



GAHC010014242021

Page No.# 1/15



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

Case No. : WP(C)/505/2021

BIKRAMJIT SINGHA
S/O SHRI BIPIN BIHARI SINGHA, R/O VILL. SUDARSHANPUR, PT-2, P.O.
SUDARSHANPUR, P.S LALA, DIST. HAILAKANDI, ASSAM, PIN-788160

VERSUS

THE INDIAN OIL CORPORATION AND 4 ORS
REP BY ITS CHAIRMAN CUM MANAGING DIRECTOR HAVING ITS
REGISTERED OFFICE AT INDIAN OIL BHAVAN, ALI YAVAR JUNG MARG,
BANDRA (EAST) MUMBAI-400051

2:THE CHIEF GENERAL MANAGER (OPERATION)
INDIAN OIL CORPORATION LTD. INDIAN OIL AOD STATE OFFICE
INDIAN OIL BHAWAN
SECTOR-3 NOONMATI GUWAHATI-781020

3:THE SENIOR AREA MANAGER
INDIAN OIL CORPORATION LTD. (INTEGRATED AREA OFFICE)
JAGANNATH APARTMENT 1ST FLOOR
HOSPITAL ROAD SILCHAR
PIN-788005

4:THE DEPUTY COMMISSIONER HAILAKANDI
DIST HAILAKANDI
PIN-788151

5:SUBIDITA NATH
C/O SHRI SHAMAL KANTI NATH
VILL. RAJAYESWARPUR PT 5
MUKTACHARRA
P.O. UMEDNEGAR



DIST. HAILAKANDI
PIN-78816

Advocate for the Petitioner : MR. A GOGOI

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/5277/2021

BIKRAMJIT SINGHA
S/O SHRI BIPIN BIHARI SINGHA
R/O VILL. SUDARSHANPUR PT-2
P.O. SUDARSHANPUR
P.S. LALA
DIST. HAILAKANDI
ASSAM
PIN 788160

VERSUS

THE INDIAN OIL CORPORATION AND 5 ORS
REPRESENTED BY ITS CHAIRMAN CUM MANAGING DIRECTOR
HAVING ITS REGISTERED OFFICE AT INDIAN OIL BHAVAN
ALI YAVAR JUNG MARG
BANDRA (EAST) MUMBAI 400051

2:THE CHIEF GENERAL MANAGER (OPERATIONS)
INDIAN OIL CORPORATION LTD. INDIAN OIL AOD STATE OFFICE
INDIA OIL BHAWAN
SECTOR-3
NOONMATI
GUWAHATI 781020

3:THE SENIOR AREA MANAGER

INDIAN OIL CORPORATION LTD.(INTEGRATED AREA OFFICE)
JAGANNATH APARTMENT (1ST FLOOR)
HOSPITAL ROAD
SILCHAR
PIN 788005

4:THE FIELD VERIFICATION COMMITTEE



CONSTITUTED BY THE IOCL FOR THE PURPOSE OF SELECTION AND
APPOINTMENT OF LPG DISTRIBUTORSHIP FOR SUDARSHANPUR PART-II
AND PART III

HAILAKANDI DIST. IN PURSUANT TO THE ADVERTISEMENT DATED
29.12.2013

5:THE DEPUTY COMMISSIONER

HAILAKANDI
DIST. HAILAKANDI
PIN 788151
6:SUBIDITA NATH

C/O SHRI SHAMAL KANTI NATH
VILL. RAJAYESWARPUR PT.-5 MUKTACHARRA
P.O. UMEDNEGAR
DIST. HAILAKANDI
PIN 788163

Advocate for : MR. A R BHUYAN

Advocate for : GA

ASSAM appearing for THE INDIAN OIL CORPORATION AND 5 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri AR Bhuiya

Advocates for the respondents : Shri J. Handique, GA, Assam
Shri P. Bhardwaj, SC, IOCL
Shri SB Laskar

Date of hearing : **01.12.2022**

Date of Judgment : **04.01.2023**

JUDGMENT & ORDER

Both the writ petitions are connected and have been filed by the same petitioner in connection with appointment of Rajiv Gandhi Gramin LPG Vitrak (RGGVL). In fact, the second writ petition is an off-shoot of the first and accordingly both of the writ

petitions were analogously heard and are disposed of by this common judgment and order.

2. To address the issues, it is necessary to put on record the facts of the cases in brief.

3. The respondent - Indian Oil Corporation Limited (IOCL) had published an advertisement dated 29.12.2013 in the newspaper "Dainik Jugashankha" for selection and appointment of RGGVL. Pursuant to the same, the petitioner, who claims to be eligible had submitted his candidature along with other candidates. The petitioner had claimed that he is a permanent resident of village Sudarshanpur Part 2 of Haikandi district. The petitioner claims to have been found qualified for draw of lots which was scheduled on 06.11.2014. However, the petitioner alleges that in violation of the procedure, the respondent no. 5 was selected which was conveyed vide letter dated 07.11.2014. The petitioner alleges that the said respondent no. 5 was a resident of village Rajayeswapur Part 5, Muktacharra which is outside the Sudarshanpur Kalacharra Gaon Panchayat area. The principal ground of challenge is that the draw of lots is done in a chronological manner where preference is given to the candidates who are from the same Gaon Panchayat village whereas the respondent no. 5 herein is from a different village and therefore, the respondent no. 5 should not have come within the zone of consideration.

4. The petitioner contends that being aggrieved with the issuance of the dealership to the respondent no. 5, he had lodged a complaint before the respondent no. 3 but nothing was communicated to him regarding the outcome of the same. The petitioner claims that he got some information that there was some change in the policy of the Government for which, the selection process was to be conducted afresh. However, constructions were carried out by the respondent no. 5, on an enquiry the petitioner could learn that such construction was done on the strength of an order dated 24.01.2020 passed by this Court in WP(C)/6315/2017 and WA No. 281/2018

which was disposed of vide order dated 19.08.2019. The petitioner contends that in the writ petition instituted by the respondent no. 5, the residential status of the respondent no. 5 was not the issue and there was no direction in that regard as such.

5. The petitioner alleges that during the pendency of the first writ petition, an RTI application of the petitioner was responded to by the IOCL by providing him a copy of the Letter of Intent dated 25.11.2021 in favour of the respondent no. 6 [who is the respondent no. 5 in WP(C)/505/2021]. The petitioner has contended that on a subsequent date, another document was sought to be introduced regarding the residential status of the private respondent. The petitioner contends that such attempt will not improve the case of the private respondent as the eligibility has to be fulfilled as on the date of the advertisement.

6. On the other hand, the IOCL has contended that the selection has been done by following the due process of law and giving all the eligible parties, equal opportunities in which transparency and fairness have been maintained. It is further averred that the tender conditions being those introduced by the Corporation, its interpretation should be left best to the Corporation. It is further submitted that there is no allegation of any *mala fide* in the decision making process and therefore, there is hardly any scope for interference by this Court. The private respondent has opposed the writ petition by terming the challenge to be without any basis.

7. I have heard Shri AR Bhuiya, learned counsel for the petitioner. I have also heard Shri P. Bhardwaj, learned Standing Counsel, IOCL whereas the State is represented by Shri J. Handique, learned Government Advocate, Assam and Shri SB Laskar, learned counsel has appeared for the private respondent. Shri Bhardwaj, learned Standing Counsel has also produced the records in original, which have been carefully examined.

8. Shri Bhuiya, learned counsel for the petitioner has submitted that the issue involved is not a complicated one and therefore does not require any expert opinion.

The issue hinges around the eligibility criteria more specifically, the one concerning residential status. The attention of this Court has been drawn to Clause 3 of the advertisement which lays down the common eligibility criteria. In the said advertisement, the location in dispute is against serial No. 44 where the name of the town / village is Sudarshanpur Part 2 & 3 and the name of Gaon Panchayat is Sudarshanpur Kalacharra. As per the said Clause, preference was to be given to applicants residing in the Gram Panchayat of the advertised location. Clause 8 lays down the selection process which is by draw of lots. The draw of lots would be confined initially to the applicants, who are residents of the Gaon Panchayat of the advertised location and if no candidate is eligible, the other applicants satisfying the eligibility criteria would be eligible for draw of lots. The second category consist of residents of concerned Revenue Circle. The petitioner's candidature being found eligible was issued a communication dated 14.10.2014 informing the date and time of opening of the draw. In the said draw, however the private respondent's bid was also considered who turned up to be successful in the draw of lots which was conveyed vide letter dated 07.11.2014. In the meantime, the petitioner had lodged the complaint along with the demand draft which is required to be accompanied with such complaint. The petitioner was thereafter directed to elaborate and substantiate the complain. Accordingly, on 02.12.2014, the same was done by submitting in detail the allegation along with supporting documents. The petitioner has also placed on record a certificate that the private respondent or her husband were not voters of the Sudarshanpur Kalacherra Gaon Panchayat. On the other hand, the voter list of No. 2 Rajeswarpur Gaon Panchayat has been annexed wherein the private respondent is against Sl. No. 272. Further, the voters list of 2014 Loksabha Constituency has been annexed wherein the address of the private respondent is shown as Rajeshwarpur Part 5. The learned counsel has also referred to the communication of the Office of the Circle Officer, Lala which confirms that the private respondent was a resident of Sudarshanpur Part 3 and the Standard Residence Certificate is authentic and genuine.

The Land Possession Certificate dated 03.09.2020 also described the private respondent as a resident of Sudarshanpur III, who possess a plot of land under Mauza Sudarshanpur II.

9. The petitioner has also obtained a copy of the application of the private respondent made pursuant to the present advertisement dated 29.12.2013 in which the permanent address has been stated as village Rajeshwarpur Part V and temporary addresses as Lala. Even while signing the private respondent has put Rajeshwarpur - V against Place. The learned counsel accordingly submits that the decision making process is flawed inasmuch as, the basic criteria of residence has been overlooked and ignored. The learned counsel for the petitioner submits that the aforesaid requirement cannot also be held to be directory in nature as the entire preference depends upon such criterion. Shri Bhuiya accordingly prays for due intervention in the matter in the interest of justice.

10. Shri Bhuiya, learned counsel for the petitioner further submits that even though a plot of land has been said to be purchased by the private respondent, the same has been made after the date of the advertisement and therefore, on the crucial date, the private respondent did not meet the requirement.

11. *Per contra*, Shri P. Bhardwaj, learned Standing Counsel, IOCL submits that the instant petition is barred by the principles of waiver, estoppel and acquiescence. The learned Standing Counsel has submitted that the petitioner never objected at the time of draw of lots after which, sufficient time has elapsed and investments have also been made both by the Corporation and the private respondent. He submits that the complaint of the petitioner was also duly considered and information was collected from the concerned authorities namely, the Circle Officer, Lala Revenue Circle. By referring to the same communication dated 18.04.2015 of the Circle Officer, Shri Bhardwaj, the learned Standing Counsel has submitted that the Corporation was informed that the Standard Residential Certificate dated 05.01.2015 was as per the

field report that the private respondent is a voter of Rajeshwarpur but was residing in village Sudarshanpur Part 3 from the year 2005 with her family in a rented house and her husband is a school teacher in ME Madrassa. The communication also states that the private respondent is the owner of a plot of land at Sudarshanpur Part 2 which was purchased on 22.01.2014.

12. Shri J. Handique, learned Government Advocate, Assam endorses the submission of the learned Standing Counsel, IOCL and submits that the writ petition is liable to be dismissed.

13. Shri SB Laskar, learned counsel for the private respondent while endorsing the submissions made by the learned Standing Counsel of the Corporation additionally submits that the challenge is based on only one ground namely, the residential status. He submits that such allegations constitutes disputed questions of fact which cannot be gone into by a Writ Court. It is submitted that the advertisement was almost a decade ago and in the meantime, sufficient investment has been made by the private respondent, who is also serving the interest of public. Shri Laskar, learned counsel categorically submits that complaint if any should have been made at the time of short listing of the candidates as the same relates to the residential status and on the ground of waiver itself, the writ petition is not maintainable.

14. It is also submitted that initially WP(C)/5887/2014 was filed by one Anup Kumar Sahu challenging his rejection in respect of the same advertisement and site. The aforesaid writ petition was disposed of on 16.05.2016 by permitting the IOCL to renew the process of draw of lots including that of Shri Anup Kumar Sahu. On such reconsideration, a communication dated 31.08.2017 was issued whereby the candidature of the private respondent was rejected on the ground of residence. The said communication was however the matter of challenge in WP(C)/6315/2017 by the private respondent. This Court had passed an order dated 25.10.2017 directing no further steps to be taken for allotment of the LPG distributorship in question. In the

meantime, a policy decision was taken by the Ministry of Petroleum and Natural Gas to cancel advertisement of all locations where draw is required except for the advertised location under litigation. This Court accordingly disposed of the writ petition WP(C)/6315/2017 along with the IA(Civil)/884/2018 vide order dated 13.08.2018 by directing that as and when fresh advertisement would be issued, the private respondent would be eligible to participate in the same and her candidature would be considered as per terms and conditions of the advertisement.

15. Shri Laskar, learned counsel for the private respondent has submitted that affidavit-in-opposition has been filed in WP(C)/505/2021 which would cover both the cases. By drawing the attention of this Court to the said affidavit-in-opposition, he submits that the said order dated 13.08.2018 was however challenged before a Division Bench in WA No. 281/2018. The aforesaid WA was disposed of vide order dated 19.08.2019 by setting aside the order dated 13.08.2018 of the learned Single Judge and the matter was remanded for reconsideration. On such reconsideration, this Court had passed an order dated 24.01.2020, which had provided the petitioner (private respondent herein) to submit a fresh representation along with supporting documents on which the competent authority would take a fresh decision based upon the materials available. It was further directed that if the petitioner (private respondent herein) was found eligible, the Letter of Intent was to be issued to her. Pursuant to the same, a representation was submitted on 13.02.2020 whereafter, on 04.12.2020 the allotment of the distributorship was approved in the name of the private respondent.

16. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been carefully examined.

17. The advertisement by which the process has been initiated for allotment of the LPG Distributorship contains the detail process. As per the same, the candidates are to

be categorized on the basis of their residence so as to undertake the exercise of draw of lots. The first criteria are for applicants who are residents of the Gram Panchayat of the advertised location. The categorization or its basis is not the subject matter of dispute as, in the opinion of this Court, the objective appears to be based on the consideration that the interest of the concerned consumers would be best served by a person who is a resident of the locality. Such categorization on the basis of the residence is a mandatory one where preference has to be given.

18. In the instant case, there are a number of documents including those produced by the respondents which would demonstrate that the private respondent is not a resident of the concerned location. In the materials brought on record in these two cases, the following documents are to be taken into consideration:

- i. Certificate by the Sudarshanpur Kalacharra GP that neither the private respondent nor her husband are voters of Sudarshanpur Kalacharra GP as per the voter list of 2014 and they are not inhabitants of the said Gaon Panchayat.
- ii. Voter list of the No. 2 Rajeshwarpur Gaon Panchayat containing the name of the private respondent and her husband.
- iii. Voter list of 2014 for Hailakandi Legislative Assembly containing the name of the private respondent under Rajeshwarpur Part 5.
- iv. Standard Residence Certificate clearly states that the private respondent to be a resident of Rajeshwarpur 5
- v. Verification report dated 18.04.2015 issued by the Circle Officer whereby a drastic change has been made in stating the private respondent to be a voter of Rajeshwarpur but residing in village Sudarshanpur Part III from the year 2005 in the rented house as her husband is a school teacher of Sudarshanpur Madrassa. The said verification report further states that

the private respondent has purchased land in Sudarshanpur Part II vide registered sale deed dated 22.01.2014.

vi. Further, verification report dated 27.11.2015 stating that on 14.10.2015 a verification was made and it was found that the private respondent was residing in village Sudarshanpur Part III by constructing a house.

Vii. Second Standard Residence Certificate dated 27.11.2015 certifying the private respondent to be a resident of Sudarshanpur Part II under Sudarshanpur Kalacharra Gaon Panchayat.

Viii. Communication dated 25.08.2020 to reconfirm the residential status of the private respondent in view of the Certificate dated 27.11.2015.

ix. Reply by the ADC Revenue, Hailakandi dated 09.10.2020 whereby it was certified that the private respondent was the resident of village Sudarshanpur Part III having a plot of land at Sudarshanpur Part II which she had purchased vide registered sale deed dated 22.01.2014.

x. Confirmation dated 03.09.2020 by the Circle Officer, Lala Revenue Circle regarding the Standard Residence Certificate of the private respondent certifying that she is a resident of village Sudarshanpur III.

xi. The application form of the private respondent wherein her permanent address has been given as Rajeshwarpur Part V and temporary address as SP Road, Post Office- Lala.

Xii. Application form in the new format of the private respondent wherein her address has been given as Sudarshanpur Kalacharra.

19. The aforesaid documents would bring any reasonable mind to an inevitable conclusion that the private respondent's claim to be a resident of Sudarshanpur is wholly unsustainable. Even the documents produced by the respondents would demonstrate the inconsistencies where in some documents it is stated that it is



Sudarshanpur Part III and in others it is Sudarshanpur Part II. The residence cannot shift from one place to another. As regards the documents mentioned above in serial Nos. (xi) and (xii) namely, application in old format and new format, the change is only of the format and cannot be of the contents, more so, when the private respondent has clearly stated her permanent residence to be Rajesharpur Part V and temporary address as Lala. Interestingly, the demand draft number accompanying the application is the same being 186388 dated 25.01.2014 of Rs.1,000/-.

20. The terminology used for the criteria to be in the first category for draw of lots is to be a "resident" of the Gram Panchayat of the advertised location and not of owning a plot of land. There is no dispute regarding fulfillment of the said criterion by the petitioner and in fact there is no challenge to that aspect at all. The dispute is regarding the fulfillment of the said criterion by the private respondent. Even assuming for the sake of argument that the land said to have been purchased by the private respondent on 22.01.2014 is a relevant factor, the private respondent still does not fulfill the criteria of being a resident of the area in question.

21. There is another intriguing factor, the IOCL in their affidavit filed on 15.03.2022 in WP(C)/5277/2021 also annexes Standard Residence Certificate issued by the Competent Authority. The said Certificate clearly states the private respondent to be a resident of Rajeshwarpur-5 Muktacharra. When the contents of the Standard Residence Certificate was clearly not conforming to the requirement of the advertisement to be in Class I category, this Court does not see any justification for a verification exercise to be done by the IOCL. It appears that in the garb of such verification, an explanation was given that though the private respondent was a voter of Rajeshwarpur, she was residing at village Sudarshanpur Part 3 from 2005 with her husband in a rented house. The explanation further mentioned that on 21.01.2014, the private respondent had purchased a plot of land by registered sale deed at Sudarshanpur. The same authority in a subsequent communication dated 27.11.2015 has stated that the private respondent was now residing in the village Sudarshanpur

Part 3 by constructing a house over the plot of land purchased on 22.01.2014 and accordingly, a fresh Standard Residence Certificate was issued on 27.11.2015.

22. A further improvement has been tried to be made regarding the residential status of the land which was purchased on 22.01.2014 which was admittedly after the date of advertisement dated 29.12.2013. However, as discussed above, even overlooking the date of purchase, the requirement was to be a resident and not of possessing of plot of land in the area. The improvement, as mentioned above, is in the communication dated 27.11.2015 as per which, the private respondent has been shown to be a resident of Sudarshanpur Part III by stating that a house was constructed over the said plot of land purchased on 22.01.2014. The Standard Residence Certificate of the private respondent showing her to be a resident of Sudarshanpur Part II is not only inconsistent but has been issued on 27.11.2015 which is much after the date of the advertisement and accordingly wholly irrelevant and cannot be taken into consideration.

23. The Hon'ble Supreme Court in the case of ***Rekha Chaturvedi v. University of Rajasthan, 1993 Supp (3) SCC 168*** has laid down that in so far as eligibility is concerned the same should be acquired / possessed as on the date of the advertisement and possessing the same on a later date will not make a candidate eligible. The aforesaid case has been referred and the said view has also been reiterated in the case of ***Ashok Kumar Sharma Vs. Chander Shekhar***, reported in ***(1997) 4 SCC 18***. For ready reference, the relevant extract is quoted hereinbelow:

“6. ... The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications

*constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification.”*

24. In view of the above discussion, this Court is of the unhesitant opinion that the challenge made on the ground of eligibility of the private respondent to qualify herself to be in the first category for draw of lots is a sustainable one. Consequently, the selection of the private respondent Smt. Subidita Nath is set aside and quashed and the IOCL Authorities are directed to make the allotment by making a fresh draw of lots as per the categorization provided in the advertisement as well as the guidelines. It is needless to state that the event of draw of lots would come in the first category only when there is any other bidder with the petitioner falling in the first category of having the residence in the village of the site proposed namely, Sudarshanpur Part II and Part III Kalacharra Gaon in the district of Hailakandi. These writ petitions accordingly, stand disposed of.

25. The interim order passed earlier accordingly stands merged.



26. No order as to cost.

27. The records of the case in original are returned back to the learned Standing Counsel for the IOCL.

JUDGE

Comparing Assistant