

(2015) 11 AHC CK 0106
In the Allahabad High Court
Case No : Misc. Bench No. 8538 of 2015

R. Chaswal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 3(o), 3(o)(iv)
Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 8, 9, 10
Armed Forces Tribunal (Practice) Rules, 2009 — Rule 146

Citation : (2015) 10 ADJ 650 : (2016) 114 ALR 635 : (2016) 1 AWC 129

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Nitin Kumar Mishra, R. Chaswal and S.S. Pandey, for the Appellant;
Deepanshu Das, for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioner is an Armed Forces Personnel. He has been called upon to vacate the premises, that he was occupying on his regular posting, as he has now proceeded on study leave. The petitioner claims retention of the same accommodation on the ground that the policy, as formulated by the respondents on 30.1.2015 read with the letter dated 27.5.2015, cannot be applied to forcibly compel the petitioner to give up the said accommodation that was allotted to him in 2014. He is resisting the vacation of the said premises questioning the correctness of the policy and also its incorrect application by the Station Headquarters at Lucknow.

2. In order to compel the petitioner to vacate the premises, the respondents initiated proceedings by issuing a Notice under The Public Premises (Eviction of unauthorized Occupants) Act, 1971, during the pendency of the present writ petition. The Estate Officer, under the said provisions, has proceeded to hear the petitioner and has ultimately passed an order directing his eviction on 26.10.2015. This order has been brought on record by the respondents through

the second Supplementary-Counter-Affidavit.

3. The petitioner contends that the Station Headquarters, at the local level have on their own, proceeded to alter the policy implementation to the disadvantage of the petitioner inasmuch as the provisions of the policy dated 30.1.2015 (Annexure No. 1 to the writ petition) clearly envisages that an Officer, who proceeds on study leave, has to be provided with alternate Hired Accommodation or Accommodation on Rent Reimbursement basis or can avail the facility of House Rent Allowance. The policy also desires the vacation of the premises in occupation as further retention of the same according to the said policy beyond a period of 10 days would not be permissible. It is in this background that the petitioner challenged the order issued by the respondents on 14.8.2015 contending that firstly the policy is not in conformity with the benefits to which an Officer proceeding on study leave, is entitled; and, secondly, the order calling upon the petitioner to vacate the accommodation was also unjust.

4. The writ petition was entertained and a counter-affidavit was invited upon which a counter-affidavit was filed to which a rejoinder-affidavit has been filed. On the matter, being heard on previous occasions, a supplementary-counter-affidavit and a second supplementary-counter-affidavit has been filed on behalf of the respondents to which a response has also been filed by the petitioner.

5. While passing the orders, we had made it clear in the order dated 13.10.2015 to inform the Court as to how the policy was sought to be implemented as the documents, that had been brought on record, did not indicate any material to gather an opinion as to whether any effort was made to hire any accommodation for the petitioner or to provide accommodation on rent reimbursement basis. It is thereafter that the supplementary-counter-affidavit and second supplementary-counter-affidavit has been filed bringing on record the deliberations that were undertaken in this respect as also the proceedings that was undertaken under the Public Premises Act, 1971.

6. In view of the developments that have taken place during the pendency of the writ petition, it would be appropriate to deal with the said issue as the question now involved is also the action already taken under the 1971 Act during the pendency of the writ petition together with the challenge raised to the policy and its implementation.

7. We had called upon the learned Counsel for the respondents and the petitioner, who has appeared in person, to address us on these issues.

8. Sri Chaturvedi, learned Senior Counsel for the respondents, has urged that once an order has been passed under the 1971 Act, then the petitioner has a remedy of filing an appeal under the provisions of Section 9 of the said Act before the learned District Judge where the appellate officer also has a power to stay enforcement of the eviction order on such conditions as he deems fit. Sri Chaturvedi, therefore, submits that the petitioner should be permitted to file an appeal in view of these developments and he has pointed out that the order of

eviction by the Estate Officer also takes notice of the policy that is under challenge by the petitioner before this Court.

9. He further submits that the petitioner had pointed out that in view of the opinion of the Armed Forces Tribunal, Principal Bench, New Delhi, in the matter of Col. Satish Kandpal v. Union of India and others, O.A. No. 536 of 2015, decided on 5.8.2015, the Armed Forces Tribunal may not have the jurisdiction to deal with such a subject matter. He, however, submits that the said order produced by the petitioner does not lay down any ratio with regard to the jurisdiction of the Armed Forces Tribunal and for that Sri Chaturvedi has invited the attention of the Court to Section 3 (o) of the Armed Forces Tribunal Act, 2007, to contend that the said provision takes care of all matters relating and ancillary to the services of armed personnel and whatever matters were to be excluded has been expressly provided therein. He submits that so far as the policy of retention of accommodation is concerned, this can be related to the words "(iv) any other matter, whatsoever" as defined in the aforesaid provision. To substantiate this submission, he has also pointed out that Rule 146 of the Armed Forces Tribunal (Practice) Rules, 2009, empowers the registry of the Tribunal to classify cases both department-wise and subject-wise, for which a Form is provided. He has, therefore, invited the attention of the Court to Form No. 27 meant for subject-wise classification of cases and at Item No. 3 Allotment/vacation/eviction of government quarters/all government hired accommodation matters is also one of the subjects. On the strength of this, he submits that the jurisdiction of the Armed Forces Tribunal cannot be said to be ousted whenever a challenge is raised to the policy of accommodation and its impact as in the present case.

10. He then submits that so far as proceedings under the Public Premises Act, 1971, are concerned, this issue has been directly dealt with by the Apex Court in the case of Union of India (UOI) Vs. Rasila Ram and Others, , where it has been held that once action is taken under the 1971 Act, then the jurisdiction of an Administrative Tribunal cannot be construed to cover such a subject under the garb of "any other matter". The aforesaid decision is in relation to the Administrative Tribunals Act, 1985, but Sri Chaturvedi submits that since the same provisions are available at par in the Armed Forces Tribunal Act, 2007, the writ petition now cannot be entertained in view of the said ratio.

11. Replying to the aforesaid contentions raised by the respondents, the petitioner submits that in the case of Col. Satish Kandpal (supra) after the order of the Armed Forces Tribunal was passed, a writ petition was filed by the said personnel along with others in the High Court of Delhi, being Writ Petition No. 7831 of 2015, in which a Division Bench on 18.8.2015 passed an order not to dispossess the occupant till the next date of hearing from the accommodation being occupied by him. Similar petitions were also entertained vide order dated 21.9.2015 in other cases as well. The petitioner, therefore, submits that the writ petition can be entertained when it is a matter of challenge to a policy and which

was instituted by the petitioner even prior to the initiation of the proceedings under The Public Premises Act. He further on merits contended that the policy is to the disadvantage of the petitioner and is arbitrary and not only this even it's implementation by offering only House Rent Allowance by the local Hqrs. is contrary to the policy laid down on 30.1.2015. He further submits that disadvantage and prejudice caused to petitioner is, that after the study leave was processed, had the petitioner been made aware of the said policy being implemented in the said fashion, he would have opted the cancellation of his study leave in order to retain the accommodation, but on account of the aforesaid developments, the petitioner could not even attempt the same and he is now being compelled to vacate the premises on the strength of a wrong policy and it's wrong implementation.

12. Having considered the aforesaid submissions raised, we find that the matter in the present case during the pendency of the writ petition has crystallized into an order passed by the Estate Officer under the provisions of the 1971 Act ordering the petitioner's eviction. No doubt this has happened during the pendency of the present petition, yet the said action is available under law and, therefore, it cannot be said that the pendency of the writ petition prevented the respondents from taking any such action. The eviction order is founded on the basis of the policy which is under challenge in the present writ petition. In our considered opinion, the petitioner can file an appeal questioning the correctness of the order of the Estate Officer dated 26.10.2015 and can simultaneously also raise his grievance with regard to the correctness of the policy as well as it's implementation. The reason is that the respondents have passed the order under the 1971 Act for eviction on the basis of the same policy that is under challenge on various grounds. The petitioner, therefore, cannot be denied this opportunity to question the policy and it's implementation before the forum of appeal which is available to him under Section 8 of the Act. Section 10 of the 1971 Act attaches finality to the orders passed under the said Act. In such a situation this opportunity, as indicated above, is available to the petitioner.

13. The second question is of the Armed Forces Tribunal possessing any such authority to entertain a plea relating to the challenge of the house accommodation policy. As noted above and as pointed out by Sri Chaturvedi, the Armed Forces Tribunal Act, 2007, does indicate in the definition of Section 3 (o) the entertaining of all residuary matters under Clause (iv). The intention under the Act is not to include such matters which are mentioned after the aforesaid clause. Thus, there is a clear indication of such matters which cannot be included and at the same time, the arrangement of subject wise cases under Form 27 at Item No. 3 does indicate the mention of the subject matter of allotment/vacation/eviction/and matters relating to hire accommodation. The mention of the aforesaid subjects, in our opinion, would not exclude the jurisdiction of the Armed Forces Tribunal to entertain any challenge raised to the policy of retention of house accommodation particularly in matters as raised at the outset in the present case. The Policy under challenge indicates that accommodation to an

officer is an obligation on the respondents during the tenure of an officer's service. An officer may not have a fundamental right to claim accommodation but he can always approach the court if the discharge of obligation by the respondents suffers from any arbitrariness. This legal obligation can be subject of adjudication by the Tribunal as per the above noted provisions. Even otherwise, the obligation to provide accommodation to an officer in service is necessarily an accessory of service and, therefore, directly connected with the conditions of service. Retention of accommodation during service is incidental to service and this subject would be covered under "any other matter" of Section 3 (o) (iv) of the 2007 Act.

14. The situation, however, turns to be a little different once an order is passed under the Public Premises Act. In the present case also the orders have been passed under the Public Premises Act as admitted above and, therefore, the petitioner now cannot be relegated for a challenge to the policy decision to the Armed Forces Tribunal inasmuch as the same is now available for challenge as discussed herein above to the petitioner in appeal under the 1971 Act before the appellate authority. Additionally, the principle, as per the ratio of the Apex Court decision in *Union of India v. Rasila Ram* (supra), is equally attracted herein to maintain this challenge before the forums under the 1971 Act.

15. The entertaining of the writ petition by the Delhi High Court is by short interim orders dated 18.8.2015 and 21.9.2015. The aforesaid orders are not orders laying down a ratio or declaring the law to construe that the Armed Forces Tribunal would not have any jurisdiction to entertain any such matters. To the contrary in our considered opinion, in view of the provisions discussed herein above and the issue relating to a house retention accommodation by an Officer in service can also be subject matter of challenge before the Armed Forces Tribunal subject to the exception of any other valid legal proceeding including proceedings under the Public Premises Act, 1971.

16. Consequently, we are of the opinion that the petitioner has to avail the remedy of filing an appeal under the 1971 Act and the petition now, therefore, cannot proceed any further.

17. Since we are relegating the petitioner to the forum of a statutory efficacious remedy of an appeal before the learned District Judge, we provide that if an appeal is filed within a week from today, the same shall be entertained on merits by the learned District Judge. The petitioner shall have a right to move an application for interim relief which shall be considered forthwith by the learned District Judge in accordance with law upon it being filed along with the appeal. In order to protect the interregnum interest of the petitioner for enabling him to avail the said remedy, we provide that for a period of 2 weeks, the respondents shall not undertake any coercive steps against the petitioner to execute the order dated 26.10.2015 passed under the 1971 Act.

18. With the aforesaid directions, the writ petition stands disposed of.

19. Copy of the order today.