

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION STAMP NO.33704 OF 2016**

|                                             |   |                     |
|---------------------------------------------|---|---------------------|
| <b>Rajendra Bhikshapathi Yapuram</b>        | ] |                     |
| <b>Aged about 28 years,</b>                 | ] |                     |
| <b>Occupation: Service,</b>                 | ] |                     |
| <b>R/o Room No.117, B Wing,</b>             | ] |                     |
| <b>Sukhsagar CHS Ltd.</b>                   | ] |                     |
| <b>New Prabhadevi Road, Mumbai-400 025,</b> | ] | <b>..Petitioner</b> |

**Versus**

|                                        |       |                      |
|----------------------------------------|-------|----------------------|
| <b>1. State of Maharashtra Through</b> | ]     |                      |
| <b>The Office of the Govt. Pleader</b> | ]     |                      |
| <b>High Court Appellate Side</b>       | ]     |                      |
| <b>Mumbai.</b>                         | ]     |                      |
| <br><b>2. Mumbai Housing and Area</b>  | <br>] |                      |
| <b>Development Board,</b>              | ]     |                      |
| <b>Grihanirman Bhavan, Kalangar,</b>   | ]     |                      |
| <b>Bandra (E), Mumbai-51.</b>          | ]     | <b>..Respondents</b> |

**Mr. J. K. S. Hegde for the Petitioner.**  
**Mr. S. D. Rayrikar, AGP for the Respondent No.1.**  
**Mr. V. M. Parshurami for the Respondent No.2.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 14<sup>th</sup> FEBRUARY, 2017**

**ORAL JUDGMENT**

1           Rule. Considering the nature of the challenge raised made returnable forthwith and heard.

2           The writ jurisdiction of this Court is invoked against the order dated 23.05.2016 passed by the Appellate Authority, by which

order, the Appeal filed by the Petitioner came to be rejected.

3           The Petitioner was an Applicant for a tenement belonging to the Lower Income Group which was advertised alongwith tenements for various other groups vide advertisement issued for sale of tenements in the year 2015 by the Respondent No.2. The persons in the income group of Rs.16,001/- to Rs.40,000/- were entitled to apply for a tenement in the Lower Income Group in terms of the said scheme. The Petitioner had accordingly applied for a tenement in the Lower Income Group as his net monthly salary was more than Rs.16,001/-. The Petitioner vide letter dated 20.07.2015 was informed by the Respondent No.2 that he was successful in the lottery drawn for the said group and that he would be allotted a tenement in the said Lower Income Group subject to the terms and conditions mentioned in the first intimation of allotment letter dated 20.07.2015. In terms of the said letter the Petitioner was to furnish certain documents to the Respondent No.2 herein. It seems that the Authorized Officer of the Respondent No.2 on the basis of the documents which were submitted by the Petitioner along with his application and on perusal thereof held the Petitioner to be ineligible for allotment in the Lower Income Group which was communicated to the Petitioner vide letter/order dated 15.02.2016.

4           It seems that the Petitioner in view of the said communication dated 15.02.2016 of the Authorized Officer visited the office of the Respondent No.2 when he was informed that the Petitioner would have to file an Appeal against the said order under the relevant rules. The Petitioner accordingly filed an Appeal, it seems that alongwith the said Appeal the Petitioner had annexed the order/communication dated 15.02.2016 passed by the Authorized Officer. Before the Appellate Authority the Petitioner had also submitted various documents vide the standard format on 25.02.2016. The said documents are inter-alia the Salary Certificate, Salary Slip, Income Tax Return, F-16 for AY 2015-16, Bank Statement from 1<sup>st</sup> March 2014 - 30<sup>th</sup> April 2015 for the consideration of the Appellate Authority. The Appellate Authority has by the impugned order rejected the said Appeal on the ground that the Petitioner's income is less than that prescribed for the Lower Income Group. The Appellate Authority has mentioned in the impugned order the factum of the Petitioner filing the various documents. As indicated above, it is the said order dated 23.05.2016 passed by the Appellate Authority which is taken exception to by way of the above Petition.

5           On behalf of the Respondent No.2, an affidavit in reply has been filed. In the said reply, the manner in which the average monthly income, calculated for the purposes of determining the eligibility is

mentioned. It has been mentioned that average monthly income is calculated on the basis of Basic Salary + Dearness Allowance + Bonus + City Allowance. It is further stated in the affidavit that having regard to the documents on record, it is disclosed that the average monthly income of the Petitioner is Rs.13,662/- i.e. less than the minimum of Rs.16,001/- required for a person to be eligible to participate in the scheme for a tenement meant for the Lower Income Group. It is further mentioned in the said affidavit that after the Petitioner has been declared ineligible, the next person in the waiting list has been issued the allotment letter and that the next person has also furnished the documents. However in view of the ad-interim order passed in the above Petition, no further steps have been taken in the matter of allotment of the concerned tenement to the said person who is in the waiting list. This is in so far as the affidavit in reply which has been filed on behalf of the Respondent No.2.

6                    Heard the Learned Counsel for the parties.

7                    The Learned Counsel for the Petitioner Mr. J. K. S. Hegde would seek to contend that the Petitioner is eligible having regard to the documents which the Petitioner has filed alongwith the application as also the documents which were placed before the Appellate Authority. The Learned Counsel would refer to the Salary Certificate issued by one

Amrut Software Pvt. Ltd., wherein the Petitioner is working, wherein the average monthly salary of the Petitioner is shown as Rs.16,832/-. The Learned Counsel would also draw this Court's attention to the break up of the salary which was also placed before the Appellate Authority which is at page No.28 of the paperbook. The Learned Counsel also drew this Court's attention to the certificate issued in respect of bonus, wherein it has been mentioned that the total bonus paid to the Petitioner on 18.10.2014 is Rs.10,346/- and the annual incentive which is paid to him is in the sum of Rs.27,700/- as on 10.10.2014. It was therefore the submission of the Learned Counsel that the Petitioner has been wrongly held to be ineligible.

8           Per contra, the Learned Counsel Mr. V. M. Parshurami appearing for the Respondent No.2 would contend that the documents filed by the Petitioner indicate that the Petitioner's average monthly income is less than Rs.16,001/- per month. The Learned Counsel would contend that the break up of the salary does not indicate the payment of Dearness Allowance and if that be so, the Petitioner's average monthly income would be less than Rs.16,001/- per month. The Learned Counsel would submit that the Authorized Officer as well as the Appellate Authority have considered the documents filed by the Petitioner and on such consideration that the figure of Rs.13,662/- has been arrived at. It

was therefore the submission of the Learned Counsel that interference of this Court in the writ jurisdiction with the impugned order is not warranted.

9 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue which arises is whether the Petitioner can be said to be eligible for an allotment of a tenement under the Lower Income Group. As indicated above, for a person to be eligible for allotment of a tenement belonging to the Lower Income Group he must have monthly salary in the bracket of Rs.16,001/- to Rs.40,000/-. The Petitioner as indicated above had filed documents relating to his average monthly salary which he is getting from his employer. The said documents also cover the break up of the average monthly salary. The Petitioner has produced Salary Certificate dated 02.03.2016 issued by his employer wherein the average monthly salary is shown as Rs.16,832/-. The Petitioner has also produced the certificate showing the break up of the said amount Rs.16,832/- which is as under :-

| Net Salary<br>Non Reimbursable | Monthly | Annually | Net Salary<br>Reimbursable | Monthly | Annually |
|--------------------------------|---------|----------|----------------------------|---------|----------|
| Basic                          | 10350   | 124200   | HRA                        | 3105    | 37260    |
| City Allowance                 | 3312    | 39744    | Conveyance                 | 3623    | 43476    |
| Bonus                          | 862     | 27700    | Other<br>Allowance         | 2610    | 31320    |

|            |       |        |  |      |        |
|------------|-------|--------|--|------|--------|
| Incentives | 2308  | 10346  |  |      |        |
| Total      | 16832 | 201990 |  | 9338 | 112056 |

Hence from the said break up it can be seen that the Petitioner's Basic is Rs.10,350/-, City Allowance is Rs.3312/-, Bonus is Rs.862/-, Other Allowances are Rs.2610/-. According to the Learned Counsel for the Petitioner the Other Allowances include the Dearness Allowance which the Petitioner is entitled to. If the aforesaid amounts are taken into consideration then the figure crosses Rs.16,001/- per month. In so far as the submission of the Learned Counsel appearing for the Respondent No.2 that the said break up does not contain the clause relating to Dearness Allowance and therefore the other allowances cannot be taken into consideration. In my view, that would be taking a too hyper technical view of the matter. It cannot be lost sight of the fact that the Petitioner must be entitled to the Dearness Allowance which is sought to be paid by way of payments under the heading of Other Allowances to the Petitioner. In fact the said statement discloses the incentives which are paid to the Petitioner which are in the sum of Rs.2308/-. Hence even if the said amount of incentives is taken, the figure crosses Rs.16,001/- per month. The bonus of Rs.862/- per month has been arrived at by spreading over Rs.10,346/- over the period of 12 months. In a scheme of the nature in question and especially having regard to the fact that the Petitioner is an

Applicant in the Lower Income Group certainly some play in the joints would have to be shown in so far as the description of the amounts which are paid by the employer, a strict construction cannot be applied. In my view, therefore, in the light of the material on record, the Authorized Officer as well as the Appellate Authority had erred in holding that the Petitioner is ineligible for allotment of a tenement under the Lower Income Group. Hence the order passed by the Appellate Authority in which has merged the order dated 15.02.2016 passed by the Authorized Officer is required to be quashed and set aside and is accordingly quashed and set aside. The Petitioner is resultantly declared as being eligible for allotment of a tenement under the Lower Income Group category. The allotment to the Petitioner is therefore upheld. The Respondent No.2 may complete the formalities by asking the Petitioner to pay the amounts which are required to be paid for a tenement under the Lower Income Group. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

**[R.M.SAVANT, J]**