
(2013) 01 DEL CK 0302

In the Delhi High Court

Case No : Writ Petition (C) 9556 of 2009 and CM No. 7558 of 2009

Kokila Dhingra

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0302

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Sudhanshu Batra with Mr. Arvind Gupta and Mr. Rahul, with Petitioner in Person, for the Appellant; A.S. Singh, for the Respondent

Judgement

Rajiv Shakdher, J.—This is a writ petition, by which, challenge is laid to two orders passed by the respondents. The first order is dated 16.04.2009, the second being order dated 20.05.2009. The petitioner is aggrieved by the fact that she has been asked to shift from the present government accommodation allotted to her, which is, suite No. B-107, Curzon road Hostel, Kasturba Gandhi Marg, New Delhi (in short the Curzon Road accommodation) to D-004, Pragati Vihar Hostel, New Delhi (in short the Pragati Vihar accommodation). It may be pertinent to note that the petitioner was earlier given a similar accommodation being: Suite No. 210, Tagore Road Hostel, New Delhi (in short the Tagore Road accommodation).

2. The order of shifting dated 16.04.2009 is followed by an order of cancellation which, as indicated above, is order dated 20.05.2009. The order of cancellation has been passed since, the petitioner did not comply with the earlier order dated 16.04.2009, whereby she was required to shift to the new accommodation i.e. the Pragati Vihar accommodation.

3. The background in which the present writ petition has been filed is briefly as follows:

3.1 The petitioner is presently working as a personal assistant in the Ministry of

Defence, in the office of the Chief Administrative Officer, Jt. Secretary (Training).

3.2 The petitioner was allotted the Curzon Road accommodation in 2006. It appears that over the period of time she had complaints with the occupants of the servant quarters allotted to other residents, because of which, she appears to have filed several complaints with the Resident Welfare Association (in short RWA). As a matter of fact, the petitioner, it appears, has also lodged a FIR dated 31.10.2008 bearing No. 343/2008 u/s 323/451/427/506/34 of the Indian Penal Code, 1860 (in short the IPC). This FIR is lodged with the Police Station Tilak Marg, New Delhi.

3.3 A complaint was also lodged by the petitioner with the Chairman, Delhi Commission for Women (DCW). This complaint was lodged on 28.11.2008. In the said complaint there are allegations of atrocities allegedly meted out to her by other residents of the Curzon Road accommodation.

3.4 The aforesaid complaint has been followed up with representations dated 19.12.2008 and 23.12.2008 to the Ministry of Urban Development, Government of India. The first representation was addressed to the Additional Secretary, Government of India in the said ministry, while the second representation was addressed to the Secretary, Government of India of the very same ministry.

3.5 It appears that based on the petitioner's complaints to the Chairperson of the DCW, a communication was issued on 04.02.2009 by the Chairperson of the DCW to the Ministry of Urban Development calling upon it to cancel the order of shifting issued to the petitioner. Quite obviously this referred to an order of shifting issued to the petitioner prior to 16.4.2009. Pertinently, there is no reference to an earlier order of shifting in the present writ petition. As indicated above, the only order referred to, is the order dated 16.04.2009.

3.6 It appears that the official respondents, however, passed the impugned order dated 16.04.2009 calling upon the petitioner to relocate herself from the Curzon Road accommodation to the Pragati Vihar accommodation. In response to the above order dated 16.04.2009, the petitioner wrote to the respondents on 20.04.2009, seeking to explain her side of the story. On the petitioner being queried who was present in Court, she admitted that there was another order passed prior to 16.4.2009. Pertinently, if any such order was passed, it is not placed on record.

3.7 The aforesaid was followed by a legal notice dated 24.04.2009, issued on behalf of the petitioner, by her advocate, to the respondents. The respondents, however, on 20.05.2009 passed the second impugned order, whereby her allotment qua the Pragati Vihar accommodation was cancelled on account of her failure to comply with the first order which required her to shift from the Curzon Road accommodation to the Pragati Vihar accommodation.

4. Mr. Batra, learned senior counsel, who was appointed as an amicus by me vide order dated 31.07.2012, submits that the impugned orders deserve to be set

aside on the following grounds; each of which have been duly elaborated by him:

(i) That they have been passed in breach of principle of natural justice, in as much as, no opportunity was given to the petitioner to explain her case. This submission was further elaborated by Mr. Batra by pointing out that, not only was no opportunity given, even the material on the basis of which the impugned orders were passed, was not supplied to the petitioner. It is Mr. Batra's submission that the orders seem to have been passed on the basis of complaints of the residents, which were not supplied to the petitioner so that she could place her version of the case before the concerned authority.

(ii) It is Mr. Batra's submission that the primary grievance of the petitioner was vis-?-vis the illegal sub-letting of the servant quarters by other residents. It is Mr. Batra's submission that because of the presence of illegal occupants, there is a nuisance in the Hostel accommodation.

(iii) Mr. Batra submits that the impugned orders seem to have been passed on the basis of the decision of the National Commission for Scheduled Castes (in short NCSC). It is his submission that the petitioner became aware of the same, only on taking recourse to the provisions of the Right to Information Act, 2005 (in short the RTI Act). For this purpose, he drew my attention to the minutes of meeting dated 27.02.2009, wherein the officials of the Ministry of Urban Development, were present. It was Mr. Batra's submission that the petitioner was not called by the NCSC, to the said meeting. The NCSC, it appears, at the said meeting directed relocation of the petitioner from the Curzon Road accommodation and, it is because of this direction that the impugned orders were passed.

(iv) It is Mr. Batra's submission that there has been a complete abdication of authority by the Directorate of Estate, which, according to him, has acted at the behest of the NCSC.

5. On the other hand, Mr. Singh, who appears for the respondents, has largely relied upon the counter affidavit filed on behalf of the said respondents. He has also drawn my attention to the report of the RWA dated 07.07.2008. Besides the said report, reliance has also been placed on the findings of a group appointed by the President of the RWA; which are recorded in a report dated 21.07.2008. Mr. Singh submits that a bare perusal of the report would show that the petitioner being a single person is extremely insecure and is perhaps, as recorded in the report, suffering from a "zero tolerance" syndrome. He has taken pains to refer to various complaints lodged by the petitioner which he says show the mental disposition of the petitioner, i.e., inability to co-exist with her neighbours.

6. Before I proceed further, I may only note that a rejoinder had been filed on behalf of the petitioner as late as on 15.01.2013. Learned counsel for the respondents says that he has not received a copy of the said rejoinder. I have perused the rejoinder. It is a reiteration really of the stand taken in the writ petition. Apart from the allegations against the illegal occupants of servant

quarters, as made in the writ petition, she has directed her ire against the Chief Welfare Officer, one Mr. Sujit Datta, who incidentally, at the relevant time, was also the resident of the same hostel accommodation, having been allotted an apartment at A-808, Curzon Road accommodation.

7. I must also at this stage indicate that Mr. Batra did, in his submissions, point to the fact that Mr. Sujit Datta was also the Chief Welfare officer, who had dealt with the petitioner's case when she was shifted out of the Tagore Road accommodation to the present accommodations. There are some vague allegations of bias qua the said Chief Welfare Officer. In view of the reasons that I have set out hereinafter, it may not be necessary to refer to the petitioner's rejoinder.

8. Having heard the learned counsels for the parties, it is noted that the broad events set out above, are not in dispute. What though emerges upon perusal of the record is that, there are, several complaints which the petitioner has lodged with the RWA. The complaints not only relate to the illegal occupants of the servant quarters but are also relatable to the day-to-day incidents in the Hostel accommodation at Curzon Road.

8.1 The perusal of the records does show that the RWA also appears to bear a grievance against the petitioner qua her conduct. A few examples of the nature of complaints that the petitioner has made; none of which are denied as these apparently form part of a complaints register maintained by the RWA; would show her inability to adjust to her neighbourhood: (i) a neighbour walking in the corridor and making noise with his/her slippers; (ii) servants or car cleaners talking on the mobile phone; (iii) drivers chatting with each other near her house; (iv) listening to music on the mobile phone in her neighbourhood; (v) Children playing in her immediate neighbourhood; and (vi) barking of street or pet dogs at odd hours near her place of residence.

8.2 I have put these instances to the petitioner, who is present in court, to which her response is that these are complaints made by her as she is unable to live in peace in view of the illegal occupants of the servant quarters making a nuisance of themselves in and around her apartment.

9. I do not, for the present, wish to evaluate merits of the report of the RWA dated 07.07.2008 or the findings of the group appointed by the RWA, as at present the core issue raised before me by the petitioner is the non-adherence to the principles of natural justice, in her case, by the respondents.

10. Suffice it to say, however, that there does seem to be a difficulty in the petitioner co-existing with her neighbours; though who exactly is at fault, is not known. Therefore, above apart the position in law would be that she should be given due opportunity to explain her case. Mr. Singh, however, suggests that Rule 317-B-21 under which the impugned orders have been passed do not require that hearing be given to the petitioner.

10.1 To examine this contention, one would, thus, have to examine the scope and effect of Rule 317-B-21; which reads as follows:

....QUARRELS BETWEEN NEIGHBOURS-SHIFTING OF

It has since been decided that:

(1) The complaints about the quarrels between neighbours in government colonies would be examined in details by the Chief Welfare officer, Ministry of Home Affairs, who would make his recommendations to the Directorate of Estate.

(2) The allottee of Government accommodation found guilty would be shifted to another quarter in the same locality but at a distance from the residence of the allottee with whom he had picked up quarrel: or to another nearly or remote locality depending upon the nature of his offence.

(3) If the allottee so shifted to another place again picked up quarrel with his neighbours, his allotment would be cancelled and he would be debarred from allotment of Government accommodation for a period varying from one to two years depending upon the nature of the offence.

(4) If the Government servant after expiry of one or two years as the case may be, is allotted Govt. accommodation and again picks up a quarrel with his neighbour(s) and is found guilty, he would be declared ineligible for allotment of Govt. accommodation permanently...

10.2 A perusal of the said Rule extracted hereinabove would show that, in case, there are complaints about quarrels erupting between neighbours in government colonies, the matter, in the first instance, is examined by the Chief Welfare officer, Ministry of Home Affairs, who makes his recommendations to the Directorate of Estate. In the event the allottee is found guilty, he is shifted to another quarter in the same locality, though at a distance of the allottee with whom he has picked up a quarrel. There is also a provision to relocate such an allottee to a remote locality depending on the nature of the offence. If, however, there is a second instance of such nature, the concerned authority is empowered to cancel the allotment and also debar the allottee from being allotted a government accommodation for a period varying between one and two years, once again, depending on the nature of the offence. If, though, the delinquent government servant is allotted an accommodation after the period of debarment is over and, there is another instance of like nature, on being found guilty, the concerned officer has the power to declare such a government servant ineligible for government accommodation permanently.

10.3 The Rule thus envisages a calibrated approach to a problem which perhaps is existing in most colonies, whether government or private. The issue really before me is that: does the Rule envisage grant of a minimum opportunity to the petitioner, in consonance with the rules of natural justice, before a government servant is found guilty of infraction of the above referred Rule.

10.4 It is well settled that rules of natural justice are implied even if there is no provision in the Rules, if the action complained of results in serious civil consequences. For this, one does not have to cite far too many authorities. As a matter of fact the said principle applies to both the administrative actions as well as the quasi-judicial functions. Therefore, if an authority is to be cited, one could helpfully look at the principles enunciated in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . Also see observation in *Assistant Commissioner of Income Tax vs. Ravi* , which is reproduced hereinbelow:-

...It is quite plain, upon reading of the provisions of Sub-section (3) of Section 92CA, that the Legislature has clearly cast an obligation on the Transfer Pricing Officer to accord an oral hearing to the assessee. The submission of the Learned Additional Solicitor General to the contrary is not acceptable to us. It has been reiterated time and again by courts in India and other jurisdictions all over the world that authorities which have a power to decide and whose decisions would prejudice a party, entailing civil consequences, would be required to accord oral hearing even where the statute is silent. See *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ...

11. In the present case, while this was quite clearly a second infraction by the petitioner, in as much as, she was shifted from Tagore Road accommodation to Curzon Road accommodation, and is now to be shifted by virtue of the impugned order to the Pragati Vihar accommodation, the respondents appear to have taken a lenient view of the matter. In as much as, the first impugned order only directs shifting of the petitioner from the Curzon Road accommodation to Pragati Vihar accommodation, the government could have taken a harsher view of cancellation as also debarment. This, however, is premised, as indicated above, on the respondents complying with the principles of natural justice. The principles of natural justice would require, in the very least, a notice and an opportunity of hearing. In the present case, there was neither any notice nor an opportunity of hearing. The respondents passed the first impugned order on 16.04.2009, and thereafter, proceeded to pass the second order, which is really a consequential order of cancelling the accommodation since, the petitioner failed to comply with the directions contained in the first order.

12. Apart from the above, there is something to be said qua the submission made by Mr. Batra that, the impugned order dated 16.04.2009 was triggered by the decision taken by the NCSC at the meeting dated 27.02.2009. It is not denied by the respondents that the petitioner was not present at the said meeting. The decision taken at the said meeting is in the form of a direction to the respondents. This is quite evident from the minutes of the said meeting; a relevant part of which, for the sake of convenience, is extracted hereinbelow:

....3. On the basis of deposition of the petitioners, the facts on records and discussion, the commission desired that Ms. Kokila Dhingra be shifted from the premises of the Curzon Road Hostel, KG Marg, immediately in public interest.

The Directorate of Estate, Ministry of Urban Development may forward an action taken report as above, within 30 days from the date of hearing of the case.

(emphasis supplied)

12.1 Clearly, NCSC at its meeting of 27.2.2009, issued a directive to the respondents, without hearing the petitioner. There are several lacunae in approach adopted: first and foremost as indicated above no notice and no hearing was accorded to the petitioner. Second, acting under dictation of another authority; resulted in abdication of its duty. Third, nothing is shown to demonstrate that NCSC is possessed of, such like, power of the kind it seeks to exercise in this case qua the petitioner. In this behalf reference be had to the provisions of Article 33 and 5(b)(e) of the Constitution of India.

13. Mr. Singh, learned counsel for the respondents, during the course of submission tried to defend the position of the respondents by reiterating with all the emphasis at his command that the said Rule, neither requires any notice to be given nor, does it envisage hearing in a matter of like nature. Mr. Singh submitted that all that the Rule required was that a report of the committee be generated, which was done in the present case, and therefore, no fault could be found qua the actions of the respondents.

14. I tend to disagree with this submission of Mr. Singh. As indicated above, the rules of natural justice would have to be read into Rule 317-B-21. As a matter of fact, the committee's report ought to have been put to the petitioner. The petitioner ought to have been heard in response to the findings of the committee. I may also point out here that the report, to which Mr. Singh made a reference above, was the RWA's report dated 07.07.2008 and the findings of the committee dated 21.7.2008 appointed by the RWA, to which I have made a reference above. As a matter of fact Rule 317-B-21 requires, that the Chief Welfare Officer examine the matter, and thereafter make his recommendations available to the Directorate of Estate. Learned counsel for the respondents has not been able to show from the record that Chief Welfare Officer generated any such report and/or made any recommendations to the Directorate of Estate. I find from the record that there is a report of, one, Mr. G.P. Sarkar. As to the capacity in which this report was generated is not made known. I will assume for the moment that that the Chief Welfare Officer did examine the issue, and made recommendations to the Directorate of Estate for taking action qua the petitioner. This, still would not help the cause of the respondents, as no such report was made available to the petitioner.

15. Therefore, for the aforementioned reasons, the impugned orders are set aside. This will, however, not prevent the respondents from issuing a fresh show cause notice to the petitioner. If a show cause notice is issued, relevant material on the basis of which respondents propose to take action, will be supplied to the petitioner. Due opportunity will be given to the petitioner of being heard in support of her case. Thereupon, if necessary, the respondents would be free to

pass an appropriate order. The order, if any passed, shall be communicated to the petitioner within one week of the same being passed.

16. Needless to say, in view of the orders dated 16.04.2009 and 20.05.2009 having been quashed, the show cause notice issued to the petitioner under the Public Premises Act, 1971, shall also stand set aside. In so far as the decision taken in the minutes of the meeting of the NCSC dated 27.02.2009 is concerned, these can have no legal efficacy qua the petitioner. The respondents need not act on them, qua the petitioner, in view of the order passed today.

17. I make it clear, that any observation made by me hereinabove will not impact the case of either party in case respondents choose to issue a show cause notice to the petitioner and have it adjudicated upon in accordance with law.

18. Before I conclude, I must record my appreciation for the assistance rendered by Mr. Sudhanshu Batra, learned senior counsel and Mr. Arvind Gupta, Advocate in dealing with the matter. With the aforesaid observations, the writ petition is disposed of.