

(2003) 02 KAR CK 0090

In the Karnataka High Court

Case No : W.A. No. 4258-59 of 1999 C/W 7332 of 2000 & Writ Appeal No's.
4258-59 of 1999 and 7332 of 2000

N.K. Nanjarajaiah and Another

APPELLANT

Vs

Karnataka Electricity Board and Others

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Electricity (Supply) Act, 1948 — Section 79 (c)

Citation : AIR 2003 Kar 253 : (2003) 5 KarLJ 337

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : M.P. Eshwarappa and Sundarswamy Ramdas, s for K.G. Naik, for the Appellant; B.C. Prqabhakar and S. Siddappa, for the Respondent

Judgement

S.R. Nayak, J.—Writ Appeal No. 4258-59 of 1999 are directed against the common order of the learned single Judge dated 17-2-1999 in writ petition No. 39752 of 1995 and 39753 of 1995. The appellants herein are the petitioners in those writ petitions. When the Karnataka Electricity Board (for short the "Board"), on the ground that the writ petitioners therein, despite having their own houses near the place where they were officiating did not vacate the official quarters and move to their own residential houses sought to recover the penal rent in terms of the Regulations framed by the Board u/s 79(c) of the Karnataka Electricity supply Act (for short the "Supply Act"). At that stage, the appellants filed writ petition in this court assailing the validity of the Notification dated 24-4-1989 produced at Annexure-B amending the rules called "Karnataka Electricity Board Accounts Manual Volume-1 (Amendment) Regulations 1988" and for consequential reliefs. A learned single Judge who heard the matter has upheld the validity of the rule and consequently, dismissed the writ petitions. Hence, the aggrieved writ, petitioners have preferred writ appeal No. 4258-59 of 1999.

2. Writ appeal No. 7332 of 2000 filed by the Board is directed against the order

of another learned single Judge dated 23-11-1999 in writ petition No. 4598 of 1998 (2000 (5) Kant LJ 504). The respondent in this writ appeal preferred the above writ petition praying for the following reliefs :--

- (i) Issue writ of certiorari by quashing the Annexure P4;
- (ii) Issue Mandamus to collect the normal rent as per Rules.
- (iii) Issue Mandamus to refund the penal rent recovered from December 1997 and January 1998.
- (iv) issue any other writ or writs as this Hon"ble Court deems fit to grant.

Although, the petitioner does not specifically pray for quashing of the Regulations, in paragraph-4 of the writ petition, he has raised grounds to attack the vires of Accounts Manual 38/01 of K.E.B. Account Manual Volume-1 by contending that they are "violative of constitutional provision as it has no statutory protection/support."

3. Learned single Judge, in W.P. No. 4598 of 1998, having examined the validity of the impugned Regulations come to the conclusion that the impugned Regulations are in fact made by the Internal Management Committee (Administration) hereinafter referred to as (IMC (Admn.), for short) and not by the Board and consequently, quashed the Regulations as not valid and issued consequential direction to the Board to refund the amount of penal rent deducted out of the salary of the writ petitioner therein within two weeks from the date of receipt of the said order. Feeling aggrieved by the said order of the learned single Judge, the Board has come up with the writ appeal No. 7332 of 2000.

4. We have heard Sri, M.P. Eshwarappa, learned Senior counsel for the appellants, Sri B.C. Prabhakar, Advocate for Respondents in Writ Appeal No. 4258-59 of 1999 and Sri K. Ramdas, learned Senior Counsel for the appellant and Sri S. Siddappa, Advocate for respondent in Writ Appeal No. 7322 of 2000.

5. Essentially what falls for our decision in these writ appeals is the validity of Regulation made by the Board by virtue of the power conferred on it u/s 79 (c) of the Supply Act. Therefore, in the first instance, it is appropriate that the Court should deal with the validity of the Regulations framed u/s 79(c) of the Supply Act.

6. Sri M.P. Eshwarappa, learned senior counsel or the appellants in W.A. No. 4258-59 of 1999 placed before us the following contentions while assailing the validity of the impugned Regulations framed u/s 79(c) of the Act and they are :--

(i) that the impugned Regulations are not made by the Board and in fact they were made by the Internal Management committee (Administration) for short (IMC, Adm);

(ii) that imposition of penal rents on an employee of the Board who resides in the official quarter after his retirement or on transfer cannot be regarded as a

condition of service and therefore, the Board could not derive any power from Clause (c) of Section 79 of the Supply Act to frame Regulations with regard to imposition and recovery of penal rents; and

(iii) that even in the event of the Court holding that the impugned Regulations are framed by the Board in lawful exercise of its power u/s 79(e) of the Act, nevertheless, the impugned Regulations are liable to be quashed inasmuch as they are totally arbitrary and unreasonable.

7. Before appreciating the contentions urged by Sri M.P, Eshwarappa, learned senior counsel for the appellants, it is appropriate to refer to the provisions of Section 79 (c) of the Supply Act which reads as follows :--

"79. Power to make regulations :-- The Board may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely :-(a) &(b).....

(c) the duties of officers and other employees of the board, and their salaries, allowances and other conditions of service":

The language employed in Clause (c) of Section 79 is quite clear precise, unambiguous and it does not permit more than one meaning. The only meaning of the provision of Clause (c) is that the Board is empowered to frame Regulations by issuing Notification in the official gazette not only in regard to the duties of officers and other employees of the Board and their salaries and allowances but also, in regard to other conditions of service. The phrase "other conditions of service" occurring in Clause (c) is quite significant, comprehensive and inclusive. The phrase "their conditions of service" in the context would mean all other conditions of the service of the employees and officers of the Board. The Official quarter allotted to a serving employee by the Board as an amenity. cannot be taken out of the concept of conditions of service. It is trite, this amenity is extended to a serving employee of the Board as a condition of service. Therefore, we do not find any weighty or substantial ground to accept the suggestion made by Sri Eshwarappa, learned senior counsel not to extend the meaning of "other conditions of service" so as to exclude the amenity of official quarter allotted to a serving employee. In that view of the matter, the power conferred on the Board to frame the impugned Regulations could not be assailed on the ground of want of authority or statutory sanction.

8. We also do not find any merit in the contention of the learned senior counsel that the impugned Regulation is arbitrary and unreasonable and opposed to the postulates of Article 14 of the Constitution of India. It is trite, no enactment or a delegated legislation can be struck down by the constitutional Courts just saying that in the opinion of the Court it is arbitrary or unreasonable. Although non-arbitrariness, reasonableness and fairness are postulates of Article 14 of the constitution, when an enactment is sought to be struck down on the ground of arbitrariness and unreasonableness, the reviewing Court should find some or

other constitutional infirmity in addition to those grounds before Invalidating the enactment. An enactment cannot be struck down merely on the ground that the Court thinks it is unjustified and unwise. It is not open to a Court to declare an enactment unconstitutional and void solely on the ground of unwise and harsh provisions or that it is supposed to violate some of the perceived natural, social, economic or political rights of the citizen, unless it can be shown with satisfactory proof that such injustice is in fact prohibited or such rights guaranteed or protected by the Constitution. Particularly in the context of the present case, the validity of the impugned Regulation has to be reviewed keeping in mind the twin objectives of the impugned Regulation. The first objective is to provide accommodation to serving employees at a particular place or station. When an employee retires or is transferred to some other place, it is quite natural for the board to expect and insist that such employee shall vacate the quarter within the stipulated time or within the time extended by the Board. If he fails to do so, it would cause hardship and inconvenience for incoming officer in his place,

9. There is also another objective beyond the Regulation, i.e. that penal rent to be collected from the officials overstaying in the official quarters despite retirement or transfer should work as a deterrent or disincentive, that objective could be ensured only by enforcing the impugned Regulation strictly.

10. In this case, the two writ petitioners covered by writ appeal Nos. 4258-5259 of 1999 admittedly, have their own houses situate nearby the place where they work. For no good reasons, they refused to move to their own houses and squat on the official quarters allotted to them by the Board. In the other case covered by Writ Appeal No. 7332 of 2000, the petitioner despite having been transferred from Banaswadi to Kaggalipura did not vacate the official quarter. It is not for this Court to appreciate whether there was any justification for the petitioners not to move to their own houses or to vacate the official quarter on transfer to Kaggalipura.

11. The impugned Regulation framed by the Board to achieve twin objectives noticed above cannot be termed as arbitrary or irrational so as to attract the wrath Article 14 postulates. Therefore, the contention Mr. Eswarappa is not acceptable to us.

12. This takes us to the first contention of Sri. Eshwarappa, learned senior counsel that the impugned Regulations were not made by the Board and in fact they were made by the Internal Management Committee (Administration). This contention does not deserve our acceptance because the materials placed before the Court clearly go to show that it was the Board and the Board alone has framed the impugned Regulations by virtue of power conferred on it. u/s 79(c) of the Supply Act. The Board, in its Writ Appeal No. 7332 of 2000, has annexed a copy of the proceedings of the Board dated 07-09-1988 which reads as follows :--

"Approval is accorded to impose penal rent on the Board employees for non-vacation of the Board Quarters occupied by them. In the manner as indicated

hereunder :--

1) Ordinarily, three months time shall be granted for vacation of the Board-Quarters to such of the Employees who either own houses at the places where they are posted or who are transferred out of station, where Board quarters have been allotted to them (or the legal heirs of the employee who has been allotted: Board Quarters and dies while in service); During this three months period, normal rent shall be recovered from such employees or the legal heirs of the employees as the case may be residing in the Board Quarters.

2) For the next three months, if the employees or the legal heirs of the employees residing in the Board Quarters fail to vacate the Board Quarters, then 20% of the gross salary drawn in the case of deceased employees) shall be recovered from them as penal rent.

3) After six months period (i.e. 3 months grace period at normal rent plus 3 months extended period at 20% of gross, salary, if the employees (or the legal heirs of the deceased employees) fail to vacate the Board quarters, salary shall be recovered from them as penal rent".

This was followed by issuance of the Notification dated 24-4-1989. The preamble to the said Notification clearly states that the Board, in exercise of the powers conferred by Section 79 (c) of the (Supply) Act, 1948, is pleased to further amend the Karnataka Electricity Board Accounts Manual Volume 1. If the Notification dated 24-4-1989 is read with the proceedings of the Board dated 7-9-1988, it becomes quite clear that the Board has got statutory power u/s 79 (c) of the Supply Act to frame Regulations and in exercise of that power, it has framed the impugned Regulations. Therefore, quashing of those Regulations for want of rule-making power would not arise. The reasoning given by the learned single Judge in writ petition No. 4598 of 1998, with great respect, is not acceptable to us. It is quite apparent from the perusal of the judgment that the learned single Judge thought that simply because IMC (Admn.) in its proceedings dated 7-9-1988 had recommended for framing of Regulations for imposition and recovery of penal rent, the impugned Regulations should be treated or regarded as the Regulations framed by the IMC (Admn.) itself. This reasoning of the learned single Judge is illogical and untenable. The basic question to be considered is whether the Board has exercised its rule-making power or not. It is satisfactorily established that the Board itself has framed the impugned Regulations. Therefore, the contention of the learned Senior Counsel is not acceptable to us.

13. Before parting with the case, feeble submissions made by the learned counsel for the writ petitioner be noticed. The contentions are :--

(i) the Board ought to have taken prompt action to evict the petitioners from the official quarters and having failed to do so, it would be irrational for the Board to impose and recover penal rent in terms of the impugned Regulations;

(ii) before taking impugned action, the Board did not issue notice to the petitioners;

(iii) even after the expiry of the permitted period, the Board accepted normal rates of rents from the writ petitioners and therefore, it is not permissible for the Board to recover penal rents in terms of the impugned Regulation later;

(iv) the Board is guilty of practicing invidious discrimination since in similar circumstances it allowed certain other employees to overstay in the official quarters even after the expiry of the stipulated period.

We do not find any merit in any of these contentions. The basic point is that as per the impugned Regulations, every employee or officer who overstays in the official quarter beyond the stipulated period, he is liable to pay penal rent without there being any prior notice. Secondly, simply because in the case of some officials or officers, the Board did not take action to recover penal rent for their overstay in the official quarters in breach of the Regulation, that fact itself would not be a justification for the Court to issue mandamus to the Board not to recover the penal rents from the petitioners in terms of the Regulations. We say this because it is well settled that under no circumstance, mandamus will lie to an authority to do something in breach of public law requirement or provisions of the statute, This position is well settled by the judgments of the Supreme Court in *State of Bihar and others Vs. Ramdeo Yadav and others*, and *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, . It is also well settled that simply because an authority wrongly gave or granted an advantage or a relief to a person who is not entitled to it in law, other similarly placed ineligible persons who are not entitled to such relief cannot move the Court under Article 226 of the Constitution to seek a direction to such authority to extend similar treatment on par with other ineligible persons. This position is also well settled by the judgments of the Supreme Court in *State of Orissa Vs. Durga Charan Das*, . *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, and *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, . Looking from any angle, we do not find any justification to issue mandamus to the respondent-Board.

In the result and for the foregoing reasons, we allow the writ appeal filed by the Board i.e. W.A. No. 7332 of 2000 and set aside the order of the learned single Judge dated 23-11-1999 and dismiss Writ Petition No. 4598 of 1998. We dismiss Writ Appeals Nos. 4258-59 of 1999 filed by the petitioners in W.P. Nos. 39752 and 39753 of 1995. Having regard to the peculiar facts and circumstances of the case, the parties in all these writ appeals are directed to bear their own costs.

However, we make it clear that this order shall not come in the way of the Board to consider the request of the writ petitioners to reduce their liability in the matter of payment of penal rents having regard to the individual grievances pleaded by the petitioners and merits of each of the case in its discretion.