
(2003) 09 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No. 7387 of 2001

Sunil Dutt Sharma

APPELLANT

Vs

Chief Regional Manager, H.P.C. Ltd. and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Citation : AIR 2004 SC 157 : (2003) 6 ALT 33 : (2003) 1 JT 155 Supp : (2003) 7 SCALE 176 : (2003) 7 SCC 662

Hon'ble Judges : Shivaraj V. Patil, J;D. M. Dharmadhikari, J

Bench : Division Bench

Advocate : G.L. Sanghi, S.C. Gupta, A.G. Sharma, Sanjay Pal, Debya J. Neog and Lalita Kaushik, for the Appellant; Rajiv Dhavan Sanjay Kapur, Rajiv Kapur, Shubhra Kapur and B.K. Satija, for the Respondent

Final Decision : Partly Allowed

Judgement

Dharmadhikari, J.—In the contest for award of distributorship for Liquified Petroleum Gas Agency in the township of Jagraon in District Ludhiana, Punjab, in the 'Defense category' of 'ex-servicemen who have limited means of livelihood/ respondent - Rajinder Sidhu was selected by the Oil Selection Board [hereinafter referred to as 'the Board'] and pursuant to a letter of appointment issued on 26.9.1994, he has started his business of gas agency.

2. The appellant - Capt/Sunil Dutt Sharma challenged the selection and appointment of respondent - Rajinder Sidhu in the High Court of Punjab and Haryana. The ground urged was that the eligibility certificate produced by the contesting respondent from Director-General of Resettlement (DGR) of Defense services, was not valid as it was issued for gas agency at Amritsar Cantt and not for gas agency in the township of Jagraon.

3. The learned single Judge In the writ petition and the Division Bench. In appeal, before the High Court, repelled the challenge to validity of the eligibility certificate of the contesting respondent and upheld his selection and appointment

for the gas agency. Aggrieved by the impugned orders of the High Court, the appellant has approached this court in this appeal.

4. Learned senior counsel Shri G.L. Sanghi appearing for the appellant, took this Court through the contents of the guidelines issued for issuance of eligibility certificate by the DGR and the guidelines to be followed by the Board for awarding the gas agency. Reading its relevant portions, the contention advanced before the High Court is reiterated before us. The main thrust of the argument advanced on behalf of the appellant is that the eligibility certificate has to be issued in respect of a particular advertisement in which applications are invited for grant of gas agency at a particular location. A certificate issued for another gas agency at a different location pursuant to a different advertisement was not valid for award of gas agency for the township of Jagraon. The submission made is that the guidelines clearly indicate that the eligibility certificate qua a particular advertisement should certify that the applicant is covered under the Defense category and has also limited means of livelihood meaning annual income of his family is less than Rs. 50,000/-.

5. Learned senior counsel argued that if the guidelines are interpreted as is sought to be done on behalf of the contesting respondent, even a stale eligibility certificate issued for previous years and for a different advertisement and location of gas agency would be made basis for award of gas agency for different location and for different advertisement. This will result in misguiding the Board about the present status of the applicant in the 'Defense category on the basis of limited means of livelihood.' It is submitted that up-to-date position of the applicant qua a particular advertisement and a location is the basic requirement of a valid eligibility certificate from the DGR.

6. We have also heard learned Senior Counsel Shri Rajiv Dhavan appearing for the contesting respondent who has supported the reasoning and conclusions in the impugned orders of the High Court.

7. The advertisement for award of LPG agency for Jagraon township was issued on 11.1.1994. The eligibility certificate issued from Director-General of Resettlement is dated 16.8.1993 which cannot be said to be a very old or stale eligibility certificate for gas agency. It is not the case of the appellant before the High court or in this court that the contesting respondent does not fall in the Defense category of ex-servicemen and that he did not fulfil the income limit prescribed for being covered by the category of 'ex-servicemen with limited means of livelihood.' What is being contended is that in the absence of certificate issued after the advertisement for Jagraon township showing the current financial status of the candidate under consideration there was no available source of information before the Board to treat the contesting respondent as eligible under the Defense category with the prescribed income limit.

8. Learned senior counsel appearing for the appellant laid much emphasis on certain portions of the guidelines issued to the Director-General of Resettlement,

Ministry of Defense for issuance of eligibility certificate. It is pointed out from the guidelines that the applicant seeking eligibility certificate is required to supply the copy of advertisement for which certificate is required. It is argued that this requirement in the guidelines shows that the applicant has to seek eligibility certificate pursuant to a particular advertisement and location. The authority, it is contended, is therefore required to issue eligibility certificate only when an advertisement is issued and the applicant approaches for grant of the certificate against an advertisement. A certificate issued for a particular advertisement and location cannot be treated as valid for a different advertisement and location.

9. The eligibility certificates issued in favour of appellant and contesting respondent made thus :-

1.

GOVERNMENT OF INDIA Ministry of Defense Dte. Gen. Resettlement West Block IV, Wing No. 1 R.K. Puram, New Delhi -66

Sl.No. 340/94

CERTIFICATE

1. Certified that Capt. Sunil Dutt Sharma (retd.) (55-31762, CSC) is an Ex-servicemen. He is eligible to apply for allotment of a gas agency at Jagraon, Ludhiana (Punjab) under "Defense Category".

2. His case for allotment of the same is recommended. He falls in priority three only.

Sd/- (S.N. Yargop) Lt.Col. Dy Dir. (SE) For Dir. Gen. Resettlement

Dated : 21.2.1994 No. 1512/DGR/SE-2/Cert./III

2.

GOVERNMENT OF INDIA Ministry of Defense Dte. Gen. Resettlement West Block IV, Wing No. 1 R.K. Puram, New Delhi-110066

Sl.No. 181/93

CERTIFICATE

1. Certified that ex CPO Rajendar Sidhu (081580K) is an ex-servicemen. He is eligible to apply for allotment of a gas agency at Amritsar Cantt (Punjab) under "Defense Category".

2. His case for allotment of the same is recommended. He falls in priority three only.

Sd/- (Vivek Kapur) Col. Dir.(SE) For Dir. Gen. Resettlement

Dated : 16th August, 1993 No. 1612/R-2/ROC/Certificate/III

10. After reading the guidelines and hearing the reply of the learned senior counsel appearing for the contesting respondent. We find that the High Court was fully justified in negating the contention advanced for the appellant questioning the validity of the eligibility certificate issued in favour of contesting respondent. The purpose of obtaining the eligibility certificate from the Director-General of Resettlement in Defense services is obviously with a view to identify suitable candidates in the Defense category for being considered for selection and appointment for award of gas agency. The candidate who has been certified to be covered in the Defense category and fulfilling the required income limit cannot lose his eligibility merely because certificate was not obtained pursuant to a particular advertisement and for a particular location. The role of the Director-General of Resettlement is limited to ascertaining the qualification of the candidate being in the Defense category and certifying that he fulfils the requirement of prescribed income limit. The matter of selection from amongst the competing candidates falling in 'Defense category' has to be left to the decision of the Board.

11. It is beyond the power and functions of Director-General of Resettlement to restrict the eligibility certificate to a particular location and advertisement and also make its own recommendations for a particular candidate. In both the certificates issued in favour of the appellant and the contesting respondent, it has been duly certified that they fall in 'Defense category' meaning that they fulfil also the prescribed income limit. The mention in the certificate of gas agency at a particular location and recommendation in favour of the candidates applying for eligibility certificate is a surplusage.

12. In the process of fair selection from amongst the competing candidates for appointment to the gas agency, involvement of DGR is apparently with the sole purpose of ascertaining the eligible candidates in 'Defense category' having specified income limit. DGR on the basis of the information obtained in accordance with the guidelines, after his own verification has to grant certificate whether a particular candidate falls in the "Defense category" of ex-serviceman with prescribed income limit. The certificate issued by DGR is not final but subject to further verification and scrutiny by the Board on the basis of its own sources of information and particulars supplied by the candidate in the application to be submitted in prescribed form. Merely because the eligibility certificate issued by the DGR is of a date earlier than the date of advertisement issued for grant of agency at a particular location is no ground to reject the candidature of an applicant if the Board finds the candidate to be covered in the Defense category with no change in his financial status.

13. In the instant case, there was nothing adverse before the Board to show that the contesting respondent has between the date of eligibility certificate i.e. 16.8.1993 and issuance of advertisement dated 11.1.1994 for Jagraon township, improved his financial position and has crossed the prescribed income limit to render him ineligible for grant of agency under the Defense category of ex-

serviceman with limited source of livelihood. The alleged invalidity of the eligibility certificate being of a date prior to the date of advertisement is merely a technical objection and not a substantial ground to upset the selection made by the board. The High Court was, therefore, right in dismissing the Writ Petition.

14. Lastly, it is contended that the Board has not disclosed any reasons why the contesting respondent was placed at No. 1 in the selection panel above the appellant. Such a ground was never urged either before the Single Judge or Before the Division Bench of High Court. No foundation has been laid in the petition so as to allow opportunity to Hindustan Petroleum Corporation Ltd., to meet this ground of challenge by producing the proceedings of the Board to demonstrate that the selection was made objectively and in accordance with the criteria laid down. We, therefore, refuse to entertain such a new ground for the first time in this appeal.

15. As a result of the discussion aforesaid, the appeal fails, and is hereby dismissed. The respondents have been dragged in this long drawn litigation and although this is the second round of approach to this Court, keeping in view the nature of the controversy involved we leave the parties to bear their own costs in this appeal.