
(2009) 05 DEL CK 0500

In the Delhi High Court

Case No : LPA No's. 1611-1619 of 2006

Mr. B.K. Mathur and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0500

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : V.P. Chaudhary, G. Tushar Rao, in LPA Nos. 1611-1619 of 2006, Aradhna Mittal and Manu Nayar, in LPA Nos. 1738-1741 of 200, for the Appellant; Gaurav Duggal, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The appeals raise the issue of the entitlement of accredited journalists, newsmen & cameramen to occupy Press Pool accommodation of the Government of India till they continue to be so accredited.

2. It is the case of the appellants, who are journalists & cameramen, that it is as far back as in the year 1953 that the Union Cabinet took a decision to form a separate Press Pool for Government accommodation in Delhi for accredited journalists and Press cameramen. The appellants claim to have been allotted Government accommodation in terms of the guidelines formulated in the year 1953 and are being charged rent. The Supreme Court came to analyze the problems arising from irregularities in allotment of Government accommodation in Shiv Sagar Tiwari Vs. Union of India and others, . On this decision being pronounced in December 1996, the Government of India reviewed the guidelines for allotment of Government accommodation including in respect of the appellants. In this behalf recommendations were also sought from the Press Council of India (for short "PCI"). The appellants claim that the Government found that such journalists and Press cameramen were rendering useful and valuable service to the society and could, thus, be treated as a class in

themselves entitling them to Government accommodation at subsidized rates. The matter, however, got raked up, once again, on the new guidelines coming into force w.e.f. 8.3.2001. An amendment was also made to even these guidelines vide Office Memorandum dated 19.11.2001. In view of new guidelines having come into force notices were issued to the appellants dated 16.4.2001 on the ground that they had become ineligible to retain Government accommodation and were asked to vacate the same not later than 15.10.2001.

3. The appellants claim that the earlier existing guidelines had stood the test of time which did not require any modification and in any case the new guidelines could not have been applied to the appellants who were already in occupation of the Government accommodation as per the earlier guidelines. These guidelines are alleged to be also arbitrary, illegal and contrary to principles of natural justice & fair play resulting in miscarriage of justice. The appellants have sought to link the issue of their occupation of Government accommodation with freedom of press, which is an essential prerequisite for healthy and vibrant democracy. The Press Pool is stated to have been constituted in the year 1953 with 110 houses of type-IV being earmarked for it. The earlier guidelines provided for the houses to be allotted to such newsmen/cameramen who did not own any house in Delhi and the allotment was based on the recommendation of the Press Information Bureau (for short "PIB") and the Press Association of India (for short "PAI"). The basis of allotment is stated to be seniority of journalists in accordance with the accreditation with PIB and the rent was charged under FR 45-A.

4. The appellants claim that accredited journalists, newsmen and cameramen are those persons who have carried on their profession for a minimum period of five (5) years and only thereafter were they considered for accreditation by the Central Press Accreditation Committee (for short "CPAC"). Such accreditation is renewed on a yearly basis. The imposition of emergency in the year 1975 saw the Press Pool being scrapped but the decision to get the houses vacated was by and large not implemented and in 1977 the decision to abolish the Press Pool was scrapped. A further aspect pointed out by the appellants was that once a Press Pool accommodation was made available, the entitlement for retention of such Government accommodation did not cease even if a person later on acquires or builds a house. Some new guidelines are stated to have come into existence in 1990-91 vide Office Memorandums but they are stated not to have been made applicable to the appellants.

5. In Shiv Sagar Tiwari case (supra), the Supreme Court also sought suggestions from the PCI which suggested interim guidelines as per its report dated 8.6.1996. One of the suggestions incorporated in the interim report was that a uniform period of five (5) years be given for vacating the Government accommodation to all journalists if they did not have any accommodation in Delhi of their own and were liable to retain the Government accommodation in terms of those guidelines. These suggestions were taken note of by the Supreme Court but it was left to the Government to formulate its policy.

6. We may note that there is one set of appeals filed by such persons whose spouses or dependent children do not own any residential accommodation either in Delhi or adjoining areas but there is another set of appeals by persons who incur such a disqualification albeit after the allotment.

7. The appellants have sought to emphasize that the case of Ms. Amita Malik came before the Court but she was not actually given a Press Pool accommodation but was given an accommodation out of discretionary quota. The relevant Ministry with regard to formulating of new guidelines was not even consulted. Since notices were served on the appellants proceedings were initiated against the appellants under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

8. The appellants filed writ proceedings before this Court seeking to challenge the decision of the respondents. The interim order passed permitted the proceedings to go on before the Estate Officer though no final order was liable to be passed. The appellants claim to have also placed before the learned single Judge hearing the writ petition documents showing the composition of Cabinet Committee on Accommodation (for short "CCA") to contend that the Cabinet itself had not taken any decision to make the fresh guidelines and the CCA had not been delegated with the power to do so. The writ petitions were, however, dismissed by the impugned order dated 2.6.2006 giving rise to the present Letters Patent Appeals.

9. Learned senior counsel for the appellant has assailed the impugned judgement by contending that though it could not be disputed that the Cabinet had the right to delegate powers to the CCA, yet submitted that what is in issue is whether such delegation actually took place. The office order of the Government of India dated 4.11.1999 has been placed on record in terms whereof various Cabinet Committees were constituted including the CCA. The functions of the CCA have been specified as under:

Functions

(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 organization and rate of rent to be charged from them"

(iii) To consider the question of allotment of accommodation from the General Pool to the Members of Parliament;

(iv) To consider proposals regarding shifting of existing Central Government Offices to places outside Delhi and the location of new offices in Delhi; and

(v) to consider and decide upon proposals relating to:

a) revision of scales of accommodation to various categories of persons;

- b) revision of license fee for various types of Government Accommodation; and
- c) other matters, like allotment of accommodation to the various categories of Central Government servants from the Central Pool or Special Pool.

10. Learned senior counsel for the appellants contended that the Press Pool was not mentioned in the said list of functions and thus any decision relating to the policy of allotment under the Press Pool was not a function delegated to the CCA.

11. Learned Counsel for the respondents, on the other hand, referred to the Office Memorandum dated 24.10.1985 dealing with the subject of "Review of guidelines for allotment of general pool accommodation - Accredited Press Correspondents & Journalists" to emphasize that the so-called Press Pool is nothing but a part of the General Pool accommodation. The various clauses of the Office Memorandum were referred to emphasize that the eligibility provided for requirement not to own a house in his/her name or in the name of family members or dependents at the time of allotment and that the persons concerned should be withdrawing a salary of up to Rs. 3,000.00 per month. The tenure of allotment was set out in Clause (g) which provided for a period of up to three (3) years of such allotment and the position to be reviewed thereafter.

12. Learned Counsel pointed out that the review of guidelines was done by another Office Memorandum of 11.7.1990 where, once again, the same Clause (g) continued.

13. Learned Counsel for the respondents drew our attention to certain passages of Shiv Sagar Tiwari case (supra) more specifically paras 61 to 66. The Supreme Court noted that a need was felt by the Court requiring a fresh examination of the issue whether journalists occupying Government accommodation for a long period of time be permitted to continue indefinitely or some period is to be fixed; whether the existing eligibility and criteria/conditions need modification; and if so, in what manner. The views of the PCI have also been incorporated in the judgement. The accommodation as per recommendations was to be only for a limited period with the allottee not eligible for allotment of accommodation in the pool more than once. These suggestions of the PCI were to be kept in mind by the Government while making allotment for the Press Pool.

14. Learned Counsel, thus, submits that the subsequent Office Memorandum dated 8.3.2001 is nothing but guidelines in conformity with the directions contained in Shiv Sagar Tiwari case (supra).

15. Learned Counsel explained that the subsequent Office Memorandum dated 19.11.2001 made no modification except in respect of the financial eligibility.

16. Learned Counsel also drew our attention to the discussion in the impugned judgement dealing with the aspect of authority of the Cabinet Sub-Committee.

17. The learned single Judge noted that the constitution of the Standing Committees of the Cabinet and their functions is by virtue of powers exercised by

the Prime Minister under Sub-Rule 1 of Rule 6 of the Government of India (Transaction of Business) Rules, 1961. The learned single Judge has thereafter examined the effect of the directions of the Supreme Court in Shiv Sagar Tiwari case (supra) and concluded that if the phrase "out-of-turn allotment" was to be narrowly construed and applied to Government servants, journalists would fall in category (ii) for allotment of Government accommodation to various categories of non eligible persons and organizations. The increase and decrease in the Press Pool accommodation has also taken place as per decisions of the CCA.

18. We find from the various Office Memorandums referred to that really speaking the Press Pool accommodation is nothing but a part of the General Pool accommodation dedicated for allotment to accredited journalists/pressmen/cameramen. This is more than apparent even from the earlier Office Memorandum dated 24.10.1985. In the designated functions of the CCA specifically para (v) (c) "other matters, like allotment of accommodation to the various categories of Central Government servants from the Central Pool or Special Pool" is provided for. In para (ii) "allotment of Government accommodation to various categories of non-eligible persons and organizations and rate of rent to be charged from them" is also included. Further Clause (i) provides for the "terms and conditions to govern out-of-turn allotment of Government accommodation". It cannot be lost sight of that Government accommodation is meant for Government servants. In fact, we find no correlation between the independence of media and press with the provision of accommodation. These are actually non-eligible persons to whom Government accommodation is provided on account of certain decisions of the Cabinet. Accredited journalists, pressmen and cameramen are, thus, really non-eligible persons entitled to allotment of Government accommodation from a Special Press Pool forming part of the General Pool accommodation in terms of decision of the Government.

19. We are, thus, of the considered view that the plea of the learned senior counsel for the appellants that the guidelines laid down by the CCA being without empowerment by the Cabinet is without merit.

20. Learned Counsel for the appellants also urged that the revocation of license under the new guidelines as per notices issued, other than reference to new guidelines gives no reason. This plea is only stated to be rejected for the reason that the allotment itself was for a limited period of time which was kept renewed and once the new guidelines came into force fixing a maximum period of occupation with non-entitlement of renewal all that was required to be stated in the notice was the reference to the new guidelines. It is really not in question that as per the new guidelines the appellants would be ineligible.

21. Learned senior counsel for the appellants sought to make out a case that the appellants had no opportunity to assist the Supreme Court in Shiv Sagar Tiwari case (supra) and suggestions from only PCI were invited. This had resulted in an error in the suggestions being made by the PCI inasmuch as it has been stated

that such accommodation was provided to journalists who are compulsorily transferred from outstation to Delhi by their Newspaper to expect them to get breathing time to find out accommodation for themselves. In this behalf it is submitted that when applications are invited for accreditation it requires a minimum of five (5) years professional experience in that capacity. Thus, it could never be in the nature of a transient requirement. However, we find that the learned senior counsel for the appellants seems to ignore the other material fact that the allotment itself is for a limited period of time. The allotment is for five (5) years for category (I) and three (3) years for category (II) from the date of allotment after which the allottee would have to vacate the accommodation. This is the condition stipulated while inviting the application itself and is a material term of the letter.

22. We, thus, find no merit in the contention of the learned senior counsel for the appellants as the submission is contrary to the Memorandum inviting applications containing the material term, which reads as under:

iv) The duration of allotment shall be five years for category (I) and three years for category (II) from the date of allotment, after which the allottee will have to vacate the accommodation.

We may also note that there could be no legitimate expectation as the allotment was for a fixed period only.

23. Learned Counsel also sought to contend that these guidelines could only have prospective effect. Once again, there is no dispute about the abstract proposition but the prospective effect of the guidelines would only mean that the norms contained therein making a person eligible prospectively. The allotment to the appellants was never made for an unlimited period of time but for a limited period of time. The plea that they are entitled to continue occupation till they continue to be accredited has no force in law as it is not supported by any allotment document or office memorandums. In fact, the sum & substance of the contention of the learned senior counsel for the appellants is that since the accreditation is renewed on an yearly basis the occupation of accommodation is directly linked to such accreditation. Thus, till accreditation is withdrawn accommodation cannot be withdrawn.

24. We, however, find no such linkage making the occupation of accommodation co-terminus with accreditation either in the office memorandums or in the allotment terms.

25. An important aspect is that the PCI itself considered the matter of allotment to journalists. The PCI is the competent body which made suggestions. Such suggestions have been incorporated in Shiv Sagar Tiwari case (supra). Thus, it is abundantly clear that even the parent body feels that there should be certain restrictions on the period of occupation and the Government was expected to make guidelines in terms of such recommendations of the PCI in view of the observations made in Shiv Sagar Tiwari case (supra). The Government having

done so, we find no infirmity in the same.

26. Learned senior counsel for the appellants referred to the observations of the Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . In para 10 while referring to the judgement of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it was observed that there was an increasing expansion of the magnitude and range of governmental functions and thus more wealth consists of the new forms of property like contracts, licenses, quotas, etc. It was observed that some of these forms of wealth may be in the nature of privileges. The law had not recognized the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, the Supreme Court through various pronouncements had developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognized as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. Learned Counsel, thus, contended that the occupation of the appellants of Government accommodation is supported by the aforesaid principles.

27. We are, once again, constrained to reject the plea of the learned Counsel for the appellants. No doubt accommodation in a city like Delhi being scarce, fetters were put on rights to make out-of-turn allotments by the Government. This is the very basis of the pronouncement of the Supreme Court in *Shiv Sagar Tiwari case* (supra). Insofar as the journalists were concerned, once again, there is a discussion in the said judgement after obtaining recommendations of PCI. The guidelines of the Government are sequitur to the same. Even otherwise it cannot be said that only one set of journalists should have the exclusive privilege to continue to occupy the Government accommodation only because they continue to be accredited journalists.

28. The charts given to us show that the occupants have been in occupation of Government accommodation starting from 1956. In view of the modified policy most of the accredited journalists and cameramen have vacated the accommodation except the appellants. Other accredited journalists are waiting in the queue to get this accommodation which continues to be occupied by the appellants. The proceedings by the Estate Officer have not reached culmination because of interim orders. The appellants have, in fact, occupied for an extra period of almost seven (7) years in view of these legal proceedings.

29. We find no merit in the appeals which are dismissed with costs quantified at Rs. 5,500.00 for each of the appellants.