

GAHC010023442023



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

Case No. : WA/35/2023

SUBIDITA NATH
W/O SHAMAL KANTI NATH, VILL.- SUDARSHANPUR PART- III, P.O. AND
P.S.- LALA, DIST. HAILAKANDI, ASSAM, PIN 788163.

VERSUS

THE INDIAN OIL CORPORATION LTD. AND 5 ORS.
REPRESENTED BY ITS CHAIRMAN CUM GENERAL MANAGER, HAVING
ITS REGISTERED OFFICE AT INDIAN OIL BHAVAN, ALI YAVAR JUNG
MARG, BANDRA (EAST) MUMBAI, PIN- 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 DEPUTY COMMISSIONER

HAILAKANDI
DIST. HAILAKANDI
PIN 788151

5: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

6: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

Advocate for the Petitioner : MR. S B LASKAR
MR. H.A. LASKAR

Advocate for the Respondents : MR. A. R. BHUYAN
MR. P. BHARADWAJ
MS. R. B. BORA, JR. GA, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 02-05-2024
Date of judgment : 06.05.2024

JUDGMENT & ORDER

(Vijay Bishnoi, CJ)

1. The present intra-court appeal is filed by the appellant being aggrieved with the order dated 04.01.2023 passed by the learned Single Judge in WP(C) No. 505/2021 and WP(C) No. 5277/2021, whereby the learned Single Judge has set aside the selection of the appellant as a Rajiv Gandhi Gramin LPG Vitarak (RGGLV distributor) for the area of Sudarshanpur Part-II and Part-III of Kalacherra Grant under Sudarshanpur-Kalacherra Gram Panchayat in the district of Hailakandi, Assam, and has directed the IOCL authorities to make allotment of the RGGLV distributorship by

making a fresh draw of lots as per the categorization provided in the advertisement as well as the guidelines.

2. The facts which are necessary for the adjudication of the present appeal are that pursuant to an advertisement issued by the IOCL authorities, the appellant as well as the respondent No. 6/writ petitioner had applied for RGGLV distributorship for the location of Sudarshanpur Part-II and Part-III of Kalacherra Grant under Sudarshanpur-Kalacherra Gram Panchayat in the district of Hailakandi, Assam. The appellant was selected in the draw of lots and, subsequently, after a round of litigation, which has been taken note of by the learned Single Judge in the impugned order, Letter of Intent (LOI) was issued in favour of the appellant on 25.11.2021. The respondent/writ petitioner preferred WP(C) No. 505/2021 challenging the selection of the appellant as the RGGLV distributor for the location Sudarshanpur Part-II and Part-III and subsequently filed WP(C) 5277/2021 challenging the Letter of Intent issued in favour of the appellant. Both the writ petitions have been allowed and disposed of vide the impugned judgment.

3. The respondent/writ petitioner has challenged the selection of the appellant as a RGGLV distributor for the location in question on the ground that the appellant is not a resident of Sudarshanpur Part-II and Part-III of Kalacherra Grant under Sudarshanpur-Kalacherra Gram Panchayat in the district of Hailakandi and, as per Clause 3 of the advertisement, preference was to be given to an applicant residing within the Gram Panchayat area of the advertised location, but the respondent IOCL has illegally treated the appellant as a resident of the location in question whereas she is not a resident of the said locality. The learned Single Judge, having analyzed the documents submitted by the rival parties, has come to the following conclusions:

“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.

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."

4. Assailing the impugned judgment, Mr. S.B. Laskar, learned counsel appearing for the appellant has submitted that the respondent/writ petitioner filed the writ petition challenging the selection of the appellant's RGGLV distributorship for the location in question after a great delay. It is submitted that the appellant had been selected through a draw of lots on 07.11.2014 whereas the respondent/writ petitioner filed the writ petition in the year 2021. It is submitted that in between the said period the appellant has invested a huge amount in constructing godown and office building. However, the learned Single Judge, without considering the delay in filing the writ

petition has illegally passed the impugned judgment.

5. Learned counsel for the appellant has also tried to impress upon the Court that the appellant is a resident of Sudarshanpur-Kalacherra Gram Panchayat in the district of Hailakandi and the respondent IOCL has not committed any illegality in treating her as a resident of the said area.

An attempt is also made by the learned counsel for the appellant to impress that for being selected as a RGGLV distributor, the only requirement is that the applicant has to be residing within the Gram Panchayat area and it is not necessary that the applicant has to be a permanent resident of the Gram Panchayat concerned. It is further contended that the IOCL, after detail enquiry, has concluded that the appellant is a resident of Sudarshanpur-Kalacherra Gram Panchayat and there is no reason to discard the said enquiry conducted by the IOCL. It is therefore prayed that the impugned judgment may kindly be set aside the writ petition filed by the respondent/writ petitioner be ordered to be dismissed.

6. Per contra, Mr. A.R. Bhuyan, learned counsel appearing on behalf of the respondent/writ petitioner as well as learned counsel appearing for the IOCL have argued that there is no illegality in the impugned judgment passed by the learned Single Judge and no case for interference is made out.

7. We have heard the learned counsel for the parties and have carefully scrutinized the material available on record.

8. So far as the argument of the learned counsel for the appellant that the respondent No.6/writ petitioner has approached the Court with a great delay, is concerned, it is to be noticed that the advertisement inviting applications for allotment of RGGLV distributorship was issued on 29.12.2013. The last date for submission of application forms was 30.01.2014 and the draw of lots was conducted on 06.11.2014. The selection letter was issued to the appellant on 07.11.2014. However, subsequently, the said selection was cancelled on 31.08.2017. The writ petition

[WP(C) No.6315/2017] filed by the appellant challenging the said cancellation of selection was disposed of on 24.01.2020 and ultimately, the letter of intent was issued in her favour on 25.11.2020. Aggrieved by the same, the respondent No.6/writ petitioner has filed the writ petition [WP(C) No.5277/2021] in the year 2021.

9. From the above sequence of events, it is clear that the Letter of Intent was issued in favour of the appellant only on 25.11.2020 and aggrieved by the same, the writ petition [WP(C) No.5277/2021] was filed by the respondent No.6/writ petitioner in the year 2021. Hence, it cannot be said that the respondent No.6/writ petitioner has approached the Court with great delay. Therefore, the contention of the appellant to the effect that the learned Single Judge should not have interfered in the writ petition filed by the respondent No.6/writ petitioner on the ground of delay is without any substance and the same is hereby rejected.

10. Now, coming to the merits of the claim of the appellant, the conditions of the advertisement are to be taken into consideration.

As per Clause 3 of the advertisement issued by the IOCL for the purpose of allotting RGGLV distributorship for various locations, first preference was required to be given to the applicants residing in the Gram Panchayat area of the advertised locations. In case candidates belonging to the first preference category were not available, the applicants residing in the concerned Revenue Circle of the advertised locations were required to be considered. The IOCL has considered the candidature of the appellant for allotting her RGGLV distributorship for the advertised location, i.e. village Sudarshanpur Part-II and Part-III of Kalacherra Grant, treating her to be a resident of Sudarshanpur-Kalacherra Gram Panchayat.

11. The learned Single Judge has taken into consideration the various documents submitted on behalf of the parties and has recorded a finding of fact that the said documents would raise a serious doubt about the appellant's claim to be a resident of Sudarshanpur-Kalacherra Gram Panchayat.

12. On careful scrutiny of the above-mentioned documents, we are of the view that the learned Single Judge has rightly held that the appellant's claim to be a resident of Sudarshanpur-Kalacherra Gram Panchayat is wholly unsustainable.

13. Apart from the above mentioned facts, it is also to be noted that the advertisement inviting applications from the eligible candidates for allotment of RGGLV distributorship for various locations including the location in question was issued on 29.12.2023 and the last date for submission of applications pursuant to the said advertisement was fixed on 31.01.2014. The appellant purportedly purchased a plot of land for the purpose of establishing godown etc. vide registered Sale Deed dated 22.01.2014 demonstrating herself as a resident of village Rajayeswarpur Part-5 (Muktacherra), Porgona-Hailakandi, Mouza-Rayayyeswarpur Part-5, P.O. Umednagar, P.S. Lala, District-Hailakandi, Assam. From the said document, it can be gathered that even on the date of purchase of the land, i.e. 22.01.2014, she did not claim herself to be a resident of Sudarshanpur-Kalacherra Gram Panchayat.

14. The Hon'ble Supreme Court has defined the meaning of the word "resident" in the case of ***Bhagwan Dass and Another vs. Kamal Abrol and Others***, reported in **(2005) 11 SCC 66** and has held as under:

"6. The word 'resident' is in common usage and many definitions were attributed to it in different decisions. Nevertheless, it is difficult to give an exact definition for the term is flexible, elastic and somewhat ambiguous. The meaning of the word 'resident' in itself creates certain doubts. It does not have any technical meaning and no fixed meaning, would be applicable in all the facts and circumstances. It is used in various senses and has received various interpretations by the Courts. Generally, the construction of the term is governed by the connection in which it is used and it is dependent on the context of the subject matter, and the object, the purpose or result designed to be accompanied by its use, and the meaning has to be adduced from the facts and circumstances taken together in each particular case. The word 'resident' as defined in Oxford Dictionary is "to dwell permanently or for considerable time, to have one's stay or usual abode, to live in or at a particular place". Similarly, the Webster's Dictionary has defined it as "to dwell permanently and for any length of time" and words like dwelling place or abode are held to be synonymous. From the above it can be seen that the term 'residence' makes it clear that the word 'residents' includes two types which are: 1) a permanent

residence and 2) a temporary residence. First type of residence form all the permanent dwelling which means that the person has settled down at a particular place permanently and regularly for some purpose. The second type refers to a situation that the person is not residing at a place forever but residing at a place for a temporary period or not for a considerable length of time. This is also referred to a temporary living in a place. Hence, in one place the word 'residence' is interpreted in the strict sense to include only permanent living at a place which may be referred to a domicile and in the second place the word is interpreted flexible sense to show a temporary or tentative residence.

7. The concept of residence has obtained varied judicial opinions and responses. To start with, in the case of *Sarat Chandra Basu v. Bijoy Chand Mahatab Maharajadhiraj Bahadur of Burdwan*, AIR 1937 PC 46, the Privy Council while dealing with the word 'resides' as it occurs in Section 33 of the Registration Act, 1908 has observed that :

"the expression resides as used in Section 33 is not defined in the statute, but there is no reason for assuming that it contemplates only permanent residence and excludes temporary residence."

8. The decision of the Privy Council was quoted with approval and followed by the Supreme Court in the case of *Sri Sri Sri Kishore Chandra Singh v. Babu Ganesh Prasad Bhagat and Ors.*, AIR 1954 SC 316. The Supreme Court later on in the decision *Mst. Jagir Kaur and another v. Jaswant Singh* AIR 1963 SC 150 has defined the word 'resides' in the following manner:

"a person resides in a place if through choice make it his abode permanently or even temporarily."

In the same decision the Supreme Court pointed out that the question of residence is a mixed question of law and fact. Hence this being the mixed question of law and fact has to be decided keeping in mind the facts and circumstances of each case. The meaning of the word 'residence' would in ultimate analysis depend upon the context and the purpose of a particular statute. In another decision of the Supreme Court in the case of *Jeewanti Pandey v. Kishan Chandra Pandey*, AIR 1982 SC 3 while construing Section 19(ii) of the Hindu Marriage Act, 1955 the Supreme Court said: (Para 12)

"In ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time to have a fixed home or abode. Where there is such fixed home or such home at one place, his legal and actual residence is the same and cannot be said to reside at any other place where he had gone on a casual or temporary visit. But if he has not established home, his actual and physical habitation is the place where he actually or personally resides."

9. The court has further said in paragraph 13 that it is plain in the context of clause (ii) of Section 19 of the Act, that the word 'resides' meant actual place of residence and not a legal or constructive residence. It clearly does not indicate the place of origin. The words residence is flexible and has many shades of meaning

but it must take its colour and content from the context in which it appears and it cannot be read in isolation. By this decision another dimension was added to the concept of residence in the form of concept of de facto residence and the concept of de jure residence. The Supreme Court in this case has clearly distinguished between the concept of actual residence or de facto residence and legal residence or de jure residence. The actual residence means the place where the person is residing actually at a given point of time. On the other hand concept of de jure residence or the legal residence means the place at which the person is residing in law. The latter form of residence may or may not be the actual residence or the place where the person actually stays or reside. A person holding property or land in a particular place or city or having some ancestral roots to the city may be a resident of that particular place in the legal sense, but his actual residence will be the place where he is presently residing and coupled with the fact of animus manedi or an intention to stay for a considerable period. The concept of de facto and de jure residence can also be understood by the following example. If a person suppose has the residency certificate of a place say 'A', but actually for his living he stays at the place 'B'. Then de jure he can be said to be the resident of place 'A' but de facto he is the resident of the place 'B'.

10. In *U.O.I. v. Dudh Nath Mishra and Ors.*, [AIR 2000 SC 525](#) Division Bench of this Court has held that the word 'resides' has to be interpreted in the context of the purpose of the statute in which the words 'resides' is used. The word resident is read with word ordinarily hence making the phrase 'ordinarily resident'. It is clear that the person, before he can be said to be ordinarily residing at a particular place has to have an intention to stay at that place for a considerable length of time and it would not include a visit of a short or casual presence at that place.

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, any 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 the Black Law Dictionary, 8th Edition. 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."

15. In the light of the above decision rendered by the Hon'ble Supreme Court, we have no hesitation in holding that the learned Single Judge has not committed any

illegality in concluding that the appellant not being a resident of Sudarshanpur-Kalacherra Gram Panchayat, is not entitled for being included in the draw of lots for the location in question treating her as a resident of Sudarshanpur-Kalacherra Gram Panchayat on preferential basis.

16. In view of the above discussions, we do not find any case for interference. Hence, this writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant