
(2018) 06 MP CK 0057
In the Madhya Pradesh High Court
Case No : Writ petition No. 804 of 2017

Raunak Yadav

APPELLANT

Vs

State Of M.P. And Others

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Uttar Pradesh Ministers (Salaries, Allowances & Miscellaneous Provisions) Act, 1981 —
Section 4A, 4(3), 5
Constitution of India, 1950 — Article 14, 32

Citation : (2018) 06 MP CK 0057

Hon'ble Judges : HEMANT GUPTA, CJ; AKHIL KUMAR SRIVASTAVA, J

Bench : Division Bench

Advocate : Vipin Yadav, Samdarshi Tiwari

Final Decision : Disposed Off

Judgement

The initial challenge in the writ petition was to an administrative order passed by the General Administrative Department of the State Government on

21.04.2016 permitting the Former Chief Ministers to occupy Government Accommodation as is granted to the Ministers in the State including benefits

in respect of allowances and other benefits. After the writ petition was filed, the State Government promulgated Ordinance No.2 of 2017 called

â??The Madhya Pradesh Mantri (Vetan Tatha Bhatta) Sanshodhan Adhyadesh, 2017â? published in the Extra-ordinary Gazette of the State

Government on 24.05.2017 allowing such benefits. Such Ordinance stands substituted by The Madhya Pradesh Mantri (Vetan Tatha Bhatta)

Sanshodhan Adhiniyam, 2017 (Act No.23 of 2017) published in Madhya Pradesh Gazette on 24.08.2017.

(2) The Madhya Pradesh Mantri (Vetan Tatha Bhatta) Adhiniyam, 1972 (for short â??the Actâ?) provides for residence of Ministers as also

conveyance and medical treatment to the Ministers, Cabinet Ministers, State Ministers, Deputy Ministers etc. The present writ petition is relating to

residence provided to the Former Chief Ministers. The relevant provision of the statute as it exists prior to aforesaid amendment reads as under:

â??5. Residence of Ministers, etc. - (1) Each Minister, Minister of State, Deputy Minister and Parliamentary Secretary shall be entitled, without

payment of rent, to the use of a furnished residence throughout his term of office at Bhopal and for the period of one month immediately thereafter,

and no charge shall fall on the Minister or Minister of State or Deputy Minister or Parliamentary Secretary personally in respect of the maintenance of

such residence. Explanation. - For the purposes of this section, ""residence"" includes the staff quarters and other buildings appurtenant thereto and the

garden thereof, and ""maintenance"" in relation to a residence includes the payment of local rates and taxes and the provision of electricity and water.

(2) If a Minister or a Minister of State, or a Deputy Minister or a Parliamentary Secretary does not avail of the benefit of sub-section

(1), he shall, in lieu thereof, be entitled to a house-rent allowance equal to twenty per centum of the salary payable to him under Section 3.

(3) In addition to a free furnished residence at Bhopal under sub-section (1), each Minister, Minister of State, Deputy Minister and Parliamentary

Secretary shall also be entitled to the use of a furnished residence without payment of rent at any other place which the State Government may, from

time to time for the purpose of this Act, declare to be the place of official residence of the Minister, Minister of State, Deputy Minister and

Parliamentary Secretary, as the case may be, so long as such declaration remains in force.

(4) The expenditure to be incurred in respect of furnishing of the residence provided to a Minister, Minister of State, Deputy Minister and

Parliamentary Secretary, as the case may be, under sub-section (1) shall be subject to the following monetary limits :-

Minister Thirty-five thousand rupees.

Minister of State Twenty-five thousand rupees.

Deputy Ministers Twenty thousand rupees.

Parliamentary Secretary Fifteen thousand rupees.

(5) The annual expenditure to be incurred in respect of upkeep, annual repairs

and maintenance of the residence and garden provided under sub-section (1) shall be subject to such monetary limits as may be laid down by rule made in this behalf by the State Government.â??

(3) Section 5 of the Act was substituted on 24.5.2017 when an addition was promulgated with following clause:

â??5. In Section 5 of the principal Act,-

(i) in sub-section (1), for full stop, colon shall be substituted and thereafter the following proviso shall be added, namely:-â??Provided that a Ex-Chief

Minister shall be entitled throughout his life, without payment of rent, to the use of a furnished residence equivalent to a Minister.â?;

(ii) in sub-section (4), for full stop, colon shall be substituted and thereafter the following proviso shall be added, namely:-

â??Provided that the provision of this sub-section shall apply to a Ex-Chief Minister as it apply to a Minister.â?;

(iii) in sub-section (5), for full stop, colon shall be substituted and thereafter the following proviso shall be added, namely;-â??Provided that the

provision of this sub-section shall apply to a Ex-Chief Minister as it apply to a Minister.â??.â??

(4) The question is as to whether the Former Chief Ministers are entitled to the benefit of government accommodation after demitting the office has

been examined by the Honâ??ble Supreme Court in Writ Petition (C) No.864/2016, [Lok Prahari Through General Secretary vs. The State of Uttar

Pradesh & ors.]. The Supreme Court was considering the matter of allotment of government accommodation to the Former Chief Ministers of the

State of Uttar Pradesh. The Supreme Court in its judgment dated 07.05.2018 struck down Section 4(3) of the Uttar Pradesh Ministers (Salaries,

Allowances & Miscellaneous Provisions) Act, 1981 as amended by Uttar Pradesh Act No.22 of 2016. It has been held as under:

â??36. In the light of the above views the allocation of government bungalows to constitutional functionaries enumerated in Section 4(3) of the 1981

Act after such functionaries demit public office(s) would be clearly subject to judicial review on the touchstone of Article 14 of the Constitution of

India. This is particularly so as such bungalows constitute public property which by itself is scarce and meant for use of current holders of public

offices. The above is manifested by the institution of Section 4-A in the 1981 Act

by the Amendment Act of 1997 (Act 8 of 1997). The questions relating to allocation of such property, therefore, undoubtedly, are questions of public character and, therefore, the same would be amenable for being adjudicated on the touchstone of reasonable classification as well as arbitrariness.

37. The present petitioner, as already noticed in the opening paragraphs of this judgment, had earlier approached this Court under Article 32 of the

Constitution challenging the validity of the 1997 Rules. Not only the said writ petition was entertained but the 1997 Rules were, in fact, struck down. In

doing so, this Court had, inter alia, considered the validity of the 1997 Rules in the light of Article 14 of the Constitution of India. The insertion of

Section 4(3) by the 2016 Amendment as a substantive provision of the statute when the 1997 Rules to the same effect were declared invalid by the

Court would require the curing of the invalidity found by this Court in the matter of allotment of government accommodation to former Chief

Ministers. The defect found earlier persists. The impugned legislation, therefore, can very well be construed to be an attempt to overreach the

judgment of this Court in *Lok Prahari* (supra).

38. Natural resources, public lands and the public goods like government bungalows/official residence are public property that belongs to the people of

the country. The “Doctrine of Equality” which emerges from the concepts of justice, fairness must guide the State in the distribution/allocation

of the same. The Chief Minister, once he/she demits the office, is at par with the common citizen, though by virtue of the office held, he/she may be

entitled to security and other protocols. But allotment of government bungalow, to be occupied during his/her lifetime, would not be guided by the

constitutional principle of equality.

39. Undoubtedly, Section 4(3) of the 1981 Act would have the effect of creating a separate class of citizens for conferment of benefits by way of

distribution of public property on the basis of the previous public office held by them. Once such persons demit the public office earlier held by them

there is nothing to distinguish them from the common man. The public office held by them becomes a matter of history and, therefore, cannot form the

basis of a reasonable classification to categorize previous holders of public office as a special category of persons entitled to the benefit of special

privileges. The test of reasonable classification, therefore, has to fail. Not only

that the legislation i.e. Section 4(3) of the 1981 Act recognizing former holders of public office as a special class of citizens, viewed in the aforesaid context, would appear to be arbitrary and discriminatory thereby violating the equality clause. It is a legislative exercise based on irrelevant and legally unacceptable considerations, unsupported by any constitutional sanctity.

40. Consequently, we hold that Section 4(3) of the 1981 Act cannot pass the test of Article 14 of the Constitution of India and is, therefore, liable to be

struck down. We, therefore, hold that the aforesaid Section 4(3) of the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions)

Act, 1981 is ultra vires the Constitution of India as it transgresses the equality clause under Article 14. The writ petition in question, therefore, is

allowed.â??

(5) For the reasons recorded by the Supreme Court in the case of Lok Prahari (supra), we find that a Former Chief Minister cannot be treated to be

at par with the Ministers. The inclusion has been founded to be violative of Article 14 of the Constitution of India. Therefore, for the reasons recorded

by the Honâ??ble Supreme Court in the Judgment referred to above, the Section 5 of the Act, as amended, is struck down.

(6) However, the question in respect of other perks is not being examined in the present petition. The same is left open to be raised by the petitioner or

any other aggrieved person in an appropriate petition, if so advised.

(7) As a consequence of striking down of Section 5 of the Act, as amended, the State Government shall take appropriate steps for cancellation of the

allotment and to take possession of the same from the Former Chief Ministers expeditiously within a period of one month.

With aforesaid observation, petition is disposed of.