

Central Administrative Tribunal
Principal Bench
New Delhi

T.A.No.128/2013

Order Reserved on: 18.01.2017
Order pronounced on 20.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

NDMC Avam Karamchari Bachao Morcha;
Through its General Secretary
Mahatma Mahto
R/o 66, Palika Gram
Sarojini Nagar
New Delhi – 110 023.

...

Petitioner

(By Advocate: Sh. Amit Kumar)

Versus

1. New Delhi Municipal Council
Through its Chairperson
Palika Kendra, Sansad Marg
New Delhi.
2. Director (Municipal Housing)
New Delhi Municipal Council
Palika Kendra, Sansad Marg
New Delhi.
3. Govt. of NCT of Delhi
Through its Secretary
Department of Land & Building
New Secretariat
I.P.Estate
New Delhi.

4. Govt. of India
Through its Secretary
Directorate of Estate
Nirman Bhawan
New Delhi.

... Respondents

(By Advocate: Ms. Sriparna Chatterjee and Shri Rajneesh Vats)

ORDER

By V. Ajay Kumar, Member (J):

Heard both sides.

2. The applicant filed WP(C) No.2270/2013 before the Hon'ble High Court of Delhi, which was transferred to this Tribunal, and numbered as the present TA No.128/2013.

3. The applicant is NDMC Avam Karmachari Bachao Morcha and represented by its General Secretary, Mahatma Mahto, filed the TA, seeking the following prayer(s)/relief(s):

"a) Issue an appropriate writ, direction or order in the nature of mandamus directing the respondents to ensure strict compliance of rules and get the illegally allotted/occupied accommodation cancelled with immediate effect;

b) Set aside order dated 14.6.2010 issued by the Director (Municipal Housing) being issued without proper approval and authority of the Council of NDMC which is vested with such powers by way of NDMC Act 1994 passed by the Parliament; and

c) Issue an appropriate writ, direction or order in the nature of mandamus directing the Management of NDMC to recover market rents from the concerned officers occupying municipal accommodation illegally for the last many years and causing huge revenue loss to NDMC;

d) Issue an appropriate writ, direction or order in the nature of mandamus or any other appropriate orders directing probe by any other appropriate orders directing probe by an independent agency/CBI into corruption involving out-of-turn allotment made during 2007-08 to 2011-12 as well as illegal occupation of municipal accommodations by outside officers;

Alternatively to pass appropriate orders appointing a fit and proper person if, possible a retired justice of this Hon'ble Court to constitute a commission of a enquiry into the various acts of nepotism and corruption as morefully alleged in the instant Writ Petition with the mandate to submit a comprehensive report, after giving the concern parties an opportunity of being heard before the said commission and to make and file a confidential report upon such enquiry, as aforesaid, before this Hon'ble Court under sealed cover;

e) Issue such other writ, order of direction, as deemed fit in the circumstances of the case in the interest of justice."

4. At the outset, the learned counsel for the respondents submitted that the TA is in the nature of Public Interest Litigation (in short, PIL), and hence, the same is not maintainable before this Tribunal.

5. The Hon'ble Apex Court in **Arun Agarwal v. Nagreeka Exports (P) Ltd. and Another**, (2002) 10 SCC 101 held that the question regarding jurisdiction of the Court was required to be decided as a preliminary issue. Therefore, we are of the considered view that this Tribunal is oblized to decide the question without compelling the parties to undergo the stress of hearing on other merits of the case. Accordingly, we proceed to decide whether this Tribunal is having jurisdiction to entertain the present OA, as a preliminary issue.

6. A bare perusal of the relief claimed in the OA indicates that the applicant-Association has not claimed any specific relief or consequential relief for itself or to any specific member of its Association. The Annexure P-6 letter dated 14.06.2010, quashing of which is sought in the OA, admittedly does not pertains to the service conditions of any of the members of the applicant-Association.

7. In **Girjesh Shrivastava & Ors Vs. State Of M.P. & Ors**, (2010)

10 SCC 707 the Hon'ble Apex Court, held as under:

"16. In the case of **Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others** (1998) 7 SCC 273, a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others**, reported in (2006) 11 SCC 731 (II), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

18. This view was very strongly expressed by this Court in **Dattaraj Nathuji Thaware v. State of Maharashtra and others**, reported in (2005) 1 SCC 590, by pointing out that despite the decision in **Duryodhan Sahu** (supra), PILs in service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in **Duryodhan Sahu** (supra) (Para 16, page 596).

19. Same principles have been reiterated in **Ashok Kumar Pandey v. State of W.B.**, reported in (2004) 3 SCC 349, at page 358 (Para 16).

20. In a recent decision of this Court delivered on 30.8.2010, in **Hari Bansh Lal v. Sahodar Prasad Mahto and others**, (MANU/SC/9654/2010), it has been held that except in a case for a writ of 'Quo Warranto', PIL in a service matter is not maintainable (See paras 6 and 7).

8. In view of the aforesaid settled position of law, and in view of the nature of the relief claimed in the OA, being in the nature of Public

Interest Litigation, the TA is not maintainable before this Tribunal and accordingly, the same deserves to be dismissed.

9. The TA is liable to be dismissed yet on another ground that no OA or TA is maintainable by any Association, without there being any affected employee joined with the Association in filing the OA/TA. Admittedly, the present TA was filed by the Association alone, without there being any affected party, and accordingly, the TA is liable to be dismissed on this ground also.

10. In view of our finding that the present TA is in the nature of a Public Interest Litigation (PIL), and the same is not maintainable, we do not consider it necessary to examine the validity of the impugned proceedings in any manner or the other merits of the TA, and accordingly, we leave it open to the applicant to question it before the appropriate forum, if so advised, in accordance with law.

11. In the circumstances and for the aforesaid reasons, the TA is accordingly dismissed. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)