
(2013) 07 P&H CK 0924
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7197 of 2012

Vinod Chaudhary

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2014) 1 SCT 222

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Arun Jain, with Mr. Amit Jain, for the Appellant; Raman Sharma, for the Respondent

Judgement

Rameshwar Singh Malik, J.—This is yet another case wherein the petitioner complains the violation of the Rule of Audi Alteram Partem. Facts first.

The respondent issued an advertisement dated 28.2.2011, inviting applications from the eligible persons for allotment of LPG Distributorship at Kherikalan, District Faridabad, in an open category under the Rajiv Gandhi Gramin LPG Vitrak Scheme ("RGGLV for short). Claiming himself to be eligible for allotment of LPG Distributorship, petitioner submitted his application dated 30.3.2011 well in time, which was duly acknowledged by the respondent authorities vide Annexure P-1. Consequently, draw of lots was held on 17.10.2011 and out of total 12 candidates, petitioner was declared successful. Copy of RGGLV policy has been appended at Annexure P-3, disclosing mode of selection of distributors and the eligibility criteria. As per relevant clauses (b) and (c) of para 4 of the brochure of selection Annexure P-3, applicant applying for RGGLV had to be a resident of the town/village(s) of the advertised RGGLV location and should have passed minimum 10th class examination or equivalent, from a recognised Board.

2. It is the pleaded case of the petitioner that he attached his 10+2 certificate along with application and he was a bonafide resident of village Kherikalan. He was having an electric connection (Annexure P-7), ration card (Annexure P-8),

bank account (Annexure P-9), certificate from the Sarpanch (Annexure P-10), house tax receipt (Annexure P-11) and voter identity card (Annexure P-12). However, the respondent authorities passed the impugned order canceling the candidature of the petitioner on the ground that he was not a resident of village Kherikalan and he did not produce original certificate of 10th class for verification. Neither any show cause notice was issued, nor any opportunity of being heard was granted to the petitioner before passing the impugned order. Hence this writ petition.

3. Notice of motion was issued and pursuant thereto written statement on behalf of respondents No. 1 to 3 was filed, controverting the allegations levelled by the petitioner, stating that in view of the certificate Annexure R-3 issued by the Tehsildar, Faridabad, showing the petitioner to be a resident of Purani Chungi, Faridabad, the impugned order was passed.

4. Learned senior counsel for the petitioner submits that the impugned order was passed by the respondent authorities without issuing any show cause notice to the petitioner. No opportunity of being heard was granted to the petitioner. He further submits that, had an opportunity of being heard been granted to the petitioner, he would have produced all the above said documents before the respondent authorities, so as to remove any kind of misunderstanding, in this regard. Relying upon the above said documents contained in Annexure P-5 to P-12, he submits that the impugned order was liable to be set aside, being violative of basic principles of natural justice.

5. On the other hand, learned counsel for the respondents submits that the impugned order was passed in view of the certificate issued by the Tehsildar, Faridabad, showing the petitioner to be a resident of Purani Chungi instead of village Kherikalan. He prays for dismissal of the writ petition.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

7. A bare reading of the impugned order dated 31.3.2012 (Annexure P-4) would show that before cancelling the candidature of the petitioner for allotment of LPG Distributorship at village Kherikalan, Faridabad under RGGLV Policy, neither a show cause notice was issued nor any opportunity of being heard was granted to the petitioner.

8. During the course of hearing, learned counsel for the respondents could not put into service any substantive argument, so as to defend the impugned order. The only stand taken on behalf of the respondents was that the impugned order was passed on the basis of the Residence Certificate, Annexure R-3 issued by the Tehsildar, Faridabad. The case set up by the petitioner in this regard was that father of the petitioner owns another house at Purani Chungi situated at Old

Faridabad.

9. However, that fact alone will not make the petitioner a non resident of village Kherikalan. Father of the petitioner owns sufficient property in the village. Petitioner has got ancestral house. He was a bonafide voter in the village, had been paying house tax and maintaining his back account. The specific averments taken by the petitioner in this regard have not been denied by the respondents.

10. Further, when asked by the Court as to why an opportunity of being heard was not granted to the petitioner, learned counsel for the respondents had no answer. Having said that, this Court feels no hesitation to conclude that the impugned order has been passed in glaring violation of the basic principles of natural justice. Since the rule of Audi Alteram Partem has been violated in the present case, the impugned order cannot be sustained.

11. The view taken by this Court also finds support from the numerous judgments of the Hon'ble Supreme Court. The development of law relating to the applicability of the rule of Audi Alteram Partem to administrative actions, can be traced right from A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Ridge v. Baldwin, 1964 AC 40 Sayeedur Rehman Vs. The State of Bihar and Others, State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

12. The law laid down in all these judgments has been consistently followed by the Hon'ble Supreme Court in catena of judgments and the recent judgments are Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,

13. The persons affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew in its application to a given case. This unwritten right of hearing is fundamental to a just decision by any authority, which decides the controversial issue affecting the rights of the parties.

14. A recapitulation of the facts would show that a serious prejudice has been caused to the petitioner by not issuing any show cause notice or granting an opportunity of being heard to him. Once the petitioner has been found to be successful in the draw of lots, which is an admitted fact on record, it was least expected from the respondent authorities to provide an opportunity of being heard to the petitioner, before canceling his candidature by passing the impugned order. However, the respondent authorities failed to do so. Having said that, this Court feels no hesitation to conclude that the impugned order, being violative of the principles of natural justice, cannot be sustained.

15. It is not even pleaded or argued case on behalf of the respondent authorities

that in the given fact situation of the case, there was a compulsive necessity or any compelling urgency, because of which it was not practically possible to grant an opportunity of being heard to the petitioner. Thus, the respondents have not made even an attempt to bring the present case under any exception to the general rule.

16. In this view of the matter, it is unhesitatingly held that since the impugned order has been passed without granting opportunity of being heard to the petitioner, the same cannot be sustained. Even a bare reading of the only document relied upon by the learned counsel for respondents, i.e. Annexure R-3, would make it clear that it does not show that the petitioner was not resident of village Kherikalan. There is not even a passing reference in Annexure R-3, about any of the documents placed on record by the petitioner, showing him to be a bonafide resident of village kherikalan.

17. Further, had the respondent authorities issued any show cause notice or granted opportunity of being heard to the petitioner, it would have been quite possible that the petitioner might have persuaded the respondent authorities in this regard, showing them the above said numerous documents, which are coming from official record of different departments of the State. Thus, since the respondents have not followed the golden rule of Audi Alteram Partem, while passing the impugned order, Annexure P-4, the same cannot be sustained for this reason, as well.

18. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order is unsustainable and the same is hereby ordered to be set aside. However, liberty is granted to the respondents to pass a fresh order, in accordance with law, after granting due opportunity of being heard to the petitioner.

Resultantly, the present writ petition stands allowed, however, with no order as to costs.