

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 25, 2017
Judgment delivered on: October 16, 2017

+ W.P.(C) 6234/2017, CM No. 25877/2017
G K NANDA

..... Petitioner

Through: Mr. Harsh K. Sharma, Ms. Ragini,
Ms. Vaibhavi Sharma & Mr. Rohit
Gaur, Advs.

versus

TELECOMMUNICATIONS CONSULTANTS INDIA LTD & ANR

..... Respondent

Through: Mr. Ratan K. Singh, Mr. Gaurav
Lavania & Ms. Sushila, Advs. for
R1
Ms. Shubhra Parashar, Adv. for
R2/UOI

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

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

“In view of the facts and circumstances mentioned herein above, it is respectfully prayed that this Hon’ble Court may kindly direct or issue a writ of appropriate nature, thereby quashing the Officer Order No.TCIL/11/802/01/17/ADMN, dt. 07.07.2017 passed by the respondent and thereafter direct the respondent to allow the petitioner to retain the Office Accommodation for a period of 8 months as per prevailing rules on 31.05.2017, inclusive of the Rules forming part of Office Memorandum dt. 31.07.2013.

Any other order(s) or further order(s) which this Hon'ble Court may deem fit and proper may be passed in the interest of justice."

2. Vide order dated July 07, 2017 the respondents have allowed the retention by the petitioner, the H. No. 637, Maruti Mane Block for two months with effect from June 01, 2017 to July 31, 2017 and was directed to pay normal Licence Fee for the period of retention. It is the submission of Mr. Harsh K. Sharma, learned counsel for the petitioner that the petitioner retired as General Manager from the respondent No.1 Organization on May 31, 2017. During his employment with the respondent No.1, the petitioner was allotted, on September 01, 2009 H.No. 637, Maruti Mane Block, Asian Games Village, New Delhi-49. On the date of his superannuation, as per the instructions issued by the Government of India vide Office Memorandum dated July 31, 2013 as adopted by the Board of Directors of TCIL, the petitioner is entitled to retain the house for a total period of eight months after the date of superannuation.

3. He would submit, that the petitioner had applied for retention of the accommodation on May 23, 2017 i.e before the date of superannuation. Unfortunately, vide Office Order dated June 30, 2017 whereby new Rules have been framed for retention of flats on retirement/death (during service/voluntary retirement), the petitioner has been allowed retention of the accommodation only for two months. He stated that much before the office order of June 30, 2017 was issued, the petitioner, in conformity with the Office Memorandum dated July 31, 2013 of the Govt. of India as adopted by the respondent No.1, had submitted a cheque of Rs.20,332/- towards advance licence fee up to January 31, 2018. Unfortunately, the same has been returned back to the petitioner by the respondent No.1 for unknown reasons. In any case, it is his

submission that once a right has accrued to the petitioner under the OM dated July 31, 2013, the respondents could not, under the garb of issuing new Rules, allow retention only for two months. He would submit, the reasons for seeking retention under the old Rules for a period of eight months, which is automatic are other than family reasons. The petitioner who had booked a flat in Noida in the year 2012 is yet to get the possession. That apart, he would state, that in similar circumstances Mr. Vimal Wakhlu, Ex-Chairman, who retired on January 31, 2016 was allowed to retain the accommodation till September 30, 2016 for a period of eight months. He would rely upon the judgment of the Supreme Court in the case reported as **(2013) 12 SCC 631 S.D. Bandi v. Divisional Traffic Officer, Karnataka State Road Transport Corporation and Ors.** In support of his submissions.

4. Mr. Ratan K. Singh, learned counsel for the respondent No.1 would submit that the petitioner, even though having retired on May 31, 2017, shall also be regulated by the Office Order dated June 30, 2017, which has been issued for a purpose, keeping in view the limited number of flats possessed by the respondent No.1, if an Officer, who ceased to hold the office on retirement/transfer/death/voluntary retirement, is allowed to retain the accommodation for eight months, more deserving cases would be precluded from the privilege. He stated, that the reference made to the case of Mr. Vimal Wakhlu is misconceived as Mr. Wakhlu having retired on January 31, 2016 was allowed retention till September 30, 2016 strictly in terms of OM dated July 31, 2013 when the Office Order dated June 30, 2017 was not in place. He would rely upon the judgment of the Supreme Court in the case reported as **(2004) 8 SCC 1 Zile Singh v. State of**

Haryana and Ors. to contend when Rules of this nature are formulated, purposive interpretation need to be given. In other words, it is his case, this Rule has been framed to answer/remove the mischief, which is sought to be advanced by the OM dated July 31, 2013.

5. Having heard the learned counsel for the parties, the only issue, which falls for consideration is whether the petitioner's case shall be regulated by OM dated July 31, 2013 or office order of June 30, 2017. To answer this, it is necessary to reproduce the relevant part of the OM dated July 31, 2013. Para 2 of the OM dated July 31, 2013 reads as under:-

“XXXX

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2. *It is clarified that the period of retention of 8/6 months, as; the case may be, shall be admissible to the allottees, who retire on or after 23.4.2013, automatically at one go without any request or production of certificate by the allottees. The allotment of the General Pool accommodation occupied by the retiring allottees shall be cancelled by Directorate of Estates after allowing a retention of 8/6 months, as the case may be, simultaneously. The allottees, however, shall have an option to vacate the accommodation anytime during the retention period.”*

6. From a reading of para 2, it is clear that the retention of accommodation for 8/6 months is automatic without any request or production of certificate by the allottees. The retention stands cancelled after allowing retention for that period simultaneously whereas the Office Order dated June 30, 2017 clearly stipulates that the Office Order shall be enforceable with immediate effect after the approval of Competent Officers. In other words, the effect of the order would be, on June 30, 2017 or thereafter. The issuance of order dated June 30, 2017 may have annulled the effect of the OM dated

July 31, 2013 but that would be only from June 30, 2017 and not before that. Admittedly, the petitioner stood retired on May 31, 2017. His case of retention shall be governed by the OM dated July 31, 2013 of the Government of India as adopted by the respondent No.1. On that date, certain rights/privileges had accrued to the petitioner with regard to the retention of the accommodation. The very fact that the OM dated July 31, 2013 has been adopted by the Board of Directors of TCIL shows a conscious decision on the part of the respondent No.1 to make the applicable the OM in the same manner as it existed. The respondent No.1 could have framed its own Rules/instructions in that regard to suit its requirement. The respondent No.1 having done that only on June 30, 2017, the Officers, who had retired before that particular date has right to retain accommodation as per OM dated July 31, 2013, as has been done by them in Wakhlu's case. The reliance placed by Mr. Ratan Singh on the judgment of the Supreme Court in *Zile Singh (supra)* is concerned, in the said judgment, the Supreme Court was concerned with the Haryana Municipal Act, 1973, which is a State enactment dealing with the Local Self Government through the Municipalities. Chapter III of the said Act deals with the composition of the Municipalities. The Haryana Municipal (Amendment) Act, 1994 inserted Section 13A in Chapter III of the Principal Act, which relates to disqualification for membership. The amendment was to the following extent:

"13A. Disqualification for membership.

(1) A person shall be disqualified for being chosen as and for being a member of a municipality — xxx xxx xxx

(c) if he has more than two living children :

Provided that a person having more than two children on or after the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified".

The Proviso appended to Clause (c), as held by the Supreme Court turned out to be a trouble-maker on account of its faulty drafting. Subsequently, the Haryana Municipal (Second Amendment) Act, 1994 was enacted by the legislature which received the assent of the Governor on October 3, 1994. Section 2 of the Haryana Municipal (Second Amendment) Act, 1994, reads as under:

"2. In the proviso to clause (c) of sub-section (1) of section 13A of the Haryana Municipal Act, 1973 (hereinafter called the principal Act), for the word "after", the word "upto" shall be substituted."

7. The question arose before the Supreme Court whether the said amendment would have a retrospective effect. The Supreme Court held, the second amendment is declaratory in nature and did not affect vested right since, as held in ***Javed and Ors. Vs. State of Haryana and Ors. (2003) 8 SCC 369***, the Statute which confers the right to contest an election can also provide for necessary qualifications and disqualifications for holding an elective process. The said Act only alters the context of the earlier amendment by substituting a mistaken 'after' by the correct word 'upto' and removes the obvious absurdity therefrom and brings it in conformity what the legislature intended. The Supreme court held that the second amendment was not expressly retrospective. It would operate retrospectively from the date of coming into effect the earlier amendment of 1994.

8. The said judgment has no applicability to the facts of this case as the issue was

with regard to the retrospectivity of the Second Amendment Act of 1994 as the second amendment Act was only effected to remove the absurdity which had crept in because of the earlier amendment Act. In any case, the Supreme Court held that the second amendment Act would operate retrospectively from the date of coming into effect the first amendment of 1994.

9. In the case in hand, when the Office Order dated June 30, 2017 clearly stipulated that the effect of the same shall be with immediate effect after the approval of Competent Officers, surely, the same would suggest that it will have a prospective effect. No doubt, the plea of Mr. Ratan Singh that this Office Order seeks to remove the mischief of OM dated July 31, 2013 but that would not mean, under the garb of removing the mischief and invoking the principles of purposive interpretation, an existing right can be taken away for retention of the accommodation for eight months in terms of OM dated July 31, 2013. The writ petition needs to be allowed. The OM dated July 07, 2017 is set aside. The petitioner shall have the right to continue in the accommodation till January 31, 2018 and shall be liable to pay Licence Fee in accordance with the OM dated July 31, 2013. No costs.

CM No. 25877/2017 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 16, 2017

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