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

\+ W.P.(C) 8942/2017

HEMANT KUMAR .....Petitioner

Through: Mr. Anirudh Sharma, Mr. Ritvik Bhanot, Mr. Sanjeev Sharma, Mr. Rajiv Dalal and Mr. Girish Kumar, Advocates.

versus

UNION OF INDIA & ORS .....Respondents

Through: Mr. Sandeep Kumar Mahapatra, Central Government Standing Counsel with Mr. Tribhuvan, Advocate for R-2 to 5.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **13.08.2024**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to Clauses 7(c) and 14(e) and (f) of the '*Allotment of Residences – Instructions*' (hereinafter referred to as 'Allotment Instructions') issued by Respondent No. 2/Oil and Natural Gas Corporation Ltd. ('ONGC'). A direction is sought to ONGC to refund the amounts recovered from Petitioner's salary on account of the license fee and/or other charges payable to ONGC due to retention of actual physical possession of the premises being Flat No. B-26, ONGC Colony, Sector 39, Noida, licensed to the Petitioner by ONGC.

2. Factual matrix to the extent necessary is that Petitioner joined ONGC on 13.01.2000 and was posted in Gujarat as Finance & Accounts Officer

('F&AO'). Post his joining, Petitioner married Ms. Sakshi on 02.03.2014, which was his second marriage. Matrimonial disputes having arisen between the two, Petitioner filed an application for judicial separation before the Family Court, which was withdrawn in 2015 after the divorce petition was filed in Family Court, Noida under Section 13A of the Hindu Marriage Act, 1955 on 03.03.2015.

3. Petitioner avers that on 16.01.2015, he shifted in a PG accommodation in Noida as he was not able to cohabit with Sakshi. On 22.05.2015, Petitioner was transferred to Mumbai. His wife filed a civil suit being CS No. 107/2015 before the learned Civil Judge, Patiala House Courts on 17/18.05.2015 for permanent injunction restraining the Petitioner and ONGC from taking possession of the official accommodation. On 28.05.2015, Petitioner received his relieving order from Delhi. Foreseeing that his wife may not vacate the official premises, Petitioner made a representation to the Police for assisting in handing over the possession to ONGC and on 20.04.2015, Petitioner wrote to ONGC that he was surrendering the flat and the same was surrendered on 29.05.2015 after which the Petitioner joined Mumbai office on 01.06.2015.

4. It is further averred that Petitioner returned to Delhi on 03.06.2015 to handover the possession but was unable to do so due to obstructions caused by his wife. Finally, a consent order was passed in the Civil Court on 06.06.2015 recording the undertaking of Sakshi that she would vacate the premises on or before 29.06.2015, subject to Petitioner depositing Rs.30,000/- in her bank account and paying Rs.10,000/- per month as rent to her. Despite the undertaking, Sakshi did not vacate the premises and

Petitioner wrote to ONGC on 07.08.2015 to take steps under the Public Premises Act, 1971 ('PP Act') for vacation of the flat. Contempt case was also filed by the Petitioner against Sakshi for violating the undertaking despite having received Rs.30,000/- from the Petitioner. Estate Officer, ONGC thereafter sent several notices to the Petitioner to vacate the flat and this constrained the Petitioner to file a writ petition being W.P.(C) No. 4683/2016, which was dismissed as not maintainable due to pendency of the suit for possession filed by the Petitioner in the meantime. On 05.07.2016, Petitioner withdrew the suit bearing No. 251/2015 and CONT. CAS (C) No. 579/2015.

5. Petitioner challenged letter dated 18.05.2016 whereby he was directed to vacate the official accommodation in W.P. (C) No. 6357/2016, wherein ONGC filed a response that Petitioner was liable to pay penal rent at twice the admissible HRA drawn on last basic + 15% w.e.f. 01.08.2015. By an order dated 26.07.2016, the Court restrained ONGC from effecting recoveries from the salary of the Petitioner. This writ petition was finally disposed of on 02.02.2017 on the ground that Petitioner had no legal cause of action as there was no law or rule of ONGC by which the license fee or user charges for occupation cease merely on handing over nominal possession without actual vacant physical possession. Court held that Petitioner will be liable to pay license fee or any other charge payable to ONGC as per its rules till actual physical possession was received back by ONGC. Court further directed that Petitioner's wife Sakshi will be given one month's notice from the date of the order to vacate the licensed premises as she had already overstayed for more than one and a half years. Liberty was

given to ONGC and the Petitioner to approach the concerned Police authorities who would provide assistance for seeking vacation of the premises.

6. This order was challenged both by the Petitioner and his wife in two separate appeals. LPA No. 147/2017 filed by Sakshi was disposed of on 16.03.2017 recording her statement that the premises had been vacated on 15.03.2017. LPA No. 160/2017 filed by the Petitioner was dismissed as withdrawn to challenge the rules relating to penal rent and rate of penal rent under the Allotment Instructions.

7. Pursuant to the liberty granted by the Division Bench, Petitioner filed the present petition laying a challenge to clauses 7(c), 14(e) and (f) of Allotment Instructions. Writ petition was dismissed vide judgment dated 12.10.2017 basis the earlier round of litigation wherein W.P.(C) No. 6357/2016 was dismissed directing the Petitioner to pay the license fee and/or other charges due to ONGC. This judgment was carried in appeal by the Petitioner in LPA No. 785/2017 and the Division Bench set aside the judgment and restored the writ petition on the ground that constructive *res judicata* will not come into play when a question is raised with respect to constitutionality of a provision of law.

8. Learned counsel for the Petitioner lays a challenge to clauses 7(c) and 14(e) and (f) of Allotment Instructions primarily on two grounds. It is argued that these clauses have been framed without taking into account special circumstances that may arise in a given case, where an employee of ONGC, may not be in a position to handover physical possession of the official accommodation immediately on his entitlement coming to an end

due to unavoidable circumstances such as a matrimonial discord as in the present case; dispute with any family member; a consent or a restraint order of a Court; a spouse/family member forcibly occupying the premises etc. The clauses under challenge permit no exception for retention and/or payment of penal rent and cause hardship to the employees who are otherwise ready and willing to vacate the residence on time but are prevented by circumstances beyond their control. Framers of the Allotment Instructions ought to have been alive to the genuine and peculiar problems of the employees as well as to the changes in the society and development of law. Relying on the judgments of the Supreme Court in ***Joseph Shine v. Union of India, (2019) 3 SCC 39*** and ***Anuj Garg and Others v. Hotel Association of India and Others, (2008) 3 SCC 1,*** it is argued that with the changing time and mindsets in the society, women are no longer the chattels of a man and have their own rights and individual entities and take independent decisions. In the present case, despite best efforts of the Petitioner to handover vacant possession of the official premises, he was unable to do so because of his wife forcibly occupying the premises as an independent individual and refusing to vacate the same, despite an undertaking to the Court while the Petitioner took all initiatives to hand over the physical possession.

9. The only other argument raised on behalf of the Petitioner is that there are other clauses in the Allotment Instructions such as Clause 5(6), which provides that an allotment shall be effective from the date on which it is accepted by the employee concerned and shall continue until it is cancelled by the Estate Officer or is deemed to have been cancelled or is surrendered

by the employee etc. but also provides an exception where for *bona fide* reasons the allotment may be retained. Clause 5(6) incorporates the various reasons on which retention of accommodation is permissible beyond the entitlement and on this touchstone, Clause 14 is liable to be struck down as it does not incorporate any exception for retention of accommodation and/or reduction in penal rent in *bona fide* cases where an employee is willing to hand over possession of the official accommodation but is prevented by circumstances such as a matrimonial discord with a spouse, as in the present case.

10. Learned counsel for Respondents No.2 to 5 opposes the writ petition and submits that the Allotment Instructions dated 05.12.2011, challenged by the Petitioner are executive instructions formulated by ONGC to regulate allotment and vacation of the official residential accommodation, keeping in view the larger public interest so as to avoid a situation where an allottee retains the accommodation beyond his entitlement period and then seeks to absolve himself from the liability to pay the penal rent/charges for over staying, by alluding to family disputes etc. The housing complexes of ONGC are constructed from public money and any lapse or failure to take appropriate measures against erring allotees would be detrimental to public interest and will lead to an unacceptable and anomalous situation where ONGC as an employer would have no choice but to accept a situation created by the employee where he/she would fail to hand over possession of the premises taking shelter under family disputes, resulting in misuse of the official accommodation including non-availability of accommodation for employees, waiting for their turn in long waiting lists.

11. It is argued that Petitioner cannot call upon ONGC to frame instructions tailormade to suit the personal/domestic problems of individual employees, which may have varied complexities. ONGC employs 34,000 employees in various establishments across the country and about 1223 number of employees are presently employed in the Delhi office alone, against which only 84 accommodations are available. The demand is more than the availability and many genuine employees await allotments for months together and thus carving out exceptions in penal rent or cancellation of allotments for overstaying will lead to a dangerous trend where an employee may deliberately overstay, setting up a false case of domestic problem or marital discord or in collusion with a family member file a Court case and then express helplessness to vacate on the pretext that the family member is not vacating.

12. Challenge of the Petitioner to various clauses of the Allotment Instructions is entirely premised on the matrimonial discord with his estranged wife and the ongoing litigation between them. This cannot be a ground to challenge the vires of an instruction framed to regulate allotment/vacation of official accommodation. Only because Petitioner's wife chose to allegedly forcibly and unauthorisedly occupy the premises in question for over a year, Petitioner cannot indirectly absolve himself of the liability to pay penal rent. The term 'family' has been defined in the instructions to mean wife or husband, as the case may be and children, parents, brothers and sisters as ordinarily reside with and are dependent on the employee. Therefore, till the legal separation, wife of the Petitioner was a part of the family and a challenge to the vires of the impugned Clauses on

the ground that they do not incorporate these practical and personal difficulties, has no basis in law. Allotment Instructions are legal and valid and if the plea of the Petitioner is accepted, it would open a window for employees to illegally hold on to official residences for indefinite periods on personal grounds, an unconceivable situation in law and speaking practically, this would lead to paucity of residential accommodation and add to the already existing long waiting lists of employees genuinely seeking allotments.

13. I have heard learned counsels for the parties and examined their contentions.

14. The main thrust of the argument of the Petitioner in support of his challenge to Clauses 14(e) and (f) and Clause 7(c) is that these clauses do not take into account the individual problems of an employee including a marital discord with a spouse, which in a given case could genuinely lead to a situation where while the employee is ready and willing to vacate the premises, the spouse may refuse to do so, as in the present case. According to the Petitioner, relevant instructions deserve to be struck down and ONGC should consider framing instructions for allotment of residences to include exceptions where an employee should not suffer the penal rent due to delay in handing over premises, if the delay is not attributable to him/her. It is also urged that just as exception has been carved out in Clause 5(6), an exception must also exist in the Clauses under challenge. In my view, these contentions only deserve to be rejected. No rules, regulations or instructions can be framed by an employer tailormade to suit each employee's individual aspirations, constraints or limitations and/or personal problems and have to

be framed maintaining a delicate balance between individual interests of the employees and larger public interest. The clauses under challenge are extracted hereunder for ease of reference:

> *"**14. HOUSE RENT RECOVERY (HRR):***
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> *e) Till the date of cancellation, the original allotment subsists and rent should be charged at the same rate as was being paid by an employee before his transfer, death, dismissal, retirement, reversion etc. (vide instructions 5. above).*
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> *f) After cancellation of the allotment, if the premises are not vacated, the occupation thereof shall be considered unauthorized and the ex-allottee shall be liable to pay liquidated damages for occupation of the premises @ twice of HRA drawn on last Basic plus 15% or as may be determined by the Corporation from time to time.*
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> ***7. SURRENDER:***
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> *An employee may at any time surrender an allotment made to him under these instructions, subject to clause (c) below, and if he does so.*
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> *c) An employee to whom a residence has been allotted shall give not less than 10 days (30 days in case of lease) notice in writing to the Estate Officer before vacating the residence. The allotment of the residence shall be deemed to be cancelled with effect from the day on which the letter is received by the Estate Officer."*

15. Respondents urged and in my view rightly so, that instructions pertaining to allotment of residences to employees have been framed to regulate allotment, retention and vacation of official premises to prevent misuse and ensure that those whose turn comes up for allotment do not have to wait only because those who are liable to vacate the premises retain the same beyond the period of entitlement. As pointed out by counsel for ONGC, there are over 34,000 employees in various establishments of ONGC across the country and in Delhi office alone 1223 employees are employed as against which only 84 houses are available. There is a long list of employees waiting to be allotted official accommodation for several

months and if the instructions regulating and fixing time limits for retention of official quarters beyond the entitlement periods on retirements/postings etc. and entailing levy of penal rent in case of unauthorized occupation or overstay, are struck down, it would lead to exploitation and misuse by some employees, who in the guise of a family dispute would overstay and occupy the official accommodations for long periods of time and/or not pay the penal rent. This would seriously impact the allotments also and the waiting lists will become longer. Instructions/Rules containing similar provisions with timelines for vacation and payment of penal rent in case of unauthorised occupation and overstay in official accommodation are common in both Government and private sectors and this Court finds no reason to strike down the impugned clauses.

16. Petitioner predicates his entire case on the conduct of his wife who allegedly obstructed the handing over of possession of the flat in question. The term 'family' has been defined under the Allotment Instructions to include wife and there is no gainsaying that the employee will have to accept the onus and responsibility of ensuring that the official accommodation is vacated in time by the family member, as it is the employee to whom the accommodation is allotted as a term of his employment. If the regulatory regime such as the impugned clauses are struck down, it would be the easiest thing for an employee to allude to a family dispute and retain an official accommodation indefinitely. Reliance by the Petitioner on Clause 5(6) is misconceived as it operates in a different field whereby the Estate Officer may approve retention of an accommodation for *bona fide* use of the family of the employee, where the employee is on training/preparatory

leave/deputation/temporary transfer or due to death etc. and even in those cases, the maximum period of stay has been fixed.

17. For all the aforesaid reasons, it is held that the Petitioner has not made out a case for quashing the impugned clauses of the Allotment Instructions and the writ petition is accordingly dismissed.

JYOTI SINGH, J

AUGUST 13, 2024/kks