IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 298 1990

DATE OF DECISION 22-03-91

SHRI K. GOPALAN Applicant (s)

SHRI M.R. RAJENDRAN NAIR Advocate for the Applicant (s)

Versus

THE UNION OF INDIA represented by Secretary to Govt. Ministry of Finance, New Delhi and 2 others. Respondent (s)

SHRI NN SUGANAPALAN for R-1
SHRI M.C. SEN for R-2 and 3 Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

N. Dharmadan, M(J)

The applicant, a fitter in National Institute of Oceanography, Regional Centre, Kochi, residing with his wife in the residential quarters allotted to his wife by the State Government, is challenging in this application the vires of Cl.5(c)(iii) OM governing the grant of House Rent Allowance (HRA for short) and Annexure-III order denying HRA. The order reads as follows:

> "....An employee is not eligible to draw HRA when his/her spouse has been allotted accommodation at the same station by Central/State Government, autonomous public undertaking, Municipality, PortTrust, Nationalised Banks or L.I.C. irrespective of whether he/she resides in that accommodation or separately by paying rent....."

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2. The facts of the case are as follows: The applicant had been receiving HRA from 1977 onwards. But the third respondent issued Annexure-I order dated 19-10-87 informing him that the Director was pleased to approve the recovery of HRA drawn by the applicant with effect from 30-11-1977. The applicant filed OAK 280/88 for quashing Annexure-I order and for a declaration that he is entitled to HRA and that the HRA already paid to him was not recoverable. This application was entertained only in respect of the quantum of instalment and disposed of by a final order dated 5-7-88 (Annexure-II) with the observation that the recovery shall be at the rate of Rs.300/- per month. In that case he did not challenge the vires of the order. Hence, he filed this application specifically challenging the vires of Clause 5(c)(iii) of H.R.A. The present application has been filed with the following prayers:

> "i)..To declare that the provision in HRA rules to the effect that an employee is not eligible to draw HRA when his/her spouse has been allotted accommodation at the same station by Central/State Government, autonomous public undertaking, Municipality, Port Trust, Nationalised Bank or LIC irrespective of whether he/she resides in that accommodation or separately by paying rent, evidence by Annexure-III is unconstitutional, null and void and to direct consequential benefit to the applicant.
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> ii). To declare that Ernakulam(Cochin-18) and Trikkakara are two different station for the purpose of HRA and direct the respondents to work out and give the consequential benefits to the applicant...."

3. The learned counsel for the applicant argued only one point viz. Clause 5(c)(iii) of the HRA order is unreasonable, arbitrary, discriminatory. It is also violative

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of Articles 14 and 16 of the Constitution of India. On going through the application, we are not in a position to gather materials in support of his contentions. Applicant's wife is an employee of Kerala Govt. Press and is a compositor by designation. The quarters allotted to her at Thrikkakara on payment of 10% of the salary is occupied by the applicant and wife. The applicant submits that this should not be a bar for getting HRA for him. Apart from this statement, he has not given sufficient facts and figures to establish a case of either discrimination or arbitrary action on the part of the respondents. He only submitted that HRA is part of the salary of an employee and the denial of HRA would amount to violation of the principle of 'equal pay for equal work'. According to him even employees who have their own house get HRA and the denial of HRA to an employee while sharing the accommodation given to his wife by the State Government is unreasonable, arbitrary and discriminatory. With this unsatisfactory and insufficient materials it would be difficult to consider the validity of the provision challenged in this case. The Govt. in implementation of policy decision taken under the above O.M. to grant some compensatory allowance to the Govt. servant and in order to avoid double payment, a provision was incorporated that such allowances should not be given to a person when sharing a Govt. accommodation allowed to the other spouse. This is the gist of impugned provision. It is very reasonable and cannot be struck down on the scanty material available in this case. The Supreme

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Court in Anant Mills V. State og Gujarat, AIR 1975 SC 1235, observed that when a party challenges the validity of a provision he should make the necessary averments and adduce material to establish discrimination for attracting the Article 14. The Court held as follows:

> ".....There is a presumption of the constitutional validity of a statutory provision. In case any party assails the validity of a any provision on the ground that it is violative of Article 14 of the Constitution, it is for that party to make the necessary avernments and adduce materials to show discrimination violative of Article 14 . No avernments were made in the petitions before the High Court by the Petitioners, that the assessments before the coming into force of ordinance 6 of 1969 had been made by taking into account the rent restriction provisions of the Bombay Rent Act....."

4. The clause of HRA order challenged by the applicant reads as follows:

> "5. (a)....
> (b)....
> (c) A Government servant shall not be entitled to house rent allowance if
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> (i) he shares Govt. accommodation allotted rent-free to another Govt. servant or
>
> (ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Govt., State Govt. an autonomous public undertaking or semi govt. organisation such as Municipality, Port Trust, Nationalised Banks Life Insurance Corporation of India etc.
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> (iii) his wife/her husband has been allotted accommodation at the same station by the Central Govt., State Government, an autonomous public undertaking or semi-Govt. organisation such as Municipality, Port Trust, etc whether he/she resides in that accommodation or she/he resides separately in accommodation rented by him/her..."

5. As indicated above the HRA payable to the Govt. servant is compensatory allowance. Its legal character has been examined by Hon. B.K. Kartha, Vice Chairman, while deciding the issue, in OA 235/89 for settling the difference of opinion between one of us (N. Dharmadan) and Hon. Shri N.V. Krishnan, in the above case. The relevant portion of the judgment is extracted below:

> "...At the outset, it is necessary to state precisely as to the concept of House Rent Allowance being paid to Govt. servants. Pay Commission set up by the Central Govt. had occasion to consider the matter. Compensatory allowance and housing subsidy are separate categories of the terms of service conditions. As regards H.R.A., the second Pay Commission has observed as under:-
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> "The rent concessions dealt with here are of two kinds: (i) provision of rent free quarters, or grant of a house rent allowance in lieu thereof; and (ii) grant of a house rent allowance in certain classes of cities to compensate the employees concerned for the specially high rents that have to be paid in those cities. The former is allowed only to such staff as are required to reside on the premises where they have to work, and is thus intended to be a facility necessary to enable an employee to discharge his duties. In some cases, it is a supplement to pay, or substitute for special pay etc. which would have been granted but for the existing of that concession. In either case, it is not related to the expensiveness of a locality. The latter, on the other hand, is a compensatory or a sort of a dearness allowance, intended to cover not the high cost of living as a whole but the prevailing high cost of residential accommodation; and it has no relation ship to the nature of a employee's duties...."
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> (Cited in the Management of Indian Oil Corporation Ltd. V. its Workmen AIR 1975 SC 1856)
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> 7. Thus, the pay Commissiin has treated H.R.A. as a concession. So is the case with compensatory Allowance (City Compensatory Allowance) being paid to Govt. servants. H.R.A. being in the nature of a concession and not a legal right bestowed upon a Govt. servant, it has to be construed strictly and not liberally.."

6. Generally when the vires of an Act or Rule or Regulation is attacked on the ground of the infringment of fundamental right, we have to examine the challenge having regard also to the fact of the case, after applying the principles laid down by the Supreme Court in this behalf. The principles which will have to be borne in mind while considering the constitutional validity of an Act, Order or Notification issued by the Govt. as explained by Chief Justice, S.R. Das, in Ram Krishna Dalmia case, AIR 1958 SC 538, can be usefully extracted below:

> "...The decisions of this Court further establish---
>
> (a) that a law may be constitutional even through it relates to a single individual if, on account of some special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
>
> (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles;
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> (c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its law are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
>
> (d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be clearest;
>
> (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and

> (f) that while good faith and knowledge the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to thenotice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation..."

7. In the light of the observations in the above judgment, we have examined the facts of this case. We are of the view that the applicant, as indicated above, has not established by producing facts and figures that his fundamental right or other legal right for getting HRA has heen infringed for attacking the vires of para 5(c)(iii) of the xxxxx HRA order. Under these circumstances his challenge against the order cannot be sustained. The Supreme Court in State of M.P. V. G.C. Mandwar, AIR 1954 SC 493 considering the claim under F.R. 44 held as follows:

> "....Subject to any restrictions which the Secretary of State in council may by order impose upon the powers of the Governer-General in council or the Governer in Council, as the case may be, and to the general rule that the amount of a compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the receipient, a local Government 'may' grant such allowance to any Govt. servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn.."

Under this provision, it is matter of discretion with the local Govt. whether it will grant Dearness Allowance and if so, how much. That being so, the prayer for 'mandamus' is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rule confers no right on the Government servant to the grant of D.A.; it imposes no duty on the State to grant it it merely confers a power on the State to

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grant compassionate allowance at its own discretion and no 'mandamus' can issue to compell the exercise of such power. Nor, indeed, could any other right or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced." (Emphasis added)

The observation in the above case squarely applied to the facts of this case. This application was admitted on 19-4-90 with the following order:

> "...Heard the learned counsel for the applicant. The learned counsel for the applicant states that the relief No. (ii) is an alternative to relief No. (i) and he will be satisfied if either of the aforesaid two reliefs is granted. On that basis we admit this application

The learned counsel for the applicant pressed before us only the first relief. Hence under the above circumstance, we are not considering the second relief prayed for in this application.

8. Having considered the matter in detail, we are of the opinion that there is no substance in the application and is only to be dismissed. Accordingly, we dismiss the application. There will be no order as to costs.

22.3.91.

(N. Dharmadan)
Member (Judicial)

22-3-91

(S.P. Mukerji)
Vice Chairman

22-3-91