**(1996) 09 GAU CK 0022**

**Gauhati High Court (Imphal Bench)**

**Case No:** Civil Rule No"s. 592 and 743 of 1996

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| Yengkhom Kunjo Singh | | APPELLANT |
| | Vs | |
| State of Manipur and Others | | RESPONDENT |

**Date of Decision:** Sept. 27, 1996

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Liquefied Petroleum Gas (Regulation, Supply and Distribution) Order, 1993 - Section 2

**Citation:** (1998) 3 GLR 346

**Hon'ble Judges:** H.K. Sema, J

**Bench:** Single Bench

**Advocate:** N. Kerani Singh, for the Appellant; A. Nilumani Singh and A. Madhuchandra, for the Respondent

**Final Decision:** Allowed

**Judgement**

H.K. Sema, J.
These 2 (two) Civil Rules are interlinked and as such, they are being disposed of by this common judgment.

2. The dispute involved in this writ petitions is with regard to the distributorship of L.P.G. in Kakching area of Thoubal District, Manipur. It stated that the Petitioner is a Graduate in Electrical Engineering and he pass the BE. (Elect.) From Saurashtra Univers in the year 1990 but since the Petitioner did not get any employment he has been earning his livelihood by doing cultivation, Pursuant to the public notice dated 4.10.95, inviting application for appointment of distributorship for Indune of Kakehing area, the Petitioner applied for the same. In the said notice the following eligibility criteria has been laid down in Clause 2(d) to 2(g). The relevant portion runs from 2(d) to 2(g) as under:

2(d) Resident of Thouhal District for a period not less than 5 years immediately proceeding the date of application.

(e) Having family (as defined in the application form) income not more 1 than Rs. 50,000/- annually (last financial year).

(f) Not having any dealerships/distributorships of any Oil Company.

(g) Having no close relatives (as defined in the application form) as a I dealer/distributor of any Oil Company. However, details of the eligibility criteria and conditions as mentioned in the application form will be applicable.

3. Thereafter, interview was held on 19.12.95 and the Petitioner appeared Wore the Selection Board along with others. It is stated that the Respondent No. vide his letter dated 20.12.95 recommended Respondents 3 and 4 for grant of distributorship for Indane, Respondent No. 3 at SI. No. 1 and Respondent No. 4 at (sic) No. 2 Letter of intent was also issued in favour of the Respondent on 7.1.96. being aggrieved, the Petitioner has filed C.R. No. 254/96 at Principal Seat. The prim order was passed on 17.1.96 not to give effect to the letter of intent dated 1.1.96 issued in favour of the Respondent No. 3. Thereafter, the said Civil Rule was withdrawn on 14.5.96 with liberty to file a fresh application, if so advised, the present writ petition has been filed on 18.7.96 and interim order was passed in 19.7.96 not to give effect to the letter of intent dated 7.1.96 in favour of the Respondent.

4. I have heard Mr. N. Kerani Singh, Id. Sr. Counsel for the Petitioner as well as Mr. A. Nilamani Singh, Id. Sr. Counsel for the Respondents.

5. Before I advert to the other points urged in this petition, I may, at this age, dispose of the preliminary objection raised by Mr. A. Nilamani Singh with hard to the maintainability of this petition. At the outset, Mr. A. Nilamani Singh admits that the writ petition is not maintainable because the impugned letter of out dated 7,1.96 has not been annexed in the writ petition. In this connection, has referred to the decision of the Supreme Court in Surinder Singh Vs. Central Government and Others, In that case, it was held by the Apex Court in paragraph 9 of the judgment as under:

Whenever an order of Govt. or some authority is impugned before the High Court under Article 226 of the Constitution, the copy of the order must be produced before it. In the absence of the impugned order it would not be possible to ascertain the reasons which may have impelled the authority to pass the order. It is therefore improper to quash an order which is not produced before the High Court in a proceeding under Article 226 of the Constitution.

6. There is no dispute with regard to the aforesaid proposition of law but in the instant case, it appears from Annexure-A/3, letter dated 16.1.96 Petitioner prayed for furnishing a copy of the result of the interview, however, it appears that the request of the Petitioner

was not conceded to by the Respondent. Petitioner has also filed a Misc. Application registered as Misc. Case No. 709/96 with a prayer for calling a copy of the letter of intent dated 7.1.96. In this view, it clearly appears that there was no latches and negligence on the part of the Petitioner for not enclosing a copy of the impugned letter of intent dated 7.1.96, On the other hand, it appears that the impugned letter of intent dated 7.1.96 could not be annexed in the writ petition due to circumstances, which was beyond the control of the Petitioner. Therefore, the contention of Mr. A. Nilamani Singh cannot be accepted.

7. Nomination of the 3rd Respondent has been assailed on the ground that the eligibility criteria laid down by the advertisement dated 4.10,95 has been violated. The eligibility criteria laid down in Clause 2(d) to 2(g) are alleged to have been violated.

2(d) Resident of Thoubal District for a period not less than 5 years immediately proceeding the date of application.

(underlined is mine)

8. It is contended by Mr. N. Kerani Singh that the 3rd Respondent is u resident of Mayang Imphal Thana Khunou Leikai in Sub-Division Imphal West-II, Imphal District, Manipur and not a resident of Thoubal District, Manipur. In this connection, Id. counsel has referred to the extract copy of the electoral roll, 23 Mayang Imphal Assembly Constituency Roll 1995, Polling Station No. 23(sic) Mayang Imphal Boys L.P. School, in which the name of the 3rd Respondent appeared in SI. No. 58, Ld. counsel has also referred to the extract copy of Electoral Roll - 1993 of Inner Manipur Parliamentary Constituency, 23 May (sic) Imphal Assembly Constituency, Polling Station No. 23/9. Mayang Imphal which the name of the 3rd Respondent appeared in SI. No. 768. It appears for (sic) first time that the 3rd Respondent filed an application dated 23.11.95 (Annexure A/6) before the Electoral Registration Officer, Wabagai Constituency of (sic) himself as a voter in the Electoral Roll for the Constituency at Thoubal District. This application dated 23.11.95 has been filed after the last date of submission of application form for distribution on 10.11.95. Thereafter, by Annexure-A/7 order on the basis of the order dated 11.12.95 on the body of the application the name of the 3rd Respondent has been included in 36 Wabagai Assembly Constituency at Thoubal District as a voter as shown at SI. No. 115.

9. Counter on behalf of the 3rd Respondent has been filed. It is stated interalia that in para 6.1 of the counter that the 3rd Respondent has been remaining outside Manipur for several years prosecuting his study and he was not even aware of enrolment of his name in the Electoral Roll of Mayang Imphal Constituency and accordingly, be could not earlier apply for necessary correction. This contention cannot be accepted because admittedly the application for inclusion in the Electoral Roll of 36 Wabagai Assembly Constituency was made on 23.11.95 so as to show that he is the resident of the Thoubal Town to gai eligibility for award of distributorship, As quoted above, the eligibility criteria in Clause 2(d) is that an applicant must be a resident of Thoubal District for a period not less than 5 years immediately proceeding the date of application. The fact that the Petitioner apply

for enrolment of his name in the Thoubal District by an application dated 23.11.95 could clearly show that the 3rd Respondent was not a resident of Thoubal District immediately proceeding the date of application. There is yet another fatal infirmities for which the claim of the 3rd Respondent cannot be believed. In the Electoral Roll - 1995 of 23 Mayang Imphal Assembly Constituency his age has been recorded as 33 years, however, in the application dated 23.11.95 the Petitioner has stated that his age was 23 years and 6 months. From the Electoral Roll - 1995 and 1993 it clearly appeared that the 3rd Respondent was a resident of 23 Mayang Imphal Assembly Constituency. It also appeared from the application dated 23.11.95 that the 3rd Respondent, for the first time, applied for inclusion of his name in the Electoral Roll of 36 Wagagai Assembly r Constituency in Thoubal District. From the aforesaid circumstances, it clearly appeared that the 3rd Respondent was not a resident of Thoubal District for a period not less than 5 years immediately proceeding the date of application as enjoined under Close 2(d) of the eligible criteria. Therefore, 3rd Respondent did not fulfill the eligibility criteria 2(d) at the time of submission of application.

10. In C.R. No. 743/96 the Petitioner prayed for quashing the resident Certificate dated 23.10.95 issued by the D.C., Thoubal. Admittedly, the resident certificate dated 23.10.95 has been issued on the basis of an application dated 6.10.95 filed by the 3rd Respondent. In the application for resident certificate the Petitioner has slated that the Petitioner has been residing in Thoubal District for the last about 9/10 years till date. It will be noticed that in the application dated 23.11.95 for registering his name in Thoubal Disirict, the Petitioner slated that his age was 23 years and 6 months. If the statement made by the 3rd Respondent in his application dated 6.10.95 is treated as correct, the 3rd Respondent was aged about 12/13 years when he smarted living separately at Thoubal Disirict. It is unthinkable that the Respondent would reside in Thoubal District alone because it is submitted by the 3rd Respondent in paragraph 6 of his counter that the 3rd Respondent has his parental/ancestral house at Mayang Imphal within Imphal District and his mother and elder brother are still living at Mayang Imphal.

11. As said earlier, on the basis of the application dated 6.10.95 the resident certificate dated 23.10.95 has been Issued. It would appear that on the body of the application dated 6.10.95, the competent authority ordered for enquiry as to whether the 3rd Respondent is a resident of Thoubal District for a period not less than 5 years and on the basis of the report submitted, the certificate has been issued. 2 (two) translation copies of the report, one by the Petitioner''s counsel and the other by Mr. A. Nilamani Singh, have been received. I have accepted the translation copy submitted by Mr. A. Nilamani Singh. The report of the Circle Mandol appeared on the back of the application dated 6.10.95 made by the 3rd Respondent, the translation of which runs as under:

In pursuance of the direction, spot enquiry has been made. K. Tomba Singh, S/o Jemon Singh has his residential house and homestead land in Maibam Konjil. Maibam Konjil is within Wabgai A/C, and to this effect the witnesses have been testifying.

12. A perusal of the report, it does not indicate whether the 3rd Respondent is a resident in Thoubal District for a period not less than 5 years. A man may have his residential house and homestead land in one place but he may not be resident in that place. The aforesaid report does not indicate whether the 3rd Respondent is a resident in Thoubal District for a period not less than 5 years. The report simply testily that the 3rd Respondent has his residential house and homestead land in Maibam Konjil. This itself does not show that the 3rd Respondent is a resident of Maibam Konjil for a period not less than 5 years. In Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, it has been held by Their Lordship that:

Residence is not identical with ownership. It means where a person (sic) drinks, and sleeps or where his family or his servants eat, drink and sleeps Mere animus revertendi and a lively interest in a former residence and connexion with kith and kin residing there and in interest in ances(sic) property does not give Court jurisdiction u/s 20 of the Code.

Therefore, no man properly instructed in law would have issued the resident certificate dated 23.10.95 on the basis of the report as quoted above.

13. Eligibility criteria 2(e)- Having family (as defined in the application form) income not more than Rs. 50,000/- annually (last financial year). On this ground if is contended Mr. N. Kerani Singh that the 3rd Respondent and his family has annual income not less than Rs. 1,00,000/- being collected from Motor Workship at Mayang Imphal as well as from Bus and Truck Services, earned by him in addition to the income from M/s. K. Jemon Gas Service and therefore, he is not eligible as per the eligible condition 2(e). It is also contended that the 4th Respondent Shri Maibam Ranjan Singh is an employee as a Firm Junior Accountant in the M/s. Manglem Transport Agency of the Indian Oil Corporation Ltd. (Assam Oil Division) and his monthly income in the form of salary is Rs, 3,000/-. It is alleged that father of the 4th Respondent Shri Maibam Budhi Singh is a Govt. School teacher drawing a monthly salary of more than Rs. 4,000/- and the father of the 4th Respondent live jointly in the same roof. Therefore, the income of the father and the 4th Respondent together is Rs. 84,000/-. Therefore, the 4th Respondent is not eligible as barred by Clause 2(e) of the advertisement.

14. It will be noticed that Clause 2(e) of the eligibility condition has specifically stated the family income as defined in the application form. Mr. A. Nilamani Singh has produced declaration form submitted by the 3rd and 4th Respondents at the time of hearing of this petition. In the declaration form it clearly appeared that the income of the wife and the husband is to be clubbed together, however, it a candidate is not dependent on his or her parents, the income of the father or mother need not be included in the form of declaration. In the declaration form submitted by the 3rd Respondent it clearly appeared that income from professional is shown as Rs, 24,000/- and for agriculture is Rs. 12,000/- altogether Rs. 36,000/- and the income from his wife has been shown as Rs. 12,000/- totallying to Rs. 48,000/- Therefore, annual income of the 3rd Respondent as defined in the application form does not exceeds Rs. 50,000/- Also from the declaration form

submitted by the 4th Respondent it appeared that the salary of the 4th Respondent is Rs. 36,000/- Since the 4th Respondent is not dependent on his or her parents, the income of the father or mother cannot be included under the head of family income as defined in the application form. There is no substance on the allegations of eligible condition Clause 2(e), therefore, the contention is accordingly, rejected.

15. Eligibility conditions Clause 2(f) and (g):

(f) Not having any dealership/distributorships of any Oil Company.

(g) Having no close relatives (as defined in the application form) as a dealer/distributor of any Oil Company. However detail of the eligibility criteria and conditions as mentioned in the application form will be applicable.

These two conditions are inter-linked and as such, they are taking up together It is contended by Mr. N. Kereni Singh that the relation of the 3rd Respondent is already having another distributorship of Assam Oil Company in the name of M/s. K. Jemon Gas Service, having its show room located at Singjamel Chingamathak, Imphal and Mr. K. Jemon Singh is the father of the Respondent No. 3. Therefore, the 3rd Respondent is not eligible under Clause (g) of the advertisement dated 14.10.95.

16. In paragraph 9 of the counter of the 3rd Respondent, it is stated that Mr.Thangkhomang Sihgsit, a resident of New Lambulane (New Chcckon) was appointed as distributorship of L.P.G. by the I.O.C. Ltd., Digboi under the appointment letter dated 12.1.96 and the said Thangkhomang Singsit has appointed Shri Kongkhom Manglem Singh, elder brother of the 3rd Respondent in the form of attorney and manager to run and carry the business of Gas Service in the name of M/s. Jemon Gas Service, Slngjamei. It is stated that Kongkham Manglem Singh is only the agent and employee of Mr. Singsit. A perusal of the letter dated 12.1 96 (Annexure-R/5) issued by the Chief LPG Manager it clearly appeared that one Shri Thangkhomang Singsit has been appointed as LPG distributor of M/s. K. Jemon Gas Service, Mr. Thangkhomang Singsit also filed affidavit stai(sic) that he has been appointed as distributor of LPG by letter dated 12.1.96 and he has been running his buslness as distributor of LPG at Imphal under the (sic) name or style M/s Jemon Gas Service. It is also averred in paragraph 3 that(sic) to his long association with Shri Kongkham MangJem Singh, elder brother of the 3rd Respondent, he was appointed as attorney and manager to run and carry his business of LPG distributorship under the name of style of M/s Jemon Gas Service on payment of regular remuneration.

17. In this connection, Mr. N. Keranj Singh has brought to my notice (sic) provisions of Liquified Petroleum Gas (Regulation of Supply and Distribution Order, 1988 in which u/s Clause 2(d) ''distributor'' has been define which includes representative employee, agent, commission agent, According to Mr. N. Kcrani Singh, therefore, an agent is also a distributorship and since (sic) elder brother of the 3rd Respondent is an agent of M/s. K.

Jemon Gas Service (sic) 3rd Respondent is not eligible under Clause 2(f) and (g). Mr. A. Nilamani Singh however, submits copy of the latest edition of the Liquified Petroleum Gas (Regulation or Supply and Distribution) Order, 1993 in which Section 2(e) (sic) distributor. In 1993 order the representative employee and agent has been (sic) from the purview of distributorship. Therefore, the elder brother of the Respondent being an agent and attorney of M/s. K. Jemon Gas Service cannot be treated as Distributor.

18. However, there is one hurdle for which the case of the 4th Respondent could not have been considered. Eligible criteria Clause 3(b) provides as under:

3(b)-(i) Preference would be given to Consumer Co-operative Societies compared to Unemployed Graduates.

(ii) Unemployed Graduates would be given preference over other applicants.

It would clearly appear that the 4th Respondent was employed as Junior Accountant in the Firm of M/s. Manglem Transport Agency, Mayang Imphal and he was drawing a salary of Rs. 3,000/- p.m. This fact has been admitted by the 4th Respondent in paragraph 5 and 6 of the counter. The 4th Respondent, however, stated that his service as Junior Accountant in the firm stood terminated on 30.11.95. This statement cannot be accepted because no order of termination has been produced. This apart, even if assuming the statement is accepted, the 4th Respondent was not eligible for consideration in preference to Unemployed Graduates at the time of the application. The last date of receipt of application was on 10.11.95. The internment of the scheme is to give preference to Unemployed Graduates over other applicants so that it may solve the problem of unemployment. In the instant case by giving preference to Employed Graduates, the internment of the scheme for which it is made, has been made frustrated. Therefore, the nomination of the 4th Respondent in SI. No. 2 is also liable to be quashed.

19. It is now remain to be seen as to what relief Petitioner is entitled. In C.R. No. 592/95 the Petitioner has prayed for the following relief:

2 (a) Issue a rule calling upon the Respondents to show cause why the impugned selection and the letter of intent dated 7.1.1996 issued in favour of the Respondent No. 3 should not be set aside and quashed. (b) Issue a rule calling upon the Respondents to show cause as to why the Petitioner should not be selected as Distributor for Indanc for Kakching Town by issuing a direction in place of the Respondents No. 3 and 4.

20. It is submitted at the bar by Mr. Nilamani Singh that altogether about 14 candidates appeared before the interview. According to Mr. Nilamani Singh since the other candidates have not been impleaded as party respondents, no effective relief can be granted to the Petitioner. I entirely agree with the Id. counsel for the Respondents. The remedy under Article 226 of the Constitution is an equitable remedy. Since the other candidates, who are interested parties, are not impleaded as party Respondents in this writ petition no effective relief, as prayed for can be granted to the Petitioner.

21. There is, yes another difficulty, despite of the order aforesaid, to dislodge the 3rd Respondent at this stage. From the additional documents filed by the Respondents on 11.9.96 it appeared from the Annexure-R/11, the 3rd Respondent has been registered as a dealer. It also appeared from Annexure-R/14 that the 3rd Respondent has been granted license to store compressed gas in cylinders. It also appeared from Annexure-R/17 that 288 Gas Cylinders have been delivered and vide Annexure-R/18 another 288 Gas Cylinders have been delivered. It is pertinent to mention herein that the Gas Cylinder is essential commodity and if the aforesaid arrangement is disturbed at this stage, the consumers would be the sufferers. Keeping this view in mind the 3rd Respondent shall be allowed to run as distributor for a period of one year from today. Thereafter, the distributorship of the 3rd Respondent shall be automatically lapsed and the Respondents are directed to re-advertise afresh in respect of the Thoubal District and nominate in accordance with law, keeping in mind of the observation of this Court.

22. Before I part with the record, I may refer to the decision of the Supreme Court cited by the Id. counsel for the Respondents. Mr. Nilamani Singh referred to the decision of the Supreme Court reported in AIR 1993 SC 1435 in which the Apex Court had held that the High Court cannot sit as an Appellate Authority i over the Administrative decisions, Mr. Niiamani Singh has also referred to the decision of the Apex Court reported in State of M.P. and Others Vs. Nandlal Jaiswal and Others, in which the Apex Court had held that the delay and latches in filing writ petition cannot be allowed. There is no dispute with regard to the proposition of law, however the aforesaid decision of the Apex Court is not applicable in the case at hand. Firstly, here is the question whether the competent authority has exercised the power in violation of the conditions laid down in the advertisement thereby abused the process of the power and secondly, there was no inordinate delay on the part of the Petitioner in filing writ petition in the case at hand as already observed above.

23. For the reasons aforestated, these two writ petitions are allowed indicated above. The letter of intent dated 7.1.96 and the resident certificate dated 23.10.95 are hereby quashed. Consequently, the recommendation of the 3rd and the 4th Respondents are also quashed however without costs. The interim and order dated 19.7.96 passed by the Id. Single Judge of this Court in C.R. No. 592/96 stands vacated.