

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

Date of decision: 18<sup>th</sup> May, 2017

+ W.P.(C) 8838/2014, CM No. 20276/2014  
N K GROVER & ANR.

..... Petitioner

Through: Mr. Mahesh Srivastava, Adv. with  
Mr. Ashok Kumar Sharma, Adv.

versus

BHARAT HEAVY ELECTRICAL LIMITED & ANR.

..... Respondent

Through: Mr. J.C. Seth, Adv.

**CORAM:-**

**HON'BLE MR JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J. (ORAL)**

1. The present petition has been filed by the petitioners with the following prayers:-

*“In the circumstances, it is, therefore most respectfully prayed that this Hon'ble Court may be pleased to:-*

- i. Issue an appropriate writ, order or orders, direction or directions to the respondents to restore the medical facilities which has been withheld from 01.04.2014 and restore the same with immediate effect in respect of petitioners in the interest of justice.*
- ii. Pass such other or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

2. Some of the relevant facts are, the petitioner No.1 retired as General Technician on August 24, 2005 and petitioner No.2 retired as Senior Technician on July 24, 2006 from BHEL the respondents herein. After retirement, the petitioners were entitled to continue with the medical facilities for themselves and their family Members dependant on them by depositing half of the basic salary with the respondents and pay Rs.50/- annually for renewal of the medical card.

3. It is their case, that they have been getting medical facilities continuously till March 31, 2014, but the same have been withheld w.e.f. April 01, 2014. It is in this background, the present petition has been filed.

4. The case of the respondents is that the petitioners were allotted flats while in service and as they vacated the flats on August 28, 2009 and August 04, 2009 respectively, long after retirement and not paid the dues for occupying the flats and in terms of the BHEL Retired Employees Contributory Health Scheme, a defaulter in payment of dues of BHEL, the Medical facilities can be withdrawn.

5. Mr. Mahesh Srivastava, learned counsel for the petitioners would submit that the petitioners were not unauthorized occupants in view of the judgment of this Court in the case of *Varishth Nagrik Kalyan Parishad*

*and others v. BHEL and others W.P.(C) No. 8236/2008 decided on November 21, 2008*, which petition was filed by the retired employees of BHEL seeking directions to the respondents to grant them two years further time for vacating the company's accommodation in their possession. The petition was disposed of by the Court by granting nine months time for vacating the company's accommodation in their possession subject to an undertaking, to be filed by the Members of the Union that they shall vacate the company's accommodation in their possession by August 31, 2009. According to him, thereafter an application being CM No. 404/2009 was filed in that writ petition by the respondents seeking direction against the Members of the Union that they should give an undertaking to pay market rent as per applicable Rules. The said prayer in the application was rejected by the Court. He would state, the proceedings initiated before the Estate Officer by the respondents, which was decided on January 28, 2010, the Estate Officer has wrongly held the petitioner No.1 to be unauthorized occupant when there is already a direction of this Court to extend the occupation of the accommodation till August 31, 2009. He also draws my attention to the bills raised by the respondents from time to time, to contend the same is unjustified and the petitioners are at the most liable to pay the normal rent

and not the damages and the impugned action need to be set aside.

6. On the other hand, Mr. J.C. Seth learned counsel for the respondents would submit that the petitioners cannot take advantage of their own wrong, inasmuch as they continue to occupy the accommodation given to them and not vacate the same. He states, that this Court has in the order dated November 21, 2008 in W.P.(C) 8236/2008 never restrained the respondents from claiming the damages/market rent. The limited relief granted by this Court was only to extent the date of vacation of the accommodation by August 31, 2009. According to him, this Court had also observed that the Members of the Union shall continue to pay rent, water and electricity charges for the period they would retain the company's accommodation during this extended period. That apart, the Court has also held that the respondents are given liberty to initiate appropriate recovery proceedings against the Members of the petitioner Union for recovery of any amount that may be legally recoverable from them as per applicable Rules and law on the subject. He also states that no doubt, the application filed by the respondents being CM No.404/2009 for a direction to the Members of the Union that they should give an undertaking to pay market rent was rejected but the same was on the ground such directions cannot be given

in a disposed of writ petition. He states, this Court while deciding the application also referred to that part of the order dated November 21, 2008, which held that the respondents were given liberty to initiate appropriate legal proceedings for recovery of the amount of the premises in their occupation as per applicable Rules.

7. That apart, this Court has also held that any grievance regarding payment of rent/licence fee in respect of the premises in occupation by the Members of the Union, the respondents shall be at liberty to take appropriate proceedings for recovery of the difference as per liberty granted vide order dated November 21, 2008. He states, the Estate Officer has rightly quantified the amount in the proceedings. According to him, the claim of the respondents at the relevant time against the petitioners was of Rs.1,01,020/- and 64,668/- respectively. He concedes to the submission made by Mr. Srivastava that the petitioner No.2 has since paid the amount claimed by the respondents.

8. Having heard the learned counsel for the parties, the issue arises for consideration is whether the respondents could have withdrawn the Medical Facilities of the petitioners on account of non-payment of the licence fee for continued occupation of the accommodation granted to them. The plea of Mr. Srivastava, relying on the order dated November

21, 2008 of this Court in W.P.(C) No. 8236/2008 filed by the Union of the retired employees, is not appealing to this Court as in the said order, this Court while extending the vacation of the accommodation has not restrained the respondents from claiming the licence fee in accordance with the Rules. Rather, the Court has granted liberty to the respondents to initiate appropriate recovery proceedings against the Members of the petitioner Union for recovery of any amount that may be legally recoverable from them as per applicable Rules and Law on the subject. In view of the clear directions, which have been reiterated by this Court in its order dated April 21, 2009 while deciding CM No. 404/2009 filed by the respondents, would leave no doubt that the respondents were within their rights to claim the licence fee as per the applicable Rules and Law on the subject. It is not the case of the petitioners that the Rules does not permit the claim of licence fee on market rent.

9. Insofar as the submission of Mr. Srivastava that the Estate Officer has held that the petitioners are unauthorized occupants is untenable is concerned, the said finding has no bearing insofar as the issue which falls for consideration which has been already noted above. Even if the continuance of the petitioners in the accommodation in view of the order of the Court, is justified, suffice to state, that the Estate Officer, was also

justified in computing the amount of licence fee as per the applicable Rules and the Law on the subject and there was no restraint order in that regard. The said order cannot be faulted.

10. The amounts having been quantified were required to be paid by the petitioners. Surely, the non-payment of the amounts has a particular consequence under the provisions of the BHEL Retired Employees Contributory Health Scheme and also in terms of corporate circulate dated June 5, 2012 as modified vide circular dated February 16, 2013 (pages 56 and 57 of the paper book).

11. In view of my discussion above, the present petition is devoid of merit. The same is dismissed.

**CM No. 20276/2014**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**MAY 18, 2017/ak**