

[2021] 6 S.C.R. 1056

A UNION OF INDIA & ANR
v.
OMKAR NATH DHAR (D) THROUGH L.Rs.
(Miscellaneous Application No. 1468 of 2021)

B In
(Civil Appeal No. 6619 of 2014)

OCTOBER 07, 2021

[HEMANT GUPTA AND A. S. BOPANNA, JJ.]

- C *Government Accommodation – For retired Government employees who are Kashmiri Migrants – Propriety – Held: Government houses/flats are meant for serving Government employees – There cannot be any justification on the basis of social or economic criteria to allow the Kashmiri Migrants to stay in*
- D *Government accommodation for indefinite long period – To say that they would return to the Valley when the situation will improve is an open-ended statement capable of being interpreted in different ways – The satisfaction of improvement of situation would be widely different by the erstwhile Government employees and the State –*
- E *But in no case it can be countenanced that the former Government employee, may be a Kashmiri Migrant, is entitled to stay in a government accommodation for an indefinite period – Impugned Office Memorandum allowing government accommodation to retired Government employees who are Kashmiri Migrants cannot meet the touchstone of Art.14 of the Constitution, and accordingly struck down as being totally arbitrary and discriminatory.*
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Union of India v. Vijay Mam 2012 SCC OnLine Del 3218 – referred to.

G CIVIL APPELLATE JURISDICTION: Miscellaneous Application No.1468 of 2021.
In
Civil Appeal No.6619 of 2014.

H From the Judgment and Order dated 07.07.2011 of the High Court of Punjab and Haryana at Chandigarh in L.P.A. No.1128 of 2011(O&M)

With

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Miscellaneous Application No.1556 of 2021 In Civil Appeal
No.6619 of 2014 and Miscellaneous Application No.1573 of 2021

In

B

Civil Appeal No. 6619 of 2014

Ms. Madhvi Divan, ASG, Bimal Roy Jad, Sr. Adv., Ms. Riddhi Jad, Ms. Shikha Dixit, Dr. Brij Bhushan K. Jauhari, Ms. Purnima Jauhari, Shiv Sagar Tiwari, Ms. Aakansha Tiwari, Kishor Kumar Mishra, Aditya Mishra, Ashutosh Bansal, Sanjay Sharma, Niranjan Moharana, Surya Kant Jena, Ms. Preeti, Ms. Seema Bengani, Rajan Kumar Chourasia, Ms. Vimla Sinha, Amrish Kumar, Yoginder Handoo, Ritesh Khatri, Advs. C for the Appearing Parties.

The Order of the Court was passed by

HEMANT GUPTA, J.

1. This order shall be read with in continuation of order dated 5.8.2021 and shall dispose of the three applications filed by the occupants of the Government accommodation in Delhi and in National Capital Region on the strength of an order passed by the Delhi High Court in a judgment reported as *Union of India v. Vijay Mam*¹, including an application filed by the legal heir of the deceased respondent Omkar Nath Dhar for recall of judgment of this Court passed on 5.8.2021.

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2. In M.A. No. 1468 of 2021, recall is sought on the basis that the respondent had died on 16.3.2020 and this Court had passed an order without seeking substitution of the legal representatives of the deceased respondent.

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3. All these applications are filed by the applicants who are in possession of government accommodation in Delhi and/or National Capital Region in terms of policy framed by the Central Government on 28.3.2017 as modified on 19.5.2017.

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4. In *Vijay Mam*, there was a direction that the Central Government was to frame a rehabilitation scheme specifically for such retired employees like the respondents herein, specifying the terms and conditions on which such persons would be entitled to rehabilitate/alternate residence, which may include the term that these respondents or family members do not have any residence in any part of the country. The

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¹ 2012 SCC On Line Del 3218

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- A Office Memorandum is the policy circulated on 28.3.2017 in pursuance of the directions of the High Court of Delhi. The relevant extract from the Office Memorandum reads thus:

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OFFICE MEMORANDUM

- B** Subject: Scheme for providing alternate accommodation etc. to retired Central Govt. employees belonging to the State of Jammu & Kashmir holding General Pool residential accommodation in Delhi in terms of the direction of Hon'ble High Court of Delhi.

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4. In view of direction of the Hon'ble High Court of Delhi, a scheme has now been formulated by Ministry of Urban Development, in consultation with Ministry of Home Affairs, for providing alternate residence to retired Central Govt. employees belonging to State of Jammu & Kashmir who are possessing General Pool Residential Accommodation (GPRA) in Delhi and who meet the specified terms and conditions to qualify as "Kashmiri migrant". The Scheme is enclosed at Annexure.

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E Annexure

Scheme for providing alternate accommodation etc. to retired central Govt. employees belonging to the State of J&K holding General Pool residential accommodation in Delhi in terms of the direction of Hon'ble High Court of Delhi

- F 1. Terms and conditions for qualifying a ‘Kashmiri migrant’ under this scheme

- (i) The applicant should be a retired Central Government employee or his/her spouse (in case the employee is dead), and the applicant should be in possession of a General Pool Residential Accommodation (GPRA) in Delhi allotted by the Directorate of Estates, Ministry of Urban Development on the date of filing the application.

- H (ii) Applicant should be a permanent resident of State of Jammu and Kashmir and should be an erstwhile domicile of Kashmir Division excluding Ladakh and Kargil districts.

(iii) Applicant was an employee . Of the Central Government and was posted in Srinagar, J&K at the relevant time, and he was transferred by the Central Government from Srinagar to Delhi on security ground after 1st November, 1989. A

(iv) He/She' or his/her family have no other residence in any part of the country. B

(v) Though he/she has retired, he/she is not in a position to go back to his/her native place because condition are still not favourable for his/her safe return back to the valley.

2. Scheme C

i). The retired Kashmiri migrants (who were litigants in the cases decided by Hon'ble Delhi High Court) holding residential accommodation from General Pool shall be provided retention in the quarters in their possession at present.

ii) Such retired Kashmiri migrants, who meet the specified terms and conditions to qualify as a 'Kashmiri migrant' would be accommodated in Delhi for first five years starting from the date of their retirement and thereafter be shifted to NCR. The scheme would apply to those retired Central. Govt. employees belonging to State of J&K who have been transferred by the Central Govt from Srinagar to Delhi on security grounds after 1st November, 1989. D E

iii) The quarters may be held by the retired government employees till his/her demise or demise of his/her spouse whichever event takes place later, subject to extension of this scheme and the condition that the retired government employee/spouse doesn't procure a house in any part of India subsequent to their availing of this scheme. Extension of this scheme will be granted at par with the extension of the scheme of retention of GPRA at the last place of posting to civilian Central Govt. Employees posted to the State of J&K. F G

iv) The incumbent or his/her spouse, as the case, may be, will have to submit a life certificate once a year (in November) to the Directorate of Estates in the proforma prescribed for Pensioners for the purpose of availing benefits of the Rehabilitation Scheme for Kashmiri migrants. H

- A 3. Documentary Proof to be submitted for examining the request on case to case basis.
- When a claim is received for consideration for providing alternative residence under the direction of the Hon'ble High Court, the claimant must provide adequate documentary proof in support of his claim that his/her case falls within the parameters of those retired Kashmiri migrants who were granted relief by the Hon'ble Court as set out in para 30 of the judgment. Following documents may be collected from them;—
- C a) Proof of posting in Srinagar, Jammu & Kashmir in Central Govt. office during relevant period (documentary proof issued by the employer)
- b) Proof of transfer from Srinagar to Delhi during the relevant period, i.e. after 1st November, 1989 (copy of transfer order/letter)
- c) Proof that he/she or his/her family have no other residence in any part of the country. (copy of service book to ascertain if he has taken HBA from the Government)
- D d) A life certificate from the incumbent/spouse, as the case may be, once per year (in November) in the proforma prescribed for the Pensioners for the purpose of availing benefits of Rehabilitation Scheme for Kashmiri migrants.
- E 4. The claim with the documentary proofs received from such retired Kashmiri migrants may be processed in the Allotment Section on case-to-case basis and their entitlement to an alternative residence be decided in the light of the specified terms and conditions and the documentary proof produced by them.
- F Alternative residence should be provided only after it is established from documentary proof that they fulfill the specified terms and conditions: Those who do not meet these conditions may be asked to vacate the quarters as per the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971'. Damage charges may also be made applicable on them for retaining the quarters beyond the permissible period.”
- G 5. Clause 2(i) of the Scheme was restricted to grant of benefits to retired Kashmiri Migrants who were litigants in the cases decided by the High Court of Delhi holding residential accommodation from the General Pool. However, such conditions were modified on 19.5.2017 to

clarify that the Office Memorandum dated 28.3.2017 is applicable equally A to all retired Central Government employees belonging to the State of Jammu & Kashmir who are holding General Pool residential accommodation in Delhi, irrespective of whether they were litigants before the Delhi High Court.

6. Mr. Bimal Roy Jad, learned senior counsel appeared for the B applicants in M.A. Nos. 1556 of 2021 and 1573 of 2021 and vehemently argued that this Court on 5.8.2021 held that the directions issued in *J.L. Koul* were under Article 142 of the Constitution of India but in fact, the directions were not issued under Article 142 of the Constitution of India but while deciding the rights of the Kashmiri Migrants to residential accommodation. It was further argued that the Kashmiri Migrants form C a different class as victims of terrorism, therefore, the same were dealt with while keeping in view peculiar hardships faced by them. Since, neither the transit accommodation is available for them nor they can go to their houses which stand either occupied by the local population or destroyed, therefore, the Kashmiri Migrants have been treated as a class apart, particularly the applicants who were working in the critical intelligence offices. Thus, in light of such background, the Scheme was D framed.

7. It was argued that 31 Kashmiri Migrants were given protection E in *J.L. Koul*, therefore, similar protection was accorded by the High Court of Delhi to the 54 Kashmiri Migrants. As per written submissions filed by the appellants, 80 Kashmiri Migrants are in possession of Government accommodation in Delhi and 3 in Faridabad.

8. To a question put to Mr. Jad, it was admitted by him that some F of the migrants have retired many years ago but some might have retired in 2016, 2017 and 2018 as well. Learned counsel argued that since the Scheme provides a humanitarian approach to the problems faced by the Kashmiri Migrants, therefore, the order passed by this Court needs to be recalled. It was argued that the judgments referred to by this Court such as *Lok Prahari*, *S.D. Bandi* and *Shiv Sagar Tiwari* arise in G different circumstances and are not applicable to the displaced Kashmiri Migrants.

9. Mr. Jad submitted that 31 retirees are still in occupation of H Government accommodation, therefore, the same benefit should be granted to the other occupants in Delhi and/or National Capital Region. It was also submitted that the judgments referred to by this Court in *Lok*

- A **Prahari** were in respect of prominent public figures such as Chief Ministers, therefore, such directions in the aforesaid referred cases would not be applicable to the present applicants who are victims of terrorism.
10. On the other hand, Ms. Madhavi Divan, learned Additional Solicitor General of India pointed out that the Government has given various benefits to Kashmiri Migrants including grant of financial assistance, financial package for repairs and renovation of the houses, jobs, ration etc. It was also argued that with the abrogation of Article 370 from the Constitution of India, the Kashmiri Migrants have started moving back to the Kashmir Valley. Reference was made to the statement of Hon'ble Minister of State in the Ministry of Home Affairs on the floor of the House on 17th March 2021 that nearly 3800 persons have returned back to the Kashmir Valley in the last few years to take up the PM package jobs. 520 migrants have returned to Kashmir for taking up the jobs that have been provided to them under the Rehabilitation Package post abrogation of Article 370. Another nearly 2000 migrants are also likely to return under the same policy in the year 2021 on successful completion of the selection process. The Parliament was also informed that Government has devised policies for Return and Rehabilitation of Kashmiri Migrants under the Prime Minister's Packages in the year 2008 and 2015. The various components of the policies included assistance at the rate of Rs. 7.5 lacs for repairing fully or partially damaged house; Rs. 2 lacs for dilapidated/ unused house and Rs. 7.5 lacs for purchase/ construction of a house in group housing societies for those who sold their properties during the period after 1989 and before the enactment of JK Migrant Immovable Property Preservation, Protection and Restraint of Distress Sale 1997. Cash relief is also being provided which has been raised to Rs. 13,000/- per family at the rate of Rs. 3250/- per person. 6,000 posts were announced under PM Packages and nearly 3,800 Kashmiri Migrants have been rehabilitated directly by providing government employment. In respect of transit accommodation, it was stated as under:
- G "In order to provide accommodation to the 6,000 Kashmiri Migrants who are getting employed in the Government of Jammu and Kashmir in the valley, 6,000 Transit Accommodation units are being constructed for Kashmiri Migrants Employees in various districts of Kashmir Valley at an estimated cost of Rs.920 Cr. So far, 1,025 dwelling units have already been constructed which include 721 dwelling units in the district of Budgam, Kulgam,
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Kupwara, Anantnag and Pulwama. Another 1,488 units are under construction and land has been identified for about 2444 units.” A

11. We do not find that any modification is required to the order dated 5.8.2021. In **J.L. Koul**, an affidavit of Chief Secretary of the State was filed disclosing that out of 54 appellant/Migrants, 23 had already vacated Government accommodation whereas 31 Migrants were still occupying the Government accommodation. The appellants were allotted residential accommodation at Jammu in the year 1989-1990 being Government servants. The writ petitions were filed before the High Court in the year 1995 which were decided by the learned Single Bench. Aggrieved against the directions issued by the learned Single Bench of the High Court, the occupants filed intra-court appeal before the High Court which was dismissed. Still further, appeal was filed before this Court. B C

12. This Court noticed that during the period of 12 years when the matter remained pending, directions were issued to prepare a Rehabilitation Scheme which was ultimately prepared and placed on record by the Chief Secretary of the State. Accepting the Scheme, it was held that no further action/direction was required. However, the appeal was disposed of “*with a pious hope that the State shall take all endeavours to rehabilitate the persons who have been victim of terrorism and till the State is able to rehabilitate and provide the appropriate accommodation to 31 appellant retirees/oustees, they shall continue to possess the accommodations which are in their respective possession on this date.*” D E

13. We do not find any merit in the argument that directions in **J.L. Koul** were not under Article 142 of the Constitution of India. 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 any question of law or fact but merely expressed a compassionate view to alleviate the difficulties being faced by Kashmiri Migrants. The Rehabilitation Package approved by this Court itself contemplated that transit accommodations were being constructed at three sites but if such transit accommodation was not available, Rupees One Lakh per family 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 F G H

- A 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.
- B 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 meant for serving Government employees. Post retirement, the government employees including Kashmiri Migrants are granted pensionary benefits including monthly pension. The classification made in favour of Government employees who were Kashmiri Migrants stands on the same footing as that of 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.

16. To say that they would return to the Valley when the situation will improve is an open-ended statement capable of being interpreted in different ways. The satisfaction of improvement of situation would be widely different by the erstwhile Government employees and the State. But in no case it can be countenanced that the former Government employee, may be a Kashmiri Migrant, is entitled to stay in a government accommodation for an indefinite period. Thus, we are unable to uphold the Office Memorandum and strike it down as being totally arbitrary and discriminatory.

17. In Para 2(ii) of the Scheme, Kashmiri Pandits were to be accommodated in Delhi for first five years starting from the date of their retirement and thereafter be shifted to National Capital Region. Thus, we find it reasonable if Kashmiri Migrants are allowed government accommodation for a period of three years from the date of retirement so as to make alternative arrangements within such period. If an alternative accommodation is not available for them at their instance, they are at liberty to move to the transit accommodation or to avail cash amount in lieu of transit accommodation. Thus, a government employee who is a Kashmiri Migrant would not be entitled to retain Government accommodation for a period exceeding three years, may be in Delhi or in the National Capital Region or for that matter anywhere in the country. A
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18. The three-years period can also be considered as cooling off period for the officers who were in active intelligence work so that they can resume normal life but the excuse of once working for intelligence agency is not a valid ground to occupy the Government accommodation for indefinite period. D

19. In view thereof, we do not find any merit in the present applications. The same are dismissed. However, time granted to Omkar Nath Dhar, since deceased, to vacate the premises is extended upto 30.11.2021. The action taken report by the Union shall be filed on or before 15.12.2021. The liberty is given to the Union to file an application for modification of the order in respect of the 31 retirees as well who are covered by the judgment in **J.L. Koul.** E