

HIGH COURT OF JAMMU AND KASHMIR- SRINAGAR

Case No: OWPs 386/2014, 479/2011, 623/2011 & 1725/2012

Dt : 31st of August, 2018

<i>Khazir Mohammad Dar & ors</i>	VERSUS	<i>State of J&K & ors</i>
<i>Habib-ul-lah Khanyari & ors</i>	VERSUS	<i>Union of India & ors</i>
<i>Mohammad Saleem rather & ors</i>	VERSUS	<i>Union of India & ors</i>
<i>Dr. Javed Ahmad Mir</i>	VERSUS	<i>Union of India & ors</i>

ORDER SHEET

CORAM:

HON'BLE MR. JUSTICE M.K.HANJURA- JUDGE

FOR THE PETITIONER/s : M/s Manzoor Ahmad Dar & Syed Manzoor

FOR THE RESPONDENT/s: . M/s B.A.Dar Sr.AAG & Abid Kuthoo

Whether approved for reporting?	Yes
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01/ The case set up by the petitioners in all the writ petition cited above, in a nutshell, is that their hotels came to be occupied by the security forces from the year 1990 onwards without their consent. The petitioners have contended it further that although they were being paid the rentals of their premises, yet the respondents directed all the Drawing and Disbursing Officers to ensure that necessary 'No Objection Certificate' (NOC) is obtained from the hoteliers/owners on account of electricity/water charges before the release of payment of rent to them. The petitioners have further pleaded that it is the respondents who have to bear the expenditure of water and electricity and pay the same to the authorities concerned. The petitioners, in carving out a case for them, have put explicit reliance on an order dated 20-12-2005, by the dint of which, the Ministry of Home Affairs, Govt. of India, New Delhi, has directed the Chief Secretaries of various States, including the State of J&K, to bear the cost of adequate and suitable

accommodation and other allied facilities, like power and water supply etc., for the CPF/RAF contingents, deployed for security purposes and such costs will not be reimbursed by the Central Government. The petitioners have further invited the attention of the Court to various interim orders, passed by the Court from time to time in a number of writ petitions, restraining the respondents from deducting any electricity or water charges from the rentals being paid to the owners of the hotels/guest houses etc. It is further averred that some of these directions have also been made absolute.

02/ It is further averred that the petitioners have filed the writ petitions seeking vacation of their respective properties, occupied by various security agencies, enhancement of user charges from time to time as also the payment of the electricity and other allied charges by the Home Department. They have also prayed that the charges on account of water and electricity, already paid by the petitioners, be refunded in their favour. It is further stated that insofar as the question of electricity and water dues is concerned, the issue has been raised in many other writ petitions also and the Hon'ble Court has been pleased to stop deduction of electricity and water charges from the rentals being paid to the hoteliers and owners of other premises occupied by the security forces. It is further contended that the respondents are not implementing even their own orders regarding the clearance of the bills pertaining to electricity and water supply and their properties, which are under the occupation of the security forces, have suffered a huge loss on account of their misuse by them. The bath rooms and electric fittings have been damaged beyond repair. When asked to pay the electric and water charges, the respondents are only extending

assurances that the matter is under the active consideration of the Ministry of Home Affairs and the same will be settled soon.

03/ Petitioners have further stated that though the Ministry of Home Affairs directed the respective States to pay deployment charges, transportation charges of the para military forces deployed in their States, yet the States which face the law and order problems, were exempted from paying deployment and cost of transportation charges. However, these States have been specifically directed to bear the cost of accommodation and allied facilities such as water and electricity, utilized by the security forces with further direction that the amount has to be paid by the respective State Governments and no reimbursement can be claimed by them from the Central Government. The petitioners, in these writ petitions, have finally prayed that the official respondents be directed to implement their own communications and clear the electricity/water supply bills, which are due to them. It is further prayed that by issuance of writ of a Mandamus, the respondents be restrained from making any deductions on account of the electricity/water charges from the rentals being paid to them. the petitioners have also prayed that by issuance of writ of Certiorari, order bearing No.BDR-04/2011/207-14 dated 03/02/2014, passed by the Additional Director General of Police, (Hqrs) PHQ, J&K, Jammu/Srinagar, asking all the concerned DDOs to ensure that necessary 'No Objection Certificates' be obtained from the hoteliers on account of electricity/water charges, before the release of payment of rent to them, impugned in the lead case (OWP 386/2014), be quashed. It is further pleaded that this Court, vide order dated 20-03-2014, while displaying indulgence in the lead case, (OWP 386/2014), has passed the following order:

1. *The case of the petitioners is that their hotels are under the use and occupation of the security forces right from the year 1990, and are being paid the rentals also. However, it is stated that respondent No. 3 issued a communication to respondent No. 4 asking him to enjoin upon all the concerned drawing and disbursing officers to ensure that necessary 'No Objection Certificate' is obtained from hoteliers on account of electricity / water charges before release of payment of rent to them. It is this order which is under challenge and impugned in the writ petition at hand.*

2. *It is the case of the petitioners that by the impugned communication, they have been virtually asked to pay the water usage and electricity charges, whereas it is Respondent-State who has to bear the charges and pay the same to the concerned. In this regard, the attention of the Court has been drawn to the reply filed by the Union of India in one of the writ petitions bearing OWP No. 479 of 2011 filed by the petitioners prior to one in hand. It is apt to reproduce the relevant portion of the reply, which is reproduced hereunder:*

"However, it is submitted that with regard to the miscellaneous items, such as payment of electricity and water bills, the Government of India has formulated a policy whereby those States which enjoy exemption from payment of Deployment Charges under any category are required to bear the cost of suitable and adequate accommodation and allied facilities such as water, power supply etc. It is submitted that the State of J&K is enjoying the exemption as referred to above and thus the State Government is bound to pay the electricity as well as water charges in respect of the buildings / hotels occupied by the Central Security Forces."

3. *What is gathered from the reproduction aforementioned is that it is the State Government who is bound to pay the electricity as well as water charges in respect of the buildings / hotels occupied by the security forces.*

4. *My attention has also been drawn to the reply filed by the State Government in one of the allied writ petition bearing OWP No. 839 of 2012. It would be profitable to extract the relevant paragraph (15) of the reply, which reads hereunder:*

"...The permissible rentals are being paid on the basis of per day per room to the occupied hotels without any sort of deduction towards the electricity or other taxes and hence the present writ petition deserves to be dismissed."

5. *Learned counsel for the petitioners has also pressed into service the order dated 20th December, 2005, issued by the Government of India, Ministry of Home Affairs, New Delhi, directing the Chief Secretaries of various States including the State of J&K that they are required to bear the cost of suitable and adequate accommodation and*

allied facilities such as water, power supply etc. for CPF/ RAF contingents-deployed and the scheme does not provide for any reimbursement of such costs by the Central Government.

6. Learned counsel for the petitioners have also annexed photocopies of the interim orders passed by various coordinate Benches of this Court in number of writ petitions to show that the respondents have been restrained not to deduct the electricity / water charges from the rentals received by the petitioners in those writ petitions and in some of the writ petitions the interim directions have been made absolute.

7. I have heard learned counsel for the petitioners at length and considered the matter. In view of the facts narrated above, this writ petition is admitted to hearing.

8. Notice, returnable within six weeks. Notice in the CMP also, returnable within the same period. In the meantime, the impugned communication bearing No. BDR-04/2011/207-14 dated 03.02.2014 (Annexure 'E' to the writ petition) is stayed. Consequently, the respondents shall not insist on production of 'No Objection Certificates' on account of electricity and water charges for the purpose of releasing the rentals in favour of the petitioners."

04/ In the objections, the respondents have challenged the locus of the petitioners to file and maintain these petitions by stating that they (petitioners) are bound to pay the water & electricity charges themselves. They have stated that the hotels/guest houses are being hired by them on per day basis and the rent paid includes the water/electricity charges also. They have further stated that the same procedure is being followed by the Estates Department, while hiring various hotels/guest houses. It is further stated that in the early nineties, various hotels and other accommodations including that of the petitioners were hired by the State Government on the basis of a proper agreement to accommodate various agencies of the security forces for maintaining of law and order. Rentals are being paid to the owners of the occupied premises on regular basis. Therefore, the charges on account of electricity and water are to be borne by the owners of the premises themselves. It is further stated that the Home Department, vide its communication bearing No. Home/PB-

II/29/2010/2287 dated 26-04-2011, while considering the issue, has made it clear that since the rooms in the hotels/guest houses are being hired/taken on rent on per day basis, the per day rent includes electricity and water charges also. It is also stated that the Hon'ble Court in a catena of judgements has addressed the issue pertaining to the electricity and other charges and it is made clear by the Court that since the rooms in hotels/guest houses are being hired on rent on per day basis, the per day rent includes electricity and water charges also. In this view of the matter, the claim of the petitioners is without merit and deserves to be rejected. The respondents have further stated that the State Government, pursuant to the guidelines issued by the Ministry of Home Affairs, New Delhi, on the subject, is bearing the expenses of accommodation provided to the security forces on rentals on per day per room basis and the rentals so paid includes the water and electricity charges as well. It is further stated that there is no justification behind the claim put-forth by the petitioners to agitate and seek exemption to pay the electricity & water charges by them. Finally it is stated by the respondents that the petitioners are dragging them into avoidable litigations, inasmuch as, they are being asked not to deduct the allied charges like the electricity and water charges from the rentals, therefore, these petitions, being devoid of merit, be dismissed.

05/ Heard & considered.

06/ The simple and short grievance of the petitioners in these petitions is that although their hotels came to be occupied by the security forces from 1990 onwards without their consent, yet the respondents directed all the Drawing & Disbursing Officers to ensure that necessary NOCs are obtained from the hoteliers on account of electricity and water charges before the payment of rent

to them. The petitioners contend that the expenditure of water and electricity has to be borne by the respondents and not by them.

07/ On the basis of the parameters evolved in the order dated 20-12-2005, by which the Ministry of Home Affairs, Govt. of India, New Delhi, has directed the Chief Secretaries of the States, including the State of J&K, to bear the cost of suitable accommodation and other allied facilities like water and power supply etc., for the CPF/RAF contingents, deployed for security purposes and such cost will not be reimbursed by the Central Government, it is the State that has to bear the expenditure under these heads. To understand this proposition correctly, the stand, taken by the Union of India in their objections, requires to be enumerated and delineated here.

08/ The Union of India has contended that the petitioners in the writ petitions are seeking the payment of electricity and water dues in respect of their hotels occupied by the Central Security forces, to be borne by the State-Respondents. In this regard it is submitted that the rental dues in respect of the hotels and buildings occupied by the Central Security Forces, are to be borne by the State Government, to be paid from the SRE (Security Related Expenditure) kept at the disposal of the State Government by the Government of India. However, it is submitted that with regard to the miscellaneous items, such as payment of electricity and water bills, the Government of India has formulated a policy whereby those States which enjoy exemption from payment of Deployment Charges under any category are required to bear the cost of suitable and adequate accommodation and allied facilities such as water, power supply etc. It is further submitted that the State of J&K is enjoying the exemption as referred to above and thus the State Government is bound to pay the electricity as well as water charges in respect of the

buildings/hotels occupied by the Central Security Forces. Therefore, it is amply clear that the charges are to be borne by the State Government and the non payment of these dues by the State respondents have off and on been causing a lot of problems for the Central Security Forces as the sudden and frequent disconnections pose a security hazard for the forces, exposing them to immediate dangers. It is further submitted that the Central Security Forces have not occupied the hotels/buildings of the petitioners forcibly but after the petitioners agreed to the same and the properties in question were never misused or damaged by the Central Security Forces.

09/ On the face the objections aforesaid, it is the liability of the State Government to make the payment of electricity and water bills in respect of the hotels/accommodations, which have been occupied by the security forces, deployed for security purposes. However, the State Government has taken umbrage under the plea that these hotels have been occupied on day today basis and, therefore, the owners have to meet the expenditure on account of payment of electricity and water tariff. The State Government cannot take shelter and refuge under this plea when there is no written agreement on that count in as much as had it been so they would have placed it on record. The hotels appear to have been occupied by them without seeking the consent of the petitioners, who had no bargaining power and, therefore, this plea pales into insignificance, particularly when these hotels are in the possession of the security forces right from the date these have been occupied without any break and interruption.

10/ The law laid down on the subject in the case of *Mohammad Ahmad and another versus Atma Ram Chauhan and others*, reported in (2011) 7 SCC 755, more particularly paragraph 21 thereof is loud and clear and it states as under :

“21. According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows:-

(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv) But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein

etc. Care ought to be taken that it does not end up being a bonanza for the landlord.”

11/ Applying the ratio of the law laid down above to the facts and circumstances of these cases, the payment of water tax and electricity charges is the prerogative and liability of the State which the State has to discharge and each owner has to get the actual rent, out of which nothing would be deductible.

12/ Viewed in the context of what has been discussed above, the writ petitions are allowed and the communication bearing No. BDR-04/2011/207-14 dated 03-02-2014 is **quashed**. Respondents are directed not to deduct the electricity/water charges from the rentals paid to the writ petitioners. They are further directed not to press the petitioners for production of ‘*No Objection Certificates*’ before paying them the rentals.

13/ The writ petitions are, accordingly, **disposed** of along with all connected IAs.

(M. K. HANJURA)
JUDGE

SRINAGAR
31-08-2018
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