

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

Judgment reserved on October 08, 2015

Judgment delivered on October 29, 2015

+ **W.P.(C) 7189/2014, CM No.16894/2014**

UJJAL MUKHERJEE & ORS Petitioners

Through: Mr.R.K. Kapoor, Advocate
with Ms.Astha Nigam,
Advocate

versus

NATIONAL INFORMATICS CENTRE SERVICES INC. (NICSI)

..... Respondent

Through: Mr.Ranjan Mozumdar, Adv.
for R-1
Mr.Ajay Kalra, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition, by 57 petitioners, is primarily to the e-mail dated October 9, 2014 whereby, the respondent No.1 has called upon the petitioners herein to comply with the letters issued earlier for recovery of the amount paid for the LTC availed by the petitioners and the petitioners' representation was accordingly rejected. The details of the LTC availed period and the recoveries sought are given in a chart by the petitioners in annexure P-19.

2. Mr. R.K. Kapoor, learned counsel appearing for the petitioners would submit that the respondent No.1 National Informatics Centre (hereinafter referred to as 'NICSI') came into existence on March 3,

1998 as a Company registered under Section 25 of the Companies Act, 1956. The petitioners were the regular employees of the National Informatics Centre (NIC) and were sent to the NICS I respondent No.1 company on deputation. According to him, the terms of appointment, issued to the petitioners inter-alia, stipulated that for availing Leave Travel Concession, the petitioners would be governed by the Rules of the NICS I, respondent No.1, subject to the petitioners having not availed the concession during the particular block of year before deputation. It is also his submission that the concession shall not, at any time, be inferior to that of the petitioners' entitlement in their parent organization. According to him, the petitioners availed the concession on various dates between the period 2006-2014. The claims of the petitioners were settled in accordance with the applicable Rules. As per the Rules of the respondent No.1 company framed in the year 2006, with regard to LTC, stipulated that *"the concession will be admissible to all employees of NICS I as per the Rules applicable in NIC"*. He would also state, office order dated October 13, 2010, by which the respondent No.1 conveyed the decision of its Board of Directors modifying the Rule with regard to LTC, inter-alia stipulated an employee of the respondent No.1 company can visit Foreign Country in lieu of *"anywhere in India as per the eligibility. The entitlement of Foreign LTC shall be equal to the*

fartherest point in India from the Headquarter of the concerned officer or actual expense incurred in foreign travel, whichever is less". In other words, it is his submission that by this order, the respondent No.1 company had permitted its employees to avail concession for foreign travel. He states, in view of this, many of the employees had actually availed the LTC for foreign trips. Before travelling abroad, undertakings were taken from the concerned officers to the extent that in the eventuality, they are granted leave for a particular period to visit the foreign Country (name of the foreign country), they would undertake not to extend their leave under any circumstances and report for duty on expiry of the leave period. He would also state that everything was in order inasmuch as the Comptroller & Auditor General for the years ending March 31, 2011 and March 31, 2012 did not find any objection with respect to LTC concessions. According to him, the claims of the some employees who undertook foreign trips were settled in terms of the said order. He would state that there was nothing wrong with the availing of the LTC facility. It appears an audit report dated July 2, 2014 from the Post and Telecommunication Audit Office, Delhi was received by the respondent No.1 wherein certain objections were raised with regard to (i) irregular amendment to LTC rules and payment of Rs. 1.24 crore on account of LTC claims for visiting abroad; (ii) irregular

payment of Rs.65.50 lacs on account of LTC claims for travel within India. He would state that an appropriate reply was sent by the respondent No.1 to the Auditors justifying LTC reimbursement to the petitioners. According to him, notices dated July 31, 2014 were issued to the petitioners for recovery of the reimbursement made for availing the LTC by them. The notices were duly replied to by the petitioners wherein they have referred to the office order dated October 13, 2010 issued by the respondent No.1 for availing concession for visiting a foreign country in lieu of anywhere in India. He would state, that the claim of refund after three years was in gross violation of the Rules and principles of natural justice and the petitioners called upon the competent authority to reconsider and review the recovery of the abovesaid amount as it is an unnecessary burden for no fault of theirs. He would rely upon the judgments of the Supreme Court in the cases of *Sahib Ram vs. State of Haryana and ors 1995 Suppl. (1) SCC 18*; *P.H. Reddy and ors vs. National Institute of Rural Development & ors 2007 (15) SCC 598*; *Syed Abdul Qadir and ors vs. State of Bihar and ors 2009 (3) SCC 475* to contend that when there is no misrepresentation/fraud played by the petitioners, the recovery of the payment is unjustified as it would lead to hardship.

3. On the other hand, the learned counsel for the respondent No.1

would submit that the impugned action was in view of the audit report issued to his client by the office of Director General of Audit, Post & Telecommunication and also in view of the note dated July 4, 2014 of the Additional Secretary, Department of Electronics and Information Technology. Pursuant thereto a decision was taken by the Board of the respondent No.1 to initiate action in the light of audit observation and effect recovery of the amounts paid and fix responsibility for violation of the Rules. He states that in the audit report, it was specifically mentioned that the company has no regular post and all the employees are on deputation from the National Informatics Centre. They are entitled to draw the Central Government pay scale plus admissible deputation allowance. The employees are governed by the Government of India Rules as regards perks and privileges viz pension, provident fund, gratuity etc. In terms of Department of Public Enterprise O.M Government officers who are on deputation to the CPSEs will continue to draw salary as per their entitlement in the parent department. The Service Rules of the NICS approved by the Board of Directors in May 2006 to be effective from July 1, 2007 provided that the employees of NICS will be entitled to LTC as per the LTC Rules as applicable to the employees of NIC i.e CCS (LTC Rules) and Government of India orders issued from time to time. He would state that the audit report refers to

the decision taken by the Board to allow the employees of the NICSI to travel abroad on All India LTC with the ceiling of entitlement of fare equal to the farthest point in India from the employees' headquarter. According to him, the decision to amend the LTC rules of NICSI, which was contrary to the CCS (LTC Rules) was critically commented in the report. He would also state that some of the officials who availed LTC travelled in private airlines which was not allowed under the CCS (LTC Rules). That apart, some of the claims were not restricted to LTC 80 fares of Air India as required under the Rules. He would state, that the reply of the NICSI on the objections was not accepted, which resulted in the notice to the petitioners and subsequent recovery thereof.

4. Mr. Ajay Kalra, Advocate, who appears for the respondent No.2, would also justify the action.

5. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the recovery sought to be made by the respondent No.1 after having made the payment to the petitioners for availing Leave Travel Concession is justified. The terms of their deputation clearly stipulate that insofar as LTC is concerned, they are governed by the NICSI Rules, which are as per the rules applicable in NIC i.e CCS (LTC Rules). The decision taken by the Board of Directors of the respondent No1 to allow foreign travel while availing Leave

Travel Concession was a deviation from the CCS (LTC Rules) which does not permit travel abroad. That apart, the audit objections are primarily as under:-

“The Committee considered the service rules of large Commercial Navratna companies viz ONGC, BPCL, CIL, NHPC, BHEL & NTPC and recommended that “the existing LTC rules should be continued. In addition on the BPCL pattern, the Committee recommended LTC abroad against the entitlement of “LTC anywhere in India” with the ceiling of entitlement of fare equal to the farthest point in India from the individual’s headquarters or actual expenditure incurred by the individual, whichever is less. The farthest point in India will be declared at the time of applying for LTC”

The Committee brought in the “concept of the entitlement of fare equal to the farthest point in India from the individual’s headquarters” in the LTC rules though there was no such entitlement in GOI/CCS LTC Rules. Under the CCS LTC rules, there is NO entitlement of fare unless the journey is actually done by permissible airlines (Air India) by the shortest route to the declared place of visit.

The Committee also failed to appreciate the difference between the large Commercial Companies like BPCL, which compete with other Public/Private sector companies and earn their revenues, hire employees from open market, train and retain them on competitive package basis, earn profit and pay dividend to the GoI, and a section 25 not for profit company NICS. The BoD while approving the proposed amendment to LTC rules, also did not take into account the fact that the Committee’s recommendations were in gross violation of Government LTC rules and there was a need of obtaining the approval of the administrative ministry, MoF/DoPT before making such amendment in the LTC rules of the Company.

Director (Finance) of the Deity was not included in the committee though the issues concerned had significant financial implications.

This irregular amendment to LTC rules of NICSI in September 2010 led to notional claims by the officials of the company for the farthest place from the headquarters without undertaking any journey to those places. Out of the 41 claims for claim for which reimbursements were made during 2009-10 to 2013-14, amounts were stated to have been restricted to fares as obtained from BalmerLawrie&Co. but no proof was found attached to 33 claims. Even in respect of the 8 cases where proof for restricting of fare is attached, discrepancies were noticed in seven cases as detailed in Annexure-I attached.

The then Managing Director (MD) of the NICSI was a member of the Committee which recommended for irregular changes in the LTC rules and availed the LTC for the Block year 2010-13 and went to Milan/Rome by Qatar Airways during 13-23 August 2011 and submitted a claim of Rs.1.92 lakh and was paid the same. Though the officer travelled by Qatar Airways instead by Air India, which is mandatory for Government servants as per CCS LTC Rules, the claim was passed without restricting to the air-fare of Air India for Delhi-Port Blair Sector.

None of 41 LTC of the NICSI officials pertained to air journeys by Air India. All officials travelled abroad by other Private airlines, which was not allowed under the CCS LTC Rules. These claims were thus ab-initio liable to be rejected as even the Company rules prescribed that existing CCS LTC rules should be followed.

CCS LTC rules provide that LTC claims should be restricted to the applicable LTC 80 fare or the cheapest economy fare. However, none of the claims were restricted to LTC 80 fares of Air India as required under rules.

In some cases, claims of taxi fares for local journey from residence to Air Port and vice versa were also reimbursed contrary to CCS (LTC) rules.

In respect of three cases, the boarding passes were not found enclosed to the claim.

Thus Rs.1.24 crore was passed for reimbursement of 41 LTC claims of NICS employees irregularly for visiting abroad during the years 2009-10 and 2013-14 (Annexure-I) in gross violation of the CCS (LTC Rules) and without approval of the administrative department, MoF and DoPT. In view of the above, the entire payment of Rs.1.24 crore made towards LTC claims for visiting abroad is irregular, inadmissible and required to be recovered”.

6. Insofar as LTC claims for travel within India are concerned, the audit observations are as under:-

“It was noticed in audit (March-June 2014) that 39 LTC claims for air journeys within India were passed and Rs.65.50 lakh was reimbursed during 2009-10 to 2013-14 (Annexure-II), contrary to the provisions of LTC Rules and these irregularities are brought out below:

In 26 cases (out of 39 cases), journey by private airlines were allowed where air travel by Air India was compulsory, contrary to CCS (LTC Rules).

In 4 cases, claims were not regulated by LTC-80 fares and reimbursement was made in excess of admissible amount as per LTC 80 fares.

Claims of private taxi or own car was also allowed in contravention of rules which resulted in an excess payment of Rs36,380/- in seven cases on account of LTC as detailed in the Annexure-II.

Though tickets were purchased from private agents claims were paid (Annexure-II) contrary to the LTC rules of G.O.I”.

7. The reply of the respondent No.1 to the audit objections was

primarily as under:-

“BoDs had felt the need of NICSI’s own Service Rules for its employees and directed that Service Rules for it employees and directed that Service Rules to the extent they cover the aspects relating to deputationists and contract employees may be prescribed. Accordingly, a committee had been constituted for the purpose.

The BoD had approved the Service Rues of NICSI employees, as were recommended by the said committee, with some modifications and given effect from 01/07/2007.

NICSI being a CPSE and its service rules being silent on travel by a particular carrier, the journeys were performed by the officials as per their choice but the reimbursement towards fare was restricted as per the rates informed by the authorised travel agency i.e, BalmerLawrie&com.

NICSI had considered and proposed some amendments to the provisions on TA, LTC etc., in the said existing Service Rules and the same was submitted to the Board in its 66th meeting held in March 2010. Again a committee was constituted for examining the proposal.

The Committee had considered various options in its different meetings held and based on that, had finalized/submitted its recommendations which were thereafter considered by the Board and approved. NICSI had nothing to say in the matter.

The individuals had performed the journeys as per the provisions in the Service Rules approved by the Board, duly notified by NICSI on 13/10/2010 and the Boarding passes etc. were attached to their claims in original. There was no provision in the approved NICSI service rules that journeys on tour or on LTC are to be performed by Air India only and hence these were performed even by other Airlines.

NICSI Service Rules provide for travel in economy class and do not provide to regulate the bills as per LTC-80 provisions

in the Government Rules (sic.). Claims of taxi fares for local journeys from residence to airport and vice-versa were reimbursed as per the provisions in the approved service of NICS.

Regarding the irregular amendment to LTC rules in gross violation of Government Rules without approval of the Administrative Department/MoF/DoPT, it was replied that since the decision was taken by the Board, NICS had no comment in the matter.

It was also stated that NICS has been implementing a very number of projects and every officer is being over-loaded. It may not be possible to continue NICS in its present form, as well as to perform, without significant manpower and in the absence of some perks at least at par with other CPSEs.

NICS had stopped the grant of LTC to officials to visit abroad from April 2014 onwards, against "LTC Anywhere in India" based on DPE O.M dated 09/12/2013 which was addressed to all CPSEs".

8. A perusal of the above reply would reveal that NICS respondent No.1 had justified the reimbursement made to the petitioners. Suffice to state, the stand of NICS respondent No.1 was not accepted by the auditors. Whether that would still justify the respondent No.1 to seek a refund of the amount already paid to the petitioners. No doubt, at least those petitioners who have travelled abroad would justify the same by relying upon the instruction dated October 13, 2010 which was given effect to. Surely, if benefit of order dated October 13, 2010 was allowed to be taken, the reimbursement thereof cannot be recovered, on the

ground that the same was impermissible, more particularly, when the act was bona fide. The other aspects are, travelling by private airlines, not restricting the fares to LTC 80 fares, ticketing through unrecognised travel agents etc. The plea taken by the respondent No.1 that the NICS Rules are silent may not be correct, as NICS Rules follow NIC Rules which are CCS (LTC) Rules. The reimbursement of the claims being contrary to CCS (LTC Rules), the reimbursement cannot be justified but it is seen that some of the petitioners have availed concessions on two occasions. The concessions availed, have been accepted and payments made, without any objection/demur. The petitioners having spent money cannot be denied benefit. The reimbursement can be regulated strictly in accordance with the rules. This I say as there is an issue of equity and hardship on one hand and public interest on the other. A similar issue had come up for consideration of the Supreme Court in a situation where employees have been given benefit contrary to the Rules and instructions, in the case of *State of Punjab and ors vs. Rafiq Maseeh (White Washer and ors) 2015 (4) SCC 334*, where the Supreme Court, after referring and considering its earlier judgments including *Syed Abdul Qadir and ors* (supra) has in para 18 held that it is not possible to postulate all situations of hardship which would govern the employee on the issue of recovery where payments have mistakenly been made by the

employer in excess of their entitlement and had carved out the following situations where recoveries by the employers could be impermissible in law.

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery.

9. It is not known, whether any of the petitioners have superannuated or is due to retire within one year. In those cases, the recovery is impermissible. In other cases, equity/public interest can be balanced by directing the respondents to regulate the concession availed for international travel and domestic travel by adjusting the reimbursement as per Air India fares including LTC-80 fares (if not already done) by obtaining the details from authorized agents or the airline concerned

provided proof exists of having undertaken the journey.

10. Any other aspect(s) for which benefit has been given but is/are not regulated by the CCS (LTC Rules) need to be refunded back by the petitioners. It is made clear, in the absence of any proof of having undertaken the journey, would necessarily mean, the refund sought is justified. The respondents shall calculate the reimbursement of the LTC availed by the petitioners, on the above lines and communicate the same to the petitioners to enable the petitioners to represent against such calculation which would be considered by the respondents before effecting recovery, if any. Till such time, the action is taken by the respondents in terms of this order, the interim order dated December 9, 2014, as revived vide order dated July 29, 2015 shall continue.

11. The writ petition is disposed of in terms of the above. No costs.

CM No.16894/2014

In view of the order passed in the writ petition, the present application is dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

OCTOBER 29, 2015

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