
(2011) 02 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) 6545 of 2010 and CM No. 12957 of 2010

Anup Kumar Srivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Citation : (2011) 2 AD 550 : (2011) 177 DLT 393

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Amarendra Sharan, Somesh Jha, Ashutosh Jha and Amit Anand Tiwari, for the Appellant; H.P. Raval, ASG, B.V. Niren, CGSC, Anirudh Sharma, for UOI, Vijay K. Sondhi and Sanjeev Kumar for R3, for the Respondent

Judgement

S. Muralidhar, J.

Introduction

1. The writ petition and the connected contempt petition concern the Petitioner's entitlement to Government accommodation. The case of the Petitioner is that although he was at serial No. 1 in the General Pool category and was entitled to a 5A type house either at Ashoka Road or Mahadev Road, the accommodation at 60, Ashoka Road which fell vacant was allotted to Respondent No. 3, who is a Member of Parliament ("MP") in the Lok Sabha. The writ petition has been filed challenging the said allotment made in favour of Respondent No. 3.

2. This Court by an order dated 6th October 2010 directed that in regard to accommodation at 60, Ashoka Road "till the next date of hearing, status quo as regards possession will be maintained." However, on 19th November 2010 Respondent No. 3 was put in possession of the said accommodation. The Petitioner then filed the aforementioned contempt petition alleging willful disobedience by the Respondents of this Court's order dated 6th October 2010.

Facts

3. The Petitioner was appointed as a Commissioner of Central Excise, Customs and Service Tax on 24th October 2004. The Petitioner was transferred from the Commissionerate of Customs, Meerut-II to the Commissionerate Central Excise, Delhi-I on 8th March 2010. In terms of the Allotment of Government Residence (General Pool in Delhi) Rules, 1963 ("General Pool Rules"), the Petitioner was entitled to C-II type General Pool accommodation. He applied for such accommodation on 11th March 2010 and was granted registration No. 10148364 on 12th March 2010. On 7th April 2010 the Petitioner made a representation to the Ministry of Urban Development ("MoUD"), Respondent No. 1, stating that he was willing to accept the accommodation below his entitlement, i.e. a D-II accommodation, provided it was available on the ground floor. He also pointed out that he was suffering from serious heart disease as well as problems in the knee joint because of which he was advised not to climb stairs. He prayed for an out-of-turn allotment on medical grounds. The Petitioner has enclosed with the writ petition copies of his representations dated 7th April 2010, 20th April 2010, 12th May 2010 and 19th May 2010. He states that he did not receive any reply to the representations.

4. The Petitioner states that he was in the wait list at serial No. 1 for a General Pool accommodation both at Mahadev Road as well as Ashoka Road. Yet, on 22nd May 2010 an order was issued allotting the General Pool house at 7, Mahadev Road in favour of an MP although not entitled to such allotment. Thereafter when another D-II type accommodation on the Ground Floor at 60 Ashoka Road fell vacant, it was allotted by the Directorate of Estates, Respondent No. 2 on 2nd June 2010 to another MP, i.e. Respondent No. 3. herein. This was however not known to the Petitioner at that time and he sent further reminders on 30th July 2010 and 30th August 2010 to Respondent No. 2. He pointed out that a D-II type category accommodation was available at 60, Ashoka Road since the officer who had been staying in the said accommodation had retired on 31st March 2010. The Petitioner relied on the order passed by the Supreme Court 13th July 2006 in S.D. Bandi v. Divisional Traffic Officer, KSRTC (Civil Appeal No. 4064 of 2004) (hereafter the S.D. Bandi case) which contained an observation to the effect that the occupation of General Pool houses by M Ps was uauthorised. The Petitioner states that he learnt of the allotment made to Respondent No. 3 on 19th September 2010 and made a further representation on 20th September 2010. In the circumstances, the present petition was filed on 23rd September 2010 seeking quashing of the order dated 2nd June 2010 passed by Respondent No. 2 allotting the accommodation at 60 Ashoka Road to Respondent No. 3 and for a direction to Respondent No. 2 to allot the said accommodation to the Petitioner

Proceedings before this Court

5. At the very first hearing on 27th September 2010 while directing notice to issue, this Court passed the following order:

CM APPL Nos. 12958 and 12959/2010 (for exemptions)

Exemptions allowed subject to all just exceptions. Applications are disposed of.

WP (Civil) 6545/2010 and CM APPL No. 12957/2010 (for stay)

1. Notice. Mr. Abhishek Goyal, learned Counsel accepts notice on behalf of Respondents 1 and 2. In the first instance the Respondents 1 and 2 will inform this Court what is the correct status as regards the General Pool D-II Type category accommodation i.e. 60, Ashoka Road, New Delhi and whether the allotment thereof to a Member of Parliament (Lok Sabha) is permissible. The Petitioner's contention is that general pool accommodation is exclusively for the Central Government servants.

2. It is made clear that if either no instructions are forthcoming, or no reply is filed, the application for interim relief will nevertheless be considered on the next date of hearing.

3. List on 6th October 2010. Order be given dasti.

6. Since no counter affidavit was filed and further time was sought for that purpose on the next date, i.e., 6th October 2010, the following order was passed by this Court:

1. Counsel for Respondent Nos. 1 and 2 seeks and is granted two weeks time to file a parawise reply to the petition including a response to the queries posed by this Court in its order dated 27th September 2010.

2. List on 9th November 2010. Till the next date of hearing, status quo as regards possession will be maintained.

3. Order dasti.

7. Thereafter Respondent No. 2 filed a counter affidavit on 27th October 2010. A rejoinder thereto was also filed by the Petitioner on 2nd November 2010.

8. This Court did not sit on 9th November 2010 the date on which the writ petition was listed. The Court Master recorded "the Hon"ble Judge is not holding Court today. List on 16th December 2010."

9. On 19th November 2010 Respondent No. 3 was given possession of the accommodation at 60, Ashoka Road. Aggrieved by this, the Petitioner on 2nd December 2010 filed Contempt Petition No. 820 of 2010 praying for initiation of contempt proceedings against the Secretary MoUD, the Director of Estates as well as Respondent No. 3 in the writ petition. On 7th December 2010 notice was directed to issue in the contempt petition by this Court returnable on 16th December 2010 when the writ petition was listed.

10. On 16th December 2010, a statement was made by the learned Additional Solicitor General ("ASG") that the Respondents are willing to offer an accommodation to the Petitioner either at R.K. Puram or at Andrews Gunj. The case was then adjourned to 21st December 2010 to enable the Petitioner to seek instructions. On 21st December 2010, it was pointed out on behalf of the

Petitioner that he was being offered a D-II type flat whereas he was entitled to a C-II type. The learned ASG sought time to obtain instructions on whether the accommodations mentioned by the Petitioner in his rejoinder affidavit were available for allotment.

Pleadings in the writ petition

11. In its counter affidavit Respondent No. 2 stated that the Petitioner applied for a Type VA (DII) accommodation giving preference of localities at Mahadev Road, Vinay Marg, Ashoka Road and specially DII/60, Ashoka Road "on medical ground although not in the prescribed form." It was further stated that the accommodation was in the name of one Shri Jogendra Singh who after retirement was permitted to retain the flat up to 23rd August 2010. At the time the counter affidavit was filed the action for evicting the then occupier was stated to be still under progress. It was, however, admitted that in the meanwhile on 2nd June 2010 the said accommodation had been allotted to Respondent No. 3 "on vacation basis with the approval of the Ministry of Urban Development." It was asserted in the counter affidavit that M Ps were entitled to allotment of a General Pool House of types v. to VIII as per the Guidelines dated 24th October 1985 of the Respondent No. 2 issued with the approval of the Cabinet Committee on Accommodation ("CCA"). It was claimed that there was no violation of any rule in the allotment made to Respondent No. 3. It was stated in the counter affidavit that flat No. DII/308, Pandara Road was allotted to the Petitioner in May 2010 as per his waiting position/locality/floor preference. However, for want of specific medical certificate/other documents in terms of guidelines of Respondent No. 2, the Petitioner's representation for an out-of-turn allotment on medical grounds could not be considered. It was stated as and when the Petitioner made such an application in the prescribed format it would be considered by a Committee of medical experts. It was further stated that Respondent No. 2 had since introduced an "Automated System of Allotment." The Petitioner was at liberty to opt for a house of his choice and entitlement out of the houses offered each month between 1st to 9th days of the month and such accommodation would be allotted to him on maturity of his turn subject to his seniority.

12. In the rejoinder filed on 2nd November 2010, the Petitioner pointed out that the guidelines dated 24th October 1985 were outdated and did not hold good after the decision of the Supreme Court in Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, and the order passed by the Supreme Court on 17th July 2006 in the S.D. Bandi case. It is stated that even in terms of the 1985 Guidelines Respondent No. 3 could only have a priority of 2009 whereas the priority date of the Petitioner was 2006. It is stated that despite receiving the Petitioner's representation dated 19th May 2010 stating that flat at DII/308, Pandara Road was not suitable for him and that he should be put back on the waiting list for D-II in Mahadev Road or Ashoka Road, D-I in Ravinder Nagar, Chanakya Puri and C-II in any central location (ground floor), the Respondents failed to respond.

13. On 3rd January 2011, Mr. Harin P. Raval, ASG appeared and stated that he would like to place on record an additional affidavit. This was filed on 4th January 2011. In the said additional affidavit, it was pointed out by Respondent No. 2 that initially the Petitioner had applied for allotment on 12th March 2010 for a type-IVA (DII) accommodation with preference of localities as Mahadev Road, Vinay Marg, Shahjahan Road, Pandara Road and Kaka Nagar. It was stated that the waiting list position of the Petitioner for a Ground Floor D-II type accommodation in the General Pool locality wise "including the officers senior to the Petitioner, who had given open choices, i.e., for all the localities" was that in Mahadev Road his waiting list was at serial No. 8 both as on 31st March 2010 and 30th April 2010. It was claimed that that the Petitioner was allotted a D-II type flat at Pandara Road as per his waiting list position and locality preference and that no vacant house was available in Mahadev Road for April and May 2010. The Petitioner did not accept the accommodation at Pandara Road and applied for reconsideration in June 2010 along with modification of locality preference to include Ashoka Road. It was stated that although a refusal for allotment resulted in debarment of applicant for further allotment for a period of one year, the Petitioner's request was accepted and he was registered for Mahadev Road, Ashoka Road and Vinay Marg as per his modified choices. His name was accordingly included in the waiting list as on 30th June 2010. It is stated that allotment as per the waiting list was made on 15th July 2010 and that no vacancy was available in General Pool for allotment to Government servants as per the waiting list in Mahadev Road and Ashoka Road. There was one vacancy in Vinay Marg but the Petitioner could not be allotted the said accommodation as he was at serial No. 6 for the ground floor. According to Respondent No. 2 "even for localities of Mahadev Road and Ashoka Road there are five officers senior to him who had given open choices, i.e., for all localities and as such any vacancy in these areas, if available, would have gone to them." Since the Petitioner applied for modification of choice in June 2010, after refusing the allotment of D-II, Pandara Road accommodation, his name was not included in the waiting list as on 31st May 2010 (for allotment in June 2010). A reference was made to para 3 of the procedure outlined in the Hand Book on General Pool Residential Accommodation.

14. Respondent No. 2 referred to the OM dated 17th November 1997 which laid down the policy parameters for out-of-turn allotments both on functional and medical grounds. It was stated that the Petitioner's representation dated 20th April 2010 for out-of-turn allotment could not be considered since it did not fall within the parameters outlined in the said OM. The allotment of a General Pool Accommodation to M Ps who are not governed by the General Pool Rules was sought to be justified on the ground that "being public representatives from various parts of the country, the Members of Parliament are also required to be provided accommodation by the Government to enable them to effective discharge their functions."

15. The additional affidavit of Respondent No. 2 proceeded to explain the

Automated System of Allotment introduced with effect from June 2010 in terms of OM dated 8th April 2010. The new system extended to D-II type accommodation with effect from 1st July 2010. It is stated that under the new system the vacancies for allotment as on the last date of the month are put on the website of Respondent No. 2. A combined waiting list of the applicants was prepared and finalized on the last day of the month and placed on the website. Officers in this combined list are directed to indicate their choices for specific houses amongst those listed for allotment. These choices are indicated by the wait listed officers between 1st and 9th of the month. An allotment is automatically made by the computer on 10th of the month based on the seniority of the officer in the waiting list and his choices out of the houses available for the allotment. If the house is opted by the senior most applicant he would get the allotment of that house to the exclusion of his junior. The junior would get allotment of the house on the basis of preferences given by him between 1st and 9th of each month provided no officer senior to him in the waiting list has indicated his preference for the same house. Respondent No. 2 stated that in terms of the Automated System of Allotment the position of the Petitioner in the combined waiting list was at No. 22 as on 31st July 2010, No. 11 as on 31st August 2010, No. 14 as on 30th September 2010, No. 13 as on 31st October 2010 and No. 16 as on 30th November 2010. Annexed to the additional affidavit was a computer generated report of the options exercised by the Petitioner.

16. The Petitioner filed a reply to the said additional affidavit on 6th January 2011 stating that the website still showed the waiting list position of the Petitioner at serial No. 1 for Ashoka Road as well as Mahadev Road. Copy of the print-out of the waiting list position, downloaded from the internet was enclosed with the reply affidavit. It was reiterated by the Petitioner that no MP could have been allotted a General pool accommodation and that the impugned allotment was bad in law.

17. A second additional affidavit was filed by Respondent No. 2 on 12th January 2011. The difference between the procedure followed for allotment of Government accommodation prior to 1st July 2010 and that followed after that date was further elaborated in this second affidavit as under:

Prior to 01.07.2010

(A) A unified waiting-list (including all localities) of all the applicants who have submitted their applications on or before the last day of a particular month is prepared. This waiting-list also indicates locality-wise preferences of the applicants for allotment of houses.

(B) Based on the above unified waiting-list, a house available for allotment is allotted to a wait-listed officer if nobody else senior to him in the waiting list opted for the same locality.

(C) A locality-wise waiting-list was also derived from the unified waiting-list and shown separately on the web-site just to indicate the chances of wait-listed

officers in getting allotment in various localities. However, as explained earlier, only the unified waiting-list was used for actual allotment.

(D) The difference between a unified waiting-list and the locality-wise waiting-list for a particular locality is that the unified waiting-list also includes names and particulars of all those officers who have given open choices without indicating any specific locality. They are considered for allotment in all the localities. On the other hand, locality-wise waiting-list does not include details of such officers even though their numbers are indicated in the locality-wise waiting-list under the heading "NC" and "Wait No" which must be taken into consideration while working out one's chances of allotment in a particular locality.

After 01.07.2010

(A) As already submitted by the Respondents in their additional affidavit a new system of allotment of houses viz., Automated System of Allotment was made effective for D II houses with effect from 1st July, 2010. This system is designed to make a transparent and objective allotment of houses to officers based on their choices and their positions in the waiting-list automatically through a computer without any human intervention.

(B) A unified waiting-list for purposes of Automated System of Allotment is prepared in the same manner as in the old system as on the last date of the month.

(C) All the vacant houses available for allotment as on the last day of the month are also shown on the web-site.

(D) The wait-listed officers desirous of getting allotment are required to indicate their choices/preferences for specific houses out of those available for allotment on-line between 1st and 9th of the following month.

(E) At 10 A.M. on 10th of the month, the computer system automatically makes allotment of houses based on the choices of the officers and their position in the waiting-list. An officer is allotted a house of his first choice if no other officer senior to him in the waiting-list opts for the same house. In case an officer does not get his 1st choice then he is considered for his second choice failing which for the third choice and so on.

(F) In view of house-specific preferences/choices indicated by the officer every month during the 1st and 9th of the month, the locality-wise choice becomes irrelevant and meaningless.

18. Thereafter, in paras 7 and 8, it was stated as under:

7. As far as position of the Petitioner in the wait-list of subsequent months i.e., as on 31st July, 2010 onwards is concerned, it is reiterated that due to new system of seeking choices and preferences of wait-listed officers for individual house as explained above, the locality-wise waiting-list has become irrelevant and meaningless. It is further submitted that the officer was fully aware about

the new system of allotment and exercised his option for allotment of houses of his choice/preference, viz., D I/323, Chanakyapuri, D I/49, Bhartinagar and D I/49, Rabindra Nagar in July, 2010, D I/115, Chanakyapuri, D I/103, Chanakyapuri in August, 2010, DII/41, Kaka Nagar, D I/21, Rabindra Nagar in November, 2010 and D II/11, Shahjahan Road in December, 2010. (Annexure-A-19 of Additional affidavit) The Petitioner, however, did not succeed in getting allotment of any of these houses as the officers senior to him in the waiting-list had asked for the same. Suppressing these factual position the Petitioner has deliberately harping on locality-wise waiting list which is irrelevant and meaningless with a clear intention to mislead the Hon"ble Court.

8. It may be clearly seen from the foregoing submissions that the Petitioner was never at position No. 1 of the waiting-list for ground-floor D II houses in the localities preferred by him.

19. In para 10 of the second additional affidavit of Respondent No. 2, it was stated as under:

10. Without prejudice to our contentions and submissions and in difference to the submission made by the Petitioner before this hon"ble Court, we are offering the Petitioner following D-II type ground floor houses for selecting one of them for allotment. However, if no acceptance is conveyed by the Petitioner on or before the next date of hearing i.e. 17th Jan 2011, then the Respondent would be constrained to release these houses for further allotment to other waiting and eligible officers.

SN

House No.

Floor

Pool

1.

1/5, Andrews Ganj

Ground

TP

2.

139, Asian Games Village

Ground

TN

3.

A-1, Nanak Pura

Ground

TP

4.

P-6.1(MS), Sector-13, R.K. Puram

6th Floor with lift facility*

GP

* Under medical considerations, all floors in multi-storied building with lift facility are considered at par with ground floor in terms of Office Memorandum No. 12035/2/97-Pol. II (Pt. II) dated 16.9.2009 (Para 6 of Annexure S-2).

20. With the second additional affidavit, Respondent No. 2, annexed (as Annexure S-4) a copy of the affidavit dated 30th August 2006 submitted by it to the Supreme Court in the S.D. Bandi case placing on record the Guidelines dated 24th October 1985.

21. Meanwhile, on 11th January 2011 Respondent No. 3 filed an affidavit explaining inter alia that no notice in the writ petition was served on him and, therefore, he was not aware of the order dated 6th October 2010. He also relied upon the Guidelines dated 24th October 1985 to justify the allotment of 60, Ashoka Road in his favour.

22. The Petitioner on 15th January 2011 filed a reply to the second additional affidavit dated 6th January 2011 of Respondent No. 2 claiming that there was no one senior to him who had opted for either of the accommodations at Mahadev Road or Ashoka Road. Pleadings in the contempt petition

23. As regards the contempt petition, along with the reply dated 7th January 2011 the Director of Estates-II has placed on record a copy of the relevant file notings. It is pleaded that there was a genuine communication gap as a result of which counsel appearing for the Union of India failed to mention in his communication dated 6th October 2010 that a status quo order had been passed on that date. It is stated that the handing over of the possession of the accommodation at 60, Ashoka Road to Respondent No. 3 on 19th November 2010 was pursuant to the allotment order that was issued on 2nd June 2010. It is only after the Petitioner approached Respondent No. 2 on 26th November 2010 that it became aware of the status quo order.

24. Respondent No. 3 has also filed a reply in the contempt petition stating that he was not aware of the status quo order dated 6th October 2010 since notice was not issued to him. It is only on 13th December 2010 that the summons was served on him in the contempt petition and then a copy of the writ petition provided to Respondent No. 3. Rejoinders were filed by the Petitioner to both the replies.

Submissions of counsel

25. Mr. Amarendra Sharan, learned Senior counsel for the Petitioner took strong exception to the willful disobedience by Respondent No. 2 of the status quo order passed by this Court on 6th October 2010. Referring to the note sheet, a copy of which has been placed on record by Respondent No. 2, he pointed out that it is inconceivable that when the officials of the Directorate of Estates briefed the Government counsel on 8th November 2010 for the hearing on 9th November 2010, they were not informed of the status quo order dated 6th October 2010. He further pointed out that the noting of 26th November 2010 suggested that an application should be filed in this Court for withdrawal of the status quo order. It noted that handing over of possession to Respondent No. 3 "has been kept in abeyance." Clearly, therefore, the officials of Respondent No. 2 knew that possession ought not to have been handed over to Respondent No. 3 in the teeth of this Court's order dated 6th October 2010. He insisted that the Respondents should purge the contempt before being heard in the main writ petition.

26. As regards the impugned allotment dated 2nd June 2010 in favour of Respondent No. 3, Mr. Sharan submitted that the Guidelines dated 24th October 1985 were no longer operative after the affidavit filed by the Respondent No. 2 in the Supreme Court in the S.D. Bandi case. He submitted that at no point in time did Respondent No. 2 inform the Supreme Court that M Ps could be allotted accommodation from the General Pool. The impression given was that no house from the General Pool could be allotted to an MP. Mr. Sharan further submitted that even in terms of the Guidelines dated 24th October 1985, no allotment could have been made to Respondent No. 3 since there was a separate pool of houses for M Ps of the Lok Sabha and Rajya Sabha. He submitted that the reasons for making the allotment to Respondent No. 3 overlooking the claims of the Government servants in the wait lists were not indicated. The said allotment to Respondent No. 3 was de hors the rules. It was without any authority of law. Mr. Sharan urged that the Automated Allotment System had not come into effect when the Petitioner made his application. He pointed out that even as of date, the Petitioner's name figured in waiting list at serial No. 1, both for Mahadev Road and Ashoka Road and, therefore, the Petitioner's claim could not have been overlooked. Alternatively, he submitted that the Petitioner's case ought to have been considered for out-of-turn allotment on medical grounds. He submitted that no equity could be created in favour of Respondent No. 3, since the allotment in his favour was in the teeth of the status quo order dated 6th October 2010.

27. Appearing for Respondent Nos. 1 and 2 in the writ petition as well as in the contempt petition, Mr. Harin P. Raval, learned ASG submitted that the guidelines of 24th October 1985 permit the allotment of houses to M Ps from the General Pool. According to him, affidavits filed by Respondent No. 2 before the Supreme Court in the S.D. Bandi case related to unauthorized occupation by M Ps of houses in the General Pool. This did not imply that no house from the General Pool could be allotted to an MP.

28. Mr. Raval submitted that after the Automated Allotment System became

operational, the Petitioner did not figure at Serial No. 1 in the waiting list for either Mahadev Road or Ashoka Road. There were officers senior to him who could, if an accommodation fell vacant, lay a claim to it. In any event, the Petitioner did not have a vested right in getting a particular accommodation. He pointed out that the reasons cited by the Petitioner in his representations to seek an out-of-turn allotment were not valid. As far as the medical grounds were concerned, the Petitioner was required to make an application in the prescribed format. Only thereafter could such request be considered.

29. As regards the contempt petition, Mr. Raval first submitted that the status quo order made on 6th October 2010 was to continue only till the next date of hearing. The next hearing was meant to be on 9th November 2010, on which date this Court did not sit. Therefore, the status quo order came to an end on that date and thereafter it was not renewed. The handing over of possession of the accommodation at 60, Ashoka Road to Respondent No. 3 on 19th November 2010, therefore, did not constitute contempt of this Court's status quo order. He submitted that since the order dated 6th October 2010 was not communicated by counsel for the Union of India to the officers of Respondent No. 2 till 26th November 2010, they could not be held to have willfully disobeyed the status quo order dated 6th October 2010. He relied upon the decisions of the Supreme Court in *Kapildeo Prasad Sah and Others Vs. State of Bihar and Others*, , *Arjan Singh Vs. Punit Ahluwalia and Others*, , *Suresh v. Imran Khan*, 1995 Supp (3) SCC 306 , and *Ashok Kumar and Others Vs. State of Haryana and Another*, .

30. Mr. Vijay Sondhi, learned Counsel for Respondent No. 3 submitted that his client was not aware of the status quo order by the time possession was given to him of 60, Ashoka Road. Relying on the decision of the Allahabad High Court in *State of U.P. and Others Vs. Committee of Management, D.A.V. Inter College and Another*, Mr. Sondhi submitted that in any event on 19th November 2010 no status quo order subsisted. Respondent No. 3 therefore, was not liable for contempt.

Supreme Court proceedings in the S.D. Bandi case

31. In order to appreciate the above submissions, the background to the present petition, in the context of allotment of government accommodation, requires to be examined. In the S.D. Bandi case in the Supreme Court an additional affidavit was filed by Respondent No. 2 on 14th November 2005. Paras 3, 4, 5 and 6 of the said affidavit reads as under:

3. In this context, I wish to state that there are several pools of houses allocated to different categories of personnel. The largest among them is referred to as the General Pool, which is administered by the Ministry of Urban Development. This comprises of a total of 62,263 houses in various types ranging from type-I at the lowest to type-VIII at the highest. The following categories of personnel are entitled to accommodation in the General Pool.

(a) Union Ministers

(b) Chairmen, Members and staff of various Commissions, Tribunals, Authorities etc.

(c) Law Officers

(d) Central Govt. employee

(e) Private persons such as Freedom Fighters, Social Workers, Journalists, Artists, Sports persons etc.

(f) Non-Governmental Organizations and

(g) Some for Members of Parliament as per the guidelines and subject to availability

4. The various rules and guidelines that have been formulated for allotment of accommodation to these different categories of personnel from the General Pool will be placed before this Hon'ble Court in a separate compilation.

5. For other specific categories of personnel there are separate pools of houses.

A) For the Members of Parliament there exist two pools namely the Lok Sabha MP's Pool and Rajya Sabha MP's Pool. These are administered entirely by specific committees constituted by the respective Houses of Parliament. All Members of Lok Sabha and Rajya Sabha are entitled to get their accommodation from these pools. The details of accommodation available at the disposal of the respective House committees (i.e. Lok Sabha Pool and Rajya Sabha Pool) and the accommodation allotted from the General Pool to the Members of Parliament are as under:

Category

Lok Sabha Pool

Rajya Sabha Pool

1

Total strength of Members of Parliament

545

245

2

Member of Parliament who are Union Ministers and are eligible for General Pool accommodation

48

13

3

Members of Parliament in occupation of General Pool Houses

45

26

4

Requirement of houses for allotment to Members of Parliament= $[1-(2+3)]$

452

206

Availability of accommodation with Lok Sabha and Rajya Sabha Pools

5

Bungalows

182

92

6

Flats

338

135

7

Total number of Bungalows/Flats (5+6)

520

227

8

Members of Parliament, who are

6

3

Ministers and in occupation of houses allotted by House Committees concerned.

9

Surplus units available in the respective Pools of Lok Sabha and Rajya Sabha = $[7-(4+8)]$

62

18

B) In addition, there are separate housing pools for Judges of the Supreme Court of India and High Court of Delhi. 27 type-VIII bungalows have been placed in the Supreme Court Judges Pool. 9 type-VIII and 23 type-VII bungalows have been placed at the disposal of the High Court of Delhi Judges Pool. These houses are allotted on the recommendations of the Chief Justice of India and Chief Justice of the High Court of Delhi, respectively.

C) Besides, the Defense Services, Indian Railways and other Departments like P and T etc., maintain separate Pools for allotment. Directorate of Estates, Ministry of Urban Development has no administrative control over these departmental pools. 6. In the management of higher type bungalows of the General Pool, the major problem that arises is that sitting Members of Parliament, upon ceasing to be Ministers, do not vacate the General Pool houses allotted to them by virtue of their being Ministers. As a Member of Parliament they are entitled to accommodation only from the respective house pools and not from the General Pool.

32. Annexed to the said affidavit was a list of 36 persons who were occupying bungalows above their entitlement. It was stated that there were 465 cases of unauthorized occupants. After regularization of 20 and eviction of 116, there remained 329 unauthorized occupants. On 13th July 2006, a further affidavit was filed by the Directorate of Estates in the Supreme Court. The Supreme Court order of that date recorded that 36 houses in the General Pool were unauthorisedly being occupied by the M Ps. Paras 7 and 8 of the said order read as under:

7. It has been stated in various affidavits filed on behalf of the Union of India that 36 houses of General Pool are in occupation of the Members of Parliament though they are not entitled to continue therein and the Department concerned is entitled to get vacant possession thereof. We have been informed that out of 36, one Member has vacated the accommodation whereas 35 Members are still in occupation.

8. Issue notice to the Secretary General of Rajya Sabha and Lok Sabha to file response in relation to statements made in various affidavits filed on behalf of the Union of India before this Court on 16th November, 2005, 23rd January, 2006, 5th April, 2006 and 13th July, 2006 in relation to the aforesaid 35 houses. It has been stated in the affidavit that out of 35 occupants, occupation of five persons has been regularized. In affidavit the Union of India shall explain under what circumstances and authority, orders of regularization have been passed.

33. On 31st August 2006, in response to the above order, the Director of Estates filed a further affidavit. Paras 11, 12 and 13 of the said affidavit read as under:

11. That a list of 36 Members of Parliament, who were occupying accommodation above their entitlement, was submitted to this Hon"ble Court. Allotment in respect of 5 Members of Parliament (Annexure-IX), who were occupying accommodation above their entitlement, was regularized with the approval of the

Cabinet Committee on Accommodation (CCA). The CCA has been constituted under the powers derived from Rule 6(1) of the Government of India (Transaction of Business) Rules, 1961, which itself has been framed under the powers vested with the President of India under Sub-rule (3) of Article 77 of the Constitution of India. Functions assigned to the CCA are given as under:

- (i) To determine the guidelines/rules and terms and conditions to govern out of turn allotment of Government accommodation;
- (ii) To decide upon allotment of Government accommodation to various categories of non-eligible persons and organizations and rates of rent to be charged from them;
- (iii) To consider the question of allotment of accommodation from general pool to the Members of Parliament;

12. That the CCA has framed guidelines to regulate allotment of general pool accommodation to the Members of Parliament. A copy of the guidelines dated 24.10.1985 is given at Annexure-X.

13. Further the CCA has, under its inherent powers, allotted/regularized allotment of accommodation in respect of Members of Parliament, who are occupying accommodation above their entitlement. This has been done in consideration of the merit of each case and wherever the CCA has felt that the person deserves such special consideration.

34. The Supreme Court was further informed that out of 36 MPs, 5 had vacated their accommodation and the vacated houses were allotted to other eligible persons.

35. A further update was given in an affidavit dated 22nd July 2009 filed by Respondent No. 2 before the Supreme Court in S.D. Bandi case. Para 6 of the said affidavit reads as under:

6. As regards the houses in the occupation of Members of Parliament, it is submitted that in response to the communications of this Directorate to the Secretary Generals of Rajya Sabha and Lok Sabha in line with the directions of the Hon'ble Court, as submitted in the Affidavit dated 17th September, 2007 to take immediate action to allot accommodations to the Members belonging to the two Houses, a reference dated 25.10.2007 has been received in the meantime from the Lok Sabha Secretariat conveying the approval of the Chairmen for indicating the following position in relation to accommodations presently held by the Members of Parliament:

It may be submitted that in the Joint Sitting of the Chairmen, House Committees of Lok Sabha and Rajya Sabha held on 13.8.2007 the matter was discussed at length. It was stated by the Chairmen that the Members are eligible for allotment of Bungalow type accommodation as per criteria laid down by the respective House Committees. Further, it has been an established practice to allow sitting

Members to retain the General Pool Houses allotted to them when they were Ministers and transfer such houses to the respective pools of Lok Sabha and Rajya Sabha when they cease to be Ministers on "revert back basis". This practice should continue to be followed in the instant case and bungalows occupied by senior Members be transferred to the Lok Sabha and Rajya Sabha Pools, as the case may be, "on revert back basis".

The Guidelines dated 24th October 1985

36. At this juncture it is necessary to refer to the OM dated 24th October 1985 on which Mr. Raval placed extensive reliance. It reads as under:

No. 12016(2)/80-Pol.-II (Vol. III)(iii)

Government of India

Directorate of Estates

.....

New Delhi, the 24th October, 1985

Subject: Review of guidelines for allotment of general pool accommodation-Member of Parliament.

Guidelines for allotment of general pool accommodation to Members of Parliaments were placed before the CCA which at its meeting held on 12th Sept, 1985 has approved the following guidelines:

(a) In future, no allotment of type EIII bungalow will be made from the general pool to any Member of Parliament without the approval of the Cabinet Committee on Accommodation.

(b) Members who are ex-Governors, ex-Chief Ministers and ex-Cabinet Minister of the Centre, ex-speaker of the Lok Sabha, Ex-Judge of the Supreme Court may be allotted houses of category VII (type-EII) depending on availability.

(c) Other members who were Ministers of State/Ex-Deputy Chairman, Rajya Sabha/Deputy Ministers in the Centre Speaker/Chairman of legislature in the States and who were Cabinet Ministers in the States may be allotted houses of type VI (EI).

(d) Other members may be allotted houses of category V(E) i.e. flats in North/South Avenue, etc.

(e) Members of parliament who are already in occupation of general pool type-EIII, EII and EI accommodation and who are not entitled to retain the same as per above criteria are to be advised to vacate the accommodation in their occupation and move to alternative accommodation which may be allotted from general pool/M Ps pool as per above criteria.

2. It is requested that the above guidelines may also be brought to the notice of

the Chairman of the House Committee of Rajya Sabha/Lok Sabha also in continuation of the communication sent by Allotment Type Special Section earlier.

Sd/-

(V.S. Raman)

Deputy Director of Estates

37. In the instant case, Respondent No. 3 was admittedly a former Cabinet Minister in the State of Jammu and Kashmir. If at all, his case would fall under Clause 1 (c) of the above OM dated 24th October 1985. It is only for those M Ps who do not get covered by clauses 1 (a), (b), or (c) that the question of allotment of a house of category v. (E) i.e. flats in North/South Avenues in terms of Clause 1 (d) would arise. Prima facie, therefore, it appears that the case of Respondent No. 3 could not have been considered in terms of the 24th October 1985 Guidelines for allotment of a category v. (E) flat, as his case fell within the scope of Clause 1 (c) of the OM dated 24th October 1985.

Allotment in favour of Respondent No. 3 legally unsustainable

38. Mr. Raval urged that if a type VI (EI) accommodation was not available in terms of Clause 1 (c), Respondent No. 3 could be offered a lower type accommodation viz. category v. (E).

39. This Court is constrained to observe that this position does not automatically flow from the OM dated 24th October 1985. The reasons for this are that first, once an MP's case falls under any of the categories in clauses 1 (a), (b) or (c) it has to be considered only in terms of those clauses and not any other. The General Pool accommodation is essentially meant for Government servants and is regulated by the General Pool Rules. The Guidelines laid down by the OM dated 24th October 1985 permits allotment of government accommodation from the General Pool de hors the General Pool Rules. Consequently, the Guidelines which give extraordinary discretion to Respondent No. 2 to allot a house to an MP from the General Pool have to be strictly construed as applying in a narrow sphere.

40. Secondly, the affidavit filed by Respondent No. 2 before the Supreme Court shows that there are houses in both the Lok Sabha and Rajya Sabha pools for M Ps. Therefore, even while exercising powers with reference to Clause 1 (d) of the OM dated 24th October 1985, the CCA has to first ensure that the MP concerned has no accommodation available in the said exclusive pools of houses earmarked for the Lok Sabha and Rajya Sabha M Ps. That exercise was obviously not undertaken in the present case while making allotment on 2nd June 2010 in favour of Respondent No. 3 of the accommodation at 60 Ashoka Road.

41. Thirdly, the impression given to the Supreme Court in the various affidavits filed by Respondent No. 2 in the S.D. Bandi case was that the occupation of a General Pool accommodation by an MP was unauthorized. Significantly, in the affidavit dated 14th November 2005, which was filed after the OM dated 24th

October 1985 was issued, no mention was made of the said OM. It is only with the second affidavit dated 31st August 2006 that the said OM was placed on record. The said Guidelines do not give an MP a right to a General Pool accommodation. It is a matter of discretion to be exercised by the CCA. There have to be special reasons disclosed in the file for making such allotment in favour of an MP overriding the superior claims of Government servants who are in the waiting list for accommodation for several years. The CCA will have to consider all relevant materials including the wait list position in respect of the accommodation in the General Pool, the wait list position if any of the M Ps, the availability of houses in the pools meant for M Ps and other incidental factors.

42. Fourthly, in para 13 of the affidavit dated 31st August 2006 filed in the Supreme Court, it was stated by Respondent No. 2 that the CCA has regularized allotment of accommodations given to the M Ps who were occupying them "above their entitlement." Clearly, the question of allotting a house to an MP from the General Pool "below" the entitlement of such MP was not considered to be within the domain of the CCA at all.

43. Thus, the powers of the CCA to make allotment in terms of the OM dated 24th October 1985 is to be understood in the context of the orders passed by the Supreme Court in S.D. Bandi case. Even though this Court is not been called upon to pronounce on the validity of the said OM dated 24th October 1985, and even assuming that it is constitutionally valid, the discretionary power of the CCA to allot an accommodation to an MP from the General Pool meant for Government servants in terms of the OM dated 24th October 1985 cannot be lightly exercised. In other words, the said discretionary power has to be coupled with a duty to act responsibly. The reasons that weighed with the CCA to justify the exercise of the powers there under have to be disclosed. The decision to allot a General Pool accommodation to an MP can cause severe prejudice to a Government servant who has been waiting for many years for accommodation. The comparative period of waiting by an MP vis-à-vis a government servant for accommodation would be a relevant factor. The allotment of houses from the General Pool consecutively to M Ps would, for instance, be unjustified as that would frustrate the chances of allotment of government servants who have after several years reached the top of the waiting list.

44. In the present case, there is no justification shown in any of the affidavits filed by Respondent No. 2 for the allotment made from the General Pool in favour of Respondent No. 3 by the impugned order dated 2nd June 2010. No enquiry was made from the Secretariat of the Lok Sabha or Rajya Sabha to ascertain if there was any accommodation available in either of their pools for allotment to Respondent No. 3. Going by the affidavits filed by Respondent No. 2 in the Supreme Court in the S.D. Bandi case, the allotment made by CCA to Respondent No. 3 of a General Pool accommodation could not be sustained unless there existed some special reasons. The impugned order dated 2nd June 2010 issued by Respondent No. 2 allotting the General Pool accommodation at

60 Ashoka Road in favour of Respondent No. 3 is, in the considered view of this Court, unsustainable in law.

Balancing equities

45. It was argued on behalf of Respondent No. 3 that since he was not aware of the order dated 6th October 2010 and was handed over the possession slip on 19th November 2010, he bonafide occupied the house at 60, Ashoka Road having given up his earlier rented accommodation. He submitted that Respondent No. 3 would be put to tremendous inconvenience, if he is now asked to vacate the premises at 60, Ashoka Road for no fault of his.

46. This Court is of the view that equities in such a situation can be balanced by permitting Respondent No. 3 to stay on at 60, Ashoka Road for a period of three months from today, during which period Respondent No. 2 as well as Respondent No. 3 will ascertain from the Secretariat of the Lok Sabha if any vacant accommodation is available in the Lok Sabha Pool for allotment to Respondent No. 3. If available, Respondent No. 3 will shift to such accommodation within the said period of three months. If, for some reason, no accommodation is available in the Lok Sabha Pool, Respondent No. 3 will nevertheless vacate the premises at 60, Ashoka Road within three months from today. It would be open to Respondent No. 3 in such event to make a proper application stating the special reasons why his case for allotment of a house should be considered in terms of the OM dated 24th October 1985. The CCA will decide his entitlement in accordance with the law as explained by this Court in this order.

47. As regards the claim of the Petitioner to a C-II type accommodation, it has already been noticed that the Petitioner is willing to take a D-II type accommodation, below his entitlement, subject to such flat being on the ground floor. The case of the Petitioner shall once again be considered by Respondent No. 2 in the light of the application made by him and the preferences given by him. If the alternative accommodation offered by Respondent No. 2 in para 10 of the second additional affidavit dated 12th January 2011 is still available it would be open for the Petitioner to opt for any one of the available accommodation within a period of ten days from today. If he does so opt, then Respondent No. 2 will issue an appropriate order formalizing the allotment of such accommodation in favour of the Petitioner within two weeks thereafter. If he does not so opt, the Petitioner will submit a proper application in the prescribed format within the next two weeks for claim for an out-of-turn allotment on medical grounds. If such application is made within two weeks it will be considered by the Medical Board of Respondent No. 2 within a further period of three weeks thereafter. The Petitioner will be communicated within two weeks thereafter the decision of Respondent No. 2 both on his claim for an allotment in his own turn as well as his claim to an allotment on out-of-turn basis.

The Contempt Petition

48. As regards the contempt petition, this Court is not satisfied with the

explanation given by Respondent No. 2 regarding its understanding of the status quo order passed by this Court on 6th October 2010. In a technical sense, the status quo order continued only till the next "hearing" of the case after 6th October 2010. However, the next "effective" hearing of the case by this Court took place only on 16th December 2010. Thereafter, from the point of view of Respondent No. 2, it could not have presumed that the status quo stood vacated on 9th November 2010. The note on file shows that this was not even the understanding of Respondent No. 2. The stand of Respondent No. 2 is that its counsel failed to inform it of the status quo order. The note of 26th November 2010 shows that when Respondent No. 2 realized the correct legal position, it decided that the allotment slip issued to Respondent No. 3 should be kept in abeyance. In the circumstances, the plea put forth by learned ASG that the status quo order passed on 6th October 2010 stood vacated on 9th November 2010 and, therefore, there was no disobedience of the said order when Respondent No. 3 was put in possession of the accommodation at 60 Ashoka Road, is an afterthought. Consequently, this Court does not consider it necessary to discuss the decisions cited on the automatic vacation of the status quo order on 9th November 2010.

49. This contempt petition highlights the difficulties faced by Courts in general in getting their orders implemented. The judiciary has to depend on the State machinery for the implementation of its orders. It is on this implicit understanding that the legitimacy and efficacy of the legal system depends. If the mandatory orders passed by Courts, including the High Court, requiring action to be taken by the State are not communicated to the concerned officials or when communicated are not acted upon then it would render the power of the Court futile and frustrate the working of the judicial system. Much therefore depends on prompt obedience of court orders by the State authorities.

50. With a view to ensuring that interlocutory orders sought against the central or state government or state entity are not issued ex parte, this Court requires, through a practice direction issued in that behalf, that copies of all such petitions seeking interim relief's are served in advance on the standing counsel for the concerned government or state entity. Thus every effort is made to ensure that an interlocutory order granting stay or status quo is passed only after hearing counsel for the government or a state entity.

51. Even in this case no order was passed on 27th September 2010, the first date that the writ petition was listed. On that date this Court observed in its order that if no instructions of the Respondents to their counsel were forthcoming, or no reply was filed, by the next date, "the application for interim relief will nevertheless be considered on the next date of hearing." Since neither a reply was filed nor instructions received by counsel on the next date i.e. 6th October 2010 a status quo order was passed in the presence of counsel for Union of India. A copy of that order was also directed to be given dasti (by hand) to enable all the counsel to obtain an official copy of the order immediately. It was

expected that the counsel for the Union of India would, after obtaining a copy of the order, send it to Respondent No. 2 forth with. A copy of that order could also have been downloaded from the website of the High Court. It was also expected that counsel for Respondent No. 2 would have informed it of the status quo order on the same day telephonically as well. It is difficult to believe that counsel for the Union of India did none of this. The explanation offered in the affidavits filed in the contempt petition to the effect that counsel for the Union of India did not in fact communicate to Respondent No. 2 the status quo order dated 6th October 2010 passed by this Court is not convincing.

52. Interestingly the note of 26th November 2010 shows that there was a conference held with the Government counsel by the officers of Respondent No. 2 on 8th November 2010. Yet the Directorate of Estates claims not to have been informed even on that date of the status quo order dated 6th October 2010. This is unbelievable. By 8th November 2010, the possession of the accommodation at 60, Ashoka Road had not been handed over to Respondent No. 3. Having decided on 26th November 2010 to keep the allotment in favour of Respondent No. 3 "in abeyance", the correct course for Respondent No. 2 to adopt would have been to apprise Respondent No. 3 of the status quo order of 6th October 2010 and require him to hand back the possession of 60 Ashoka Road to Respondent No. 2, pending further orders of this Court. That this was not done, is a further pointer to the casualness with which Respondent No. 2 has reacted to this Court's status quo order even after becoming aware of it.

53. Thus by a combination of factors, this Court's order dated 6th October 2010 has been frustrated and it has been presented with a *fait accompli*. This Court is constrained to express its displeasure and cautions Respondent No. 2 to ensure that no such omission occurs in future.

54. As far as Respondent No. 3 is concerned, this Court is unable to find that he willfully disobeyed the status quo order dated 6th October 2010. It is a fact that notice in the writ petition was not served upon Respondent No. 3 earlier than on 19th November 2010. It is possible, therefore, that he was not aware of the status quo order dated 6th October 2010 when he took possession of the accommodation at 60, Ashoka Road. The contempt proceedings against Respondent No. 3 are dropped.

Conclusion

55. The writ petition and the contempt petition are disposed of in the following terms:

(i) The impugned order dated 2nd June 2010 issued by Respondent No. 2 allotting the General Pool accommodation at 60 Ashoka Road in favour of Respondent No. 3 is held to be unsustainable in law and is accordingly quashed.

(ii) Respondents 2 and 3 and the Petitioner will abide by the directions issued in paras 44 and 45 of this judgment.

(iii) The contempt petition is disposed of in terms of paras 53 and 54 of this judgment.

(iv) Costs of these petitions in the sum of Rs. 5,000 will be paid by Respondent No. 2 to the Petitioner within a period of four weeks.