
this wedlock has become a dead lock because the wife is still willing to join the matrimonial home. The appellant cannot be allowed to take advantage of his own wrongs by pleading that the wife has deserted him. Conversely it is a prove that he is guilty of constructive desertion.

(17) Marriage is not like a partnership at will or a house of cards. Both the spouses should strive to defend the institution of marriage, rather than dissolve it. In married life normal wear and tear is required to be tolerated by both the partners. While they share the same roof, same bed, they are required to be tolerant to each other. Parties are educated. They should be well aware of the importance of the congenial matrimonial home. Now their son is of marriageable age. They are already too late in coming to terms, but it is expected that they will ensure avoidance of never.

(18) Finding the appeal devoid of merit, it is liable to be dismissed and is hereby dismissed with no order as to costs. In view of this decision C.M. No. 1227-CII of 1987 being infructuous is also hereby dismissed.

J.S.T.

Before Hon'ble Jawahar Lal Gupta & S. C. Malte, JJ.

JAGTAR SINGH,—Petitioner.

versus

**HINDUSTAN PETROLEUM CORPORATION LTD. &
OTHERS,—Respondents.**

C.W.P. 14659 of 1994

6th March, 1995

Constitution of India, 1950—Arts. 226/227—Selection for grant of Retail Outlet—Challenge on the ground that the selected candidate ineligible—Alternative remedy—Exercise of writ jurisdiction.

Held, that it is correct that normally High Court does not go into the disputed questions of fact while hearing a petition under Article 226 of the Constitution. However, so far as the present case

is concerned, it is clear that a categorical declaration had been filed by respondent No. 4 in the form of an affidavit. He had submitted that his gross family income did not exceed Rs. 50,000 per annum. So far as the declaration of his personal income is concerned, it is being taken at its face value. So far as the income of his wife is concerned, it is undeniable that she was drawing a basic salary of Rs. 3,700 per month. There being no dispute on these two facts, it is clear that the Court is not going into any disputed question of fact. Even otherwise, in a case where there is *prima facie* evidence to indicate that the plea raised by a party is false, the Court is not precluded from recording evidence, and determining question of fact.

(Para 11)

Further held, that the instructions issued by the Ministry of Petroleum and Natural Gas are not a public document. They are not notified. They are not published so as to be known to the people at large. In fact, these are included in the Manual for selection of dealers/distributors, which is marked as "strictly confidential restricted for official use". These do not provide an effective alternative remedy.

(Para 10)

H. S. Mattewal, Senior Advocate with Gurminder Singh, Advocate, for the Petitioner.

Anil Malhotra, Advocate for respondents Nos. 1 and 2.

D. S. Dhillon, AAG, Punjab for respondent No. 3.

Salil Sagar, Advocate, for respondent No. 4.

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) The Hindustan Petroleum Corporation invited applications for the allotment of a 'Retail Outlet' at Beas, District Amritsar, from the candidates belonging to the Scheduled Castes. One of the conditions of eligibility was that the candidate should not have a family income of more than Rs. 50,000 per annum. The petitioner and respondent No. 4 were amongst the applicants. The oil Selection Board interviewed the candidates on August 21, 1993. Respondent No. 4 was selected. Aggrieved by the selection, the petitioner has approached this Court through the present writ petition. The primary challenge to the selection of respondent No. 4 has been made on the ground that he was not eligible to be considered as his family income was well above the limit of Rs. 50,000 per annum

fixed by the Corporation. It has been further alleged that the wife of respondent No. 4 is working as a Senior Medical Officer and her monthly income was more than Rs. 7,000 per mensem.

(2) Written statements have been filed on behalf of the respondents. In the written statement filed on behalf of respondents Nos. 1 and 2, it has been vaguely mentioned that respondent No. 4 had declared his personal income as Rs. 32,499.99 per annum and that the Corporation had accepted this statement. So far as respondent No. 4 is concerned, he has filed a separate written statement in which it has been averred that he is living separately from his wife since the year 1991 in pursuance to an agreement which had been executed before the Community Panchayat in the year 1991. A copy of this agreement (dated March 5, 1991) has been produced as Annexure R4/2 with the written statement.

(3) We have heard learned counsel for the parties.

On behalf of the petitioner, it has been contended that respondent No. 4 was not eligible to be considered as the gross family income was well above Rs. 50,000 per annum. The claim has been controverted on behalf of the respondents.

(4) At our asking, Mr. Anil Malhotra, learned counsel for respondents Nos. 1 and 2 has produced before us the file containing applications submitted by the petitioner and respondent No. 4. A perusal of the application form shows that the candidate has to give details of his family income and file an affidavit in support of his statement in this behalf. It has been particularly emphasised that "the candidate should carefully note that the declaration of annual income is an important document which has a vital bearing on his/her eligibility for dealership/distributorship. If any information given by him/her in the Declaration of Annual Income is found to be untrue, incorrect or false, his/her application is liable to be rejected at any stage. In case, Letter of Intent has been issued or the dealership has been commissioned, the same is liable to be withdrawn or the dealership/distributorship may be terminated. In such cases, the candidate/dealer shall have no claim whatsoever against Hindustan Petroleum Corporation Limited". (emphasis supplied).

(5) We have perused the application submitted by Respondent No. 4. He has stated that he is 'married'. He has disclosed his

personal income as Rs. 32,499.99. He, however, did not indicate the income of his wife or his dependent children. Respondent No. 4 also filed an affidavit as photocopy of which is Mark 'x'. In para 4, he has *inter alia* averred as under :—

“That the gross income viz. mine and that of my spouse and dependent children put together does not exceed Rs. 50,000 per annum (last financial year as detailed in the Income Declaration attached).

OR

That I am dependent on my parents and that the gross income viz. mine, that of my spouse, my dependent children and that of my parents put together does not exceed Rs. 50,000 per annum (last financial year as detailed in the Income Declaration attached).”

This affidavit was attested by the Notary on March 10, 1993. On a perusal of the record, it is clear that neither in the application form nor in the affidavit, respondent No. 4 gave even an oblique hint regarding the alleged separation from his wife. On the contrary, he categorically stated that his family income did not exceed Rs. 50,000. In this situation, we are unable to accept the plea as now sought to be raised by respondent No. 4 that he has been separated from his wife since March 1991 and that her income should not be clubbed with his income. The alleged agreement is not even on a stamped paper. Its validity is highly doubtful. We even suspect its execution. In any event, the application submitted by respondent No. 4 made a clear declaration that his income along-with that of his spouse did not exceed Rs. 50,000 per annum. Was this correct ?

(6) The income of respondent No. 4, as already noticed above, was Rs. 32,499.99. The basic pay of the wife of respondent No. 4 is said to be Rs. 3,700 per month. This would make an amount of Rs. 44,400 per annum. If the allowances etc. admissible to an officer, are added, her income would be well over Rs. 70,000 per annum. If the income of the two is clubbed together, it has to be well above Rs. 50,000. The respondent concealed the true income. He was apparently not eligible. The Corporation as well as the Oil Selection Board had erred in considering him on the hypothesis that he was eligible.

(7) Mr. Anil Malhotra, learned counsel for respondents Nos. 1 and 2 has contended that on the basis of the selection made by the Board, the Corporation has already given a loan of Rs. 3 lacs to

respondent No. 4. Consequently, he prays that in the interest of the Corporation and the larger interest of the public, the selection should not be quashed.

It is the admitted position that the selection of respondent No. 4 had been challenged through the present petition on October 8, 1994 when this petition had been presented to this Court. A Division Bench of this Court had directed the issue of notice of motion to the respondents on October 10, 1994. Learned counsel for respondents Nos. 1, 2 and 4 had put in appearance before the Court on November 2, 1994 when the case was adjourned to January 11, 1995. This apparently means that the Corporation as well as the Oil Selection Board and respondent No. 4 had been served with the notice of the writ petition prior to November 2, 1994. It was after the service of the notice that the respondent-Corporation allowed respondent No. 4 to instal the Petrol Pump in December 1994 and advanced the loan to him on December 29, 1994. This date has been given by Mr. Anil Malhotra, learned counsel for the respondent-Corporation. If the Corporation has chosen to give loan to the fourth respondent in spite of the categorical direction of the Division Bench that dealership, if any, shall be subject to the decision of this writ petition, it has itself to blame. On receipt of the notice of the writ petition, the Corporation should have been put on guard and should have even desisted from taking any further steps regarding commissioning of the Outlet. Instead, the Corporation acted with hot haste as if it wanted to confront this Court with a *fait accompli*. In this situation, we are clearly of the view that Respondent No. 4 did not fulfil the income criterion which had been laid down to help the needy, he was not eligible. His selection cannot be sustained. As for the loan, the Corporation can also fix the responsibility of the officer who may have acted with undue haste in disbursing the loan.

(8) Learned counsel for the respondents have also been at pains to point out that this Court in the exercise of its writ jurisdiction under Article 226 of the Constitution, cannot compare the rival merits of different candidates. The counsel have urged that the facts as now brought on the record should be directed to be placed before the Oil Selection Board for reconsideration of the matter. We are unable to accept this contention.

(9) Normally, a writ court does not compare *inter se* merit. Even in the present case, we are not going into the comparative

merits of the petitioner and respondent No. 4. We have addressed ourselves to the limited question of the eligibility of respondent No. 4. We have found him to be ineligible. In our view, the affidavit filed by him was not accurate. The income of his family as disclosed in the application form was not correct and it was above the limit of Rs. 50,000. In this situation, we are of the view that his selection by the Oil Selection Board and the action of the respondent-Corporation in issuing the Letter of Intent or giving him a Retail Outlet for the sale of Petroleum products, was illegal.

(10) Equally lacking in merit is the submission that the petitioner should be made to file a complaint before the Oil Selection Board. This contention is based on certain instructions which have been communicated to the respondent-Corporation by the Ministry of Petroleum and Natural Gas. These instructions are not a public document. They are not notified. They are not published so as to be known to the people at large. In fact, these are included in the manual for selection of dealers/distributors, which is marked as "strictly confidential—restricted for official use". These do not provide an effective alternative remedy. In such a situation, we cannot relegate the petitioner to the remedy of filing a complaint before the Oil Selection Board. In fact, the sequence of events as noticed above shows that even when the facts had been pointed out to the respondents through this petition, they did not desist from taking further steps to ensure the installation of the Retail Outlet. In fact, they acted in haste and even released the loan of Rs. 3 lacs to respondent No. 4. In such a situation, the petitioner may not be able to expect a very impartial consideration of his complaint by the respondents. It is true that while deciding C.W.P. No. 2880 of 1994, the Bench had given a direction to the petitioner to place the facts before the Board. On the peculiar facts of the case, the Bench had taken the view that none of the documents which had been placed before the Court had been considered by the Oil Selection Board. The situation in the present case is entirely different. The facts speak for themselves. Accordingly, we are not inclined to relegate the petitioner to the remedy of making a representation before the Oil Selection Board.

(11) It was also contended by Mr. Salil Sagar, counsel for respondent No. 4 that the case involves disputed questions of fact which cannot be gone into by this Court in the exercise of its jurisdiction under Article 226 of the Constitution. Learned counsel is absolutely right in his contention that this Court does not normally go into the disputed questions of fact while hearing a

petition under Article 226 of the Constitution. However, so far as the present case is concerned, it is clear that a categorical declaration had been filed by respondent No. 4 in the form of an affidavit. He had submitted that his gross family income did not exceed Rs. 50,000 per annum. So far as the declaration of his personal income is concerned, it is being taken at its face value. So far as the income of his wife is concerned, it is undeniable that she was drawing a basic salary of Rs. 3,700 per month. There being no dispute on these two facts, it is clear that the Court is not going into any disputed question of fact. Even otherwise, in a case where there is *prima facie* evidence to indicate that the plea raised by a party is false, the Court is not precluded from recording evidence. Since we are not in doubt about the fact that the family income of respondent No. 4 was well above Rs. 50,000, we do not consider it necessary to record any evidence. Accordingly, the submission is rejected.

(12) Lastly, Mr. Salil Sagar, has raised a tenuous contention that in view of the deed of separation, the wife of respondent No. 4 cannot be considered to be his spouse and consequently, her income cannot be clubbed with that of the respondent.

(13) Admittedly, the marriage of respondent No. 4 with his wife has not been annulled by any court or even by the agreement. They continue to be husband and wife till such time as an annulment of marriage takes place or they are legally divorced. In any event, the claim of the fourth respondent before the Corporation was not that the income of his wife cannot be clubbed with his income. On the contrary, his categorical stand was that the income of both of them did not exceed the limit of Rs. 50,000 per annum. This was not correct. Consequently, the plea cannot be accepted.

(14) No other point has been urged.

(15) As a result, we allow this writ petition and quash the selection of respondent No. 4 for the allotment of a Retail Outlet. Consequently, the letter of Intent, the allotment of the Retail Outlet and all other events that may have taken place, stand quashed. The respondents shall re-advertise the Outlet and make fresh selections in accordance with law. In the circumstances of the case, we make no order as to costs.

S.C.K.