Supreme Court of India
The State Of West Bengal & Ors vs Ranbindra Nath Sengupta & Ors on 31 March, 1998
Author: G Ray.
Bench: G.N. Ray, K. Venkataswami

PETITIONER:
THE STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:
RANBINDRA NATH SENGUPTA & ORS.

DATE OF JUDGMENT: 31/03/1998

BENCH:
G.N. RAY, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

THE 31ST DAY OF MARCH, 1998 Present:

Hon'ble Mr. Justice G.N. Ray Hon'ble Mr. Justice K. Venkataswami A.K. Mitter, Additional Solicitor General, Joydeep Kai, Rana Mukherjee, Goodwill Indeevar, Advs., with him for the appellants.

M.C. Bhandare, Sr, Adv., Ranji Thomas and S. Menon, Advs.. with him for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered: G.N. RAY. J.

Leave granted, Heard learned counsel for the parties. This appeal is directed against Judgment dated 17.5.1994 passed by the Division Bench of Calcutta High Court in F.M.A.T. No. 1966 of 1992 allowing the appeal and setting aside the judgment of the Single Bench of the said High Court in the Writ Petition being Civil Rule No. 1136. (W) of 1990.

The aforesaid writ petition was made by the respondents Rabindra Nath Sengupta and other petitioners being employees of the State Government who had been allotted government flats and had been paying assessed amounts for such occupation and were enjoying the House Rent Allowance.

In order to appreciate the rival contentions of the parties it will be appropriate to note certain facts. After the submissions of Third Pay Commission's Report, the West Bengal Service (Revision of Pay and Allowance) Rules, 1990 (hereinafter referred to as ROPA Rules) was published, In the writ petition being CR No. 11360 (W) of 1997, the writ petitioners challenged the provisions of House Rent Allowance in the ROPA Rules and the Notification issued in this regard. The ROPA Rules provided for House Rent Allowance to the following effect:-

> "House Rent Allowance: With effect from the 1" January, 1988 the House Rent Allowance admissible to a Government employee shall be 15% of basic pay subject to a maximum of Rs.800/- per month. The ceiling of the House Rent Allowance drawn by husband and wife taken together was also been raised to Rs. 800/- per month. The allowance may be drawn, without reference to quantum rent paid, by all Government employees (other than those provided with accommodation owned/hired by Government) without requiring them to produce rent receipt. They should however be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards rent. House Rent Allowance at the above rate shall also be paid to Government employees living in their own houses, subject to their furnishing a certificate that they are paying/contributing towards house of property tax or maintenance of the house. Pending fixation of licence fees according to the system recommended by the Pay Commission, the drawal of House Rent Allowance by Government employees provided with accommodation owned/hired by Government and recovery of licence fee from them shall be regulated as follows:-
>
> (1) For those employees living in flats for which assessment of rent has been made and the occupier pays assessed rent as licence fee and draws usual house rent allowance the drawal of house rent allowance shall be further limited to the actual assessed rent allowance shall be further limited to the actual assessed rent paid.
>
> (2) For those employees paying licence fee as percentage of pay, the recovery shall be frozen at the level at which the licence fee was recovered from the pay bills for December, 1989 in the unrevised scale.
>
> All other conditions regarding drawal House Rent Allowance by Government employees and recovery of licence fee from them shall, in so far as they are not inconsistent with these decisions, continue to hold good."

It may be stated here that till 1994, the occupation of housing estates belonging to the State Government was regulated by the West bengal Premises (Tenancy Regulation) Act, 1976. The amount assessed for occupation of Government housing estates was termed `rent'. Previously, some dispute about the House Rent Allowance for

occupiers of Government flats were raise in writ petition being CR No. 1527(W) of 1973. (Sri Deba Prasad Mukherjee vs. The Financial Commissioner as Secretary, etc.) Such Writ Petition was disposed of by the Calcutta High Court by order dated 28.1.1996 passed by consent of parties in the following terms:-

"Upon the petitioner being agreeable to pay assessed rent calculated as per relevant principles for such occupation, the petitioners will be entitled to compensatory house rent allowance in accordance with Rules."

The department of housing, Government of West Bengal issued a memorandum on 28th January, 1978 laying down that the Government employees occupying accommodation provided to them by the Housing Department of State Government in the rental housing estate, meant exclusively for the State government employees, should have option either to pay "assessed rent" that may be fixed by the Government in accordance with the accepted principles and to draw the admissible house rent allowance or to pay a fixed percentage of their pay as rent and forego the house rent allowance. It is the case of the writ petitioner that they had availed the option of paying the assessed rent and drawing admissible house rent allowance.

A second opportunity to exercise such option was given to the government employees occupying flats of the Government Housing Department in 1984, the West Bengal Premises (Regulation and Occupancy) Act 1984 came into force. Under the said act, the occupation charge for such government flats was termed `licence fee' instead of an `assessed rent'.

The contention raised in the writ petition (CR 11360 (w) of 1990 was inter alia that refusal by the government to grant house rent allowance to the writ petitioners at per with government employees in occupation of private rented houses or personal accommodations was not only contrary to the decision rendered by consent in C.R, 1527 (W) of 1973 but also contrary to the policy regarding house rent allowance being persistently followed by the State Government for at least the decade. it was contended that the government employees who had been living in privately rented accommodations or in their own accommodations were entitled to 15% of their pay as house rent allowance per month subject to the ceiling of Rs. 800/- Irrespective of whatever rent or expenses being incurred by them for such private or personal accommodation. Denial of such privileges to the writ petitioner in occupation of flats in government housing estates amounted to hostile discrimination not being informed by any valid reason.

Such contentions of the writ petitioners were opposed by the State Government by contending that government employees living in government accommodation had always been treated as a separate class distinct from government employees either living in privately rented accommodation or in personal accommodations. Such distinction was not unreal but based on reasonable criteria. It was also contended that the Third Pay Commission had gone into the question referred to it about the complications, bifurcations, division of payment and drawal of house rent allowance by government employees living in government accommodation. The Pay Commission addressed to itself such question and made its recommendation as to how house rent allowance would be paid to

government employees occupying government flats. Such recommendation was accepted and ROPA rules were framed. It was further contended that as a matter of fact, the policy adopted by the State Government for payment of house rent allowance is less rigid than that of the Central Government where not only no house rent allowance was allowed to these residing in government accommodation but such employees were required to pay rent/licence fee. The State Government on the contrary, has allowed the employees residing in Government accommodation to be paid house rent allowance to the extent of actual rent licence fee paid. it was contended that the writ petitioner, as a matter of fact were residing in rent free accommodations because they were entitled to reimbursement of whatever amount of licence fee required to be paid for occupying flats in the Government Housing Estates. It was also contended that licence fee for occupation of Government flats by the Government employees was not only very reasonable but quite low compared to rent for similar accommodation in private houses. Precisely for the said reason no government employees had desired to leave government accommodation for shifting to private accommodation on the score of alternative cheaper accommodation.

The Single Bench of the High Court dismissed the writ petition by holding inter alia that the writ petitioner did not controvert. the statement on behalf of the State Government that the policy of house rent allowance of the State Government was more liberal and beneficial to the employees than the policy followed by Central Government and the impugned house rent policy of the State Government and the impugned house rent policy of the State Government was not unreasonable. The learned Judge has specifically indicated that the writ petitioners did not contend that they had been living in government accommodation, the rental of which, if in private accommodation, would have been less than 15% of their emoluments. The learned Judge also held that the Government was competence to revise the policy decision regarding payment of house rent allowance and it was not bound by the earlier policy decision or by the decision in the earlier writ petition since disposed of by consent of parties.

As aforesaid, such decision of the Single Bench was assailed before a Division Bench of the High Court in FMAT No. 1966 of 1992 and by the impugned judgment, the Division Bench has allowed the Writ Petition by holding inter alia that the State Government had also let out government flats to private persons on rental basis and it was not disclosed what special benefits were given to the government employees in service when allowed to occupy government flats which were not given to the members of public when allowed to occupy government flats on rent. The Division Bench has held that in this case, the State Government has failed to make out any reasonable basis for different treatment to government officer in occupation of their personal accommodations or accommodations arranged with private persons and the government employees occupying government flats on payment of assessed licence fee. It has also been held that the actum of giving some concession in the matter of fixation of licence fee to the government employees occupying government flats is wholly irrelevant and "if payability of the rent is not the factor for the purpose of granting house rent allowances, in that event, making some concession in the matter of assessment of rent payable by the second category of the State Government employees is not at all a relevant consideration for the purpose of making a discrimination. If the object of granting house rent allowances was intended to reimburse the house rent paid or payable by the employees wholly or in part, in that even this classification could have been said to be reasonable and such classification

could have same nexus with the object sought to be achieved. But those who have no liability to pay rent and those who pay a nominal amount as rent and on the contrary, get a lumpsum amount as house rent allowances, which is not a compensation nor reimbursement, cannot be said to be a different group from the other.". The Division Bench by allowing the writ petition directed the State Government not to make any discrimination between the government employees in the matter of payment of house rent allowances.

Mr. A.K. Mitter, learned Additional Solicitor General appearing for the appellants, has submitted that for the purpose of house rent allowance, the State Government employees have been classified into categories under ROPA Rules, namely,

i) These employees who are provided with accommodation owned/hired by the State Government will get House Rent Allowance (HRA) limited to the actual rent/licence fee.

ii) Those employees who are not provided with the accommodation in flats hired/owned by the State Government will get HRA at the rate of 15% of basic pay subject to maximum of Rs.800/- per month and will have to bear the accommodation expenses.

The learned Solicitor has submitted that such classification was in existence since 1948. For the first time in 1978, by an executive order it was provided that the State Government employees will get full HRA out of which they would pay the charges for their accommodation. The Third Pay Commission considered various aspects of HRA and came to the finding that the principle of HRA as introduced by the executive order in 1978 had introduced an element of unjust profit to the government employees who had been provided with government accommodation and there had been great demand or government accommodation made available at very low rate.

The learned Solicitor has contended that in order to satisfy the test of reasonable classification, two conditions must be fulfilled as indicated by the Division Bench of the High Court, namely, such classification must be founded on intelligible differentia and it would also have a rational nexus to the object of the scheme of HRA.

The learned Solicitor has submitted that the HRA, is in lieu of accommodation not made available to the employees and HRA is not a matter of right. In support such contention, reference has been made to the decision of this Court in Director, Central Plantation Crops Research Institute, Kesaragod and Ors. Vs. M. Purushothaman and Ors. (1995 Suppl. (4) SCC 633). The learned Solicitor has contended that there is intelligible differential between two groups of government employees, namely, government employees provided with accommodation in government flats and employees who have not been so provided.

The learned Solicitor has also submitted that the impugned principle of HRA has been formulated on the basis of advice by an expert body like Pay Commission which took into consideration various aspects of HRA. The policy decision is in the domain of executive authority of the State Government. So long such policy decision is not arbitrary, capricious and based on no reason thereby offending Article 14 of the Constitution, the Court should not outstep its limit and tinker with the policy

decision of the State Government. In the connection, reference has been made to the decision of this Court in M.P. Oil Extraction and Anr, Vs. State of M.F. and Ors, (1997 (7) SCC 592).

The learned Solicitor has further submitted that the writ petitioners have alleged that some o f the government employees who have not been provided with government accommodation are paying less than the amount received as HRA for their private accommodations. The learned Solicitor has contended that particulars or instances in support such contention have not been given by the writ petitioners. Even if in some cases, some government employees are required to pay for their private accommodations at the rates less than the amounts receivable by way of HRA, such few instances cannot affect the policy decision. The fortuitous circumstances, even in a few cases, under which some government employees not being provided with government accommodation may gain pecuniary advantage, cannot affect the HRA policy which is otherwise reasonable and not wholly capricious and arbitrary.

The learned Solicitor has submitted that although the Division Bench has correctly indicated the import of Article 14 of the Constitution in the matter of hostile discrimination but it has failed to appreciate the fact situation in this case and has proceeded erroneously on the footing that the government employees being given full HRA for not being provided with government accommodation stand on advantageous position than the government employees provided with government accommodation and therefore not being paid the full HRA and such discriminatory treatment to two sets of government employees offends Article 14 and such discrimination does not conform to reason.

The learned Solicitor has contended that under the West Bengal Government Premises (Tenancy Regulation) Act, 1976, the government premises were defined as premises owned by the State Government or by the government undertaking. The grounds of termination of tenancy were enumerated in Section 3. Cessation of employment under the State Government was not a ground for termination of tenancy. The State buildings which were thrown open to the public for residential accommodation, were not allotted to the occupant qua government employees. Such position was substantially altered by the West Bengal Government Premises (Regulation of Occupancy) Act, 1984. Section 24 of the 1984 Act given an overriding effect to the said Act and Sub-Section 2 of Section 24 expressly provides that the West Bengal Government Premises (Tenancy Regulation) Act. 1978 shall not apply to the government premises. The Preamble of the said 1984 Act indicates that there are government premises meant for a employees of State Government only and it was necessary to prevent unlawful occupation of such premises. The `State premises' means any premises belonging to or taken on lease or licence or requisitioned by the State Government. Under Section 2 (n) `Public Premises' means State premises in respect of which a declaration has been made under Section 3 of the said Act and includes these mentioned in Schedule if of the Act (Section 2 (k)).

The learned Solicitor has submitted that `government premises' are earmarked only for the employees of the State government and a licence for such occupation can be granted only to an employees of the State government under Section 4 of the 1984 Act, Every licence in respect of government premises will stand automatically terminated on constitution of employment of the

licenses under the State Government or on his death (Section 2 (i). The 1984 Act provides for licence fees. The Third pay Commission has recommended for nominal made of licence fee. The learned Solicitor has also submitted that there is distinction between licence and tenancy. While lease or tenancy confers some interest on the land, licence gives only personal privilege to the licensee with no interest in the land. The test of exclusive possession is not conclusive. The Act of 1984 expressly provides for terminator of licence on cessation of employment. It is thus clear that no personal interest in the accommodation has been created by such licensee. The privilege of accommodation in government premises as licensee is co-terminus with the government service.

The learned Solicitor has also submitted that acceptance of government accommodation as licensee is optional and the writ petitioners have accepted such government accommodation. It has been contended by the learned solicitor that the writ petitioners intend to take advantage twice over. The writ petitioners only claim accommodation in government premises by paying at a low rate of licence fee, but they also claim full amount of HRA so as to make unreasonable profit. The learned Solicitor has also contended that the consent order passed in the earlier writ proceeding being binding between the parties, the order was implemented by the State Government by issuing Memorandum dated 20th January, 1978. Such consent was given on the basis of existing policy of the state government in the matter of grant of HRA. When the Third Pay Commission recommended for change of policy regarding HRA, the government framed ROPA Rules of 1990 under which the earlier policy about grant of HRA was changed. The said 1984 Act was passed for regulating the licence in respect of the government premises allotted only to the government employees In service making such licence co-terminus with the employment. That apart, the State Government was within its rights to change the policy. The consent order on the basis of the earlier policy will not preclude the government from revising the policy in the matter of HRA. The learned Solicitor has informed in response to the querry that there are about 12000 employees of the State Government who have been provided with government accommodation and the writ petitioners are only 134 in number. He has submitted that it will be not just and proper to allow these 134 employees the benefit of full amount of HRA by occupying government accommodation as licensees by paying nominal licence fee for such accommodation. The learned Solicitor has, therefore, submitted that the impugned judgment of the Division Bench should be set aside and the judgment passed by the learned Single Bench dismissing the writ petition should be uphold by this Court.

Mr. M.C. Bhandare, learned senior counsel appearing for the writ petitioners-respondents, has submitted that the government employees going to be affected by the revised decision of the State Government relating to grant of HRA to the government employees given accommodation in government premises, are only about 10,000 out of about total 10 lacs State government it employees i.e. only 1% of the total strength of the government employees. Mr. Bhandare has also submitted that the government accommodation allotted to the writ petitioners are not staff quarters. The government premises are also let out to private individuals who are not government employees. Initially, the government premises were governed by the said West Bengal Premises, Tenancy Regulation Act, 1976 and from 1976 to 1990, all government employees irrespective of the fact whether they has occupied government accommodation or not were paid HRA at 8% of their salaries. After the enactment of West Bengal Government Promises (Regulation of Occupancies) Act, 1984, the government premises were divided into two categories, namely, `government'

premises' and `public premises' Under Section ***) or 1984, Act, Government promises means premises which has not public premises and under Section 2

(k) public premises means State premises in respect of which a declaration has been made under Section 3 and includes the State government premises mentioned in Schedule II. Under Section 3(1) of the said Act, the government may be Notification, declare any premises to be public premises. Under Section 27, the State Government may dispense with or relax the requirement of any of the provision of this Act in respect of any government premises. Under the 1984 Act, the government employees residing in government houses have been deprived of tenancy rights and such employees have become licensees. But government employees who are residing in some LIG/MIG/HIG flats termed as `public premises' under the 1984 Act have not become licensees but they retain their tenancy right sin the flats owned by the government. Mr. Bhandare has submitted that the 1984 Act has made unreasonable and illegal distinction between `government premises' and `public premises'. The public premises have been taken out of the regulation and control under the 1984 Act. The Writ Petitioners-respondents after enactment of the said Act, became licenses of the premises and thus forfeited the tenancy right to continue occupation in government flats after their retirement as well as their heirs loosing the right to inherit the right to reside in such premises. Mr. Bhandare has submitted that the government premises as defined under the 1984 Act is not correct. It is also contended that the `government premises' are not occupied exclusively by the government employees and government premises are also occupied by the private persons. Mr. Bhandare has submitted that the classification between two sets of employes, namely, the employees who have been provided with accommodation owned or hired by the government and the employees who have not been provided with such accommodation and consequential different treatment to these two types of government employees in the matter of HRA, are without any reasonable basis and the Division Bench has rightly struck down such distinction as offending Article 14 of the Constitution.

Mr. Bhandare has submitted that even after the 1984 Act, in respect of government premises and public premises, both government employees and the general members of public are residing. Mr. Bhandare has also submitted that even if it is accepted that the status of the government employees living in government premises after 1984 Act has changed from tenant to licensee, such change has no relevance to the payment of HRA. Mr. Bhandare has submitted that some LIG/MIG/HIG flats are treated as `government premises' while many other similar flats are treated as `public premises'. No reasonable basis of such distinction has been made out by the State government.

Mr. Bhandare has also submitted that it will be unjust and improper to allow the government employees living in LIG/MIG/HIG flats and employing the status of a tenant to draw full HRA and not to allow such HRA to unfortunate employees who held the status of licensee in `government premises' even if they are occupying similar flats. As such distinction is wholly unjust, improper having no reasonable basis on which HRA is to be paid. The Division Bench of the High Court has rightly held that such distinction offends Article `4 of the Constitution and no interference against such judgment is called for.

Mr. Bhandare has also submitted that the policy decision may be the prerogative of the State Government but such policy decision must conform to the mandate under Article 14 of the

Constitution. If the policy decision being unjust and discriminatory offends the guarantee of equality under Article 14, the State government is not permitted o contend that within its prerogative, it has framed a policy and such revised policy should not be tinkered with by the Court.

Mr. Bhandare has further submitted that the basic for the payment of HRA is that nobody should be allowed to keep any money in excess of the actual house rent paid. If 99% employees are allowed to retain HRA in excess of the actual rent paid by them, only 1% of the employees cannot be singled out and treated with discrimination by limiting the quantum of HRA to the extent of licence fee payable by such employees.

Mr. Bhandare has also submitted that the flats in government premises which have been allotted to the petitioners and similarly circumstanced employees are not being properly maintained and considering the quality of the accommodation and the amenities in such accommodation a low rate of licence fee has been assessed. It will be unjust and improper to disallow payment of full HRA to the government employees who are occupying the government flat as licensees under the 1984 Act only because they are to pay comparatively low licence fee because of the inferior quality of accommodation made available to them. Mr. Bhandare has submitted that in equity and justice no interference is called for against the impugned judgment and this appeal should therefore be dismissed.

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to use that distinction between two classes of government employees, namely, those who have been provided with government accommodation qua government employees and licence in respect of such government accommodation being co-terminus with the service, stand on a different footing from the other government employees who have not been provided with such government accommodation. In the instant case, it has not been demonstrated with relevant documents that in LIG/MIG/HIG flats belonging to the government, the government employees are allowed to continue as tenant like ordinary members of the public by virtue of being in government service. Even if it is assumed that some government employees have got tenancy rights under the State Government in respect of public premises such tenancy right has not been given qua government servant but as member of public. Under the 1984 Act, allotment of government flat in `government premises' can only be made as licensee, period of licence being co terminus with employment. Hence, occupation of a government servant as a tenant under the State is not similar as the occupation as a licensee in `government premises'. It has also not been demonstrated with supporting documents as to how many government employees have been given tenancy in government premises and how many members of public have also been allowed to remain there as tenant. Under the 1984 Act, allotment of government flat in `government premises' can only be made as licensee, period of licence being co-terminus with employment. Under the 1984 Act, the status of government employees occupying `government premises' have been statutorily altered and such employees have become licensees. Therefore, such licensees stand entirely on a different footing. Such distinction has a reasonable basis and it cannot be contended that such distinction is without any nexus to the object of grant of HRA. It is the positive case of the State Government that the writ petitioners are occupying government premises as defined under 1984 Act holding the status of licensee. It is the case of the State Government that they have been provided

such government accommodation as licensee in `government premises' which are not meant for occupation by the members of the public. Even if it is assumed that in government premises, non government employee has been allowed to occupy as tenant, the grant of such tenancy is not a regular affair and such tenancy even if any in `government premises' is against the scheme under the 1984 Act. It is also the case of the State government that nominal licence fee is required to be paid for such occupation in `government premises'. Since the writ petitioners and the similarly circumstanced employees having accommodation in government premises qua government employees are licensees and the licence is co-terminus with the service, they are required to pay only nominal feo for such occupation as found by the Pay Commission. Therefore, there is justification that such government employees are not to be given the full amount of HRA but they will be reimbursed to the extent of licence fee paid by them.

In our view, the revised policy decision in the matter of payment of HRA is not only reasonable but also fair and just. It will be improper and unjust if by virtue of being government employees they are favoured with accommodation in `government premises' as licenses and on such account, are required to pay only nominal licence for such occupation, yet they will be paid the full amount of HRA so that they can make profit out of HRa.

It is not the case that each and every government employee is offered government accommodation as licensee subject to the option of the concerned government employee either to take such government accommodation or not. It is an admitted position that such government accommodation is very limited and only 1% of the government employees have been provided with such government accommodation. It has not been demonstrated that the writ petitioners have been living in government accommodation, the rental of which in similar private accommodation would have been less than the licence fee payable by them. One the contrary, after considering relevant facts, the Third Pay Commission has held that such government employees have been allowed to enjoy government accommodation on payment of nominal sum for such occupation.

So long the previous policy continued, the State Government had given effect to the consent order passed by the High Court. The respondents are not entitled to contend that the government is precluded from revising its policy in respect of grant of HRA and once a decision is taken, such decision will remain binding for ever.

The Third Pay Commission has considered various aspects of HRA and it has been indicated by the said Commission that the payment of full HRA (subject to the extent of maximum limit) to the government employees who have been allotted government accommodation qua government employees and paying nominal licence fee should not be permittee to draw full HRA and thereby permitted to make profit. It is to be noted that barring one per cent, all other government employees have not been provided with government accommodation and they have been compelled to arrange for their own accommodation under competitive market rent. Considering the recommendation of the Third Pay Commission, the government has revised the policy regarding the payment of HRA. Such revision of policy, therefore, cannot be held to be arbitrary, capricious without any basis and taken on the ipsi dixit of the State Government. Since the revised policy decision of the State Government is informed by reasons and as the distinction between different sets of government

employees is also reasonable, in our view, no interference against that policy decision is warranted. We, therefore, allow this appeal and set aside the impugned decision of the Division Bench of the High Court and we uphold the decision of the learned single Bench. In the facts and circumstances of the cast it, however, appears to us that it would cause great hardship to the writ petitioners-respondents if they are asked to refund any excess HRA which have been paid to them. It is, therefore, directed that any excess amount which have been paid to the said respondents by way of HRA need not be refunded. The aspect is accordingly, disposed of without any order as to costs.