

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 1745/2018
IA Nos. 1/2018 & 2/2018
CM Nos. 2746/2021,
2863/2019[1/2019] &
2881/2019[2/2019]

Pronounced on 3.06.2022

Indar Krishan Raina and
others

.... Petitioner(s)

Through:- Mr. Sunil Sethi, Sr.
Advocate with
Mr. Navyug Sethi, Advocate

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. Sumeet Bhatia,
Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The petitioners are retired employees of State Bank of India. petitioner No. 1 has retired as Chief Manager on 31.05.2016, whereas petitioner No. 2 as Manager on 30.04.2018 and petitioner No. 3 as Deputy Manager on 30.09.2016. As employees of the Bank, while they were in service, the petitioners were allotted residential accommodation by the Bank. Petitioner No. 1 was allotted Flat No. 16, petitioner Nos. 2 and 3 were

02. The grievance of the petitioners is that the respondent Nos. 2 to 6 in order to oust them have illegally started charging rent at commercial rate from their pension accounts on account of retention of flats by them.

03. The contention of the petitioners is that they are migrants and have suffered the calamity which struck in 1990, due to which the minority community of the Kashmiri Pandit migrated from the Kashmir Valley to Jammu and various other States. A large number of people from the minority community including State and Central Government Employees migrated from Kashmir Valley to Jammu. Petitioners have also migrated to Jammu due to disturbances in the valley and were registered as migrants and were also issued migrant ration cards by the State Government. The State as well the Central Government have allotted residential accommodation to those migrant employees, who were forced to leave Kashmir Valley by abandoning their moveable and immoveable property.

04. It is submitted by the petitioners that the State Government in the year 1995 contemplated a move to oust the migrant Government Employees both in-service as well as retired, occupying government residential accommodation. This compelled the migrant employees both retired as well as in-service to invoke the extra-ordinary writ jurisdiction of this Court by filing writ petition titled J. L. Koul and others v/s State of J&K and others.

This petition was dismissed and against the order of dismissal, an LPA (OWP) No. 50/1997 titled J. L. Koul and others v/s State of J&K and others

appeal by directing respondents to frame rehabilitation scheme for Kashmiri Pandits within a period of six months and place the same on record. This appeal was disposed of on 27.10.2009 by holding that:

“8. The aforesaid affidavit makes it clear that the State Authorities have framed the rehabilitation scheme and for implementation of the same, it got the resources also. In such a fact situation no further action/direction is required.

9. In view of the above affidavit/undertaking given by the State and after hearing Mrs. Purnima Bhat Kak, Ld. Counsel for the appellants and Mr. Anis Suhrawardy, Ld. Counsel for the State, we dispose of the appeal with a pious hope that State shall take all endeavors to rehabilitate the person who have been victim of terrorism and till the State is able to rehabilitate and provide the appropriate accommodation to 31 appellants-retirees/oustees, they shall continue to possess the accommodations which are in their respective possession on this date.”

06. The contention of the petitioners is that they are similarly situated as the petitioners in the aforesaid petition and the observations/findings of the Hon’ble Apex Court in the J. K. Koul’s appeal apply to them also. They are migrants from Kashmir and, thus, fully entitled to reside in the residential accommodations provided to them by the respondents. The charging of commercial rate of rent from the petitioners by the Bank which was forcibly debited amount of rent at commercial rate from the accounts of the petitioners, the same is bad, arbitrary and is required to be set aside.

07. The petitioners also submit that they do not have any other

buying a house and is likely to vacate the accommodation allotted to him in near future. The illegal deduction of rent at commercial rates from the petitioners, who are retired officials and have been provided accommodation on account of their being migrants by the respondents is discriminatory and violative of Article 14 of the Constitution of India. The petitioners, thus, seeks a direction to the respondents to allow them to occupy the flats allotted to them by the respondents till the appropriate policy for allotment of residential accommodation to Kashmiri Migrants is framed and also seek a direction to respondents to refund the commercial rent deducted from the pension accounts of the petitioners and not to make any further deductions and also to lift the lien from the pension/bank saving accounts of the petitioners.

08. Mr. Sumeet Bhatia, learned counsel for the respondents submit that petitioners are not entitled to invoke extra ordinary jurisdiction of this Court as they have not approached this Court with clean hands. It is stated that petitioner No. 1 has availed housing loan amounting to Rs. 20.00 lacs from State Bank of India and owns Flat No. 82-F, Second Floor, Block-R, Dilshad Garden, new Delhi. Petitioner No 2 has also availed housing loan amounting to Rs. 45.00 lacs from the State Bank of India, Batote and owns Apartment/Flat No. 503, Fifth Floor, Block-3F, Category A, Maya Garden, Phase-III, VIP Road, Village Bishanpura within the limit of M.C. Zirakpur

Tehsil Dara, District Mohali. It is also submitted that the flats were

two months after retirement and thereafter they were charged commercial rent for the same.

09. The State Bank of India in terms of HR Handbook, Volume 1 issued by the Home Resources Department, SBI under Clause 19.11.1 Retention of Accommodation/Car/Telephone. It is stipulated that henceforth the officers may retain the accommodation (including designated house), telephone and car up to the maximum of two months from the date of normal retirement without any approval. Any retention beyond the permitted period would be dealt with as per instructions like recovery of commercial rent. Since the petitioners have not vacated the premises as per the guidelines, they were being charged commercial rent.

10. Though reliance has been placed by the petitioners on the judgment in case titled, '**J. L. Koul and others V. State of J&K and others**' but the same is not applicable to them. The petitioners were not allotted the accommodation on the basis of their being migrants from the Valley rather the accommodation was allotted to them by virtue of their being serving employees of the Bank on nominal license fee. The judgment in J. L. Koul's case (Supra) was applicable to those migrants who had no accommodation available for residence and were unable to occupy their own houses. The petitioner Nos. 1 and 2 are possessing their own accommodation.

11. The appellants were permitted to retain their respective accommodation at Jammu for safety reasons. However, the petitioners in

process of buying a house and is likely to vacate the accommodation allotted to him in near future which he must have bought by now. The petitioners' contention is not that they have no other residential accommodation rather they submit that they have no accommodation in Jammu and, therefore, the respondents are under obligation to allow them to occupy the residential accommodation as per the principle adopted by the State Government.

12. As per the statement of the respondents, the petitioners have obtained the loan facility and bought the flats in Delhi and Mohali. This has not been denied by the petitioners. The petitioners are, thus, possessing the residential accommodation as per their choice in Delhi and Mohali and still retained the official accommodation allotted to them at nominal charges denying the same to those other serving employees, which is required by them to facilitate in discharge of their duties.

13. The issue with regard to retention of Government accommodation, to the Kashmiri migrant employees came up for consideration before the Hon'ble Supreme Court in **Union of India and another V. Omkar Nath Dhar**; Civil Appeal No. 6619/2014 decided on 05.08.2021. The Hon'ble Supreme Court while considering the same has held that:

“13..... This Court accepted the Rehabilitation Scheme produced on affidavit by the Chief Secretary of the State and thereafter expressed a pious hope. This Court did not decide

towards rental and incidental expenses would be given to those who may not be accommodated in transit accommodation. Thus, even if they have not been given alternate accommodation, the Scheme approved by this Court contemplates cash compensation towards rental and incidental expenses. The compassion could not be extended in perpetuity and has to end some day or the other. Therefore, seeking parity with 31 retirees who were granted benefit in J.L. Koul is not tenable. The applicants are occupying the government accommodation at the cost of other Government servants who are waiting in queue for allotment of a government accommodation to discharge their official duties. The compassion shown to Kashmiri Migrants has to be balanced with the expectations of the serving officers to discharge their duties effectively. The Government accommodation is meant for serving officers and cannot be taken as a recourse to stay in Government accommodation for the life time of the Government servants or his/her spouse.

14. The Office Memorandum issued on 28.3.2017 was in terms of the directions of the High Court of Delhi. Such order of High Court has not been approved by this Court vide order dated 5.8.2021. Therefore, the entire basis of issuance of Office Memorandum falls flat as the very foundation of such Scheme stands knocked down.

15. We find that the Office Memorandum allowing government accommodation to the retired Government employees who are Kashmiri Migrants cannot meet the touchstone of Article 14 of the Constitution of India. The Government houses/flats are

other Government employees or public figures. There cannot be any justification on the basis of social or economic criteria to allow the Kashmiri Migrants to stay in Government accommodation for indefinite long period.”

14. The petitioners, thus, do not hold any indefeasible right for allotment of Government accommodation. The Government accommodation is meant for serving officer and not for the retirees.

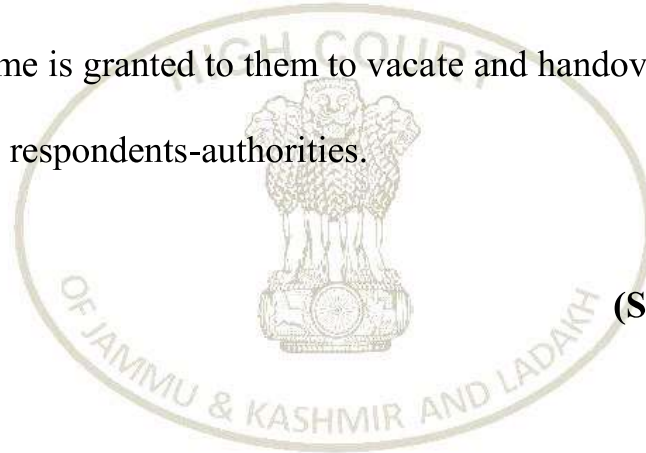
15. As has been held in O. N. Dhar’s case (supra), the petitioners cannot be said to have enforcing their right to shelter, since they already are having alternate accommodation. This apart, the petitioners have concealed the all these material facts from this Hon’ble Court while filing the writ petition.

16. In **AIR 1994 SC 853, S.P Chengalvaraya Naidu vs Jagannath**, it has been held as under :-

“As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play ‘hide and seek’ or to ‘pick and choose’ the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning

judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

17. For the reasons mentioned above, there is no merit in this petition; the same is, accordingly, **dismissed** along with connected application(s). However, considering the fact that all petitioners are retired employees, as such, 30 day's time is granted to them to vacate and handover the possession of the flats to the respondents-authorities.



(Sindhu Sharma)
Judge

JAMMU
3.06.2022
SUNIL-II

Whether the Judgment is speaking : Yes
Whether the Judgment is reportable : Yes