
(2000) 11 AHC CK 0095
In the Allahabad High Court
Case No : C.M.W.P. No. 17161 of 1999

U.P. Judicial Services Association and others	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Citation : (2001) 1 AWC 34 : (2001) 1 UPLBEC 502

Hon'ble Judges : Mr. S.K. Jain, J; Mr. Binod Kumar Roy, J

Bench : Division Bench

Advocate : Mr. Ranjit Saxena, for the Appellant; Mr. Sabhajit Yadav, for the Respondent

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and S. K. Jain, JJ.—Three-fold prayers have been made in this writ petition filed by U. P. Judicial Services Association of the State through its President and six Judicial Officers, who are posted in the judgeship of Bhadohi at Gyanpur praying to command the respondents particularly respondent No. 4, the Joint Director, Treasury Camp Office, Treasury Directorate, Navin Koshagar Bhawan, Katchery Road, Allahabad to pay to the petitioner Nos. 2 to 7, (i) arrears of difference of the amount borne out by petitioner Nos. 2 to 7 towards house rent for their private accommodations and the house rent allowances equivalent to 12.5% of their basic salary since they are occupying private accommodations, together with interest at the rate 18% per annum, (ii) the current actual house rent which they are paying to their landlords for occupying private accommodations, and (iii) the petitioners be paid special cost for prosecuting this case.

2. Their case is as follows :

In the old districts, the Government has accommodations to provide for the judicial officers ; the Government has created more districts without having any accommodation for the judicial officers ; petitioner Nos. 2 to 7 are holding

different posts in the district of Bhadohi alias Sant Ravidas Nagar at Gyanpur (vide order dated 10.4.1995) ; in All India Judges' Association and others Vs. Union of India and other, the Supreme Court has laid down that the Judicial Officers shall be provided accommodation within one month's time, and if the Collector fails to do so within said time, they will be entitled to hire houses and the State Government shall have to pay rental in excess of house rent admissible to them and if in case they are already occupying private houses, the same benefit should be extended to them also : respondent No. 2, the District Magistrate, Bhadohi alias Sant Ravidas Nagar was bound to provide accommodations within one month to the petitioner Nos. 2 to 7 after their joining, but he failed to provide any such accommodation to them and thus no option was left to them except to hire private accommodations at Gyanpur who are paying rent as stated in item Nos. I to VI of paragraph 3 ; previously the State Government had issued G. O. dated 9.6.1995 (as contained in Annexure-B) that 12.5% of the basic salary shall be deducted from the salary and the remaining portion of the rent shall be borne by the State Government ; the State Government issued another G. O. dated 6.9.1995 (as contained in Annexure-C) clarifying to the effect that whatever rent was being paid by the Judicial Officers to be borne by the State Government ; petitioner Nos. 2 to 7 were issued certificates by the District Magistrate, Bhadohi (as contained in Annexure-D) indicating the amount of rent paid by the petitioners for the houses occupied by them during the period of discharge of their duties ; a collective representation was filed by petitioner Nos. 3, 5 and 6 on 19.8.1998 (as contained in Annexure-E) before respondent No. 3, the Director Treasury, Treasury Directorate, Lucknow mentioning clearly the fact that due to non-allotment of any Government accommodation, they are residing in private accommodations and thereby paying more rent than what they were receiving as house rent allowances which be reimbursed ; a similar representation was also made before respondent No. 4, the Joint Director, Treasury Camp Office Treasury Directorate, Navin Koshagar Bhawan, Kachery Road, Allahabad, as contained in Annexure-F, claiming reimbursement ; respondent No. 4 asked them to give declaration in proforma supplied, which indicates that house rent allowances was to be paid under the G. O. dated 6.9.1995, though respondent No. 4 was bound to pay the difference of the amount paid by them to their landlords as per the G.O. dated 6.9.1995 but it is being insisted illegally, without any basis and just to harass them to be paid on the basis of the earlier G. O. dated 9.6.1995 : there are several other districts where the later G. O. has been implemented in toto except in Bhadohi alias Sant Ravidas Nagar for the reasons best known to respondent No. 4 and that too without passing any reasoned order ; the Judicial Officers are being deprived of the major part of their pay by paying the same as house rent to their landlords and thereby suffering a great financial loss and hence this writ petition, which is first one ; during pendency of this writ petition on 10.5.1999, another G. O. (Annexure-I) was issued for providing full rent/actual rent as paid by such officers who were not provided official residences by the District Magistrate and are residing in accommodation on rent. Yet the respondents are not paying rent

which is wholly arbitrary, illegal and bad in law.

3. The office reports non-filing of any counter-affidavit, when yesterday Mr. Sabhajit Yadav, learned standing counsel appearing on behalf of the respondents informed us that a counter-affidavit has already been filed which we could not find. Today Mr. Yadav after re-looking the records intimates us that in fact through Civil Misc. Application No. 36110 of 1999, filed on 25.5.1999 on behalf of the respondents, two months time was prayed for on the ground that the matter is being examined at the Government level and steps are being taken for filing counter-affidavit for which some time is likely to be taken but thereafter it does not appear that the said petition was pressed. Be that as it may, the net result is that till today no counter-affidavit has been filed by the respondents.

4. The submissions :

Mr. Ranjit Saxena, learned counsel appearing in support of the prayers made in this writ petition, contended that in terms of the directions made by the Hon"ble Supreme Court through its order dated 10.4.1995 in All India Judges" case the respondents were duty bound to pay the rental of their official accommodations in private houses in regard to which even certificates were also issued by the District Magistrate, Bhadohi alias Sant Ravidas Nagar but the prayers of the petitioners made through various representations had fallen on deaf ears of respondent Nos. 3 and 4, the petitioners were constrained to move this Court for the redressal of their grievances and, accordingly, it is a fit case in which the prayers made be allowed with exemplary costs.

5. Mr. Sabhajit Yadav, learned standing counsel appearing on behalf of respondent Nos. 1 to 4, in reply, contends that in relation to this writ petition, the Joint Secretary, Department of Finance (General) sent a letter directing respondent No. 4 to file a counter-affidavit with the opinion of the Finance Department.

Our findings :

6. The Hon"ble Supreme Court in All India Judges" Association Vs. Union of India and others, , considered the issue in regard to residential accommodations of the Judicial Officers of the country and disposed it of as follows :

"33. Provision of an official residence for every judicial officer should be made mandatory. A Judicial Officer to work in a manner expected of him has to free himself from undue obligations of others, particularly owners of buildings within his jurisdiction who ordinarily may have litigations before him. This is mostly the case in rural areas where outstation judicial courts are located. We are aware of cases where a rural court is located in the building belonging to a lawyer or a client. Even the residential accommodation of the Judicial Officer belongs to people of that category. Such a situation often gives occasion to personal embarrassment to the judicial officer and it has to be avoided.

34. Expenditure on residential accommodation in a family budget is not ordinarily

to exceed 15 per cent of the monthly income ; otherwise it becomes difficult for the person concerned to make his two ends meet. A Judicial Officer who is not provided residential accommodation is obliged to go in for rented accommodation. In view of the prevailing rate of rent, the smallest accommodation that can be taken may often cost 75 per cent to 100 per cent of the monthly salary, a situation which cannot be countenanced by any logic. It is absolutely necessary that appropriate conditions should be provided for the Judicial Officer and he should have reasonable mental peace in order that he may perform his duties satisfactorily. Rendering justice is a difficult job. It is actually a divine act. Unless the Judicial Officer has a reasonably worry free mental condition, it would be difficult to expect unsoiled justice from his hands.

35. Very often building projects are undertaken for providing residential accommodation to public officers but the requirement of the Judicial Officer is not taken into account for one reason or the other. Control of the State purse is in the hands of the executive. As appropriate share of construction expenses is not being provided towards accommodation of Judicial Officers, they do not have any quota in the building projects. As a result of this over the years at several places throughout the country residential accommodation for Judicial Officers has turned out to be scanty. Many Judicial Officers dread postings in Metropolitan towns as residential accommodation is not available and the rental would be exorbitant in respect of private accommodation. The cost of living also becomes heavy.

36. We take judicial notice of the fact that the Planning Commission of the Central Government is considering acceptance of the subordinate judiciary as a plan subject. Providing adequate residential accommodation should be considered as a priority. Until adequate governmental accommodation is available, it should be the obligation of the State at the instance of the High Court to provide requisitioned accommodation for every Judicial Officer according to his entitlement and recovery of not more than twelve and a half per cent of salary of the officer towards rent should be made and the balance should be met by the State Exchequer. We would emphasise the need of provision of a separate and exclusive office room as an indispensable component of every such official residence and the accommodation should take into account this feature. As a long-term measure. Government accommodation should be constructed to meet the need of the Judicial Officers at their respective stations. This should be a matter for the Planning Commission to review and the State Government to co-operate and undertake construction activity. The Government of the States and the Union Territories would take some time to implement this part of the direction. In case for some reason, the Planning Commission does not come forward to take up the matter before January, 1992, the Chief Justice of every High Court should set up a committee with him as Chairman where two senior Judges of the Court and the Secretaries of Finance, Law and Works should be members and annual planning of construction of residences should be made. We accordingly fix the outer limit of December 31, 1992 when this part of the

direction would become fully operative."

x x x "60. We would now briefly indicate the directions we have given in the judgment :

(vi) Residential accommodation to every Judicial Officer has to be provided and until State accommodation is available. Government should provide requisitioned accommodation for them in the manner indicated by 31.12.1992. In providing residential accommodation, availability of an office room should be kept in view."

6.1 Review was sought for by the Union of India and various States raising the following objection :

"The direction to provide residential accommodation, would call for a substantial investment in the infrastructure. It is difficult to quantify the financial outlay. By the early 1989, there were nearly 10,000 Judicial Officers all over the country. The accommodation is not available to many of them at present, and at least more than 5,000 residential houses may have to be constructed all over the country involving a Rs. 150-250 crores....."

6.2 The prayer for review was dismissed vide Judgment and Order dated August 24, 1993 reported in All India Judges' Association and Others Vs. Union of India and Others, , observing, inter alia, as follows :

".....In the direction given, this Court has emphasised that the Judicial Officers cannot be left without proper accommodation for any length of time. Secondly, the accommodation available to the Judicial Officer must be adequate and consist also of a separate and exclusive office-cum-study room as an indispensable component of such residence. Thirdly, it was pointed out that in the absence of official residences, the Judicial Officers are required to pay exorbitant rent out of proportion to their salaries. Lastly, it was emphasised that in the pool of the Government accommodation which is available in any town, the judiciary gets the last priority. The Governments have not so far shown any keen awareness of the problems faced by the Judges for want of accommodation and of the manner in which it affects the discharge of their duties. It is for these reasons that it was suggested that the Government should give top priority to the provision of residential accommodation to the Judges and construct enough houses with the requisite facilities.

It is difficult to understand the objections raised by the review petitioners to the said direction. The attitude adopted by the petitioners itself bears out that the Governments are not at all keen on providing proper residential accommodation to the members of the judiciary and justifies the necessity to give the said direction. On the admission of the review petitioners, there is at present a shortage of about 5,000 houses. This means that about 50 per cent of the Judicial Officers are facing trials and tribulations for want of proper accommodation at rentals within their means. The estimated expense of Rs. 150 to 200 crores for constructing the said houses which is to be incurred by all the

States and the Union Territories is according to us not forbidding even assuming that the estimate is (sic).

We now understand that the judiciary has been included as a plan subject by the Planning Commission, if this is so, the construction of adequate number of houses with the necessary facilities should be given the top priority being the most primary requirement of the Judges at any place. The provision of house rent allowance is not an answer much less a substitute for the adequate housing facility. In the judgment under review, it has been specifically emphasised that the provision of a separate and exclusive office room is an indispensable component of the official accommodation allotted to the Judicial Officer. In order to ensure that the quarters constructed for the Judicial Officers are of proper dimension and with adequate number of rooms, their future construction should be made in consultation with and under the supervision of the respective High Court and the High Court should take adequate interest in their construction.

It may be noted in this connection that the direction is not to provide rent-free housing accommodation but accommodation at a rental not exceeding 12-1/2 per cent, of the salary of the occupant. We, therefore, reiterate the said direction and reject the objections of the petitioners."

6.3 This matter again came up for consideration by the Supreme Court and following order was passed on 10.4.1995, which is Annexure-A to this Writ Petition, reported in All India Judges' Association and others Vs. Union of India and other,

"1. By our judgment in Review Petitions rendered on August 24, 1993 the date of compliance of certain directions issued earlier by the judgment of November 13, 1991 came to be extended up to March 31 More than a year has since passed. We find that the directions have not been complied with fully by most of the States. That is presumably because it has not been possible for the State Governments to construct sufficient houses for Judicial Officers even though some of the State Governments have granted administrative approvals and sanctioned funds for the grant thereof. However, that may take some time but in the meantime some arrangement ought to be made because the question of residential accommodation to Judicial Officers is a first priority requirement. What the interim arrangement should be is a matter in regard to which we have heard counsel for the respective State Governments. In the case of the State of Gujarat we had on an earlier occasion, i.e., on 19.8.1994, passed an order to the effect that the Judicial Officer should be granted residential accommodation of the standard to which they are entitled having regard to their status from the general pool on priority basis. It should be made clear that when we state that the quarters, should be allotted to Judicial Officers on priority basis, the direction should be complied with letter and spirit and not by permitting special category allotments by- passing allotment to Judicial Officers. If despite the same sufficient quarters are not available from the common pool and it becomes necessary to requisition or hire private accommodation the State Government

should direct the respective Collectorates to locate accommodation of the prescribed standard and allot the same to the Judicial Officers. In cases where that is not done or is not possible for want of accommodation or even though the Judicial Officer is able to point out accommodation but for some valid reason it is not possible for the State Government to requisition or hire the same and the Judicial Officer is compelled to hire accommodation for himself, the rental in excess of what the Judicial Officer is entitled to by way of H.R.A., must be borne by the State Government provided the Judicial Officer intimates the State Government that on account of its default he has selected a house at a particular rental and would be occupying the same. If after such intimation the State Government/ Collectorate does not provide accommodation to the Judicial Officer within a month's time the Judicial Officer will be entitled to hire the house and the State Government will pay the rental in excess of the H.R.A. admissible to the Judicial Officer for the accommodation. In the case of Judicial Officers already in occupation of private accommodation the same benefit should be extended to them also, namely, of payment of the excess amount for the accommodation. In order that the State Government may have reasonable time to comply with this direction we direct that this order should be worked out as early as possible and will become effective from August 1, 1995. It is needless to impress upon the State Government that we expect scrupulous implementation of this order because by the date 1.8.1995 more than reasonable time would have elapsed since the making of the order in the Review Application. A copy of this order will be sent to the Chief Secretary of every State Government who shall be personally responsible for the implementation of the order, failure, if any, will invite drastic action.

x x x 5. We want to impress upon the State Governments that we have been quite lenient and indulgent so far and have extended the time more than once. We now mean business. It should be impressed upon the Chief Secretary of every State Government/Union Territory that it will be his/her responsibility to see to it that these directions are complied with without any further delay failing which we may be compelled to initiate drastic action. Any failure to comply with these directions would only mean that the concerned Government and in particular the Chief Secretary lacks a sense of urgency. Let the matters come up on 1.8.1995"

6.4 Thereafter, vide Order dated 29.9.1997, which stands reported in (1997) 8 SCC 520 , the State Governments were directed to file a comprehensive status report of the action taken by each of them to implement Supreme Court's earlier directions in the matter.

6.5 Status reports were filed on which by order dated April 8, 1998 reported in (1999) 5 SCC 185, further direction was issued that short-comings as regards provision of residential accommodation to the Judicial Officers should be made good latest by 31.7.1999.

7. From the report of the office, it appears that district of Bhadohi was created by

the State Government on 30.6.1994, i.e., to say 2-1/2 years of the 1st order of the Supreme Court and about 1 year after the rejection of review. Sessions Division, Bhadohi was created on 23.7.1995, i.e., to say after 3 months of the order dated 10.4.1995 and on 17.2.1996 the Judgeship of Bhadohi started functioning yet the Government or the District Magistrate failed to provide residential accommodation to petitioner Nos. 2 to 7 Annexure-D, the certificates allegedly granted by the District Magistrate, Bhadohi shows that the petitioner No. 3 Prem Prakash Tiwari has been residing in a private house since 9.6.1996 at the rental of Rs. 1,600 per month, petitioner No. 7 Mahfooz Ali has been residing in private house since June, 1996 at the rate of Rs. 1,500 per month, petitioner No. 6 Mukteshwar Prasad has been residing since 3.6.1996 at the rate of Rs. 1,500 per month. Petitioner No. 5 Akhilesh Kumar Tiwari at the rate of Rs. 1,500 per month in a private house and petitioner No. 4 Anirudh Singh was reallocated the private accommodation which was earlier allotted to Sri S. K. Dey, J. M. Gyanpur, at the rate of Rs. 1,500 per month. No such certificate, however, has been brought on the record by petitioner No. 2. What has been brought on the record is a certificate granted by him personally (at page 49 of the brief). Annexure-E is the representation of petitioner Nos. 3 to 5 before respondent No. 3. Annexure-F is of petitioner No. 3 before respondent No. 4 and Annexure-G is of petitioner Nos. 3, 7 and 5 before respondent No. 4.

8. The claim of the petitioner Nos. 3 to 7 stands certified by the Collector of the district Bhadohi alias Sant Ravidas Nagar. The directions of the Supreme Court referred to above were bound to be complied with by the respondents without any hitch or murmur. It is extremely unfortunate that despite all these, when the petitioner Nos. 2 to 7 made repeated requests through their representations to reimburse the rents paid by them in private houses, it was not done by adopting dilly-dallying by respondent Nos. 3 and 4. In doing so, in fact they rendered themselves guilty of insubordination of the State Government which attempted to carry them out by issuing repeatedly G.Os. and had also committed contempt of the Hon'ble Supreme Court being employees of the State Government, which was directed to comply the direction.

9. We, thus, hold that the petitioners except petitioner No. 2 are entitled to have all reliefs claimed by them from this Court.

10. Accordingly, we command respondent Nos. 3 and 4 to reimburse the petitioner Nos. 3 to 7 the rent paid by them to their landlords as certified minus H.R.A., if already paid, within one month from the date of receipt of a copy of this order and also pay interest at the rate of 12% per annum thereon. If petitioner No. 2 also produces certificate of the District Magistrate, Bhadohi before respondent Nos. 3 and 4 then they shall be duty bound to reimburse him similarly within one month from the production of the said certificate. This writ petition is allowed with cost quantified to Rs. 2,000 (Rupees two thousand) only to be paid to the petitioners by respondent Nos. 1, 3 and 4. It will be open for the State Government to take appropriate action against respondent Nos. 3 and

4 because for their refusal to reimburse, the Government has to cut a very sorry figure before us.

11. The office is directed to hand over a copy of this order by tomorrow to Sri Sabhajit Yadav, learned standing counsel for its intimation to and follow up action by the respondents.