
(2010) 04 PAT CK 0232
In the Patna High Court
Case No : L.P.A. No. 1444 of 2009

Smt. Ratneshwari Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0232

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Questioning the pregnability of the order dated 5-10-2010 passed by learned single Judge in C.W.J.C. No. 12073 of 2009, the present appeal has been preferred under Clause 10 of the Letters Patent.

2. Filtering the unnecessary details, the facts which are requisite to be stated are that the Appellant-writ Petitioner (hereinafter referred to as "the Appellant") filed an application for appointment as a distributor for L.P.G. at Bettiah, West Champaran pursuant to an advertisement published in "Hindustan" newspaper dated 19-1-2009 which has been brought on record as Annexure-1. The Appellant is a widow of a freedom fighter and she claimed to be granted the dealership under the quota of freedom fighters but her candidature was rejected by the Interview Board on the foundation that she should not be put in the category of compartment of freedom fighters.

3. Being dissatisfied with the aforesaid action of the Indian Oil Corporation Ltd. (for short "the Corporation"), the Appellant invoked the jurisdiction of the writ Court and contended that though she herself was not a freedom fighter but being a widow of a freedom fighter is covered by the definition of freedom fighter as finds place in the brochure issued by the Corporation and hence, the Corporation cannot take a somersault and decline to adjudge the claim of the Appellant.

4. Learned single Judge adverted to the brochure and the dictionary clause defining the freedom fighter and expressed the view that the said clause does not cover the widow of a freedom fighter. As is evident from the order impugned,

he has placed reliance on the decision rendered in Uttama Devi Vs. Union of India and Others, to arrive at the said conclusion.

5. Critising the order passed by learned single Judge it is contended by learned Counsel for the Appellant that he has failed to appreciate the definition as contained in Clause 4.6 which defines freedom fighters (FF) and the advertisement that was issued by the Corporation inasmuch as on a careful scrutiny of the said documents it would be quite vivid that the Corporation has categorically included the widow of the freedom fighters. Further structuring the said submission it is urged by learned Counsel for the Appellant that the term used in the dictionary clause in which "persons" has its own signification and that would include in its ambit the concept of the plurality which would include freedom fighters and their widows in its fold otherwise there was no justification to use term "persons". It is also submitted by him that the advertisement in Column 3 mentions the categories wherein it has been mentioned as FFW and hence, a widow of a freedom fighter has to be included in the category of freedom fighter.

6. Mr. K.D. Chatterji, learned senior counsel appearing for the Corporation, on the contrary, submitted that the interpretation placed by learned single Judge cannot be faulted with inasmuch as the definition of freedom fighters is absolutely clear and unambiguous and, therefore, nothing should be read into the same. It is urged by him that the brochure as an instrument has to be read as a whole and if Clause B of brochure which deals with various reserved categories is read in juxtaposition with the advertisement it would be crystal clear that in freedom fighters category there is a horizontal reservation meant for women freedom fighters but that does not remotely suggest to include the widow of freedom fighters.

7. To appreciate the rival submissions raised at the Bar, we have careful perused the brochure. Clause 3 deals with reserved category which reads as follows:

3. Reservation for Retail Outlet (RO) Dealerships

3.1 the percentage reservation, state wise, For various categories is as under:

Details of category Category code Reservation%

Scheduled Caste/ Scheduled Tribes SC/ST 25%

Physically Handicapped PH 10%

Paramilitary/Police/Govt. Personnel PMP 8%

Defence Personnel DC 8%

Freedom fighters FF 2%

Outstaning sports persons OSP 2%

Open OP 50%

Clause 3.2 deals with reservation for-woman and the same reads as follows:

3.2 Reservation for Women.

33% of the dealerships in each category will be reserved for women.

Freedom fighters which finds place in Clause 4(B)(VI) reads as follows:

(VI) Freedom fighters (FF):

Persons applying for dealerships under this category should attach a certificate or Tamra Patra or an attested copy of the pension order issued by the Accountant General in pursuance of the sanction letter from the Ministry of Home Affairs, Govt. of India of their having been freedom fighters.

On a plain reading of the aforesaid stipulations, there can be no trace of doubt that it only covers two categories of freedom fighters, namely, male freedom fighters and female freedom fighters.

8. The emphasis is on the term "freedom fighters". The learned Counsel for the Appellant has tried to impress upon us that the term "persons" would engulf a widow of the freedom fighters. To pyramid the said stand he has referred to the advertisement. In the advertisement it has been mentioned in a categorical manner that a freedom fighter would be a person who is holder of "Tamra Patra" and recipient of pension from Government of India. On a reading of the said postulates it can be stated with certitude that both are to be read in a cumulative manner. To elaborate he | must be holding a "Tamra Patra" being a freedom fighter and must be in receipt of pension. The widow of a freedom fighter does not hold a "Tamra Patra" as a freedom fighter. She gets the family pension only after the death of her husband. In this context, we may reproduce a passage from Uttama Devi's case (supra) wherein the learned single Judge has expressed the view as follows:

... Shri H.S. Himkar, learned Counsel for the Petitioner with reference to Annexure-4 submitted that the Petitioner is getting Freedom Fighter's pension after the death of her husband and enjoying other benefits as Freedom Fighter and therefore, she was eligible for appointment as Distributor. The submission is totally misconceived. The Petitioner has been allowed the benefit of Freedom Fighter's Pension under the Freedom Fighter's Samman Pension Scheme, 1980 which provides for payment of family pension upon the death of the freedom fighter pensioner. That does not make her a Freedom Fighter herself nor makes her eligible for appointment as Distributor. From the advertisement it is clear that the applications were invited from the "Freedom Fighters". The legal heirs of freedom fighters cannot be called Freedom Fighters and considered for appointment as Distributor under the particular Scheme....

In our considered opinion, the decision rendered in Uttama Devi's case (supra) is absolutely correct and the learned single Judge has rightly relied upon the same.

9. At this juncture, it would be out of place to refer to a passage from the

decision in Sri Jeyaram Educational Trust and Others Vs. A.G. Syed Mohideen and Others, wherein the Apex Court has held thus:

11. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity vagueness, uncertainty, or absurdity which were not obviously intended by the legislature or the lawmaker, a Court should open its interpretation toolkit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the Court should remember that it is not the author of the statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A Court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be.

The purpose of referring to the aforesaid decision is that when the language implied in the brochure and the advertisement is absolutely clear and unambiguous, there is no reason or justification to read any thing into the same or to stretch it to have a meaning as put forth by learned Counsel for the Appellant. If the construction as claimed by the Appellant is placed on the same, it would defeat the object and purpose of the brochure inasmuch as the basic purpose is to give priority to a freedom fighter and a widow of a freedom fighter cannot be conferred the status of a freedom fighter. It is because the meaning is absolutely clear and does not admit any other interpretation that has been conveyed in the clear language implied in the dictionary clause and the advertisement.

Thus the submission put forth by learned Counsel for the Appellant sans substance and is accordingly, repelled.

10. At this stage, we may also note with profit the dictionary clause of brochure in relation to defence personnel (D.C.) which reads as follows:

(iii) Defence Personnel (DC):

The following persons will be eligible

(a) Widows/dependents of posthumous gallantry award winners.

(b) War widows/dependents of those who died in war.

(c) War disabled.

(d) Widows/dependents of those who died in harness due to attributable causes.

(e) Disabled in peace due to attributable causes.

On a scrutiny of the same, it is illustrative that said includes war widows. Thus, where the Corporation wanted to give extra privilege to such persons, it has to be mentioned in separate and clear cut and such having not been mentioned to reach certain things, is absolutely impermissible and accordingly we find no merit in this appeal and accordingly the same is dismissed without arty order as to costs.