
(2005) 07 DEL CK 0088

In the Delhi High Court

Case No : Writ Petition (C) No. 9585 of 2003 and CM 14234 of 2003

Sunita

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 141 PLR 46

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : T.K. Trivedi, for the Appellant; Amiet Andley, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In these proceedings under Article 226 of the Constitution of India, two orders passed by the respondent Nos. 2 and 3 dated 11.4.2001 and 15.12.2002 pertaining to allotment of Government Accommodation, to the petitioner, have been impugned.

2. The petitioner is Programme Executive working with the All India Radio. She was allotted a Government quarter on 2.12.1998 in Andrews Ganj (hereafter called "the flat"). It is averred that pursuant to a complaint by someone that the petitioner had sublet the flat unauthorizedly, investigations were carried out, and a show-cause notice issued. Subsequently, the show- cause notice was dropped/recalled. On 20.12.2000 another show-cause notice was issued to the petitioner, alleging that she had sublet the flat in contravention of rules; her response as to why the allotment ought not to be cancelled and further action be not taken, was elicited. The petitioner sought for information including a copy of the complaint, through her letter dated 12th March, 2001, after responding to a notice of personal hearing.

Subsequently, by order dated 11.4.2001, the respondents cancelled the allotment and directed imposition of damages as also as ordered that the

petitioner would be ineligible for debarred from future entitlement to Government accommodation. The petitioner appealed. During pendency of the appeal, the flat was inspected on separate occasions, including on 24.7.2001, 29.8.2001 and 8.9.2001. On the first occasion, the premises were found locked; and on the last occasion the report indicated that the petitioner as well as to other persons were found. The report indicated that there was no subletting. Another inspection was carried on 5.11.2001 which also reported that the inspecting team did not suspect any subletting. In this background, the petitioner's appeal was partly allowed. The appellate authority set aside the direction regarding ineligibility for future allotment and further disciplinary action. However, the direction for recovery of damages was confirmed.

3. The principal grounds on which the impugned action of the respondents have been questioned in these proceedings are that the action was motivated and result of proceedings carried out in utter violation of principles of natural justice; the petitioner was not furnished copies of the complaint nor even given a proper hearing by the authority which passed the order in the first instance. The petitioner has averred that in fact the authorities have misconstrued the facts and acted in an arbitrary manner since there was no subletting on the first instance even on the admitted material on record as her brothers were found in the premises in the course of one or the other inspection. It is averred that mere residence of a blood relation such as a brother with the petitioner cannot lead to an inference of subletting.

4. The respondents in their counter affidavit aver that on eight occasions the premises were inspected out of which the petitioner was found there in the course of two inspections. On four occasions the premises were locked and on the other two occasions certain persons claiming to be relatives of the petitioner were found. It is averred that their identities are suspected. The dates in question are 27.9.2000 and 15.12.2000. On the first date of inspection one Sh. Avinesh was found; on the second date of inspection Sh. Ajay and Sh. Anand were found. They claimed to be the cousin of the petitioner, and friend of her brother respectively. It is also averred that Sh. Avinesh claimed to be petitioner's brother. There was some doubt as to his identity on account of his signatures in the inspection record dated 15.11.2001. The allegations of denial of reasonable opportunity have been refuted and the respondent has averred that sufficient notice and opportunity was granted; it is also stated that the petitioner was given a chance to record her statement.

5. The original records of the case were produced in the course of hearing. They indicate that by a complaint dated 12.11.1999, one Sh. Tulsi Dass had alleged that the petitioner was not residing in the flat and that it was sublet. As a result, an inspection was carried out on 12.2.2000 when Sh. Aminesh was found along with two of his friends. That inspection report recorded that Sh. Aminesh claimed himself to be the petitioner's brother. In view of this position, a show-cause notice was issued on 6.3.2000. The file contains two attested copies of

certificates issued by the Central Board of Secondary Education, relating to the petitioner and Sh. Aminesh. Both of them have been shown as children of Shiv Narayan. The date of birth of Sh. Aminesh in the copy of CBSE certificate is 1.4.1971. Apparently, in view of this documentary evidence the authority decided to drop the case. Accordingly, an order was issued on 25.5.2000 intimating the petitioner that a decision had been taken to drop the case although the order does not cite any reason; there is an unsigned sheet of paper recording that when inspected Sh. Aminesh was found in the premises and that there was nothing wrong in the petitioner's brother residing with her.

6. The petitioner's woes do not appear to have ended with the above decision, The premises were again inspected on 24.7.2000 and 27.9.2000 respectively. On both occasions, the flat was locked. The first inspection however reported a case of "suspected subletting". On the second occasion, the inspection report recorded that Sh. Aminesh was present; nevertheless it proceeds to state that if Sh. Aminesh is found to be brother though the case would not be one of subletting, it would be an instance of misuse. Nothing happened thereafter. On 5.12.2000 a Member of Parliament appears to have addressed a letter to the department, complaining of subletting. On the basis of this a note was prepared on the same date and inspection also was carried out the very same day. Again, Sh. Aminesh was found in the premises. The inspection report once again reported that the case was not one of subletting but of possible misuse. A show-cause notice was issued on 20.12.2000. This notice alleged unauthorized subletting of the premises.

7. The official file contains a letter written by the Union Minister for Urban Development to the concerned Member of Parliament on 24.1.2001 assuring that action had been taken on the basis of his complaint. Similarly, the file contains several letters by another M.P., a former Chief Minister of Delhi closely following up the case and periodically urging action, and enquiring why the petitioner had not been directed to vacate the premises. Some of these letters also allude to an affidavit sworn to by the petitioner in which she had disclosed her address as being Mandir Marg and not Andrews Ganj where she had been allotted the flat.

8. Learned Counsel for the petitioner submits that the action of the respondents was motivated as also arbitrary; they never disclosed all the relevant information nor made available copies of complaints. The petitioner had made a written request for supply of all necessary documents which was not acceded to and the authority straightaway proceeded to pass an order which included the direction to pay damages. The appellate authority even while partly allowing the appeal ignored this aspect and maintained the earlier direction to pay damages. It is submitted that authorities were not able to prove the allegations leveled against the petitioner. If the case was indeed of one of subletting, there ought to have been a categorical finding in that regard. However, the entire material relied upon shows that on one or the other occasions the petitioner's brother was found whenever she was not in the premises. That cannot be termed as

subletting to warrant a crippling direction to pay damages. It is also submitted by learned Counsel for the petitioner that the nature of petitioner's employment, namely, Programme Executive in the All India Radio is such that she works in shifts and does not function on fixed time employment basis. In other words, the petitioner's job requirements are such that the time schedules for work differ on different dates/periods.

9. Mr. Andley, learned Counsel for the respondent submitted that substantial grievance of the petitioner had been redressed in that appeal inasmuch as the grievance regarding future disability for allotment was concerned; indeed the petitioner had now been allotted another quarter. He submitted that on majority of dates of inspection, the petitioner was unavailable in the premises so much so that even during pendency of the appeal when dates of inspections were duly notified the premises were found locked. It was also submitted that the authorities were constrained to return a finding of sub-letting on account of discrepancies of the signatures of Sh. Aminesh.

10. The facts of this case disclose that the petitioner, a Programme Executive with the All India Radio, was allotted Government accommodation in the year 1998. The nature of her employment places time constraints in that she works in shifts. On an earlier occasion some time in the year 1999 a complaint had been made that she was not using the premises and had sublet it. That led to investigation and an inspection of the premises. During inspection Sh. Aminesh was found in the premises. The petitioner was able to place on record copies of his school leaving certificate showing that he was her brother. The authorities were satisfied with the Explanation and dropped the inquiry and further investigation in the matter in May 2000. For mysterious reasons, the matter was again revived barely two months later. Another series of inspections were carried out. The matter acquired greater impetus with the intervention of a Member of Parliament in December 2001 with a complaint enclosing certain documentary evidence such as an affidavit of the petitioner showing a different address. On the same day, inspection was carried out and subsequently a show-cause notice was issued. The petitioner responded on 12.3.2001 and sought for copies of the complaint and other documents. There is nothing on record to indicate that these were supplied or that the authorities even thought the application worthy of consideration. The order of the authority in the first instance was passed on 11.4.2001 cancelling the allotment on the ground of subletting directing payment of damages at 10 times of the license fees and rendering the petitioner ineligible for future allotment of Government accommodation. The petitioner appealed. During the pendency of appellate proceedings, further investigations were carried out. Again on at least two occasions Sh. Aminesh was found in the premises. On one occasion, another person Kamlendu admittedly the petitioner's brother, was found in the premises.

11. The sequence of events and the manner in which the proceedings were conducted, in my opinion, reveal a pre-disposed bent of mind on the part of the

respondents. The investigation carried out earlier pursuant to the complaint in 1999 led to dropping of the show-cause notice in May 2000, after the petitioner furnished documentary evidence to the effect that Sh. Aminesh [found in the flat], was her brother. Despite this the respondents thought it fit to proceed ahead, carried out further inspections and issued a show-cause notice. The petitioner's statement was undoubtedly recorded. However, the record nowhere discloses that the complaint and copies of other relevant materials were ever given to her. By her statement dated 23.11.2001 petitioner had clarified that the affidavit submitted by her on 3.5.1999 in the Court of the District and Sessions Judge was filed on the advice of a lawyer where she had affirmed to be living in quarter No. J-618, Mandir Marg which had been regularized in the name of her brother Kamlendu. It has been stated that the case was of the year 1997 and in fact the entire copies of records pertaining to the case were produced. The original record shows that the affidavit is in support of a revision petition which was occasioned by an order passed at behest of Tulsi Dass who had initially complained. The Tulsi Dass appears to be a neighbour of her brother Kamlendu, residing at J-619, Mandir Marg. These aspects have nowhere been adverted or even discussed by the Assistant Director or the Appellate Authority, namely, the Director.

12. I am of the considered view that the respondents could not have come to the conclusion that the flat had been sublet. Subletting implies a positive action whereby the premises are occupied by a stranger. In the present context, there was no material on record to show that on a continuous basis a stranger or third party was in possession or occupation of the premises. At the highest what could be inferred was the absence of the petitioner on several occasions when inspections took place and the presence of Sh. Aminesh on certain occasions in the premises along with other persons, and the presence of petitioner's other brother, namely, Kamlendu. Perhaps these facts impelled the Appellate Authority to soften the rigour of the order passed by the Assistant Director. The order of the Appellate Authority, namely, the Director suffers from the vice of the non-application of mind since there is no material on record to support a finding of subletting. In fact, none of the inspection reports have reported subletting. The show-cause notice issued on 20.12.2000 alleged that the petitioner had completely/partially sublet the premises to unauthorized persons. In support, there is no material on record by way of inspection report. Hence the instant case is one of action being based on no evidence.

13. It is well established that every action of an administrative or statutory authority has to be based on bona fide exercise of power, preceded by an application of mind to all factors relevant and germane to the issue in question. Further it must also be based on some material. In the instant case, the impugned order is neither based on proper application of mind nor is based on any cogent and acceptable material to establish subletting. The finding of subletting Therefore was based on no material, and could not have been reached by any reasonable person. Hence, I am of the view that the petition is entitled to

succeed. The petition is accordingly allowed; the impugned orders dated 11.4.2001 and 15.12.2002 are hereby quashed/set aside. No costs.