
(2004) 12 GAU CK 0063
In the Gauhati High Court
Case No : W.A. No. 04 of 2004

Pradip Kumar Modak

APPELLANT

Vs

Akhilesh Kumar Gupta and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 GLT 29

Hon'ble Judges : H.N. Sharma, J;Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : P.K. Tiwari, for the Appellant; A. Apang, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This writ appeal is directed against judgment and order dated 13.09.04 passed by learned Single Judge in W.P.(C) No. 167(AP)/04 by which the writ petition filed by the Respondent No. 1 herein was allowed. The Appellant in the appeal was the Respondent No. 4 in the writ petition who has now preferred this appeal making a grievance against the said judgment and order.

2. The subject matter of dispute is in respect of the allotment of official accommodation to the Appellant vis-a-vis the writ Petitioner/Respondent No. 1. According to the Appellant, he became entitled to a Type-IV quarter with effect from 01.01.96. The Respondent No. 1/Writ Petitioner was allotted Type-IV quarter in April, 1998 and presently he is in occupation of the same.

3. Incidentally the writ Petitioner/Respondent No. 1 was allotted with the aforesaid Type-IV quarter bearing No. T/IV/20 in the first floor of the same building in which the quarter in question which had fallen vacant in the ground floor, i.e. quarter No. T/IV/19 was allotted to the Appellant pursuant to the decision of the House Allotment Committee. An order of allotment was issued on 04.03.04 under the signature of the Chairman, House Allotment Committee.

4. Pursuant to the said allotment order, the Appellant took over possession of the

quarter. However, the writ Petitioner/Respondent No. 1 made a challenge to the said order of allotment by filing a writ petition being W.P (C) No. 167 (AP)/2004. Placing reliance on Clause 12 of the guideline formulated by the official Respondents laying down the allotment conditions of official accommodation, it was the case of the Respondent No. 1 Petitioner that he being senior to the Appellant was entitled to get preference over him.

5. Learned Single Judge accepting the plea of the writ Petitioner/Respondent No. 1 allowed the writ petition filed by him providing change of his accommodation from first floor to ground floor. As per the direction of the learned Single Judge, the writ Petitioner/ Respondent No. 1 is to be accommodated in the ground floor quarter to the replacement of the Appellant who is presently in occupation of the same and consequently the Appellant is to shift to the first floor quarter presently under the occupation of the writ Petitioner/Respondent No. 1.

6. We have heard Mr. P.K. Tiwari learned Counsel for the Appellant. We have also heard the writ Petitioner/Respondent No. 1 Dr. Akhilesh Kumar Gupta who appeared in person and argued his case. Referring to the various clauses of the allotment conditions as formulated by the official Respondents towards allotment of official accommodation, Mr. Tiwari, learned Counsel for the Appellant submitted that no interference was called for in respect of the order of allotment made in favour of the Appellant. His basic thrust was that the allotment conditions being only directory not having any statutory force, the learned Single Judge ought not have interfered with the allotment made a favour of the Appellant. Reminding the limited scope of judicial review in exercise of power under Article 226 of the Constitution of India, Mr. Tiwari submitted that the official Respondents having exercised the discretion without being guided by any arbitrary and malafide exercise of power, the learned Single Judge ought not have passed the impugned judgment and order even after admitting that the matter being a small one could have been resolved by the official Respondents themselves.

7. The writ Petitioner/Respondent No. 1 who appeared in person, supported the impugned judgment and order passed by the learned Single Judge. Placing reliance on the Clause 12 of the allotment conditions, he strenuously argued that he being senior to the Appellant was entitled to have his choice of accommodation in preference over the Appellant.

8. Mr. A. Apang, learned Standing counsel, NERIST referring to the affidavit in opposition filed in the writ proceeding, supported the order of allotment made in favour of the Appellant. He also submitted that Clause 12 of the allotment conditions cannot be read in isolation but will have to be read along with other conditions of allotment. He submitted that the allotment committee dully considered the case of the Appellant and allotted the quarter in his favour and in absence of any attribution of malafide and colourable exercise of power, the writ Petitioner could not have assailed the same. Referring to the clauses relating to out of turn accommodation, he submitted that the House Allotment Committee is

authorized to make out of turn allotment in deserving cases and in such a situation no strict application of a particular clause of the allotment conditions can be insisted upon.

9. We have consider the rival submissions made on behalf of the respective parties. We have also considered the materials available on record. The whole controversy relating to allotment of official accommodation to the Appellant is based on Clause 12 of the allotment conditions which reads as follows:

Clause 12: Change of Residence

(i) Any employee to whom a residence has been allotted may apply for a change of allotment for a particular residence of the same type after a period of 3 months from the date occupation of residence.

(ii) Changes of residence under Sub-clause (i) of this clause is not allowed more than once for a particular type of residence.

(iii) Whenever a particular residence falls vacant it shall be allotted to the senior most among the employees who have desired a change and also those who are in the seniority list for similar type of residence.

(iv) If an employee fails to accept the change of residence offered to him under this clause within 3 days after the date of order, he will not be eligible again for a change of residence under this clause for a period of 12 months from the date of such allotment.

10. Clause 3(vii) defines seniority as follows:

vii) seniority" of an employee for allotment of a particular type of residence is counted from the date he acquires the necessary qualifications as may be laid down in these conditions for becoming eligible for allotment of a particular type of residence provided he continuously retains the qualifications from that date.

11. Clause 4, 5 and 6 of the allotment conditions speak of eligibility, seniority list and allotment. The clauses are also reproduced below:

(4) Eligibility:

The employees of the Institute are eligible for such types of residence according as are indicated in Schedule-1.

(5) Seniority list:

(i) Seniority list for a particular type of residence will be prepared on the basis of the date on which an employee starts drawing the qualifying pay as indicated in column 2 of the Schedule-1.

ii) An employee may apply for a next lower type residence only if the higher type for which he is eligible, is not available.

iii) On receipt of application from an employee under Sub-clause (ii) of this

clause, the employee will be placed in the seniority list for the type of residence he has applied for w.e.f. three months after the date of receipt of application in the office of the Institute Engineer. This sub-clause shall not apply to new employees for first 30 days of their service.

(iv) An employee whose name is found on the seniority list due to his refusal of earlier allotment or on account of his residence in private accommodation for along time, applies for accommodation his name will be placed in the seniority list for the type of residence he has applied for w.e.f. three months after the date of receipt of application in the office of the Institute Engineer.

(5) Allotment:

i) Residence as and when they are available will be allotted to an employee according to seniority list prepared under (clause-5).

ii) Allotment orders will be issued by the Institute Engineer or any other officer appointed by Director in such form as the Director may approve.

12. On a reference to the aforementioned clauses of the allotment conditions it will be seen that the seniority of an employee for allotment of a particular type of residence is counted from the date he acquires the necessary qualification. The employees of the Institute are eligible for such types of residence as indicated in schedule - 1 of the allotment conditions. As per the said schedule, both the Appellants and the writ Petitioner/Respondent No. 1 are entitled to get Type-IV accommodation. A seniority list is to be maintained on the basis of the date on which an employee starts drawing the qualifying pay as indicated in the schedule. As per the Clause 6 quoted above, the residence as and when available will be allotted to the employee according to seniority list prepared under Clause 5. Allotment orders are required to be issued on that basis.

13. From the above, it will be seen that an employee of the NERIST will have to attain eligibility towards a particular accommodation by reaching a particular basic pay range. A seniority list for a particular type of residence is required to be maintained on the basis of the date on which an employee starts drawing the qualifying pay. Allotment of accommodation, as and when they become available is required to be made to an employee according to seniority list prepared under Clause 5. The Writ Petitioner/Respondent No. 1 was allotted with a Type-IV accommodation in the first floor of the same building in which the ground floor accommodation which is also a Type-IV quarter is the centre of controversy. There is no dispute that the writ Petitioner/Respondent No. 1 is senior to the Appellant as per the said definition of "seniority". It is on that basis he was provided with a Type-IV accommodation as per his entitlement which he occupied in April, 1998.

14. After six years of such accommodation of the writ Petitioner, the Appellant as per his turn of seniority, was provided with a Type-IV accommodation in the ground floor which incidentally falls in the same building.

15. The whole basis of the claim of the writ Petitioner is in reference of Clause 12 of the allotment conditions. Clause 12(i) is an enabling clause. As per the said clause, an employee to whom a residence has been allotted may apply for a change of allotment for a particular residence of the same type after a period of three months from the date of accommodation of earlier residence. By the said clause although the qualifying period has been prescribed, but no outer limit to make such a claim for change of residence has been fixed. This is precisely the reason as to how the writ Petitioner could make a claim for allotment of the quarter allotted to the Appellant even after six years of the allotment made in his favour.

16. The aforesaid Clause 12(i) will have to be understood and read along with Clause 12(iii) While Clause 12(i) is an enabling clause towards exercising an option by an employee in whose favour already there is an allotment of quarter, Clause 12(iii) confers a discretion on the authority concerned for allotment of a particular residence falling vacant from amongst the employees who have desired to change and also those who are in the seniority list for same type of residence. While Clause 12(i) enables an employee to exercise an option for change of accommodation, Clause 12(iii) vests a direction with the authority concerned towards allotment of a vacant accommodation in consideration of the claim of the employees of both the categories, i.e. the employees seeking change of accommodation and the employees seeking accommodation on the basis of their seniority position in the seniority list. Upon exercising of such discretion, if the allotment was made in favour of Appellant, we see no reason as to how the writ Petitioner/Respondent No. 1 could raise a grievance against the same so as to invoke the writ jurisdiction of this Court.

17. It is not the case that a senior employee has been deprived of official accommodation giving a preference to his junior. Way back in 1998, the writ Petitioner was allotted with a Type-IV accommodation as per his entitlement which incidentally falls in the first floor of a particular building in which the Appellant has been accommodated in the ground floor by the impugned order of allotment issued in March, 2004.

18. After six years of such allotment of Type-IV accommodation to the writ Petitioner/Respondent No. 1, the Appellant was allotted with the particular Type-IV quarter by the impugned order of allotment dated 04.03.04. Taking recourse to Clause 12(i) of the allotment conditions, the Petitioner made his claim for the accommodation. He even invoked the writ jurisdiction of this Court in such a matter seeking writs of mandamus and certiorari. It is not a case of preferring the Appellant over the writ Petitioner/Respondent No. 1. The Appellant was given the accommodation as per his turn in terms of his seniority. The House Allotment Committee considered the case of the Appellant and recommended his case for allotment of the vacant quarter.

19. There is no allegations of malafide and/or colourable exercise of power by any of the members of the House Allotment Committee towards allotment of the

accommodation in question in favour of the Appellant. Merely because Clause 12(i) of the allotment conditions enables the Respondent No. 1/writ Petitioner to make a claim for change of residence, we are of the considered opinion that he could not have staked a claim for that particular accommodation provided to the Appellant as a matter of right. Apart from the fact that the allotment conditions are in the realm and sphere of only guidelines laying down certain parameters towards allotment of accommodation to the employees of the NERIST, the writ Petitioner/Respondent No. 1 cannot seek any mandamus for providing a particular accommodation to him.

20. To quell any doubt as the probable difficulties being faced by the writ Petitioner/ Respondent No. 1 in the first floor accommodation, we had asked the writ Petitioner/Respondent No. 1 to clarify his position. He fairly admitted that no difficulty was being faced by him and by his family members. As regards the facilities etc. in both the quarters, he admitted that there was no difference as such in both the accommodations. However, he submitted that since a right was available to him as per Clause 12 of the allotment conditions, he legitimately exercised that right towards change of his accommodation and that as per the said clause he was entitled to get preference over the Appellant.

21. We have already discussed the matter in details above. In view of our considered opinion that Clause 12(i) of the allotment conditions is only an enabling provision towards exercising option for change of accommodation and that the same will have to be read along with other conditions of allotment, more particularly Clause 12(iii), we are of the opinion that no legally enforceable right vested in the Petitioner has been infringed so as to provide relief to him exercising the power of judicial review under Article 226 of the Constitution of India.

22. Even otherwise also, the balance of convenience lies in favour of the Appellant. He has recently been accommodated with the official quarter as against such accommodation of the Petitioner/Respondent No. 1 six years back. We doubt that had it been some other accommodation far off from the present accommodation of the Respondent No. 1/Petitioner, whether he would have exercised this option for change of accommodation. Be that as it may, in view of our findings that there was no wrong in the decision making process of the House Allotment Committee towards the particular allotment in favour of the Appellant and that no legally enforceable right vested in the Petitioner has been violated, we are of the opinion that no interference is called for in the order of allotment made in favour of the Appellant.

23. In view of our above findings, the judgment and order dated 13.09.04 passed by the learned Single Judge in W.P.(C) No. 167 (AP)/04 is liable to be set aside and quashed which we accordingly do.

24. The writ appeal stands allowed. Consequently, the writ petition W.P.(C) No. 167 (AP)/04 stands dismissed. However, having regard to the facts and

circumstances involved in the case, we leave the parties to bear their own costs.