

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7338 of 2012

=====

Shakti Rai, son of Sri Surendra Kumar Sinha, Resident of Village-Neem Chak
Bathani, Tola-Gorai Bigha, P.O.-Bathani, P.S.-Neem Chak Bathani, District-Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Gaya
3. The Sub-Divisional Officer, Neem Chak Bathani, Gaya
4. The Circle Officer, Neem Chak Bathani, Gaya
5. The Bharat Petroleum Corporation Ltd., Territory Office, Patna
6. The Territory Manager (L.P.G.), Bharat Petroleum Corporation, Fatuha
Industrial Area, Fatuha, Patna
7. Smt. Priya Gupta, D/O Sri Arvind Kumar, W/O Sri Dharmendra Kumar, R/O-
Biiharsharif, P.S.-Sohsarai, Dist.-Nalanda

.... Respondent/s

=====

Appearance :

For the Petitioner	:	Mr. Rajendra Singh, Sr. Advocate Mr. Amrendra Kumar Sinha, No.1, Advocate
For the S t a t e	:	Mr. Jitendra Kumar, A.C. to AAG-14
For the Bharat Petroleum Corporation	:	Mr. Madhuresh Prasad, Advocate
For Respondent No.7	:	Mr. Satyavrat Verma, Advocate Mr. S. Chandra, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

Date: 21 -04-2017

The present writ application has been filed seeking a writ
in the nature of *certiorari* for quashing the order dated 17.02.2012,
issued by the Territory Manager (L.P.G.), Bharat Petroleum
Corporation (respondent No.6), as contained in Annexure 3,
whereby and whereunder the representation filed by the petitioner
has been rejected and the selection of respondent No.7-Priya Gupta,
in pursuance of the lottery held on 5.8.2011, has been held to be



valid on the basis of a residential certificate issued by the Circle Officer, Neem Chak Bathani, Gaya (respondent No.4), stating the said certificate to be a valid piece of document. The petitioner further seeks a direction from this Court to reject the claim of respondent No.7 and, further, for a direction to respondent No.6 not to grant licence in favour of respondent No.7 in pursuance of the lottery held on 05.08.2011.

2. Before proceeding further, it is relevant to point out here that the petitioner had earlier sought relief from this Court in a previous litigation with regard to the same lottery by filing CWJC No.22265 of 2011, which was disposed of on 07.02.2012, with a direction to the petitioner to approach the Territory Manager(L.P.G.), BPCL, Fatuha, Patna, along with a copy of the said order as well as his earlier representations, within 15 days from the date of the said order, whereafter the said authority was to consider the same and decide it by a speaking order within a month from the date of receipt/production of a copy of the said order. The present impugned order has been passed as a sequel thereto.

3. The main grievance of the petitioner in this writ application is that Priya Gupta (respondent No.7) and one Neelam Kumari, being not the residents of the district of Nalanda, were not eligible to participate in the bid and that their candidature ought to



be rejected on that score alone. It was further contended that the petitioner, being the sole candidate and placed at serial No.3, was duly entitled to be considered for the same.

4. It appears from the records of the case that after disposal of CWJC No.22265 of 2011, the petitioner filed his representations dated 14.2.2012 (Annexure 2) and also Annexure 2/A, wherein the petitioner has stated that, apart from himself, there were two other candidates, who had applied for allotment of L.P.G. dealership in Neem Chak Bathani at Fatuha. Both the candidates were not the residents of Village-Neem Chak Bathani, yet one Priya Gupta (respondent no.7) had been selected as LPG dealer. It was submitted that Neelam Kumari was a resident of Village-Pachambha and her name figured at Serial No.181 of the voters' list whereas Priya Gupta was a permanent resident of Sohsarai, Ward No.3, Biharsharif and her name figured at 585 of the voters' list of Biharsharif.

5. It was further submitted that the residential certificate issued by the Circle Officer, Neem Chak Bathani had been cancelled by the authorities on 14.09.2011 on the basis of the report of Halka Karamchari. Thus, the LPG retailership issued in her favour ought to have been cancelled. Thus, the applications of Neelam Kumari and Priya Gupta should, both, be rejected and the



petitioner's name be considered for allotment of LPG dealership. In order to substantiate his claim and to disentitle respondent no.7, the petitioner has also brought on record certain residential certificate and voters' list and also a certificate issued from the Anchal Adhikari, Neem Chak Bathani, whereby he has cancelled the residential Certificate No.2133 dated 15.3.2011.

6. In support of his contention, learned counsel for the petitioner has referred to a Division Bench decision of this Court in the case of *M/s. Indian Oil Corporation Limited vs. Raj Kumar Jha*, reported in **2012(2) PLJR 783**, wherein this Court in paragraphs 9 and 10 has held as follows:

“9. We are of the opinion that the Corporation being the State within the meaning of Article 12 of the Constitution is supposed to act fairly, reasonably and uniformly and has to be objective in its approach. Once the standard is set out in the advertisement, the Corporation has to adhere to the said standard without any variation. In case, the Corporation allows any alteration, the same will amount to subjective approach which is frowned upon by the Courts time and again. To remain objective Corporation is required to adhere to the standards mentioned in the advertisement. In the present case, it is not in dispute that the application made by the writ petitioner was not in conformation with the requirements mentioned in



the advertisement. In our opinion, the Corporation was justified in rejecting the application of the writ petitioner.

10. The learned Single Judge ought not to have interfered with the decision of the Corporation which was taken in consonance with the terms and conditions contained in the advertisement. Besides; may be, in the present case, it was a mere typographical error. However, there might be a case of mischief or misrepresentation also. It is difficult to draw a line where an error ends and a mischief or misrepresentation begins. The best way to avoid discrimination is strict adherence to the standards mentioned in the advertisement.”

7. Thus, it was contended by the petitioner that Bharat Petroleum Corporation Limited (BPCL) had not adhered to the terms of the advertisement and having failed to adhere to the terms of the advertisement, their actions suffered from lack of reasonableness and objectivity and was fit to be rejected.

8. The respondent-Bharat Petroleum Corporation Limited, on the other hands, submits that after considering the entire material facts and documents supplied by the petitioner along with his representation, has rejected his representation, vide order dated 17.2.2012, stating therein that the selection of respondent No.7 is correct because the Circle Officer, Neem Chak Bathani, Gaya, vide



his letter No.255 dated 18.10.2011, had informed the authorities that earlier the residential certificate No.2133 dated 15.03.2011 issued to Priya Gupta was valid till before the date of her marriage i.e., 09.07.2011, which took place after the date of application i.e., 29.03.2011. The said decision was taken on a communication made by the Circle Officer (respondent No.4), who, vide letter No.255 dated 18.10.2011, has validated the residential certificate No.2133 dated 15.03.2011, which was issued in her favour and who has stated that the same was valid till before the date of marriage of respondent No.7, i.e., 09.07.2011. The said certificate was prior to the date of application filed by her i.e., 29.03.2011 and, therefore, valid at the time her application was placed for consideration. Thus, by necessary implication, the application filed by respondent no.7 was valid as she was not married on the said date, when she had filed her application.

9. Learned counsel for respondent No.7 has supported her selection by the BPCL by stating that on the date of application Smt. Priya Gupta (respondent No.7) was a resident of Nalanda, which stands supported by the residential certificate issued in her favour.

10. In support of her contention, learned counsel for respondent No.7 has relied upon a decision of this Court in the case



of *Niraj Kumar vs. Indian Oil Corporation Ltd.*, reported in *2009(3) PLJR 591*, wherein this Court has held that for allotment of LPG distributorship, the residential certificate is of a place where a person resides. A person may also have his residence at a number of places and he changes his residence because of his business and employment, but that does not necessarily take away the place of his residence where he originally belonged. This Court has also held in paragraph 10 of the aforesaid judgment that the cut off is the date when the application is filed and subsequent documents cannot be looked into. The right of the applicant crystallizes on the date he makes an application and that cannot be altered subsequently. In paragraph 12 of the said decision, it has been held as such:

“12. The second is with regard to the residence of Respondent No.5. This also cannot be accepted in the application itself. The respondent No.5 has annexed a copy of residence certificate granted by the Block Development Officer, Lalganj. To me, it appears that submission is based on a wrong premise. It is based on the premise that a person can have only one residence. In present times that is not correct nor was it so earlier. A person can have multiple residences. A residence is a place where a person resides. A person may have his residence at a number of places because he may be required to change the



place because of his employment, because of his business but that does not take away the place of his residence where he originally belonged to.”

11. Thus, the respondent-BPCL has, vide order dated 17.02.2012, after due enquiry, come to the finding that the candidature of respondent no.7-Priya Gupta was wholly valid in view of the fact that the Circle Officer, Neem Chak Bathani, Gaya, vide letter under reference No.255 dated 18.10.2011, had informed the authorities that earlier residential certificate No.2133 dated 15.03.2011 issued to Priya Gupta was valid till before the date of her marriage i.e., 09.07.2011, which is after the date of application i.e., 29.03.2011. Accordingly, the representation of the petitioner was rejected by the respondents.

12. Learned counsel for the respondent-BPCL further submits that the petitioner is also guilty of manipulation and hence having not come with clean hands is not entitled to any relief under Article 226 of the Constitution of India. It was further pointed out that the manipulation is evident from the fact that the residential certificate was issued in favour of respondent no.7 by the B.D.O. of Neem Chak Bathani, whereas the cancellation of the certificate has been made by the Circle Officer on the basis of the report from the Halka Karamchari. Thus, Certificate No.2133, having been issued prior to the date of application, on which date respondent No.7 was



still unmarried, is a valid piece of document, which was correctly considered on the date of consideration of the application of respondent No.7. Therefore, any cancellation of a certificate by the authority, who had not issued it, is also not a valid cancellation in the eyes of law.

13. Responding to the aforementioned argument, learned counsel for the petitioner submits that respondent No.7, not being a resident of the village, was disentitled to participate in the lottery and her application ought to have been rejected at the very threshold. Moreover, the action of the respondent-BPCL in supporting the candidature of respondent No.7 is wholly arbitrary and mischievous, especially because the residential certificate of respondent No.7 was cancelled by the Circle Officer, Neem Chak Bathani, Gaya (respondent No.4) on the ground that she was not the resident of Neem Chak Bathani. Furthermore, without considering the entire facts and documents supplied by the petitioner, the authorities have illegally supported the case of respondent No.7 and ignored the certificate issued by the Circle Officer, Neem Chak Bathani, Gaya (respondent no.4). Thus, the order impugned stands vitiated and is fit to be set aside.

14. In reply to the contention advanced by the learned counsel appearing on behalf of respondent No.5, the submission



advanced is that the petitioner, being aggrieved by an action rejecting his application for grant of licence of dealership of L.P.G., which was granted in favour of respondent no.7 under RGG Scheme, had come to this Court on the ground that the residential certificate issued by the Block Development Officer, Neem Chak Bathani was false and respondent No.7 Priya Gupta was not the resident of Neem Chak Bathani in the district of Gaya. This Court after hearing the matter directed the petitioner to raise his grievance before respondent no.6.

15. In compliance of this Court's order dated 7.2.2012, respondent No.6 after due verification rejected the claim of the petitioner on the ground that the residential certificate issued by the Circle Officer, Neem Chak Bathani, Gaya, vide Certificate No.2133 dated 18.3.2011, is valid and lawful till before the date of her marriage i.e., 9.7.2011. It is relevant to mention that respondent No.7 as well as the petitioner had both made application in response to the advertisement issued in the month of February. It was only on 18.03.2011 that the Circle Officer, Neem Chak Bathani, Gaya issued the residential certificate in favour of respondent no.7. Therefore, as on the date of application, respondent no.7's candidature was wholly valid and she got married only on 09.07.2011. Hence, it was submitted that the writ application has no



merit and is fit to be dismissed.

16. I have heard learned counsel for the parties. The law in this regard has been settled in previous litigations. The reasonableness of the action of the Bharat Petroleum Corporation Ltd., which is a State within the meaning of Article 12 of the Constitution, can well be tested on the anvil of fair play. It is also well settled that the right of an applicant accrues on the date of application and once a party is required to make an application on the basis of certain documents, knowing fully well that consideration of such documents would alone form the basis of the decision of the authorities, then it can be said that his right crystallizes on the date the application is made and that cannot be altered subsequently either to his advantage or disadvantage by supplementing further documents. If subsequent documents are allowed to be considered, then all candidates would be changing their basic papers at their free will, till the time of interview/selection. The cut off date is the date when the application is filed for that particular candidate/applicant and subsequent documents cannot be looked into.

17. In the present case, Bharat Petroleum Corporation Ltd. has rejected the representation of the present petitioner as on the date of issuance of residential certificate in favour of respondent



No.7, which was filed along with her application, she was unmarried and had been living at Nalanda, which is wholly legal and justified. The authorities have fully considered the case of the petitioner vis-à-vis respondent No.7 and have appropriately rejected his representation after holding that on the date of application, the residential certificate filed by respondent No.7 was a valid piece of document.

18. Thus, in the considered opinion of this Court and for the reasons described above, the impugned order rejecting the representation/candidature of the petitioner cannot be flawed and is thus upheld.

19. In the result, the present writ application merits no consideration and is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	28.02.2017
Uploading Date	24.04.2017
Transmission Date	N.A.

