

(1985) 02 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 18770 of 1984

Aruna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-02-1985

Acts Referred:

Constitution of India, 1950 — Article 15, 15 (4), 16 (4), 29
Income Tax Act, 1961 — Section 28, 36, 37

Citation : AIR 1985 Kar 196 : (1985) ILR (Kar) 3673

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : R.S. Chakrabhavi, for the Appellant; N. Devadas, Govt. Pleader, for the Respondent

Judgement

1. In this writ petition, the following important question of law arises for consideration

"Whether for ascertaining as to whether a person belongs to Backward Class in terms of Government Order made under Clause (4) of Article 15 of the Constitution providing reservation of seats in professional colleges in favour of backward classes, the income of a person carrying on a profession after deducting establishment and other expenses incurred by him, should be taken as the basis?"

2. The facts of the case are as follows:

The petitioner passed the Pre-University examination held by the Board of Pre-University Education of this State in April 1984. She secured 84 per cent marks in the optional group. She applied to the 2nd respondent selection committee constituted by the State Government for the purpose of making selection for admission to the medical course in respect of seats in Government Medical Colleges and in respect of Government seats in private medical colleges. She also appeared for the Entrance test conducted by the State Government for the

purpose of ascertaining the merit of the candidates for making the selection. At that test the petitioner secured 985th rank. On the basis of the rank in the entrance test, she could not get a seat out of the seats available for open competition. She, however, claimed selection against one of the seats reserved for backward classes in terms of the Government order on two grounds.

(i) That she belonged to Ganiga community, which is one of the backward communities declared as backward class by the State Government, and

(ii) That the income of her father was less than Rs. 10,000/--

Her claim for selection against one of the seats for backward class was rejected by the selection committee. She filed earlier a writ petition No. 14462 of 1984 before this Court. One of the grievance of the petitioner in that writ petition was, that no opportunity was given to the petitioner to prove that she belonged to Backward Class. The writ petition was allowed on 19-9-1984 and a direction was issued to the selection committee to reconsider the case of the petitioner after giving opportunity to make good her claim for selection against a seat reserved for backward classes. Thereafter the selection committee issued a notice D/-18-10-1984 (Annexure-C) calling upon the petitioner to appear for an interview and to prove her claim against one of the seats reserved for backward classes. She along with her father, who is a chartered accountant, appeared before the selection committee on 26-10-1984. The selection committee, on consideration of the submissions made by the petitioner and her father as also the documents produced, came to the conclusion that the petitioner was not entitled to claim that she belonged to Backward Class for the reason that the gross income of the petitioner of the father was more than Rs. 10,000/-- The decision of the selection committee reads -

"The Selection Committee met to reconsider the case of Kumari Aruna G. Shettar in pursuance to the directions of the Hon'ble High Court of Karnataka in Writ Petition No. 14462 of 1984.

Kum. Aruna, the writ petitioner appeared before the Selection Committee with her father Sri Gangadhar Shettar. The Selection Committee asked Kum. Aruna and Sri G. Shettar as to what was the gross total annual income of their family from all sources. Sri G. Shettar replied that the gross total annual income was about Rs. 15,000/- (Rupees fifteen thousand). He further said that the income furnished by Kum. Aruna in her application as Rs. 8,400/- is the net income after deducting the incidental expenditure towards his profession like payment of rent, salary to the staff he has engaged etc.,

Here, the Selection Committee referred to the orders of the Hon'ble High Court of Karnataka dated 21st March 1979 in Writ Petn. No 2160 and 2161 of 1979 Dr. N. B. Anand and Kum. Latha Naik Balaji Rao v. Chairman, Selection Committee for admission to Post Graduate courses and MBBS., The petitioners were the children of one Sri N. B. Balaji Rao, a Tailor by profession. The petitioners had applied for admission to Post Graduate course in Medicine and MBBS Course

respectively under the seats reserved for Backward Communities and had furnished the "Income" of their family as Rs. 7,000/- per annum after "admissible deductions". The selection committee had rejected their claim on the ground that their gross total annual income from all sources was more than Rs. 10,000/- p.a. The Hon"ble High Court, vide order D/- 21st March 1979, in the above writ petitions, has upheld the view taken by the Selection Committee. The gross total annual income of the family of Kum. Aruna G. Shettar is about Rs. 15,000/- as informed by her and her father Sri Gangadhar Shettar. Hence, the claim of Kum. Aruna under Backward Community category is not valid as the income of her family exceeds Rs. 10,000/- p.a., the limit prescribed by Government.

The selection committee, therefore, decided to adhere to its earlier decision wherein the claim of Kum. Aruna G. Shettar under Backward Community category for admission to 1 MBBS was rejected. In view of this decision, the selection committee also decided not to hold any further enquiry in the matter."

Aggrieved by the said decision, the petitioner has presented this writ petition.

3. The plea of the petitioner in support of the claim is as follows: From 1973-74 till date the income of the father of the petitioner was less than Rs. 10,000/-. It was Rs. 8,200/- for the year 1973-74, Rs. 7720/- for the year 1981-82 Rs. 7818/- for the year 1982-83, Rs. 8,012/- for the year 1983 and Rs. 8,200/- for the year 1984-85. Therefore the selection committee was in error in holding that the income of the father of the petitioner was more than Rs. 10,000/-. The petitioner has also produced all the Income Tax returns for the years 1981-82 to 1984-85. The statement of income for these years as produced by the petitioner is as follows:

"STATEMENT OF INCOME FOR THE YEAR 1981-82

Gross Receipts Rs. 13,850.00

Less :

Salary to Clerks Rs.3000.00

Office Rent Rs. 900.00

Stationery and Printing Rs. 800.00

Books and Magazines Rs. 350.00

Typing Charges Rs. 600.00

Rs.5,650.00 Rs. 5,650.00

Rs 8,200.00

Less : Depreciation on Furnitures @ 10% on Rs. 4,800.00 480.00

Income Rs. 7,720.00

STATEMENT OF INCOME FOR THE YEAR 1982-83.

Gross Receipts Rs. 14,350.00

Less :

Salary to Clerk Rs. 3,000.00

Office Rent Rs. 900.00

Stationery & Printing Rs. 1,000.00

Books & Magazines Rs. 500.00

Typing Rs. 700.00

Rs. 6,100.00

Rs. 6,100.00

Rs. 8,250.00

Less: Depreciation at 10% on W. D. V. Rs. 4,320.00 Rs. 432.00

Income Rs. 7,818.00

STATEMENT OF INCOME FOR THE YEAR 1983-84

Gross Receipts Rs. 14,300.00

Less :

Salary to Clerk 3,000.00

Office Rent 900.00

Stationery & Printing 800.00

Books and Magazines 400.00

Typing Charges 800.00

5,900.00 5,900.00

Rs. 8,400.00

Less : Depreciation on Furniture @ 10% on Rs. 3,885/- 388.00

Income 8,012.00

STATEMENT OF INCOME FOR THE YEAR 1984-85

Gross Receipts Rs. 14,300.00

Less :

Salary to Clerks 3,000.00

Office Rent 900.00

Stationery & Printing 1,000.00

Books and Magazines 400.00

Typing Charges 900.00

6,200.00 6,200.00

8,550.00

Less : Depreciation on furniture @ 10%, W.D.V. on 3,500/- 350.00

Income 8,200.00

Learned counsel for the petitioner, with reference to the above facts and figures submitted as follows: No doubt the gross receipts of the father of the petitioner exceeded Rs. 10,000/- during all the above years, but the gross receipt was no income. In respect of a person carrying on a profession the income has to be ascertained after making necessary deduction or allowance necessary for earning the income and the remaining amount alone constitutes income in the real sense of the term. After such, computation, the income of the father of the petitioner was less than Rs. 10,000/- all these years as established by the assessment orders. Therefore the rejection of her claim by the selection committee was erroneous.

4. In support of his submission that in ascertaining the income of a person carrying on the profession "the establishment and other expenditures incurred for the purpose of earning the income" should be excluded, learned counsel for the petitioner relied on the following authorities.

(i) Bhagwan Dass Jain Vs. Union of India (UOI) and Others,

(ii) Rushden Heel Co. Ltd. v. I.R.C. (1946) 2 All ER 141.

(iii) Bombay Tramways Co. v. Bombay Municipal Corporation (1902) 4 Bom LR 284.

He also relied on the provisions of Ss. 28, 36 and 37 of the Income Tax Act.

5. There can be no doubt that for the purpose of assessing income liable to tax under the Income Tax law the establishment and other expenditures incurred by an individual carrying on a profession have got to be deducted and it is only the net income after making such deduction would be liable to tax under Income Tax Law. But the question which arises for consideration is, whether those principles governing ascertainment of an income of an individual under the Income Tax Law are germane to the consideration of the question whether that person belongs to backward class. Learned counsel for the State submitted that it is the gross income which should be taken as the criteria for deciding as to whether a person belonged to backward class and that the question is also concluded by earlier decision.

6. The Government Order which provides for reservation of seats in favour of backward classes is issued by the State Government in exercise of Cl. (4) of Art. 15 of the Constitution. The said clause reads -

"15. xx xx xx (4) nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." (Underlining by me).

It may be seen from the wording of the above clause that the State is given the enabling power to make special provisions in favour of certain classes of persons recognised as socially and educationally backward. The State Government for purposes of ascertaining as to what section of people in the State could be regarded as socially and educationally backward had appointed Karnataka Backward Classes Commission. The said commission identified certain castes and communities in the State as belonging to socially and educationally backward class. On consideration of the said report, the State Government made the order D/- 22-2-1977. The relevant part of the order as amended reads -

1. After careful consideration of the various recommendations made by the Commission, Government are pleased to direct as follows:

1. The Backward Communities, Backward Castes and Backward Tribes as mentioned in, the list appended to this order shall be treated as Backward Classes for purposes of Art. 15(4) and Art. 16(4) of the Constitution of India. Only such citizens of these Backward Classes whose family income per annum from all sources is Rs. 10,000/- (Rupees ten thousand only) and below shall be entitled to special treatment under these Articles.

xxx xxx xxx Note: Family income under sub-para's I and II above means income of the citizen and his parents and if either of the parent is dead, his legal guardian.

Thus it may be seen, the family income of Rs. 10,000/- has been fixed by the State Government to distinguish between persons belonging to the same community or castes to find out as to whether they belong to socially and educationally backward class. The question as to whether the principle laid down in the Income Tax law for purposes of computing the income should be taken as the basis for ascertaining the income of an individual to decide as to whether he belongs to backward class or not was the subject matter of consideration in W.P. Nos. 2160 and 2161 of 1979 (Dr. N. B. Anand v. Chairman, Selection Committee). The relevant portion of the judgment is at para 14. It reads -

"14. The order of the Government dated 22-2-1977 only says that only such citizens of the Backward Classes whose family income per annum from all sources is Rs. 10,000/- and below shall be entitled to special treatment. The word used is not net income or taxable or assessed income of the family but only family income. Under the Income Tax Act, certain deductions are allowed from

the income per annum and it is only that income arrived at after giving the permissible deductions that is taxed. The word "income" used in the Government order therefore only means the income per annum as is understood commonly by a common man. It is therefore reasonable to hold that the word income per annum means the total income per year from all sources and not the taxable or assessed income under the Income Tax Act."

The plea that the principle governing ascertaining of the income under the Income tax law was rejected and it was held that the expression should be understood as commonly understood by a common man and, therefore, it was reasonable to hold that the total income must be taken into account irrespective of the expenditure incurred.

7. There is also another case, viz., Dr. Indira Thimmaiah v. Selection Committee W.P. No. 18814 in 1983 and connected petitions D.D. 12-3-1984, in which a question was raised to the effect that a rent actually not received as also the municipal taxes should be excluded for the purpose of considering as to whether a candidate belongs to backward class. Both these submissions were rejected. The relevant portion of the judgment reads-

"6. But the learned counsel for the petitioners submitted that the entire amount could not be taken into account for the reason that as far as the tenant occupying the premises for which the rent fixed was Rs. 105/- had not at all paid the rent. Secondly, he submitted that if Municipal taxes are excluded the income would be less than Rs. 10,000/-.

7. I am unable to agree with the submission made by the teamed counsel for the petitioners. The mere fact that a tenant is a defaulter in payment of rent is no ground to hold that there was no income due to the parents of the petitioners. If any tenant has failed to pay the rent, the owner has the right to file a suit and recover it. But the mere fact of default in payment of rent is no basis to say that there is no rental income.

8. Similarly, according to the Government order, in order to decide as to whether a person belongs to backward community or not the total income of the parent alone constitutes the criteria. The fact that they are liable to pay the tax, municipal or on income, is no ground to deduct that amount to determine as to whether they belong to backward class or not."

W. A. Nos. 1129 and 1130 of 1984 D.D. 29-6-1984 against the aforesaid judgment were also dismissed by the Division Bench.

These two decisions provide Complete answer to the contention urged for the petitioner.

8. Sri R. S. Chakrabhavi, learned counsel for the petitioner, strenuously contended that there was difference between the gross receipt and gross income and the same has not been correctly appreciated in those decisions. He submitted that it was not correct to equate the gross receipts to gross income

and that the total figure furnished as gross receipts in the four returns filed by the father of the petitioner should not be treated as gross income and the figures arrived at after deducting salaries and rents and other permissible expenditures should alone be treated as income.

9. After giving careful and anxious consideration to the matter once again, I am of the view that the concept of income under the Income Tax Act is not germane for the purpose of deciding the status of a person i.e., whether he belongs to backward class under the Government Order. The expression "income" not having been defined under the Government Order, as observed in the order in W.P. No. 2160/79, has to be given a meaning which it has under common parlance. For instance if a person is receiving a rent of Rs. 1,000/- per month, in common parlance his rental income is regarded as Rs. 12,000/-per annum notwithstanding the fact that for purposes of ascertaining his income under the Income Tax Act, the municipal tax payable as also one-sixth for repairs has to be deducted. The same analogy also applies to a person carrying on a profession. I find no difference between gross receipts and the gross income. The total amount which he receives constitutes his income. It is out of the said income he incurs expenditure by way of salary, rents etc. The said amounts are not received from his clients separately towards establishment expenditure or towards rental of his office. For instance, when a lawyer receives an amount of court fee payable on the plaint, appeal etc., apart from his professional fees, it is not correct to say that the court fee so received is also his income. But to say that the professional fee which he received is also not income and the figure arrived at, after deducting out of it the establishment expenditure and rent, alone is his income is also not correct. Therefore, I am unable to agree with the submission made by the learned counsel for the petitioner. It is true that for purposes of Income Tax law establishment expenditure and rent has to be deducted. But in common parlance, it is an expenditure, which he has the capacity to incur because of his income. The concept of taxable or non-taxable income under the Income Tax law, cannot be invoked for applying the income criteria fixed under the Government Order to decide the backwardness of an individual.

10. In the result. I make the following order:: Petition is dismissed. No Costs.

Sri N. Devadas, learned High Court Govt. Pleader, is permitted to file his memo of appearance in two weeks.

11. Petition dismissed.