
(2004) 01 DEL CK 0054
In the Delhi High Court
Case No : C.W.P. No. 39 of 2004

Vijendera Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-01-2004

Acts Referred:

Citation : (2004) 109 DLT 925 : (2005) 1 RCR(Civil) 440

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : B.B. Rawal, for the Appellant; S.K. Taneja Rajesh Gupta and Puneet Taneja, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner, Vijendera Kumar, has filed the present petition, seeking a writ of certiorari for quashing the respondents' action in evicting him from the official accommodation. Petitioner also seeks a man claims to the respondents to allot him a house of his entitlement in BTPS Staff Colony, Badarpur, New Delhi and compensate him for the damages suffered. Exemplary costs are also sought.

2. Petitioner was employed with National Power Training Institute (in short NPTI) under the Ministry of Power, Government of India and was posted at the Regional Power Training Institute (in short RPTI), Badarpur, New Delhi. Petitioner " was promoted in the year 1997 as Deputy Director (Technical) "and posted at the NPTI, Headquarters, Faridabad. Petitioner had been allotted accommodation in the BTPS Staff Colony at a monthly license fee. This license fee was initially Rs. 75/- per month and was raised to Rs. 110/- per month and then Rs. 167/- per month for the period November, 1992 to 31.3.1993. Petitioner was allotted higher type of accommodation and at his request, on medical grounds, he was also allotted a ground floor accommodation at C-19, Type C. Petitioner claims that he was having dual charge. His services were required round-the-clock for the maintenance of Simulator, which is critical for the functioning of thermal

plants. Petitioner was attending to the Simulator at Faridabad. Besides, emergency work at Badarpur Simulator.

3. BTPS, who had allotted the quarter in BTPS Township to the petitioner required NPTI to make regular recovery and deposit the same with BTPS. BTPS required 10 per cent of the basic salary to be recovered from the employee. Accordingly, license fee was to be collected on the said basis. Vide order dated 3.11.2000, BTPS authorities took a decision to cancel the allotment of the quarter to the petitioner, as their petitioner was in default of the water and electricity charges as well as charges payable for occupation on the above basis. BTPS authorities further required the petitioner to clear the arrears. In the event, notices u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to show cause as to why an order of eviction should not be made and another notice under Sub-section (4) of Section 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were issued. Petitioner claims to have sent a reply on 31.1.2000, denying the charges and asserting that license fee was regularly being paid by the department and no further revision had been communicated to him and he is not liable to pay the same. Time was sought for appearance. As the petitioner did not appear, order was passed on 12.4.2002 under Sub-section (1) of Section 5 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Another order dated 3.11.2002, assessing the damages @ Rs. 76,488/- together with interest at 12 per cent per annum was passed. It is the admitted position that despite the notices having been duly served under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, petitioner did not appear before the authorities, culminating in passing of the aforesaid two orders. Petitioner did not avail of the statutory remedies against the said orders. In the event, on 12.5.2002, petitioner was evicted from the premises.

4. Learned Counsel for the petitioner initially attempted to urge that the action was without jurisdiction as the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 could not be applied. However, after some arguments, he does not press the contention that the premises are not public premises or there was any violation of principles of natural justice.

The submission of the learned Counsel is that this action had been taken on account of mala fide and vindictive action of the Vigilance Officer of the employer, who had eyes on the petitioner's quarter. He claims that the entire license fee, as payable and demanded, had been deducted from his salary and nothing more was due. He relies on Annexure P20 dated 13.8.2003, addressed by the employer, NPTI, wherein the total balance is shown as Rs. 2,511/-.

5. I have heard Mr. S.K. Taneja, Senior Counsel appearing on behalf of respondent Nos. 2 and 3, who has submitted that the present writ petition is not maintainable. He relies on *Sadhana Lodh v. National Insurance Co. Ltd. and Anr.*, reported at (2000) 3 SCC 524, wherein the Court, observed that even if the statutory remedy was provided on limited grounds, a party could not enhance the scope of the challenge by filing a writ petition under Articles 226 and 227 of

the Constitution of India. Mr. Taneja submits that in this case, the petitioner had not even availed of the statutory remedy to assail the order of eviction or that of damages. Not only this, even in the present writ petition, there was no specific challenge to the order of eviction and the order u/s 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

6. I find considerable merit in the submission of the respondents. Petitioner had been duly served with the notices under Public Premises (Eviction of Unauthorized Occupants) Act, 1971, who failed to avail of the opportunity of presenting his case. Petitioner's grievance is that license fee at the prescribed rate had been charged by the employer and he was not obliged to pay the higher amount, as sought to be claimed. An order after following the due process of law had been passed assessing the damages. In fact, in the absence of any challenge to the said order, the same would be in force. In this particular case, I find that the respondent is requiring the petitioner to pay 10 per cent of the basic pay as the charges in accordance with the rules, as applicable to the Central Government employees. Not only this, the respondents, I find, had adopted a very considerate and fair approach, as is evident from Annexure P22, filed by the respondents. By the said communication, the undertaking given by the petitioner that he would vacate the quarter, allotted in DTPS Staff Colony as soon as a quarter of his entitlement was made available to him in NPTI Complex, was noted. Not only this, the BTPS, as a special case, agreed to waive the penal rent of Rs. 87,303/-, provided the dues were cleared by 30.11.2003. Petitioner has chosen not to accept the said offer. In these circumstances, I find no ground to entertain the writ petition and the same is dismissed. It would be for the petitioner to approach the respondents, with a request of extension of time to comply with the offer, as given, if he so chooses.

Writ petition is dismissed with these observations.