(2006) 03 AHC CK 0195

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18886 and 39926 of 2002

Ratan Kumar Nigam and B.B. Singh — APPELLANT

Vs

State of U.P. and Allahabad Development Authority — RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Reserve Bank of India Act, 1934 — Section 45(5)
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 21, 22, 24, 39, 4(2)

Citation : (2006) 9 ADJ 35 : (2006) 3 AWC 2882

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare and Subodh Kumar, for the Appellant; A.K. Misra and Vijendra Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—In these two connected writ petitions, the U.P. Diploma Engineers Association, Nagar Maha Palika, Allahabad through their office bearers, who have also joined in their individual capacities as Diploma Engineers and employees of Allahabad Development Authority, Allahabad, in Class III employment have prayed for directions to provide time scale and selection grade as per the recommendation of 5th Pay Commission, at par with the State Government employees.

2. In writ petition No. 18886 of 2002 the petitioner, President of Diploma Engineers Association, has given a brief background of the recommendation of the Pay Commission. In the year 1988 the State Government constituted Pay Equivalence Committee to consider raise in pay scale of the employees of the State Government, Local Bodies and members of other services. The Committee submitted its recommendation, which was accepted by the State Government vide its resolution dated 18.10.89 revising the pay scales of the employees of the State Government, Local Bodies w.e.f. 1.1.86. By Government order dated

13.2.90 the recommendations of the Pay Commission 1988 were also adopted for the employees of the Local Bodies. After a period of about 10 years, the State Government constituted another Committee vide order dated 9.10.97 for implementing the recommendation of 5th Pay Commission to the employees of the State Government, Local Bodies, Development Authorities etc. By Government order dated 23.12.97 the State Government decided to revise pay scales of the State Government employees w.e.f. 1.1.96. However, the revised pay scale and the benefits of time scale were not implemented.

3. The State Government, thereafter, by Government order dated 11.8.98 accepted the 4th presentation of the Pay Commission U.P. 1998 vide its letter dated 21.7.98, allowing the benefit of promotional pay scale and revised pay scale in higher pay scale to the employees of Local Bodies and Jal Sansthan w.e.f. 1.1.96. The time scale was made applicable to the State Government employees by Government order dated 2.12.2000 providing for selection grade on eight years of satisfactory service, a promotional pay scale on personal basis on 14 years of satisfactory service and the next promotional pay scale on completion of 19 years of satisfactory service. A further benefit of next promotional pay scale was provided to those, who had completed 24 years of satisfactory service with certain additional benefits.

4. The benefits of time scale on completing satisfactory service of 8 years, 14 years, 19 years and 24 years respectively was not made applicable to employees of Local Bodies, Palika Centralised Service and Development Authorities. The petitioners as employees of Development Authorities approached the State Government with several representations. They were informed that the State Government did not have any objection to its implementation but was not willing to admit the benefits in writing. Several rounds of discussion with the Chairman of the Development Authorities and other competent authorities did not result into grant of benefits, giving rise to these writ petitions.

5. The petitioners claim the benefits of time scale, and promotional pay scales, on the basis of the acceptance of the recommendations of Pay Commission by the State Government, as well as discrimination caused to them as against the State Government employees and the employees of Centralised services of local bodies, as violative of Article 14 and 16 of the Constitution of India.

6. In writ petition No. 18886 of 2002 a short counter affidavit was filed by Shri Awadhesh Narain, Under Secretary, Urban Development, Government of U.P. on 8.5.2003 stating in paragraph 4 as follows:

4. That the matter is under serious considerations in Finance Department and various level of the Government. As the matter involves the policy of the State Government and approval from different departments is required, it is pertinent to mention here that the Finance Department has sent back the file with certain recommendations which requires the approval of the Cabinet.

7. The Court found that more than one year had passed but the State

Government had not taken a decision for which assurance was given on 8.5.2003 and issued an interim mandamus to the State Government to implement the recommendations of the Pay Commission with regard to the employees of the Centralised service in local bodies and development authorities within six weeks or to show cause.

8. In the affidavit of Shri B.N. Singh, Joint Secretary, Allahabad Development Authority, Allahabad filed in writ petition No. 39926 of 2002, it was stated that benefits of 5th Pay Commission for time scale can be given provided the State Government agrees to such implementation as service conditions of all the employees are regulated by the rules framed by the State Government.

9. On 1.2.2005 the Court observed that all the development authorities in the State have virtually become defunct. Instead of regulating the development areas they are only interested in extracting bribes from general public and have become builders and colonisers with no responsibility. Most of the employees are not carrying out their duties and are not prepared to take their responsibilities. The cities in the State are dying as urban planning is neither followed nor implemented. They have no right to claim higher salary and that time has come when the State Government should link higher pay scale with performance. It was further observed that a person, who seeks remedies in law must show that he is entitled to and deserves such relief. While refusing interim orders at that stage time was given to the State Government to file counter affidavit in four weeks.

10. Learned Standing Counsel filed an affidavit of Shri R.B. Prasad, Special Secretary, Housing and Urban Planning Department, Govt. of U.P., Civil Secretariat, Lucknow on 5.3.2005 giving background of the recommendations, acceptance and implementation of the 5th Pay Commission Report in paragraph 4 to 6 of the affidavit. Initially the benefit of time scale and selection grade was not given, however, the Government order dated 2.12.2000 staying these benefits was lifted with discretion to the local authorities and local bodies to grant these benefits keeping in mind their financial position. It is stated in paragraph 7 of the counter affidavit that providing time scale to employees of local bodies, the finance department recommended for imposing certain conditions that by granting time scale no financial burden be placed by the State Government and that these bodies should manage the expenses to be incurred in this regard and to take the ultimate responsibility to make the payment. It was provided that financial grant to be given to the local bodies will be freezed and no additional grant will be given for additional expenditure to be incurred in allowing time scale. With regard to development authorities the State Government submitted in paragraph 8, 9, 10 and 11 as follows:

That the position of the Development Authorities is totally different that from the Local Bodies. Though the State Government pays some sort of grant to Local Bodies hut no such grant is given by the Slate Government to the Development Authorities. The State Government in the past used to take guarantee of the loans to be given to the Development Authorities and now even that guarantee is also not being given in view of the deteriorating financial condition of the State Government. The financial position of all the 22 Development Authorities in the State is worst and as per the datas collected till the month of January, 2005, there is a loan of about Rs. 517.79 crores. It is also pertinent to state that in order to pay the interest of the loan against the Development authorities they use to pay the same having made further borrowings. A true copy of the Chart demonstrating the indebtedness of the Development Authorities of the State is being annexed herewith and is marked as Annexure No. CA-4 to this counter affidavit.

That in view of the directions of this Hon''ble Court, the matter was considered at the highest level of administrative side and ultimately in view of the deteriorating financial condition of the Development Authorities, no decision could be taken for allowing Time Scale to the employees of the Development Authorities.

That the matter is under serious consideration of the State Government and as a step in this direction a letter has been issued to certain Development Authorities to prepare an action plan for removing their indebtedness, so that, the Time Scale may be given to the employees of the Development Authorities. A true copy of the letter dated 25th January 2005 is being annexed herewith and is marked as Annexure No. CA-5 to this counter affidavit.

That in view of the consideration at the highest level and also on the recommendations of the Finance Department it has been decided not to grant Time Scale to the employees of the Development Authorities unless their indebtedness is removed first for which efforts are being made and it is for the Development Authorities also and its employees to improve their functioning, so that, they may be in a position to repay the loans and their employees may be also benefited by the grant of Time Scale.

11. In paragraph 16 it is reiterated that the finance department constituted a committee to implement the recommendation of 5th Pay Commission and that by Government order dated 9.10.97 it was categorically stated in paragraph 4 that the recommendations have been made keeping in mind the financial position of the concerned institutions. It is further stated that unless the indebtness is removed, time scale cannot be allowed.

12. U.P. Urban Planning and Development Act, 1973 was enacted to provide for development of certain areas of Uttar Pradesh according to plan, and for matters ancillary thereto. The existing local bodies and other authorities were not found able to cope up with the needs of development. Development areas were provided to be declared with development authorities pattern of the Delhi Development Authority for planned urban development. The authority u/s 4(3) is provided to include the whole or any part of city as defined in U.P. Nagar Maha Palika Adhiniyam, 1959 and to consist of a Chairman and Vice-Chairman be appointed by the State Government. The Secretary to the State Government

incharge of department in which, for the time being the business relating to development authorities is the Ex-Officio Secretary and other Ex-Officio members including Chief Town and Country Planner, U.P., Managing Director of Jal Nigam, Mukhya Nagar Adhikari, District Magistrate, four members to be elected by Sabhasad of Nagar Maha Palika and such other members not exceeding three to be nominated by the State Government. The object and purpose of the development authorities is to prepare master plan and zonal development plans, submit them for approval to the State Government, maintenance and improvement of facade of certain buildings abutting arterial roads, development of land in the development area, to grant permission for the development in the area, to supervise use of land and building to be in conformity with such plan, acquisition and disposal of land for development and management of nazul land. All these activities except that of preparation of master plan and zonal development plan are regulatory. The acquisition and disposal of land is a profit making activity.

13. The development authorities were conceived for the planned development of the area for which they were constituted, Instead these development authorities, having delayed the preparation and implementation of master plan and zonal development plan started acquiring, and selling land and buildings. In the last 25 years, the development authorities, completely deviated from its objects and instead became builders and developers in the townships. The Court takes judicial notice of the fact that land in prime areas were acquired by the development authorities for constructing residential colonies and were sold at more than ten times of its acquisition costs. The profit making activity, however, resulted into all the development authorities in the State of Uttar Pradesh falling into losses. Large scale corruption, nepotism, arbitrariness, short sighted policies and favours granted to politicians have destroyed all the development authorities. The loans taken by the World Bank and HUDCO were not paid, excessive staff was employed without sanction of posts. These Authorities, not only failed to pay the loans, but kept on borrowing more and more and are now largely dependent upon the government grants even for payment of salaries. In most of the development authorities the master plans and zonal development plans have not been prepared. Instead of planned development of cities, the authorities have allowed the cities to decay and have converted them into urban slums. The difficulties and obstructions, created by the development authorities in sanctioning lay out plans have forced citizens, to make constructions, which are then treated to be unauthorized to fleece the occupiers. The demolition orders are kept in files, to be used as perennial source of extortion. The officers and staff have earned wealth beyond their known source of income. The State Government allowed and encouraged their own officers on deputation, to exploit the Act, for their own advantage and is now admitting these facts in their affidavits.

14. In the counter affidavit of Shri R.B. Prasad, Special Secretary, Housing and Urban Planning Department, it is admitted that each of the development

authority is running into losses and is bleeding the State Government for servicing the loan. The details of the losses of the 11 development authorities including Gaziabad, Kanpur, Lucknow, Allahabad, Meerut, Gorakhpur, Varanasi, Banda, Buland Sahar-Khurja, Hapur-Pilkhua, Raibarely shows that together they owe more than 285 lacs towards the government grant taken as loan for payment of salaries and servicing of debts. They are also liable to pay more than Rs. 20 crores to HUDCO, and to other borrowings. In January, 2005 total amount of loan to be repaid by these 22 development authorities was more than 268.73 crores. The State Government has refused to bear any further burden by way of providing grants, for servicing the higher pay scales or the time scale/ promotional pay scale to the employees of the development authorities.

15. Shri Ashok Khare, learned Counsel for the petitioners submits that there has been hostile discrimination between local bodies to which the benefits have been allowed in the development authorities. Each of the development authorities have informed the State Government that it is ready to bear the burden of time scale/promotional pay scale. The employees stagnating for 20-24 years without promotions, are disillusioned and are being discriminated. He submits that the objects for which the development authorities were established and the fact whether they have any fund or borrowings is not relevant for providing benefits of statutory pay scales and for causing hostile discrimination with similar statutes local bodies. The decision of the State Government is most unreasonable and arbitrary. All earlier pay revisions were sanctioned. The employees in centralized services and those who are on deputation have been given this benefit. Shri Khare submits that there is absolutely no justification for the State Government to refuse the same benefit to the employees of the development authorities.

16. The service conditions of the employees of the development authorities are subject to such control and restriction as may be determined by general or special order of the State Government. Sub-section 2 of Section 5 of the U.P. Urban Planning and Development Act, 1973, further provides that the authority may appoint such number of other officers and employees as may be necessary for efficient performance of its functions and may determine their designation and grades. The State Government, as such, under the Act is an authority competent to sanction the pay scales and higher pay to be paid to the employees of the development authorities. The terms and conditions of service of persons in centralized service appointed in development authorities have to be determined by the State Government under Sub-section 1 of Section 5-A of the Act.

17. The Courts ordinarily do not interfere with the policy decision taken by the State Government. Judicial review of policy decision is permissible only where it violates any of the rights guaranteed by the Constitution, is in colourable exercise of power, malafide or capricious.

18. In Joint Action Council of Service Doctors'' Organisations and Others Vs. Union of India (UOI) and Another, followed in Union of India (UOI) and Another Vs. Manu Dev Arya, the Supreme Court held that question as to whether certain

allowances would be paid to a section of employees or not, and that too at what rate, is basically a question of policy. Employees concerned cannot claim non-practicing allowance as a matter of right.

19. Shri Ashok Khare assisted by Shri Subodh Kumar has relied upon statement of cash flows in 24 authorities, which shows a balance with them as on 1.7.2005 and a letter sent by the Secretary, Housing and Urban Development, U.P. to all Housing Commissioners and Vice Chairman of development authorities to prepare a action plan for unused amount, which is increasing in last three years. He has relied upon the statement prepared by the Finance Controller of Agra Development Authority, giving the details of financial burden, which Agra itself would be only about Rs. 45.65 lacs and which development authority prepared to bear. He submits that all the development authorities have communicated to the department that they are ready to bear financial burden of grant of time scale/ promotional pay scale to its employees.

20. From the documents annexed by the petitioners I find that the letters were written as early as on 28.7.2005 by the Chief Secretary, Government of U.P. to the Housing Commissioners and Vice-Chairman of all Development Authorities, informing them of the losses suffered by the development authorities namely Meerut, Moradabad, Bareily, Banda, Hapur-Pilkhua and Saharanpur in the last three years and Varanasi in the last two years and the statement of fact that the development authorities in these districts are working in a wholly unplanned and undisciplined manner. All the development authorities were asked to submit action plan for three years from their own source or from any private consultants. In paragraph 3 of the letter the development authorities in losses were warned that no further plan for acquisition of land and other plans will be sanctioned for them.

21. U.P. Urban Planning and Development Act, 1973 has conceived the development authorities to be autonomous bodies with supervision and an advisory counsel u/s 6 of the Act. The authority under Sub-section (2) of Section 4 is a body corporate having perpetual succession and common seal and power to acquire, hold and dispose of property, to contract and be issued in the name of the authority. The State Government has only supervisory control over the number and condition of service of officers and employees. The authority is authorized to prepare its budget u/s 21 of the Act with estimated receipts and expenditure. It is required to maintain accounts and get them audited u/s 22 with annual statement and to forward the same every year to the State Government. The authorities require u/s 24 to constitute for its own benefit pension and provident fund. It is entitled to charge tolls and to recover its money under Sections 39(a) and 40 of the Act to levy and to collect additional stamp duties. With such autonomy of financial power the authority should improve its financial affairs. This liberty, however, cannot be stretched to reward its officers with time scale/promotional pay scale where the authority is suffering continuous losses and is unable to pay its loans.

22. In the aforesaid background I do not find any illegality in the stand taken by the State Government to disapprove the proposals for award of time scale/ promotional pay scale to the employees of the Development Authorities, and to accept the recommendation of the 5th Pay Commission for them. I do not find that they have been discriminated as against the State Government and the employees of other local bodies, who are primarily discharging State functions without any profit motive. The reasons given by the State Government, for not implementing the recommendations of 5th Pay Commission with regard to time scale/promotional pay scale, linking them with the financial condition and performance of the development authorities is a policy decision, which is not arbitrary, malafide or capricious.

23. The Courts have been cautioned to be slow with interfering with the Government policy. In M.P. Oil Extraction v. State of M.P. (1977) 7 SCC 592 the Supreme Court in dealing with revision of industrial policy held that unless the policy framed is absolutely capricious and not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere epse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offend other constitutional provisions, or come into conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State.

24. The judgment was followed in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., when the Supreme Court upheld the change of policy by State of Punjab whereby reimbursement of medical expenses incurred in private hospital was only possible, if such treatment was not available in any Government hospital.

25. The Apex Court in Bhavesh D. Parish and Others Vs. Union of India and Another, while examining the validity of Section 45 of the Reserve Bank of India Act, 1934 held that the economic policy is best left to the wisdom of the legislature and in policy matters the accepted principle is that the Courts should not interfere.

26. The Court feels that now the time has come when pay revisions and additional pay benefits should be linked with the performance and a healthy competition must be encouraged to allow these benefits, to only those authorities, who have demonstrated sound financial health.

27. Both the writ petitions, are accordingly, dismissed.

