(2015) 04 BOM CK 0322

In the Bombay High Court

Case No : Writ Petition No. 4774 of 2014

Dinesh Kumar Ahluwalia APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 5 ALLMR 666 : (2015) 4 MhLj 309

Hon'ble Judges : V.A. Naik, J;A.M. Badar, J

Bench : Division Bench

Advocate : S.P. Bhandarkar, for the Appellant; Rohit Deo, ASGI, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, a brigadier in Defence Services, has challenged the rejection of his claim for reimbursement of the Leave Travel Concession (hereinafter referred to as "L.T.C." for the sake of brevity) bill to the tune of Rs. 1,44,000/- and the recovery of the amount secured by the petitioner as advance towards the L.T.C. The petitioner, was entitled for L.T.C. under the Defence Services Travel Regulations (TR para 177 B) and had availed the L.T.C. during November, 2011 for traveling from New Delhi to Port Blair along with his wife and son. The petitioner had drawn an advance for the said purpose and had booked the tickets for the journey from M/s. M.K. Tours and Travels, New Delhi, which is not an authorized agent of the respondents. The petitioner, after his return from the journey, submitted the L.T.C. claim of Rs. 1,48,300/- to the respondent No. 2 for audit and for balance payment. The claim of the petitioner was returned back by the respondent No. 2 on 31-5-2012 as the petitioner had purchased the tickets from the agent that was not authorized by the respondents. Since the petitioner learnt that the cases in regard to the return of the irregular claims were being considered by the Ministry of Finance for one time relaxation vide communication dated 22-2-2012, the petitioner resubmitted the claim. At the time of resubmission, the petitioner found that the travel agent had charged an amount

of Rs. 4,300/- in excess and accordingly, the petitioner resubmitted the claim by deducting the excess amount of Rs. 4,300/-. The claim was, however, returned by the impugned communication dated 13-12-2013 as the petitioner had not purchased the air tickets from one of the agencies mentioned in the circular and had purchased the same from a private agent. The petitioner has impugned the communication dated 13-12-2013 by the instant petition. By an amendment to the petition, the petitioner has also challenged the circular dated 16-9-2010, so far as it imposes the condition of purchasing the air tickets from the authorized travel agencies, as being unconstitutional, illogical, irrational and discriminatory.

2. Shri Bhandarkar, the learned Counsel for the petitioner submitted that the circular dated 16-9-2010 is bad in law as it permits the reimbursement of the claim for L.T.C. only if the air tickets are purchased directly from the Airlines or by utilizing the services of M/s. Balmer Lawrie and Company, M/s. Ashok Travels and Tours and IRCTC. It is submitted that the requirement to purchase the air tickets only from the aforesaid three authorized travel agencies results in monopolization and hence, the circular dated 16-9-2010 is liable to be set aside to the aforesaid extent. It is stated that the circular dated 16-9-2010 is in the nature of guidelines and the word ''may'', as found in clause 4 of the said guidelines relating to L.T.C., providing for purchase of tickets from the aforesaid three authorized agencies, clearly shows that the guidelines are directory in nature. It is stated that the petitioner was not aware of the guidelines as they were not widely publicized and had the petitioner been aware of the same, he would not have traveled by purchasing the tickets from the private travel agent. It is stated that since the petitioner has traveled from Delhi to Port Blair and there is no dispute about the same, me claim of the petitioner ought to have been favourably considered.

3. Shri Deo, the learned Assistant Solicitor General of India appearing on behalf of the respondents supported the action of the respondents and submitted that the circular dated 16-9-2010 is neither arbitrary nor discriminatory. It is stated that the three authorized agencies mentioned in the circular dated 16-9-2010 are Government of India Undertakings. It is stated that there is a logic and rationale underlying the stipulation that the tickets should be purchased either directly from Air India or from the website of Air India or from the three authorized agencies. It is submitted that private agents charge a higher amount for the air tickets and the same causes loss to the Government to a great extent. It is stated that the policy decision was in existence since 2006 and in 2009 the name of an agency was included, thereby increasing the number of the agencies from 2 to 3. It is stated that the employees entitled to L.T.C. are not allowed to purchase the tickets from private agents for minimizing the expenditure and curbing fraudulent claims. It is stated that the three agencies are old players and their offices would be located in the length and breadth of the country. It is stated that an amount of Rs. 4,300/- was overcharged by the private agent from which the petitioner had purchased the tickets and even if a private agent charges Rs. 1,000/- or more on an air ticket in excess, the loss to the

Government would be in crores. It is stated that the policy was in existence since 2006 and the petitioner who holds the rank of a brigadier cannot be heard to say that he was not aware of the policy that was widely publicized. The learned ASGI submitted that the said policy was challenged by a private travel agent before the Delhi High Court and the Delhi High Court has, by the judgment dated 29-10-2014, dismissed the writ petition filed by the private travel agent and upheld the validity of the circular.

4. On hearing the learned Counsel for the parties, it appears that the respondents were justified in rejecting the claim of the petitioner for reimbursement of the amount of Rs. 1,44,000/- towards L.T.C. We do not find that the circular is unconstitutional, irrational or discriminatory. By the circular issued by the Central Government in the year 2006, it was made known to the employees that air tickets should be purchased directly from the Airlines office or by utilizing the services of the two Central Government Undertakings. An additional Central Government Undertaking was added to the list of authorized travel agencies by the circular issued in the year 2009. The challenge to the validity of the circular by a private travel agent before the Delhi High Court has failed and the Delhi High Court has dismissed the writ petition filed by the private travel agent by the judgment dated 29-10-2014. It is held by the Delhi High Court in the said judgment that the decision to avail the services of public sector enterprises over other private travel agents cannot be subjected to judicial review. It is held that a private travel agent has no right to insist that the Government authorities should avail its services. If that be the view, which in our view is correct, the challenge to the impugned circular by the petitioner on the ground of monopolization should surely fail. We also do not find any merit in the submission made on behalf of the petitioner that the condition in regard to utilization of the services of the three authorized travel agencies is directory in nature and it was permissible for the petitioner to purchase the tickets from a private travel agent in view of the use of the term ''may'' in the guidelines of Air Travel by availing L.T.C. The word ''may'' has been used in the sense of ''must'' in the circular. We also find that the circular has been issued with a view to ensure minimization of expenditure and curbing fraudulent claims. It is admitted by the petitioner that the private travel agent from which the petitioner purchased the tickets had charged an amount of Rs. 4,300/- in excess. This clearly shows that the Government would be put to loss in crores, as submitted on behalf of the respondents, even if a meagre amount is charged in excess on every air ticket. In the circumstances, the petitioner cannot seek the reimbursement of the amount of Rs. 1,44,000/- on the claim towards L.T.C. The petitioner also cannot seek the reimbursement of the amount on the ground that the petitioner was not aware of the circular dated 16-9-2010. The circular dated 16-9-2010 was widely publicized. Even assuming that it was not, the petitioner ought to have made enquiries about the regulations in regard to L.T.C. before availing the concession. It is rightly submitted on behalf of the respondents that the petitioner working in the Judicial Branch of the Military cannot be heard to say that the petitioner was

not aware of the circular. Be that as it may, since the challenge to the circular fails, the petitioner cannot effectively challenge the communication, rejecting the claim of the petitioner for reimbursement of the amount of Rs. 1,44,000/- towards L.T.C. In the result, the writ petition fails and is dismissed with no order as to costs.

