

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.7825-7828/2004**

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Date of decision: 23rd February, 2010

PREM SINGH RAWAT & ORS. Petitioners
Through: Mr. Yashpal Rangi, Advocate

Versus

UOI & ANR. Respondents
Through: Mr. Rajinder Nischal, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The four petitioners are employees of Board Security Force (BSF). In the year 1992 all of them were posted on deputation to Special Protection Group (SPG) at Delhi. They were allotted dwelling units at Delhi. On 30th April, 2000 they were repatriated back from SPG to BSF with posting in Jammu & Kashmir / North-East. However, in January/February, 2001 itself they were reposted at BSF Headquarters, New Delhi. They applied for regularization of the accommodation already allotted to them during their stint with SPG, during their posting at New Delhi in BSF Headquarter in January/February, 2001 or for alternate accommodation to be allotted to them and for restraining the respondent/ Union of India from levying any penal license fee on the petitioners for retaining possession of the accommodation aforesaid allotted to them during their stint with SPG. Soon

after issuance of notice of this petition, the SPG vide letter dated 25th August, 2004 to BSF sought vacation of the accommodation in occupation of the petitioners and for recovery of damages/charges for unauthorized retention of the SPG accommodation. This Court vide order dated 8th September, 2004 directed that the petitioners be not dispossessed and no coercive steps be taken against them for vacation of the premises. The said order continues to be in force. It is however informed that in or about the year 2005, the petitioners were allotted alternative accommodation, one category below their entitlement by the BSF. The petitioners thus on 25th October, 2005 made a statement before this Court that since they had vacated the accommodation, nothing further survived in this petition. The writ petition was accordingly dismissed as infructuous. However, subsequently, the petitioners applied for recall of the order of dismissal of writ petition as infructuous, on the ground that the petitioners had also claimed the relief of restraining the respondents from recovering any penal license fee from the petitioners and the respondents notwithstanding the petitioners having vacated the accommodation aforesaid were threatening to recover the penal license fee and which question was required to be adjudicated in the petition. This application of the petitioners for recall of the order of dismissal of the petition was allowed with the consent of the respondent on 20th August, 2007 and the writ petition restored to its original number. The only controversy which thus survives in the present petition is as to the entitlement of the respondents to recover penal license fee from the petitioners for unauthorized retention of the SPG accommodation from 2001 till 2005 as aforesaid. Sums varying from Rs.1,53,000/- to Rs.1,96,000/- are sought to be recovered from

each of the petitioners in terms of the communication dated 17th October, 2008 of SPG.

2. The crux of the case of the respondents is that the accommodation aforesaid was placed at the disposal of SPG for use by officials of SPG, to provide them a tension free work environment and to ensure non-contamination of its members and to achieve their optimum operational efficiency and it was deemed desirable that the members of SPG are located at one or two places preferably near the work place. Immediate allotment of government accommodation was also deemed as an incentive to attract the best talent to SPG. It is thus the case of the respondent that even though the petitioners continued to remain employed with BSF and were eligible for allotment of government accommodation, but were so eligible from the pool of government accommodation of BSF or from general pool only and could not retain the accommodation of SPG and having unauthorizedly retained the same are liable to pay penal license fee therefor.

3. Per contra, the petitioners plead that the dwelling units of SPG were at the time of their deputation to SPG in 1992, still under construction; that 775 dwelling units of the general pool were placed at the disposal of SPG as a special measure; that as per the office memorandum dated 31st July, 2000 of the Directorate of Estates of the Government of India, where an officer is reposted to Delhi within a period of four months beyond the permissible period of eight months (for which the officer is entitled to retain the accommodation) the allotment may be regularized on payment of double the nominal license fee for the intervening period. It is their case that they

having been reposted to Delhi within the said total period of 12 months and under the office memorandum aforesaid became entitled to regularization of the allotment earlier made to them. The petitioners also rely on minutes of the meeting held in the Ministry of Works and Housing on 4th February, 1985 in this regard. It was agreed therein that officers who are occupying accommodation in other pools, on their transfer to offices eligible for general pool accommodation will be considered for allotment in the next below type in the general pool unless they are eligible for their entitled category by seniority. The counsel for the respondents contends that the aforesaid rule would not be applicable since the accommodation that the petitioners were occupying was not of the general pool but was of the departmental (SPG) pool.

4. From the annexures to the counter affidavit filed by the respondents, it is abundantly clear that the accommodation in possession of the petitioners was of the SPG and was not the general pool accommodation. The petitioners thus while becoming liable to vacate the said SPG accommodation in any case were eligible for general pool accommodation in the next below type. The fact remains that the petitioners were not given the next below type accommodation immediately in 2001 and which was given to them finally in 2005 when the petitioners vacated the SPG accommodation and moved to their new accommodation. The question which arises in these facts is whether the petitioners should be held liable for the penal license fee which SPG claims has been assessed by the Estate

Officer of the SPG in accordance with the provisions of the Public Premises Act.

5. Though ordinarily this court would not interfere in such recovery of damages under the provisions of the Public Premises Act but one cannot lose sight of the fact that the petitioners are members of a defence service and were considered on merits for posting in the SPG where as per the respondents also, the best talent is brought. The petitioners are expected to lay down their lives in the service of the nation. It is not as if the petitioners were insistent upon retaining the SPG accommodation only. They are found to have always shown willingness to take any other accommodation as per their entitlement. The petitioners had been residing in the SPG accommodation since 1992. In a city like Delhi, it is not easy to find accommodation. The petitioners and their families must have built their lives around the accommodation allotted to them with the children being admitted to nearby schools etc. In such circumstances, the court cannot shut its eyes to the human difficulties faced in relocation. This court feels that the petitioners could not be expected to just uproot themselves from the SPG accommodation, particularly when they had been posted back to Delhi and were as per their service conditions eligible for allotment of government accommodation. Their continuance in occupation of the SPG accommodation till the allotment of alternative accommodation is not found to be such so as to justify the levy of penal charges. The occupation of the petitioners cannot be said to be totally unauthorized or akin to a trespasser. The petitioners had not ceased to be employees of the defence services and

were continuing to serve the country and were duty bound to, during that time also if the exigency of their service so demanded to also lay down their lives for the country. The continuance in occupation of the petitioners of the SPG accommodation was directly a result of the failure to allot alternative accommodation to them for whatsoever reason it may have been.

6. The counsel for the petitioners has also contended that at the contemporaneous time, a large number of dwelling units in the vicinity of the accommodation aforesaid of the petitioners were lying unoccupied and unused and it is not as if the functioning of the SPG was in any case affected owing to the continued occupation by the petitioners of the accommodation aforesaid. The respondents have also not pleaded any such loss, inconvenience or circumstance because of the action of the petitioners. It is a matter of internal arrangement that the accommodation aforesaid was placed by the Directorate of Estates for the sole use of SPG and its personnel. Else there is nothing to distinguish the said accommodation from the general pool accommodation to which the petitioners were entitled.

7. That though the petitioners are not found to have had any right to retain the accommodation but it is felt that if the petitioners in the circumstances aforesaid are burdened with the penal charges levied on them, it will affect the morale of the petitioners who are members of the defence forces of the country. The Supreme Court in *Capt. Virendra Kumar Vs. Union of India* AIR 1981 SC 947 took note of those who fight on the war front and expose their lives to extinguishment so that the security of the nation might be defended. It was held that if such be the parsimony with

which the Army prizes patriotism, the morale of the defence forces may be adversely affected. The Supreme Court deprecated the unimaginative attitude of the authorities and which was found to have a long range impact on the Jawans who were held to deserve special solicitude having regard to the supreme sacrifice they are sometimes called upon to make. It was held that defence personnel are dear to the country and the defence department ought to have a considerate disposition in dealing with such personnel; human resources were held to be the real wealth of the nation. Hope was also expressed that just judgment of the human situations in which the appellant in that case found himself, would be made by the Union of India. The Courts have held (reference in this regard may be made to *Shangrila Food Products Ltd. Vs. LIC* AIR 1996 SC 2410, *Dwarka Nath Vs. ITO* AIR 1966 SC 81, *LIC Vs. Asha Goel* AIR 2001 SC 549, *UOI Vs. R. Reddappa* 1993 (4) SCC 269) that Article 226 is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Court to reach injustice wherever it is found. The High Court is empowered to mould the relief to meet the peculiar and complicated requirements of this country. The constitution does not place any fetters on the exercise of the extraordinary jurisdiction of the High Courts under Article 226. It is left to the discretion of the High Court. This Court can in exercise of such jurisdiction take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. Once this Court is satisfied of injustice or arbitrariness, then the restrictions on the exercise of power, self imposed or statutory, stand removed and no rule or technicality on exercise of power can stand in the way of rendering justice.

In the present case, it is found that unless the recovery of penal license fee from the petitioners is quashed, injustice would be done. This case in which the petitioners continued to be in service cannot be equated to *Secretary ONGC Ltd. Vs. V.U. Warriar* AIR 2005 SC 3039 where the Supreme Court had reversed the judgment of the High Court quashing the demand for penal license fee. In that case, the accommodation was continued to be occupied post-retirement and without any authorization.

8. Thus, without intending to lay down a precedent, in the facts of the present case, I deem it appropriate to grant the relief to the petitioners to the effect that they will not be liable to pay the penal license fee for the period of their occupation of the SPG accommodation inspite of being repatriated to their parent cadre. The said relief is granted solely for the reasons of the nature of service/duties of the petitioners and with a hope that the indulgence shown to the petitioners would enable them to in future excel in their duties.

9. Accordingly, a writ is issued restraining the respondents from recovering damages for unauthorized occupation of SPG accommodation from the petitioners as per the demand contained in the letter dated 17th October, 2008 of SPG. The petitions are disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 23rd, 2010
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