

(2015) 04 PAT CK 0063

Patna High Court

Case No: C.W.J.C. Nos. 22586 of 2011 and 5919 of 2012

Ashutosh Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: April 6, 2015

Citation: (2015) 4 PLJR 460

Hon'ble Judges: Shivaji Pandey, J.

Bench: Single Bench

Advocate: Shashi Bhushan Kumar Mangalam, for the Appellant; Kanak Verma, for the Respondent

Final Decision: Allowed

Judgement

Shivaji Pandey, J.

Heard the parties. As both the writ petitions are dealing with the same subject matter and are connected to each other, hence both the writ petitions are being disposed of by this common judgment.

2. In C.W.J.C. No. 22586 of 2011 a prayer has been made on behalf of the petitioner for giving direction to the respondent to produce the letter of intent issued in favour of Sri Ajit Kumar Singh, (respondent No. 7) by which an award of retail outlet distributorship at Goriyakothi in the district of Siwan and quash the same. Further prayer has been made for giving direction to the respondent for holding fresh lottery amongst the surviving candidates for the selection of dealers and to declare the result accordingly. Further prayer has been made to declare that Sri Ajit Kumar Singh (respondent No. 7) is not a resident of Goriyakothi at the relevant time but obtained a residential certificate illegally from the Circle Officer concerned which was later on cancelled after proper enquiry and as such the respondent Oil Company should have rejected his candidature immediately after the receipt of such reports and ought to have proceeded for fresh draw among surviving candidates for selection of dealer.

3. In C.W.J.C. No. 5919 of 2012 a prayer has been made for giving direction to the respondents to produce on record the residential certificate issued vide residential certificate No. 1601 dated 18.2.2012 in favour, of Sri Ajit Kumar Singh (respondent No. 6) and quash the same holding that Sri Ajit Kumar Singh is not a permanent resident of Goriyakothi rather he is resident of Sarsad.

4. The facts arising out of two writ petitions are common, without unnecessary details stated hereinbelow. The Indian Oil Corporation (hereinafter referred to as "the IOC") issued an advertisement on 17.10.2009 under Rajeev Gandhi Rural Liquefied Petroleum Gas Distribution Scheme (hereinafter referred to as "LPG") for appointment of distributor. In pursuance thereof the petitioner and Sri Ajit Kumar Singh (respondent No. 7) applied for the same, both were called for interview vide letter dated 19.3.2010 (Annexure-2) to participate in the draw to be conducted on 10.4.2010 at 2.30 P.M. When petitioner could know of invitation extended to Sri Ajit Kumar Singh (respondent No. 7) to participate in the draw, he raised objection to Circle Officer, Goriyakothi (respondent No. 10), vide letter dated 15.2.2010 about his residence at Goriyakothi, as said Ajit Kumar Singh was/is permanent resident of Sarsar Block of Siwan District as his entire family members including he were/are voters of Sarsar Block. Similar objection dated 22.2.2010 (Annexure-9) was filed before the Sub-Divisional Officer, Maharajganj, Siwan but neither his complaint did give any result, ultimately petitioner approached to the Janta Darbar of District Magistrate, Siwan who referred the case of petitioner for enquiry to the Sub-Divisional Officer, Maharajganj who made an enquiry and found that Sri Ajit Kumar Singh (respondent No. 7) is permanent resident of Goriyakothi (sic--Sarsar?) but to create his claim he had purchased land of area 4 Kathas 5 Dhurs on 5.11.2009 which became the basis for issuance of residential certificate dated 6.11.2009, arrived to a conclusion that the Circle Officer has wrongly issued the residential certificate in favour of Sri Ajit Kumar Singh (respondent No. 7) and recommended for cancellation of his residential certificate.

5. In the meantime, draw was conducted and Sri Ajit Kumar Singh was declared successful candidate to open the retail outlet under Rajeev Gandhi Rural Liquefied Petroleum Gas Distribution Scheme. When Sri Ajit Kumar Singh (respondent No. 7) was declared as successful candidate in draw he made a complaint vide application dated 12th April, 2010 (Annexure-13) to Senior Area Manager, Indian Oil Corporation about wrong participation and wrong selection of Sri Ajit Kumar Singh on the ground of his residence as basically he cannot claim to be resident of Goriyakothi.

6. The IOC after receipt of the complaint vide letter dated 15.11.2010 (Annexure-14) sought clarification from the Circle Officer, Goriyakothi, Siwan about residential certificate of Sri Ajit Kumar Singh. The Circle Officer vide letter dated 16.11.2010 (Annexure-15) sent his report informing that the residential certificate in favour of Sri Ajit Kumar Singh was issued from his office. On that basis Senior Manager, IOC

vide letter dated 23.12.2010 (Annexure-16) mentioning letter dated 16.11.2010 of the Circle Officer rejected the objection raised by the petitioner.

7. As the matter was moving forward, after the receipt of enquiry report dated 19.7.2010 (Annexure-10), the Senior Additional Collector-Incharge-District General Department vide letter No. 117 dated 19.1.2011 (Annexure-12) informed the Circle Officer that he has been instructed by the District Magistrate for giving him direction for cancellation of residential certificate issued in favour of Sri Ajit Kumar Singh (respondent No. 7), in pursuance thereof the Circle Officer vide his letter No. 31 dated 27.1.2011 cancelled the residential certificate issued in his favour accordingly made entry in the certificate whereupon vide letter dated 18.7.2011 (Annexure-17) Senior Area Manager, IOC kept commissioning of outlet of LPG in abeyance till further communication.

8. Sri Ajit Kumar Singh (respondent No. 7) after cancellation of his residential certificate filed an application before the District Magistrate, Siwan requested for fresh enquiry and issuance of residential certificate to him whereupon the District Magistrate, Siwan vide letter No. 111-25 of 2010 constituted a Joint Committee consisting of Director, Accounts Administration, Self-employment and Sr. Additional Collector In-charge-General Section, Administration Department for inspection and its report. The said Committee vide letter dated 1.3.2011 submitted its report (Annexure-B to the counter affidavit of the State) where the Committee found that Sri Ajit Kumar Singh is resident of Goriyakothi, mentioning about purchase of the land over which construction of the house over purchased land appertaining to Khata No. 106, Khesra No. 998, Area 4 Kathas 5 Dhurs up to the lintel level, further mentioning, about his residence in rented house and also mentioned, about complete construction of Godown over the purchased land. Furthermore said Sri Ajit Kumar Singh (respondent No. 7) applied for deletion of his name from voter list of Sarsar Block and simultaneously he has filed an application before Block Development Officer at Goriyakothi Block for inclusion of his name in the voter list of Ward No. 12. At this stage it is very relevant to mention that the Committee has mentioned the construction of the house as well as the godown over the same plot of land. On receipt of the report, the District Magistrate vide letter dated 18.4.2011 (Annexure-C to the counter affidavit of the State) annexing all reports sought guideline with respect to issuance of residential certificate in view of earlier cancellation of residential certificate by the Circle Officer.

9. It appears that the Joint Secretary, Government of Bihar vide letter No. 1875 dated 13.6.2011 did not give any tangible guideline in the matter of issuance of fresh certificate. The Senior Additional Collector on the direction of the Collector vide letter No. 1529 dated 20.9.2011 directed the Circle Officer to conduct local inspection and do needful. Ajit Kumar Singh (respondent No. 7) again filed his application dated 18.2.2012 (Annexure-F) for issuance of fresh residential certificate without annexing documents. It appears that on the same day report was sought

from Halka Karamchari and on the same date submitted his report recommended for issuance of residential certificate in the application itself. The Circle Officer on the same day issued the residential certificate on 18.2.2012 (Annexure-G series). The Circle Officer vide letter No. 8-II dated 29.3.2011 (Annexure-G series) informed to Additional Collector about issuance of residential certificate annexing enclosure such as rent agreement, photo identity card, voter list, self-inspection report, no objection certificate issued by the present Mukhiya, inspection report of Halka Karamchari and Circle Inspector and RTPS receipt.

10. Learned counsel for the petitioner submits that Sri Ajit Kumar Singh (respondent No. 7) on the day of advertisement for appointment of retail dealer for LPG was resident of Sarsar and not of Goriyakothi which is apparent from 2009 voter list for the election of Bidhan Sabha. The name of Sri Ajit Kumar Singh is standing at item No. 229 and all his family members are at sl. Nos. 289, 290, 293, 295 and 296 and to create his claim of his residence he purchased a plot of land area of 4 Kathas 5 Dhurs on 5.11.2009 and on the next day dated 6.11.2009 he applied for the residential certificate, on the same day the Circle Officer sent the same for enquiry to the Halka Karamchari, on the same day the Halka Karamchari submitted his report and on that day alone i.e. on 6.11.2009 a residential certificate was issued in his favour. This act of Circle Officer cannot be approved but is tainted with mala fide. He has further submitted that the report of the Sub-Divisional Officer lucidly mentioned that Sri Ajit Kumar Singh (respondent No. 7) was/is resident of Sarsar, illegally the Circle Officer has granted the residential certificate to him. The enquiry report of the Committee is not fair and proper as is based on inspection of site where he found construction of his house up to the lintel level and found that Sri Ajit Kumar Singh was living on rented house and mentioned about the rent agreement and construction of godown over the same land where his house up to lintel level was found constructed. The rent agreement filed by Sri Ajit Kumar Singh (respondent No. 6) of C.W.J.C. No. 5919 of 2012 as Annexure-R-6/3 amply shows that no any house was not under the rent agreement but Sri Ajit Kumar Singh has taken open space for rent for his business. It is apparently clear Annexure-G of the counter affidavit is letter of the Circle Officer to the Senior Additional Collector-incharge but it appears the date of letter has been changed as letter mentioned as 29.3.2011 same has been changed to 29.3.2012 (Annexure-G) in court copy. He has pointed out, in the second time, application for residential certificate was filed on 18.2.2012, on the same day spot verification was made by Halka Karamchari, on the same day enquiry report was submitted by Halka Karamchari and on the said day i.e. on 18.2.2012, residential certificate was issued by the Circle Officer in favour of Sri Ajit Kumar Singh. In the manner the residential certificate has been issued in favour of Sri Ajit Kumar Singh apparently gives strong inference of stage manage show for malicious reason illegally issued residential certificate with an intention to ensure allotment of retailership of LPG outlet in his favour. The manner officials have acted patently and strongly indicates their malicious action and grant of residential

certificate on both occasions are per se illegal and this Court should interfere in the matter.

11. Learned counsel for the State has justified the action of the respondent concerned and has said that after cancellation of the residential certificate, second time when he has requested for fresh enquiry and enquiry report was given in his favour, accordingly second time the residential certificate was issued in favour of Sri Ajit Kumar Singh cannot be said to be illegal.

12. Learned counsel for the I.O.C. has submitted that IOC has acted on the basis of assistance provided by the Officer of the State Government as Circle Officer issued residential certificate in favour of Sri Ajit Kumar Singh on that basis award for outlet in favour of Sri Ajit Kumar Singh was made cannot be said to be illegal and this Court may refuse to interfere in the matter after laps of such a long period when Sri Ajit Kumar Singh (respondent No. 7) has already invested huge amount.

13. Learned counsel for the private respondent, Ajit Kumar Singh, has submitted that respondent No. 7 has been doing business with his maternal uncle three years prior to the issuance of the advertisement and before the issuance of the advertisement he has purchased the land and was residing at Goriakothi. Residential certificate issued in his favour cannot be faulted. Further claim has been made that he has already invested Rs. 50,00,000/-, any order adverse to him will cause immense prejudice and would cause huge financial loss. At the same time he has also raised a grievance that residential certificate dated 6.11.2009 was cancelled without giving prior notice violates the basic principle of natural justice and if this Court allows the present writ petitions in favour of the petitioner, will revive and perpetuate illegal order of cancellation. In support of his contention he has relied on in the case of [The Delhi Development Authority, New Delhi Vs. Lila D. Bhagat and Others](#), , [Dina Nath Jha Vs. State of Bihar and Others](#), , [State of Haryana Vs. Surinder Kumar and others](#), , M/s. National Project Construction Corporation Ltd. vs. M/s. Sadhu Singh & Co., reported in 2008 Supl. SCC 1106 , Paragraph 18, [Tirupati Sugars Limited Vs. The State of Bihar and Others](#), . Further claims that issuance and cancellation of residential certificate is a disputed question of fact which cannot be adjudicated in the present proceeding. It will be fair and proper for the petitioner to approach the proper civil court and that court after proper consideration would pass an order in accordance with relevant material. In support of his contention he has relied on in the case of [D.L.F. Housing Construction \(P\) Ltd. Vs. Delhi Municipal Corpn. and Others](#), .

14. During the course of argument this Court has felt necessity to call the original record. The Circle Officer could not produce the original record but produced file with collection of some Photostat of the documents. So much so it also appears that the original letter dated 29.3.2012 is not on record. It also appears that Sri Ajit Kumar Singh has applied for residential certificate first time on 6.12.2011 and on the same day enquiry report was submitted by the Halka Karamchari and on the same

day certificate was issued. Petitioner again applied for residential certificate on 18.2.2012, on the same date after purported enquiry certificate was issued such residential certificate does not create efficacy rather creates serious doubt genuinity of the same. The enquiry was conducted in a very hurried and swift manner on the day of filing of application; the Circle Officer issued the residential certificate itself on the same day of filing application shows in what manner and in what consideration the Circle Officer hurriedly acted. The court may take judicial notice of fact the manner the officials of Government office generally acts with laxity with general people, files remains pending years and months together without any action, materials are not available to show he has shown same urgency with regard to the other application filed before him or this was only favorite, application for his consideration of issuance of residential certificate. Eligibility of Sri Ajit Kumar Singh to participate for the opening of retail outlet of LPG was dependent on residential certificate of Goriakothi, not of Sarsar. Any purchase of land after the notification will not make him entitle to participate in the draw. Everything has been done in such swift manner does not inspire any confidence in the action of the Circle Officer, so much so in the light of report submitted by the Sub-Divisional Officer where it has been specifically mentioned that Sri Ajit Kumar Singh (respondent No. 7) was resident of Sarsar and wrongly residential certificate was given to him by the Circle Officer. The report of Committee cannot be put in reliance on the account that, in the report it has been mentioned of half made house and godown in the same plot and lease document attached by Sri Ajit Kumar Singh shows that he had/has taken lease for open land not of house and as claim of residence is belied.

15. This Court is conscious of legal proposition that the order of this Court should not allow illegal order to revive and perpetuate but at the same time it requires that the parties must get fair consideration from this Court otherwise they will loose faith from the judicial system itself. Judiciary is an institution where the people repose faith. It is the justice which this institution dispenses. It is the confidence of people who approach the judiciary that it commands. It is the sanctity which strengthen the justice delivery system. This Court knows that large number of applications remained pending before the authority concerned and they do not care to look into and they do not dispose of the same. Some times parties are compelled to approach this Court for giving direction for the disposal of their respective applications for different purposes. What was the special thing for the issuance of residential certificate in favour of Sri Ajit Kumar Singh on the same day of application is only known to the Circle Officer. There must be some thing special that itself makes the file move so fastly. The Hon"ble Supreme Court in the case of [R.S. Garg Vs. State of U.P. and Others](#), where the interdepartmental file moved in swift manner the Hon"ble court was compelled to arrive to a conclusion of mala fide. It will be appropriate to quote paragraph Nos. 24 to 27:-

"24. The difference in concept of malice in law and malice on fact stand is well known. Any action resorted to for an unauthorized purpose would construe malice

in law (See [Smt. S.R. Venkataraman Vs. Union of India \(UOI\) and Another, State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, , Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others,](#) and see also [Punjab State Electricity Board Ltd. Vs. Zora Singh and Others,](#) .

25. Malice in its legal sense means malice such as may be assumed for a wrongful act intentionally but without just cause or excuse or for one of reasonable or probable cause. The term malice on fact would come within the purview of aforementioned definition. Even, however, in the absence of any malicious intention, the principle of malice in law can be invoked as has been described by Viscount Haldane in Shearer and Another vs. Shields (1914) AC 808 at p. 813 in the following terms:--

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

26. The said principle has been narrated briefly in [Smt. S.R. Venkataraman Vs. Union of India \(UOI\) and Another,](#) , in the following terms:--

"Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

27. Another aspect of the matter cannot also be overlooked. Apart from the fact that the concerned authorities had made up their minds to promote the 3rd respondent herein from the very beginning, as an approval therefore appears to have been obtained from the Chief Minister only on 20.4.1997; the post was in fact created on the next date, i.e. on 21.4.1997 and the order of promotion was issued on 24.4.1997, although, decision thereupon, as would be evident from the note-sheet, had been taken on 15.4.1997 itself. Such an action is undue haste on the part of the respondents smacks of mala fide."

16. This Court is of the same view the manner the Circle Officer and others have acted it requires criticism from this Court and action cannot be approved. This Court directs the District Magistrate to hold an enquiry in the manner the then Circle Officer has acted in issuance of residential certificate so much so also to find out about the existence of the original document as the original documents have not been produced before this Court rather photocopies of the same have been produced. When the counter affidavit has been filed by the State includes the supporting documents they must explain where the original file has gone. The District Magistrate should go to the bottom of the matter. In view of the aforesaid discussions the second residential certificate dated 18.2.2012 is hereby quashed. The District Magistrate will either hold an enquiry himself or through any higher

Administrative Officer of Additional Collector rank giving an opportunity of hearing to both the parties and decide the issue for residential certificate to Sri Ajit Kumar Singh for the purposes of participation in the draw for selection of appointment of dealer of retail outlet, the decision of the District Magistrate on the residential certificate, will be basis for IOC to decide the issue of retail outlet at Goriyakothi in favour of Sri Ajit Kumar Singh (respondent No. 7).

17. If the issue is decided against Sri Ajit Kumar Singh, IOC will act in accordance with law. This Court does not find any disputed question of fact for arriving to the aforesaid conclusion. The aforesaid issue raised by the private respondent has no worth for consideration by this Court. With the aforesaid observation and direction these writ petitions are allowed.