

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 418/2022

Smt Kamla W/o Hanuman Ram Chodhary, Aged About 44 Years,
Village And Post Poorvi Matasar Bhurtia Via Kavas, Tehsil And
District Barmer (Raj.)

----Appellant

Versus

1. Hindustan Petroleum Corp. Ltd., Through Its Managing Director, 17 Jamshedji Tata Road, Mumbai.
2. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd, Jodhpur Lpg Regional Office, Bhagat Ki Kothi, Jodhpur.
3. The Deputy General Manager, Hindustan Petroleum Corporation Ltd, Lpg Office, North-West Zone, Karaka Building, Ashram Road, Ahmedabad (Gujarat)
4. Jagdish Suthar S/o Bhanwar Lal Suthar, Gungia Dhora, Balotra, District Barmer.

----Respondents

For Appellant(s)	:	Mr. Muktesh Maheshwari
For Respondent(s)	:	-

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

Order

23/05/2022

The instant intra court appeal has been filed on behalf of the appellant writ petitioner Smt. Kamla for assailing the order dated 03.03.2022 passed by the learned Single Bench of this Court rejecting S.B. Civil Writ Petition No.1418/2013 preferred by the petitioner for assailing the orders dated 18.01.2011, 22.01.2011

and 21.09.2012 whereby, the respondent No.4 was awarded the LPG distributorship for the location Baytu, in District Barmer.

Mr. Muktesh Maheshwari, learned counsel representing the appellant writ petitioner submits that the respondent No.4 was not qualified to be appointed as distributor under the Notice (Annexure-P1) and the guidelines applicable in the Hindustan Petroleum Corporation Ltd. for award of LPG distributorship. He urged that it is an admitted position that the respondent was not residing in India within a period of previous 180 days as on the date of award of dealership and thus, he was not a resident of India in terms of the definition of resident of India provided under the Income Tax Act and consequently, he could not have been awarded the dealership. On these grounds, Mr. Maheshwari implored the Court to admit the appeal and stay the impugned order.

We have heard and considered the submissions advanced at bar and have gone through the impugned order and the documents annexed with the writ petition.

The petitioner asserted before the learned Single Bench that the respondent No.4 was, as a matter of fact, a Non Resident Indian and hence, he was clearly in violation of the qualification as laid down in point No.2(b) of 'Common Eligibility Criteria for all Categories' in the notice for appointment of LPG distributors dated 13.10.2010 which stipulates that an eligible candidate must be a resident of India.

Learned Single Bench took note of the fact that the respondent No.4 was serving as a Customs Clerk in the UPS Supply Chain Solutions Inc. in Dubai from 07.11.2007 till March, 2010 when the application was made. Dealing with the

contentions advanced on behalf of the petitioner, learned Single Bench held that the complaint which was made by the petitioner against the declaration of result after seven months of the issuance of the declaration of result through LOI dated 22.01.2011 and thus, the same was time barred.

Learned counsel Mr. Maheshwari urged that as it is a case of fraud, the limitation of 30 days for filing the complaint would not preclude the appellant from filing the appeal beyond the period of thirty days because the case would be covered under clause 23 of the guidelines and as the information furnished by the applicant was false, the allotment can be cancelled at any point of time. In this regard, it may be noted here that there is no such assertion that the respondent, made any false declaration at the time of applying for the gas dealership in question. The petitioner has tried to harp upon the definitions of 'Indian Resident' as provided under the Foreign Exchange Management Act, 1999 and the Income Tax Act, 1961 for claiming that the respondent was not a resident of India. The objections submitted by the appellant in this regard were dealt with by the competent officer of the oil company and were rejected on merit. Even though, the same were time barred.

In reply to the writ petition, the respondents have pleaded as below:-

"It is true that the Respondent No.4, Jagdish Suthar was working abroad during 7/11/2007 to 26/10/2010, but that does not alter his status of being resident of India. The provision of Foreign Exchange Management Act, 1999 are not applicable to the present case. The provisions contained in the Act of 1999 have a different

purpose and object. Hence provisions contain in Section 2(5) of FEMA, 1999 does not serve the cause of the Petitioner in any manner. Similarly definition of Resident of India given under Income Tax Act, 1961 is also of little help to the Petitioner inasmuch as condition of living in India for 182 days is for the purpose of taxing somebody's income under the provisions of Indian Tax Laws and such provision cannot be applied in the present factual backdrop."

We are prima facie of the view that there is no reason to accept the assertion of the appellant that the respondent was not a resident of India by applying the provisions of the Foreign Exchange Management Act, 1999 and the Income Tax Act, 1961 because, both the acts have a different object and purposes. The condition imposed by the Income Tax Act that a person residing in India for a continuous period of 180 days would be considered to be a resident of India, is for the purpose of bringing such person in the purview of the Income Tax Act. The definition is simply designed for the purpose of including the persons who are in India for a period of 180 days to bring in the tax net and not for the purpose of determining the citizenship or for deciding the permanent resident status of such person.

Apparently, the respondent owns properties in India. He is a bonafide resident of District Barmer and has all necessary identification documents which conclusively establish his status as a resident of India. The learned Single Bench extensively dealt with this aspect of the matter and turned down the argument advanced by the appellant's counsel by assigning valid reasons.

In view of the above facts, on both counts i.e. non filing of the compliant within the stipulated period of one month and on merits as well, the petitioner has no grounds to challenge the impugned order, which does not suffer from any infirmity whatsoever warranting interference therein.

Hence, the appeal fails and is dismissed as being devoid of merit.

(VINOD KUMAR BHARWANI),J

(SANDEEP MEHTA),J

60-/Pramod/Devesh/-

