

(2002) 02 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4470 of 2001

Smt. Tulsi Devi Somani

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 RLW 1829 : (2002) 2 WLC 374 : (2002) 5 WLN 174

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : N.M. Ranka and Raj Kumar Yadav, for the Appellant; Bajrang Lal Sharma Manish Bhandari and Kasliwal, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—The petitioner in the instant writ petition has challenged the withdrawal of Letter of Intent issued to her by the Indian Oil Corporation (for short the IOC) for awarding Retail Outlet Dealership at location Bhilwara under marketing plan 96-98 Category-Open.

2. Pursuant to the advertisement dated August 19, 2000 the petitioner made application that was found to be in accordance with the eligibility criteria formulated by the IOC and after complete scrutiny, verification and satisfaction, the Letter of Intent dated March 28, 2001 was issued by the IOC on the orders of the Dealers Selection Board (for short the DSB).

3. Smt. Sumitra Nanawati (respondents No. 3) who was at No. 3 in the merit list served a notice dated April 16, 2001 for demand of justice on the IOC and DSB. Treating the notice as complaint the DSB directed th IOC to conduct inquiry as per para 3.15 of the guide lines. After receiving enquiry report the DSB asked the petitioner to appear before it. Shri C.L. Jhanwar appeared before the DSB on behalf of the petitioner and made submissions. On hearing arguments the DSB passed the following orders on August 18, 2001:

"We have today heard arguments of the learned counsel for both the parties and gave them ample opportunity to produce documents and material in support of their contentions. We have carefully considered the arguments, perused the case law as also documents, material produced by both the parties. We are of the opinion that Smt. Tulsi Devi Somani who was placed at No. 1 in the merit list was not eligible and qualified as her annual income exceeded Rs. 2 lacs in view of the fact that she has not included her capital gains earned during the relevant financial year, although shown in her income tax return. Hence her selection was erroneous and is hereby cancelled. The panel stands revised and Smt. Sunita Chawla becomes first in the order of merit and Mst. Sumitra becomes No. 2 in the order of merit."

4. The IOC vide letter dated August 27, 2001 intimated the petitioner that on the basis of advise of DSB, the Letter of Intent dated March, 28, 2001 issued to the petitioner stood withdrawn. The petitioner through her counsel served a notice for demand of justice on the IOC and DSB and filed the instant writ petition seeking the relief indicated herein above.

5. The respondents 1, 2 and 3 submitted separate replies to the writ petition. In the reply to the writ petition respondent No. 1 averred that the petitioner has been held ineligible because her income was found to exceed the ceiling of Rs. 2 lacs. The petitioner mis-represented and concealed the correct annual income for the relevant financial year 1999-2000, which was evident from the income tax return submitted by the respondent No. 3. It was further averred that the respondent No. 1 rightly withdrew the Letter of Intent dated March 28, 2001 in exercise of the its powers under Clause 3.15 of the Guidelines as the petitioner had concealed true and correct income for the relevant financial year from the IOC and it was found that her income for the relevant financial year was more than Rs. 2 lacs.

6. The respondent No. 2 reiterated the facts given in the reply to the writ petition submitted that the second empanelled candidate Mrs. Sunita Chawla became the next incumbent for the retail out let but Mrs. Sunita Chawla opted for LPG Distributorship at Mandal and therefore Letter of Intent for Retail Outlet at Bhilwara was issued on October 23, 2001 to Smt. Sumitra Nanawati, the third empanelled candidate.

7. The respondent No. 3 submitted in the reply that the petitioner has suppressed the income and made incorrect declaration and as the application submitted by the petitioner was based on false declaration, it was liable to be rejected or the dealership was to be cancelled at any point of time when the said fact was revealed. It was further averred that in the undertaking given by the candidate it was provided that if any .candidate made a false declaration then his dealership could be cancelled at any time. The income tax return of the petitioner was annexed with the reply.

8. The petitioner submitted rejoinder to the replies denying the allegation of false

declaration levelled against her. The petitioner averred in the rejoinder that any gain or transfer of a capital asset or personal property cannot be termed as "income" for the purpose of the said criteria and excluding the capital gain, the gross annual income for the relevant year was as under:

1. Smt. Tulsi Devi Somani (petitioner)

Rs. 81,051/-

2. Shri Ashok Somani (husband)

Rs. 98,256/-

Total

Rs. 1,79,307/-

In the rejoinder it has been averred that after issuance of notice in the writ petition, the respondent No. 1 communicated Letter of Intent to respondent No. 3 Smt. Sumitra Nanawati on October 23, 2001, which is unreasonable and unjust.

9. The fact situation emerges from the pleadings of the parties is as under-

(i) The petitioner was placed at No. 1 in the merit list and Letter of Intent was issued to her.

(ii) Respondent Smt. Sumitra Nanawati who was at No. 3 in the merit list, made a complaint that annual income of the petitioner exceeded Rs. 2 lacs in view of the fact that she had not included her capital gains earned during the relevant financial year.

(iii) The DSB cancelled the selection of the petitioner only on the ground that after including her capital gains her income exceeded Rs. 2 lacs.

(iv) The panel stood revised. After striking down the name of the petitioner from the merit list, Smt. Sunita Chawla was placed at No. 1 and respondent Smt. Sumitra at No. 2.

(v) Smt. Sunita Chawla opted for LPG Distributorship at Mandal.

(vi) During the pendency of writ petition i.e. on October 23, 2001 IOC issued Letter of Intent for Retail outlet at Bhilwara (which was earlier issued to the petitioner) to respondent Smt. Sumitra Nanawati.

10. Mr. N.M. Ranka, learned counsel appearing for the petitioner attacked the order of DSB on the following grounds-

(i) Gross annual income under the criteria/scheme is not similar to that of the definition of "income" under the Income Tax Act 1961. Any gain on a transfer of a capital asset or personal property is not income for the purpose of said criteria/scheme and therefore "capital gain" was correctly now shown in the application. The application was filed in the prescribed form accompanied by requisite

documents that were found complete after scrutiny. The Gross annual income for the relevant year was Rs, 1,79,307 and did not exceed Rs. 2 lacs.

(ii) Eligibility criteria for awarding dealership/distributorship under open category in IOC and Bharat Petroleum Corporation Ltd. is common. In regard to "Gross annual income" Bharat Petroleum Corporation Ltd. is common. In regard to "Gross annual income" Bharat Petroleum Ltd. issued corrigendum as under-

"However, any ex-gratia income or any such one time lump sum income which is not of recurring nature will not be considered for this purpose. However, income accruing from investment of such lump sum will be taken as annual income,"

Case law on which learned counsel placed reliance shall be referred in the later part of the judgment.

11. Supporting the impugned order of DSB Mr. Bajrang Lal Sharma and Mr. A. Kasliwal learned counsel canvassed that as application submitted by the petitioner was based on false declaration it was liable to be rejected at any point of time when it was revealed that the declaration was false. The petitioner's annual income for the relevant financial year 1999-2000 as per her income tax return was more than 2 lacs but the petitioner misrepresented and concealed the correct income and the IOC in exercise of its powers under clause 3.15 of the Guide Lines has rightly withdrawn the Letter of Intent. Learned counsel further contended that only the "decision making process¹ and not the "merits of the decision" itself is reviewable as court does not sit as appellate court while exercising power of judicial review. Reliance was placed on *Tata Cellular v. UOI* (1), *Shrilekha Vidyarthi v. State of UP* (2), *AIR India Ltd. v. Cochin International Airport Ltd.* (3) and *Rajasthan Cooperative Dairy Federation v. Maha Laxmi Mingrate Marketing Service* (4).

12. The issue that requires my consideration is as to whether the finding of the DSB in including the "capital gains" in the income of the petitioner can be reviewed under Article 226 of the Constitution of India.

13. Gross income for the purpose of allotment of retail Outlet Dealership is defined thus-

"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."

In the form of declaration of "Annual Income" gross annual income was to be shown under the following heads-

- (i) Gross salary.
- (ii) Property Income.
- (iii) Interest Income.
- (iv) Dividend Income,

- (v) Business income,
- (vi) Professional income,
- (vii) Vocational income.
- (viii) Agricultural income.
- (ix) Income from other sources not covered under (vii) e.g. pension etc.

In the income tax return, the gross total income of the petitioner and her spouse was Rs. 2,16,952/-. Capital gain of Rs. 41505/- was also included in it. The contention of the petitioner was that the capital gain though not income yet deemed to be income due to legal fiction under the Income Tax Act, 1961. In the application for dealership Gross annual income was to -be shown and not the gross total income under the Income Tax Act, 1961. In the format where income was to be shown under various heads there was no column for "capital gains". The "Gross Annual Income" should have therefore been arrived at by including only such income which was regular and real income. The capital gains which was a capital receipt should not have been considered in arriving at Gross Annual Income.

14. In *Karanpura Development Co. v. Commissioner of Income Tax* (5), their Lordships of the Supreme Court indicated thus-

"The word "income" has not been defined in the Income Tax Act. In the definition which is enacted, certain receipts are said to be included in the receipt of income, but it does not say what "income" itself means. Certain working definitions have been given by courts, chief among which is by the Judicial Committee in *Commission of Income Tax v. Shaw Wallace & Co.* (6), where it was held that by income is meant a periodical monetary receipt, not in the nature of a windfall but coming in with some sort of regularity or expected regularity."

15. The DSB while cancelling the selection of the petitioner did not follow the ratio indicated by the Privy Council in *Shaw Wallace* case (supra). This fact was not considered by the DSB that in the format of declaration of "Annual Income" why the column of "Capital Gain" was omitted. In the format of declaration of "Annual Income" the petitioner was required to show income from gross salary. Property, interest, dividend, business, profession, vocation, agriculture and other sources pension etc. The petitioner was not required to show the income from capital gain. The DSB also did not consider the corrigendum issued by *Bharat Petroleum Ltd.* in regard to "Gross annual income" which provides that any ex-gratia income or any such one time lump sum income which is not of recurring nature, will not be considered for awarding Retail Outlet Dealership. From the material on record it appears that the petitioner did not misrepresent or conceal the actual income but made the application after taking advice of her Chartered Accountant who also appeared before the DSB.

16. *Tata Cellular v. Union of India* (supra) was the case wherein their Lordships of

the Supreme Court indicated that judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. Their Lordships further held that

"Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under-

i) Illegality : This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationality, namely, wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further ground in course of time."

17. In *Associated provincial Picture Houses Ltd. v. Wednesbury Corporation* (7), Lord Greene M.R. Propounded the charming principle of WEDNESBURY UNREASONABLENESS thus-

"A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it."

18. In *Padfield v. Minister of Agriculture, Fisheries and Food* (8), it was held that if the decision making body is influenced by consideration which ought not in influence it; or fails to take into account matters which it ought to take into account, the court will interfere.

19. In the case on hand as already noticed the DSB did not properly direct itself on the ratio indicated in *Shaw Wallace Case* (supra) and although there was a corrigendum to the effect that any ex-gratia income or any such one time lump sum income which is not of recurring nature will not be considered while calculating the "Gross Annual Income" yet the capital gains of the petitioner were added by the DSB. Even the DSB failed to consider the requirements of the format of declaration of "Annual Income". Thus the finding arrived at by the DSB suffers from "Wednesbury Unreasonableness". The DSB did not appreciate correctly the law that regulates its decision making power and failed to give proper effect to it. As such the "decision making process" of the DSB is reviewable under Article 226 of the Constitution of India,

20. For the aforementioned reasons I hold that the order dated August 18, 2001 of the DSB is arbitrary and deserves to be quashed and I quash it. Letter dated August 27, 2001 whereby Letter of Intent issued to the petitioner was withdrawn

and the Letter of Intent dated October 23, 2001 issued to the respondent Sumitra Nanawati during the pendency of the writ petition also stand quashed. I remit the matter to the DSB for a fresh decision after applying the ratio indicated by the Privi Council in Shaw Wallace case (supra). The requirements of the format of declaration of "Annual Income" and the corrigendum issued in regard to calculation of the "Annual Income" shall also be taken into consideration by the DSB. The parties shall be afforded full hearing and a well reasoned order is expected to be passed as expeditiously as possible.

21. The writ petition stands allowed as indicated above. There will be no order as to costs.