

5

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 29/93
~~Second Application No.~~

Date of Decision : 16.8.95

Indrayani Darshan Residents Welfare Association Petitioner

Smt. K. Nagarkatti Advocate for the Petitioners

Versus

Union of India & Others Respondents

Shri R.K. Shetty Advocate for the respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

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(1) To be referred to the Reporter or not ?
(2) Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

ssp.

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 29/93

Indrayani Darshan Residents
Welfare Association ... Applicants

v/s

Union of India & Others ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE : 1) Smt. K. Nagarkatti, counsel for the
Applicant.
2) Shri R.K. Shetty, counsel for the
Respondents.

JUDGEMENT

Dated: 16.8.95

(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Applicant has filed this Application under Section 19 of the C.A.T. Act 1985 being aggrieved by the order of the Respondents vide dated 13-4-1992 - Annexure 1, wherein consequent upon the issue of modified instructions vide Govt. of India, Ministry of Urban Development, Directorate of Estates Office Memorandum No. 18011/13/89/Pol.III dated 28-6-1991 regarding revision of flat rates of licence fee for residential accommodation, President's sanction is conveyed for revision of flat rates of licence fee for residential accommodation contained in the Ministry letter dated 18th December 1987 from civilians paid from Defence Service Estimates who are in occupation of General Pool residential accommodation etc. and the revised rates of licence fee will be effective from 1-7-1990 and the arrears will be recovered in three equal instalments.

From pre-page:

2. The Applicant is an Association comprising of civilian employees of various installations under Ministry of Defence in and around Pune. They are provided with residential accommodation out of Defence Pool located at Indrayani Darshan and Sarvatra Nagar Dehu Road, Pune. The grievance of the member(s) of the Applicant Association arises from the order of the Government of India vide dated 3-3-1992/13-4-1992 regarding revision of flat rate of licence fees for residential accommodation.

3. Heard the argument of both the counsel - Mrs. Nagarkatti for the Applicant and Shri R.K. Shetty for the Respondents and perused the record. The main crux of the argument of the counsel for the Applicant is that prior to IVth Pay Commission, the Government charged the employees residing in the Government accommodation rent which was limited to standard rent of the accommodation provided or 7½ to 10% of the employee's basic pay whichever was less. However, the IVth Pay Commission felt that the existing system of levying rent involved voluminous accounting work in each case. Therefore, the IVth Pay Commission recommended recovery at a flat rate with reference to type of accommodation in order to rationalise the levy in bringing about uniformity throughout India which has been accepted by the Government. The licence fee has been defined in SRO 308 as the sum of money payable monthly in respect of a residence allotted under the rules. The Government has enhanced the flat rate of licence fee vide its order dated 13-4-1992 with effect from 1-7-1990 which is being challenged in this O.A. on the ground that there is a nexus

From pre-page:

between the quantum of H.R.A. and the type of accommodation entitlement of employees etc. It is further contended that the flat rate of licence fees for these types of accommodation is clearly related to H.R.A. payable and is intended as a one time exercise since H.R.A. recoveries remain invariable. It is further contended that the Respondents cannot charge licence fees beyond what is prescribed vide FR 45-A II. She further contends that FR 45-A II prescribes that rates of monthly licence fees towards the cost of ~~construction~~ and plinth area, living area, type of accommodation allotted to employee subject to condition that the amount taken from any employee shall not exceed 10% of the monthly emoluments of the employee which does not include dearness allowance as per FR 45-C and FR 9(21). The Respondents denied various contentions raised by the Applicant and raised a preliminary objection stating that the licence fee is not a service matter under section 3(g) of the Administrative Tribunals Act 1985. In this connection, they draw our attention to Supreme Court decision in M/s. Shri Sitaram Sugar Co. Ltd. v/s Union of India AIR 1990 SC 1277 wherein the Supreme Court has held that "Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgement for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of

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From pre-page:

fact which are conclusive provided that such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact was reasonably based on evidence and whether such findings are consistent with the laws of the land. Price fixation is not within the province of the courts, etc." Though it relates to prices of levy sugar, the ratio of the Supreme Court decision clearly applies to the facts of this case. Therefore, the Tribunal cannot entertain and adjudicate upon the Application of the Applicant and the same is required to be dismissed. Further, the 'licence fee' is not a service matter under Sec. 3 (g) of the Central Administrative Tribunal Act 1985. They draw our attention to another decision of the Supreme Court in Mallikarjuna Rao v/s State of A.P. AIR 1990 SC 1251 wherein the Supreme Court has held that "It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The Special Rules have been framed under Art. 309 of the Constitution. The power under Art. 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Art. 309 of the Constitution. ..." and accordingly

(b)

From pre-page:

in the light of the above, the Respondents submit that the Tribunal has no jurisdiction to entertain and adjudicate upon the present Application.

4. Apart from jurisdiction, they contend by saying that under FR 45 A IV(c)(ii), eleventh edition of Swamy's Compilation of FRs & SRs - Part I, general rules prescribe flat rate of monthly licence fee applicable throughout the country based on the cost of construction and plinth area, living area of the type of accommodation allotted to the employees subject to the condition that the amount taken from any officer shall not exceed 10% of his monthly emoluments. Further, the Respondents have invited our attention to S.R. 324(4) which stipulates that notwithstanding anything contained in the sub rule (1) and (2), the flat rate of licence fee prescribed under FR 45-A-IV (c)(ii), for residences shall be recalculated on the expiry of three years from the date of the last calculation and the recalculations shall be effective from 1st July next following, or from such other date as the President may direct. Therefore, they submit that the O.M. dated 3-3-1992 revising the flat rates of licence fee for residential accommodation and recovery of arrears w.e.f. 1-7-1990 is strictly within the parameters of the aforesaid FR and SR which are statutory regulations under Art. 309 of the Constitution of India. In view of the above, the question of setting aside the O.M. referred to above does not arise.

From pre-page:

5. It is an admitted fact that the revision of licence fee is of periodical nature within the parameters of FRs/SRs. In this FR 45-A, Part II and III and SR 324 are relevant which makes it clear that Government is in basis of its power to revise the licence fee on the capital cost of the repairs of the Buildings and other aspects.

6. As stated earlier, the main thrust of the argument of the Applicant is that 5 years periodical revision is not automatic and mandatory unless there is corresponding repairs, special repairs, additions and alterations etc. which incur expenditure exceeding 5% of the capital cost over a period of 3/5 years. Their grievance is that the colony is not given any facility such as community hall, primary health centre, shopping centre, electricity etc. They had conceded that the revision of licence fee is contemplated by FRs/SRs under certain conditions and these are not fulfilled. The last revision has taken place in 1987 thereupon after expiry of three years the revision in dispute had taken place. Though the order is issued in 1992, it is effective from 1990. It is applicable to those who are in Government accommodation and is made applicable with effect from 1-7-1990 universally and as such there is no discriminational treatment in so far as the Applicants are concerned. It is not the contention of the Applicant that the revision of flat rate applies only to them but it applies throughout India i.e. to those who are in occupation of Central Government accommodation. Admittedly, it is not the case of the Applicant that they have been charged more than 10% of the basic pay; that being the position, it is not open to the Applicant to contend that the

12

From pre-page:

corresponding facilities have not been provided vis-a-vis increase in licence fees. The said contention is not tenable and the same is not sustainable in law. Secondly, the recovery of licence fee with retrospective effect as the earlier revision has taken place in 1987 and that process is a continuous one; therefore after expiry of 3 years revision of flat rate of licence fee has been effected with effect from 1-7-1990 though the orders are issued in 1992 which the President is empowered under FRs and SRs which is not liable to be challenged unless the same is treated as malafide and arbitrary and that is not the issue before us. As stated earlier, the recovery with retrospective effect is strictly within the parameters of FRs and SRs which are statutory requirement framed under Art. 309 of the Constitution.

7. It may be recalled that the power to make a law includes the power to give retrospective effect. The only express limitation imposed upon the power of the retrospective legislation is that contained in Art. 20(1) of the Constitution, that it cannot make any retrospective penal laws; any other law ~~may therefore~~ be made retrospective under the Constitution. There is nothing to debar the legislation/ the President/Governor from giving retrospective effect to a procedural law. In ~~construing~~ a statute, a Court acts on the presumption that the Legislature did not intend to impair the existing rights and obligations as the Legislature itself gives retrospective effect to its enactment and the language is clear, the Court has to give effect to such retrospective operation, however harsh might be its effect.

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3

From pre-page:

8. Regarding payment of licence fee, whether it is a condition of service, the said subject matter has been dealt with by the Full Bench of C.A.T. in Liaquat Ali and Others v/s Union of India in O.A. No. 2684/93 and a batch of 4 cases in a decision delivered by the Full Bench on 29-5-1995 wherein it is held as to whether the allotment of Govt. accommodation is a condition of service and the said contention is rejected by the Tribunal stating that it is neither statutory nor it is a condition of service. It is further observed that the Applicants did not have any vested rights in continuing in the quarters. Keeping in view the ratio of the aforesaid Full Bench decision, it is clear that the licence fee charged by the Respondents cannot be treated as a condition of service though it may be governed by FRs and SRs.

9. In the facts and circumstances of the case, we see no merit in the O.A. and the Application is liable to be dismissed as it does not have any merit both for want of jurisdiction and on merits. The interim relief granted earlier vide dated 2-4-1993 stands vacated. It is open to the Respondents to take appropriate action in accordance with the rules. Accordingly, the O.A. is dismissed with no order as to costs.

M.R.Kolhatkar
(M.R. Kolhatkar)

Member (A)

B.S. Hegde
(B.S. Hegde)
Member (J)