

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Aniruddha Roy

WPA 3787 of 2012

Sri. Arup Ratan Goptu

vs.

Coal India Ltd. & Ors.

For the petitioners:

**Mr. Achintya Kr. Banerjee, Advocate,
Ms. Indumouli Banerjee, Advocate.**

For the respondents:

**Mr. Shiv Shankar Banerjee, Advocate,
Ms. Anupa Banerjee, Advocate,
Ms. Sanchita Barman Roy, Advocate.**

Reserved on:

13.05.2022

Judgment on:

20.05.2022

ANIRUDDHA ROY, J.:

1. The writ petitioner was working as a Sales Manager of the first respondent and was posted at its Marketing Headquarters at Park Street, Kolkata during the period October, 2005 till October, 2008. During such posting the petitioner received his due salary including the House Rent Allowance (for short, HRA) at the rate of 30 per cent of the basic salary.
2. In August, 2008 the petitioner was promoted to the post of Deputy Chief Sales manager (re-designated as Chief Manager) and was transferred to Eastern

Coalfields Limited (for short, E.C.L.) pursuant to an office order dated August 18, 2008 and accordingly was released from the first respondent by a release order dated October 13, 2008 and immediately joined ECL on October 22, 2008.

3. Pursuant to Coal India Executives House Rent Allowance Rules (for short, the HRA Rules) (corrected upto May 23, 1989), the petitioner contended, that in the event any executive is not provided with the quarter/accommodation at his place of posting he would be entitled to HRA. According to the HRA Rules, even any executive who was drawn HRA, was transferred to another station involving change of residence leaving behind his family members at the old station, he would be eligible for the HRA at the new station for a maximum period of six months from the date of release from the old station provided he was not allotted accommodation by the employer at the new station. However, the period could be extended thereafter with the approval of the competent authority, if the management had not been able to provide accommodation to such employee.
4. The petitioner further contended that an employee, as the petitioner, who had been transferred from first respondent to any of its subsidiary, the concerned rule provides that such employee would be eligible for the HRA at the new station for a maximum period of six months from the date of release of the old station provided that he had taken over the duty in the new station and not been allotted accommodation by the employer Coal Company and also provided

that such employee would not draw any HRA for such period at the new station.

5. From the letter of the petitioner dated November 04, 2009 being **Annexure P-6** to the writ petition, it appeared that the petitioner admitted that immediately on arrival at the new station the petitioner, was put up and was provided accommodation at **Sitalpur Guest House** (for short, the said Guest House) by his employer. He stayed there for nine days only, for which he had duly paid the necessary charges on account of his boarding and food at the said Guest House. Since then the petitioner stayed in a Hotel at Asansol and not in the Guest House of the employer, by incurring a considerable expense. Such fact was also corroborated from paragraph 19 of the writ petition. From **Annexure P-7** to the writ petition it was also evident that all the necessary charges on account of the said Guest House was duly paid by the petitioner for his stay.
6. The petitioner further contended that in view of the clear terms of the HRA Rules, the petitioner was not required to make application for obtaining an accommodation to be provided by the employer at the newly posted place and the same was the sole obligation of the employer to provide the necessary accommodation to the petitioner commensurating with his rank, by its own volition. This was an automatic process. Referring to Annexure P-3 to the writ petition it was submitted that, the employer had specifically promised that the HRA for six months on account of the petitioner had already been processed and was sent for competent approval and immediately after receiving such approval the same would be communicated to the petitioner. The petitioner

was also requested to apply for accommodation and the same was promised to be provided to the petitioner after receiving necessary application from him. Referring to Annexure P-4 to the writ petition it was submitted that, the employer had confirmed the petitioner that his representation regarding grant of HRA had been placed before the competent authority and the administrative approval had been accorded. The petitioner was requested to apply in the prescribed format for further necessary action in the matter. In terms of such communication dated August 26, 2009, the petitioner duly applied through the prescribed format by giving the necessary details. Referring to Annexure P-9 to the writ petition which was an office memorandum dated March 08, 1995, it was submitted that in terms of the decision taken by Functional Directors dated February 23, 1995, it was decided that the House Rent Allowance admissible as per rules, without production of rent receipt may be paid to those officers who were residing in guest house and transit flats etc. and do not occupy any other residential accommodation provided by the company anywhere. The petitioner submitted that, the petitioner was residing at the said guest house for nine days and paid the room rent for his staying as evident from the No Due Certificate issued to the petitioner dated August 16, 2010 being Annexure P-7 to the writ petition. However, the employer failed to provide the necessary accommodation to the petitioner and the petitioner was compelled to shift from the said guest house to a hotel at Asansol at his own cost and expenses.

7. Learned Counsel for the petitioner submitted that, a natural person has the capacity to do all lawful things unless his capacity has been curtailed by the rule of law. It is equally a fundamental principle that in case of statutory corporation, it is just the other way. The corporation has no power to do anything unless those powers are conferred on it by the statute which creates it. Relying upon this principles of law, it was submitted on behalf of the petitioner that, the petitioner being a natural person had every right to leave the guest house provided to him by his employer within a short while of his stay and to stay at a hotel at Asansol, as there was no prohibitory rule prohibiting the petitioner in doing so. In support, he referred to a decision of a Division Bench of this Court *In the matter of: Asian Leather Limited & Anr. vs. Kolkata Municipal Corporation*, reported at (2007) 3 CALLT 64 :2007(3) CHN 476.
8. In view of the above, the grievance of the petitioner was that since the present employer of the petitioner failed to provide accommodation/quarter to the petitioner. The petitioner was eligible for HRA at the rate of 30 per cent of his basic salary for six months in terms of Rule 3.4 of the said HRA Rules. From time to time the petitioner made several representations to the employer and the petitioner contended that despite admission that the employer would release the said HRA to the petitioner, it had failed to do so. According to the petitioner he had also duly applied for obtaining necessary accommodation from the employer though to which he was otherwise eligible but the employer failed to take any step for the same. Aggrieved with such arbitrary and

wrongful action on the part of the employer, the petitioner filed the instant writ petition.

9. The learned counsel appearing for the respondents submitted that, the stay of the writ petitioner at a hotel at Asansol instead of staying at the guest house provided by the employer would render the petitioner ineligible from claiming HRA in terms of the relevant HRA Rules. It was submitted that, the said guest house accommodation was provided by the employer and the petitioner was obliged to stay there instead of surrendering the said accommodation and went on staying at a hotel at Asansol. Referring to Rule 3.1 of the said HRA Rules it was submitted that, a limitation was cast upon the eligibility for HRA. It stated that an employee who refused or surrenders accommodation offered to him by the company shall not be eligible for HRA. The relevant rule is annexed as Annexure R-2 to the affidavit-in-opposition filed by the respondents. Referring to Rule 8.3 of the HRA Rules, it was, inter alia, submitted that, the competent authority would satisfy himself before granting the allowance that the claim made by the employee is genuine and with this end in view he would not grant House Rent Allowance to any employee drawing pay above Rs.1,740/- per month unless he has produced rent receipt in proof of the actual rent paid by him. Referring to a letter dated May 11, 2011, Annexure R-1 to the affidavit-in-opposition written by the petitioner, it was submitted that, the petitioner had admitted that there was no letter/correspondence regarding allotment/non-allotment of companies residence at the new place of posting through the first six months of his posting or even thereafter.

10. Referring to the said document being Annexure P-3 to the writ petition it was submitted on behalf of the respondents that, this document could not be construed as an admission for release of HRA in favour of the petitioner. From the tenor of the said document it was clear that the request for HRA made by the petitioner was processed and was sent for competent approval. Such approval would naturally depend upon the applicability of the prevailing relevant rules and whether the petitioner had caused any breach of such rules or not. The petitioner was also requested to apply for accommodation to which the petitioner failed to comply.
11. In view of the above, the respondents submitted that, the writ petition was wholly misconceived, frivolous and liable to be dismissed.
12. Referring to Section 10(13A) of the Income Tax Act, 1961 read with Rule 2A of the Income Tax Rules, it was submitted that, the HRA deduction under the said 1961 Act can be claimed only by salaried individuals on the actual rent paid by the same. The relationship between landlord and tenant, to whom the assessee paid rent must be established. The assessee must be in occupation of premises as a lessee of premises and must pay rent to the landlord during his occupation. It was submitted that, the entitlement of HRA is not an automatic allowance/grant and the same can only be allowed on fulfillment of the requisite conditions laid down under the said 1961 Act read with the said relevant rule thereunder. In support, reliance was placed in the decision of Karnataka High Court *In the matter of: Patil Vijay Kuraar vs. Union of India*, reported at (1985) 20 Taxman 363(Kar).

13. Upon completion of their arguments, the learned counsel for the parties filed their respective written notes.
14. After considering the submissions made on behalf of the parties and on perusal of the materials on record, it appeared to this court that, the relevant rules of the prevailing HRA Rules relied upon on behalf of the parties, are required to be reproduced at the threshold, which are:

“3. Limitations

3.1 An employee who refuses or surrenders accommodation offered to him by the Company shall not be eligible for house rent allowance.

3.4 If an employee who is drawing house rent allowance, is transferred to another station, involving change of residence and leave behind his family at the old station, he shall be eligible for house rent allowance at the new station, for a maximum period of 6 months, in the following manner, from the date of release in the old station, provided that he has taken over duty in the new station, and not been allotted accommodation by the Company at the new station and also provided further, that he does not draw separately any house rent allowance for this period, at the new station.

In case, he has been allotted a residence at the new station (place of posting) his entitlement to house rent allowance at the old rate will be limited only to the period of joining time:

- (i) During the 1st 2 (two) months: At the same rate at which it was drawn at the old station.*
- (ii) For the next 4 (four months: At the rate at which it was being drawn at the old station or the maximum amount that would have been admissible to him at the new station, had he taken a residence on rent, at the new station, whichever is less.*

Authority: CIL's O.M. No. C-5(B)/50727/808 dated 24-11-1978.

8.3 The Competent Authority will satisfy himself before granting the allowance that the claim made by the employee is genuine and with this end in view he will not grant house rent allowance to any employee drawing pay above Rs.1740/- per month unless he has produced rent receipt in proof of the actual rent paid by him or in case of an employee living in his own house, a copy of the municipal assessment of the

house and where no such assessment has been made, any other satisfactory proof of the rental value of house”.

15. From the communication dated May 11, 2011 written by the petitioner to his employer being Annexure R-1 to the said affidavit-in-opposition it was an admitted position that there was no letter/application made by the petitioner regarding allotment/non-allotment of company's residence at the new place of posting during the first six months of his posting or even thereafter. The petitioner only filled up the prescribed format for application for house rent and submitted the same through its letter dated September 14, 2009 being Annexure P-5 to the writ petition. The same could not be construed as an application for obtaining any accommodation from the employer. Therefore, on the basis of the said document the employer could not have granted an accommodation to the petitioner nor could the petitioner claim so.
16. On arrival at the transferred place of posting the petitioner was accommodated for his stay at the said guest house by his employer. The petitioner for a short while stayed at the said guest house and ultimately left for a hotel accommodation at Asansol by surrendering the said guest house accommodation.
17. On a close scrutiny of the said Rule 3.1 of the HRA Rules makes it clear that when an employee refused or surrendered accommodation offered to him by the employer company should not be eligible for HRA. Since the petitioner who was accommodated by the employer in its guest house, stayed there a short while and surrendered the said accommodation offered to him by the employer

and then went on staying at a hotel at Asansol, the petitioner is not eligible to receive any HRA from his employer.

18. On a close scrutiny of the said Rule 3.4 of the HRA Rule, it appeared to this Court that, the same would apply for an employee when such an employee had taken over duty in the new station and not been allotted accommodation by the employer company at the said new station. In case, he had been allotted a residence at the new station (place and posting), his entitlement to House Rent Allowance at the old rate, would be limited only to the period of joining time in the manner mentioned therein. From a harmonious reading and upon a true construction of the said Rule 3.4 it is clear that, in the first paragraph the expression used **“accommodation”** and in the second paragraph the expression used **“residence”**. The distinction between the two expressions are very clear and obvious. The expression **“accommodation”** denotes an immediate one simultaneously with the new posting and the expression **“residence”** denotes with some stability of a permanent nature, of course limited to the course of his employment only. In the facts of the instant case, the petitioner was admittedly accommodated at the said Sitalpur Guest House immediately on his transferred posting where he stayed for a short while and left for a hotel at Asansol at his own expense. Therefore, **“accommodation”** was duly provided to the petitioner immediately on his transferred posting where he refused to stay after a short while as stated above. Such an act on the part of the petitioner made him ineligible to receive House Rent Allowance from

his employer. The House Rent Allowance was, therefore, not payable to the petitioner as claimed in his writ petition.

19. *In the matter of: Asian Leather Limited & Anr. (supra)*, the demand was made by Kolkata Municipal Corporation on account of Drainage Development Fees for sanction of a building plan and it was held that such demand was not authorized by the statute and as such money collected on such account was to be refunded. In the facts of this case, the relevant HRA Rules clearly creates a bar on and makes the petitioner ineligible for claiming the HRA. In the instant case the relevant rules are absolutely clear governing the provisions for granting HRA to the employees. Therefore, the ratio of the said judgment of the Hon'ble Division Bench of this Court would not apply in the facts of this case.
20. Ratio decided *In the matter of: Patil Vijay Kuraar (supra)* has no application in the facts of this case, as there was no case of tenancy existed or claimed by the writ petitioner. So application of the relevant provision on the rent paid by an individual employee under the said 1961 Act did not arise in the facts of this case. The case of the petitioner was governed by the relevant HRA Rules as discussed above, which made the petitioner ineligible from receiving HRA.
21. Even under the communication dated April 03, 1987 being Annexure XVI which was issued by Coal India Limited and made a part of the HRA Rules, did not make the petitioner eligible to receive HRA because the petitioner did not stay at the said guest house provided by his employer at a transferred place except a short while and not for the required tenure and then he shifted to a

hotel at Asansol at his own expense by surrendering the same. Thus, the petitioner did not adhere to the relevant HRA Rules as discussed above.

22. In view of the foregoing discussions and reasons this writ petition **WPA 3787 of 2012** stands dismissed. Interim order, if any, stands vacated. All connected interlocutory applications shown in the records are also disposed of as a consequence.
23. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)