

(2013) 03 PAT CK 0101

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2390 of 2007

Sunil Kumar Singh

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : (2013) 3 BLJud 198

Hon'ble Judges : Ramesh Kumar Datta, J.

Bench : Single Bench

Advocate : Mr. Rajendra Prasad Singh, Senior Advocate and Mr. Shailendra Kumar Singh, Advocate, for the Petitioners; Mr. Rabindra Nath Kanth, Advocate, for the H.P.C.L.; Mr. Sujeet Kumar Sinha and Mr. Indu Bhushan Pandey, Advocates, for the Respondent No. 6

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.— Heard learned counsel for the petitioner and learned counsels for the respondent Hindustan Petroleum Corporation as also for respondent No.6.

2. The petitioner seeks quashing of the Letter of Intent for distributorship/dealership of HP Gas of the Hindustan Petroleum Corporation in favour of respondent No.6 for urban area of Murliganj in the District of Madhepura and also for quashing the letter/order dated 3.10.2006 passed by the Senior Regional Manager of the Corporation (respondent No.5) and consequentially to allot the same in favour of the petitioner.

3. The case has a chequered history. On 27.6.1998 the respondent Corporation came out with an advertisement for allotting distributorship/dealership of H.P. Gas for Murliganj urban area in the district of Madhepura restricted to the physically handicapped category. The advertisement provided that inhabitants of the Districts of Madhepura, Saharsa, Araria, Supaul, Khagaria, Purnia and Bhagalpur were eligible to apply but other things being equal preference shall be

given to the applicants of Madhepura District. Pursuant to the same, the respondent No.6 applied. Thereafter, the respondent Corporation came out with another advertisement on 28.8.2000 with respect to, among others, the same Murliganj urban area restricted to physically handicapped category which was in the same terms as the earlier advertisement. It was, however, provided that those who had applied against the previous advertisement they will also have to file a fresh application in the format of application provided in the fresh advertisement annexing therewith photo copy of the previous application or acknowledgment receipt or cash receipt for which no further fee was payable and the eligibility of the candidate would be decided in terms of the application given earlier. It was further provided that if the applicant did not file a fresh application then the earlier application would not be considered. Pursuant to this fresh advertisement, the petitioner applied and the respondent No.6 also filed the fresh application as per the requirement of the second advertisement. The advertisement provided that there should be minimum 40% disability in order to qualify under the handicapped category. In the merit panel prepared by the respondents, the name of respondent No.6 was at serial No.1 and that of the petitioner at serial No.2. Pursuant to the same, the Letter of Intent was issued in favour of respondent No.6 on 17.6.2004. Against the same, the petitioner filed C.W.J.C. No.7694 of 2004 alleging that the respondent No.6 is a resident of Purnia and was, therefore, disqualified and thus his residence certificate with respect to Murliganj in the district of Madhepura was forged and fabricated and wrongly issued and the District Magistrate, Madhepura by order dated 8.2.2003, had cancelled the earlier residence certificate dated 24.9.2002. The Block Development Officer, Murliganj had also cancelled the residential certificates granted by him on 31.8.2000, 12.11.2001 and 14.12.2001. The further ground taken by the petitioner in his earlier writ petition was that the petitioner was not 60% handicapped.

4. This Court by order dated 7.4.2006 disposed of the writ petition with a direction to the respondent No.5, Senior Regional Manager, Hindustan Petroleum Corporation to examine the grievances raised by the petitioner after hearing both the parties without however setting aside the order of allotment of the dealership in favour of the respondent No.6 observing that the same has become operational and shall remain in force for a period of six months from that day and shall abide by the result of the enquiry which should be disposed of by a reasoned order. Thereafter by the enquiry report/ impugned order dated 3.10.2006, the Regional Manager, Patna LPG region after affording reasonable opportunity to both the parties gave the finding that respondent No.6 was eligible for the selection for the distributorship in his favour. In the impugned order, it was stated that the residential certificate dated 17.7.1998 issued by the S.D.O., Madhepura was filed by respondent No.6 along with the first application which had been issued within six months from the date of first application filed on 31.7.1998 and therefore, as per the conditions stipulated in the advertisement as well as Note Appendix D of the application format, only the

residential certificate dated 17.7.1998 can be considered as valid for the purpose of determining the eligibility of respondent No.6. It is further stated that the SDO was requested by letter dated 1.9.2006 to examine the genuineness of the said residential certificate and the SDO after making enquiry from the BDO submitted his report by letter dated 28.9.2006 that the residential certificate dated 17.7.1998 was issued from his office on the basis of the residential certificate dated 15.7.1998 issued by the B.D.O. for which the BDO by his letter dated 18.9.2006 had confirmed the issuance of said certificate from the Block Office, Murliganj. It was also stated in the order that the SDO, Madhepura had made an enquiry from the Nagar Panchayat, Murliganj, Assistant Electrical Engineer, Electricity Board, Madhepura and Principal, Well Done Future Public School, Madhepura regarding the genuineness of various documents of respondent No.6 in support of his residential status like collection of Municipal Tax from his wife since 1997, the date of electric connection since March,1998 and education of three sons of respondent No.6 in the school at Murliganj since 1997 and found the same to be true. It was, accordingly, held in the order that the eligibility of respondent No.6 has to be decided on the basis of the first application in terms of the advertisement and the residential certificates dated 31.8.2000, 12.11.2001, 14.12.2001, 18.12.2001 and 24.9.2002 having been issued after the period of six months prior to the date of his first application dated 31.7.1998, therefore, the subsequent cancellation by letters dated 16.3.2002 by the B.D.O. and 8.2.2003 by the District Magistrate is of no consequence in the said matter.

5. Regarding the disability of respondent No.6, reference was made to the medical certificate of handicap dated 25.7.1998 issued by the Handicap Medical Board, Madhepura under the signature of the Chairman Handicapped Medical Board and the Civil Surgeon cum Chief Medical Officer, Madhepura which had been filed with his first application by respondent No.6. Since earlier this Court in its order dated 7.4.2006 had expressed the need to ascertain the accuracy of the conclusion made in the Medical Certificate submitted by respondent No.6, therefore, vide letter dated 13.5.2006 the Civil Surgeon cum Chief Medical Officer, Patna was requested to constitute a Medical Board to examine the respondent No.6 regarding his disability as per the standards contained in the Manual of Orthopedic Surgeon in evaluating permanent physical impairment brought out by the American Academy of Orthopedic Surgeons USA and published on its behalf by the Artificial Limbs Manufacturing Corporation of India, GT Road, Kanpur, which requirement is specified in paragraph No.19 of the application form itself. Thereafter, the Civil Surgeon by his letter dated 26.5.2006 fixed the date as 8.6.2006 as the date for examination of respondent No.6 and on the same day, i.e., 8.6.2006 the Medical Board gave its report after completion of the medical examination of respondent No.6 with the finding that the respondent No.6 has been found to have 60% disability. It is stated in the order that the criteria for evaluating the degree of disability has already been specified in paragraph No.19 of the application form, therefore, any other evaluating criteria or manual can have no application in the present context. For

all the aforesaid reasons in the impugned order, it was held that the respondent No.6 was eligible for the selection of distributorship/dealership in his favour.

6. Aggrieved by the same, the petitioner has filed the present writ application.

7. Learned counsel for the petitioner submits that the respondent No.6 not being a resident of Madhepura district and the certificate granted earlier to him found to be incorrect and cancelled both by the BDO, Murliganj by his letter dated 16.3.2002 and the District Magistrate by his order dated 8.2.2003, the respondent No.6 is disqualified from being considered for dealership because he has stated incorrect fact and it is provided in the advertisement itself that by giving incorrect fact a candidate would be disqualified for the dealership.

8. It is submitted by learned counsel for the petitioner that admittedly the respondent No.6 was a resident of Purnia district having his name in the Voter List also for the period from 1995 to 2001 and his wife having contested the elections for member of Zila Parishad, Purnia. It is contended that the respondent No.6 was not a resident of Murliganj in Madhepura District and thus his case could not have been considered on the basis of his application as the resident of Madhepura District. It is the contention of learned counsel for the petitioner that if the petitioner had filed his application as a resident of Purnia he could have been considered but having taken a false plea of being resident of Madhepura District and the same having been found to be false by the BDO and the District Magistrate cancelling the residential certificate issued by them, hence, he should not be considered on the ground that he is at least a resident of Purnia District who is also entitled to in terms of the advertisement to apply for the dealership. Thus, no benefit of residence in Purnia District can accrue to respondent No.6 after having applied as resident of Madhepura district only.

9. Learned counsel also refers to shifting stands of the respondent No.6 as also respondent HPCL referring to the stand taken before this Court in the earlier writ petition wherein reliance had been placed on the residential certificates dated 7.6.2004 issued by the BDO, 25.6.2004 issued by the SDO and 12.7.2004 issued by the District Magistrate, Madhepura on the basis of which it is stated that the Letter of Intent was issued to respondent No.6 but in the impugned order the stand has been taken that the residential certificate dated 17.7.1998 has been relied upon and LOI has been rightly issued to respondent No.6 and thus it is alleged by the counsel that the authorities of respondent HPCL are bent upon protecting the respondent No.6 in one way or the other through all means.

10. Learned counsel also submits that he has specifically mentioned in paragraph No.28 of the writ petition that respondent No.6 has less than 40% disability as fixed in the advertisement, he is nominally handicapped and has only cut and deformed fingers which comes below 30% disability. His left index finger has loss of two phalanges (11%) middle finger loss of two phalanges (9%) ring finger loss of two phalanges (6%) in view of Workmen Compensation Act, 1923. Learned counsel also submits that not meeting the said stand in the counter affidavit

either of HPCL or of respondent No.6 affirms the said fact.

11. A reference is made in this regard by learned counsel for the petitioner that information under RTI Act dated 27.7.2007 was obtained by the petitioner with respect to driving license issued on 9.7.1994 to the respondent No.6 from Madhepura by the District Transport Officer, Madhepura showing him as the permanent resident of Purnia and the temporary address at Murliganj. It is thus, submitted by learned counsel that respondent No.6 on his own showing in 1994 was a permanent resident of Purnia District.

12. Learned counsel for the respondent HPCL as also the private respondent No.6 have made similar submissions. Their stand is that in terms of the second advertisement it was clearly stated that the eligibility was to be considered with respect to the first advertisement, in case the applicant had applied against the first advertisement also. Thus, the application of respondent No.6 had been filed on 31.7.1998 and only a residence certificate issued within six months prior to the said application could have been taken into consideration. It is, accordingly, contended by learned counsel that in the impugned order dated 3.10.2006, the Regional Manager has rightly relied only upon the residential certificate dated 17.7.1998 issued by the SDO, Madhepura, which certificate has never been set aside; rather it was found to be genuinely issued on enquiry being made by the SDO, Madhepura who had verified the said residential certificate by his letter dated 28.9.2006. It is submitted that as a matter of fact, the S.D.O., Madhepura before sending the letter dated 28.9.2006 has also got the matter verified and it was found that the respondent No.6 was actually residing in Madhepura district when the certificate dated 17.7.1998 was issued with regard to disability also.

13. It is contended that no credence can be given to the statements made in paragraph No.28 of the writ petition to show that the disability is less than 30% when as a matter of fact the duly constituted Medical Board in terms of the advertisement had found the respondent No.6's disability to the extent of 60% handicapped which in terms of the order dated 7.4.2006 passed by this Court in C.W.J.C. No.7694/2004 was further verified by sending the respondent No.6 before another Medical Board constituted on the request of respondent Corporation by the Civil Surgeon-cum-Chief Medical Officer, Patna, which also found that the respondent No.6 had 60 % disability. It is urged by learned counsels that in view of the earlier report of the Medical Board dated 25.7.1998 which was filed along with the first application of respondent No.6 as also the confirmation of the same by the subsequent Medical Board, there can be no question of coming to any other conclusion except that the respondent No.6 is physically handicapped to the extent of 60% and any statement to the contrary by the petitioner in his writ petition can be of no consequence in the matter.

14. Having considered the rival submissions of learned counsels for the parties, this Court does not find any force in the submission of learned counsel for the petitioner. This Court while exercising its power in a judicial review under Article 226 of the Constitution does not sit in appeal over the action of respondent

authorities so as to arrive at an independent conclusion on the basis of facts and materials on the record. Such decision is required to be taken by the respondent authorities by virtue of the powers conferred upon them. The only thing to be considered is that their action is not arbitrary or discriminatory. As is repeatedly stated, judicial review is not a review of the decision but only of the decision making process.

15. In the present matter, I find that the impugned order dated 3.10.2006 has been passed after taking into account the relevant materials, which were on the record and on the basis of the relevant provisions of the advertisement which had to be applied to the same. It is evident that the respondent No.6 having applied against the first advertisement of 1998 his eligibility criteria has to be considered in terms of the first advertisement. Thus, the respondent Corporation has not traveled beyond the terms and conditions of the advertisement in examining the eligibility and suitability of respondent No.6 for being awarded the LOI for the dealership. It, thus, rightly decided to rely upon the residential certificate dated 17.7.1998 and handicapped certificate dated 25.7.1998 which had been filed along with his first application by respondent No.6 on 31.7.1998. The residential certificate was duly verified from the SDO, Madhepura and was not found to be forged or fabricated and there was no material on the record that the said certificate has been withdrawn or set aside by any superior authority at any point of time. Thus, at the very least, the respondent Corporation was entitled to rely upon the said residential certificate.

16. At this stage, I may also examine the submission of learned counsel for the petitioner that the residence certificate dated 24.9.2002 of respondent No.6 having been cancelled by the District Magistrate by order dated 8.2.2003, the respondent No.6 became disqualified for consideration. In my view the residential requirement in the advertisement to be seen is the de facto residence of the applicant in the district concerned and not his de jure residence. While issuing the residence certificate by the State officials the same may not always be in terms of the requirement for the grant of LPG dealership. In such cases, as a matter of fact it would not only be open but also imperative upon the authorities of the respondent Corporation to consider as to whether a person can rightfully claim to be de facto resident of the particular district. In the present matter not only the respondent No.6 has produced the aforesaid residential certificate dated 17.7.1998 which was granted after due enquiry but there are sufficient evidences to show that the respondent No.6 was residing in the district of Madhepura and paying Municipal tax since 1997, the date of electric connection since March, 1998 and education of three sons of respondent No.6 in the school since 1997. The driving licence of the vehicle of respondent No.6 has been brought on the record by the petitioner himself which shows that it was obtained in 1994 from Murliganj in the District of Madhepura. It further shows that for a long period the respondent No.6 had been residing at Murliganj with an intention to continue his residence there although admittedly his original family home is at Purnia to which place he belongs. In the said circumstances even on

the merits the conclusion could have been arrived that the respondent No.6 is a de facto resident of Madhepura. However, in the present matter there cannot be any need to arrive at any such conclusion by any of the parties as the advertisement itself provided that a person, who is the resident of any of the districts, namely, Madhepura, Purnia, Khagaria, Supaul, Saharsa, Araria and Bhagalpur was eligible to apply. All other conditions remaining similar, the resident of Madhepura district would be given preference for the distributorship. Even if the worst view is taken that the respondent No.6 is not a resident of Madhepura district, he would still be qualified for consideration. The admitted position is that the respondent No.6 having secured more marks was at serial No.1 of the merit panel.

17. This Court does not find any force in the submission of learned counsel for the petitioner that respondent No.6 having shown himself as a resident of Madhepura district and his residential certificate dated 24.9.2002 having been subsequently cancelled by the District Magistrate, Madhepura on 8.2.2003, he would be disqualified for consideration. The present is not a case where the respondent No.6 had filed a forged or fabricated residence certificate without any residential connection with Murliganj in Madhepura District. Admittedly, he was residing for some years in that area and the only issue that could be raised is that he was not yet a de facto resident. That issue however is not relevant in the present case in view of the condition regarding residence laid down in the advertisement. For the same reason it is not a case of giving incorrect fact which would disqualify the respondent No.6 as per the provision in the advertisement.

18. This Court also does not find any reason to interfere with the finding of the earlier Medical Board on the ground of the statement made by the petitioner. As a matter of fact the Medical Certificate granted earlier has been duly verified by a second Medical Board constituted in Patna and there can be no occasion, and the petitioner cannot be permitted, to challenge such repeated findings of different Medical Boards merely because of his own statement in paragraph No.28 of the writ petition, whether the same is specifically controverted or not in the counter affidavit filed by the respondents. As a matter of fact, the finding having been recorded in the impugned order, it was for the petitioner to establish by cogent evidence that the Medical Boards had given perverse reports which he has failed to do. The challenge to the impugned order on the said ground is therefore rejected. In the light of the aforesaid discussions, this Court does not find any merit in the writ application and it is, accordingly, dismissed.