

(2014) 02 KAR CK 0118

In the Karnataka High Court

Case No : Writ Petition Nos. 37536 to 37541/2013 (S-CAT)

Union of India and Others

APPELLANT

Vs

Smt. D.N. Sarojadevi

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 19, 2, 3, 3(q)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(d), 4, 4(1), 5(1)

Citation : (2014) 2 AKR 348 : (2014) ILR 2037 : (2014) 2 KCCR 1288 : (2014) LabIC 1967

Hon'ble Judges : S. Abdul Nazeer, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : M. Unnikrishnan, Advocate for the Appellant; V.S. Naik, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—These writ petitions are directed against the order in O.A. No. 279/2012 dated 6.2.2013 whereby the Central Administrative Tribunal, Bangalore Bench, Bangalore, has directed the respondent to continue in the present premises till an alternate ground floor accommodation at the new place is made available to her. The respondent was employed at Airport Station, Yelahanka as Steno-I and was provided with an authorized Government accommodation within the station premises. On being promoted as Personal Secretary, she was transferred to the Station Headquarters Training Command, Indian Airforce Unit at Hebbal, Bangalore. She joined duty at the new work place on 1.3.2011.

2. As per the prevailing policy, the defence civilian employees have to vacate their quarters on posting to another station. The respondent through her letter dated 23.3.2011 requested the petitioners to permit her to retain the quarters for two months i.e. from 28.2.2011 to 27.5.2011. She undertook to vacate the

quarters on 28.5.2011. Considering her request and undertaking, petitioner No. 4 granted her permission to retain the quarters till 27.5.2011. On 16.5.2011, the respondent once again submitted a representation seeking permission to retain the quarters till she gets an accommodation at the new work place quoting medical reasons of her son. Petitioner No. 4 through a letter dated 1.6.2011 (Annexure "A5") informed the respondent that occupancy of service accommodation beyond two months of posting is not authorized due to policy constraints. It was further informed that she has been declared as an unauthorised occupant and action will be initiated against her for recovery of damages at the market rate and eviction as per the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Public Premises Act"), besides disciplinary action is being initiated against her. Instead of vacating the quarters, the respondent went on writing letters seeking extension of time to vacate the quarters quoting one reason or the other. Finally, a notice was issued under sub-section (1) of Section 4 of the Public Premises Act to the respondent on 31.10.2011 as per Annexure "R8". This was followed by an order at Annexure "R9" dated 13.12.2011 u/s 5(1) of the Public Premises Act directing her to vacate the quarters within 30 days from the date of publication of the said order. The respondent filed O.A. No. 279/2012 before the Central Administrative Tribunal, Bangalore Bench, Bangalore, being aggrieved by the notice at Annexure "R8" wherein she was informed that action for her eviction will be initiated under the provisions of the Public Premises Act.

3. Petitioners have filed their reply to the application by contending that the respondent has not approached the Tribunal with clean hands. She has suppressed material documents/facts with an intention to mislead the Tribunal. Secondly, it is contended that the application is not maintainable and the Tribunal has no jurisdiction, power or authority to entertain the application.

4. As stated earlier, the Tribunal by its order dated 6.2.2013 has allowed the respondent to continue in the present premises till an alternate ground floor accommodation at new place is made available to her.

5. Learned Counsel for the petitioners submits that the respondent was employed at Air Force Station, Yelahanka as Steno-I and was provided with authorized Government accommodation within the station premises. On being promoted as Personal Secretary, she was transferred from Yelahanka Station to the Headquarters Training Command, Indian Airforce Unit at Hebbal, Bangalore. As per the prevailing policy, the defence civilian employees have to vacate their quarters on posting to another station. The respondent did not vacate the premises. She went on seeking time to vacate the quarters for one reason or the other. Finally, she was informed by letter at Annexure "A5" dated 1.6.2011 that she will be evicted under the provisions of the Public Premises Act. A notice u/s 4(1) of the Public Premises Act was issued to her on 31.10.2011. This was followed by an order u/s 5(1) of the Public Premises Act dated 13.12.2011. The respondent has not disclosed the issuance of the notice and passing of the order

under the Public Premises Act before the Tribunal.

6. It is further argued that the respondent is in unauthorized occupation of the public premises. She cannot maintain an application u/s 19 of the Administrative Tribunals Act, 1985 ("Act" for short) because the dispute is not relating to a "service matter" as defined under sub-section (q) of Section 3 of the Act. On this ground alone, the application should have been dismissed. The Tribunal has therefore erred in entertaining the application.

7. On the other hand, learned Counsel appearing for the respondent submits that the respondent is married and is having a family and a premature down syndrome son. Hence, she made a representation dated 28.4.2011 with a request to allot the quarters on medical grounds or for retention of earlier quarters at Yelahanka. He has brought to our notice the medical certificates of respondent's son and submits that she cannot wait for her turn for allotment of an accommodation. Learned Counsel further submits that the son of the respondent is attending Baldwin Opportunity School, an Institution for children who are intellectually challenged from 2.7.2013. She may be granted reasonable time to vacate the premises or in the alternative allot atleast a "C" type quarters in the ground floor at Mekhri Circle, Bangalore.

8. We have carefully considered the arguments made by the learned Counsel made at the Bar and perused the materials placed on record.

9. It is not in dispute that respondent was employed at Air Force Station, Yelahanka as Steno-I and was provided with authorised Government accommodation within the station premises. On being promoted as Personal Secretary, she was transferred from Yelahanka Station to Headquarters Training Command, Indian Airforce unit at Hebbal, Bangalore. She had joined the duty at the new work place on 1.3.2011. It is an admitted fact that as per the prevailing policy, the defence civilian employees have to vacate their quarters on posting to another station. The respondent went on seeking extension of time to vacate the quarters. She was granted reasonable time to vacate the said quarters. However, the respondent did not vacate the quarters even after the expiry of extended period. A notice at Annexure "A8" dated 8.6.2011 was issued to the respondent informing her that the occupancy of service accommodation beyond two months of posting is not authorized and that action will be taken against her for her eviction from the quarters under the provisions of the Public Premises Act. Thereafter, a notice at Annexure "R8" dated 31.10.2011 was issued u/s 4(1) of the Public Premises Act. An order at Annexure "R9" dated 13.12.2011 was passed u/s 5(1) of the said Act. In her application, the respondent has not disclosed the issuance of the notice at Annexure "R8" and the order passed at Annexure "R9" dated 13.12.2011 under the provisions of the Public Premises Act.

10. The petitioners have taken a stand that the original application filed u/s 19 of the Administrative Tribunals Act is not maintainable because the matter does not pertain to a "service matter" as defined u/s 3(q) of the Act. The Tribunal has no

jurisdiction to entertain the application or to pass the order impugned herein. It is not in dispute that the premises in question is a "public premises" as defined u/s 2(d) of the Public Premises Act. The respondent is in unauthorized occupation of the said premises. That is why the petitioners have issued notice u/s 4(1) of the Act for her eviction. This was followed by an order u/s 5(1).

11. The jurisdiction, power and authority of the Central Administrative Tribunal are specified under sub-section (1) of Section 14 of the Act. The Tribunal under this provision is invested with the jurisdiction and power to decide all disputes and complaints relating to persons appointed to public services and posts under the Union Government and other authorities enumerated in this provision except those who are expressly excluded by Section 2 of the Act. Section 19 provides for making an application by a person aggrieved by the order pertaining to any matter within the jurisdiction of a Tribunal for redressal of his grievances. In this context, the expression "service matters" contained in Sec. 3(q) assumes importance, which is defined as under:

(q) "service matters" in relation to person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any Corporation or society owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

12. A perusal of this provision makes it clear that what is defined in Section 3(q) is "service matter" in relation to a person. It provides that all matters relating to conditions of service come within this definition. In other words, to qualify as a "service matter", it has to be a condition of service or must have proximate nexus to a condition of service. Secondly, the nexus to the conditions of service must be in respect of the five categories of matters specified in the clauses. After specifying four specific conditions of service in clause (i) to (iv), the residuary clause speaks of "any other matter whatsoever". Though the language employed is wide, it is not possible to infer that the Parliament intended to bring in every matter without any qualification. The said expression is qualified and takes its colour from the expression "all matters relating to the conditions of service" employed in the first part of the definition clause. As this general clause occurs after enumeration of different specific conditions of service, the principle of *ejusdem generis* is attracted. "*Ejusdem generis*" is a rule of legal construction that general words of following enumeration of particulars are to have their

generality limited by reference to the preceding particular enumeration and to be construed as including only all other articles of the like nature and quality. Having regard to the setting and context, the expression "any other matter whatsoever" means "condition of service in respect of any other matter whatsoever".

13. The procedure for eviction of unauthorized occupants from public premises is provided in the Public Premises Act. The Tribunal is not conferred with the power or authority to consider the legality of the proceedings initiated against the Government servant in respect of a Government quarters in his/her unauthorized occupation. The expression "any other matter" in Section 3(q)(v) would not confer jurisdiction to the Tribunal to consider the validity of the proceedings initiated or the order passed by the competent authority under the provisions of Public Premises Act.

14. The Hon'ble Supreme Court in Union of India (UOI) Vs. Rasila Ram and Others, , has held that an order passed by the competent authority under the Public Premises Act for eviction would not come within the purview of the jurisdiction of the Administrative Tribunals constituted under the Administrative Tribunals Act, 1985. It has been held thus:

2. The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the "Eviction Act") was enacted for eviction of unauthorized occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorized occupants, as defined under the said Act. Once, a Government servant is held to be in occupation of a public premises as an unauthorized occupant within the meaning of Eviction Act, and appropriate orders are passed there-under, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression "any other matter" in Section 3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal, over an order passed by the competent authority under the Eviction Act, must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed.

15. We are of the view that the dispute relation to eviction of the respondent from the quarters belonging to the petitioners is not a "service matter" as defined u/s 3(q) of the Administrative Tribunals Act. Therefore, the order of the Tribunal impugned herein is totally without jurisdiction.

16. At this stage, learned Counsel for the respondent submits that having regard to the facts and circumstances of the case, reasonable time may be granted to the respondent to vacate the premises. Taking into consideration the said

request, time is granted to the respondent to vacate the quarters till 31.8.2014. The petitioners may also consider the allotment of atleast a "C" type quarters in the ground floor at Mekhri Circle, Bangalore, to the respondent keeping in mind the ailment of her son.

17. In the result, writ petitions succeed and are accordingly allowed and the order passed by the Tribunal in O.A. No. 279/2012 dated 6.2.2013 is hereby quashed subject to the observations made above. In view of the disposal of the petitions as above, I.A. No. 1/2013 does not survive for consideration. It is accordingly dismissed. No costs.