

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

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WRIT PETITION NO. 131 OF 2020

Tanaji Hari Dhekale and anr. .. Petitioners
Vs.
The State of Maharashtra and ors. .. Respondents

Mr. Omkar M. Kulkarni, for the Petitioners.

**CORAM: DIPANKAR DATTA, CJ &
M. G. SEWLIKAR, J.**

DATE: APRIL 13, 2022

P.C.:

1. Original Application No. 732 of 2017 on the file of the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) stands dismissed by a judgment and order dated February 26, 2019 of its Judicial Member. Aggrieved thereby, the original applicants have invoked the writ jurisdiction of this Court by presenting this writ petition under Article 226 of the Constitution of India.

2. Facts giving rise to this writ petition are these. The first petitioner is the father of the second petitioner. At the material time, the first petitioner was holding the post of Assistant Police Inspector in the Maharashtra Police Force, while his daughter, the second petitioner, was holding the post of Police Sub-Inspector in the same force. The first petitioner was allotted quarter no. D-56, where he had been residing with his family, while the second petitioner was allotted quarter no. A-4/1 in 2011. The first petitioner retired from

service on attaining the age of superannuation on November 30, 2016. As per the extant rules relating to retention of accommodation, the first petitioner was permitted to occupy quarter no. D-56 for three months, i.e., till February 28, 2017. The first petitioner did not vacate quarter no. D-56 thereafter, on the ground that he had applied for transfer of allotment of quarter no. D-56 to the second petitioner and she had also applied for allotment of quarter no. D-56 on December 6, 2016 in her favour but such applications had been wrongly rejected. Thus, with effect from March 1, 2017, the first petitioner became an unauthorized occupant of quarter no. D-56. Since the first petitioner continued to occupy quarter no. D-56 beyond March 1, 2017, an order dated July 6, 2017 came to be passed imposing penal charges of Rs.32,580/- for unauthorised occupation of the said quarter. Earlier thereto, by orders dated February 20, 2017 and March 19, 2017, the prayer of the petitioners for allotment of quarter no. D-56 in favour of the second petitioner stood rejected on the ground that she had already been allotted quarter no. A-4/1. Challenging the orders dated February 20, 2017, March 19, 2017 and July 6, 2017, the petitioners instituted a joint original application before the Tribunal. During the pendency of the original application, quarter no. D-56 was allotted to the second petitioner on September 3, 2017. Despite such allotment, the second petitioner continued to remain in occupation of quarter no. A-4/1 till December 15, 2018. It is in such facts and circumstances that the Tribunal was called upon to answer the question as to whether rejection of the request of the first petitioner to transfer quarter no. D-56 in

favour of the second petitioner was incorrect and secondly, whether the order of recovery of the penal charges is legal. Having heard learned advocates appearing for the parties, the Tribunal returned findings against the petitioners and for the reasons assigned in the impugned judgment proceeded to dismiss the original application.

3. Reliance was placed on behalf of the petitioners before the Tribunal as well as before us on clauses I and III of circular dated February 2, 2015. The vernacular version of such circular appears to have been quoted at paragraph 8 of the judgment. Clause III of the circular dated February 2, 2015, which was made the sheet anchor of the petitioners' claim, had no application insofar as the petitioners are concerned and, in our view, the Tribunal rightly held so. Such clause provides for exchange of quarters if two police officers apply therefor. However, it is also provided therein that no application for exchange of quarters would be entertained during the two-year period preceding retirement of one of the officers applying for exchange. For two reasons, the petitioners could not have claimed the benefit of clause III. First, in the present case, there was no request for exchange of quarters by and between the petitioners. Secondly, assuming that clause III provided a right to either of the petitioners to claim allotment of quarter no. D-56 in favour of the second petitioner, application for such purpose was made on December 6, 2016, after superannuation of the first petitioner on November 30, 2016 and hence the pre-condition for applicability of clause III was not satisfied. The Tribunal, therefore, found that no illegality was committed by the

respondents in not accepting the request of the petitioners for exchange or allotment of quarter no. D-56 in favour of the second petitioner.

4. Having ascertained the true meaning of clause III, we agree with the Tribunal that the petitioners were not entitled to claim that quarter no. D-56 should have been allotted in favour of the second petitioner. Clause III relates to exchange of quarters by two officials, but it does not cover a case of the present nature where the second petitioner, as daughter, sought for allotment of the quarter which was previously allotted in favour of the first petitioner, her father. In the absence of any provision in the relevant circular dated February 2, 2015 conferring a judicially enforceable right, much less a legally protected right, in favour of the petitioners relating to a transfer of allotment of quarter no. D-56 from the first petitioner to the second petitioner immediately upon retirement of the former, we hold that the petitioners had no right in law to claim relief of quashing of the orders dated February 20, 2017 and March 19, 2017 by the Tribunal.

5. It appears that an allegation of discrimination was raised before the Tribunal by the petitioners. Such allegation was dealt with at paragraph 10 of the judgment. The Tribunal was of the opinion that the first petitioner was allotted a quarter meant for an Assistant Police Inspector to which the second petitioner was laying a claim, though she was not an Assistant Police Inspector. It is in such circumstances that the allegation of discrimination was not accepted by the Tribunal.

6. We have read paragraph 10 of the judgment bearing in mind the materials on record. The incidents cited by the

petitioners did not relate to allotment of the same quarter in favour of a daughter/son of a retiring police officer. The Tribunal duly noted the distinction. Question of discrimination would not arise if two sets of individuals are not exactly circumstanced. Thus, unequals cannot be treated equally. We see no reason to hold that the reasoning of the Tribunal is illogical, warranting interference in exercise of our writ jurisdiction.

7. The Tribunal next dealt with the order dated July 6, 2017 by which penal charges of Rs.32,580/- were imposed on the first petitioner. We find from paragraph 11 of the judgment that the Tribunal was of the opinion that the first petitioner having undisputedly occupied quarter no. D-56 beyond the period of entitlement, he was liable to bear penal charges.

8. A point has been raised by Mr. Kulkarni, learned advocate appearing for the petitioners that the first petitioner was not put on notice and natural justice was brazenly violated while fixing penal charges. Our attention is drawn to a co-ordinate Bench decision of this Court reported in 2019 (1) Mh.L.J.653 **[Union of India Vs. Sayed Naimuddin]** in support of the contention that the order of the respondents imposing penal charges having the effect of visiting the first petitioner with civil consequences, natural justice should have been complied with. He has, accordingly, submitted that the order dated July 6, 2017 should have been set aside by the Tribunal for violation of principles of natural justice.

9. We find absolutely no force in such contention of Mr. Kulkarni. In any given case where a contention regarding violation of principles of natural justice, more particularly with

reference to the rule of *audi alteram partem*, is advanced and found to be of substance and such contention ultimately succeeds, the tribunal or the court, as the case may be, would ordinarily set aside the order and direct a remand for complying with such rule from the stage the violation has occasioned. However, recourse to the same should not be mechanical in the sense that the rule of *audi alteram partem* is required to be complied with by the relevant authority to complete a mere ritual in law. The demand to comply with natural justice principles should be insisted upon only when there are materials on record to *prima facie* satisfy the tribunal or the court that had the rule of *audi alteram partem* been complied with, the result/outcome on merits could have been different/otherwise.

10. To support such a conclusion of ours, we may profitably refer to the decision of the Supreme Court reported in (2004) 4 SCC 281 [**Escorts Farms Ltd. previously known as M/s. Escorts Farms (Ramgarh) Ltd. Vs. Commissioner, Kumaon Division, Nainital, U.P. and ors.**] where the Court had the occasion to lay down the law in paragraph 64 as follows:

"Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequences, more so, when on this legal question all affected parties have got full

opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

(emphasis ours)

11. In the present case, there is no denial of the fact that the first petitioner had overstayed beyond February 28, 2017. As has been held in **Escorts Farms Ltd.** (supra), principles of natural justice are required to be complied with for rendering substantial justice to the parties and not for completing a mere ritual of hearing. It has not been shown to us by Mr. Kulkarni how a hearing given to the first petitioner before fixation of penal charges could have resulted in a different outcome on merits. He has also not been able to show, despite being called upon by us, that quantification of the penal charges has been made by the relevant authority contrary to any binding provision of law. Once this is not shown, it would be an idle formality to set aside the order and a remand ordered only on the ground that the first petitioner was not put to notice. The decision in **Escorts Farms Ltd.** (supra) does not appear to have been cited by the parties before the coordinate Bench while it decided **Sayed Naimuddin** (supra) and hence such Bench did not have the benefit of looking into the law laid down by the Supreme Court. The first petitioner, therefore, cannot succeed merely based on what has been held in **Sayed Naimuddin** (supra)

without even satisfying us *prima facie* that on merits he has a sound claim.

12. What remains now is the question of the first petitioner vacating quarter no. D-56 in the presence of the concerned official of the respondents and delivery of possession of such quarter in favour of the second petitioner and to complete the official formalities including paperwork in this behalf. This is proposed to be regulated in the manner as follows.

13. We direct the first petitioner to pay the penal charges of Rs.32,580/- in favour of the respondents together with simple interest @ 5% per annum within a period of a month from date. In the event of failure to effect payment as above, the respondents shall be entitled to take recourse to law for securing eviction of the first petitioner from quarter no. D-56 and in such event, the respondents may also consider whether to continue the allotment of quarter no. D-56 in favour of the second petitioner. An appropriate order may be passed in accordance with law, if it is decided to discontinue the allotment made in favour of the second petitioner.

14. Should the petitioner pay Rs. 32,580/- together with interest within a period of a month from today, as directed above, the respondents shall initiate the process of taking over possession of quarter no. D-56 from the first petitioner and delivering possession of such quarter in favour of the second petitioner immediately after payment as above is effected but not beyond a week from such date. It is made clear that the first petitioner need not remove his belongings from quarter no. D-56, but all official formalities including paperwork preferably must be completed at the site.

15. With these directions, we affirm the impugned judgment of the Tribunal and the writ petition stands disposed of.

16. No costs.

(M. G. SEWLIKAR, J.)

(CHIEF JUSTICE)