
(1998) 03 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 462 of 1992

Sehdev and Another

APPELLANT

Vs

Santokh Singh and Others

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 P&H 228 : (1998) 2 ILR (P&H) 251 : (1998) 2 RCR(Civil) 694

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.L. Sibal, A.P. Bhandari and Reeta Kohli, for the Appellant; V.G. Dogra, for No. 1 and Salil Sagar, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—M/s.Bharat Petroleum Corporation Limited notified its proposal to appoint a dealer for a Retail Outlet at Ahingran (Sidhwan Bet/ Dharamkot Road) in District Ludhiana. Various persons submitted their applications. One of the applicants Mr. Sehdev was selected. Aggrieved by this selection, one of the candidates Mr. Santokh Singh filed a complaint before the Oil Selection Board. The Board having not accepted his claim, he filed Civil Writ Petition No. 7159 of 1988. The authorities undertook to re-examine the matter. The writ petition was dismissed as premature. Subsequently, the complaint was rejected. To challenge this action, Santokh Singh filed Civil Writ Petition No. 14287 of 1990. He alleged that Sehdev was not eligible for the allotment of a Retail Outlet as-

(i) He was already a partner in M/s. Amar Filling Station, Bhundari, Tehsil Jagraon, District Ludhiana;

(ii) His father Shri Amar Nath was a partner in M/s. Anurag Filling Station, Mullanpur, District Ludhiana; and

(iii) Sehdev had an annual income exceeding Rs. 50,000/-.

2. The learned single Judge vide judgment dated February 5, 1992 allowed the writ petition with the finding that Sehdev was not eligible as he and his father were already dealing in petroleum products. Aggrieved by this judgment, Sehdev as well as the Bharat Petroleum Corporation Limited have filed these two Letters Patent Appeals.

3. Mr. Hira Lal Sibal, learned Counsel for Sehdev has contended that the view taken by the learned single Judge is not correct. Sehdev had not been appointed as a dealer by any company. He was merely a partner with Amar Singh. Similarly, even Amar Nath, father of Sehdev was also a partner and not a dealer. Consequently, the learned single Judge has erred in holding that the appellant-Sehdev was ineligible for the allotment of a Retail Outlet. Secondly, Mr. Sibal contended that neither the dealer viz. Shri Amar Singh with whom the appellant was alleged to be a partner nor the Indo Burma Petroleum Corporation having been impleaded as parties, the High Court could not have decided the disputed questions of fact involved in the case in proceedings under Article 226 of the Constitution. Resultantly, the dealership allotted to the appellant had been wrongly annulled.

4. Mr. Salil Sagar, besides adopting the arguments raised by Mr. Sibal, contended that the Court cannot add to the Statute. The view taken by the learned single Judge was based on an erroneous interpretation of the conditions of eligibility laid down by the Corporation. Still further, the learned Judge had not considered the relevant evidence viz. the documents, copies of which had been produced as Annexures as R2/7 and R2/10.

5. The claim made on behalf of the appellants was controverted by the learned Counsel for the respondent-writ petitioner.

6. The two questions that arise for consideration are--

(i) Was the appellant-Sehdev eligible for the allotment of dealership?

(ii) Has the learned single Judge erred in annulling the allotment?

Reg : (i)

7. The primary question that arises in these appeals relates to the eligibility of the appellant-Sehdev for the allotment of the Retail Outlet. Admittedly, the conditions of eligibility are laid down in the notice, a copy of which has been produced as Annexure P. 1 and the criteria laid down by the Corporation which is at Annexure P.2 with the writ petition. In the notice published by the Corporation it had been provided as under :--

"2. Eligibility :

Applicant should be :--

a) Indian by Nationality.

b) Not less than 21 years of age and not more than 50 years of age on the date

of application.

c) Minimum Matriculation.

d) Resident of Ludhiana District.

e) Having family (as defined in the application form) income of not more than Rs. 50,000/-during the last financial year,

f) Having no close relatives (as defined in the application form) as a Dealer/Distributor of any Oil Company.

g) Other things being equal, preference will be given to unemployed graduates/unemployed engineering graduates.

3. In case of partnership, each partner should submit separate application form."

8. In the document at Annexure P.2, the "eligibility criteria" was laid down. The applicants were informed that their cases shall be rejected if they do not satisfy the conditions of eligibility. The relevant conditions may be usefully extracted. These were :--

"5. RELATIONSHIP : (a) No person or cooperative society shall be awarded a new dealership if he/she/they already hold a Letter of Intent or a dealership of LPG/Kerosene/LDO/HSD/MS/ Lubricating Oil of any Oil Company.

(b) No person shall be awarded a new Dealership if any of the following close relatives of the person already holds a Letter of Intent or a dealership of LPG/Kerosene/LDO/MS/HSD/Lubri-cating Oil with any Oil Company :

(i) Spouse

(ii) Father/Mother

(iii) Brother/Sister

(iv) Son/Daughter

(v) Daughter-in-law/Son-in-law

(vi) Parents-in-law.

6. INCOME: The candidates should not have income more than Rs. 50,000/- per annum (during the last financial year). The income for this purpose would include income of the candidate, his/ her spouse, dependent children put together. In case, the candidate happens to be dependent on his/her parents, his/her parents' income will also be taken into consideration for. computing the total income,

7. PARTNERSHIPS : In case of partnerships, each candidate must fulfil the eligibility criteria."

9. A perusal of the above shows that a person is not eligible for the award of a

dealership if--

- (i) He or a close relative already holds a Letter of Intent or a dealership;
- (ii) He along with the spouse and the children has an income of more than Rs. 50,000A per annum.

It has also been provided; that "other things being equal, preference will be given to unemployed graduates/unemployed Engineering gradu-ates."

10. The objective behind these conditions of eligibility appears to be to help the needy. If a person or any of the close relatives like spouse etc. has got himself a dealership, he is not eligible to even submit an application. The Corporation has gone to the extent of providing that even when a daughter-in-law or a son-in-law has got a letter of intent or dealership, the candidate is not eligible to compete. Similarly, even when the parents-in-law are dealing in petroleum products, one cannot apply. In case of partnerships, it has been specifically provided that "each candidate must fulfil the eligibility criteria". In other words, if the parents-in-law, the son-in-law or the daughter-in-law of any of the partners has a dealership or even a letter of intent, the entire partnership becomes ineligible for seeking the allotment of a Retail Outlet. These provisions can possibly have only one objective--to help the one who needs and to keep out a person who is already doing well. It is in pursuance of this objective that the authority has taken care to further make a provision that the family income should not exceed Rs. 50,000/- per annum.

11. Mr. Sibal was vehement in his submission that a person can be ineligible only when he or any of his relatives is already having "a letter of intent or a dealership..."

12. Apparently, the contention is not without merit. If the stipulation in the notice and the criterion for eligibility is literally concerned, the argument raised by the learned Counsel would appear to be plausible. However, a closer scrutiny militates against such a restricted meaning. Keeping in view the intended purpose, the terms of the notice do not admit of such a narrow construction. A dealer, according to its ordinary dictionary meaning, is a person who "makes a business of buying and selling goods especially without altering theircondition". In the presentcase, the appellant amply satisfies this test. When all the conditions of eligibility are cumulatively considered, it appears that if a person or any of his relations is already buying or selling the petroleum products whether by himself or in partnership with others, he is not eligible for the grant of a dealership.

13. What is the position in the present case? The appellant had executed a partnership deed on December 8,1986 with his brother-Arjan Dass. A copy of this deed is on record as Annexure P.5 with the writ petition. This partnership was deemed to have commenced from October 6,1986 and its business was to be the sale of petroleum products. The partnership was to function "under the

name and style of M/s. Amar Filling Station, Ludhiana Road, Bhundari, Tehsil Jagraon, District Ludhiana.

"It is also not disputed that Mr. Amar Singh Tegh had been allotted a petrol pump in the year 1986 from the quota allotted to the freedom fighters. It was to run this petrol pump that the partnership was formed under the "name and style of M/s. Amar Filling Station, Ludhiana Road....". Still further, it was not disputed that the petrol pump is actually located on the land in the revenue estate of Bhundari which was purchased by the appellant along with his brother on August 21, 1986. The mutation in respect of this land was sanctioned on October 27, 1986. It is on this land that the petrol pump allotted to Mr. Amar Singh Tegh had been installed. The appellant would like to explain it away by calling it a sheer coincidence. However, it is too much to believe.

14. Mr. Sibal submitted that the partnership had been dissolved. He referred to the letter dated June 13, 1988 sent by Amar Singh Tegh (the original allottee of the Retail Outlet) to the Bharat Petroleum Corporation. A copy of this letter is at Annexure R2/3 with the written statement filed by the Corporation. In this letter, it has been mentioned by Mr. Amar Singh that he was nearly 82 years of age and was not keeping good health. Due to unavoidable circumstances, he had to approach his family friend "Shri Amar Nath.... to render help both in terms of grant of loan and arrangement of manpower. Shri Amar Nath provided me with the required funds and also put his son Mr. Arjan Dass at my disposal". He also produced a photo copy of the Power of Attorney executed by him in favour of the appellant's brother-Shri Arjan Dass. It was also observed that the "partnership deed executed on 8-12-1986 between Arjan Dass and Sehdev was dissolved by them as soon as they brought this thing to my notice...." On the basis of this letter, it was sought to be contended that the partnership having been dissolved, Arjan Dass was merely helping Mr. Amar Singh who was the dealer. Is it so?

15. It was not disputed that on July 22, 1987, an account was opened in Canara Bank in the name of the partnership. A copy of the partnership deed executed on December 8, 1986 was produced before the Bank. If the partnership had been dissolved within a week of its constitution as alleged by the appellant, there would have been no occasion to open the account or to produce the partnership deed before the bank in July 1987. Still further, the appellant made an attempt to explain away this documentary evidence by saying that he was "working as a trainee with Amar Singh Tegh at his Retail Outlet at Bhundari, Tehsil Jagraon, District Ludhiana" and that he had "left the training job with effect from 1987 in view of issue of letter of intent from Bharat Petroleum Corporation Limited, Chandigarh". This statement was made by him in an affidavit dated June 7, 1988, a copy of which has been produced as Annexure R2/6 on the record. After consideration of the matter, it appears to be a crude attempt to keep back the truth. The facts of the case clearly show that the partnership had been constituted on December 8, 1986 for the purpose of dealing in petroleum products. It was to function under the name and style of M/s. Amar Filling

Station, Ludhiana Road, Bhundari. The products were to be totally shared by the appellant and his brother-Arjan Dass. The petrol pump allotted to Mr. Amar Singh Tegh is factually located on the land purchased by the appellant and his brother. The bank account had been opened in July, 1987 in the name of the partnership. These facts as borne out from the record completely belie the claim of the appellant that he was merely a trainee or that the partnership had been dissolved. It is clear that the appellant was factually dealing in petroleum products. In any event, on the date of the publication of the notice inviting applications viz. November 20, 1986 or on the date of the submission of the application, he was a partner of the firm which was dealing in petroleum products and had been constituted for running the Retail Outlet. Thus, he was not eligible

16. Learned Counsel for the Corporation has produced photo copies of the applications along with Check lists etc. submitted by the appellant-Sehdev (pages 1 to 12) and the respondent-writ petitioner (pages 1 to 13). Both are collectively taken on record as Mark "A" in LPA No. 462 of 1992. A perusal of this application form shows that the appellant has claimed himself to be "unemployed since three years". He has described his present occupation as "commission agent-cum-broker". He has also claimed selling experience of "fertilizer and karyana Goods". At Sr. No. 12(ii), it is recorded as under :--

"Have you ever worked on cars/trucks in a Service Station or Garage? If Yes, what is your idea of customer service?"

My friend owns a Garage. I often go to the Garage in spare moments. Customer satisfaction is my motto."

17. In the application, there is not even a suggestion that the appellant was working as a trainee at a filling station. It appears that this plea was trotted out only to defend the case.

18. It has also been alleged on behalf of the respondent-writ petitioner that even the appellant's father was a partner in M/s. Anurag Filling Station, Mullanpur. He was a dealer in petroleum products and thus, the appellant was not eligible to be considered. The learned single Judge has accepted this contention.

19. Mr. Sibal contended that vide letter dated June 16, 1988, the Indo Burma Petroleum Products Limited had informed M/s. Bharat Petroleum Corporation that "Shri Amar Nath father of Sh Shri Sehdev Goyal is not a partner in our dealership M/s. Anurag Filling Station, Mullanpur". A similar communication dated December 30, 1987 had also been sent in respect of the appellant himself. Copies of these two documents have been produced as Annexures R2/7 and R2/10 with the written statement filed by the Corporation.

20. It has not been disputed that Shri Amar Nath, the appellant's father was a partner of M/s. Anurag Filling Station, Multanpur. When was that partnership dissolved? When did he cease to be a partner? Learned Counsel were unable to

specify.

In view of the above, we hold that--

(i) The appellant was a partner of the firm viz. M/s. Amar Filling Station which was dealing in petroleum products and was running the filling station.

(ii) This filling station was located on the land owned by the appellant.

(iii) The appellant's father Mr. Amar Nath was also a partner in M/s. Anurag Filling Station.

(iv) The plea of the appellant that he was only a trainee or that the partnership had been dissolved is false.

21. As a result, the appellant was not eligible for the allotment of the Retail Outlet on the last date for the submission of applications as well as on the date of the actual allotment. The findings recorded by the learned single Judge are affirmed.

Reg : (ii)

22. It was contended on behalf of the appellant that the case involves disputed questions of fact.

Mr. Amar Singh and the Indo Burma Petroleum Corporation had not been impleaded as parties. In their absence, no findings could be recorded against them. Thus, the learned single Judge had erred in annulling the allotment.

23. The contention is misconceived. The learned single Judge had not held that Amar Singh Tegh was wrongly allowed to continue with the Retail Outlet allotted to him by the Indo Burma Petroleum Corporation. No relief was sought either against the dealer or against the Corporation. The grievance of the respondent-writ petitioner was that Sehdev, the present appellant was not eligible. For this purpose, Amar Singh and the Indo Burma Petroleum Corporation were not necessary parties. The issues involved in the case could be decided without any difficulty.

24. It was then contended that the disputed questions of fact could not have been decided in proceedings under Article 226 of the Constitution.

25. Even this contention is misconceived. The appellants had full opportunity to adduce the evidence in their possession. Factually, they have produced various documents with their respective written statements. These documents have been examined. After consideration of the matter, various findings have been recorded. Factually, there is no dispute on those matters. To illustrate : the Petrol Pump allotted to Mr. Amar Singh Tegh is located on the land owned by the appellant. Similarly, it is even admitted by Mr. Amar Singh that on his request Shri Amar Nath (the father of the appellant) had given him money as well as man-power. On these admitted facts, the natural inferences have been drawn. In the process, no illegality has been committed.

26. Resultantly, even the answer to the second question is against the appellants in both the appeals.

27. Mr. Salil Sagar contended that the language of a Statute must be given its natural meaning. The Courts cannot add to the Statute. He also referred to the decisions in *Mangilal Vs. Suganchand Rathi*, and in *Union of India v. Deoki Nandan Aggarwal*, 1991 (I)SLR 16 (sic), in support of his submission.

28. There is no quarrel with the proposition laid down in these cases. While dealing with the provisions of the Rent Act and the Pension Rules, their Lordships have observed that Courts cannot add to the Statute and that the words used in an enactment must be given their natural meaning. In the present case, no Statute has fallen for interpretation. However, the conditions of eligibility as prescribed by the authority have been given their natural meaning. It may also be observed that a Court is not debarred from ascertaining the real intention behind a provision and to interpret it in a manner that would effectuate the purpose. This is precisely what has been done in the present case.

29. Mr. Sibal had also referred to the decisions in *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, ; *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, ; and *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others*, to contend that a partnership is merely an association of persons and that the firm name is a compendious method of describing the partners. There is absolutely no quarrel with his proposition. Nothing to the contrary was argued by the counsel for the respondent. However, in the present case, it appears that the partnership was the de facto dealer in petroleum products. Thus, the appellant who was a partner was not eligible to compete or to be allotted the outlet.

30. Mr. Sibal also referred to certain decisions to contend that the Court cannot add or amend a provision to make up the deficiency. Counsel relied on the following decisions :--

(i) *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, .

(ii) *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, .

(iii) *Smt. Ravinder Sharma and Another Vs. State of Punjab and Others*, .

(iv) *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, .

(v) *H. R. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath and Sons* (1990) 77 STC I (SC).

31. We do not think that the learned single Judge had added anything to a Statute so as to attract the dictum of these cases.

32. In view of the above, both the questions are answered against the appellants. As a result, both the appeals have to be dismissed. It is ordered

accordingly. No costs.