

Yugeshwar Pandit Vs Heavy Engineering Corporation Ltd. and Others

Court: Jharkhand High Court

Date of Decision: Nov. 20, 2008

Citation: (2009) 1 JCR 458

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

Petitioner in this application has prayed for quashing the order dated 30.3.2006 (annexure7) whereby and where-

under the claim of the petitioner for allotment of residential quarter on a long term lease (LTL) basis has been rejected by the respondents.

2. The petitioner was an employee of the respondent I liiC and was allotted a residential quarter No. CD 18 at Sector HI, Dhurwa, Ranchi.

On 14.1.2004, the respondent company issued an advertisement vide Circular No. 2/2004 offering allotment of residential quarters to its

employees on long term lease basis. In response thereto, the petitioner applied for allotment and on 28th May, 2004 and deposited Rs. 3/10,

200/- by way of premium payable for allotment of a ground floor quarter.

The respondent Management offered him quarter No. CD 15/8. Though the offer of the quarter was accepted by the petitioner but the delivery of

possession of the quarter was not given by the respondents to him. instead, the Management allotted the quarter to the occupant who was in

forcible occupation of the said quarter, Later, on being informed that CD 403/III at Sector III has fallen vacant after the earlier occupant had

vacated the quarter, the petitioner submitted his representation seeking delivery of possession of the aforesaid quarter. Though by letters dated

29.11.2005 and 30.12.2005 (Annexures 5 series) the concerned authorities of the respondents assured the petitioner of allotment of the said

quarter, but again the assurance was not fulfilled and the quarter was allotted to some other person. Instead, the Management offered another

quarter No. CD 559 at Sector III. It was conveyed to the petitioner by the respondent Management that if the petitioner accepts the offer of

quarter No. CD/559, then the allotment would be given to him soon after the stay granted by the High Court in another writ petition is vacated.

3. By his letter dated 29.3.2006 (annexure 6) the petitioner accepted the offer for allotment of quarter No. CD 559. Yet, instead of allotting the

quarter to the petitioner, the respondents by their impugned order dated 30.3.2006 (annexure 6) rejected the petitioner's claim for allotment of the

quarter and directed him to collect his premium amount.

4. The grievance of the petitioner is that he having accepted the offer of the respondent Management for allotment of a residential quarter on LTL

basis and in token of such acceptance, having deposited the premium amount of Rs. 3,10,200/-, the contract is deemed to have concluded by and

between the petitioner and the Management and the respondent Management is bound to offer the quarter to the petitioner, but the respondent

Company has now retracted from its obligation under the contract on account of the fact that by reason of a revised decision of the Management,

the amount of premium has been enhanced from Rs. 3,10,200/- to Rs. 4,90,000/- and it is only to obtain unjustified financial benefit and with

malafide motives that the allotment of the quarters has now been denied to him. Such denial of allotment of the quarter to the petitioner is totally

discriminatory, unjustifiable and smacks of an ulterior motive. Further, grievance of the petitioner is that ever since the date of the deposit of the

premium amount on 28.5.2004 which he had withdrawn from his GPF account and the house rent allowance he has been suffering loss on interest

on the amount and further more, he is now being threatened with forcible eviction of the quarter in his occupation and his retiral dues have also

been illegally withheld by the respondents.

5. Counter affidavit has been filed on behalf of the respondent Management denying and disputing the entire claim of the petitioner. The stand

taken by the respondents is that though vide letter dated 8. 5.2004, (annexure 2) the respondent Management had provisionally allotted Quarter

no CD No. 15/8 on long term lease of 30 years, extendable to 90 years, in stages of 30 years each, to the petitioner, on the terms that the

petitioner should deposit the fixed premium amount of Rs. 3,10,200/- within the stipulated date; the offer itself was conditional and it was

categorically stated in the letter that if due to "unforeseen circumstances" and even after the deposit of the premium amount if the quarter is not

physically handed over to the petitioner, then the premium amount will be refunded to him without interest and no alternative quarter will be

provided to him in lieu of the offered quarter. The said quarter at the relevant time was in occupation of one S.K. Pandey. It is further contended

that even though the petitioner had deposited the premium amount after accepting the offer of the aforesaid quarter, but since even to the

petitioner's knowledge, the quarter was in occupation of another person, the allotment of the quarter could not be completed in favour of the

petitioner by delivery of the possession of the same to him.

6. As regards the petitioner's claim that the respondent Management had offered Quarter No. CD 559/III, the stand of the respondents is that the

respondents had never offered the aforesaid quarter No. CD 559/III to the petitioner under the LTL scheme Learned Counsel for the respondents

would explain that as matter of fact, the petitioner being an employee of the company, was allowed to occupy quarter No. CD. 18/III on normal

allotment basis. The petitioner by his letter dated 29.11.2005 (Annexure 5) had expressed his physical inconvenience for residing in the allotted

quarter No. CD 18/III situated on the top floor of the building and had requested for change of the quarter and had desired for allotment of CD

403/III in exchange. In response, the concerned authority of the respondents had informed the petitioner that his request for allotment of quarter

No CD. 403/III has been rejected by the allotment committee, although the committee had decided to allot CD 559/III to the petitioner. Learned

Counsel explains further that though in the letter (annexure 6), the Manager (Estate) of the respondent Company had conveyed to the petitioner

that long term lease scheme was not in operation on account of the stay order passed by the High Court and that on vacation of the stay order, the

said CD 559/III shall be regularized to the petitioner under the LTL scheme if it is declared under the LTL zone, but such communication was

totally without authority vested in the Manager by the Management and hence, it does not create any right in favour of the petitioner. Learned

Counsel adds further that though the stay order of the High Court has since been vacated, but since CD 559/III did not fall under the LTL zone,

the same cannot be offered to any person much less the petitioner under the said scheme.

7. From the rival submissions, the facts which emerge are:

(i) In response to the advertisement issued by the respondent Management for allotment of residential quarters to its employees under LTL

Scheme, the petitioner had submitted his application in acceptance of the offer by fulfilling the requisite conditions namely deposit of the premium

amount of Rs. 3,10,200/- for allotment of a ground floor quarter on 28.4.2004.

(ii) The respondent Management had offered CD 15/8 to the petitioner on long term lease basis. However, the possession of the allotted quarter

was not delivered to the petitioner on the ground that it was under occupation of some other person.

(iii) Subsequently, by letter (annexure 6), the Management had initially offered to allot quarter No. CD 559/III to the petitioner by way of normal

allotment in exchange of the quarter which was already in his occupation, but with the assurance that such allotment would be regularized under

long term lease if declared under LTL zone after vacation of the stay order of the High Court.

(iv) The petitioner accepted this offer by his letter dated 29.3.2006. Subsequently, the stay imposed by the High Court in another writ petition was

vacated. Thereafter, vide a fresh advertisement dated 12.6.2006 the respondent Management had offered several quarters, including CD 559/III,

for allotment under LTL scheme and allotted the said quarter to one P.P. Vijay on 21.7. 2006. This fact has not been denied by the respondents.

8. During the pendency of the present application, the petitioner had superannuated from service on 31.7.2006, while all along waiting for the

allotment of the aforesaid quarter under the LTL scheme.

9. The above facts and circumstances clearly indicate that there is utter lack of transparency and fairness on the part of the respondent

Management in dealing with the petitioner's claim. When the respondents had initially offered CD 15/8 to the petitioner under LTL, scheme, the

respondent Management knew very well that the quarter was not vacant and it was in possession of another person and yet, the said quarter was

offered for allotment to the petitioner giving him an impression that it would be vacated and soon after eviction of the occupant, delivery of

possession of the quarter would be delivered to him under the scheme. Instead of taking prompt and appropriate measures for eviction of the

unauthorized occupant, the respondent Management continued to linger the matter and ultimately settled the quarter with the unauthorized occupant

instead of the petitioner. The correspondence exchanged between the petitioner and the respondent Management (annexure 5 and 6) would clearly

indicate that in place of the original quarter No. 15/8, the Management had offered CD 559/III to the petitioner under the LTL scheme. The

argument advanced by the learned Counsel for the respondents seeking to explain that the said offer was not under the LTL scheme and it was

only allotment by way of exchange of the quarter which was in occupation of the petitioner under the normal, allotment procedure is not convincing

at all.

10. A plain reading of Annexures 5 and 6 would abundantly indicate that though the petitioner sought for another quarter in exchange of the one in

his occupation, his request for the desired quarter was refused and instead, quarter No. 559/III was offered to him, though under normal allotment

basis, but with the stipulation that the allotment of the said quarter would be regularized in due course under LTL scheme after vacation of the stay

order of the High Court in a pending writ petition. The obvious inference is that even if the quarter No. 559/III was offered to the petitioner in

exchange for the quarter presently in his occupation. Yet the possession of quarter No. 559/III was not promptly delivered to the petitioner and

only hitch at the relevant time was the stay order of the High Court in the pending writ petition. Admittedly, the stay order was vacated, but

instead of completing the process of allotment of the said quarter to the petitioner in terms of the assurance given under annexure 6, the respondent

Management proceeded to issue a fresh advertisement fixing a higher rate of premium and allotted the quarter to some other person ignoring the

repeated requests of petitioner for allotment of the quarter. Such allotment of the quarter to another person instead of the petitioner was made even

at the time when the petitioner was under employment of the respondents. The respondents have not offered any justifiable reason/ground for

refusing allotment of quarter to the petitioner even though the offered quarter was vacant and the formalities of allotment could have been

completed by delivering possession of the quarter to the petitioner.

11. The plea taken by the respondents that quarter No. CD 559/III did not fall under LTL zone is contradicted by the fact that the very same

quarter was subsequently advertised for allotment under LTL scheme even during the pendency of the writ petition soon after vacation of the

stay order passed in a pending writ petition.

12. In the light of the above conduct of the respondents, the contention of the petitioner that issuance of letter (annexure 7) rejecting the

petitioner's claim for allotment (sic) under LTL scheme is with mala fide and oblique motives appears to have a reasonable basis. The petitioner's

contention that he has been arbitrarily discriminated by the concerned authorities of the respondent company is also not without basis. The

petitioner has been made to suffer mental agony, harassment and denial of legitimate expectations created under the terms of the contract, besides

monetary loss on interest on the principle premium amount which he had withdrawn from his GPF and deposited with the respondents in May,

2004.

13. Having considered the above facts, it remains however to be noted that the scheme for allotment of the quarter under LTL scheme was

admittedly for a stipulated limited period, and as informed by the learned Counsel for the respondents, there is no such further scheme under offer.

Furthermore, the petitioner has already retired from service in July, 2006 and therefore he being no more under employment of the respondent

company, he cannot claim entitlement for allotment of the quarter under any LTL scheme which is exclusively meant for the existing employees of

the company. In view of these circumstances, the petitioner's prayer for a direction to the respondents to allot him a quarter under LTL scheme

cannot possibly be accepted. Nevertheless, considering the amount of the wrong which the petitioner suffered on account of the irresponsible

callous conduct of the concerned authorities of the respondent Management and in all fairness, it would be appropriate that the respondent

Management should pay a reasonable compensation to the petitioner. Accordingly, 1 hereby direct that the respondent Company shall refund the

entire premium amount deposited by the petitioner, along with interest @ 12 per cent per annum calculated from the date of receipt of the premium

amount, till the date of issuance of the impugned letter (annexure 7) dated 30.3.2006. The respondent shall also pay a sum of rupees fifty thousand

to the petitioner by way of compensation for the loss and detriment suffered by him on account of the negligent conduct of the concerned

authorities of the respondents. The respondent No. 2 is directed to ensure that the above order for payment of the amount to the petitioner is

carried out and complied with within three months from the date of, receipt of a copy of this order.

14. Furthermore, the respondents shall, within the stipulated period as mentioned above, pay the entire retiral dues of the petitioner and till such

time the payment is not made, shall allow the petitioner to continue in occupation of the quarter presently in his occupation on payment of the fixed

monthly rent as applicable to the type of the quarters allotted to the employees under normal allotment.

15. With these observations and directions, this application is disposed of.