

(2009) 10 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (C.) No's. 5240-42 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Ms. Surjeet Sangwan

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2009) 10 DEL CK 0034

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Ruchika Mittal, for the Respondent

Judgement

Anil Kumar, J.—The petitioners have impugned the order dated 23.09.2005 passed in O.A. No. 1558/2005 titled as Ms. Surjeet Singh Sangwan v. Union of India and Ors. quashing the letters dated 06.11.2003 and 05.03.2004 issued by the Assistant Inspector General, Estates, addressed to Principal, Kendriya Vidyalaya, SPG Complex, Dwarka with copies to the respondent and directing recovery of Rs. 76,421/- from the respondent. The Tribunal also directed the petitioner to charge only twice the license fee and not the damages/rent.

2. The respondent was a primary teacher in Kendriya Vidyalaya, SPG Complex, Sector 8, Dwarka and was allotted House No. 83, Type "C", SPG Complex, New Delhi. She was relieved by order dated 17.04.2003. On respondent being relieved from the said school she became liable to surrender the accommodation provided to her in the SPG Complex, Dwarka. However, in view of the marriage of her daughter, she sought permission from the AIG (Estate), SPG Complex, Dwarka to retain the government accommodation from 09.09.2003 up to 01.10.2003 on humanitarian grounds. The request of the respondent was forwarded to Principal, Kendriya Vidyalaya/petitioner No. 3. According to the respondent, she vacated the accommodation in the SPG Complex on 05.10.2003

and handed over the key to the Principal on that day itself.

3. The respondent received a letter dated 06.11.2003 from AIG Estate, SPG Complex respondent No. 2 regarding recovery of license fee and water charges. It was alleged that she had been retaining the accommodation un-authorizedly from 17.04.2003. It appears that the SPG addressed a communication dated 15.01.2004 to Kendriya Vidyalaya regarding recovery of damages from the respondent and in pursuance thereof, on 21.01.2004 Kendriya Vidyalaya, SPG Complex, Dwarka addressed a communication to the Principal, Kendriya Vidyalaya, Sector 15, Dwarka. The AIG Estate directed the Principal, Kendriya Vidyalaya to recover a sum of Rs. 76,421/- from the respondent. Another letter dated 05.03.2004 was also issued seeking recovery of damages licence fee of Rs. 76,421/- at the rate of Rs. 8,148/- per month w.e.f. 17.04.2003 to 26.01.2004 besides water charges for the said period at the rate of Rs. 40 per month.

4. The respondent challenged the recoveries proposed to be made from her by filing a writ petition being WP(C) No. 10795/2005. The petitioners objected to the maintainability of the writ petition on the ground that a notification has been published whereby the disputes of the employees of Kendriya Vidyalaya Sanghathan could be raised before the Central Administrative Tribunal only. In view of the objections raised by the petitioners, the respondent withdrew the petition with liberty to approach the Central Administrative Tribunal by order dated 18.07.2005. Pursuant to the said liberty, the respondent filed O.A. No. 1558/2005 titled Ms. Surjeet Sangwan v. Union of India and Ors. praying, inter alia, to quash the orders dated 06.11.2003 and 05.03.2004 seeking to recover damages from the respondent.

5. The petition filed by the respondent has been allowed by order dated 23.09.2005 holding that:

(i) No proceedings were initiated by the petitioners u/s 7 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971;

(ii) Without any notice to the respondent (as the notices issued by the petitioner No. 2 were addressed to the petitioner No. 3) the demand had been raised;

(iii) The petitioners continued to deduct H.R.A. for the period when the respondent was in possession of the said accommodation which had been vacated by the respondent on 05.10.2003 (as the key had been handed over by the respondent to the Principal, Kendriya Vidyalaya Sanghathan, SPG Complex, Dwarka), and;

(iv) There were no deficiencies in the acts of the respondent in carrying out any formalities, and;

Therefore, the demand raised by orders dated 06.11.2003 and 05.03.2004 was not sustainable and consequently, the orders dated 06.11.2003 and 05.03.2004 were set aside. The learned Tribunal further held that the petitioner could charge only twice the license fee from the respondent and not the damages/rent.

6. The petitioners have challenged the order of the Tribunal primarily on the ground that the Tribunal did not have jurisdiction as the dispute raised by the respondent was not a service matter as contemplated u/s 3(q) of the Administrative Tribunals Act, 1985. The petitioners have also relied on Smt. Babli and Another Vs. Govt. of NCT of Delhi and Others, and Union of India v. Dr. Jagdish Saran 123 (2005) DLT 626 in support of their contention that the dispute raised by the petitioner regarding payment of the damages claimed by the petitioners is not a service matter and could not be adjudicated by the Tribunal in exercise of its jurisdiction.

7. Learned Counsel for the petitioner has contended that the jurisdiction of the Tribunal is barred u/s 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the accommodation allotted to the respondent was not under any terms and conditions of the service of the respondent.

8. In Jagdish Saran (Supra) a Division Bench of this Court had held that disputes in respect of Government residential accommodation cannot become the subject-matter of petitions before the Administrative Tribunal unless the right to allotment or claim pertaining thereto is shown to be a condition of service. In this case the government employee was an out of turn allottee and damages were ordered to be recovered from the said government employee. In the petition filed before the Administrative Tribunal, it was held that the allotment to the employee was covered under the order issued earlier and therefore, Union of India was directed to refund the amount already recovered from the employee as damages. A Division Bench of this Court relying on Babli (supra) had held that allotment could not be construed and regarded as a matter relating to "condition of service" and therefore as the service matter as defined u/s 3(q) of the Administrative Tribunals Act, 1985 which contemplates only matters relating to "Condition of Service" between government and its employees.

9. Relying on Union of India (UOI) Vs. Rasila Ram and Others, the court had further held that the expression "any other matter whatsoever" in Section 3(q) (v) of the Administrative Tribunal Act, 1985 would not confer jurisdiction on to 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. The Supreme Court also held that the matters relating to eviction of unauthorized occupants from the Government quarters do not come within the purview and jurisdiction of Administrative Tribunal and the expression 'any other matter whatsoever' occurring in Section 3(q)(v) of the Act does not confer jurisdiction on Tribunal to go into legality of order passed by the competent authority.

10. It cannot be disputed that the letters seeking recovery were issued by the AIG (Estate) i.e. petitioner No. 2 to the petitioner No. 3 viz. Kendriya Vidyalaya demanding recovery of arrears of license fee and water charges and damages. It also cannot be disputed in the present facts and circumstances that the petitioners have not initiated any proceedings u/s 7 of the Public Premises

(Eviction of Unauthorized Occupants) Act, 1971 and no notice had been given to the respondent. Non compliance of the requirement of the said Act will not confer jurisdiction on the Administrative Tribunal u/s 3(q) of the Administrative Tribunal Act. The AIG, Estate who is the author of the two communications dated 06.11.2003 and 05.03.2004 is not the employer of the respondent. The real dispute is between the respondent on the one hand and the AIG, Estate on the other hand. The Kendriya Vidyalaya Sanghathan (KVS) has not, of its own, raised any demand against the respondent. Merely because the KVS may have effected or threatened to effect recovery from the dues/salary of the respondent of the amount demanded by the AIG (Estate), it does not mean that a dispute has arisen which could be classified as a dispute relating to the "conditions of service" of the respondent, as the allotment of the quarter is not covered by conditions of service of the respondent.

11. The Tribunal while passing the order dated 23rd September, 2005 impugned before this Court, had also noticed that the respondent vacated the accommodation in dispute and keys were handed over to the Principal of petitioner No. 3 on 05.10.2003 and the house was got checked and nothing was found missing or damaged which pleas were also raised by the respondent in her representation dated 14.03.2005 in order to deny his liability for the demand raised by the petitioners. However, these pleas of the respondents are to be considered in appropriate proceedings to be initiated by the petitioners seeking recovery of the amount as claimed from the respondent. If the amount is to be recovered by the petitioners u/s 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the pleas and contentions refuting the claims of the petitioners could not be determined and adjudicated by the Tribunal as a service matter. Even the plea of the respondent that her HRAs was continued to be deducted for the period for which the claim is raised by the petitioner, will be a plea to deny the liability. However, the same is not to be considered nor will confer jurisdiction on the Tribunal, it not being a service matter.

12. While allowing the original application of the respondent, the Tribunal has also laid emphasis on the fact that two letters of allotment were issued, one by Kendriya Vidyalaya Sanghathan signed by its Principal and other issued by SPG. Even if one of the letter had been issued by Kendriya Vidyalaya Sanghathan, it has not been established or contended that the accommodation was allotted to the respondent by petitioner No. 2 as a condition of her service with petitioner No. 3. If the accommodation has been allotted by petitioner No. 2, SPG to the respondent, the same cannot be said to be under the terms and conditions of employment of respondent with respondent No. 3. The Tribunal has relied on a decision of another Bench of the Tribunal in O.A. No. 1414/01 Udbhash Mukherjee v. Commissioner of K.V.S. and Ors. where recoveries of damages from an employee was set aside. However, an observation was made that the order of the Tribunal will not preclude the employer to take up appropriate proceedings against the employee in accordance with the provisions of Public Premises

(Eviction of Unauthorized Occupants) Act, 1971. If the allotment of accommodation is a condition of service the Tribunal may have jurisdiction u/s 3(q) of the Administrative Tribunal Act. However in the case of the respondent it is apparent that the Tribunal did not have jurisdiction, as the demand by petitioner No. 2 could not be construed as pertaining to the service conditions of the respondent.

13. Earlier no one had appeared on behalf of the respondent. After we have practically concluded the matter and dictated our order substantially, at this juncture learned Counsel for the respondent sought an adjournment. Therefore the matter was adjourned for some time and the counsel was given time to argue the matter after lunch. Learned counsel, after lunch, has contended that the arguing counsel is not available and is busy in the bar election. This cannot be the ground for adjourning the matter as no one had appeared on behalf of the respondent when the matter was taken up and the matter was argued for substantial time. Thereafter time had been again given but the arguing counsel has not appeared to argue the matter on behalf of the respondent. The appearance on behalf of the respondent had been put only during the dictation of the order.

14. In the circumstances, it is inevitable to infer that the demand raised by the respondent No. 2 from the respondent No. 3 to recover the amount of damages/rent cannot be construed as `service matter' as contemplated under Administrative Tribunals Act, 1985. Thus the Tribunal did not have jurisdiction to adjudicate about the demand raised by the petitioner No. 2 on petitioner No. 3 to recover the amount of damages/rent and could not decide that the respondent is liable to pay only twice the license fee and not the damages/rent. With the result the petition is allowed and the impugned order dated 23.09.2005 is set aside and it is that the Tribunal did not have jurisdiction under 3(q) of the Administrative Tribunal Act, 1985.

15. This however, has not been disputed that no proceedings had been initiated by the petitioners under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for recovery of any amount from the respondent. Without giving a reasonable opportunity to the respondent, the amounts as claimed by the petitioners, therefore, cannot be recovered. This Court also cannot be oblivious to the fact that a writ petition was filed by the respondent contending that the petitioners cannot recover any amount from her by raising various grounds including that no reasonable opportunity has been given to her before demanding the damages from her though she had handed over the possession on 5th October, 2003. The writ petition was opposed by the petitioners as not being maintainable. At that stage it was contended that the jurisdiction shall be that of the Central Administrative Tribunal, pursuant to which the writ petition was withdrawn by the respondent with liberty to file appropriate proceedings, and the aforesaid original application was preferred by the respondent.

16. This court in the present petition filed by the petitioners is also exercising its

jurisdiction under Article 226 of the Constitution of India. Keeping in view the admitted facts, that for claiming the amount by letter dated 06.11.2003 and 05.03.2004, neither any opportunity was given to the respondent nor any proceedings have been initiated by the petitioners under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the petitioners are directed not to enforce the alleged demand contained in the communications dated 6.11.2003 and 5.3.2004 without taking appropriate proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and by giving reasonable opportunity to the respondent.

17. For the forgoing reasons the order dated 23rd September, 2005 passed in O.A No. 1558 of 2005 titled Ms. Surjeet Sangwan v. UOI and Ors. is set aside. However, the petitioners are directed not to recover any amount from the respondent pursuant to letters dated 06.11.2003 and 05.03.2004 without taking appropriate proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and without giving reasonable opportunity to the respondent.

18. With these directions the writ petition is disposed off. Parties are however left to bear their respective costs.