
(2009) 08 OHC CK 0050
In the Orissa High Court

Nalinikanta Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Citation : (2009) 108 CLT 477 : (2009) 2 OLR 587

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—The Petitioner challenges the legality of the order dated 24.07.2007 (Annexure-12) passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (for short "the Tribunal") in O.A. No. 1034(C) of 2003 by which the Tribunal has declined to interfere with the Order Dated 27.01.2003 passed by the Government in the Department of Water Resources directing the Petitioner to retain the quarters No. D/10 located in M.I. Colony, Unit-IX, Bhubaneswar till 30.06.2003 on payment of market rent.

2. The facts & circumstances giving rise to the present case are that the Petitioner is a government servant working as Junior Engineer in the Department of Minor Irrigation. While working as such under Minor Irrigation Division, Bhubaneswar at Khurda, he was allotted with quarters No. D/10 located in M.I. Colony, Unit-IX, Bhubaneswar. Vide deployment Order Dated 28.02.2002 (Annexure-3) the Petitioner had been directed to be deployed as Junior Engineer against vacancy in M.I. Section, Laxmipur under M.I. Division, Rayagada. But, Opp. Party No. 2 vide its Order Dated 14.03.2002 (Annexure-4) directed to keep the said Order Dated 28.02.2002 (Annexure-3) in abeyance. Since the post of Junior Engineer, M.I. Division, Bhubaneswar had been abolished, a stop-gap arrangement was to be made adjusting the Petitioner against the said vacancy in the same Division until further orders by Order Dated 21.03.2002 (Annexure-5). In the order of deployment dated 28.02.2002 (Annexure-3) which was subsequently cancelled by O.P.No.2 vide its Order Dated 28.12.2002 (Annexure-6) it was specifically mentioned that the Petitioner was allowed to

continue at M.I. Section, Nayagarh. On 31.07.2002 (Annexure 7), the Petitioner made a representation to the Opposite Parties with a request to allow him to retain the quarters in question for that current year. Thereafter, the Superintending Engineer, Central Circle, Minor Irrigation, Bhubaneswar, Khurda (OP. No. 3) vide his Order Dated 19.08.2002 (Annexure 8) requested the Chief Engineer to allow the Petitioner to retain the government quarters in M.I. Colony, Unit-IX, Bhubaneswar at least till the end of that year with usual rent. Subsequently, on 27.01.2003 Government In Water Resources Department vide its order under Annexure 11 considering the representation of the Petitioner allowed him to retain the said quarters till 30.06.2003 on payment of market rent. Being dissatisfied with the order passed under Annexure-11, the Petitioner filed O.A. No. 1034(C) of 2003, which was dismissed by the Tribunal. Hence this petition.

3. Mr. Budhadev Routray, Learned Counsel appearing for the Petitioner submits that pursuant to the order of deployment/transfer dated 28.02.2002, if the Petitioner would have been posted in any other place in the same KBK districts like Kalahandi & Nabarangpur he would have been allowed to retain the said quarters at normal rent, if he so wished in view of Circular/Resolution No. 24003 dated 16.08.2001 on fulfillment of certain conditions, i.e., on the grounds of children's education & health of family members. In the said resolution, it has been clearly provided that this facility shall be available throughout the State of Orissa including Cuttack & Bhubaneswar. The above policy decision of the Government is applicable to the Petitioner since he was in occupation of the government quarters prior to his transfer in question to KBK districts. The retention of quarters by the Petitioner on the grounds health & children's education with the permission of the Government can never be treated as unauthorized & the Petitioner is not liable to pay market rent/five times of Standard Licence Fee. Therefore, the action of the Opposite Parties asking the Petitioner to pay market rent is arbitrary & contravenes the provisions of Clause 10(ii) of the Resolution dated 18.09.1998 issued by Government of Orissa in General Administration Department under Annexure-9. It was further argued that Annexure-13 certifies that the Petitioner has no dues to pay against the above quarters after it was vacated by him in June 2003, which shows the Petitioner's bona fide.

4. Learned Counsel for the State contended that the Petitioner made a representation through the Executive Engineer, Minor Irrigation Division, Khurda (O.P. No. 4) & the authorities after considering the representation allowed the Petitioner to retain the said quarters till 30.06.2003 on payment of market rent, which is in consonance with the Resolution under Annexure-9.

5. On the above rival contentions the limited question that needs determination by this Court is as follows:

Whether retention of the Government quarters in question by the Petitioner till 30.06.2003 can be treated as unauthorized occupation for which the Petitioner is

liable to pay market rent/five times of Standard Licence Fee in the facts & circumstances of the case?

6. At this juncture, it is necessary to examine what is contemplated in the resolution dated 18.09.1998 (Annexure-9) issued by Government of Orissa in General Administration Department regarding fixation of licence fee (house rent) on government residential accommodations provided to government employees in Bhubaneswar & Cuttack under the administrative control of General Administration Department & relied upon by both the parties.

7. Paragraphs 10 & 12 of the said resolution, which are relevant for the purpose are reproduced as under:

10(i) Any Officer in occupation of Government quarters, if transferred from his station can retain the Government quarters for one month from the date of relief on payment Flat Licence Fee & subsequent 2 months on payment of Standard Licence Fee. For retention of quarters beyond 3 (three) months of transfer, the allottee shall pay 5 (five) times of Standard Licence Fee.

(ii) That, any officer who is transferred from his station after 1st August of the year will be permitted to retain the quarters till the 31 st May provided he represents for the same & there is no administrative inconvenience. For the retention of the quarters for the 1st four months, he shall pay Flat Licence Fee & for the remaining period Standard Licence Fee. Retention of the quarters beyond this period will be treated as unauthorized & the allottee shall be charged five times of Standard Licence Fee of the quarters followed with eviction proceedings as per rules in force.

(iii) If the Officer, to whom a Government residential building is allotted, dies, retires, resigns, or is dismissed, discharged or removed from service the provision of Rule 107-A of the Orissa Service Code shall be followed:

(a) Provided that where a Government employee on retirement is allowed to retain the quarters occupied by him for a maximum period of four months as per Rule 107-A of the Orissa Service Code, he shall have to pay in advance the Flat Licence Fee for the said period.

(b) The Licence Fee at the rate of five times of Standard Licence Fee shall be charged for the period of occupation of the quarters beyond the permissible period followed with eviction proceedings as per rules in force.

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12. In special circumstances for reasons which should be recorded the State Government may be recorded, the State Government may by special order, waive or reduce the amount of licence fee to be recovered from any officer.

Clause 10(i) permits an officer, who is in occupation of a government quarters & is transferred from his station, to retain the government quarters on payment of flat licence fee for one month from the date of relief & standard licence fee for

the subsequent two months & period beyond three months on payment of five times of the standard licence fee.

Clause 10(ii) permits, an officer who is transferred from his station after August of the year, to retain the government quarters till 31st May provided he represents for the same, & there is no administrative inconvenience. In such situation, he is required to pay flat licence fee for the first four months & standard licence fee for the remaining period. It further provides that retention of the quarters beyond this period will be treated as unauthorized & the allottee shall be charged five times of the standard licence fee of the quarters followed with eviction proceeding as per the rules in force. Thus, it is clear that five times of standard, licence fee shall be charged only in case of unauthorized retention of government quarters followed with eviction, proceeding as per rules.

Under paragraph 12, of the Resolution, the State Government may by special order waive or reduce the amount of licence fee what is to be recovered from an officer.

Paragraph 2 of the said resolution provides for "flat fee" & "standard fee" with reference to approximate plinth area & allotable pay range.

8. In the case at hand, the Petitioner vide his representation dated 31.07.2002 (Annexure-7 series) through proper channel requested the Chief Engineer, M.I. Division, Bhubaneswar stating his difficulties to allow him to retain the said quarters for the said year. Considering the said representation, the Superintending Engineer, Central M.I. Circle, Bhubaneswar vide his letter dated 19.09.2002 (Annexure-8) requested the Chief Engineer, M.I. Division, Bhubaneswar to allow the Petitioner to retain the government quarters in M.I. Colony, Bhubaneswar at least till the end of that year with usual rent. The Government In Water Resources Department vide letter dated 27.01.2003 (Annexure-11) intimated the Chief Engineer, M.I. Division, Bhubaneswar that the Government had been pleased to allow the Petitioner to retain the said quarters till 30.06.2003 on payment of market rent. This order of the Government does not say the date from which the Petitioner was allowed to retain the quarters till 30.06.2003 on payment of market rent. However, the order of the Tribunal reveals that the Petitioner being relieved to join Nayagarh Section on 21.3.2002, the Chief Engineer (O.P.2) cancelled the order of quarters allotment from 1.6.2002 stood in favour of the Petitioner, & charged five times of the standard rent per month from that date till 30.6.2003. Moreover, the Government Resolution dated 18.09.1998 (Annexure-9) does not make any reference to "market rent". The Counsel for the parties also could not explain the term "market rent". The resolution dated 18.9.1998 speaks about "flat rate of licence fee" & "standard licence fee". The difference between the two is that the standard licence fee is double the fees prescribed for flat rate licence fee. For unauthorized retention of the quarters, the allottee is liable to pay five times of the standard licence fee for the government quarters followed with eviction proceeding as per the rules in force. Thus, five times of standard licence fee

charged for unauthorized retention of government quarters appears to be penal in nature. Now, the question arises as to whether retention of the government quarters by the Petitioner till June 2003 on the basis of the order of the Government dated 27.01.2003 (Annexure-11) can be said to be unauthorized.

The Apex Court in Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, 672 held that the term "unauthorised occupation" means the occupation by a person of the Public premises without Authority for such occupation & also includes the continuation by any person in occupation after the lease is determined.

The Delhi High Court in K.R.K. Talwar Vs. Union of India and Others, 191 held that where the lease of a tenant is terminated & the allotment is cancelled the authority under which he was allowed to occupy disappears & he becomes a person in un-authorized occupation of the premises. Moreover, the Petitioner vacated the quarters in June 2003 after clearing electricity dues, which is evident from Annexure-13, i.e., within the time allowed by the Opposite Parties for vacation of the quarters by the Petitioner.

9. In view of the above, retention of the quarters in question till 30.06.2003 with the permission of authorities cannot be construed as unauthorized. Once it is held that retention is not unauthorized, the Petitioner shall not be liable to pay charges five times of the "standard licence fee" or "market fee".

10. In the peculiar fact situation of the case, we direct that the Petitioner shall pay flat licence fee for one month from the date of relief, i.e., 21.3.2002 & thereafter, standard licence fee till June, 2003.

11. With the above direction, the Writ Petition is disposed of. No order as to costs.

L. Mohapatra, J.

I agree.