
(2006) 03 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12218 of 2001

Reekha Kumari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 24(1)

Citation : (2006) 143 PLR 518

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : A.K. Chopra, Deepinder Malhotra and Jagdish Manchanda, for the Appellant; Ashish Kapoor, for Respondent Nos. 2 and 3 and M.L. Sarin and Hemant Sarin, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—Human nature is complex. It leads people to display their wealth in marriages, various parties and by building huge bungalows, then it also leads people to conceal their wealth. The occasions, of course, are different. The instant case reveals concealment of income rather than its display because occasion has been a different one. The selection of respondent No. 4-Jagdish Lal for allotment of LPG-distributorship, is the subject matter of challenge in this petition filed under Article 226 of the Constitution. His selection has been challenged on the ground that his income exceeds the criteria laid down in the advertisement issued by respondents 2 and 3-Indian Oil Corporation. The prayer made by the petitioner, who herself was a candidate for the allotment of LPG distributorship is for quashing the selection of respondent No. 4 and for allotting the distributorship to her as she has been found in the list of selected candidate at Sr. No. 2.

Brief Facts:

A LPG distributorship became available under the open category for Cheeka,

District Kaithal and the same was required to be allotted to an eligible person. Accordingly, an advertisement was issued by respondent No. 2 for allotment of LPG distributorship in respect of open category on 21.8.2000 (P-1). In the advertisement eligibility conditions were mentioned. In Sub-clause (e) at Item 2, the criteria with regard to income was gross family income of not more than Rs. 2,00,000/- in the preceding financial year 1999-2000. The closing date for submitting the application was 6.10.2000. The petitioner applied on 5.10.2000 and deposited the application form with the Area Office, Karnal of respondent No. 2. The eligibility criteria for awarding the LPG distributorship was circulated along with the application form. The petitioner was called for interview vide letter dated 10.5.2001 and she was to appear on 5.6.2001 at 10.30 a.m. She claimed to have submitted all the requisite documents as well as affidavit at the time of interview. Out of 80 candidates interviewed, the petitioner was shown at Sr. No. 2 and respondent No. 4 was placed at Sr. No. 1 in the select list. Result was declared on the notice board of respondent No. 2 and the hand written result dated 8.6.2001 has been placed on record (P-5). The allegation of the petitioner is that respondent No. 4, who has been placed at Sr. No. 1 in the select list, is in fact ineligible for allotment because his income exceeds far more than the maximum limit of Rs. 2,00,000/- as fixed by respondent No. 2. A representation in that regard was made by the petitioner to respondent No. 2 alleging that respondent No. 4 has filed wrong declaration mentioning his annual income to be less than Rs. 2,00,000/-. It has been alleged that respondent No 4 has concealed material facts from respondent Nos. 2 and 3. The petitioner is stated to have declared his annual income as well as experience as a Science Mistress correctly and truly whereas respondent No. 4 is alleged to have no experience who has falsely claimed to be an agriculturist. In para 9 of the petition, it has been alleged that the petitioner has gross annual income of Rs. 3,55,184.80. The break up has been given in sub-paras of para 9 and the same are summed up as under:

(a) Income of Rs. 15,658/-.

There were two Cumulative Deposit Receipts (C.D.R.) amounting to Rs. 52,000/- each in the name of Smt. Laxmi Devi mother of the respondent No. 4 and in the name of Smt. Prem Kanta wife of respondent No. 4. Both were issued on 19.9.1997. The date of maturity as mentioned in the C.D.Rs. is 19.12.2000. The CDRs are to bear interest at the rate of 12% per annum. Both are to be held by either of them or the survivor. Smt. Laxmi Devi mother of the respondent No. 4 had died on 17.5.1998 and thus automatically the said amount of C.D.R.'s became the property of Smt. Prem Kanta being surviving person. This fact has been concealed by the respondent No. 4 while applying for the LPG distributorship. Rs. 15,658/- accrued as interest on the above said F.D.R.'s during the financial year 1999-2000 which is income on the F.D.R.'s and that has not been included by respondent No. 4 while mentioning his annual gross family income.

(b) Income of Rs. 22,800/-.

That Respondent No. 4 has account No 3993 with the The Siwan Co-operative Credit and Service Society Ltd., Siwan. He had taken loan on 7.12.1998 of a sum of Rs. 21,500/-, which was paid by the respondent No. 4 on 14.5.1999 along with interest Rs. 1300/-. The amount of Rs. 22,800/- was returned to the Society by Respondent No. 4. This amount of Rs. 22,800/- has not been shown in the income, either in the detail of sources of funds or in the income tax return. It has also not been declared in the form filed by Respondent No. 4.

(c) Income of Rs. 64,379/-.

Respondent No. 4 has taken tractor loan from State Bank of India, Siwan, in his own name and in the name of Smt. Laxmi Devi his mother in the year 1997. Respondent No. 4 had paid Rs. 64,379/- during the financial year of 1999-2000. The payment of Rs. 64,379/- has not been shown in the income tax return as well as in the declaration of annual income or in detail supplied by the respondent No. 4 to the respondents.

(d) Rs. 55,000/- deposited in the account No. 9135 of PNB, Siwan.

Respondent No. 4 has opened one saving bank account No. 9135 in the Punjab National Bank, Siwan. The account was opened on 12.6.1999 with an amount of Rs. 200/- and on the same date the amount of Rs. 55,000/- was deposited in the above said account. And one locker was also being operated on this bank account. On the amount deposited by respondent No. 4 interest was accrued but the same has not been shown in the income of respondent No. 4. This amount has also not been shown in the income tax return

(e) Rental income to the extent of Rs. 72,240/- + Rs. 73,200/-.

Respondent No. 4 is getting Rs. 1,44,480/- as rent from the S.B.I., Siwan and he has half share in the premises.

The income of rent comes to Rs. 72,240/- being one half. Respondent No. 4 has two shops abutting the pucca road in the S.B.I. Building and rental income from the shops is Rs. 26,400/- per annum. Respondent No. 4 is entitled to 1/2 share of the rent of two shops, which comes to Rs. 13,200/-. However, it has not been shown by respondent No. 4 in the declaration of the annual income.

It has been alleged on the basis of the above said paras that gross family income of respondent No. 4 comes to more than Rs. 3,55,184.80/-. Therefore, respondent No. 4 has not been eligible for allotment to the LPG Distributorship at Cheeka as per the eligible criteria. The total income of respondent No. 4 that accrued during the financial year 1999-2000 has been summed up as under: -

i) Annual Income shown in the income Rs. 1,66,106.80 tax return (Rs. 1,65,305.40 + Rs. 80,130.30) ii) Interest accrued on the C.D.R.'s Rs. 15,658.00 O.B.C., Siwan as at (a) above. iii) Amount returned in account No. 3993 Rs. 22,800.00 of the Siwan Cooperative Society as at (b) above. iv)

Amount returned in tractor loan Rs. 64,379.00 account at S.B.I., Siwan as at (c) above. (v) Interest accrued and amount due in Rs. 801.00 account No. 9135 P.N.B. Siwan, as on 31.3.2000 vi) Rent from S.B.I. Branch, Siwan Rs. 72,240.00 as at (e) above. vii) Rent of two shops as at (e) above. Rs. 13,200.00 ----- Total Rs. 3,55,184.80

According to the petitioner the gross income depicted by respondent No. 4 is Rs. 1,66,106.80, which is absolutely false to his knowledge. She has further claimed that the petitioner is better qualified B.Sc. B.Ed, whereas respondent No. 4 is simply B.A. IInd year pass. The petitioner has experience of teaching and respondent No. 4 has no experience. The petitioner has shown funds available with her to support the LPG distributorship, which is more than Rs. 6,00,000/- whereas respondent No. 4 has depicted by Rs. 35,000/- available with him in the application form. It has also been alleged that there is mis-statement of material facts by respondent No. 4 in his application and his application was liable to be rejected on the basis of the aforementioned concealment.

Respondent Nos. 2 in its written statement has accepted the broad factual position that respondent No. 4 was placed at Sr. No. 1 in the select list and the petitioner was placed at Sr. No. 2. It has further been conceded by respondent No. 2 that representation dated 12.7.2001 was made by the petitioner with regard to concealment of income and other facts. The representation is stated to have referred to the Chairman, Dealers Selection Board, Haryana (respondent No. 3) who had advised the General Manager of Delhi State Office of respondent No. 2 to conduct an enquiry into the allegations. A committee has been constituted by the General Manager consisting of two officers of the level of Chief Manager and the report of the committee was awaited. It is, however, claimed that as per the declaration of income in his application is within the prescribed limit. His selection is claimed to be made by the Dealers Selection Board on the basis of the information furnished by him. In the preliminary objections, respondent No. 2 has asserted that this Court should not sit as a Court of appeal over the selection process and reliance in this regard has been placed on a judgment of the Supreme Court in the case of Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, . It has also been asserted that the instant petition is pre-mature as the report of the committee appointed by respondent No. 2 is awaited.

Respondent No. 3 i.e. Dealers Selection Board, Haryana, in its separate written statement has claimed that respondent No. 4 has submitted an affidavit of Smt. Prem Kanta wherein she had disclosed fixed deposit in Account Nos. 511 and 512 in the Oriental Bank of Commerce showing the total amount of Rs. 1,52,726/- and that she was ready to furnish the aforementioned amount to respondent No. 4. It has also attached a copy of declaration of annual income (R-3/1) showing the same to be Rs. 1,65,305/-. An affidavit dated 20.9.2000 sworn by respondent No. 4 has also been placed on record as Annexure R-3/2, which gives a declaration that the income of respondent No. 4 is less than Rs. 2,00,000/- per

annum in the preceding financial year 1999-2000. It is accompanied by income tax return to support the aforementioned claim (R-3/3).

Respondent No. 4 i.e. the selected candidate in his written statement has raised numerous preliminary objections. According to him the writ petition raises disputed questions of fact requiring adducing of extensive oral as well as documentary evidence. It is claimed that the writ petition is belated as it was filed on 16.8.2001 to challenge the selection made on 8.6.2001. During the interregnums period of two months respondent No. 4 is claimed to have entered into an agreement to purchase land measuring 4 kanals in village Cheeka for setting up LPG Godown and has paid Rs. 50,000/- as earnest money. A copy of the agreement to sell dated 28.5.2001 has been placed on record (R-4/1). Some premises is stated to have been taken on rent in village Cheeka at a monthly rent of Rs. 3,000/- for setting up of the LPG showroom and advance rent is alleged to have been paid to the lessor. The writ petition is alleged to be premature as the complaint made by the petitioner has been referred to the committee of officers, which was to give its decision. A copy of the complaint dated 12.7.2001 as forwarded to respondent No. 3 vide letter dated 24.9.2001 has also been placed on record (R-4/2). Reply sent by respondent No. 4 dated 8.10.2001 has also been placed on record (R-4/3). It is, however, admitted that the petitioner as well as respondent No. 4 have applied. With regard to the allegation of income, detailed reply has been filed to the sub-paras of para 9 and the same are summed up as under:

a) The fact concerning FDR in the names of his mother and wife for an amount of Rs. 52,000/- each has been admitted. During 1999-2000 the interest which accrued under the said two FDRs was Rs. 16,000/- i.e. Rs. 8,000/- per FDR. It is also conceded that his mother died on 17.05.1998. The interest from the FDR held by her and Smt. Prem Kanta is stated to have accrued in favour of her heirs and legal representatives who are Respondent No. 4 and his brother Shri Ram, Lal Mehta in equal shares. Therefore, it is asserted that out of interest of Rs. 8,000/-, Rs. 4,000/- accrued in favour of his brother Shri Ram Lal Merita. For the other FDR in the name of Smt. Prem Kanta the interest of Rs. 8,000/- had accrued during 1999-2000. The total interest which may be taken to have accrued in favour of respondent No. 4 in 1999-2000 from the two FDRs comes to Rs. 12,000/- [4,000 + 8,000]. Even after taking into account the said accrued interest of Rs. 12,000/- the gross income of respondent No. 4 during 1999-2000 comes to less than Rs. 2,00,000/-. The allegations of concealment of two FDRs from the respondents 2 and 3 by Respondent No. 4 have been denied. It is claimed that both FDR were brought to their notice as well as the factum about the interest accruing thereon. Thus, respondent Nos. 2 and 3 were claimed to be aware about the said two FDRs when they decided to award the LPG distributorship in favour of respondent No. 4.

b) It is claimed that the figures mentioned in the sub-para of the petition under reply do not pertain to income. On 16.3.1999, respondent No. 4 claims to have

advanced a loan of Rs. 70,000/- to one Shri Pawan Kumar son of Shri R.C. Mehta vide cheque No. 000543 drawn on Oriental Bank of Commerce, Siwan. On 12.5.1999 the said Shri Pawan Kumar returned Rs. 25,000/- to Respondent No. 4 out of the loan amount of Rs. 70,000/- . Out of this Rs. 25,000/- received by respondent No. 4, Rs. 22,800/- was returned by him to the Siwan Cooperative Credit and Service Society Limited. Thus, the loan to the Siwan Cooperative Credit and Service Society Limited was not repaid out of any other unknown sources of income as has been alleged. The loan advanced to Shri Pawan Kumar is duly reflected in the accounts of respondent No. 4. An affidavit of Shri Pawan Kumar regarding the loan taken by him from respondent No. 4 has been placed on record (Annexure R-4/4).

c) That Sub-para (c) as stated is wrong and hence denied. In reply thereto it is submitted that the figures mentioned in the sub-para under reply it is claimed by respondent No. 4 that in 1997 respondent No. 4 along with his mother Smt. Laxmi Devi took a loan of Rs. 2,00,000/- from the State Bank of India, Siwan (SBI). After her death on 17.5.1998, the repayment of part of her share of the loan was undertaken by the brother of respondent No. 4 Shri Ram Lal. The repayment of the said loan during 1999-2000 to SBI was as under:

* On 18.6.1999, Shri Pawan Kumar (to whom Rs. 70,000/- had been advanced by respondent No. 4 on 17.3.1999) returned Rs. 10,000/- in cash to respondent No. 4. Respondent No. 4 alleged to have deposited Rs. 10,000/- with the SBI on 19.6.1999.

* On 6.8.1999, respondent No. 4 is alleged to have withdrawn Rs. 20,000/- from his Account No. 9135 with Punjab National Bank, Siwan (PNB). On 1.9.1999, his brother Shri Ram Lal gave Rs. 5,000/- in cash to respondent No. 4 for repayment of their mother's share of the loan. The total amount of Rs. 25,000/- [20,000 + 5,000] was deposited with the SBI on 2.9.1999.

* In October 1999, Shri Ram Lal is alleged to have given Rs. 8,000/- in cash to respondent No. 4 for repayment of their mother's share of the loan. Respondent No. 4 deposited this Rs. 8,000/- with the SBI on 4.10.1999.

* On 15.11.1999, Shri Pawan Kumar (to whom Rs. 70,000/- had been advanced by respondent No. 4 on 16.3.1999) returned Rs. 10,000/- in cash to respondent No. 4. Respondent No. 4 deposited Rs. 10,000/- with the SBI on 15.11.1999.

* In December, 1999, Shri Ram Lal gave Rs. 8,500/- in cash to respondent No. 4 for repayment of their mother's share of the loan. Respondent No. 4 is stated to have deposited Rs. 8,500/- with the SBI on 9.12.1999.

* On 3.12.1999, Shri Pawan Kumar (to whom Rs. 70,000/- had been advanced by respondent No. 4 on 16.3.1999) returned Rs. 25,000/- in cash to respondent No. 4. Respondent No. 4 is stated to have deposited Rs. 15,000/- along with Rs. 810/- from his own pocket with the SBI on 9.12.1999.

Thus, the repayment of the loan is stated to have duly accounted for and has not

been paid out of any undisclosed sources of income. A copy of the loan account with SBI has been attached (Annexure R-4/5).

d) On 18.3.1999, respondent No. 4 is stated to have advanced a loan of Rs. 50,000/- to one Shri Munish Mehta son of Shri M.L. Mehta as loan. The said loan was given vide cheque No. 000545 drawn on Oriental Bank of Commerce, Siwan (OBC). This loan advanced to Mr. Munish Mehta is duly reflected in the accounts and income tax return of respondent No. 4. On 11.6.1999, Shri Manish Mehta returned the said loan amount to respondent No. 4 in cash. On 10.6.1999, respondent No. 4 is alleged to have withdrawn Rs. 5,000/- from M/s Sri Ram Seeds, in which he is a partner. The total cash amount of Rs. 55,000/- [Rs.50,000/- + Rs. 5,000/-] is claimed to be deposited by respondent No. 4 in his account with PNB. This sum of Rs. 55,000/- was over and above Rs. 200/- with which respondent No. 4 had opened the said account with the PNB and which Rs. 200/- were contributed by respondent No. 4 from his own pocket. An affidavit of Shri Munish Mehta regarding the loan taken by him from respondent No. 4 has been placed on record (Annexure R-4/6). The interest of Rs. 101/- which is claimed to have accrued in the account with PNB during 1999-2000 was not separately reflected in the accounts or income tax return of respondent No. 4. If the amount is included even then the gross income of respondent No. 4 during 1999-2000 comes to less than Rs. 2,00,000/-.

e) Respondent No. 4 has conceded to have received rent amounting to Rs. 72,240/- from SBI, the net amount, however, comes to Rs. 24,586.50, after taking into consideration the expenditure incurred on repairs, reconstruction and interest etc., which is duly reflected in the accounts and income tax return of respondent No. 4. Even in the application forms (Annexure P-3 and P-11) income from property that was required to be stated was the rent as declared and assessed for the purpose of tax. Respondent No. 4 claims to have duly complied with the requirement and stated to have disclosed correct figure in its application form (Annexure P-11). It is denied that there were two shops abutting the pucca road in the SBI building. Respondent No. 4 has admitted only one shop which is lying vacant. Thus, there is no rental income from the said shop.

It has been denied that the gross family income of respondent No. 4 is more than Rs. 3,55,184.80. A copy of the income tax return filed by respondent No. 4 for 1999-2000 has been placed on record (Annexure R-4/9). According to the revised income tax return the declared gross income of respondent No. 4 during 1999-2000 was less than Rs. 2,00,000/- and the same reads as under;-

* Income from house property = Rs. 24,586.50 * Income from business = Rs. 18,619.00 * Income from other sources = Rs. 801.30 * Income from agriculture = Rs. 1,02,100.00 ----- Total Gross Income = Rs. 1,46,106.80

It is claimed that even if the interest from the two FDRs amounting to Rs. 12,000/- and the interest which accrued in the account with PNB amounting to Rs. 101/- is taken into account, the total gross income of respondent No. 4

during 1999-2000 comes to Rs. 1,58,207.80 [1,46,106.80 + 12,000 + 101] which is still less than Rs. 2,00,000/-.

3. The petitioner, however, has filed replication to the written statement submitted by respondent Nos. 3 and 4. In the replication to the written of respondent No. 3, the averments made in the petition have been reiterated. It has been asserted that respondent No. 4 in his written statement has disclosed Account No. 9135 of Punjab National Bank, Siwan. The current credit account with the Siwan Co-operative Credit & Service Society, Siwan and account of State Bank of India at Siwan, have also not been disclosed. An amount of Rs. 1,04,000/- in the account of his mother, wife and minor child in the FDR has also not been disclosed. After the death of the mother of respondent No. 4, the FDR has fallen to the name of his wife. According to the eligibility criteria if an applicant is found to have furnished an incorrect or false information then his application was liable to be rejected without assigning any further reason. It has also been alleged that respondent No. 3 has not deliberately made inquiry for the reason best known to it.

4. In the replication filed to the written statement submitted by respondent No. 4, the preliminary objection has been controverted and it is claimed that the writ petition is maintainable as there is no dispute on facts. With respect to the averments made in para 9 of the written statement concerning concealment of income, the petitioner has reiterated her stand in the writ petition. In respect of income of Rs. 15,658/- nay Rs. 6,000/- the claim of respondent No. 4 has been controverted that after the death of the mother of respondent No. 4 on 17.5.1998, the interest of FDR jointly held by his mother as well as wife was distributed amongst respondent No. 4 and his brother Ram Lal Mehta because in the aforementioned FDR an amount of Rs. 52,000/- was there in the joint name of his mother and wife in the capacity of either or survivor. In other words it meant that after the death of the mother of respondent No. 4 the said amount of Rs. 52,000/- of one FDR automatically was to go to Smt. Prem Kanta wife of respondent No. 4 without reference to any other person. Therefore, the interest of Rs. 16,000/- as stated by respondent No. 4 has to be considered as income of the wife of respondent No. 4, which is liable to be counted in the income of respondent No. 4 for the financial year 1999-2000. Both the FDRs are stated to have not been renewed or encashed, which fact has not been disclosed by respondent No. 4 in Column 18 of the Sources of Funds. The FDRs were not disclosed to respondent No. 3 nor it was added to the income of respondent No. 4.

With regard to the theory of advancing loan of Rs. 70,000/- to Shri Pawan Kumar, the petitioner has made further averments in para 9(b) of replication, which reads as under:

(b) Income of Rs. 22,800/-

That Sub-para (b) of the written statement is wrong and denied. It is specifically

denied that the present respondent had advanced a loan of Rs. 70,000/- to one Pawan Kumar as alleged in para under reply, since no where it has been disclosed what type of loan was advanced to the alleged Pawan Kumar and for what purpose and on what terms and conditions. It has not been disclosed whether the alleged loan of Rs. 70,000/- was given for any specific purpose to one Pawan Kumar or what type of the loan has been given by the present respondent. It is pertinent to mention here that Pawan Kumar Mehta is a brother of the partner of the present respondent i.e. Rajinder Mehta s/o Shri R.C.Mehta. This money is seems to be given on some business transaction as no affidavit and balance sheet of income tax return of the present respondent has been filed with regard to the same. Moreover, this amount has not been shown in the application form in the column of sources of funds under the head of any other deposits. Moreover, nothing has been disclosed with regard to the Rs. 25,000/- alleged to be returned by Shri Pawan Kumar from what sources. It is pertinent to mention here that as per the provision of the Income Tax Act, the amount which was given as a loan on the basis of repayment is a deposit. This was to be disclosed by the present respondent in column No. 18 i.e. sources of funds. Moreover as per the provisions of the Income Tax Act, no one can make the repayment beyond Rs. 20,000/- in cash. Therefore, the alleged repayment is false, bogus and procured one only to mislead this Hon"ble Court and fill up the lacunas which was not earlier disclosed in the application form and to conceal the income of the present respondent.

6. The sharing of interest by respondent No. 4 with his brother has also been controverted in para 9(c) and the same reads as under:

(c) Income of Rs. 64,379/- now Rs. 77.310/-.

That Sub-para No. (c) of the written statement is wrong and denied. The respondent No. 4 has concealed the income of Rs. 77,310/- which he deposited with SBI, Siwan, in the tractor loan account during the financial year of 1999-2000 as the detail has been given in the Annexure R-4/5 submitted by the present respondent with the written statement. The present respondent has wrongly stated to conceal the said income of Rs. 77,310/- that after the death of mother of the present respondent on 17.5.1998, the repayment of the half share of the above said tractor loan was undertaken by the brother of the present respondent. For the sake of argument (though denied), if, it is presumed that the brother of the present respondent undertook to pay the share of the loan of his mother which comes to Rs. 38,655/-, but in said para, the present respondent had stated that his brother Ram Lal paid Rs. 21,500/- [Rs. 5,000/- on 1.9.1999 + Rs. 8,000/- on 1.10.1999 + Rs. 8,500/- in December, 1999) as his mother's share in the loan account, this shows all the averments made by the present respondents are false and frivolous. Moreover, no document/affidavit qua the payment made by Ram Lal brother of the present respondent has been attached herewith the written statement. It is pertinent to mention here that a bare perusal of the R-4/5 shows that whenever the present respondent deposited the

amount in SBI account it has been shown to be paid by Pawan Kumar and Ram Lal. Moreover, no document has been attached by the present respondent with the written statement, where from this money has been arranged by Pawan Kumar and Ram Lal on different dates shown in R-4/5. This is all sham transaction has been shown by the present respondent. The affidavit filed by Pawan Kumar is also procured one. The person who has to pay loan of the bank along with interest, it is impossible for that person he will give loan free of interest to other person to utilize his money without interest. Therefore, this all shows that all fake transaction has been mentioned in this para. It concludes that there is a concealment of income as well as other sources of funds as well as deposits/loan which were allegedly given to Pawan Kumar and Munish Mehta.

7. Further explanation with regard to Rs. 55,000/- in para 9(d) has been given, which reads as under:

(d) Income of Rs. 55,200/- deposited in account No. 9135 at P.N.B. Siwan on 12.6.1999, now Rs. 35,2000/- as amount of Rs. 20,000/- has been withdrawn from the said account on 6.8.1999 and deposited in S.B.I., Siwan on 2.9.1999. That Sub-para (d) of the written statement is wrong and denied. There is a clear cut admission of the present respondent that he has not disclosed the account No. 9135 of PNB, Siwan, which was being operated by him at the time of filing of application. The present respondent procured a false affidavit from Munish Mehta with regard to the repayment of loan taken by him. As already stated in the above said Sub-para (b) no body can make the repayment beyond Rs. 20,000/- in cash as per the provision of the Income Tax Act. Moreover, no document has been placed on record which shows that the alleged withdrawal of Rs. 5,000/- from M/s Shree Ram Seeds at that time, in which the present respondent is the partner, has been withdrawn from the above said firm. The petitioner has moved an application before the Income Tax Officer, Ward No. 1, Kaithal to provide the certified copy of the Income Tax Return for the period relating to financial years 1998-99, 1999-2000, 2000-2001 of the respondent No. 4 and M/s Shree Ram Seeds, Siwan. A copy of the application is attached here with the replication as Annexure P-14. The petitioner came to know that no entry of alleged withdrawal of Rs. 5,000/- is present in the statement of accounts of respondent No. 4 in the income tax return of Shree Ram Seeds relating to the financial year 1999-2000. This all shows that the details given by the present respondent which has been concealed intentionally, willingly by the present respondent only to get the distributorship of the LPG at Cheeka, Distt. Kaithal. The present respondent, himself admitted that these entries have not been disclosed in the application form. There is a concealment of income as well as other sources of funds. Therefore, the application is liable to be rejected as well as the result declared by the respondent board in the favour of the present respondent at No. 1 should be quashed and the same should be allotted to the present petitioner as she is the successive candidate who fulfills the all eligible criteria/conditions. "With regard to rental income, further details have been furnished and the same reads as under: -

(e) Rental Income to the extent of Rs. 72,240/- + Rs. 13,200/-. That Sub-para (e) of the written statement is wrong and denied. The rental income from the building of SBI is Rs. 72,240/- per annum and not Rs. 24,586.50 as alleged by the present respondent in its reply. This has not been disclosed whether any repair as well as reconstruction, maintenance was made during the financial year of 1999-2000. No document has been attached by the present respondent that the shop is lying vacant. The shops are situated in the main bazar on the Cheeka-Patiala Road, which is thickly populated area. One shop of spare parts and other shop of hotel were being run during the financial year of 1999-2000 in the shops in question. One affidavit of Madan Lal Wadhwa s/o Sh. Narain Dass Wadhwa, Ex. Chairman of Market Committee, Siwan is attached herewith the replication as Annexure P-15 for kind perusal of this Hon'ble Court. The building of the shops and SBI is common one in the name of present respondent and his brother. The total rent from SBI was Rs. 1,44,480/- and from two shops Rs. 26,400/- of building. It is a fake story that the shop which is in main bazar falls under the share of the present respondent, was lying vacant. The income as already disclosed by the present petition in this para is correct one. A wrong gross income has been shown in this para by the present respondent in order to mislead this Hon'ble Court. The fresh detail is given as under:

i) Annual Income shown in the income tax return (Rs. 1,65,305.50+ Rs. 801.30 Rs. 1,66,106.80 ii) Interest accrued on the F.D.R's O.B.C., Siwan Rs. 16,000.00 iii) Amount returned in account No. 3993 of the Siwan Co-operative Society Rs. 22,800.00 iv) Amount returned in tractor loan account at S.B.I., Siwan Rs. 77,310.00 (v) Interest accrued and amount deposited in account No. 9135 P.N.B., Siwan Rs. 35,301.00 (Rs. 55,200.00 - Rs. 20,000.00 deposited in SBI Siwan on 2.9.99 from withdrawal of PNB) vi) Rent from SBI Branch, Siwan (Rs. 72,240.00 - Rs. 24,586.50) Rs. 47,653.50 vii) Rent of two shops Rs. 13,200.00
----- Total : Rs. 3,78,371.30

8. The petitioner has asserted that respondent No. 4 has concealed material facts by misrepresenting his income and that his income is much more than the disclosed one.

9. When the matter came up for hearing on 17.8.2001, a Division Bench of this Court issued notice of motion with interim direction that allotment made to respondent No. 4 be not finalized. On 13.3.2002, the petition was admitted to be heard within one year. However, it is apt to point out that on 20.12.2001 on the agreement of the parties, the dispute on the question of income was referred to the Court of Civil Judge (Senior Division) Chandigarh for recording evidence and for submission of a report. The order dated 20.12.2001 reads as under: -

The arguments have been partly heard.

The primary contention on behalf of the petitioner is that respondent No. 4 was ineligible for the allotment of an L.P.G. dealership as his income for the financial year 1999-2000 was in excess of Rs. 2 lacs. In the petition it has been averred

that the income of the family of respondent No. 4 as defined in the brochure was Rs. 3,55,184.80P. Mr. Aggarwal submits that in fact he has got more evidence to show that the income was well above even what has been mentioned in paragraph 9 of the petition.

The claim as made on behalf of the petitioner has been contested by the learned Counsel for the respondents.

In view of this dispute on facts, learned Counsel for the parties are agreed that the matter may be referred to the Court of Civil Judge, Senior Division, Chandigarh for recording of evidence and report. The parties through their counsel are directed to appear before the Civil Judge, Senior Division, Chandigarh on January 7, 2002. He would give a date for production of evidence by the petitioner. The Officer shall submit a report regarding the income of respondent No. 4 and the family as contemplated under the brochure for the financial year 1999-2000 on or before February 8, 2002. The case shall be posted before the Bench on February 15, 2002. Interim order to continue.

10. The aforementioned report has also been placed on record. The Civil Judge (Senior Division) Chandigarh, has come to the conclusion that the gross income of respondent No. 4 comes to Rs. 3,99,534.80 paise. In para 22, it has further been concluded that the documentary proof on record alone shows that the gross income of respondent No. 4 and his family is far in excess than the required amount of Rs. 2,00,000/- in the relevant finance year.

11. Mr. A.K. Chopra, learned Senior counsel for the petitioner has raised two submissions before me. Firstly, learned Counsel has argued that according to the eligibility criteria laid down in the advertisement dated 6.10.2000 (P-1) for LPG Distributorship, a gross income of Rs. 2,00,000/- in the financial year 1999-2000 is required. He has referred to Clause 2(e), which provides gross family income of not more than Rs. 2,00,000/-. Secondly, he has submitted that according to the eligibility criteria circulated along with the application form, if any statement made in the application or in the documents enclosed along with such application is found to be incorrect or false, such an application was liable to be rejected and such a candidate was not to have any claim whatsoever against respondent Nos. 2 and 3.

12. Learned Counsel has substantiated his argument on the basis of Clause 2(e) of Annexure P-1, which is the application form and it requires that gross family income of an applicant should not be more than Rs. 2,00,000/-. He has further referred to the eligibility criteria as detailed in Annexure P-2. According to Clause 6 of Annexure P-2, a candidate should not have gross income of more than Rs. 2,00,000/- for the relevant financial year as specified in the advertisement. The income of Rs. 2,00,000/- for this purpose was to include the income of the candidate, his spouse and dependent children. He has further pointed out that if the candidate is dependent on the parents than the parental income was also to be added for computing the total income. Referring to Clause 9 of the application

form of respondent No. 4 (P-11), learned Counsel has submitted that same income criteria has been repeated. The requirement of respondent No. 3 is that even if the income in respect of any of the persons is nil, it should be specifically stated and in no circumstances any of the column was to be left blank. The income from all sources such as salary, property, interest, dividend, agricultural and other sources etc. is required to be included. If the applicant is an Income Tax Assessee, the details of income as shown in the annual income declaration were to conform to those indicated in the Income Tax Return for the relevant financial year. A copy of the assessment order of the Income Tax Officer was also required to be attached. If the applicant was not an Income Tax Assessee then the details were to be supported with other relevant documents, which have been mentioned in Sub-clauses(a) to (e) of Clause 9 and the same reads as under: -

a) Gross Salary : A certificate from the employees) indicating the total emoluments paid b) Income Property from : Rent as declared and assessed for the purpose of tax. c) Interest on Bank Deposits Letter from Bank (s) showing the actual amount paid/credited as interest. d) Income from Business/ Certificate from Chartered Accountant in Profession/Vocation/Shares support of the income indicated under each & others investment/other of these heads will be required. The sources: applicant may also be required to produce any other documentary proof in support of the income indicated. e) Income from Agriculture : A certificate from Mamlatdar/Tehsildar stating out clearly the location of the agriculture land and the income therefrom.

13. Referring to the declaration made by respondent No. 4 in R-3/1, learned Counsel has pointed out that income of Rs. 1,65,305/- has been shown whereas the form required that the gross income should be indicated and not net income. Unfolding his submission that the rental income of Rs. 72,240/- from State Bank of India was to constitute the gross income whereas the income shown to be Rs. 24,586.50 after deduction would be net income and, therefore, the amount of Rs. 47,653/- which is part of the gross income has not been reflected. Learned Counsel has further submitted that respondent No. 4 himself has admitted that inadvertently the account with Punjab National Bank has not been disclosed and the interest of Rs. 101/- for the relevant year has been conceded (R-4/7). He has then referred to the return filed by respondent No. 4 (R-4/9) where agricultural income is shown to be Rs. 1,02,100/-. He has drawn my attention to Ex.P-71 at page 283 from the record of Civil Judge to point out that 1/2 share in the building rent from the State Bank of India to the tune of Rs. 72,240/- has been shown and deductions u/s 24(1)(i) have been claimed to the tune of Rs. 47,653.50. The total amount in the net income has been shown as Rs. 24,586.50. According to the learned Counsel the whole amount of Rs. 72,240/ is required to be reflected as it is gross income. He has then referred to revised return Ex.P-72 at page 287, claiming further deductions of Rs. 20,000/- from his agriculture income, which is later shown to be Rs. 1,02,100/-. According to the learned Counsel if the total amount of Rs. 47,653/- is added then the gross

income of respondent No. 4 has to be considered more than Rs. 2,00,000/- because addition of Rs. 20,000/- deducted from agriculture income and Rs. 47,653/- deducted from rental income has to be added to make it a gross income. Learned Counsel has then referred to interest earned on FDR to the tune of Rs. 12,000/-, which has not been shown either in the return (R-4/8) and the revised return [R-4/9 (cont)]. The aforementioned entry has been admitted by respondent No. 4 in para 9(a) and further amount of Rs. 801.30 paise, which is income from other sources, has been conceded. Therefore, the following income, which is concealed and has now been divulged, is required to be added to the gross income of respondent No. 4:

Sr.	Description	Amount	No. (in Rs.)
(i)	Amount illegally deducted from the rental income	47,653.00	
(ii)	Interest amount of FDR of the spouse, which was not disclosed.	12,000.00	
(iii)	Income from other sources	801.30	
(iv)	Interest which accrued in the account with Punjab National Bank.	101.00	
			----- Total :
			60,555.30

14. The aforementioned figure if added to the amount of income already reflected i.e. Rs. 1,60,305/- then it exceeds far beyond Rs. 2,00,000/-.

15. The aforementioned submission has been made without any prejudice to the right of the petitioner based on the report of the Civil Court. According to the report of the Civil Judge, which has been prepared on the agreement of the parties and the same has concluded the income of respondent No. 4 to be Rs. 3,99,534.80 paise.

16. The other submission of the learned Counsel is that the application form of respondent No. 4 deserved to be out-rightly rejected because in Part 2 of the eligibility criteria for award of LPG Distributorship (Annexure P-2), it has been provided that if any statement made in the application or in the document enclosed therewith or subsequently submitted at any stage is found to be incorrect or false, such an application was liable to be rejected without assigning any reason. Mr. Chopra has drawn my attention to Para-2 of the eligibility criteria (P-2). Elaborating his argument he has referred to the application form submitted by respondent No. 4 (P-11). In the aforementioned application in para 17 under the Sub-heading "Give details of source of funds", he has disclosed only two bank accounts in the State Bank of India and Oriental Bank of Commerce i.e. Account No. 3663 in the State Bank of India, representing an amount of Rs. 20,000/- and Account No. 394 in the Oriental Bank of Commerce, representing Rs. 15,000/-. the column with regard to Current account has been shown to be blank. He has then referred to R-4/7, which shows that he has another account with the Punjab National Bank being Account No. 9135 and the statement of account in the annexure shows the account up to 31.3.2000. Referring to Ex.P-58 on the trial Court file (at page 175) learned Counsel has pointed out that this account is continuing one even up to 17.3.2001 and the balance shown is Rs. 932/-. The aforementioned account of the Punjab National Bank has not been disclosed in his application (P-11). Learned Counsel has then

referred to a current account with State Bank of India, Siwan (Kaithal), bearing No. ATL/109 (R-4/5). According to the learned Counsel, on the date of application and for the purposes of financial year 1999-2000, the balance in this account was Rs. 35,148/-, This is another concealment. He has still further referred to the assertions made in para 9 with regard to the FDRs and Exs.P-13 and P-14 of the trial Court record. According to the FDRs (Exs.P-13 and P-14) an amount of Rs. 76,363/- was shown in the account of Smt. Laxmi Devi, mother of respondent No. 4. However, the same has not been disclosed in the application form. With regard to the FDRs, learned Counsel has referred to affidavit dated 4.6.2001 sworn by Smt. Prem Kanta, wherein it has been stated that there are two FDRs in the Oriental Bank of Commerce with C.D.R. A/c No. 511 and 512. The total maturity amount in those FDRs was Rs. 1,52,726/- and the same was ready for disbursement. Smt. Prem Kanta, who is wife of respondent No. 4 has offered the FDRs for use in the LPG distributorship. These FDRs have neither been disclosed nor reflected in the income of the spouse. One FDR account containing Rs. 5,000/- in the name of respondent No. 4 has been found in the Punjab National Bank as is evident from Ex.P-56 with the Civil Court file. This has also not been disclosed in the application form. Same is the position with regard to the account opened in the name of Dikshit Mehta, son of respondent No. 4, being FDR No. 586169 dated 22.7.2000, which has been renewed and the maturity value of the same has been shown as Rs. 12,750/- till 1.11.2003 (Ex.P-43) with the trial Court file. Again the same has not been disclosed in the application form, which was required to be shown being income of the spouse as well as of the children.

17. On the basis of the aforementioned income of respondent No. 4, which exceed far beyond Rs. 2,00,000/- and active concealment, learned Counsel has argued that respondent No. 4 is liable to be declare ineligible for awarding LPG distributorship and instead of him, the petitioner claims that she be awarded distributorship being at Sr. No. 2 in the seniority list. In support of his submission, learned Counsel has placed reliance on a judgment of the Supreme Court in the case of Rajbala v. Union of India Civil Appeal No. 7718 of 1995, decided on 23.8.1995). He has argued that in cases where the selected candidate has been found to be ineligible such a course can be adopted, especially when the criteria now adopted is entirely different than the one on the basis of which the selection was made in the present case. He has maintained that in cases where the criteria is found to be illegal, it may be necessary for the Court to quash the whole selection and to direct fresh selection on the basis of a new advertisement.

18. Mr. Ashish Kapoor and Mr. Hemant Sarin, learned Counsel for the respondent have jointly submitted that respondent No. 4 has declared his income in accordance with the Instructions contained in the application form. They have drawn my attention to the column 9 of the application form (P-3) and stated that the requirement of the application form is to show the details of income as shown in annual income declaration, which have been indicated in the Income

Tax Return for the relevant financial year. According to the learned Counsel, the petitioner has given all the details in his application form as per the declaration given in the annual Income Tax Return for the financial year 1999-2000. With regard to the rental income as reflected in the Income Tax Return, Mr. Sarin has argued that in case of persons who were not Income Tax Assessee, rent is required to be shown as declared and assessed for the purposes of tax as per the requirement of column 9(b). Learned Counsel has maintained that if properly understood, the interpretation of income from rent has to be declared in the same manner by a person who is assessable to income tax like the one who is not assessable to income tax. Therefore, the amount of Rs. 47,653/- has been rightly deducted. He has also referred to Clause 9(e) dealing with the income from agriculture. Drawing my attention to the unrevised return showing Rs. 1,02,100/- as the agricultural income, learned Counsel has pointed out that Rs. 20,000/- was required to be deducted and revised return was filed on 14.08.2001 as is evident from R-4/9, which was much before the date of filing the writ petition. Therefore, learned Counsel has submitted that there is no misrepresentation with regard to the income of respondent Mo. 4 nor there is any concealment. Learned Counsel have also argued that there is hardly any averment in the petition with regard to concealment of facts from respondent No. 3 and he has been taken by surprise in that regard. He has placed reliance on the judgments of the Supreme Court in the cases of Union of India Vs. E.I.D. Parry (India) Ltd., , V.K. Majotra Vs. Union of India (UOI) and Another, , and Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, . Learned Counsel have then argued that the Court should not sit as Court of appeal over the decision taken by expert like the Oil Dealers Selection Board. In that regard he has placed reliance on a judgment of the Supreme Court in the case of K. Vinod Kumar v. S. Palanisamy and Ors. 2003(6) Supreme 471.

19. In addition, Mr. Ashish Kapoor, learned Counsel for respondent Nos. 2 and 3 has argued that in case this Court allows the writ petition then the whole selection should be quashed instead of awarding the dealership to the petitioner. Referring to a judgment of the Supreme Court rendered in Civil Appeal Nos. 7416 of 7417 of 2002 in the case of Vinod Kumar Trehand and Ors. v. Indian Oil Corporation and Ors., learned Counsel has argued that the whole selection should be quashed instead of quashing the selection of respondent No. 4 alone.

20. The submissions made by the learned Counsel for the petitioner have merit and deserve to be accepted. It is significant to first notice Clause 2(e) of the application form (P-1) and Clause 6 of the criteria of selection (P-2). Both clause reads as under:

2. Eligibility Applicant(s) should be:

XXX XXX XXX XXX XXX XXX XXX XXX XXX

e) having gross family income (family as defined in the application form) not more than Rs. 2,00,000/- in the last financial year (1999-2000)."

"6) GROSS INCOME:

The candidate should not have gross income of more than Rs. 2 lacs for the last financial year, as specified in the advertisement. The income for this purpose will include that of self, spouse and dependent children. If the candidate is dependent on the parents, then their income will also be taken into consideration for computing the total income.

21. A perusal of the above clauses would clearly bring out that gross family income of an applicant in no case should be more than Rs. 2,00,000/- in the preceding financial year; which in this case is 1999-2000. Clause 6 makes it further clear that for the aforementioned purpose the income of self, spouse and dependent children was required to be included. If the candidate was dependent on parents then the income of parents was also required to be taken into consideration for computing the total income. Keeping in view the aforementioned parameter, the first question needs to be determined is as to whether the income of respondent No. 4 exceeds the maximum limit imposed by Clauses 2(e) and 6? The document Annexure R-3/1 is an annexure attached by respondent No. 4 with his application form. The document requires to contain gross income and not net income of self, wife/husband and dependent children and if a candidate is dependent on his/her parents then gross annual income of father and/or mother. The petitioner has shown an amount of Rs. 1,65,305/- in his declaration for annual income, which is attached with the application form. Whereas the total rental income from the State Bank of India from the property rented out to the said bank has been assessed to be Rs. 72,240/-. The petitioner was required to reflect his gross income without deduction. The aforementioned factual position becomes further clear from the reply dated 8.10.2001 (R-4/3) sent by respondent No. 4 to the complaint made by the petitioner, where under column (B) Gross Income, it has been conceded that 1/2 share in the building rent received from State Bank of India by respondent No. 4 is Rs. 72,240/- and then deduction of repairs and collection charges have been set off to the extent of Rs. 47,653.50 paise along with deduction of interest paid on borrowed capital for construction of building. Therefore, the net income worked out by respondent No. 4 is Rs. 24,586.50 paise whereas the whole income of Rs. 72,240/- was required to be reflected. Similar position emerges from the perusal of Ex.P-71 at Page 283 of the record of the Civil Judge. On the same line are the deductions of Rs. 20,000/- claimed from agricultural income. The aforementioned position emerges from perusal of Ex. P-72 at Page 287 of the record of the Civil Judge and Annexure R-4/8, dated 31.8.2000, which is income tax return for the year 1999-2000. In the return, agricultural income of Rs. 1,22,100.00 has been shown whereas a revised return has been filed, which is Ex. P-72 and the agricultural income of Rs. 1,02,100/- has been reflected. It is appropriate to mention that in the revised return deduction to the tune of Rs. 20,000/- have been made from the agricultural income, whereas gross income was required to be shown in the application form. The next amount of Rs. 12,000/- earned from Fixed Deposit Receipt of the spouse has also not been disclosed in the application

form. It is further appropriate to notice that the aforementioned interest income has not been reflected either in the return, Annexure R-4/9. The aforementioned entry has been conceded by respondent No. 4 in reply to para 9(a). If all the three figures, as mentioned above, amounting to Rs. 47,653/-, Rs. 20,000/- and Rs. 12,000/- are included in the income of Rs. 1,65,305/- then it goes far beyond Rs. 2,00,000/-. It is evident that total un-disclosed gross income in the application form comes to Rs. 79,653/- and the same is amply proved from the documents on record, even if the report of the Civil Judge is not taken into account.

22. I am farther of the view that the report of the Civil Judge cannot be discarded because in the order dated 20.12.2001 passed by this Court the parties have agreed for a reference to the Court of Civil Judge, Chandigarh, for recording of evidence and report. The Civil Judge has recorded a finding that the gross income of respondent No. 4 comes to Rs. 3,99,534.80 paise. In any case, in para 22 it has been concluded by him that the documentary proof on record shows that the gross income of respondent No. 4 and his family is far in excess than the maximum income contemplated by the criteria of Rs. 2,00,000/-.

23. The second contention of learned Counsel for the petitioner is equally meritorious as it has been shown that respondent No. 4 has concealed material facts from respondent No. 2 while making application for the award of LPG Distributorship. In para 2 of the eligibility criteria for award of LPG Distributorship (P-2) it has been categorically provided that if any statement made in this application or in the document enclosed therewith or subsequently submitted at any stage is found to be incorrect or false, such an application was to merit rejection without assigning any reason. In para 17 of the application form submitted by respondent No. 4(P-11) he has disclosed only two bank accounts, namely, Account No. 3663 in the State Bank of India, representing an amount of Rs. 20,000/- and Account No. 394 in the Oriental Bank of Commerce, representing an amount of Rs. 15,000/-. The column concerning "Current Account No. " has been shown to be blank. A perusal of Annexure R-4/5 would show that respondent No. 4 had Current Account No. ATL/109 in the State Bank of India, Siwan (Kaithal). The account is running and Annexure R-4/5 would show the date of entries from 1.4.1999 till 20.2.2001. On 28.4.2000, the balance in the aforementioned account is Rs. 35,148/-. Account No. 9135 with the Punjab National Bank (R-4/7) has not come to an end as is evident from Ex.P-57 and Ex.P-58 (at Pages 173 and 175 of the record of the Civil Judge). It shows that the bank account was continuing on 6.10.2000 when the application was submitted. There has also been concealment of two accounts maintained by the wife of respondent No. 4 in the Oriental Bank of Commerce, Siwan, namely, CDR A/c No. 511 and 512. The aforementioned fact is evident from the affidavit, dated 4.6.2001, Ex.P-2, of Smt. Prem Kanta, which has come on record of the Civil Judge. This affidavit was submitted by respondent No. 4 to respondent No. 3 at the time of interview. In para 9 of the written statement filed by respondent No. 3 it has been disclosed that at the time of interview, respondent No. 4 had

submitted an affidavit of Smt. Prem Kanta to the effect that she had fixed deposit receipts vide accounts Nos. 511 and 512 in the Oriental Bank of Commerce, totaling to Rs. 1,52,726/-, which have matured and she was prepared to part with the aforementioned amount to respondent No. 4. Even these FDRs have not been reflected anywhere in the application form. There is another account opened in the name of Dikshit Mehta son of respondent No. 4, being F.D.R. No. 586169, dated 22.7.2000, which has been renewed. The maturity value of the same has been shown to Rs. 12,750/- till 1.11.2003 as indicated in Ex.P-43. Again this FDR has not been reflected because as per the requirement the income of the spouse as well as all the dependent children should have been disclosed. Therefore, on this score also the instant petition deserves to be allowed.

24. The question which, however, survives for consideration is that what relief should be given to the petitioner? The petitioner has neither challenged the criteria nor there is anything on record to conclude that there is any illegality in the criteria of selection as disclosed in the advertisement or application form (P-1 and P-2). In cases where the Courts have found illegality in the criteria then the whole selection has been quashed as is evident from the view taken by the Supreme Court in Civil Appeal Nos. 7416 and 7417 of 2002, decided on 18.11.2002, titled as Vinod Kumar Trehan etc. etc. v. Indian Oil Corporation and Ors. etc. etc. The view of their Lordship's reads as under:

In our view, once the High Court has come to the conclusion that the assessment as well as the approach adopted by the Chairman of the Selection Board stood vitiated, it should be necessary to quash the selection and allow the Indian Oil Corporation and the concerned authorities to undertake the process of selection afresh, of all the applicants and the same cannot be confined to the writ petitioner before the High Court. Accordingly, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India ought not to have directed the allotment of distributorship to the writ petitioner.

As a consequence, we are of the view that the respondent-Indian Oil Corporation shall consider the claim of all the applicants afresh within three months in accordance with the law and on a proper assessment of the merits of the respective candidates, before allotting the distributorship.

Till such time, the new selection and allotment is made, the appellant, who has already commenced and operating the dealership, will continue to do so.

25. It is evident from above that in cases where the approach adopted by the Selection Board and the assessment made by it is found to be faulty then it was necessary to quash the selection and to direct the authority to undertake the process of selection afresh of all the applicant.

26. However, in cases where a selected candidate is found to be ineligible then the view taken by the Supreme Court is to grant the relief to the next candidate on the select-list, as has been held in Rajbala's case (supra). In that case a

selected candidate was found to be ineligible on the basis of income criteria and despite the fact that he had commissioned the distributorship, their Lordship's not only quashed the selection and appointment but directed the award of distributorship to the writ petitioner. It would be appropriate to refer to penultimate para, which bring out the aforementioned position, the same reads as under:

Having regard to the ineligibility of the 7th respondent, who was placed first on the merit list, the distributorship ought to have been awarded to the appellant, who was second in the merit list. Having regard to what has transpired, we think it appropriate to direct that the 7th respondent should cease to act as a dealer for the 2nd respondent, pursuant to the award of the dealership to him as aforesaid, on and from 1st September, 1995 and that on and from that date the 2nd respondent should award the dealership to the appellant who would be entitled to conduct business by reason thereof from that date. The appellant shall, of course, be obliged to fulfill all necessary conditions to the satisfaction of the second respondent.

27. The facts in the present case are almost similar to the facts of Rajbala's case (supra), decided by the Hon'ble Supreme Court. In the present case also respondent No. 4 has been found to be ineligible on the basis of income criteria whereas the petitioner does not suffer from any such disability. Therefore, in my opinion, it would be just and appropriate to award LPG Distributorship to the petitioner.

28. The argument raised by the learned Counsel for the respondents based on column 9 of the application form and comparison of the income tax assessee with non-assessee has failed to impress me. A person who is not an income tax assessee stand entirely on different footing and he does not need to disclose his gross income. In any case, respondent Nos. 2 and 3 have made a distinction between two categories, which cannot be held to be irrational or founded on a distinction which has no rationale basis with the object sought to be achieved. Even otherwise there is no challenge in any proceedings to the aforementioned distinction. The other argument that this Court should not sit as a Court of appeal based on the judgment of K. Vinod Kumar (supra) has no merit because on the unveil of the criteria devised by respondent No. 2 and 3, respondent No. 4 has been found to be ineligible. Such a judicial review cannot be considered as exercise of appellate jurisdiction. Therefore, both the aforementioned arguments are hereby rejected.

29. For the reasons stated above, this petition succeeds. It is declared that respondent No. 4 is ineligible as his income exceeds for more than Rs. 2,00,000/-, which is the maximum limit imposed by respondent Nos. 2 and 3. It is further directed that LPG Distributorship be awarded to the petitioner who is the next eligible and meritorious candidate. Respondent No. 4 is saddled with costs of Rs. 25,000/-, which shall be paid to the petitioner as the cost of litigation. The allotment of LPG Distributorship shall be made to the petitioner

within a period of one month from the date of certified copy of this order is presented by the petitioner to respondent Nos. 2 and 3.