
(2014) 07 CAL CK 0037
In the Calcutta High Court
Case No : Writ Petition No. 16834 (W) of 2013

Seikh Ajharuddin

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Citation : (2014) 142 FLR 725

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Ayan Benerjee and Debasree Dhamali, Advocate for the Appellant; Jyoti Prakash Chatterjee, M.S. Yadav and Saswati Chatterjee, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.—The writ petitioner had applied for appointment as distributor of Liquefied Petroleum Gas pursuant to an advertisement published on 17th October, 2009 for Keshpur area in the District of Paschim Medinipur under the West Bengal Gramin LPG Vitarak Scheme. One of the conditions in the aforesaid advertisement was to the effect that the applicant must be a resident of the village or town in the concerned area at the time of making his application, that is, on or about 16th November, 2009. As the candidatures of other empanelled candidates were turned down, the petitioner was entitled to be appointed as distributor. At this juncture, the respondent No. 5/Oil Company made an enquiry with regard to the residential status of the petitioner whereupon the respondent No. 3/Sub-Divisional Officer, Medinipur Sadar, gave a report to the effect that the petitioner at the relevant point of time, i.e. 16th November, 2009 was a resident of village Dogachia and had shifted to village Keshpur only in 2010. In view of such communication dated 20.3.2013, the respondent No. 5/Oil Company decided not to issue the letter of intent in favour of the petitioner. Hence, the petitioner challenged the impugned communication dated 20.3.2013 of the respondent No. 3/Sub-Divisional Officer, Medinipur Sadar to the respondent No. 5/Oil Company and prayed for direction upon the latter to issue letter of intent in his favour. The learned Counsel appearing for the

petitioner submits that the petitioner had made an application on 16th November, 2009 when he was a permanent resident of village Keshpur in the District of Paschim Medinipur and the application was accompanied by a residential certificate issued by the Sub-Divisional Officer, Medinipur Sadar, being Certificate No. 2978/P/Sadar dated 26.2.2010. He referred to the said communication, which has been annexed as Annexure P-1 to the writ petition. He also referred to another communication issued by the self same respondent, being Memo No. 220/Sadar dated 18.7.2012, wherein it has been observed that the aforesaid residential certificate dated 26.2.2010 relied upon by the petitioner is valid during the period from September, 2009 to March, 2010 and thereon. Accordingly, the learned Counsel for the petitioner submits that the volte face of the respondent No. 3 in issuing the impugned communication dated 20.3.2013 is illegal as it has been issued without considering relevant materials and giving an opportunity of hearing to the petitioner. He, accordingly, prayed for setting aside of the impugned decision and issuance of letter of intent in favour of his client.

2. Mr. Yadav, learned Counsel appearing for the Respondent No. 5/Oil Company submits that in view of the communication dated 20.3.2013 his client decided not to issue letter of intent in favour of the petitioner.

3. Mr. Chatteerjee, learned Counsel appearing for the State-respondents submits that an enquiry was made into the matter and it appeared that the petitioner had obtained two certificates from the respondent No. 3, one dated 4.1.2009 and the other dated 26.2.2010 stating that the petitioner is a resident of village Dogachia and Keshpur respectively. In view of such confusion, the respondent No. 3 had made an enquiry into the matter through the Sub-Divisional Disaster Management Officer, Medinipur Sadar on 11.12.2012 wherein it was noted that the petitioner was an original resident of village Dogachia and had shifted to village Keshpur only in 2010. On such premise, the impugned communication dated 20.3.2013 was made to the respondent No. 5/Oil Company.

4. In the affidavit-in-reply the petitioner has annexed certain documents in support of his claim and disputing the aforesaid finding that he was not a resident of village Keshpur on the relevant date, i.e., 16.11.2009. He submits that such relevant documents were ignored by the respondent No. 3.

5. I have considered the submissions of the respective parties and materials on record. I find that the application for distributorship was made by the petitioner alongwith a certificate dated 26.2.2010 issued by the respondent No. 3 stating that he is a resident of village Keshpur. Such certificate was reiterated by the said respondent in his subsequent memo dated 18.7.2012. It appears that thereafter an enquiry was made into the matter and a contrary opinion has been arrived at by the respondent No. 3, which had been communicated to the respondent No. 5/Oil Company by the impugned communication dated 20.3.2013. The petitioner has disputed the factual findings in the said enquiry report. No copy of the enquiry report had been furnished to the petitioner and no opportunity of hearing was given to him before arriving at such contrary finding.

It appears that the petitioner has annexed certain documents in his reply to rebut such findings recorded in the enquiry report, which he claims were not considered by respondent No. 3. Such factual issues cannot be gone into by this Court in exercise of its writ jurisdiction. Change of decision to the prejudice of the petitioner with regard to his residential status ought not to have been made by respondent No. 2 behind the back of the petitioner. It was incumbent upon respondent No. 3 to give an opportunity of hearing to the petitioner after supplying him with a copy of the enquiry report and after considering materials, if any, relied upon by the petitioner in support of his claim to come to the impugned decision. The petitioner was denied an opportunity of hearing and to lead rebuttal evidence and/or materials in support of his claim that he was a resident of the village Keshpur at the relevant point of time before the concerned authority.

6. Accordingly, I set aside the impugned communication dated 20.3.2013 and direct the respondent No. 3 to arrive at a decision as to the residential status of the petitioner on the relevant date, i.e., 16th November, 2009 after giving an opportunity of hearing to the petitioner in the matter. All materials proposed to be relied upon by respondent No. 3 shall be supplied to the petitioner and the petitioner will be entitled to lead rebuttal evidence, if any, in support of his claim. After considering all relevant materials on record and after hearing the petitioner, the respondent No. 3 shall arrive at a reasoned decision on the issue. Such decision shall be arrived at within eight weeks from the date of communication of this order and decision, so taken, be communicated to the respondent No. 5/Oil Company as well as to the petitioner within two weeks thereafter. Till the communication of the decision, the respondent No. 5 shall not take any decision in the matter of awarding distributorship in respect of village Keshpur under the aforesaid scheme. The writ petition is allowed to the aforesaid extent.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities.