

(1999) 06 CAL CK 0014
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 1096 of 1997

Ajoy Kumar Rathod and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 367, 372
General Clauses Act, 1897 — Section 2(42)

Citation : (1999) 3 CALLT 423

Hon'ble Judges : Mahemmed Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mr. Pratap Chatterjee, for the Appellant;

Final Decision : Partly Allowed

Judgement

M. H. S. Ansari, J.—Brief facts leading to the filing of the Instant writ application are that: the petitioners are the landlords of the premises being third and fourth floors and two servants quarters at premises No. 4, Kiran Sankar Roy Road. Calcutta. The Commissionerate of Central Excise, Respondent No. 8 herein are the tenants of the premises in question. According to the petitioners, the respondents are under obligation to reassess the rent every five (5) years. According to the petitioners they applied for revision of rent. The Hiring Committee determined the rent at the rate of Rs. 5.94 paise per sq. ft. for the period commencing from 1.7.85 (1st reassessment) and the Excise authorities paid the rent at the revised rates.

2. According to the petitioners, the revision of rent was delayed and that the second re-assessment of rent falls due on 1st September. 1987. By a letter dated 24.8.1987 request was made for re-assessment with effect from 1.9.1987.

3. The petitioners request for second revision of rent was forwarded to CPWD for necessary action by the Central Excise Authorities.

4. CPWD issued fair rent certificate for second reassessment vide their letter

dated 16.10.95 and Ministry's administrative approval for payment of reassessed monthly rent at Rs. 11.65 per Sqft p.m. was obtained with effect from 23.11.91.

5. According to the petitioners, the enhancement was wrongly effected from 23.11.91 whereas it should have been with the effect from 1st July. 1990. On this account, the petitioners claimed a sum of Rs. 7,96,874/- for the period from 1st July. 1990 to 22nd November, 1991 and have prayed for issue of a writ in the nature of Mandamus commanding the respondents to make the payment of the said sum.

6. Again, on 1.7.95 the petitioners applied for revision of rent with effect from 1.7.95 (3rd re-assessment). The Central Excise Authorities appear to have requested the Hiring Committee to examine the case for reassessment of rent with effect from 1st July 1995 (annexure "U"). The Hiring Committee issued a fair rent certificate on 18.10.96. certifying that the rent per square foot for the demised premises should be Rs. 16.40 paise with the effect from 1st July, 1995 inclusive of maintenance and repair charges as well as Municipal taxes. Copy of the certificate has been annexed to the writ petition as annexure "W. On this count, the petitioners have claimed that a sum of Rs. 8,75,199,60p. has become due and payable by the respondents for the period July 1, 1995 upto April, 30, 1997, being the differential rent. The grievance of the petitioners is that the Excise authorities have not taken any step or further steps to make payment of differential amount of rent as also current rent at the revised rate of Rs. 16.40.p. per square foot. The petitioners have prayed for directions to the respondents to pay the said sum of Rs. 8,75,199.60p. being the differential rent payable and issue of writ of Mandamus directing the respondents to forthwith make payment at the revised rate of Rs. 16.40p. per square foot.

7. The request of the petitioners for change of the effective date as in respect of revised rent as also the request for enhancement of rent with effect from 1.7.95 has been rejected by the respondent authorities. The petitioners have been communicated vide annexure "S" being letter dated 14.3.97 and addressed to the petitioners whereby it is stated that the petitioner's request was examined in detail by the Ministry of Finance and no justification has been found for enhancing the rate as proposed and as such, no change is required. The petitioners have questioned the validity of the said letter of rejection and prayed for a direction not to give any effect to the same.

8. In the affidavit-in-opposition- filed on behalf of the respondents-tenants, it has been stated that the request of the petitioners-landlords for second revision of rent letter dated 24.8.87 was forwarded to CPWD by a letter dated 29.10.87. The Ministry's administrative approval and sanction towards monthly rent at Rs. 11.65 per square foot with the effect from 23.11.91 was received and arrears of payment of Rs. 23,46,178/- for the period from 23.11.91 to 31.12.95 has been paid to the landlords-petitioners on the basis of Ministry's sanction. In short, the defence of the respondents-tenants is that the CPWD first reassessed fair rent of the premises in question at Rs. 5.94 p. per sq. ft. per month i.e. Rs. 49,539/- per

month with the effect from 1.7.85 for five (5) years and the Ministry's approval was obtained vide letter dated 8.7.91. CPWD again reassessed rent at Rs. 11.65 per sq. ft. per month though with the effect from 1.7.90 for five (5) years, the Ministry's approval was obtained vide letter dated 16.10.95 indicating effective date with the effect from 23.11.91 for five years. The difference in the rate of rent for the period from 23.11.91 to 31.12.95 i.e. Rs. 23.46.178/- has already been paid. In view of the rejection of the request of the petitioners by the Ministry for change in effective date of revised rent, the respondents have no alternative but to abide by the directive of the Ministry of Finance, annexure "A" to the affidavit-in-opposition is the letter of the Additional commissioner (P&V), Central Excise addressed to the Under Secretary, Ministry of Finance wherein a request has been made for inserting the effective date as 1.7.90 with respect to the revised rent at Rs. 11.65 paise per sq. ft. instead of 23.1.91. Annexure "B" is a letter dated 14.2.1997 rejecting the request on the ground that no Justification has been found for enhancing the rent with the effect from 1st July, 1987 and accordingly, no change is required in date of effect of revised rent.

9. In paragraph 34 of the affidavit-in-opposition, a legal plea has been raised on behalf of the respondents-tenants to the effect that the Central Excise Department is entitled to avail of the protection afforded by the West Bengal Premises Tenancy Act, 1956 which provides the machinery for fixation of fair rent or reassessment of rent by the Rent Controller. Such statutory provision cannot be circumvented even by the consent of the parties. The resort to the Hiring Committee is not intended to by-pass the statute. its recommendations are not binding on the respondents. Prayer has been made for dismissal of the instant writ application as misconceived and not maintainable in law.

10. Mr. Pratap Chatterjee, learned senior counsel for the writ petitioners submitted that the question as to the applicability of the West Bengal Premises Tenancy Act has been considered in a Division Bench judgment (unreported) of this High Court in APO No. 243 of 1996 (Regional Director, Department of Atomic Energy & Ors. v. Rabindra Nath Nandy & Ors.) as also the question of the binding nature of the circulars whereby the recommendation of the Hiring Committee, it was held, was binding on the Hiring Department. The petitioners, it was submitted are entitled to the reliefs as prayed for.

11. Mr. Pratap Chatterjee has referred to and relied upon the various annexures to the writ application in support of his submission that there are no disputed questions of fact which need to be adjudicated upon in the instant writ application and that mere availability of an alternative relief is not a bar to the granting of reliefs as prayed for in the instant writ application.

12. It would be useful to consider the purport of the Division Bench judgment dated 16.5.1997 referred to (supra) and relied upon by Mr. Chatterjee.

13. The Matter in controversy in the said appeal before the Division Bench arose out of the interpretation of five circulars issued by the Government of India

relating to reassessment of reasonable rent of private buildings leased by the Government. Relevant portions of the circulars have been annexed to the instant writ application and collectively marked as Annexure "A".

14. The ratio as laid down by the Division Bench in that case is to the effect that :

i) The circulars regulate not only the granting of consent but also provide the only method in which such consent can be accorded by a Government Department.

ii) It was further observed that the circulars are valid and binding on the department concerned and that under the circulars, the Hiring Committee has the Jurisdiction to make an assessment and to recommend it to the Hiring Department.

iii) Under the circulars, the recommendations of the Hiring Committee binds the Hiring Department to pay on that basis and is enforceable against the Department.

iv) It was further observed that unless it can be shown that the procedure prescribed in the circulars has not been followed by the Hiring Committee, the action of the Hiring Department in refusing to act on the basis of the recommendations of the Hiring Committee cannot be described as arbitrary or violative of Article 14 of the Constitution.

The Court, however, in the case before it held "that the Hiring Committee's recommendations cannot be enforced because of lack of particulars". The court, in that case, however, issued certain directions on the ground that "the court is not powerless to mould the reliefs....."

15. In the case before the Division Bench, facts disclosed that Hiring Department "was and is agreeable that re-assessment of the rents are to be made. The question is how much." The further fact was that no formal decision had been taken by the Department, though the Hiring Department had disclosed its mind that it does not accept the recommendation of the Hiring Committee. The Division Bench issued directions to the Hiring Committee to consider the matter and make its recommendations and to communicate the same to both the parties with further directions to the Hiring Department to take a decision on the recommendations within the time framed therein.

16. The dispute in the instant case is altogether different upto the second re-assessment. The recommendations of the Hiring Committee have been given effect to by the Hiring Department. The dispute is with respect to the effective date from which the rent as revised by the Hiring Department (tenant) based on the recommendations of the Hiring Committee is to be made effective. In the matter before the Division Bench, no formal decision had been taken by the Department with respect to the recommendations of the Hiring Committee. In the instant case, the Hiring Department has determined the effective date of the revised rents and also made payment of arrears which according to it were due

based upon the revision in rent upto second re-assessment.

17. With respect to the third re-assessment of rent the recommendations of the Hiring Committee have been rejected by the Department and according to it on the basis of the directive of the Ministry. There is identity of facts with respect to the third re-assessments with the facts as in the Division Bench case cited (*supra*). This aspect of the matter shall be accordingly dealt with separately and a little later.

18. Let us, therefore, first consider the matter and contentions raised in relation to the reliefs as claimed upto the second re-assessment.

19. It must be stated here that as to the maintainability of the writ petition, the contention before the Division Bench in the case cited (*supra*) was with respect to the arbitration clause in the lease agreement and also with respect to the applicability of the West Bengal Premises Tenancy Act, 1956. Both the said contentions were rejected.

20. As to the availability of alternative relief before Arbitrator under arbitration clause, it was held by the Division Bench that at no stage the appellants (Hiring Department) in that case ever took the stand that the question of enhancement should be decided by an Arbitrator.

21. As to the applicability of the Tenancy Act, 1956 is concerned, it was observed that it is not in dispute that no application had been filed before the Rent Controller for fixation of fair rent and the department's (tenant's) contention that only Rent Controller has the jurisdiction in respect of the tenancy was held to be misconceived.

22. The foremost question that arises for consideration in the instant application is whether for the reliefs as prayed for in the instant writ application, the invocation of the discretionary powers vested in the High Court under Article 226 of the Constitution can be exercised in the facts and circumstances of the case.

23. It can not be denied that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental or legal right but not for mere contractual rights arising out of an agreement particularly in view of the existence of efficacious alternative remedy. The constitutional Court should insist upon the party to avail of the alternative remedy instead of invoking the extraordinary writ Jurisdiction of the court. This does not, however, debar the court from granting appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the Jurisdiction under Article 226 of the Constitution.

24. In the matter before the Division Bench referred to (*supra*), the court noticed the special facts, reference to which have been made briefly which distinguishes

the matter on hand.

25. In the instant case, I find no special circumstances which would persuade me to deviate from the settled proposition of law regarding the exercise of writ jurisdiction under Article 226 of the Constitution. The Division Bench in the case cited (*supra*) has though issued certain directions on the facts before it but has not granted any of the reliefs as have been prayed in the instant writ application.

26. The relationship of the petitioners-landlords and the respondent department (tenants) is based upon the terms of the lease deed. The petitioners have prayed for a direction for payment of certain specified amount towards monthly rental based upon the revision of rents. One of the settled principles of law is that any obligation which arises out of a contract not statutory in character is ordinarily not dealt with in a proceeding under Article 226 of the Constitution of India. The claimant in such cases can always institute a civil suit. The writ court would be most reluctant to entertain a money claim. In all such claims arising out of a contract, it is of essence that the court is satisfied that the parties were *ad idem* and that the claim is proved strictly in accordance with law. If it is a money claim otherwise the basis of the claim has to be established and the matters thus arising either under a contract or otherwise for a money claim not covered by any public law and are thus not matters referable to any breach of a public law right. The writ Court issues directions in the nature of *Mandamus* only in cases of infringement of public rights and to compel performance of a public duty. Breach as alleged in respect of the claims of the petitioners in the instant case is not one of such matter.

27. It would be apposite to refer to certain observations of the Supreme Court in *M/s. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. State of Bihar and others*, which are as follows;

"..... that no petition for the issue of a writ of *Mandamus* will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.....that normally petitions solely praying for the refund of money against the State by a writ of *Mandamus* are not to be entertained. The aggrieved party has the right of going to the Civil Court for claiming the amount and it is open to the State to raise all possible defences the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction."

28. However, on the facts of the case, the Supreme Court has observed :

"The writ petition was not a run-of-the mill case. It was a case where the respondent-State had not acted as this court had expected a high constitutional authority to act, in furtherance of the order of this court. That is something that this court cannot accept. The respondent-State was obliged by this court's order to refund the writ petitioners, including the appellants, the amounts collected from them in the form of the levy that was held to be illegal. If there was good reason in law for rejecting the refund claim, it should have been stated. Not to

have responded to the appellants refund claim for 11 years and then to have turned it down without reason is to have acted disrespectfully to this Court. Even assuming, therefore, that this was a writ petition only for money, the writ petition fell outside the ordinary stream of writ petitions and, acting upon it, the High Court should have ordered the refund."

29. The instant case of the petitioners, in my view, cannot be described as "not a run-of-the mill case." It is a case in which the petitioners claim have to be adjudicated on the-basis of the pleadings of the parties to decide the effective date of the revised rents as also the right of the petitioners to such enhancement as claimed by them and/or whether it is the validity period of the fair rent certificate or the existence of the circumstances that warrant the revision of rent that is the determining factor of ascertaining the effective date.

30. In 1992 (1) CLJ 319, Director. Indian Association for the Cultivation of Science. Jadavpur & Ors. v. Ashoke Kumar Roy & Ors., a Division Bench of this High Court construed the ratio in 1989 SC 1607 Anandi Mukta Sadguru Shree Muktajee Vandajiswami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V. R. Radani & Ors., in the following terms;

".....the ratio of the judgment is that whatever may be the form of the body concerned, what is relevant is nature of the duty imposed. [f the duty imposed upon such authority is of public nature or in other words a Mandamus would lie for the purpose of fulfilling public duties and/or responsibilities. It is a firmly established principles "that a Mandamus would not lie to enforce private duties and/or private obligations."

and at para 13 it was held as under :

"There is another aspect of the nature that Mandamus is a public law remedy and not therefore be in respect of duties of a private nature even if the body in question is created by statute and could in respect of other of its functions be compelled by Mandamus....."

31. Mr. Pratap Chatterjee, senior counsel for the petitioners is right in his submission that from the language of Article 226 of the Constitution there does not appear to exist a divide between public law and private law. The distinction between public law and private law remedy by Judicial adjudication has gradually marginalized and became obliterated. It was so held in a recent Judgment of the Supreme Court in U.P.State Co-Operative Land Development Bank Ltd. v. Chandravan Dube & Ors., reported in , but not without a word of caution as to the self imposed limitations subject to which High Courts exercise jurisdiction when there 4s an efficacious alternative remedy available. A portion of the relevant paragraph of the said judgment reads as under :

"In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be

amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the Article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions, It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of Habeas Corpus, Mandamus. Prohibition. Quo Warranto and Certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act. 1897, shall, subject to any adoptions and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made right confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self imposed limitations have been put there subject to which the High Court would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in the china shop" in the exercise of its jurisdiction under Article 226."

32. Mr. Pratap Chatterjee, learned senior advocate however, contended that the claim of the petitioners is founded upon the circulars issued by the Government which are binding on the respondent Hiring Department (tenant).

33. No doubt, as contended by Mr. Pratap Chatterjee and as held by the Division Bench in the case cited supra, the circulars are binding upon and are enforceable against the Hiring Department.

34. The question, however, is whether such circulars which are in the nature of administrative guidelines/instructions can be enforced by a writ under article 226 of the Constitution?

35. No statutory provision has been placed before this court so as to confer statutory character to the circulars relied upon by the petitioners. Article 226 of the Constitution is not available to enforce administrative guidelines or rules. It is well settled that Mandamus does not lie to enforce departmental manuals or instructions not having any statutory force which do not give rise to any legal right in favour of the petitioners (see- J.R. Raghupathy and Others Vs. State of A.P. and Others,

36. In Narendra Knmar Maheshwari v. Union of India, reported in 1990 suppl, SCC 440, the apex court relying upon the decision in R. Abdulla Rowther v. The State Transport Appellate Tribunal, Madras, reported in AIR 1959 SC 896 and G.J. Fernandez Vs. State of Mysore and Others, held :

"It may, however, be stated that being not statutory in character, these guidelines are not enforceable. See the observations of this court in G.J. Fernandez v. The State of Mysore , (Also see R. Abdullah Rowther v. L. Manekchand, Proprietor, Andhra Industrial Works v. C. C. I. ; K. M. Shanmugam v. S. R. V. S. Put Ltd.]. A policy is not law. A statement of policy is not a prescription of binding criterion. In this connection reference may be made to the observations of Sagnata Investments Ltd. v. Norwich Corpn. Also the observation in British Oxygen Co. v. Board of Trade. See also Foulks" Administrative Law. 6th Edn at pp-181-184. In R. v. Secretary of State, Ex-parte Khan the Court held that a circular or self-made rule can become enforceable on the application of person if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline."

37. For the reasons aforesaid, it must be held that the instant writ application in respect of the reliefs as prayed for in relation to or pertaining to the revision of rents upto second re-assessment is not maintainable as the petitioners have efficacious alternative remedy of a suit in respect thereof. It need, however, be clarified that the observations made in this order shall not prejudicially affect either of the parties, if any such proceedings are initiated. The facts noticed and observations made have been in the context of the maintainability of the writ application.

38. Let us now advert to the reliefs prayed for and the contentions in relation thereto as regards third re-assessment of rents.

39. Mr. Pratap Chatterjee is right in his submission as to the identity of facts in the instant case with those as noticed by the Division Bench in the Judgment cited supra.

40. Both, on the grounds of judicial propriety as to the binding nature of the said Division Bench Judgment as also on the ground of identity of facts, appropriate

directions need to be issued in the instant writ application.

41. As in the case before the Division Bench, in the instant case also the request of the petitioner was forwarded to the Hiring Committee for examining the case for the third re-assessment of rent. Hiring Committee issued a fair rent certificate certifying the rent as Rs. 16.40p. per sq. ft. Copy of the said certificate being annexure "W". The said certificate is not dissimilar to the certificate extracted in the judgment of the Division Bench. It may be appropriate to extract the certificate of the Hiring Committee being annexure "W which reads as under :

"Certified that the rent of the building at 4, K. S. Roy Road, Cal. belonging to Narbada Bani & Ors. Cal-I, Hired by the Addl. Commissioner (P&W) Central Excise down in OG(W) OM No. 21/G/8S-91/OG dated 13.6.89 and Director Of Estates OM No. 1 GO 1/1/90 pd III dated 21.4.94 is Rs. 16.42 (Rent Rs. sixteen & paisa forty two) per sft of carpet area per month (Rs.....) only w.e.f. 1.7.95 for a period of 5 years. This rent include maintenance and repair charges and Municipal Taxes which should be borne by the landlord. Based on prevailing market rate per sft of carpet area per month in the locality Rent between Rs. 14.80 (Rupees fourteen & paisa eighty) and Rs. 18.00 (Rs. eighteen only) per sft of carpet area per month is considered as reasonable. The final decisions regarding actual rent to be paid to the owner of the building rests with the authorities hiring the hired property."

42. It is apparent the above certificate merits same criticism as levelled by the Division Bench in the case before it. The certificate is lacking in particulars. The said recommendation of the Hiring Committee has not been accepted by the Hiring Department in view of the "directive of the Ministry" as communicated by their letter dated 14.3.97 being annexure "S". The reasons have not been spelt out therein except stating the "No justification has been found for enhancing the rent." The ratio as in the Regional Director, Department of Atomic Energy & Ors. v. Rabindra Nath Nandy & Ors., the unreported judgement dated 16.5.97 of the Division Bench would apply on all fours.

43. Accordingly, on this aspect of the matter the petitioners are entitled to similar appropriate directions.

44. In the result, the writ application is allowed in part in so far as the reliefs in relation to or in respect of the certificate dated 18.10.96 being Annexure "W" with the following directions.

- 1) The Hiring Committee must make available to the parties the details of all calculations made with regard to the assessment of rents within four weeks from date of communication of a copy of this order.
- 2) Any objections to such calculations by either party must be specific and made within four weeks thereafter.
- 3) Within the same period any relevant evidence as to the market rate for the period in question with full particulars may be submitted by either party to the

Hiring Committee with copies to the other side.

4) The Hiring Committee will consider the matter and take a decision on the materials before it within a period of three months thereafter.

5) The recommendations along with all calculations in support thereof will be communicated to both the parties within 48 hours thereof.

6) The Hiring Department shall take a decision on the recommendations within four weeks thereafter. If the recommendation is not accepted detailed reasons for such non-acceptance must be given and communicated to the petitioners within 48 hours thereof.

7. If the recommendation is accepted, payments of all outstanding on account of such re-assessed rent must be made to the landlords within two months from the date of the decision.

8) For the aforesaid purpose, no effect shall be given to the letter dated 14.3.97 being annexure "S".

There will be no order as to costs.

45. Petition allowed part