(2010) 08 CAL CK 0071

In the Calcutta High Court

Case No : F.M.A. No. 390 of 2010

Indrajit Biswas APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Citation : (2010) 08 CAL CK 0071

Hon'ble Judges : J.N. Patel, C.J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Sadananda Ganguly, Lutful Haque and Golam Karim Chowdhury, for the Appellant;Sanjib Mal and Bimalendu Das. Advs. for the Respondent Nos. 2, 3 and 5, H.K. Lahiri, for the Respondent No. 4 and Fazle Rabi, for the Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, C.J.—This appeal is directed against the Judgment and order dated 29.04.2009 passed by the learned single Judge dismissing the petition filed by the appellant/writ petitioner seeking cancellation of the L.P.G. Dealership at Sainthia, Birbhum allocated to Debasish Saha, respondent No. 6 by the respondent No. 3 Bharat Petroleum Corporation Ltd. (BPCL for bsrevity).

2. In response to the advertisement in the daily newspaper (Ananda Bazar Patrika) for appointment of L.P.G. dealership at Sainthia, District-Birbhum, respondents received applications from various candidates for L.P.G. dealership for the location at Sainthia in the District of Birbhum. On 30th July, 2001 an interview was held by the Dealer Selection Board (hereinafter referred to DSB), Siliguri and a panel of 3 candidates was published in order of merit - (1) Debasish Saha (original respondent No. 6), (2) Indrajit Biswas (appellant/writ petitioner) and (3) Subrata Kumar Saha. It appears that several letters were written from 19.08.2001 to 14.08.2001 by the appellant/writ petitioner addressed to territory Manager (L.P.G.) seeking cancellation of distributorship of L.P.G. allocated to Debasish Saha at Sainthia. On 01.09.2001 a letter of intent in

favour of the first empanelled candidate i.e., Debasish Saha came to be issued by respondent No. 3, BPCL. In the meantime, the respondent 3 got examined the complaints received from the appellant/writ petitioner that the respondent, Debasish Saha had given a false declaration of income that his income from all sources were not more than Rs. 2 lakh and suppressed that he has employment in primary school, Koira in the capacity of a teacher. The Committee of inquiry appointed by BPCL found that the allegations were baseless and a report to that effect came to be submitted by BPCL to the Chairman, DSB on 15.11.2001. The appellant/writ petitioner filed writ petition challenging the empanelment of respondent No. 6 Debasish Saha. It so happened that the respondent No. 6 Debasish Saha, in the meantime, had sought an appointment as teacher in primary school and then resigned from the school. His resignation was accepted by the Sub-Inspector of School on 03.01.2002. On 08.01.2002 respondent No. 6, Debasish Saha, came to be appointed as L.P.G. distributor by the respondent No. 3.

3. It was the contention of the appellant/writ petitioner that after the interview, short-listed candidates for the said L.P.G. distributorship were declared by the DSB and it was found that the respondent No. 6 stood first in the panel. The appellant/writ petitioner came to know that respondent No. 6 has suppressed certain material facts as regards his income, occupation and profession and he made several complaints to respondents for seeking interference and to inquire into the matter. But, no action has been taken by the respondent. The appellant/ writ petitioner claimed that respondent No. 6 is a proprietor of a jewellery shop along with his father, has luxury buses and taxies and that he is working as a primary school teacher and owner of several acres of lands. On considering all these, his income for the year 1999-2000 would exceed Rs. 2,00,000/- and as such, his candidature should be cancelled and the appellant/writ petitioner being the 2nd empanelled candidate who fulfills all the necessary conditions may be offered appointment as a dealership of the L.P.G. distributorship for Sainthia in the District of Birbhum.

4. In response to the case of the appellant/writ petitioner, the respondents have taken a stand that the complaints as lodged by appellant/writ petitioner were examined by a Committee comprising of Chief Managers appointed by BPCL which was duly informed to the petitioner. As per the guidelines, the Committee after examining the complaints submitted a report and found that the declaration given by the respondent No. 6 as regards his income is proper and the said report was forwarded to Chairman, DSB. The respondent No. 6 in his affidavit-in-opposition clarified that his gross monthly income for the month of 1999-2000 was in the sum of Rs. 83,659- and he was a regular income tax payee. According to him, he has been working with his father in the jewellery shop owned by his father. It was conducted in the name of Saha Jewelers of Ilam Bazar and that he being the only son, his father expressed the view that in due course he will inherit the jewellery shop. In respect of owning the luxury bus he has clarified that in the year 1998-1999 he along with his friend purchased a secondhand bus

bearing the Registration No. WMH-5739 which was to be used on commercial occasions but did not generate any income. It was sold in scrap in 2004. It was contended that he has furnished correct information as sought for by making a full and frank disclosure of his income in the application form for appointment of dealer and that the authorities only after being satisfied with the information as being genuine, appointed him as dealer and, therefore, the appellant/writ petitioner being unsuccessful is trying to malign him and for that reason racked irrelevant issues with the intention to cause prejudice. The respondent No. 6 further contended that subsequent to his selection, he had worked as primary teacher which he had resigned on 3rd January, 2002, i.e., before being appointed as dealer and, therefore, he had not made any false statement either regarding his income or about anything else as alleged by the appellant/writ petitioner and, therefore, the writ petition deserves to be dismissed.

5. The learned single Judge after hearing the learned Counsel for the parties, found that there is no substance in the contention of the appellant/writ petitioner who is principally interested in contending that the income of Rs. 1,20,000/- approximately disclosed by the respondent No. 6 is incorrect and observed that whether the income shown at Rs. 1,20,000/- is right or wrong is not of much significance unless it can be shown that the respondent No. 6 had, in fact, have an income exceeding Rs. 2,00,000/-. Learned single Judge found that no such material was placed on record on the basis of which it could be said that the income of the respondent No. 6 was more than Rs. 2,00,000/-. Accordingly, learned single Judge dismissed the writ petition.

6. The only point which arises for consideration is whether the appellant/writ petitioner has substantiated his claim by placing on record sufficient material to show whether respondent No. 6, at relevant point of time, had an income exceeding Rs. 2,00,000/- which will disqualify him from being considered for allocation of dealership of L.P.G. distributorship.

7. Learned Counsel appearing for the appellant/writ petitioner submitted that the respondent ought to have cancelled the selection of the respondent No. 6 for being allocated dealership of L.P.G. distributorship as he has not only furnished false information about his income but also suppressed material information in respect of his other source of income from cultivation of land and fishery, travelling business by plying luxury buses and taxies and income earned from bank deposits and further that he had sought employment as a primary teacher. It is submitted that in spite of appellant/writ petitioner having informed the respondent, they overlooked the complaints against the respondent No. 6 and, therefore, the learned single Judge ought to have taken into consideration the material placed on record showing that the respondent No. 6 had income of more than Rs. 2,00,000/- from various sources which was suppressed while giving declaration to that effect in the application form. It is contended that in part II Column 8 of the application form, Column 10 of the declaration, the candidates were required to state that all the statements made in the application form to be

true and further confirmed that any statement being found false would lead to the termination of his distributorship and, therefore, the learned single Judge ought to have allowed the petition by directing the respondent No. 3 to cancel the distributorship of L.P.G. dealership at Sainthia, Birbhum given to respondent No. 6 and should have allocated the same to the appellant/writ petitioner, Indrajit Biswas, who was 2nd empanelled candidate. Learned Counsel for the appellant/writ petitioner placed reliance on the Judgment rendered by Division Bench of the Bombay High Court in the case of Vinod Dulerai Mehta Vs. Kanak Vinod Mehta, in support of his contention that declaration of income to the Income Tax Deptt. cannot be relied upon to assess the actual income of a person.

8. It is contended by learned Counsel appearing for respondent Nos. 2, 3 and 5 that on receipt of the complaints made by appellant/writ petitioner against respondent No. 6, the same was examined by a Committee and they did not find any substance in the allegations and, therefore, the Committee came to a finding that the allegations made against the respondent No. 6 by the appellant/writ petitioner were baseless and forwarded its report to the Chairman, i.e., DSB, i.e., respondent No. 4. It is specifically submitted that relevant period for which declaration of income was given by the respondent No. 6, i.e., for the year 1999-2000 which was supported by Income Tax Returns and the complaints came to be lodged by the appellant/writ petitioner in the nature of vague allegations as regards income from other sources. It is submitted that allegations relating to cultivated land, business of fishery, jewellery business, income earned by plying luxury buses and taxies and income from bank deposits were examined by the Committee and the report of the Committee speaks for itself and that nothing has been brought on record to show that the inquiry conducted by the Committee constituted by the respondents was not proper and, therefore, the learned single Judge was justified in dismissing the petition.

9. Similarly, learned Counsel appearing for the respondent No. 6 has stated that the materials placed before the Court by the appellant/writ petitioner do not show that the income of the respondent No. 6 was over and above Rs. 2,00,000/-. It is submitted that the nature of material placed is like signboard of the shop, calendar for the subsequent period and that the Court will have to take into consideration that respondent No. 6 has not disputed that his father runs a jewellery shop along with his brother and at one stage, he was working in the jewellery shop with his father as a salesman. Therefore, it cannot be said that mainly because the name of the respondent No. 6 published in the calendar that he had any share in the business of father. It is also submitted that respondent No. 6 did not have income of more than Rs. 2,00,000/- and that nothing has been placed on record by the appellant/writ petitioner to show otherwise that the learned single Judge was justified in dismissing the writ petition.

10. In order to ascertain the fact of the case we have called for the record of proceedings. On going through the brochure for making an application, we find that respondent No. 6 has given an earlier application in response to the

advertisement by submitting Form No. 516 and in response to subsequent advertisement he submitted the application on 30th October, 2000. Our attention was drawn to the front page of brochure by the learned Counsel appearing for the respondent Nos. 2, 3 and 5 where there is a rubber stamp to the effect "issued in lieu of earlier Form No. 516, document earlier submitted need not be re-submitted" and "the date of receipt by hand delivery as on 30th October, 2000." In support of gross income respondent No. 6 has enclosed an affidavit wherein respondent No. 6 has clarified that he is not dependent on his parent and, therefore, the income for the purpose of eligibility shown by him as that of parents has been stated to be nil as it clearly provides that only if the candidate is dependent on his parents then their income will be taken into consideration for computing total income. The candidate (respondent No. 6) has specifically stated that he has no income from agriculture. In the affidavit in support of income particularly the form annexed to the affidavit the respondent No. 6 has declared annual income (duly notarized). The gross income of respondent No. 6 from business was Rs. 1,34,359/- for the last financial year 1996-97 which was relevant year of which gross income was required to be declared. Respondent No. 6 also annexed the income clearance certificate and has affirmed "that the gross income viz. mine and that of my spouse and dependant children put together does not exceed Rs. 2,00,000/- per annum (last financial year 1996/97) as detailed in the Income Declaration attached." By subsequent affidavit dated 30.10.2000 where he has shown the gross income of the last financial year 1999-2000 as Rs. 1,22,194/- and has shown the income of his parents as nil for the reason that he is not dependant on his parents.

11. On the other hand, appellant/petitioner has placed reliance on the letters written by the appellant/petitioner to the respondents complaining that respondent No. 6 has suppressed his income which according to the petitioner is much more than Rs. 2,00,000/- as claimed in his pleadings where he has given the statement of net income of the respondent No. 6 and his family on various accounts during the period 1999-2000 as under:

Statement of The Annual Income Sl. Particulars/source Quantity Income per Total No. quantity Income (Yearly) Rs. Rs. (1) Cultivated Land 11.5 acres 10000 115000 (2) Fishery Full -1 30000 30000 Half -1/2 24000 Half -1/2 46000 12000 One fifth of 25000 23000 13 pond 55000 (13 x 1/5th) (3) Travelling 2 300000 600000 Business (4) Luxury Bus 2 Buses 100000 200000 (5) Taxi 3 Taxi 10000 120000 (6) Bank Interest Deposit 20000 20000 (7) Other Sources - 100000 100000 Total Income 12,85,000

12. The appellant/petitioner has come with the specific case before this Court that in spite of the appellant/petitioner having lodged various complaints that respondent Nos. 2, 3 and 5 have not taken any cognizance of the fact that the respondent No. 6 has given a false declaration of gross income as required by suppressing his source of income which if taken into consideration is much more than the sum of Rs. 2,00,000/- which does not appear to be correct as

contended by the learned Counsel for the respondent Nos. 2, 3 and 5. The respondents did appoint a Committee to inquire into the complaints and the Committee after necessary inquiry submitted its report dated 15th November, 2001 which rather goes to show that the appellant/writ petitioner did not come forward to substantiate the allegations made by him against respondent No. 6, though the Committee tried to establish contact with him but he was not available and, therefore, upon cross-checking with the empanelled candidate, the Committee found the complaints made by the appellant/writ petitioner to be baseless. We find no reason to disbelieve the report of the fact finding Committee appointed by the respondents. After receipt of the complaints had the decision taken by the respondents in allocating the L.P.G. distributorship in favour of respondent No. 6.

13. The allegations made by the appellant/writ petitioner are mainly based on certain misgivings and conjectures. The appellant/writ petitioner has not placed before the Court any material in support of his claim that the gross income of respondent No. 6 at the relevant time was much more than sum of Rs. 2,00,000/-.

14. Therefore, we find no merit in the contention of the appellant/writ petitioner. The appeal is, accordingly, dismissed with costs.

Bhaskar Bhattacharya, J.

15. I agree.

