IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1885 OF 2012

Raja Basu ... Petitioner
v/s
Shipping Corporation of India Ltd. ... Respondent

Mr Sanjay Singhvi, Sr. Counsel with Ms Jane Cox i/b Mr Rajmohan A. Amonkar for Petitioner.
Mr Kevic Setalvad, Sr. Counsel with Mr Anupam Surve, Ms Kavita Anchan i/b M/s M.V. Kini and Co. for Respondent.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

Reserved On : 5th December, 2016
Pronounced On : 16th February, 2017

JUDGMENT [PER B. P. COLABAWALLA J.] :-

1. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of mandamus to direct the Respondent (Shipping Corporation of India Ltd.) to continue the self-lease agreement of the Petitioner in respect of his residential accommodation in Kolkata as well as to continue to

provide the facilities of bachelor accommodation in Mumbai. He seeks this direction with retrospective effect from 26th November, 2008. In the alternative, a mandamus is sought against the Respondent to pay to the Petitioner revised House Rent Allowance (for short **"HRA"**) with effect from 26th November, 2008 and to reimburse to the Petitioner all the deductions made from his wages under the guise of recovery of amount already paid in respect of self-lease agreement / HRA.

2. The Petitioner is an individual employee of the Respondent Company. The Respondent Company is the Shipping Corporation of India Ltd. It is a Government of India enterprise and a "State" within the meaning of Article 12 of the Constitution of India. The present Petition has been filed, according to the Petitioner, in respect of the illegal retrospective deductions made from his wages in respect of the self-lease agreement allowance as more particularly set out in the Petition.

3. Mr Singhvi, learned Senior Counsel appearing on behalf of the Petitioner, submitted that the Petitioner is an employee of the Respondent and presently holding the post of assistant manager in

the Company's Head Office at Nariman Point, Mumbai. He was originally employed in Kolkata since 8th August 1990, but since 2006 he was transferred to Mumbai Head Office. Mr Singhvi stated that the wages and allowances and conditions of service of the Officer employed by the Respondent Company have been fixed by Memorandums of Agreement signed periodically between the Respondent and the Regional Officers' Associations. Such Agreements have been signed pursuant to the Officers' Associations submitting their charter of demands and negotiations held between the parties. Mr Singhvi submitted that one such agreement was signed on 1st January, 2002 between the Respondent Company and the SCI Officers' Association, Mumbai, in respect of Mumbai Officers.

4. Mr Singhvi then submitted that Presidential directives are issued in respect of Public Sector Undertakings (PSUs). These directives form the basis for negotiations between the PSUs and their employees / Unions. Accordingly, on 1st May 2009, the Government of India, Ministry of Shipping, conveyed the Presidential Directives for the period 1st January, 2007 onwards. However, in spite of the Officers' Associations' “attempts”, the Respondent Company failed to amicably negotiate and settle the

charter of demands of these Officers. Be that as it may, ultimately, the Respondent Company issued a Circular dated 23rd June, 2011 modifying and changing the existing pay-scales and allowances with effect from 1st January, 2011. This was done pursuant to meetings of the Board of Directors of the Respondent Company held on 13th April, 2009 and 31st October, 2009 respectively. A copy of the said Circular is annexed at Exh.'C' to the Petition.

5. Mr Singhvi then submitted that in the Respondent Company, as in a lot of other PSUs, there has been a practice for allowance known as "self-lease". He submitted that whilst employees living in rental accommodation (not provided by the Company) are paid HRA, those employees who own their own house / accommodation are given a self-lease facility. By this system/facility, the house / accommodation owned by the employee is deemed to be leased to the Company and he / she is paid an allowance as a "self-lease" for the same. In turn, a smaller amount of 7.5 % of the basic pay is deducted from the wages of the employee as House Rent Recovery (**"HRR"**). In respect of officers who are transferred, Mr Singhvi submitted that they continued to get the self-lease facility at the original place of posting, if they opted for

bachelor accommodation at the new place of transfer. For this bachelor accommodation a deduction of 3.75% was made from the basic pay. In this regard, Mr Singhvi relied upon clause 3 of the manual of the Personnel Department of the Respondent Company, annexed at Exh. 'C-1' to the Petition.

6. In the facts of the present case, Mr Singhvi submitted that the Petitioner originally joined the services of the Respondent Company in Kolkata and was transferred to the Head Office from September 2006. He owns his own accommodation in Kolkata where he and his family resided up and until his transfer. He was thus paid self-lease allowance and HRR deductions were also made in respect of the same. According to Mr Singhvi, on being issued the transfer order, the Petitioner was assured that he would continue to get the self-lease facility in Kolkata in respect of his own accommodation, and in Mumbai he would be provided bachelor accommodation for which 3.75% deductions would be made.

7. Mr Singhvi stated that however, by the Circular dated 23rd June, 2011 (Exh. 'C' to the Petition), it was inter alia decided that the self-lease facility would only be permitted at the place of posting of the employee and accommodation at only one place

would be allowed on transfer. In this regard, he brought to our attention clause 8.5 of the said Circular which categorically states that in case an Executive is transferred to another location in the middle of an academic session, the said employee would be allowed to retain the self-leased accommodation at the place of original posting till the end of the academic year. However, accommodation at only one place would be allowed on the transfer. By the said Circular, the HRA was also enhanced with effect from 26th November, 2008. Mr Singhvi submitted that this Circular would be applicable only to those Officers who were transferred after the Circular was issued i.e. 23rd June, 2011. According to Mr Singhvi, this Circular cannot apply to the Petitioner who was transferred to Mumbai from Kolkata in September 2006.

8. Mr Singhvi stated that arrears arising under all heads of the Circular dated 23rd June, 2011 were to be disbursed alongwith the salary due in August, 2011. However, at the shock of the Petitioner, he came to know that the Respondent Company, instead of paying the positive difference between the HRA and the old self-lease, the Respondent Company was planning to recover the old self-lease amount as well as revised HRR and not give to the Petitioner the self-lease facility at Kolkata at all and that too with

retrospective effect from 26th November, 2008. This, according to the Mr. Singhvi, was brought to the notice of the Respondent Company by the Petitioner vide his letter dated 22nd August, 2011. According to the Petitioner, despite this, the Respondent started making illegal deductions from his salary. Thereafter, several letters / communications were addressed to the Respondent Company making a grievance of these deductions but to no avail.

9. Mr Singhvi submitted that the self-lease facility was granted to employees who owned their own accommodation and opted for the same. If an employee did not opt for this facility, he could either take the accommodation provided by the Respondent or take the HRA. In the facts of the present case, Mr Singhvi submitted that not only was the self-lease facility done away with but the HRA that ought to have been paid to the Petitioner (in lieu of the self-lease facility) was also sought to be deducted. In other words, it was the submission of Mr. Singhvi that the Petitioner either be allowed to continue the self-lease facility in Kolkata or be given the HRA. According to Mr. Singhvi, the Petitioner cannot be denied of both. He therefore submitted that these actions of the Respondent were totally illegal and contrary to law and it is in these circumstances that the Petitioner has approached this Court

seeking the reliefs, more particularly set out in the Petition.

10. On the other hand, Mr Setalvad, learned Sr. Counsel appearing on behalf of the Respondent Company, submitted that the Central Government had constituted a Pay Revision Committee for consideration of a revised salary structure. This Committee had detailed consultations with the management of different Central Public Enterprises including the SCI's Officers' Association and thereafter made a report to the Central Government. This report was duly considered and after due process, the salary revision in respect of Central Government Public Enterprises was announced for implementation vide a communication / guidelines dated 26th November, 2008. Pursuant to this, the Ministry of Shipping had issued the Presidential sanction for pay revision vide its letter dated 1st May, 2009. As per the said Presidential sanction, it was directed that the benefit of pay revision to an employee enjoying the self-lease system of residential accommodation would be given only if and with effect from the time when the existing lease agreements are terminated. On termination, the employee may enjoy facility of HRA as per the revised structure. The Respondent company's management would ensure that existing agreements under the self-lease facility are terminated within a reasonable period of six

months and if the same was not done, the said employee would not be eligible for the revised pay. Obviously, the employee's self-lease so terminated, would enjoy the facility of the HRA provided the employee did not opt for the accommodation given by the Company. In short, Mr Setalvad submitted that the self-lease facility was done away with to the knowledge of the Petitioner and he never made any grievance about it until the filing of this Petition.

11. Coming to the facts of the present case, Mr Setalvad stated that the Petitioner claimed to be the General Secretary of the SCI Officers' Association and holding the post of Assistant Manager. The Petitioner was transferred from Kolkata to Mumbai vide transfer order dated 29th July, 2005 and on transfer, the Petitioner vide his letter dated 3rd October, 2006 requested for allotment of bachelor accommodation at Powai. Mr Setalvad submitted that bachelor accommodation at Powai is a hostel meant for visitors and not for employees on transfer. However, taking into consideration the request made by the Petitioner, the then management of the Respondent Company temporarily allotted the hostel accommodation to the Petitioner as transit accommodation till the Petitioner made alternate arrangements and/or opted for allotment of a house. Mr Setalvad submitted that though the bachelor's

accommodation at Powai was a hostel accommodation and meant for trainees, the Petitioner used to occupy the hostel, initially singly and soon thereafter even called his family and started staying alongwith them in this hostel accommodation. He stated that the Petitioner's son is also staying with the Petitioner and is studying in Mumbai.

12. As this was a complete abuse of the use of the bachelor accommodation that was temporarily granted to the Petitioner, the Respondent time and again directed the Petitioner to vacate it and were ready to provide alternate accommodation in the Officers' Quarter. However, for reasons best known to the Petitioner, he continued to occupy the hostel accommodation alongwith his family till date. In fact, since the Petitioner refused to vacate the hostel accommodation, after duly giving him notices in that regard, the Respondent has initiated disciplinary proceedings against the Petitioner by issuing a show-cause memorandum dated 2nd January, 2014 and which has been replied to by the Petitioner vide his letter dated 7th February, 2014. Since his reply was found to be unsatisfactory, the Respondent has also issued a memorandum of charges against the Petitioner dated 15th July, 2014. Mr Setalvad submitted that in this manner, the Petitioner is illegally and

unauthorisedly occupying the hostel accommodation with his family and utilising all the facilities of the Respondent Company including the canteen facility for himself as well as his family.

13. Mr Setalvad submitted that as mentioned earlier, the self-lease facility was to be done away with and in furtherance thereto, the Ministry of Shipping by a communication dated 28th February, 2011 specifically mentioned that the self-lease facility to the employees as per the pre-revised pattern would be terminated with effect from 25th November, 2008. This was agreed to by the Petitioner and consequently vide an undertaking dated 22nd July, 2011, the Petitioner surrendered the self-lease accommodation with effect from 26th November, 2008. Consequently, the lease rental receipt from 22nd November, 2008 till 22nd July, 2011 was to be recovered from the Petitioner and accordingly, the said excess lease rental was adjusted against the monthly salary in installments. That under the self-lease facility, once enjoyed by the employee of Respondent Company, the said employee would get lease rentals under this facility and upon termination of the self-lease, the concerned employee would be entitled to HRA. However, an employee occupying Company accommodation would naturally not be entitled to any HRA. In the facts of the present case, Mr

Setalvad submitted that the Petitioner as well as his family were admittedly occupying the Company accommodation at Mumbai and therefore he was not entitled to HRA. As far as the self-lease is concerned, the same has been discontinued with effect from 26th November, 2008 as per the Petitioner's own undertaking dated 22nd July 2011. He therefore submitted that looking to totality of the facts in the present case, there was no illegality committed by the Respondent Company in making the deductions from the salary of the Petitioner and the contention of the Petitioner that if the self-lease facility has been discontinued, then he would be entitled to HRA is wholly without any merit.

14. Mr Setalvad stated that in taking this course of action, the Petitioner had not been singled out or discriminated against by the Company. He submitted that about 779 employees of the Respondent Company had self-lease accommodation and the same was discontinued and/or terminated in the month of November 2008. The excess rent paid to them was also accordingly deducted from their salaries. None, other than the Petitioner, has made any grievance in this regard. It is not as if it is in the case of the Petitioner alone that the self-lease accommodation had been discontinued / terminated and the excess rent deducted. Mr

Setalvad submitted that this was a policy decision of the Respondent company applied uniformly to all employees without any discrimination and hence the Petitioner cannot make any grievance on the ground of being either singled out or being discriminated against. Consequently, he submitted that there is no merit in this Writ Petition and the same ought to be dismissed with costs.

15. We have heard the learned counsel for the parties at length and perused the papers and proceedings in the Writ Petition alongwith the annexures thereto. It is not in dispute that it was a policy decision taken by the Respondent Company that the self-lease facility was to be done away with from 26th November, 2008. This was done retrospectively and as per the letter dated 28th February, 2011 issued by the Government of India, Ministry of Shipping to the Chairman and Managing Director of the Respondent Company. The said communication clearly states that the self-lease facility to the executives as per the pre-revised pattern will be terminated with effect from 26th November, 2008 (i.e. the date immediately prior to the date on which the revised allowances became effective). Pursuant to this letter issued by the Government, the Respondent issued a circular on similar lines. This

policy decision and rightly, has not been challenged before us by Mr Singhvi. In fact, keeping in tune with this policy decision, the Petitioner surrendered his self-lease facility with effect from 26th November 2008. This is clear from Exh.'D' to the affidavit in reply of the Respondent (page 130 of the paper-book). This undertaking reads as under:-

> **"I, Raja Basu, E.C. No.2039 presently in view of the rank of AM hereby surrender self-lease w.e.f. 26.11.2008.**
>
> **The lease document duly signed by me which is in your possession may be treated as null and void w.e.f. 26.11.2008.**
>
> **Signature : Raja Basu**
> **Name : Raja Basu**
> **Date : 22.07.2011**
> **Place : Mumbai**
>
> **Note : The undertaking may be filled and submitted to HR by 22.07.2011."**

16. Looking at this conduct of the Petitioner, we are unable to agree with the contention of Mr Singhvi that the Circular dated 23rd June, 2011 would apply only to employees who were transferred after the said date (23rd June 2011). This circular stipulates that the self-lease facility would only be permitted at the place of posting of the employee and accommodation at only one place would be allowed on transfer. Pursuant to this very Circular,

the Petitioner, on 22nd July 2011, has given an undertaking for surrender of his self-lease. This undertaking further states that this surrender of self-lease was to be with effect from 26th November, 2008 and the lease document signed by the Petitioner and which was in the possession of the Respondent, may be treated as null and void with effect from 26th November, 2008. This being the factual position and considering that the Petitioner has acted in pursuance of this Circular dated 23rd June 2011, we fail to see how he can today contend that it applies only to Officers / employees who were transferred after 23rd June 2011. We therefore have no hesitation in rejecting this argument.

17. We are also unable to accept the argument of Mr Singhvi that once the self-lease facility was done away with, the Petitioner was entitled to HRA (in lieu of the self-lease facility). This argument proceeds on a total misunderstanding of the nature of HRA which is paid to an employee. HRA is not a matter of right. It is in lieu of accommodation not made available to an employee. This being the case, it follows that whenever accommodation is offered and taken by the employee, he is not entitled to HRA. The Respondent Company cannot be saddled with double liability by which it has to provide accommodation to the employee on the one hand and also

pay HRA on the other. HRA, as correctly understood, is basically compensation in lieu of accommodation. It is not to be used as a source of profit. It is given only to compensate for the amenities which are not available or provided to the employee. The moment therefore accommodation is provided and opted for by the employee, he ceases to be entitled to compensation which is given for the want of it. These principles are too settled, but if one needs to refer to any authority on this subject, it would be apposite to refer to the decision of the Supreme Court in the case of **Director, Central Plantation Crops Research Institute, Kesaragod and others v/s M. Purushothaman and others.**[1] The relevant portion of the said decision reads thus:-

> *"**5.** It is clear from the aforesaid provisions that paragraphs 4(a)(i) and (ii) lay down the procedure for making application for accommodation. Paragraph 4(b)(i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4(a)(i) and (ii) state that an application has to be made to secure accommodation. However, that does not mean that the Government or the organisation such as the appellant-Organisation to which the said provisions apply, cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to HRA, is not correct. It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the*

1 1995 Supp (4) SCC 633

convenience of the Management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. ***HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit HRA. The Management cannot be saddled with double liability, viz., to construct and maintain the quarters as well as to pay HRA.*** *This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum.*

8. HRA would be covered by the definition of compensatory allowance. It is compensation in lieu of accommodation. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are not available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it*. We wish the Tribunal had perused the definition of 'pay' and "compensatory allowance" given in the Fundamental Rules before pronouncing that HRA is a part of the wages or pay and, therefore, cannot be disturbed.*"

18. The facts of the present case would show that it is undisputed position that the Petitioner had opted for the self-lease facility while he was employed by the Respondent Company in Kolkata. Thereafter, in September 2006, he was transferred to Mumbai. While in Mumbai, he was staying in the bachelor / hostel accommodation. There is a dispute before us whether this bachelor / hostel accommodation was given at the request of the Petitioner or whether the same was done unilaterally by the Respondent

Company. It is the case of the Respondent that this bachelor accommodation was allotted to the Petitioner only on a temporary basis so as to give him an opportunity to find his own accommodation in Mumbai or opt for the regular accommodation provided for by the Respondent Company. In fact, it is the case of the Respondent Company that this bachelor accommodation allotted to the Petitioner was misused by him and has till date not been vacated despite repeated requests and reminders from the Respondent Company. Though this bachelor accommodation was for trainees, the Petitioner (who admittedly is not a trainee) was occupying the same not only himself but also with his family members. It is in this regard that the Respondent Company has initiated disciplinary proceedings against the Petitioner and which are pending. From these facts, what is clear is that the Petitioner was occupying the accommodation provided by the Respondent Company whilst he was working at Mumbai. There is, therefore, no question of the Petitioner contending that he would be entitled to HRA in addition thereto.

19. Faced with this situation, Mr Singhvi sought to contend that the bachelor accommodation allotted to the Petitioner in Mumbai cannot be equated with the regular accommodation that is

allotted to an employee. It was therefore contended that notwithstanding the fact that he was occupying the bachelor accommodation, the Petitioner would be entitled to HRA (in lieu of the self-lease facility).

20. In the facts of the present case, we are unable to agree with this submission of Mr Singhvi. As stated earlier, it is the case of the Respondent Company that this bachelor accommodation was allotted to the Petitioner at his own request and on a temporary basis. Apart from this, it is the case of the Respondent that this bachelor accommodation was misused by the Petitioner when he also brought his family to stay with him in this accommodation. The bachelor accommodation was for trainees and not for regular employees of the Respondent Company. The Respondent Company had time and again called upon the Petitioner to look for his own accommodation or opt for the accommodation given by the Respondent Company. However, the Petitioner failed to do so and continues to occupy the bachelor accommodation till date. In these facts, we cannot agree with the submission of Mr Singhvi that because the Petitioner was occupying the bachelor accommodation, he would still be entitled to HRA (in lieu of the self-lease facility). If we were to agree with this submission, it would virtually amount to

allowing the Petitioner to take advantage of his wrong. This we certainly cannot permit in our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India. In fact, with reference to this action of the Petitioner, disciplinary proceedings are pending and which have still not reached its conclusion. It is now well settled that in writ jurisdiction, it is not sufficient that the party should come to this Court and make out a case that a particular order / action is not valid. In order to get relief from the Court in writ jurisdiction one must not only come with clean hands, not suppress any material fact, show utmost good faith but he must also satisfy the Court that making of the order will do justice and that justice lies on his side. In this respect, it would be apposite to refer to the observations of Division Bench of this Court (M.C. Chagla, C.J. and S.T. Desai, J. as they then were) in the case of **The State of Bombay Vs. Morarji Cooverji.**[2] The observations of the Division Bench [At page 332 of the report] are as under:-

> *"But it is not sufficient that a party should come to this Court and make out a case that a particular requisition order is not valid. In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side."*

2 (1958) LXI BLR 318.

21. Looking to the facts of the present case, we are clearly of the view that making any order in favour of the Petitioner would neither do justice and certainly justice does not lie on his side to seek the reliefs more particularly set out in the Writ Petition.

22. Before parting, we must state that our observations in this Writ Petition are only tentative and prima facie and the disciplinary proceedings pending against the Petitioner shall be decided on its own merits without being influenced by any observations made in this order.

23. In view of the foregoing discussion, we find no merit in this Writ Petition. It is therefore dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA, J.) **(S. C. DHARMADHIKARI J.)**

24. After the judgement was pronounced, a request is made to stay the ad-interim order obtained in this writ petition and it is

claimed that it is operating from 26th September, 2014. That order restrains the Respondent from taking of any coercive steps.

25. This request is opposed by the Respondent.

26. Having noted the request, we find that the writ Petitioner was offered an accommodation in Mumbai by the Respondent - employer. The petitioner does not wish to vacate an accommodation styled as “bachelor's accommodation” which is, in substance, found to be meant as a transit / for trainees. Secondly, if the Petitioner is facing any disciplinary proceedings, there is nothing coercive about them for they have to be heard and decided in accordance with law. In the garb of an ad-interim order, the Petitioner cannot perpetuate his stay in the bachelor's accommodation. The request is, therefore, refused.

(B. P. COLABAWALLA, J.) **(S. C. DHARMADHIKARI J.)**