



\$~16

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

%

Date of decision: 11 January, 2022

+ W.P.(C) 10466/2019, CM APPLs. 43279/2019, 50759/2019, 11833/2021

SURESH KUMAR

..... Petitioner

Through: Mr.Avneesh Arputham, Adv.

versus

SPORTS AUTHORITY OF INDIA AND ANR. Respondents

Through: Mr.Sanjib Kumar Mohanty and
Mr.Shashank, Advs.

Mr.Awadhesh Kumar Singh, Advs.
for UOI.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The challenge in the present writ petition is to the orders of 12 April 2019 and 18 September 2019. In terms of the first order of 12 April 2019, the respondents have proceeded to cancel the allotment of the General Pool Residential Accommodation¹ being occupied by the petitioner here. Consequential directions for his eviction were also framed. By the second order of 18 September 2019, the respondents have conveyed their decision to refuse the prayer for regularization as made by the petitioner here.

2. Undisputedly, the accommodation in question forms part of premises falling in the GPRA pool of the respondents. The petitioner was appointed as a Lifeguard with the Sports Authority of India² – respondent No.1 here.

¹ GPRA

² SAI



It is his case that pursuant to an application which was made by him, the Directorate of Estate by an order of 29 April 2015, allotted the premises in question. It is also borne out from the record that the deductions towards rent and other statutory dues payable in respect of the premises were initially deducted from the salary of the petitioner by the respondent No.1 and duly transmitted. However, and is apparent from the record, the deductions after a particular period of time could not be deposited by the SAI consequent to it being found that the original allotment as made was invalid. The respondents essentially take the position that employees of the SAI, which is an autonomous body, would not be eligible for allotment of premises forming part of the GPRA.

3. The notice which came to be issued and pursuant to which the proceedings impugned commenced proceeded on the premise that the petitioner has failed to make deposits of license fee on the online portal of the Department of Estates. It further records that the license fee has not been uploaded by the DDO on the website of the Directorate of Estates so as to establish the eligibility of the petitioner to be allotted the accommodation. Ultimately and pursuant to the notice which had been issued, the Estate Officer proceeded to pass the impugned order of 12 April 2019 noting that the petitioner was an unauthorized occupant in the public premises.

4. The challenge to the aforesaid orders is addressed by Mr.Arputham, learned counsel for the petitioner, who submits that the application for allotment had been validly made and since it was duly scrutinized and accepted by the respondents, it cannot now be challenged by them or

W.P.(C) 10466/2019



questioned in the present proceedings. According to Mr.Arputham, once the respondent No.1 had made the necessary deductions from the salary of the petitioner, no further penal action was warranted since no wrongdoing could have possibly been fastened upon the petitioner here. Referring to the decision of the Supreme Court in **Mohinder Singh Gill vs. Chief Election Commissioner**³ learned counsel also submitted that the grounds which are now taken in the counter affidavit cannot possibly be countenanced or be read against the petitioner since the notice rested solely on the allegation of non-payment of license fee. It was further submitted that the respondents cannot attack their own orders which were passed in favour of the petitioner, collaterally in these proceedings. Mr. Arputham relies upon the decision of the Supreme Court in **State of Assam vs. Raghava Rajgopalachari**⁴ and of the Calcutta High Court in **Calcutta Municipal Corp. vs. Debu Bhattacharjee**⁵ in support of the afore noted contention.

5. Before this Court, learned counsel appearing for the respondent No.1 has candidly admitted that since SAI is an autonomous body, its employees are ineligible to be granted or allotted accommodation under the GPRA. Learned counsel further submitted that once SAI was apprised that the allotment was illegal and invalid, it had stopped remitting the license fee which was being deducted. The Department of Estates has filed an affidavit in these proceedings and from which the following position

³ (1978) 1 SCC 405

⁴ (1972) 7 SLR 44 (SC)

⁵ (1992) 2 CLJ 1



emerges. It is averred by the respondents that SAI employees are not entitled to allotment of premises falling in the GPRA. The proceedings against the petitioner, according to the said respondent, came to be initiated upon receipt of a complaint of 17 December 2018, which had alleged that the petitioner here had uploaded the application for allotment by misusing the office ID of an Under Secretary in the Ministry of Youth Affairs and Sports. According to the said respondent, since that application had been uploaded from the official portal of that Ministry, it was in the aforesaid backdrop that the same came to be duly acknowledged and the allotment made. The respondents in paragraph 6 of the affidavit have further submitted that upon verification of their GAMS records, it was revealed that the petitioner uploaded the application by misusing the admin ID of an officer posted in the Ministry of Youth Affairs and Sports. They further record that the license fee details were never updated by the DDO from the date of allotment as is mandatorily required and it was in that background that the allotment was ultimately cancelled. They further disclose that upon further enquires it has come to light that the petitioner's application and the signed DE-2 forms were also not available in the concerned Ministry. In view of the aforesaid facts, the respondents assert that the allotment made in favour of the petitioner has been rightly cancelled.

6. Having heard learned counsel for parties, the Court notes that it is the admitted position of parties that employees of the SAI are not eligible for being allotted premises which form part of the GPRA. The allegation of the respondents that the portal of the Ministry of Youth Affairs and Sports was utilized for the purposes of uploading the application has also not been



traversed nor established to be incorrect by the petitioner here. It becomes pertinent to note that these allegations as levelled by the respondents were not even questioned or assailed by learned counsel for the petitioner in the course of his oral submissions. The affidavits tendered by the petitioner in these proceedings also fails to explain how the petitioner came to upload the application by using the portal ID of an officer attached in the concerned Ministry. It thus leads the Court to necessarily hold that the petitioner illegally utilized the portal of the Ministry of Youth Affairs and Sports and uploaded the application for allotment which ultimately came to be considered and a consequential allotment order issued by the Department of Estates. In the considered view of this Court, the mere fact that the Department of Estates mistakenly proceeded to process the application and grant the allotment, cannot result in any principle of estoppel operating against the respondents nor can such an act be countenanced in law as conferring any right upon the petitioner or otherwise be recognized as a circumstance operating in his favour. It is evident that the portal of the concerned Ministry was not only misutilised but in fact accessed with the sole intent of misleading the respondents with regard to the eligibility of the petitioner. The aforesaid act appears to have been clearly motivated by the petitioner consciously seeking to suppress his ineligibility to be allotted a premises falling in the GPRA.

7. The mere fact that certain license fee deductions were made by the SAI initially would also not come to the aid of the petitioner, bearing in mind the fact that the allotment itself was invalid and incapable of being saved under the relevant provisions which apply. The second respondent



has, in terms of the affidavit filed in these proceedings, apprised the Court that no online remittances towards license fee had been received from SAI since June 2015. The said respondent by its further communications of 15 July and 19 August 2019 directed the SAI to desist from making any further remittances upon it being discovered that the original allotment itself was illegal.

8. The Court also notes that the respondents essentially take the position that they were misled into processing the application since it had come to be uploaded by usage of the portal of the Ministry of Youth Affairs and Sports. The stand as taken in these proceedings cannot possibly be viewed as being an act which amounts to them “attacking their own order”, as learned counsel would choose to describe it. The principles which flow from the two decisions which are cited by learned counsel, would come into play only in situations where an order validly made is sought to be questioned by the author itself. In the present case, the stand of the respondents essentially is that the petitioner fraudulently obtained the allotment of the premises by using the portal of the concerned Ministry which led them to mistakenly make an allotment in favour of an employee of the SAI, who was otherwise ineligible to be allotted GPRA accommodation. Even if the allotment were not an outcome of fraud but came to be mistakenly made in favour of the petitioner, that in the considered view of this Court cannot confer any positive rights on the petitioner. Viewed from whichever angle, the action impugned cannot be characterized as being an attack on an order validly made by the



respondents especially when the same rested on a patent error and was founded on the admitted ineligibility of the petitioner.

9. The reliance placed by learned counsel on the decision of the Supreme Court in **Mohinder Singh Gill** is clearly misplaced for the following reasons. The proceedings came to be initiated by the respondents on the specific allegation that the license fee had not been deposited online to establish the eligibility of the petitioner to occupy the premises. While the SAI may have made deductions on earlier occasions, that by itself would not inhere to the benefit of the petitioner bearing in mind the undisputed fact that the petitioner was wholly ineligible to be allotted the premises. The fact that the petitioner misused the portal and uploaded the application being fully aware of his ineligibility to be offered an allotment coupled with the finding of the Court that the same appears to have been done with deliberate intent clearly disentitles the petitioner to any equitable relief. A prerogative writ as contemplated by Article 226 of the Constitution will surely not issue where the same would result in the perpetuation of a manifest illegality.

10. Viewed in the aforesaid context and facts, this Court finds no merit in the challenge raised in the present writ petition, which consequently shall stand dismissed. The pending applications are also dismissed.

YASHWANT VARMA, J.

JANUARY 11, 2022/bh