

(2013) 07 AHC CK 0217

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 20179 of 2013

Manoj Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: July 19, 2013

Citation: (2013) 6 ADJ 683

Hon'ble Judges: Rakesh Srivastava, J; Laxmi Kanta Mohapatra, J

Bench: Division Bench

Advocate: Sanjay Mishra and Gautam Kumar Upadhyay, for the Appellant; Archana Singh, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Srivastava, J.

Heard Sri Gautam Kumar Upadhyay, learned counsel for the petitioner and Mrs. Archana Singh, learned counsel for the respondents.

The petitioner has challenged the order dated 31.1.2013 passed by Sri J.P. Sharma Chief Area Manager of the Corporation by means of which the candidature of the petitioner for grant of LPG distributorship at Rampur Bazar, District Jaunpur under category GP has been rejected. In pursuance of an advertisement published by the respondents for appointment of LPG distributorship the petitioner submitted his application on 25.11.2011 for award of distributorship at Rampur Bazar, District Jaunpur under GP category.

2. The candidature of the petitioner has been rejected by order dated 31.1.2013 on two grounds. Firstly, that the petitioner did not belong to the category for which the distributorship in question was reserved and secondly, that the petitioner did not have any land for godown and showroom in the advertised location as the lease-deed of the land offered by the petitioner was not registered.

3. Insofar as the first ground of rejection is concerned it was vehemently submitted by the learned counsel for the petitioner that the father of the petitioner was a Sub

Inspector in GRP, Gorakhpur and he died while performing his duty and the petitioner being dependent on his father, the respondents were obliged to consider the case of the petitioner for grant of LPG distributorship under GP category. In so far as the land offered by the petitioner is concerned, it was submitted that the petitioner had submitted an affidavit from the landlord that the land was being given to the petitioner on lease and in case the respondents were of the opinion that the affidavit was not sufficient, they were obliged to give an opportunity to the petitioner in terms of clause 9.5 of the brochure to rectify the alleged deficiency and in case such an opportunity had been afforded to the petitioner, the deficiency would have been removed. Since an opportunity to rectify the alleged deficiency was not given, the impugned order dated 31.1.2013 rejecting the candidature of the petitioner for grant of LPG distributorship was liable to be set aside.

4. On the other hand the learned counsel for the respondents has submitted that as per clause 7.2 of the brochure it was only when a Government or Public Sector Personnel mentioned in clause 7.2 of the information brochure died while performing his duty his widow/dependent was eligible for being considered under the GP category. Since the father of the petitioner had admittedly died due to prolonged illness it could not be said that he died while performing his duty and as such the petitioner was not eligible to be considered under the GP category. Insofar as the land offered by the petitioner is concerned, it was submitted by the learned counsel for the respondents that as per clause 7.1 of the brochure the petitioner was obliged to have a registered lease agreement for minimum 15 yrs in his name as on the date of application which the petitioner admittedly did not possess and as such the candidature of the petitioner was liable to be rejected. According to the learned counsel for the petitioner the provisions of Clause 9.5 of the brochure were not attracted in the case of the petitioner in as much as even if an opportunity had been given to the petitioner the defect could not be removed.

5. We have given our anxious consideration to the submissions made by the counsel for the parties.

Clause 7.2 of the brochure containing Guidelines on Selection of Regular LPG Distributors lays down Specific Eligibility Criteria for Different Categories applying as individual. Clause 6.2(c) of the brochure being relevant is being quoted below:

7.2 Specific Eligibility Criteria For Different Categories applying as Individual

(a).....

(b).....

(c) Government (Central & State) and Public Sector Units (Central & State)- (GP)

Applicants belonging to any of the following categories can apply under this category.

Defence Personnel

Defence Personnel means personnel of armed forces (viz. Army, Navy, Air Force) and will cover widows/dependents of those who died in war, war disabled/disabled on duty, widows/dependent of those members of Armed Forces who died in harness due to attributable causes and disabled in peace due to attributable causes.

Candidate applying under this Category should attach in original the Eligibility Certificate issued from Directorate General of Resettlement (DGR), Ministry of Defence, and Government of India sponsoring the candidate for the LPG Distributorship for which he/she has applied. Certificate of eligibility issued for one LPG Distributorship location is not valid for another LPG Distributorship location and therefore a candidate can be considered to be eligible only if he/she has been sponsored for the particular location with reference to current advertisement.

Government and Public Sector Personnel

The personnel serving in different Departments of Central/State Governments and Public Sector Undertakings of Central/State Government who are incapacitated or disabled while performing their duties will be eligible under this category. In case of death, while performing duties, their widows/dependents will be eligible to apply under this category.

Applicants under this category should attach a copy of relevant certificate from the concerned Organisation/Govt. Department singed by the Head of the Office or an Officer not below the rank of Under Secretary to the Government.

6. A perusal of clause 7.2 of the information brochure would show that a personnel serving in any department of Central or State Government or Public Sector Undertakings of Central or State Government who was incapacitated or disabled while performing his duty, was eligible for grant of distributorship under the GP category and in case of his death while performing duty, his widow or dependent was eligible to apply under GP category. The emphasis is on the words "while performing duty".

7. Admittedly, the petitioner had applied for grant of distributorship under the GP category.

8. According to the certificate dated 13.3.1995 issued by the Superintendent of Police, Railways, Gorakhpur enclosed alongwith the application form, the father of the petitioner late Nanhe Lal Mishra, who was a Sub Inspector in U.P. Police and was posted in G.R.P., Gorakhpur, died on 1.12.1994 on account of prolonged illness.

9. The certificate attached by the petitioner in support of his claim under GP category is reproduced below:

10. Admittedly, the father of the petitioner had died on account of prolonged illness and as such by no stretch of imagination it could be said that the father of the

petitioner had died while performing duty.

11. In order to claim distributorship under GP category, it was incumbent upon the petitioner to establish that his father had died while performing duty.

12. Thus, the petitioner was not eligible for grant of LPG distributorship under the GP category.

13. The other ground on which the candidature of the petitioner has been rejected is that the petitioner did not possess land for godown/showroom at the advertised location as the lease-deed submitted by the petitioner was not registered.

Clause 7.1 of the information brochure is as follows:

7.1 Common Eligibility Criteria for all Categories applying as Individual

The applicant should

i.....

vii, Own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3 metres by 4.5 metre at the advertised location or locality as specified in the advertisement as on the date of application. It should be easily accessible to general public through a suitable approach road.

In case an applicant has more than one shop of minimum size 3 metre by 4.5 metre in dimension or a plot of land for construction of shop of minimum size 3 metre by 4.5 metre at the advertised location or locality as specified in the advertisement as on the date of the application, the details of the same can also be provided in the application.

Reference vi & vii above:

"Own" means having ownership title of the property or registered lease agreement for minimum 15 yrs in the name of applicant/family members as defined in multiple distributorship norm of eligibility criteria.

In case the land is jointly owned by the applicant/member of "Family Unit" (as defined in multiple dealership/distributorship norm) with any other person(s) and the share of the land in the name of applicant/member of the "Family Unit" meets the requirement of land including the dimensions required, then that land for godown/showroom will also qualify for eligibility as own land subject to no objection from other owner(s).

14. As per the clause mentioned above, the candidates were required to own a shop or a plot of land for construction of shop of the size mentioned therein at the advertised location or locality as specified in the advertisement as on the date of application. It has been categorically mentioned in the said clause that the

candidates should have ownership title of the property or a registered lease agreement for minimum 15 yrs in their name as on the date of application. The crucial date is the "date of application".

15. Admittedly, the alleged lease-deed submitted by the petitioner alongwith his application was on a notary affidavit which was a unregistered document. The candidature of the applicant for grant of LPG distributorship was liable to be rejected in terms of clause 7.1 (vii) of the brochure.

16. The petitioner assails the impugned order on the ground of violation of clause 9.5 of the brochure. Clause 9.5 of the brochure is reproduced below.

Procedure for receipt of advertisement

Applications would be received in sealed envelop only. After application is received, serial number would be put on the envelope and also recorded in a "Register". Acknowledgement for a applications received will be sent to the applicant.

In case deficiencies are found in the application, a letter would be sent to the applicant to rectify the deficiencies within specified period of time.

17. According to the learned counsel for the petitioner the impugned order dated 31.1.2013 has been passed in gross violation of clause 9.5 of the brochure. The submission is that as per clause 9.5 of the brochure, the opposite parties were obliged to give an opportunity to the petitioner to rectify the deficiency within a specified period of time as provided in clause 9.5 of the brochure. This having not been done the order dated 31.1.2013 is liable to be set aside. It is the case of the petitioner that in case an opportunity was given to him he could have rectified the alleged deficiency in the lease-deed.

18. In respect of the land offered by the petitioner, the petitioner was required to have a registered lease-deed in his favour as on the date of the application. Admittedly there was no registered lease-deed in favour of the petitioner with respect to the land offered by the petitioner as on the date of the application and as such no useful purpose would have been served by giving an opportunity to the petitioner to rectify the deficiency as alleged by the petitioner.

19. Even if an opportunity was given to the petitioner neither the petitioner would have become eligible under the GP category nor he could have produced the registered lease-deed as required under the brochure.

20. In view of the above the challenge to the order dated 31.1.2013 fails. The petitioner has failed to make out a case for interference of this Court with the impugned order dated 31.1.2013.

21. The writ petition is accordingly dismissed. No order as to costs.