

CASE NO.:
Appeal (civil) 3268-3270 of 2005

PETITIONER:
BHAGWAN DASS & ANR.

RESPONDENT:
KAMAL ABROL & ORS.

DATE OF JUDGMENT: 11/05/2005

BENCH:
CJI G.P. Mathur, P.P. Naolekar

JUDGMENT:
JUDGMENT

(Arising out of SLP) Nos.1920-1922 of 2003)

P.P. NAOLEKAR, J.

Leave granted.

These three appeals have been preferred against the common order and final judgment dated 21.8.2002 passed by the High Court of Himachal Pradesh in Regular Second Appeal Nos. 13/97 14/97 and 103/97. The appeals arise on the following facts.

That respondent no.3, Hindustan Petroleum Corporation, is a Government of India Undertaking and respondent no.2 is the Oil Selection Board. The respondent nos. 2 and 3 and the Union of India had intended to open a retail outlet for the distribution of Liquid Petroleum Gas (LPG) in Kangra town of the State of Himachal Pradesh and for that purpose it had invited applications for allotment of dealership/distributorship for LPG through notice published in the newspaper on 14.8.85. The notice of inviting dealership/distributorship rights provided for certain eligibility criteria, which the applicant should possess. The criteria provided that the applicant should be an unemployed graduate, resident of Kangra district, family income not more than Rs.24000/-, having no close relatives as a dealer or distributor of any oil company and the applicant also should not be a partner or having dealership or distributorship agency in any petroleum corporation company. The appellants viz., Bhagwan Dass and Ashok Kumar applied jointly as partners along with other applicants. Respondent no.1 Smt. Kamal Abrol and respondent no.5 Shri Abhay Singh had also applied for the said dealership/distributorship rights. There were other applicants also along with these applicants. The Oil Selection Board called the appellants and respondent nos. 1 and 5 for interview as their applications were found prima facie falling within the criteria laid down for selection. The interviewing Selection Board recommended their names to the Hindustan Petroleum Corporation Limited in form of a merit list that consisted of respondent no. 1, respondent no. 5 and the appellants in the order of merit. Respondent no.3, Hindustan Petroleum Corporation (HPCL), had issued letter of intent to respondent no.1 and she was directed to complete certain formalities to make the allotment in her favour. Aggrieved by the said decision of the Corporation, the appellants filed a writ petition before the Punjab and Haryana High Court challenging the allotment. The writ petition was disposed of by the learned single Judge on the point that the remedy does not lie under Article 226 of the Constitution and the appropriate remedy would be to approach the Civil Court. Pursuant thereto, a civil suit was filed by the appellants impleading

all the present respondents as party defendants, claiming relief that the decree for declaration be issued that selection of respondent nos. 1 and 5 by respondent nos. 2, 3 and 4 is wrong, illegal, null and void and is liable to be set aside and, therefore, letter of intent dated 3.3.88 for allotment of LPG dealership/distributorship of HPCL issued in favour of respondent no.1 is wrong, illegal, null and void and does not confer any right, title and interest upon respondent no.1 for allotment of dealership/distributorship of LPG at Kangra. The appellants had claimed further relief in form of a mandatory injunction seeking direction to respondent nos. 2, 3 and 4 to allot the LPG dealership/distributorship at Kangra to the appellants. After trial the civil suit filed by the appellants was partly allowed. The trial court gave decree of declaration that respondent nos. 1 and 5 could not be allotted the dealership of LPG at Kangra as they didn't fulfill the required eligibility criteria. It was held that the respondent no.1 was not a resident of the Kangra Distt. and hence did not fulfill the mandatory requirement. However, the trial court dismissed the suit claiming mandatory injunction for giving distributorship of LPG to the appellant.

Aggrieved by the judgment and decree of the trial court, cross appeals were filed by both the appellants and the respondent no.1. Respondent no.5 was also a party in appeal along with other respondents. Upholding the order of the trial Court, the selection of respondent nos. 1 and 5 was declared illegal, null and void. The appellate court further gave mandatory injunction in favour of the appellants and directed the Corporation to allot the LPG dealership at Kangra town to the appellants. While confirming the judgment and decree of the trial Court, the court had held that respondent no.1 not being the resident of Kangra Distt., does not fulfill the eligibility criteria and thus is not entitled for dealership. The net result of the judgment and decree of the First appeal court was that respondent nos. 1 and 5 were held not eligible for the dealership/distributorship rights whereas the appellants were held entitled to allotment of the dealership/distributorship in Kangra Distt., they being the only candidate remaining for the selection of distributorship right.

Aggrieved by the order of the First appellate court, 3 appeals were preferred, two by Kamal Abrol and the third one by HPCL before the High Court. The High Court had framed various questions of law and had held the question of territorial jurisdiction in favour of the appellants. On the matter of mandatory injunction granted by the First appellate court, it has been held by the High Court that there was no contract between the respondents and the appellants to allot the dealership and, therefore, there is no question of specific performance of contract or enforcement thereof. It is further held that the Corporation was under no obligation to accept the recommendation of respondent no. 2, therefore, no mandate can be issued by the Court to that effect as it is the administrative discretion and set aside the decision of the First appellate court on that issue. What we find from the pleadings of respondent nos. 2 and 3 is that there is some sort of admission on the binding nature of the recommendations made by the Oil selection Board but as will be presently shown, we do not propose to deal with the findings in these appeals. The High Court has held that the requirement of the applicants being the "residents" of Kangra Distt. is mandatory in nature. However, the residential requirement cannot be held to be that of permanent nature. The High Court has recorded specific findings that since the term 'residents' include both temporary and permanent residence (except a short or casual stay), the respondent no.1 cannot be held not a resident of Distt. Kangra. Admittedly, respondent no.1 is married to her husband who owns a land and ancestral property in Kangra. Therefore, in view of the fact that the husband of respondent no.1 is the resident of Kangra she will be deemed to be the resident of the said district since her marriage. In

other words, the High Court's finding is that the husband of Respondent no.1 having some ancestral and other personal property at district Kangra and she being married to him shall be held to be the resident of district Kangra and is eligible for allotment of LPG dealership.

The question for consideration here is whether the eligibility criterion of being the resident of Kangra district has to be construed to be a permanent or de facto residence or temporary or de jure residence.

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.

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"

The decision of the Privy Council was quoted with approval and followed by the Supreme Court in the case of 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."

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 manendi 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'.

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.

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, and 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.

In the present case, the necessary eligibility criterion requires the applicant to be a resident of Kangra district. The advertisement inviting the applications has not defined the same and hence it would be necessary to see the intention of the framers of the eligibility criteria to understand the true meaning or the sense for which the word 'resident' is used or as to why the criteria of resident is put as an eligibility criteria for allotment of LPG. In the present case the intention of the framers appears to be to provide employment or source of earning for the residents of the Kangra district in the form of LPG dealership/distributorship. The eligibility criterion requires the person to be a resident of Kangra district only in the actual sense and not in any other sense. What is required to fulfill the eligibility criteria of the residence is that the person should be a de facto residence and not to have the mere connection with the place on account of her husband having some personal and ancestral property in Kangra. There is no finding recorded by the Court that the husband of Respondent No.1 is permanently residing at Kangra or has permanent abode in Kangra. From the finding arrived at by the High Court it can be said that her husband having ancestral property in Kangra is a visitor to that place and occasionally resides there for a few days. Respondent No.1 prima facie appears to be a permanent resident of Mandi, since her name appears in the voter's list of Mandi and that she has been drawing her ration from Mandi as per the case set up by the appellants. It is further clear that the intention of providing employment and source of earning to the residents of the place would be fulfilled only if the person is actually living in Kangra and not by his/her remote connection to the place. It may also be seen that another eligibility criteria is that the person should not be a partner or having any dealership or distributorship agency in any petroleum company and, therefore, the dealership/distributorship has to be allotted to the person who does not hold any other dealership/distributorship agency of any other petroleum company. This term indicates that the corporation wants that the dealership at a particular place have to be handled by that person, which would necessarily require the personal presence of that person at the place of business. The notice of intent issued to the respondent no.1 on March 3, 1988 further clarifies this requirement when it says that the dealer is to be a full time working dealer which necessitates the permanent residence at a place for which the dealership license is given. When the agency requires full time working dealer it would be only possible if the person actually resides in Kangra district and not working through agent or servants engaged for the said purpose. This further indicates that the dealer is required to be a de facto resident of the place from where the dealership license is to be issued and it is not permissible to have casual connection or temporary residence at that place.

For the aforesaid reasons we are of the view that the High Court has committed an error in construing the term 'resident of Kangra District' does not require a person to be a permanent resident of that place and his casual connection to the district

would fulfill the necessary mandatory criteria provided in the ad. notice. As the approach of the High Court in deciding the second appeal against the appellant was based on its interpretation of the criterion of residence and as we have taken a different view of the matter, we set aside the judgment and decree passed by the High Court and remand the matter back to the Court for fresh consideration of the appeals in the light of interpretation given by us to the term 'resident of Kangra'. The appeals are disposed of accordingly with no order as to costs.

JUDIS