/10/2001 Annexure11 to the writ petition. That order was challenged in this Court but the Writ Petition No. 33145 of 2001 was dismissed vide Annexure11 to the writ petition. It is alleged in paragraph 29 of the counteraffidavit that the petitioner's father who is a powerful man by concealing the order of this Court dated 13/11/2002 manipulated another order dated 18/12/2002 from the Special Secretary, Revenue Department, U.P. vide AnnexureCA12 to the counteraffidavit.

10. The Commissioner, Basti Division on 4/12/2003 informed the Principal Secretary, Revenue Department that since the matter has already been decided by the High Court the order of the SDM dated 5/10/2001 should not be cancelled and he asked that the matter be reconsidered in the light of the judgment of the High Court. In paragraph 31 of the counteraffidavit it is stated that subsequently the Principal Secretary Revenue has passed an order dated 26/4/2003 vide AnnexureCA14 to the counter affidavit stating that the order dated 18/12/2002 is not in conformity with the judgment of the High Court, dated 13/11/2002.

11. In paragraph 44 of the counteraffidavit it is that initially the Oil Corporation relied upon the report of the Lekhpal, who subsequently made a statement before Task Force Committee that he had given his report on the insistence of the father of the petitioner. In paragraph 46 of the same it is stated that the Tahsildar and Naib Tahsildar without enquiry believed the report of the Lekhpal

which was subsequently turned down by the Task Force Committee after recording the statement of the Lekhpal. In paragraph 47 of the same it is stated that the District Magistrate did not make any enquiry through the Police/LIU. The report dated 3182001 is not based on any evidence and the enquiry was not made on the material point. Subsequently, the Task Force Committee which is a superior body consisting of responsible Officers at the level of the Commissioner had conducted an enquiry and found the domicile certificate issued on the false report submitted by the Lekhpal as incorrect.

On the facts of the case we find no merit in this petition.

12. This Court had already decided the matter by judgment dated 13112002 in Civil Misc. Writ Petition No. 33145 of 2001 and it appears that it is sought to be raked up again. It appears that as per the direction of the Principal Secretary, Revenue Department, U.P. a Task Force Committee was constituted by the Commissioner Basti division, which after affording opportunity to the petitioner held that the petitioner was not a resident of district Basti and that the residence certificate issued to the petitioner was incorrect. It was also held that the petitioner is a resident of district Gorakhpur. The petitioner had given her statement and that of her father alongwith the statement of the Lekhpal who has submitted his report on the basis of which an incorrect domicile certificate was issued on 482000. Several documents were filed before the Task Force Committee and after considering the same and hearing the petitioner the Committee has submitted its report to the Commissioner and the Commissioner has sent it to the Government and the Board of Revenue. The Task Force Committee held that the domicile certificate issued in favour of the petitioner by the then SDM, Sadar, Basti on 88 2000 was incorrect. The Task Force Committee has scrutinized the documents and heard the petitioner and found that the domicile certificate issued to her was false and the report of the Lekhpal was wrong.

13. It appears that the petitioner and her father got the order dated 18122002 issued concealing the facts that this Court has already decided the controversy. The findings of the Task Force Committee are findings of fact we cannot interfere with them in writ jurisdiction. Petition is dismissed.