

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO. 1107 OF 2017**

RAVI AGRAWAL

.....PETITIONER(S)

VERSUS

UNION OF INDIA AND ANOTHER

.....RESPONDENT(S)

J U D G M E N T**A.K. SIKRI, J.**

This writ petition is filed by the petitioner, Ravi Agrawal, under Article 32 of the Constitution of India as a Public Interest Litigation. The petition is stated to be filed in the interest of handicapped children whose parents have taken Jeevan Aadhar Policy (Table 114) from the Life Insurance Corporation of India (for short, 'LIC') for the livelihood of their children. The petitioner himself is a differently abled person as he is suffering from *Cerebral Dysphagia*. The petitioner also is an income tax assessee whose Permanent Account Number (PAN) issued by the Income Tax Department is AAPPA5222M. He has stated that he has no personal interest in the subject matter raised in this petition which he has filed on behalf of the handicapped children.

2) Section 80DD of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu Undivided Family (HUF) in whose name subscription to the scheme stipulated in the said provision has been made. Though it is a long provision, for our purposes it would be suffice to reproduce sub-sections (1), (2) and (3) thereof, which are as under:

"80DD. Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability.— (1) Where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year,—

(a) incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or

(b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability, the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of seventy-five thousand rupees from his gross total income in respect of the previous year:

Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect as if for the words "seventy-five thousand rupees", the words "one hundred and twenty-five thousand rupees" had been substituted.

(2) The deduction under clause (b) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:—

(a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the

benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;

(b) the assessee nominates either the dependant, being a person with disability, or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.”

- 3) As per clause (b) of sub-section (1), if an assessee, being an individual or a HUF, has paid or deposited any amount under the scheme framed in this behalf by the LIC or any other insurer etc., such an assessee is entitled to deduction of a sum of Rs.75,000/- from his Gross Total Income in respect of the previous year. It is subject to the conditions which are specified in sub-section (2) of Section 80DD. We are concerned with the condition mentioned in clause (a) of sub-section (2). As per this condition, disabled dependant would get annuity or lumpsum payment in the event of death of the individual or the death of the member of the HUF, in whose name subscription to the scheme has been made. In order to give effect to the aforesaid special provision meant for the benefit of persons with disability, LIC has floated insurance policy named '*Jeevan Aadhar (Table 114)*' for the benefit of the handicapped dependants. Accordingly, those assesseees who get the

Jeevan Aadhar policy for the benefit of handicapped dependants and pay or deposit the amount under the said policy become entitled to the deduction mentioned in Section 80DD of the Act. Synopsis of the said policy introduced by the LIC gives a glimpse of the salient features of this plan and is, thus, reproduced below:

"A) Synopsis of Plan

1) Age at entry (life assured) – Minimum 22 years, Maximum 65 years.

(handicapped dependant – 1 year)

The age of the life assured and handicapped dependant are required to be admitted on the basis of standard age proof.

2) Maximum premium ceasing age – 75 years.

3) Premium paying term – 10, 15, 20, 25, 30 & 35 years.

4) Policy term this is whole life plan.

5) Sum assured – Minimum 50000, Maximum – no limit.

6) Mode of payment – Yearly, Half-Yearly, Quarterly, Monthly, SSS, Single also.

7) Rebate on mode of payment – Yearly 3% of tabular premium, Half-yearly 1.5% of tabular premium, Quarterly/ Monthly/SSS – no rebate.

8) Rebate on high sum assured -
25,000 to 49,999 – Re.1/- per 1000 sum assured
50,000 and above – Rs.2/- per 1000 sum assured.

9) All extra mortality rate class are allowed.

10) All female categories i.e. I, II, III are allowed.

11) Only NMS is allowed, not NMG.

12) Besides proposal form No. 3000, the life assured (proposer) will be required to submit an addendum declaring the disability of the handicapped dependant and a certificate stating that handicapped dependant is suffering from a permanent physical

disability (including blindness) or having mental retardation as per rules. A physician, a surgeon, an oculist or a psychiatrist working in Govt hospital should clearly state that due to disability such person's capacity for normal work or engaging in a gainful employment or occupation is considerably reduced."

- 4) The grievance of the petitioner pertains to Circular No. CO/CRM/PS/622/23 dated January 24, 2008 which is issued by the Income Tax Department. As per this Circular, no benefit can be paid to the dependant till the proposer/life assured survives. Relevant portion of this Circular is extracted below:

"Representations were received for allowing annuity payments for the disabled dependant before death of parents/life assured after a certain age. But CBDT/Govt. Of India have refused to do so. Hence it is clarified that no benefit can be paid to dependant till the proposer/life assured survives."

- 5) The Jeevan Aadhar plan also mentions the aforesaid Circular on the basis of which clause pertaining to maturity claim in the policy is mentioned as under:

"F. MATURITY CLAIM

1) IN FORCE POLICY OR FULLY PAID UP POLICY

Policy does not have maturity claim. The provisions of maturity claim under whole life policies i.e. after completing the age of 80 years by life assured: is not applicable under this policy.

Representations were received for allowing annuity payments for the disabled dependant before death of parents/life assured after certain age. But CBDT/Govt. Of India have refused to do so. Hence it is clarified that no benefit can be paid to dependant till the proposer/life assured survives. (co/crm/ps/622/23 dated 24/01/2008)."

It is, thus, clear that even when the entire subscription is paid

under this policy meant for handicapped persons, this policy does not have maturity claim. The amount is payable to the dependant only on the demise of the proposer/life assured.

- 6) Submission of the petitioner is that by incorporating such a provision, the respondents are denying the benefit of the insurance to the handicapped persons to get annuity or lumpsum amount during the lifetime of the parent/guardian of such a handicapped person, whereas the beneficiaries of other life insurance policy are getting annuity during the lifetime of the person who has taken insurance policy. This, according to the petitioner, violates the fundamental right of equality of the handicapped person enshrined in Article 14 of the Constitution.
- 7) The petitioner states that he had lodged a complaint before the Insurance Regulatory and Development Authority of India (IRDA) on August 06, 2014. However, the said Authority in its reply expressed its inability to provide any help having regard to the afore-mentioned Circular dated January 24, 2008 of the CBDT. The petitioner even approached the Court of the Chief Commissioner for Persons with Disabilities raising the aforesaid grievance. The Chief Commissioner heard the matter on various dates and passed the order advising the CBDT to once again examine the matter in consultation with the Department of Empowerment of Persons with Disabilities, Ministry of

Social Justice and Empowerment, as well as National Trust. Relevant portion thereof reads as under:

"11. During the hearing on 10.03.2015, it was observed that Central Board of Direct Taxes (CBDT) had already made the submission that the issue of allowing for annuity payment to the dependant with disability under Jeevan Aadhar Policy to commence after certain age of a subscriber at 55, 58 or 60 years was considered during the budgetary exercise for 2007-08 and the same was not found to be acceptable.

12. In the light of the mandate of the Chief Commissioner for Persons with Disabilities, no direction can be given to CBDT or LIC as there is no allegation of non implementation of the stated policy or its terms & conditions. It is, however, the view of this office that Jeevan Aadhar is not the only LIC Policy that gives the benefit of Income Tax exemption and only a few parents of persons with disabilities may be tax payers to be able to avail the tax exemption, such a well intentioned policy should not be linked to such benefits as tax exemption. As the primary objective of the policy is to benefit a person with disability, he/she should start getting the annuity as early as possible in his/her lifetime.

13. With regard to the allegation of the complainant in Case No. 2602/1093/2014 that the LIC Agents and professionals told him at the time of selling the policy that his child would start getting pension @ Rs.2000/- per month for every one lakh of insured amount is concerned, LIC is advised to investigate the matter and intimate the outcome to the complainant under intimation to this Court within two months from the date of receipt of these Record of proceedings. In case it is established that it is a case of mis-selling, then LIC is advised to suitably compensate the complainant.

14. As National Trust was not represented during the hearing despite the notice and it has suggested that insured amount should be disbursed to the beneficiaries through its LICs, National Trust is directed to get in touch with the LIC and obtain the details of the Jeevan Aadhar Policy holders. After obtaining the consent of the policy holders for distribution of annuity through LLCs National Trust shall inform LIC for making National Trust as the nominee/Trusty for receiving the amount of annuity in respect of such policy holders on the terms & conditions as may be finalized between LIC and National Trust and ensure that a mechanism is put in place to disburse the amount of annuity to the disabled dependants of the policy holders till the dependant is alive.

15. Both the complainants strongly felt that like other policy holders, Jeevan Aadhar Policy should also be allowed to mature after 55 years of age of proposer and the annuity amount should be disbursed through the LICs of National Trust.

16. In the light of the demand of the complainants, CBDT is advised to once again examine the matter in consultation with Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment and National Trust.”

8) The Chief Commissioner had even sent reminder thereof to the CBDT to look into the matter. However, nothing moved at the level of the CBDT. In fact, the petitioner thereafter lodged his grievance with the Prime Minister's Office through Centralised Public Grievance Redressal and Monitoring System Portal on October 15, 2015. As he did not receive any response, it provoked the petitioner to file the instant writ petition with the following prayers:

"(a) Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 1 to amend Section 80DD of the Income Tax Act to allow for the payment of annuity or lump sum amount to a person with disability on attaining the age of 55/58 years by the guardian/parent of disabled person, in addition to in the event of death of the guardian/parent.

(b) Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 2 to amend the Scheme of Jeevan Aadhar Policy (Table 114) to allow for the payment of annuity or lump sum amount to a person with disability on attaining the age of 55/58 years by the guardian/parent of disabled person, in addition to in the event of death of the guardian/parent.

(c) Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 2 to pay annuity or a lump sum amount to a person with disability, the guardian/parents of whom already attained the age of 55/58 or will attend the age of 55/58 years in the future.

(d) Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondent No 2 to make proper arrangement for the payment of an annuity/pension to the handicapped dependant after the death of the guardian, without any further formality except the filing of death certificate of the parents/guardian. All the paper formalities for the payment of annuity/pension should be completed by the LIC after premium paying term of the policy and a certificate should be issued by the LIC to the effect that all the formalities for the payment of annuity/pension has been completed, except filing of death certificate of parents/guardian. This issuing of the certificate should be conclusive proof for releasing of annuity/pension, pending till filing of death certificate of parents/guardian.

(e) Pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.”

9) In essence, the grievance of the petitioner is that benefit of Jeevan Aadhar policy should not be deferred till the death of the assessee/life assured and it should be allowed to be utilised for the benefit of the disabled person even during the lifetime of the assessee.

10) Union of India has filed its affidavit giving justification for the aforesaid course of action. In this regard, it is submitted that vide Finance Act (No.2), 1998, Section 80DD was substituted for Sections 80DD and 80DDA. The earlier Section 80DD provided for a deduction of Rs.15,000/- to an individual or HUF on account of any expenditure incurred for the medical treatment (including nursing), training and rehabilitation of a dependant relative of an individual or member of HUF. The substitution was done to provide for composite Section in respect of deduction for expenditure on medical treatment, rehabilitation etc. and

for payment made under a scheme of LIC or any other insurer for the dependant disabled person. Submission is that in effect Section 80DD amalgamates the provisions of the two sections, namely, 80DD and 80DDA. Thus, both erstwhile Section 80DDA and present Section 80DD provide that the annuity or lump sum amount for the benefit of the dependant who is a person with disability will be disbursed only after the death of the subscriber. Jeevan Aadhar scheme of LIC has been designed keeping in mind the tax benefits under Section 80DDA/80DD of the Act.

- 11) It is also submitted by respondent No.1/Union of India that the aforesaid provision was specifically provided for in the Act keeping in view the fact that the guardians of children with disability are always faced with the grim reality about the need for maintenance of the disabled after the death of the primary care giver, i.e. the parent or the guardian. Many of them would like to deposit some amount during their lifetime in some special instrument which would ensure payment of a reasonable sum regularly to the disabled on their death. Thus, a separate deduction from Gross Total Income of a specified amount deposited in a year in any scheme of LIC or any other insurer specifically framed for providing recurring or lump sum payment for the maintenance and upkeep of a handicapped dependant after the death of the assessee and approved by the CBDT in this behalf was incorporated

in the statute. As the scheme was designed to, to a great extent, to assuage the anxiety in the minds of parents/guardians of handicapped dependants about the destiny of their wards on their death and, therefore, to allow for annuity payments to the handicapped dependant under Jeevan Aadhar policy to commence after a certain age of the subscriber is not possible.

- 12) Meeting the argument of the petitioner based on Article 14 of the Constitution of India, it is argued that the deduction under Section 80DD of the Act has been specifically provided for persons with disability. This is a valid classification for providing specific regime for this class of persons. The stated objective of the scheme was to assure the parents/guardian of a dependant with disability of regular payment of amount for the care of such dependant after the death of the parent/guardian. Attention is drawn to the explanatory memorandum relating to Finance Bill, 1998, which is as under:

"Rationalisation of benefits available to parents and guardian of physically handicapped and disabled dependant.

Under the existing provisions of section 80DD, a deduction of Rs.15,000/- is allowed to an individual or Hindu Undivided Family in respect of expenditure incurred on medical treatment of a handicapped dependant. Section 80DDA allows for a separate deduction to a parent or guardian in respect of deposits upto Rs.20,000/- made specified schemes of Life Insurance Corporation or Unit Trust of India. It has been felt that the parents or guardian of handicapped dependants may not have to incur expenditure on medical treatment of a handicapped dependant every year. However, the parent or the guardian would always feel the need to provide for the future maintenance of the disabled

dependant. The existing provisions do not take such situations into account. In order to allow a choice to the parent or the guardian to spend either on the medical treatment of or for the future need of the handicapped dependant, as the case may be, the Bill seeks to provide a new section 80DD. With this provision, the parent or the guardian could claim a deduction upto Rs.40,000/- for the medical treatment and for future needs of the handicapped dependant in the manner most suited to his needs. The existing sections 80DD and 80DDA would get consequentially merged with increase in overall limit of deduction from Rs.35,000 to Rs.40,000/-.”

- 13) Number of judgments were cited by the learned Additional Solicitor General appearing for the Union of India to placate the argument of discrimination based on Article 14 of the Constitution. Insofar as respondent No.2/LIC is concerned, its simple answer is that the clause in the policy is as per the prescribed norm approved by the CBDT. Of course, LIC has also supported the reasons given by Union of India behind the aforesaid Circular.
- 14) We have considered the respective submissions.
- 15) At the outset, it may be observed that Section 80DD of the Act is a provision made by the Parliament under the Act in order to give incentive to the persons whose dependants are persons with disability. Incentive is to give such persons concessions in income tax by allowing deductions of the amount specified in Section 80DD of the Act in case such parents/guardians of dependants with disability take insurance policies of the nature specified in this provision. Purpose is to

encourage these parents/guardians to make regular payments for the benefit of dependants with disability. In that sense, the Legislature, in its wisdom thought it appropriate to allow deductions in respect of such contribution made by the parent/guardian in the form of premium paid in respect of such insurance policies. Of course, this deduction is admissible only when conditions stipulated therein are satisfied.

16) Insofar as insurance policy is concerned, it incorporates a condition (which is impugned in the present writ petition) to the effect that the amount shall not be given to he handicapped persons during the lifetime of the parent/guardian/life assured. This is in conformity with Section 80DD(2)(b) of the Act.

17) To some extent, the grievance of the petitioner may be justified in this behalf in the plea that when there is a need to get these funds even for the benefit of handicapped persons, that will not be given to such a person only because of the reason that the assured who is a parent/guardian is still alive. This would happen even when the entire premium towards the said policy has been paid. The policy does not have maturity claim. Thus, after making the entire premium for number of years, i.e. during the duration of the policy, the amount would still remain with the LIC. That may be so. However, the purpose behind such a policy is altogether different. As noted from the provisions of

Section 80DD as well as from the explanatory memorandum of the Finance Bill, 1998, by which this provision was added, the purpose is to secure the future of the persons suffering from disability, namely, after the death of the parent/guardian. The presumption is that during his/her lifetime, the parent/guardian would take care of his/her handicapped child.

- 18) Further, such a benefit of deduction from income for the purposes of tax is admissible subject to the conditions mentioned in Section 80DD of the Act. The Legislature has provided the condition that amount/annuity under the policy is to be released only after the death of the person assured. This is the legislative mandate. There is no challenge to this provision. The prayer is that Section 80DD of the Act be suitably amended. This Court cannot give a direction to the Parliament to amend or make a statutory provision in a specified manner. The Court can only determine, in exercise of its power of judicial review, as to whether such a provision passes the muster of the Constitutional Scheme. Though, there is no specific prayer in this behalf, but in the body of writ petition, argument of discrimination is raised. Here, we find that the respondents have been able to successfully demonstrate that the main provision is based on reasonable classification, which as a valid rational behind it and there is a specific objective sought to be achieved thereby.

- 19) In ***State of U.P. and Another v. Kamla Palace***, (2000) 1 SCC 557, this Court, while considering a fiscal statute in relation to Article 14 of the Constitution, has stated as under:

"11. Article 14 does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. (See *Special Courts Bill, 1978, Re*, seven-Judge Bench; *R.K. Garg v. Union of India*, five-Judge Bench.) It was further held in *R.K. Garg* case that laws relating to economic activities or those in the field of taxation enjoy a greater latitude than laws touching civil rights such as freedom of speech, religion etc. Such a legislation may not be struck down merely on account of crudities and inequities inasmuch as such legislations are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straitjacket formulae...".

- 20) Further, in ***S.K. Dutta, Income Tax Officer v. Lawrence Singh Ingty***, (1968) 2 SCR 165, the Constitution Bench of this court held as under:

"8. It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down by this Court in *Moopil Nair v. State of Kerala*. But as observed by this Court in *East India Tobacco Co. v. State of Andhra Pradesh*, in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

- 21) In ***State of A.P. and Others v. Nallamilli Rami Reddi and Others***, (2001) 7 SCC 708, this Court held:

"8. What Article 14 of the Constitution prohibits is "class legislation" and not "classification for purpose of legislation". If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment..."

- 22) The petitioner may be justified in pointing out that there could be harsh cases where handicapped persons may need the payment on annuity or lumpsum basis even during the lifetime of their parents/guardians. For example, where guardian has become very old but is still alive, though he is not able to earn any longer or he may be a person who was in service and has retired from the said service and is not having any source of income. In such cases, it may be difficult for such a parent/guardian to take care of the medical needs of his/her disabled child. Even when he/she has paid full premium, the handicapped person is not able to receive any annuity only because the parent/guardian of such handicapped person is still alive. There may be many other such situations. However, it is for the Legislature to take

care of these aspects and to provide suitable provision by making necessary amendments in Section 80DD of the Act. In fact, the Chief Commissioner for Persons with Disabilities has also felt that like other police holders, Jeevan Aadhar policy should also be allowed to mature after 55 years of age of the proposer and the annuity amount should be disbursed through the LLCs or National Trust.

- 23) In the aforesaid circumstances, we dispose of this writ petition by urging upon respondent No.1 to have a relook into this provision by taking into consideration all the aspects, including those highlighted by the Court in this judgment, and explore the possibility of making suitable amendments.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

.....J.
(S. ABDUL NAZEER)

NEW DELHI;
JANUARY 03, 2019.