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

% Judgment reserved on: 10.02.2024
Judgment pronounced on: 14.02.2024

\+ W.P.(C) 9875/2015

REKHA CHANDRA ..... Petitioner

versus

NATIONAL BANK FOR AGRICULTURE AND RURAL DEVEOPMENT (NABARD) AND ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Nandadevi Deka, Mr. C.P. Rajwar, Mr. Rohand Chandra, Mr. Savyasachi Rawat, Mr. Zain Haider Mr. K.S. Jaggi and Ms. Dashina Hazarika, Advocates

For the Respondents : Mr. H. S. Dahiya and Mr. Yuv Dahiya, Advocates

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, seeking the following reliefs:-

> *"(a) declare the circular dated 25.05.2012 as arbitrary and violative of article 14 and 15; and*

(b) quash and set aside the circular dated 25.05.2012; and

(c) quash and set aside the arbitrary demand of respondent no.1 vide letter dated 06.01.2015; or

d) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as well as in the interest of justice."

2. The facts as narrated in the petition are as under:-

i) It is the case of the petitioner that the respondent no. 1/ National Bank for Agriculture and Rural Development (hereinafter referred to as "NABARD") issued circular dated 02.01.2006 allowing its officers to retain bank's accommodation at their old center on transfer on grounds of education of children and ill health of family members including dependant parents and non-transferable nature of job of spouse for a maximum period of two years.

ii) The petitioner states that during May 2008, the petitioner was transferred from Ranchi to New Delhi RO of NABARD as Assistant General Manager (Grade C) (hereinafter referred to as "AGM").

iii) It is submitted by the petitioner that on 28.07.2008, the petitioner was allotted bank's accommodation at Jangpura Extension, New Delhi.

iv) It is the case of the petitioner that the respondent no. 1/ NABARD issued a circular dated 22.06.2010 stating that the grounds for retaining bank's accommodation at the previous center as indicated in the circular dated 02.01.2006 was to be treated as illustrative and not exhaustive. Genuine grounds to the satisfaction of the Office-In-Charge (hereinafter referred to as "OIC") of the administrative unit may be taken into account while considering requests of officers for retaining the bank's accommodation at previous center. The said circular provided for valid grounds to be, *inter alia*, of education of children or ill health of family members including dependent parents.

v) The petitioner stated that the respondent no. 1/ NABARD during the month of April 2012, transferred the petitioner from New Delhi to Goa without letting the petitioner complete her full tenure of five years at the present matter. This was challenged by the petitioner before this Court in WP(C) 2673/2012, whereby this Court *vide* order dated 07.05.2012 stayed the transfer order and allowed the petitioner to complete her tenure of five years with an eventual change in center from Goa to Lucknow.

vi) It is submitted by the petitioner that the respondent no. 1/ NABARD issued a circular dated 25.05.2012 changing the guidelines on retention of bank's accommodation on transfer. As per the new guidelines officers were allowed to retain bank's accommodation at old center on transfer for a maximum period of two years only on ground of education of children limited to (standard X or XII or final year of B.A.). That the previous provision of retaining bank's accommodation on medical grounds i.e. medical treatment of dependent family member was completely scrapped off. It was also mentioned that staying in bank's accommodation by serving officer beyond the permitted period will be treated as unauthorized occupation and eviction proceedings would begin immediately thereafter. The provision for providing leased flats was stipulated under General Instructions.

vii) It is the case of the petitioner that she sent a letter dated 02.05.2013 to respondent no. 1/ NABARD requesting for retaining the bank's accommodation at previous centre for six months i.e. up to 31.10.2013 and the said request of the petitioner was granted by the respondent no. 1/ NABARD.

viii) The petitioner stated that the petitioner joined Lucknow RO and was allotted Single Room Accommodation (hereinafter referred to as "SRA") on informing the respondent no. 1/ NABARD that she would be shifting to Lucknow without her family and accordingly her transfer bills were settled as per the rules of officers opting for SRA.

ix) It is submitted by the petitioner that the petitioner again sent a letter dated 28.10.2013 requesting the respondent no. 1/ NABARD for an extension in retaining the bank's accommodation at previous centre for 8 months i.e. up to June 2014 as the petitioner's personal flat at Noida which was to be handed over by 31.10.2013 got delayed and was now expected to be handed over only by June 2014. A similar representation was made by the petitioner to respondent no. 1/ NABARD, Uttar Pradesh Office *vide* letter dated 29.10.2013.

x) It is the case of the petitioner that on 10.12.2013, she replied to the letter dated 03.12.2013, where the respondent no. 1/ NABARD sought documentary evidence of the petitioner's son's education details at Delhi University and furnished the requisite documents to the respondent no. 1/ NABARD.

xi) The petitioner stated that the respondent rejected the aforesaid request *vide* letter dated 18.12.2013 of the petitioner and directed her to vacate the bank's accommodation within 15 days i.e. from 18.12.2013 and to hand over the possession or market rent would be payable since 31.10.2013 and the respondent no. 1/ NABARD stated that relief on the basis of education of children could only be given for Standard X, XII or Final Year of Bachelors degree.

xii) It is submitted by the petitioner that the respondent no. 1/ NABARD *vide* letter dated 02.01.2014 asked the petitioner to vacate the staff accommodation at the earliest.

xiii) It is the case of the petitioner that she sent a letter dated 07.01.2014 requesting for allotment of a leased flat as provided by the extant rule and that market rent should not be charged from the petitioner. The petitioner sent a reminder dated 13.01.2014 to the respondent no. 1/ NABARD seeking allotment of a leased flat. The respondent *vide* letter dated 30.01.2014 rejected the petitioner's request for being allotted a leased flat and directed the petitioner to vacate the bank's accommodation reiterating that market rent would be charged for occupation beyond 31.10.2013.

xiv) The petitioner stated that she again sent a letter dated 06.02.2014 requesting the respondent no. 1/ NABARD retaining the bank's accommodation for an extended period of six months as the same was in accordance with bank rules and that in case this was not possible she at least be allowed to get a leased accommodation sponsored. The respondent no. 1/ NABARD *vide* letter dated 19.02.2014 rejected the petitioner's requested and directed her to vacate the bank's accommodation with immediate effect and that market rent of Rs. 35,000/- per month would be charged with effect from 01.11.2013.

xv) It is submitted by the petitioner that she being aggrieved by the aforesaid letter, she filed an appeal before the Grievance Redressal Cell (hereinafter referred to as "GRC") praying that market rent not be charged and she be allowed to shift to a lease accommodation.

xvi) It is the case of the petitioner that on 13.03.2014, the respondent no. 1/ NABARD informed the petitioner that retention of the bank's accommodation beyond 31.10.2013 was treated as unauthorized occupation and that eviction proceedings were to be initiated and penal rent was to be charged for the period of unauthorized accommodation till the date of vacation of the premises.

xvii) The petitioner stated that the respondent no. 1/ NABARD without initiation eviction proceedings against the petitioner *vide* a letter dated 02.05.2014, reiterating its earlier stand of arbitrarily charging market rent of Rs. 35,000/- per month from the petitioner's salary with effect from 01.11.2013 till the date the bank's accommodation was vacated. The respondent no. 1/ NABARD also asked the petitioner to pay Rs. 1,75,000/- as arrears @ Rs. 35,000 per month from 01.11.2013 to 31.03.2014 failing which the same was to be recovered from the petitioner's monthly salary.

xviii) The petitioner stated that in reply dated 12.05.2014, she informed the respondent no. 1/ NABARD that her appeal before the GRC was pending and that the petitioner having occupied a SRC at Lucknow was eligible for one leased flat if not a bank's quarter, as per the SRA rules of the bank.

xix) It is submitted by the petitioner that from May to June 2014, the petitioner's salary was stopped.

xx) It is the case of the petitioner that the respondent no. 1/ NABARD *vide* communication dated 09.06.2014 rejected the appeal preferred by the petitioner and directed the petitioner to vacate the flat immediately.

xxi) The petitioner stated that the respondent no. 1/ NABARD *vide* a circular dated 26.06.2014 allowed Chief General Managers, Office-In-Charges, Chief Executive Officers and General Managers to retain the bank's accommodation at the previous center for two years. However, it was limited to grounds of education of children or ongoing medical treatment of spouse.

xxii) It is submitted by the petitioner that on 02.07.2014, the petitioner vacated the bank's accommodation at Delhi and handed over the possession to the respondent no. 1/ NABARD.

xxiii) It is the case of the petitioner that the respondent no. 1/ NABARD sent a demand letter dated 04.07.2014 to the petitioner asking the petitioner to deposit an amount of Rs. 2,80,000/- on account of rent at market rent and also sought a confirmation on whether the petitioner had vacated the accommodation.

xxiv) The petition stated that having not received no reply from the GRC sent a letter dated 07.08.2014 to the respondent no. 1/ NABARD praying that she should not be charged additional house rent at Lucknow keeping in consideration that she had been staying at SRC.

xxv) It is submitted by the petitioner that the GRC after a delay of six months issued a letter dated 04.09.2014 turning down the petitioner's appeal and directing the petitioner was not eligible for retaining the bank's accommodation in Delhi and that market rent was to be recovered from the petitioner. The GRC observed that the petitioner had retained the banks accommodation in Delhi for two years and that the medical ground stated by the petitioner was no longer a ground on which the accommodation could be retained at the previous center.

xxvi) It is the case of the petitioner that the respondent no. 1/ NABARD *vide* letter dated 06.01.2015 informed the petitioner than an appeal could be further preferred by the petitioner before GRC in case she was not satisfied with the decision of GRC and the letter was received by the petitioner on 15.01.2015 as she was on an official tour at Lucknow.

xxvii) The petitioner stated that on 06.01.2015, the respondent no. 1/ NABARD informed the petitioner that an amount of Rs. 2,82,258/- was due towards the market rent for the period from 01.11.2013 to 02.07.2014 and the same would be recovered from petitioner's salary from January 2015 onwards at Rs. 25,000/- per month till the entire outstanding was recovered.

xxviii) It is submitted by the petitioner that *vide* email dated 16.01.2015 intimated the respondent that she being advised *vide* letter dated 23.11.2014, she intends to file the said appeal and as such the recovery of rent from her salary may be stayed during the pendency of the appeal. The petitioner filed an appeal before Grievance Appellate Committee (hereinafter referred to as "GAC") on 19.01.2015, wherein it was prayed to waive off the imposition of market rent and to stay the recovery of the alleged amount from the petitioner's salary during the pendency of the appeal. The petitioner did not receive any reply from GAC and the petitioner's salary for the month of January and February 2015 stood deducted.

xxix) It is the case of the petitioner that aggrieved by the aforesaid the petitioner sent a letter dated 12.02.2015 to the respondent no. 2/ Chairman, NABARD requesting not to recover the market rent from the petitioner's salary and to keep it in abeyance till the time her appeal before GAC was disposed of and requested that the deducted amount should be refunded as the said deductions from the salary left her in financial difficulty.

xxx) The petitioner stated that on 19.03.2015 she made a request to the Deputy General Manager, NABARD, Bihar Office, to forward the appeal filed by her to the GR Cell, Secretary Department, NABARD, Head Office, Mumbai.

xxxi) It is submitted by the petitioner that during the period of March - April, 2015 the petitioner made a request to GAC not to deduct her salary but neither the GAC nor the respondent no. 2/ Chairman, NABARD replied to the said request and the petitioner's salary for the month of March to September 2015 stood deducted.

CONTENTIONS OF THE PETITIONER

3. Ms. Nanda Devi Deka, learned counsel for the petitioner opened her arguments by submitting that in the present case the respondent has acted with apparent *malafide* which is demonstrable by referring to the Circulars regarding retention of flat with the transferred officer.

4. Ms. Deka referred to the original Circular dated 02.01.2006 of the respondent in respect of retention of the bank's accommodation at the old centre by the officer under transfer. According to her *vide* the said circular, the officer on transfer was permitted to retain respondent's accommodation at the old centre on genuine grounds like education of children (Class IX onwards), ill health of family members, (including dependent parents) requiring prolonged treatment/ care and non-transferrable nature of job of spouse for a maximum period of two years, apart from the other conditions.

5. Ms. Deka submits that the petitioner in the ordinary course of her service was transferred to Delhi in May, 2008 and was allotted Bank's accommodation at Jangpura Extension. *Vide* the circular No. 112/ PPD-16-2010 dated 02.06.2010, the Circular regarding retention of bank's accommodation on transfer reiterating the previous circular of 2006 expanded it by stating that the said grounds which were available be treated as merely illustratively and not exhaustive. According to Ms. Deka the petitioner was arbitrarily transferred from New Delhi to Goa in April, 2012 without letting the petitioner compete her full tenure of five years. Challenging the same, the petitioner filed W.P.(C) 2673/2012 wherein this Court had stayed the transfer order and allowed the petitioner to complete her five years *vide* the order dated 07.05.2012.

6. It is the contention of learned counsel that out of sheer vengeance and *malafide* the respondents issued a fresh Circular on 25.05.2012, apparently, after the respondents were miffed with the petitioner *qua* the

order dated 07.05.2012. She submits that the *malafide* is apparent inasmuch as, the said circular now restricted the retention of the accommodation for a maximum period of two years only on the grounds of education of children limited to standard X or XII or final year of Bachelor's degree. The previous grounds of medical reasons were completely scrapped. Another clause which was inserted was with respect to charging penal rent in case of occupation beyond the permitted period, defined as unauthorized occupation, followed by eviction proceedings. According to Ms. Deka, it is this circular which is the bone of contention.

7. Ms. Deka, submits that just to disentitle the petitioner from retaining her quarter at the time of transfer, such circular disentitling the petitioner from the accommodation in the old centre was circulated. She specifically referred to Clause 18 of the said Circular to submit that the respondents purposely introduced the penal clause treating the period beyond the permitted time as unauthorized making the officer liable to be evicted coupled with the said officer being charged penal rent. In fact, *vide* the said circular disciplinary proceedings could be initiated against the officer. According to her, the insertion of the aforesaid clauses was solely with the intent to disentitle the petitioner alone.

8. Whilst things stood thus, the petitioner claims that the respondents compromised the matter pending before this Court and agreed to the petitioner being transferred to Lucknow and not Goa as originally directed. Subsequently, in pursuance to the aforesaid, the petitioner was

to be transferred to Lucknow on 06.05.2013. Immediately on 02.05.2013, the petitioner gave a representation to the respondents requesting retention of the bank's quarter on the following grounds. The relevant portion is extracted hereunder :-

> *"The Chief General Manager*
> *National Bank*
> *Delhi Regional Office*
> *New Delhi* *Dt. 2 May 2013*
>
> *Sir,*
>
> *Staff-Officer-Transfer-Retention of Bank's Quarter*
>
> *With reference to the captioned subject I have been advised by the RO letter No. 124 dated 1.4.2013 that I will be relieved from this office at the close of business on 3.5.2013 upon my transfer to UP RO and have to report at Lucknow on 6.5.2013.*
>
> *In this context, I wish to submit that my elder son in pursuing his graduation course which is likely to be completed by September 2013 (relevant documents enclosed). Further, I would like to mention that I have booked a flat in NOIDA in Jan 2010 with the Bank's Housing Loan facility and the builder has given me assurance to hand over the possession of the flat by October 2013. In the aforementioned circumstances I shall request you to allow me to retain the present accommodation for a period of 6 months so that my family does not face any trouble in my absence. For this act of kindness I shall be ever grateful."*

Ms. Deka submits that the petitioner had requested retention of bank's accommodation by referring to her son's graduation which was likely to be completed by September, 2013. Another ground which the petitioner took was in respect of the flat booked at Noida in January, 2010, which was to be handed over to the petitioner by October, 2013. She submits that the petitioner requested for retention of the accommodation for a period of six months.

9. Ms. Deka submit that since the mother and the mother-in-law of the petitioner were senior citizens and not keeping good health, by a request letter dated 28.10.2013, she sought further extension of time till June, 2014 on the grounds that the flat would be handed over to the petitioner only by May, 2014, and her second son would be taking his final exams of Bachelor's course in Delhi University in the month of April- May, 2014 and that her mother was ailing and under the treatment of a Doctor in Delhi

10. It is the contention of Ms. Deka that the respondents directed her to vacate the accommodation in fifteen days from 18.12.2013. According to her, even without considering the grounds which were available to her for a period of at least fourteen months, by the letter dated 02.01.2014, the respondents threatened her to vacate the quarter and stated that they would be charging market rent after 31.10.2013. According to Ms. Deka despite the further request dated 07.01.2014 of the petitioner, by letter dated 03.02.2014, the respondents rejected the request for allotment of even the lease flat at Delhi.

11. She submits that thereafter despite a number of representations having been made to the respondents, none were considered and by a letter dated 02.05.2014, the respondent had directed her to pay an amount of Rs. 1,75,000/- calculated the rate of Rs. 35,000/- per month as market rent with effect from 01.11.2013 to 31.03.2014. The Bank further threatened that the same would be recovered from the salary. Ms. Deka

submits that the subsequent appeals were arbitrarily rejected without considering her genuine grounds and shockingly *vide* the letter dated 14.07.2014 the petitioner was directed to deposited an amount of Rs. 2,80,000/- on account of market rent simultaneously seeking confirmation as to whether the petitioner had vacated the accommodation.

12. Ms. Deka submits that her representation to the GRC was disposed of after a delay of six months *vide* the letter dated 04.09.2014 rejecting her request on the ground that petitioner had retained the Bank's accommodation for two years and that the medical grounds were no longer available. By the letter dated 06.01.2015, the respondents directed the petitioner to deposit an amount of Rs. 2,82,258/- towards market rent with effect from 01.11.2013 to 02.07.2014. She submits that the representations/ appeals to the higher authorities were arbitrarily and unjustly rejected by the respondents constraining the petitioner to file the present writ petition.

13. On the aforesaid issue, by referring to all the relevant documents, Ms. Deka submits that even by the Circular dated 25.05.2012 particularly sub-Clause (a) of Clause 3, the respondent had a discretion to permit the petitioner to retain the accommodation for a maximum period of two years. Thus, according to her, the denial of the remaining period of fourteen months as per Clause 3(a), was deprivation of her rights available to her even under the said circular assuming without admitting that the previous circulars were not applicable in her case.

According to Ms. Deka, the aforesaid facts clearly demonstrate the *malafide* nature in which the respondents had acted with vendetta, targeting her only because of the litigation which she had initiated in exercise of her own independent rights. She submits that the illegality and unjustness is apparent and as such, the money which has been debited from her account towards the unlawful penal rent charged from the petitioner, be directed to be remitted back to her, treating the period of retention as lawful and in accordance with the various circulars.

14. Ms. Deka brought attention of this Court to page 105 of the paper book which is the counter affidavit of the respondent particularly to sub-para (vi) of para 7 to the reply on facts, to submit that apart from basing their defence on "administrative reasons", no explanation was put forth as to what the administrative reasons were to deprive the petitioner from further extension of time or from providing alternate leased accommodation. This too, according to Ms. Deka is a blatant display or arbitrariness and indicates the *malafide* intent of the respondents in disentitling the petitioner from her lawful rights.

15. Ms. Deka had weakly also submitted that a leased flat in place of the old accommodation could also have been granted to the petitioner by the respondents in terms of the circular dated 25.05.2012 particularly, sub-Clause (iii) of Clause 19. Even this request was not acceded to by the respondents. Ms. Deka also submitted that no eviction proceedings were ever initiated against the petitioner by the respondent and as such this Court can direct the respondents to treat the said period as lawful

occupation in terms of the circular dated 25.05.2012.

16. Ms. Deka relies upon the judgments of ***S.C. Khosla vs. State Bank of India & Ors***, reported **205 SCC OnLine Del 752.**

CONTENTION OF RESPONDENTS/ NABARD

17. Mr. H. S. Dahiya, learned counsel appearing for the respondent Nos. 1 to 4 submits that the present case is a sheer abuse of the process of this Court and ought to be dismissed with costs. He submits that the present petition attributes *malafide* to the legitimate actions of the respondents/ NABARD despite not a single averment having been made against any officer of the bank being *malafide* against the petitioner. According to Mr. Dahiya, the entire action taken by the respondents, first in granting a six months extension at the request of petitioner herself, and thereafter refusing further extension and demanding market rent for the unauthorized occupation beyond six months too, was in accordance with the circular in force at the relevant point in time.

18. Learned counsel submits that though the petitioner had challenged the impugned circular dated 25.05.2012, in fact, she had not only sought permission, but admittedly was also granted six months extension till 31.10.2013 by the Bank on her specific written request dated 02.05.2013.

19. Learned counsel submits that the second time when the petitioner sought further extension *vide* her request letter dated 28.10.2013, the same was on vague grounds that her son would complete his final exam around April-May, 2014, on which the respondents issued letter dated 03.12.2013 in respect of documentary evidence regarding petitioner

son's educational details at the Delhi University. Simultaneously, the respondents had also reminded her that in the first request letter dated 02.05.2013, the petitioner had requested extension on the basis that her son would complete his final year bachelors course by September 2013. It was only on such doubt that the documents were sought. Learned counsel pointed out that *vide* letter dated 18.12.2013 the Bank had rejected the request for the reasons that the second request now being made on the ground of second son would not qualify since the second son was not in final year of any Bachelor's degree course.

20. He further submits that the circular was issued in the year 2012, whereas the petitioner sought extension under the very same circular in the month of May, 2013. According to learned counsel having availed of the said circular, the petitioner cannot now contend that there was any *malafide* by the Department against her, in any manner whatsoever. Learned counsel submits that there being no *malafide* in a Department issuing circular *qua* all its employees, the present petition must fail.

21. Mr. Dahiya pointed out to one aspect, which is, that the petitioner time and again referred to the delay in getting possession of her flat as a reason for seeking extension of retention of bank accommodation. Learned counsel referred to all the circulars to show that this ground was never available at any point of time in any of the circulars. According to Mr. Dahiya, since the petitioner did not have any reasonable ground for seeking extension of retention of bank accommodation, she took up all lame reasons for extending her unauthorized occupation.

22. Mr. Dahiya submits that since the retention beyond the six month period granted first time, the subsequent admitted period of occupation would, in terms of the previous circulars including those issued before 25.12.2012, make the petitioner liable for penal rent for the period of unauthorized occupation. The said rent having been demanded in terms of the Circular, cannot be set aside on the aforesaid contentions. Learned counsel submits that in any case, the same has already been deducted from the petitioner. He submits that the subsequent correspondence of the petitioner, would be irrelevant since no *malafide* has been either stated or demonstrated by her. He prays that the present petition be dismissed.

ANALYSIS AND CONCLUSION

23. This Court has heard the detailed arguments addressed by Ms. Deka and Mr. Dahiya, learned counsel appearing for the parties and carefully scrutinized the documents on record and also considered the judgment relied upon by the petitioner.

24. The entire case revolves around only one aspect, that is the Circular dated 25.05.2012 issued by the respondents.

25. Ms. Deka had strenuously argued at length in an attempt to demonstrate that the respondents have acted in a *malafide* manner *qua* the petitioner on the basis of frequent change in the policy regarding retention of bank accommodation by the officer on transfer. Insofar as the said argument is concerned, it is trite that a person alleging *malafide* has to demonstrate visibly that the allegations of *malafide* made against a

party are palpably, apparent. It cannot be by way of inference that the Court would assume or presume that there is a *malafide* in an action by a party.

26. The Circular issued by the respondents dated 02.01.2006 containing certain grounds for extension of retention of bank accommodation was continued in the Circular dated 02.06.2010 by widening the scope. However, by the Circular dated 25.05.2012, the Bank had curtailed the same grounds for extension of retention. Before making any observation as to whether such curtailment was *malafide* in nature or not, it would be appropriate to consider the reasons which drove the respondents to curtail such request for extension of retention. In this regard, it would be apposite to extract the relevant portion of the circular dated 25.05.2012. The same is extracted hereunder :-

> *"Ref.No.NB.HRMD.PPD/C- 52 /RA. INST/2012-13*
>
> *Circular No. 139 / PPD- 53/2012*
> *25 May 2012*
> *1. The Chief General/Manager/General Manager*
> *National Bank for Agriculture and Rural Development*
> *All Regional Offices/All Head Office Departments, Mumbai*
> *2. The Principal*
> *NABARD, All Training Establishments*
> *Dear Sir/Madam,*
>
> ***Guidelines on retention of Bank's accommodation/ leased flat by officers***
>
> *Of late, many of the officers are making representations to retain bank's accommodation at old and new centres beyond two years.*

This has been causing difficulties to the officers transferred to new centres who are not only denied bank's accommodation but forced to sponsor leased flat leading to imposing financial burden on the bank. Although it is a Bank's facility extended at Bank's discretion, many a times it is observed that officers are viewing our guidelines as a matter of right. It has been, therefore, considered necessary to undertake review of the various existing instructions on retention of Bank's accommodation/ leased flat by officers (the relevant circulars are given in Annexure).

... ...

... ...

3. Retention of Bank's accommodation/ leased flat on transfer to centres other than NER/ A&N Island/ DDMs/ PMUs

(a) Officers posted to new centre, other than the offices in NER/ A&N Island/ DDM/PMU, are allowed at Bank's discretion to retain Bank's flat or Leased Flat at old center for a maximum period of two years on grounds of child/ children's education limited to Std. X or XII or final year of Bachelor's degree course. To avail this facility at Bank's discretion, the officer shall apply before proceeding on transfer to new centre with supporting documents indicating the period of retention sought. The licence fee in such case shall be 10% of pay, rounded off to the next higher rupee without any ceiling at old centre and at new centre

1.2% of pay at the starting stage of the incremental scale of pay as applicable to their grade, rounded off to the next higher rupee.

(b) Under no circumstances, request for retention of Bank's accommodation at old centre shall be considered by the Bank beyond two years. If the Bank's accommodation/ leased flat retained by an officer at old centre is not vacated by the officer after the date permitted by the bank, the period of retention beyond the permitted date shall be considered as unauthorized occupation of Bank's accommodation at old centre.

8. Retention of Bank's accommodation at old Centre by Officers occupying SRA at new centre

i) Officers posted to centre, other than NE Region including Guwahati and Andaman Nicobar Islands and occupying SRA at new centre will be allowed at Bank's discretion to retain Bank's

> *flat or Leased Flat at old centre for a maximum period of 2 years on grounds of child/ children's education limited to Std. X or XII or final year of Bachelor's degree course. To avail this facility at Bank's discretion, the officer shall apply before proceeding on transfer with supporting documents indicating the period of retention sought. The licence fee in such case shall be normal licence fee i.e. 1.2% of starting stage of the incremental scale of pay as applicable to their grade, rounded off to the next higher rupee.*
>
> *ii) The officers posted at North Eastern Region would continue to get the SRA as a rent- free accommodation.*
>
> *iii) The SRA occupant officers at centres other than NER shall be required to pay Rs. 700 per month.*
>
> *iv) An Officer posted to centre other than NE Region including Guwahati and Andaman Nicobar Islands and has been allotted SRA, on his/ her request at new centre, will not be eligible to retain Bank's accommodation at old centre for reasons other than educational grounds which is limited to Std. X or XII or final year of Bachelor's degree course. However, if an officer is permitted to retain Bank's accommodation at old centre on educational grounds and SRA at new centre is not available, in such case regular accommodation at new centre may be allotted. In such an event, the licence fee at old centre will be 10% of pay, rounded off to the next higher rupee, without any ceiling."*
>
> (Emphasis as supplied)

27. To understand as to whether there was any *malafide*, it would be relevant to note that the respondents had considered in its various correspondences, placed on record by the respondents along with the counter affidavit, particularly the letters dated 14.08.2007, 21.11.2007 and 27.11.2007. These indicate that the higher authorities of the respondents were considering as to what would be the best way of moving forward in granting extension of retention and at the same time ensure that those officers who are newly transferred do not suffer on

account of non-availability of Bank's accommodation. It appears to be in consonance with such consideration that the decision to impose penal rent in case of unauthorized occupation beyond the permitted retention, was inserted. This read with the aforesaid paragraph at the beginning of the circular dated 25.05.2012 leads this Court to conclude that it was more on the exigencies and the requirement of the larger number of employees of the bank that the respondents had, no alternative other than to insert certain curtailments and limit the grounds of extension of retention. This, to the mind of this Court appears to be reasonable and acceptable.

28. That apart, how an institution is to regulate its procedure for extension of retention of flats by officers under transfer, would purely be a policy decision taken by the Bank in the aforesaid interest of its own employees and cannot be stated to be propelled on any *malafide* at all. The petitioner's argument that it was on account of order dated 07.05.2012 passed by this Court in W.P.(C) 2673/2012, which actuated the respondents to *malafidely* issue the circular dated 25.05.2012, is neither demonstrated not appears palpable in view of the aforesaid letters. Moreover, the Circular was applied across board to all of its employees and as such, there is nothing to show either in the circular or any of the correspondences arising from the side of the respondents, that the petitioner was being targeted or that some officers were wrecking vengeance on her. Thus, the argument of the petitioner that the issuance of impugned circular dated 25.05.2012 is actuated on *malafide*, is

rejected.

29. It is also intriguing to note that on one hand, the petitioner had, *vide* her request letter dated 02.05.2013 sought extension of retention for six months on the grounds of her son completing his final year in bachelor degree course by September 2013, which was granted by the respondent till October, 2013 and yet, on the other hand has approached this Court challenging the very same Circular dated 25.05.2012 on the ground of the same being actuated on *malafide*. It is trite that a litigant cannot be permitted to blow hot and cold at the same time. In the present case having availed of an opportunity of extension of retention; having been granted the same for six months; seeking second extension under the same Circular; facing the rejection of second Circular and thereafter impugning the Circular dated 25.05.2012 is impermissible, in the considered opinion of this Court.

30. The decision of the respondents not to grant second extension, does not appear to be *malafide*, nor does it appear to be unreasonable to this Court, particularly, keeping in view the reasons mentioned in the same circular dated 25.05.2012. Whether the respondents could have given further extension or not, was for the authorities to decide and consider which was very much within their authority and jurisdiction. Moreover, this Court has perused the second request letter for extension of retention and also scrutinized the letters dated 03.12.2013 and 18.12.2013, whereby certain clarificatory documents were sought and the second request letter was rejected, respectively. A perusal of the

letter dated 18.12.2013, brings to fore that upon considering the documents presented by the petitioner, the respondents realized that the petitioner is now seeking extension on the basis of her second son, who in any case was not in the final year of his graduation but was in the second year of his four year BMS, which would conclude only in the year 2017. According to the respondents, the grounds on the basis of education was applicable only to the child studying in standard X, XII or final year of bachelor's degree course. Since the son of the petitioner was admittedly in the second year and not final year, the refusal does not appear to be contrary to the policy of the respondent. As such, even the refusal does not appear to be *malafide*. In fact, apparently, it was a fair assessment of the facts as obtaining on that date.

31. The challenge to the penal rent also does not appeal to reason to this Court. This is for the reason that the charge of penal rent in default of vacation of the bank accommodation coupled with further retention without permission being construed as unauthorized occupation, entitled the respondents for such demand. The impugned Circular was issued admittedly in the year 2012, the petitioner never challenged the same during the subsistence of the said Circular and assailed the same only when she was denied second extension and demand for penal rent was made. The extended period, beyond 31.10.2013 being treated as unauthorized, would surely entitle the bank to penal rent. It is held accordingly.

32. The argument of Ms. Deka that the respondent could have

permitted further extension to the extent of fourteen more months, is noted to be rejected. This is for the reason that the petitioner being an employee on transfer, did not have any indefeasible rights over such accommodation and it was in the discretion of the respondents to grant such permission or not, according to the facts arising in respect to every such extension being sought by any of the employees. This Court does not agree with Ms. Deka on this issue.

33. For the above reasons, the contention of Ms. Deka that the respondents did not initiate eviction proceeding, is also rejected. Moreover, it was for the respondents to choose as to whether they would initiate such proceedings or not. It is not within the purview of the Court to decide as to why such proceedings were not initiated. However, the non-initiation of eviction proceeding would not deprive the respondents from raising any demand of penal interest for what it considered "unauthorized occupation" by the petitioner. The relevant clause in this regard would be Clause 18 of the circular dated 25.05.2012, which is as under :-

> ***"18. Eviction and disciplinary Action in the case of unauthorised occupation by serving Officers***
>
> *Staying in Bank's accommodation by serving officer beyond the permitted period will be treated as unauthorised occupation. In case of unauthorised occupation of Bank's accommodation, eviction procedure to begin immediately. Further, from the date of unauthorised occupation to the date of vacation, the officer shall be charged penal rent. In the case of failure to follow Bank's instructions by the serving officer besides initiating eviction proceedings Bank also reserves the right to initiate disciplinary action.*

> *The penal rent for retaining the Bank's accommodation during the unauthorised period shall be charged at the fair value of the market rent for similar properties in the area. The fair value of rent shall be decided by the HO/RO by appointing two member 'committee. The committee shall determine the fair value of rent based on quick survey of market rent prevailing in the area and taking into account built-up area of the Bank's accommodation occupied by an officer."*

It is manifest from a plain reading from a aforesaid clause that charging of penal rent is linked to the unauthorized occupation *per se* and the initiation of eviction proceedings approval to have been inserted in those cases where the employee does not vacant the premises. The argument merits rejection.

34. The judgement ***S.C. Khosla (Supra)*** relied upon by the learned counsel for the petitioner does not apply to the facts and circumstances of the present case, as in that case, the petitioner asked for the retention of the bank's accommodation on the gravity of the petitioner's own medical condition, which propelled the Court to come to said conclusion.

35. The last argument of Ms. Deka based on the subsequent Circular dated 26.06.2014 is that once the petitioner was transferred out to Lucknow in the month of May, 2013, the respondents granted the very same clauses which were hitherto before available in the circular dated 02.01.2006 to the CGMs, GMs as OICs, CEOs of wholly owned subsidiaries of the bank and was an illustration of *malafide* actuated against only the petitioner apart from being discriminatory even otherwise. She had submitted that the 2014 Circular was granted only in

respect of certain officers and not granted to the employees *per se* across the board, creating classes within single class of employees, which was impermissible and contrary to the judgment laid down by the Supreme Court.

36. The aforesaid contention does not appeal to this Court and is noted to be rejected. This is for the reason that the facilities which are offered by the respondents to a particular set of officials is within the prerogative of the bank, in view of what it would consider as administrative exigencies, as also for the purposes of smooth running of its business affairs. That apart, the petitioner neither lay any challenge nor sought quashing of the Circular dated 26.06.2014, and as such, this Court would not drag itself into an academic debate on an issue, which is not even a subject matter in the present petition. Moreover, the petitioner herself was an AGM and in any case, not entitled to the benefits under the said circular. That apart, the petitioner admittedly was transferred to Lucknow on 06.05.2013 and had no reason for challenging the Circular dated 26.06.2014.

37. In view of the above, the writ petition is without any merits and the same is dismissed along with the pending applications, with no order as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 14, 2024/*nd*