

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1818 OF 2012

Mohan Dagadu Nandkar Petitioner
Vs.
Union of India & Others Respondents

Mr. Krishna H. Holambe Patil for the Petitioner.
Mr. A.R. Varma for Respondent No.1.
Mr. S.R. Page for Respondent No.2.

CORAM: A.S. OKA &
REVATI MOHITE DERE, JJ.

DATED: JULY 27, 2015

P.C:

1. On the basis of an advertisement published by the second respondent, the petitioner made an application for grant of distributorship under the Rajiv Gandhi Gramin LPG Vitrak Scheme. The petitioner claims that he was a resident of Village Pabal. The petitioner produced a residence certificate, issued by the Tahsildar, Shirur, dated 16-8-2010, recording that the petitioner was a resident of Village Pabal, Taluka Shirur, District

Pune. Thereafter, by communication dated 30-10-2010, the Tahsildar informed the second respondent that the said certificate dated 16-8-2010 shall be treated as cancelled. The petitioner claims that earlier he was declared as a successful Bidder. But due to cancellation of residence certificate, a new tender was issued in respect of the same location. The first prayer in this petition is for cancellation of the subsequent tender as far as the location Pabal is concerned. The second prayer is for issuing an allotment letter granting dealership to the petitioner.

2. During the pendency of the petition, this Court passed an order dated 24-2-2015 directing the Collector to nominate an officer not below the rank of a Sub-Divisional Officer to record a finding on the issue of residence of the petitioner in Village Pabal. In terms of the said order, the Sub-Divisional Officer, Pune held an inquiry and passed an order on 5-5-2015 holding that the petitioner was not an ordinary resident of Village Pabal on 31-3-2010. Therefore, this petition

was amended for incorporating a challenge to the order dated 5-5-2015.

3. The first submission of the learned counsel appearing for the petitioner is that there is no finding recorded by the Sub-Divisional Officer that the petitioner is not a resident of Village Pabal. The learned counsel for the petitioner relied upon a tenancy agreement dated 9-2-2008 as well as the rent receipts issued by one Sopan Laxman Jadhav on the basis of the said agreement. He also relied upon a 7x12 extract of a land bearing Gat No.838, situated at Village Pabal. He submitted that though the name of the petitioner may not be appearing on the relevant date in the voters' list, the same is not relevant for deciding the issue of residence. He submitted that though a ration card at Village Pabal was obtained by the petitioner in September, 2010, it was on the basis of the application made for transfer of the ration card. He submitted that the second respondent has been rejecting applications made for grant of dealership for the location reserved for reserved category on

flimsy grounds and has been allotting the same to persons belonging to open category. He urged that the person to whom the letter of intent has been issued is also not a resident of Village Pabal.

4. We have considered the submissions. We must note here that there is no challenge in this petition to selection of any person on the ground that he or she is not eligible. We may also note that there is no challenge in this petition on the ground that the second respondent is deliberately rejecting the applications of those who apply in reserved category. There is not even a single incident set out in the petition showing that the applications made by persons belonging to the reserved category have been rejected by the second respondent on the so called flimsy grounds.

5. As per the terms and conditions of the advertisement on the basis of which the petitioner applied, he was required to show that as on 3-5-2010, he was a resident of Village Pabal.

6. We must note here that the petitioner relied upon the ration card at the address of Village Pabal which is issued on 16-9-2010. Though orally a submission is made that the ration card held by the petitioner has been transferred in September, 2010, there is no material produced in support of the said contention. A copy of the application made for transfer of the ration card issued at his earlier address is also not placed on record. Moreover, from the ration card it appears that a fresh ration card was issued to the petitioner at the address at Village Pabal on 16-9-2010. Thus a fresh ration card was issued to the petitioner. The cut-off date was 3-5-2010 which was the last date for submitting application. There is one more circumstance considered by the Sub-Divisional Officer in the order dated 5-5-2015. The said circumstance is that after perusal of the voters' list of Village Pabal of 2009 and 2010, it is revealed that the name of the petitioner was never entered in the voters' list and on the contrary the name of the petitioner appears in some other voters' list (at Rajguru Nagar, Taluka Khed, District Pune.)

7. The petitioner is relying upon the agreement of tenancy dated 9-2-2008. Merely because the petitioner has obtained tenancy of two rooms in Village Pabal and merely because he is holding an agricultural land at Village Pabal, one cannot come to the conclusion that he was an ordinary resident of Village Pabal on 3-5-2010. The fact that the petitioner had obtained a ration card at the said address in September, 2010 militates against the claim of the petitioner. Moreover, the name of the petitioner does not appear in the voters' list of Village Pabal in the year 2010.

8. Holding a property in a village by itself is not an evidence of ordinary residence for the particular period. Documentary evidence showing actual residence in the village is required to be produced by a candidate. The said evidence is completely lacking in the present case. On the contrary, the entries in the voters' list and the ration card issued in September, 2010 completely militate against the case of the

petitioner that as on 3-5-2010, he was an ordinary resident of Village Pabal.

9. If the contention of the petitioner is that the selected candidate is not eligible, it is for the petitioner to make an appropriate representation to the second respondent.

10. Thus, the petitioner was not eligible to apply for dealership at the location advertised.

11. Subject to what is observed above, no interference is called for in the petition in writ jurisdiction. The writ petition is rejected.

12. On the prayer made by the learned counsel appearing for the petitioner, the ad-interim relief granted earlier is extended by a period of two months from today.

(REVATI MOHITE DERE, J.)

(A.S. OKA, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed Order.
