



GAHC010282722019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8669/2019

DAYAL CH. PAUL
S/O- SRI SANTOSH PAUL, R/O- VILL- KALYANPUR, P.O. AND P.S.
NAGARBERA, DIST- KAMRUP, PIN- 781127

VERSUS

INDIAN OIL CORPORATION LTD. AND 3 ORS.
REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR, INDIAN OIL
BHAWAN, LODHI ROAD, NEW DELHI- 110011

2:THE GENERAL MANAGER (LPG)
INDIAN OIL BHAWAN
NORTH EAST INTEGRATED STATE OFFICE NEAR GUWAHATI SECTOR-3
NOONMATI
GHY-20

3:THE SR. MANAGER (LPG)
INDIAN OIL-AOD
NORTH NORTH EAST INTEGRATED AREA OFFICE
3RD FLOOR
EAST POINT TOWER
BAMUNIMAIDAN
GHY- 21
KAMRUP
ASSAM

4:DIPTI DAS
D/O- SRI PRABIN KR. DAS
VILL- GOPALPUR
P.O. MIRZA
P.S. PALASHBARI
DIST- KAMRUP



PIN- 781127

5:THE CIRCLE OFFICER

NAGARBERA RVENUE CIRCLE
P.O. AND P.S. NAGARBERA
DIST.- KAMRUP(R)
PIN- 781127

6:THE SUPERINTENDENT OF POLICE

KAMRUP (R)
AMINGAON
DIST.- KAMRUP (R)
PIN-78103

Advocate for the Petitioner : MRS. N. SAIKIA

Advocate for the Respondent : MR. P. BHARDWAJ
: MR. K. BHUYAN
: MR. N. GOSWAMI

Linked Case : WP(C)/5787/2019

DAYAL CH. PAUL
S/O SRI SANTOSH PAUL
R/O VILL. KALYANPUR
P.O. AND P.S NAGARBERA
DIST. KAMRUP
PIN-781127

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REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR
INDIAN OIL BHAWAN
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2:THE GENERAL MANAGER (LRG)
INDIAN OIL BHAWAN
NORTH EAST INTEGRATED STATE OFFICE



NEAR GUWAHATI SECTOR 3
NOONMATI
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3:THE SR. MANAGER (LPG)
INDIAN OIL-AOD
NORTH EAST INTEGRATED AREA OFFICE 3RD
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BAMUNIMAIDAM
GUWAHATI-21
KAMRUP
ASSAM
4:DIPTI DAS
D/O SRI PRABIN KR. DAS
VILL. GOPALPUR
P.O. MIRZA
P.S. PALASHBARI
DIST. KAMRUP
PIN-781127

Advocate for the Petitioner : MRS. N. SAIKIA

Advocate for the Respondent : MR. P. BHARDWAJ
: MR. K. BHUYAN
: MR. N. GOSWAMI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 13-06-2023

Heard Mrs. N. Saikia, the learned counsel appearing on behalf of the petitioner and Mr. P. Bhardwaj, the learned counsel appearing on behalf of the Indian Oil Corporation as well as its officials. I have also heard Mr. K. Bhuyan, the learned counsel appearing on behalf of the respondent No.4 and Mr. N. Goswami, the learned counsel appearing on behalf of the respondent Nos. 5 and 6.

2. Taking into account the contextual semblance as well as the paramateria



legal issues involved in both the writ petitions, both are taken up for disposal by this common judgment and order.

3. The facts of the instant case is that on 12.06.2018, an advertisement was published in Newspaper namely "Axomiya Pratidin" by the IOCL authority, Bharat Petroleum Corporation Ltd., Hindustan Petroleum & Corporation Ltd. jointly for appointment of the LPG Distributorship in different places within the State of Assam. A perusal of the said advertisement, which was placed before this Court during the hearing shows that the said advertisement pertained to 33 locations wherein applications were invited for appointment of Distributorship. The present writ petition relates to the appointment of Distributorship in the location Jamlai, village Kalyanpur under Mahakuma Nagarbera, part Chamria within the District of Kamrup and the category under which the same had to be applied was reserved for OBC candidates. From a perusal of the said advertisement, it further reveals that the last date of submission of the said form was on 13.07.2018. The said advertisement also refers to Unified Guidelines for selection of LPG Distributorship. It is relevant to mention that though the writ petitions have been framed on the basis of the Guidelines of 2016 but taking into account the period during which the said advertisement was issued and the selection process, the relevant guidelines for the advertised location in question would be the Unified Guidelines for Selection of LPG Distributorships of October 2017.

4. Chapter 10 of the said Guidelines refers to the Process of Selection. In the said chapter, as to how the advertisement is to be issued, the publicity as regards the advertised location, the procedure for selection etc. have been mentioned. Clause 10.6 of the said Guidelines stipulates that the applications

cannot be submitted after the specified closing date and the time mentioned in the advertisement as communicated by the Oil Companies. In other words, as per the advertisement, the last date for submission of the application was 13.07.2018. It was further mentioned that no extension of time would be entertained.

5. Clause 10.4.2 is very relevant for the purpose of the instant dispute and the same is quoted hereinunder:

“10.4.2 *One application per applicant for a location*

Applicants should submit only one application for one location. In case more than one application is received from an individual, all the applications would be clubbed together and treated as one application. In such cases, application fees received against all other applications would be forfeited.”

A perusal of the above Clause would show that the applicant should submit only one application for one location. It has been further mentioned that in case more than one application is received from an individual, all the applications would be clubbed together and treated as one application. In such cases, application fees received against all other applications would be forfeited.

6. Chapter 11 is a Chapter pertaining to Draw of Lots. Clause 11.4 stipulates that in case there are more than one eligible applicant, selection of LPG Distributorship for an advertised location will be done through computerized draw of lots from the eligible applicants for that location. Clause 11.5 relates to certain Inter-se priority which are given in case of Sheheri Vitrak, Rurban Vitrak and Gramin Vitrak locations reserved under Government Personnel (GP) categories.

7. Clause 11.6 is vital for the purpose of the instant dispute which stipulates that Inter-se priority would be given in the draw of lots to the eligible applicants for the Durgam Kshetriya Vitrak (DKV) locations wherein three priority lists will be prepared as per the following order. It is relevant herein to take note of that the advertisement dated 12.06.2018 was an advertisement issued in respect to Durgam Kshetriya Vitrak (DKV) locations. Clause 11.6 of the guidelines is quoted hereinbelow:

“11.6 *Inter-se’ priority is given in the draw of lots to the eligible applicants for the Durgam Kshetriya Vitrak (DKV) locations wherein three priority lists will be prepared as per the following order:*

List 1 : Eligible applicants, residing in the concerned Gram Panchayat of the advertised location.

List 2 : Eligible applicants, residing in the concerned Revenue sub division of the advertised location.

List 3 : Eligible applicants, not residing in the concerned Gram Panchayat or in the concerned Revenue sub division of the advertised location.”

8. From a perusal of the above quoted Clause 11.6, it would reveal that List 1 would consist of eligible applicants residing in the concerned Gram Panchayat of the advertised location. List-2 would consist of those eligible applicants residing in the concerned Revenue Sub-Division of the advertised location and List-3 are those Eligible applicants not residing in the concerned Gram Panchayat or in the concerned Revenue Sub-Division of the advertised location. From a reading of Clause 11.6, it would be apparent that those eligible applicants in List-1 shall have priority over those eligible applicants in List-2 and those eligible applicants



in List-2 shall have priority over those eligible applicants in List-3.

9. It reveals from the records that the petitioner herein had filed two applications for the same location. The first application was filed on 23.06.2018 wherein the petitioner put his father's name as Sontosh Paul. In the second application which was filed on 13.07.2018, the petitioner has put his father's name as Santosh Pal. At this stage, it is also relevant herein to mention that the respondent No.4 had also submitted her application on 13.07.2018. On the basis of Clause 11.4 and 11.6 as referred hereinabove, the respondent IOCL authorities prepared three Inter-se priority lists as could be seen from Annexure P4 of the affidavit-in-opposition filed by one Ranjit Borgohain, the Deputy General Manager (LPG-Sales), Guwahati Area Office. In the Inter-se priority List No.1, there were 15 eligible applicants and the petitioner's name was shown at Serial Nos. 1 and 4 whereas the respondent No.4's name was shown at Serial No.13. In the Inter-se priority list No.2, it is seen that there were 10 eligible applicants. It is very unfortunate to take note of that the said list of applicants found eligible for draw for selection of LPG Distributorship were not enclosed in totality by the respondent Nos. 1, 2 and 3 in the affidavit filed on 02.01.2020, the reason for which is unknown. This aspect of the matter is clear, inasmuch as, a perusal of Annexure-P4 shows that the said document has two pages whereas only one page was enclosed. This Court made a specific query upon the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3 as to why only a part of Annexure P4 was enclosed and not the whole document, the learned counsel Mr. P. Bhardwaj submits that he had enclosed the said document as was given to him by the authorities. This Court strongly deprecates such acts on the part of the Respondent Authorities i.e. the Indian Oil Corporation Ltd.



10. Be that as it may, taking into account that there were two applications filed by the petitioner, the draw which was conducted on 27.07.2018 was cancelled on an objection being filed by one Nandita Das, another applicant who informed that the petitioner herein had submitted two applications. This aspect of the matter was brought to the attention of the petitioner vide a communication dated 22.10.2018 issued by the Deputy General Manager, (LPG-Sales) and thereby informing that the draw was held on 27.07.2018 wherein the petitioner's name was found at Serial No.1 was rejected and the redraw would be conducted by applying Clause 11.4 and by taking into account the application bearing Serial No.IOC07511029823062018. It further reveals from the said document as enclosed as Annexure-P3 that the said communication dated 22.10.2018 was received by the petitioner on 24.10.2018. Subsequent thereto, there was a fresh draw on 05.11.2018 where as many as 14 eligible applicants participated for the location Jamlai. It can be seen from Annexure-10 of the writ petition that the petitioner had also participated in the said draw without any demur.

11. Pursuant to the said draw held on 05.11.2018, the Respondent No.4 was found out to be the lucky one and a notice for appointment of the LPG Distributorship for the location Jamlai was issued in favour of the respondent No.4.

12. The petitioner thereupon being aggrieved for issuance of the notice of appointment to the respondent No.4 filed a writ petition before this Court which was registered and numbered as WP(C) No.5787/2019. The contended case in the said writ petition was that the respondent No.4 could not have been brought within the fold of the Inter-se priority List No.1 as the respondent No.4 was not



a resident of the concerned Gram Panchayat of the advertised location. It is relevant herein to mention that in the said writ petition only the IOCL Authorities and the Respondent No.4 were arrayed as parties and not the other participating eligible applicants in List 1. It further reveals from the records that this Court vide an order dated 16.08.2019 issued notice in WP(C) No.5787/2019.

13. In the meantime, pursuant to a RTI application filed on 19.08.2019, the petitioner was furnished the Letter of Intent issued in favour of the respondent No.4 dated 11.03.2019. It is under such circumstances, the second writ petition i.e. WP(C) No.8669/2019 was filed challenging the Letter of Intent dated 11.03.2019 and further seeking a direction that the petitioner being the most eligible amongst other candidates be selected and appointed as the Distributor for LPG under the category of DKV in the Jamlai area. In this writ petition also only the IOCL Authorities and Respondent No.4 were arrayed as parties. Later on, Circle Officer and the Superintendent of Police were impleaded vide order dated 18.03.2021 as Respondent Nos. 5 and 6 respectively. It is again relevant to note that the other eligible applicants of List 1 were not arrayed as Respondents.

14. It reveals from the record that vide an order dated 25.11.2019, this Court issued notice and as regards the interim prayer, it was observed in the said order that the prayer shall be considered on the returnable date. It further reveals from the record that on 06.02.2020, this Court observed that the fate of the distributorship shall be subject to the outcome of both the writ petitions.

15. From the records of WP(C) No.8669/2019, it reveals that an affidavit-in-opposition was filed by the respondent Nos. 1, 2 and 3 on 02.01.2020. In



paragraph No.4, it has been mentioned as to why the first draw was cancelled in view of the two applications filed by the petitioner for the same location. In paragraph No.5, it was mentioned that in the next draw of lots held on 05.11.2018 the respondent No.4 was selected wherein the petitioner had also participated. It was further mentioned that as per the Unified Guidelines, it is not mandatory for a candidate to be a permanent resident of the Gram Panchayat and also there is no stipulation of years about living in the Gram Panchayat. It was further mentioned that to prove his/her resident status, the selected candidates has to produce the Standard Residence Certificate which the respondent No.4 has rightly submitted before the field verification. It was further mentioned that the Field Verification Committee vide letter dated 03.01.2019 requested the Circle Officer, Nagarbera Revenue Circle to confirm the Standard Residence Certificate of the respondent No.4. In reply the Circle Officer, Nagarbera Revenue Circle had written a letter dated 09.01.2019 confirming the residential status of respondent No.4 as a Leased Resident since 04.07.2018 in the house of Abdul Jobbar and further stating that No.42 Jamlai Gaon Panchayat, Kalyanpur Gaon Panchayat and Jamlai Kalyanpur Gaon Panchayat are the same which means that the respondent No.4 was a resident of the advertised location and its Gram Panchayat. It was on the basis of the same, the Inter-se priority List No.1 was prepared in which the respondent No.4 was rightly placed and thereupon selected. It was further mentioned that the Letter of Intent dated 11.03.2019 was issued to the respondent No.4. Later on, in line with the Letter of Intent, a Letter of Appointment was also issued on 30.08.2019. At this stage, it is relevant to take note of that the said Letter of Appointment dated 30.08.2019 has been enclosed as Annexure-P8 wherein it has been mentioned that the fate of the distributorship is subject to the final



outcome of WP(C) No.4406/2018 pending before this Court.

16. Before further proceeding, this Court finds it relevant to take note of that the draw held on 05.11.2018 in respect to the Inter-se priority List No.1 could not have been on the basis of the letter dated 09.01.2019 as has been stated in paragraph No.5 as above mentioned.

17. It further reveals from the records that an affidavit-in-reply was filed by the petitioner wherein drawing reference to the communication dated 09.01.2019 issued by the Circle Officer, Nagarbera, it was mentioned that the respondent No.4 was not a permanent resident of the locality and she was not a voter and not having any NRC details to establish her permanent residency of the advertised location. It was further mentioned that the respondent No.4 was a permanent resident of village Gopalpur, P.O. Mirza, P.S. Palashbari.

18. It further reveals from the record that an affidavit-in-opposition was filed by the respondent No.4 on 25.02.2020. In the said affidavit-in-opposition, it was mentioned that on 04.07.2018, the respondent No.4 had entered into a lease agreement with the landlord Abdul Jobbar for lease of a plot of land measuring 4 Kathas covered by Dag No.582 of K.P. Patta No.30 of Revenue Village Jamlai under Mouza Nagarbera in the District of Kamrup, Assam and thereafter with due process, the said deed was registered as deed of lease on 12.07.2018 in pursuance to the lease permission/NOC issued by the Deputy Commissioner, Kamrup dated 11.07.2018 for the purpose of setting up of a godown of LPG Distribution. It was further mentioned that the Standard Residence Certificate dated 21.11.2018 issued by the Circle Officer, Nagarbera Revenue Circle in the name of the respondent No.4 had clearly reflected that the respondent No.4 is a resident of village Jamlai under Jamlai Kalyanpur Gram Panchayat in the State of



Assam since 04.07.2018. The rest of the statements so made in the affidavit-in-opposition are paramateria to what has been mentioned by the respondent Nos. 1, 2 and 3 in the affidavit-in-opposition and for the sake of brevity the same are not repeated herein again.

19. It is however interesting to note that Annexure-II to the said affidavit-in-opposition is the agreement for lease before a notary public at Guwahati between one Abdul Jobbar with the respondent No.4. The said deed was executed on 04.07.2018. From a perusal of the entire deed, it does not reflect that the said lease was in respect of a house but rather it was a lease of the land as it would be apparent from a perusal of the Schedule to the said agreement for lease. Annexure-III is the registered Deed of Lease dated 12.07.2018 executed between Md. Abdul Jobbar and the respondent No.4. A perusal of the said document would also show that it was a lease of the land and not any house thereupon. All other documents enclosed to the said affidavit-in-opposition from Annexure-IV onwards shows that the said documents have come into existence after the last date of submission of the application i.e. 13.07.2018.

20. It further reveals that an affidavit-in-reply was filed by the petitioner against the affidavit-in-opposition filed by the respondent No.4. Further to that an additional affidavit was filed on 07.06.2023 enclosing therewith a communication issued by the Circle Officer, Nagarbera Revenue Circle to the Additional Senior Government Advocate dated 09.12.2021, a copy of which the petitioner was furnished during the course of hearing that took place earlier. From a perusal of the said document, it reveals that the Circle Officer, Nagarbera Revenue Circle had stated that the respondent No.4 has been



residing on a plot of land of Abdul Jobbar as lessee dweller covered by Dag No.582, Patta No.30 of village Jamlai under Nagarbera Revenue Circle since 04.07.2018. It was also mentioned that there was no evidential document traced out of the respondent No.4 i.e. voter list, NRC etc. to be proven in support of her locality of the village Jamlai under Nagarbera Revenue Circle. Further to that, the land holding report issued by the then Circle Officer, Nagarbera dated 20.06.2018 shown by the respondent No.4 is neither in her name nor her relatives nor in the name of Abdul Jobbar. It further reveals that the said information was given by the Circle Officer, Nagarbera on the basis of information so provided by the Gaonburah, LOT Mandal, Supervisory Kanungo's report.

21. Today, when the matter was taken up, the respondent No.4 has filed another additional affidavit thereby bringing on record an unregistered house rent agreement entered into between Abdul Jobbar and one Nayan Kalita who is the husband of the respondent No.4. The said document has been placed on record to show that the respondent No.4 has been residing in the said house since 08.07.2017 with her husband. The said document, however, was at no point of time was placed before the respondent authorities or there was any mention of the same in the affidavit-in-opposition earlier.

22. From the above materials on record and upon hearing the learned counsels appearing on behalf of the parties, the question arises as to whether the respondent No.4 ought to have been placed in the Inter-se priority List 1 wherein the eligible applicants residing in the concerned Gram Panchayat of the advertised locations were clubbed together. The record reveals that on 12.06.2018, the advertisement was issued. The advertisement categorically



mandated that in terms with Clause 11.4 read with Clause 11.6, certain preference would be given for DKV locations on the basis of residence. Clause 11.6 as quoted hereinabove would show that those eligible applicants residing in concerned Gram Panchayat of advertised locations would get preference over those eligible applicants residing in the concerned Revenue Sub-Division of the advertised locations who would come under List 2. It would further show that those eligible applicants who neither reside within the concerned Gram Panchayat nor in the concerned Revenue Sub-Division of the of the advertised locations would be grouped in List 3. The documents on which the respondent No.4 herein claims that she comes within List 1 is on the basis of an unregistered agreement for lease entered in on 04.07.2018 that too for a vacant plot of land. The other document on which the respondent No.4 claims to be resident is a registered deed of lease dated 12.07.2018 just one day before the last date of application. Further to that, the Standard Residence Certificate issued on 21.11.2018 as well as the Circle Officer's report on 09.01.2019 are all based upon the unregistered agreement for the lease dated 04.07.2018. It would therefore be seen that only pursuant to the advertisement, the respondent No.4 has taken steps to enter into the agreement for lease of the land and thereupon submitted the application on 13.07.2018. Strangely enough, in spite of various statements being made by the petitioner that the respondent No.4 is not a resident of the Gram Panchayat in question, there is not a single document placed on record for example, the voter ID card, Aadhar Card or any other documents issued by the statutory authority showing the address of the respondent No.4 prior to 13.07.2018 to be a resident of the advertised location. Even the document placed today before this Court by way of additional affidavit is not a document which was submitted during the process of consideration of



the respondent No.4. There was also no reference to the said document in the affidavit-in-opposition. Under such circumstances, the question therefore arises as to whether the respondent No.4 could have been brought within the purview of List 1 of Clause 11.6. In this regard, this Court finds it relevant to observe that vide an order dated 30.05.2023, this Court directed the respondent IOCL to file an affidavit stating the reasons why Clause 11.6 was incorporated in the Guidelines. Strangely enough, the respondent IOCL did not care to file the said affidavit.

23. Be that as it may, this Court finds it relevant to take note of the judgment of the Supreme Court in the case ***Bhagwan Dass and Another Vs. Kamal Abrol and Others reported in (2005) 11 SCC 66***. In the said case, it was also relating to allotment of retail outlet for distribution of Liquefied Petroleum Gas (LPG) by the Hindustan Petroleum Corporation which is one of the constituents of the advertisement dated 12.06.2018. The Supreme Court dealt with the aspect of "resident" and observed that the word "residence" is generally understood as referring to a person in connection with the place where he lives and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of "residence". The Supreme Court observed that there are two classifications of the meaning of the word "residence". First is in the form of permanent and temporary residence and the second classification is based on *de facto* and *de jure* residence. The *de facto* concept of residence can be understood clearly by the meaning of the word "residence" as given in Black's Law Dictionary, 8th Edition meaning thereby that the word "residence" means bodily presence as an inhabitant in a given place.

Thus a *de facto* residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage. The Supreme Court taking into account the eligibility criteria for allotment of LPG Dealership/Distributorship further observed that what is required to fulfill the eligibility criterion of residence is that the person should be a *de facto* resident and not have a mere connection with the place on account of her husband having some personal or ancestral property in Kangra.

24. In the backdrop of the above, it is seen from the pleadings of the writ petition that in the affidavit-in-replies wherein it has been mentioned that the respondent No.4 is a resident of village Gopalpur, P.O. Mirza in the District of Kamrup, there is no denial to the said aspect. On the basis of the documents shown on record, it would be seen that only after the issuance of the advertisement on 12.06.2018 that the respondent No.4 took steps for the purpose of getting within the purview of List-1 by entering into an agreement for lease on 04.07.2018 and a registered agreement for lease on 12.07.2018 just one day prior to the last date of submission of the application. In this regard this Court finds it relevant to quote paragraph Nos. 11, 12 and 13 of the said judgment which are as hereinudner:

“11. From the aforesaid analysis it is apparent that the word “residence” is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of “residence”. There are two classifications of

the meaning of the word "residence". First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word "residence" as given in Black's Law Dictionary, 8th Edn. It is given that the word residence means bodily presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage.

12. *In the present case, the necessary eligibility criterion requires the applicant to be a resident of Kangra district. The advertisement inviting the applications has not defined the same and hence it would be necessary to see the intention of the framers of the eligibility criteria to understand the true meaning or the sense for which the word "resident" is used or as to why the criterion of resident is put as an eligibility criterion for allotment of LPG dealership/distributorship. In the present case the intention of the framers appears to be to provide employment or source of earning for the residents of Kangra district in the form of LPG dealership/distributorship. The eligibility criterion requires the person to be a resident of Kangra district only in the actual sense and not in any other sense. What is required to fulfil the eligibility criterion of residence is that the person should be a de facto resident and not have a mere connection with the place on account of her husband having some personal and ancestral property in Kangra. There is no finding recorded by the Court that the husband of Respondent 1 is permanently residing at Kangra or has permanent abode in Kangra. From the finding arrived at by the High Court it can be said that her husband having ancestral property in Kangra is a visitor to that place and occasionally resides there for a few days. Respondent 1 prima facie appears to be a permanent resident of Mandi, since her name appears in the voters' list of Mandi*

and that she has been drawing her ration from Mandi as per the case set up by the appellants. It is further clear that the intention of providing employment and source of earning to the residents of the place would be fulfilled only if the person is actually living in Kangra and not by his/her remote connection to the place. It may also be seen that another eligibility criterion is that the person should not be a partner or having any dealership or distributorship agency in any petroleum company and, therefore, the dealership/distributorship has to be allotted to the person who does not hold any other dealership/distributorship agency of any other petroleum company. This term indicates that the Corporation wants that the dealership at a particular place has to be handled by that person, which would necessarily require the personal presence of that person at the place of business. The notice of intent issued to Respondent 1 on 3-3-1988 further clarifies this requirement when it says that the dealer is to be a full-time working dealer which necessitates the permanent residence at a place for which the dealership licence is given. When the agency requires full-time working dealer it would be only possible if the person actually resides in Kangra district and not working through agent or servants engaged for the said purpose. This further indicates that the dealer is required to be a de facto resident of the place from where the dealership licence is to be issued and it is not permissible to have casual connection or temporary residence at that place.

13. *For the aforesaid reasons we are of the view that the High Court has committed an error in construing the term "resident of Kangra district" as not requiring a person to be a permanent resident of that place and his casual connection to the district would fulfil the necessary mandatory criteria provided in the advertisement notice. As the approach of the High Court in deciding the second appeal against the appellant was based on its interpretation of the criterion of residence and as we have taken a different view of the matter, we set aside the judgment and*



decree passed by the High Court and remand the matter back to the Court for fresh consideration of the appeals in the light of interpretation given by us to the term "resident of Kangra". The appeals are disposed of accordingly with no order as to costs."

25. In view of the above proposition of law as settled by the Supreme Court in the above judgment which more particularly applies to the facts of the instant case and the intention of the framers can also be culled out as Mr. P. Bhardwaj, the learned counsel for the respondent Nos. 1, 2 and 3 also admits to provide employment or source of earning for the residents of that particular location, this Court is of the opinion that the respondent No.4 could not have been brought within the Inter-se priority List No.1. Under such circumstances, the draw so held on 05.11.2018 bringing the respondent No.4 within the ambit of Inter-se priority List No.1 was contrary to Clause 11.6 of the Guidelines and also violates the mandate of Article 14 of the Constitution. Accordingly, as on the basis of the draw of lots dated 05.11.2018, the LPG Distributorship was awarded to the respondent No.4 vide the Letter of Intent dated 11.03.2019 and the subsequent Letter of Appointment dated 30.08.2019, the said Letter of Intent dated 11.03.2019 as well as the Letter of Appointment dated 30.08.2019 are therefore liable to be set aside and quashed.

26. The learned counsel for the petitioner has strenuously argued that in view of the setting aside of the Letter of Intent dated 11.03.2019 and the Letter of Appointment dated 30.08.2019, this Court should direct the respondent IOCL authorities to issue the Letter of Intent in favour of the Petitioner. This Court is of the opinion that the said submission is totally misconceived, inasmuch as, Clause 11.4 of the Guidelines stipulates that in case there are more than one



eligible applicant, selection of the LPG Distributorship will be done through computerized draw of lots from the eligible applicants for that location. It appears from the records that apart from the Petitioner and the Respondent No.4, there were 12 other eligible applicants. Under such circumstances, the question of issuing a direction to the Respondent IOCL authorities to issue a Letter of Intent and Letter of Appointment to the Petitioner do not arise. Further to that, it is also relevant to take note of that the other applicants are not parties to the instant writ petition and as such, such directions would be contrary to the constitutional norms.

27. Accordingly, this Court therefore disposes of the instant writ petitions with the following directions and observations:

(I) The respondent No.4 would not come within the ambit of List 1 of Clause 11.6 of the Guidelines of the October, 2017 and as such the draw held on 05.11.2018 was contrary to Clause 11.6 of the Guidelines and the consequent selection of the respondent No.4 and on the basis of which the Letter of Intent dated 11.03.2019 as well as the Letter of Appointment dated 30.08.2019 were issued are set aside and quashed.

(II) The respondent Nos. 1, 2 and 3 are given the liberty to bring to a logical conclusion the LPG Distributorship in respect of Jamlai advertised location in accordance with the Guidelines of October, 2017 within such time as deemed fit to the authorities concerned.

28. Before concluding, this Court further finds it relevant to take note of submission of Mr. K. Bhuyan, the learned counsel appearing on behalf of the respondent No.4 to the effect that the respondent No.4 has also invested a



huge amount of money and also submitted some security deposit in that regard and in view of the setting aside of the Distributorship of the respondent No.4 by the instant judgment, the respondent No.4 may be returned the said security deposits by the Respondents. This Court is of the opinion that in view of the setting aside of the Distributorship, the respondent No.4 would be at liberty to file an application before the authorities concerned, who shall duly take note of and pass appropriate orders in that regard.

JUDGE

Comparing Assistant