
(1995) 12 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 22132 of 1995

Jag Pal and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 20-12-1995

Acts Referred:

Citation : (1995) 12 AHC CK 0042

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—The petitioners have claimed that they are living in different quarter in new Idgah Colony, Kanpur, meant for weaker section of the society specially industrial workers. The rent was at Rs. 10 per month. By a Circular dated 1661993, which is Annexure1 to the writ petition, the rate of rent was fixed at Rs. 10 for those who are in the basic Payscale upto Rs. 350 and Rs. 12 for those who are above Rs. 350 but below Rs. 500 and Rs. 17.50 for those who are in the Basic Payscale of Rs. 500 and above. The said facility was also extended to other employees of the Government aided schools, colleges and Universities etc., by letter dated 3051974, which is Annexure2 to the writ petition. By letter dated 1541978, which is Annexure3 to the writ petition, the Government had directed the Labour Commissioner for realising arrears from the occupants in reasonable instalments.

2. By an order dated 2991990 the Labour Commissioner was asked to realise the rent at the enhanced rate from such occupants who were not regular allottees. The said letter is dated 29111990, which is Annexure4 to the writ petition. In the said letter rent for one room was to be charged at the rate of Rs. 125 per month while for two rooms the rate was Rs; 235 per month. It is this order, the petitioners have challenged on the ground that the petitioners being workers hailing from the weaker category, they are being discriminated upon with those who are regular allottees, though belonged to the same class. Further question that was raised is that the accommodation having been provided to the weaker

sections of the society out of the welfare scheme, cannot be utilised for commercial purposes and rent cannot be charged at such higher rate of rent. The enhancement of rent at the rate mentioned in Annexure 4 to the writ petition, is arbitrary and oppressive and violative of natural justice. It has been claimed that the petitioners are admittedly in occupation for a long time. Therefore, they should be treated as deemed tenant. Therefore, their occupation is regular and, therefore, the said order as contained in Annexure 4 to the writ petition, cannot be applied in their case.

3. Sri S. N. Dubey, learned counsel appearing on behalf of the petitioners that there has been 100% enhancement which is wholly arbitrary and excessive and that the imposition is discriminatory as between the regular allottees and the petitioners.

4. Admittedly the petitioners are not allottees of those quarters. Some how or other they have entered into the accommodation. They have not disclosed as to in which manner they have come to occupy the said quarters. They have based their claim only on the ground that they are occupying the said quarters for a long time and, therefore they should be treated as deemed tenant. Therefore, admittedly, the petitioners are not regular allottees. Therefore, their occupation cannot be said to be authorised occupation. If such occupation is not effected by way of allotment, it cannot be said that there was a privity of contract between the Government and the petitioners. Therefore, the petitioners do form a different class other than the regular allottees. Therefore, it cannot be said that by charging different rate of rent from the petitioners who are not allottees the Government is discriminating between the petitioners and regular allottees.

5. Admittedly, the petitioners not being allottees their occupation cannot be said to be authorised. Therefore, the petitioners are liable to be evicted under Public Premises (Eviction of Unauthorised Occupants) Act. Instead of resorting to the process of eviction the Government has sought to charge rent at the rate prescribed. This fact is also required to be noted.

6. The rate of rent, as has been fixed by Annexure 4 to the writ petition, by all reasonable calculation cannot be said to be unreasonable or excessive. Even then the petitioners having not disclosed any ingredient of unreasonableness, they have not made out a case that they have been allotted this quarter on the basis of their payscales. The petitioners not being allottees and having been in unauthorised occupation, is liable to pay damages. Nothing has been disclosed to show that the rate fixed is arbitrary and excessive.

7. Fixation of rate of rent is not the domain of the court. The policy of charging different rate from nonallottees cannot be subjectmatter with which court is concerned. Such an action is in the nature of legislation with which court does not concern itself and rules of natural justice do not run in the sphere of legislation, is the consistent view reflected in various judicial pronouncements. Reference may be made in the case of Union of India v. Cynamid India Limited,

AIR 1973 SC 1802 ; Bates v. Lord Hail sham of Marylobone, (1972) 1 WIR 1373. In Cynamidle India (supra), the Supreme Court observed :

"The second observation we wish to make is, legislative action, plenary or subordinate is not subject to rules of natural justice."

In the case of Saraswati Industrial Syndicate Limited v. Union of India, AIR 1975 SC 460 : (1974) 2 SCC 630 : (1975) 1 SCR 956, the Supreme Court observed :

"Price fixation is more in the nature of legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price." .

In Cynamidle India (supra), the Supreme Court held :

"Price fixation is neither the function nor the forte of the court. We concern ourselves neither with the policy nor with the rates."

It is now well established by reason of various decisions that the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. The principle does not take away from the State the power of classifying persons for legitimate purposes. Admittedly even classification is in some degree likely to produce some inequality, and mere production of inequality is not enough. Differential treatment does not "per se" constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for the differentiation. If a law deals equality with members of a well defined class, it is not obnoxious and it was not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left but would not render the legislation which has been enacted in any manner discriminatory and violative of Article 14. Article 14 prohibits class legislation and not reasonable classification for the purposes of legislation. If the legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a "welldefined class", it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons.

8. It is now a settled law that in order to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis ; such as, geographical or according to objects or occupation or the like. What is

necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Article 14 does insist that legislative classification should be scientifically perfect or logically complete. Mere differentiation or inequality of treatment or inequality of burden does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary ; that it does not rest on any rational basis having regard to the object which the Legislature has in view.

9. It is by now also well settled that the burden of showing that a classification rests upon an arbitrary and not reasonable basis is upon the person who impeaches the law as a violation of the guarantee of equal protection. Further, if any state of facts can be reasonably conceived that would sustain the classification, the existence of that state of facts at the time the law was enacted must be assumed. Allegation must be specific, clear and unambiguous and must give particulars. Throwing out vague hints that there may be other instances of like nature which the impugned legislation has left out, is not enough ; such instances must be specified and it must be proved that the selection by the legislature has been arbitrary and has no reasonable relation to the object to be achieved, by the statute. It is for the petitioner to show that the persons or objects as between, whom the Legislature is alleged to have discriminated, are similarly situated.

10. In the present case the petitioner complained that they are being discriminated with the allottees when they admitted that they are not allottees. "A legislative measure does not concern it with the facts of an individuals case. It is meant to lay down a general rule applicable to all persons or objects or transactions of a particular kind or class." *Union of India v. Cynamide India Limited*, (supra).

11. In the present case the nonallottees are separate class from the allottees and is clearly distinguishable from the allottees. Therefore, it cannot be said that such classification hits Article 14 of the Constitution.

12. Now let us examine the question that the rates are discriminatory and have been fixed arbitrarily. Admittedly the nonallottees namely, the petitioners being separate class, therefore, different rates may be fixed for them. The petitioners have not furnished any particular dates or any calculation as how the rates are arbitrary since nonallottees are of different class. Therefore fixation of rates cannot be termed as discriminatory. Even if there were material for consideration with regard to fixation of rates even then I am afraid that I cannot go into those questions. In the case of *Union of India v. Cynamide India Ltd.* (supra), it was observed:

"These are not matters for investigation in a petition under Article 226 of the Constitution or under Article 32 of the Constitution. Despite the pressing invitation of Sri Diwan to go into facts and figures and his elaborate submissions

based on facts and figures, we have carefully and studiously refrained from making any reference to such facts and figures as we consider it outside our province to do so and we do not want to set any precedent as, was supposed to have been done in Premier Automobiles though it was not so done and, therefore, needed explanation in later cases."

13. In that view of the matter I am unable to agree with the submissions made on behalf of the petitioners. The writ petition, therefore, fails and as such, is dismissed.

There will be, however, no order as to costs.