

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.10.2014

+ W.P. (C) 5510/2013 & CM No. 12264/2013

G S DHODI

..... Petitioner

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : In person

For the Respondent : Ms Zubeda Begum, St. Counsel (GNCTD) and
Ms Sana Ansari, Advocate.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an administrative order dated 24.06.2013 issued by respondent No.2 whereby damage charges for unauthorized occupation of residential accommodation were revised w.e.f. 01.01.2013. The petitioner's limited challenge is with respect to the retrospective revision of the said charges.

2. The short question to be considered is whether the respondents could revise the damage charges for unauthorized occupation of residential accommodation provided by respondent no.1, with retrospective effect. Briefly stated the relevant facts necessary to consider the controversy are that the petitioner, being an employee of respondent no.1, was allotted

residential accommodation (being 1-B, 72 Nos. D.A. Flats, New Mahavir Nagar, New Delhi). The said residential accommodation was allotted to the petitioner on 04.01.2005. The petitioner superannuated from services on 31.12.2010 and was permitted to retain the premises in question till 31.08.2011. Admittedly, the petitioner has overstayed at the said premises.

3. Prior to vacating the premises in question, the petitioner approached the concerned department of respondent no.1 for clearance of his dues, which were calculated at ₹1,92,851/- for the period 01.09.2011 to 21.05.2013. The said amount was duly paid by the petitioner by a demand draft dated 17.05.2013 and a provisional clearance certificate was also issued to the petitioner on 17.05.2013. Thereafter, on 20.05.2013, the petitioner vacated the premises.

4. It is apparent from the above, that the petitioner had paid the damage charges for unauthorized occupation of the residential premises as per the prevalent rates and had handed over the vacant possession of the premises to the concerned authorities on 20.05.2013.

5. Subsequently on 24.06.2013, respondent No.2 issued an administrative order revising the rates for damage charges for unauthorized occupation of general pool residential accommodation.

6. The petitioner is aggrieved, inasmuch as, the said revision of damage charges are with retrospective effect from 1.1.2013.

7. I have heard the learned counsel for the parties.

8. The learned counsel for the respondents submitted that the charges were revised in view of the Office Memorandum issued by Government of India on 06.12.2012 revising the damage charges w.e.f. 1.1.2013. It is further stated that the said charges have been uniformly levied. The learned counsel for the respondent further contended that the provisional clearance certificate issued to the petitioner on 17.05.2013 was only provisional and, thus, could not be relied upon by the petitioner to absolve him of further liability on account of revision in the rates of damage charges.

9. The petitioner appeared in person and submitted that he had overstayed on account of certain mitigating circumstances and had paid the full charges as applicable at the relevant time. He further submitted that after handing over the possession, no further liability ought to be imposed on him.

10. It is well settled that normally a retrospective levy would not be permissible unless specifically authorized by law. The Supreme Court in **State of M.P. and another vs. G.S.Dall & Flour Mills**, AIR 1991 SC 772 had observed as under:-

“the notification of 3/71187 amending the 1981 notification with retrospective effect so as to exclude what may be described in brief as 'traditional industries' though, like Rule 14 of the deferment rules, the exclusion extends' even to certain other non-traditional units operating in certain situations. Though this notification purports to be retrospective, it cannot be given such effect for a simple reason. We have held that the 1981 notification clearly envisages no exclusion of any industry which fulfils the terms of the notification from availing of the exemption granted under it. In view of this interpretation, the 1987 amendment has the effect of rescinding the exemption granted by the 1981 notification in respect of the

industries mentioned by it. S. 12 is clear that, while a notification under it can be prospective or retrospective, only prospective operation can be given to a notification rescinding an exemption granted earlier. In the interpretation we have placed on the notification, the 31, 7 87 notification cannot be treated as one merely clarifying an ambiguity in the earlier one and hence capable of being retrospective; it enacts the rescission of the earlier exemption and, hence, can operate only prospectively. It cannot take away the exemption conferred by the earlier notification."

11. Even in cases of statutory enactments, it is well settled that a retrospective operation would not be readily inferred. The Supreme Court in **Mithilesh Kumari and other vs Prem Behari Khare**, AIR 1989 SC 1247, stated the principle as under:-

"A retrospective operation is not to be given to a statute so as to impair existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively the Court has to be satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of past transaction, or impair contracts, or impose new duty or attach new disability in respect of past transactions or considerations already passed, However, a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. The general scope and purview of the statute and the remedy sought to be applied must be looked into and what was the former state of law and what the legislation contemplated has to be considered. Every law that impairs or takes away rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and the community as a whole may relate to a time antecedent to their

commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to have so expressed its intention.”

12. It is also well settled that persons cannot be “punished or penalised by laws of which they had no knowledge” (See: **Harla vs. The State of Rajasthan: 1951 AIR 467**). A person ought not to be visited with consequences of his acts of which he neither has any knowledge nor could by reasonable efforts acquire such knowledge. In the present case, the consequences of overstay at the premises in question as are sought to be inflicted on the petitioner could not have been known by him at the material time. Applying the aforesaid principles in the facts of the present case, the additional charges sought to be recovered by the respondent from the petitioner on account of revision in the rates of damage charges w.e.f. 01.01.2013 are, in my view, unsustainable.

13. It is apparent from the administrative order dated 24.06.2013 that the revision of damage charges is to discourage extended unauthorized occupation of Government accommodation. Whereas prior to revision, the rates for damage charges were fixed on the basis of area of the accommodation (sq. mtrs./month), the revised rates are 55 to 65 times the normal licence fee. This clearly is in the nature of penal charges to act as a deterrent for the unauthorized occupants.

14. Although the decisions referred to above are with respect to statutory levy and punitive action; in the above perspective, where the damage

charges are penal in nature, the principle enunciated would be equally applicable to the administrative order dated 24.06.2013.

15. It is relevant to note that the Central Government had revised the damage charges by an Office Memorandum dated 06.12.2012. However, the said revision was prospective (i.e. w.e.f. 01.01.2013). The respondent had also consequently revised the damages charges but the same can only be implemented prospectively.

16. Accordingly, the petition is allowed and further damage charges being the differential amount computed on the basis of the then prevalent rates and revised rates (as per administrative order dated 24.06.2013) for the period 01.01.2013 to 20.05.2013 would not be recoverable from the petitioner. The application also stands disposed of.

OCTOBER 31, 2014
pkv/RK

VIBHU BAKHRU, J