THE STATE OF KARNATAKA AND ANR. A

v.

MANGALORE UNIVERSITY NON-TEACHING EMPLOYEES ASSOCIATION AND ORS.

FEBRUARY 28, 2002 B

[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

Service Law :

Allowances—House Rent Allowance and City Compensatory Allowance— Grant of—To 'E' class city based employees at par with 'C' class city based employees—Withdrawal of such allowance—Order for recovery of excess payment—Held, withdrawal justified, since 'E' class city based employees not entitled to draw HRA/CCA at the rates applicable to 'C' class city based employees—However, in the circumstances of the case order of recovery of excess payment not justified. C D

Constitution of India, 1950—Article 14—Criterion adopted in 'A' class city not extended to 'C' class city—Held, does not violate the provision— Legislative provision or executive order of general application does not become unconstitutional merely because in its actual application it is disadvantageous or inequitable to certain individuals. E

Administrative Law—Principles of Natural Justice—Violation of—Held, violation itself is not sufficient to set at naught the action taken—In considering the effect of violation, genesis and reason of action taken and possibility of prejudice are to be taken into account—In the instant case the principle not violated, since action taken was within the parameters of rules—Hence no prejudice caused by not affording opportunity of hearing. F

Mangalore University was located in 'E' category town, 5 kms. away from Mangalore, a 'C' category city/town. Due to inadequate housing facilities in the campus of the University, its employees were allowed payment of House Rent Allowance (HRA) and City Compensatory Allowance (CCA), at par with the employees working within limits of Mangalore City Corporation Area. G

After objections from Accountant General Government ordered to discontinue such payment of HRA and CCA w.e.f. 1.4.1994 on the ground H

A that the place where the University was situated, did not fall under the City Corporation Area. University was directed to recover the excess amount paid from 1.4.1994. However, notwithstanding Government Orders status quo with regard to payment of allowances continued upto 31.3.1997.

The legality of the Government orders withdrawing such payment of B HRA and CCA and directing the University to recover excess amount, were challenged in writ petition under Article 226 of the Constitution, and direction was sought to pay HRA and CCA at the same rate as applicable to 'C' category city. It was contended that Government should have treated the University employees at par with Government employees posted at a place C within 8 k.m. from the periphery of Bangalore City Corporation Limits; and that opportunity of being heard was not afforded to them. The petition was dismissed by Single Judge of the High Court.

On appeal, Division Bench held that on the analogy of the benefit given to the employees working within the peripheral area of the Bangalore City D Corporation, the University employees should have been given the same benefit and not doing so would be violative of Article 14 of the Constitution; that the allowance being part of service condition, employees should not have been deprived of the benefits which have accrued to them; and that opportunity to show cause should have been afforded to the affected employees as their accrued rights were being curtailed. Hence these appeals.

E

Allowing the appeals, the Court

HELD : 1.1. The impugned orders of the Government do not, by themselves, fall foul of Article 14. These orders were issued only to rectify the mistake that was committed in extending the benefit of HRA and CCA F applicable to 'C' class city to the Mangalore University employees. The employees of Mangalore University will only be entitled to draw the said allowances at the meagre rate applicable to 'E' class station because the place where Mangalore University is located comes under 'E' class.[129-H; 130-A]

G 1.2. If 8 Kms. yard-stick is prescribed in the case of Bangalore city, it does not mean that the same criterion should be applied for all other cities in the State of Karnataka. A legislative provision or an executive order of general application does not become unconstitutional merely because, in its actual application, it turns out to be disadvantageous or inequitable to certain individuals or a small section of people. That is not to say that the Government H should not take note of individual cases of hardship and afford relief wherever

such relief is genuinely needed, but, the rule or the provision does not become bad or obnoxious to Article 14 for the reason that the criterion adopted in the case of 'A' class city is not extended to 'B' or 'C' class city. A

[130-G; 131-B-C]

2. HRA and CCA, which are components of total salary undoubtedly form part of conditions of service and it may not be accurate to describe them as concession. But the fact that HRA and CCA are part of conditions of service does not lead the respondents anywhere for the simple reasons that the conditions of service can be unilaterally altered so long as such action is in conformity with legal and constitutional provisions. [129-D-E] B

3. It is true, where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences; the affected employees should have been put on notice and their objections called for. But, it is by now well settled that in all cases of violation of principles of natural justice, the Court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the Court in considerating the effect of violation of principles of natural justice. When undisputably the action taken is within the parameters of the Rules governing the payment of HRA and CCA and moreover the University authorities themselves espoused the cause of employees while corresponding with the Government, it is difficult to visualize any real prejudice to the respondents on account of not affording the opportunity to make representation. C D E

[131-E-G]

4. On the special facts of this case, the employees of the University have to be protected against the move to recover the excess payments upto 31.3.1997. When the concerned employees drew the allowances on the basis of financial sanction accorded by the Competent Authority i.e. the Government, and incurred additional expenditure towards house rent, the employees should not be penalized for no fault of theirs. [132-A-B] F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6247-6250 of 2000. G

From the Judgment and Order dated 3.9.99 of the Karnataka High Court in W.A. Nos. 3274-77 of 1999.

N. Ganpathi for the Appellants. H

A K. Subba Rao, S. Ravindra Bhat, Naveen R. Nath, Ms. Hetu Arora, Vinod Kumar and Shiv Kumar Suri, Advs. with him for the Respondents.

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. The decision taken by the State B Government to discontinue with effect from 1.4.1994 the payment of House Rent Allowance (hereinafter referred to as 'HRA') and City Compensatory Allowance (hereinafter referred to as 'CCA') to the employees of Mangalore University and the consequential action taken by the State Government and the University to recover the excess payments made after 1.4.1994 in C instalments was called in question by the respondents herein by filing Writ Petitions under Article 226. The learned Single Judge of the Karnataka High Court declined to grant relief and dismissed the Writ Petitions. However, on an intra-court appeal by the aggrieved employees/association of employees, the Division Bench of the High Court reversed the order of the learned Single Judge and set aside the impugned orders of the Government, thereby allowing D the Writ Petitions. It is against this judgment of the Divisions Bench, these appeals are preferred by the State of Karnataka.

The campus of the Mangalore University which was established in the year 1980 is situated at a place called 'Konaje' which is at a distance of about E 5 Kms. from the boundary of the Mangalore City Corporation. The payment of allowances - HRA and CCA to the teaching and non-teaching staff of University is regulated by the various Government orders issued from time to time. The State Government makes the fund available to the University for meeting the expenditure towards pay and allowances of the employees. It appears that on account of inadequate housing facilities in the campus, the F Government by a G.O. dated 30.11.1984 allowed the HRA and CCA to be paid to the employees residing within the City Corporation area on par with the employees working within the limits of the Corporation. Sanction for such payment was given for three years. The payment was being made in terms of the Government Order dated 30.11.1984, even after the expiry of G three years. The Government by an order dated 12.10.1993 extended the benefit for one year from 1.4.1993. It is not in dispute that the payment towards HRA and CCA was made even thereafter at the same rate till the impugned orders came to be passed during the year 1996/1997 to which reference will be made a little later. While so, on the basis of the objection raised by Accountant-General, the Government reconsidered the issue and H passed orders on 13.2.1996 in G.O. No. ED:42:UDK:93. It is stated therein

that "since Konaje is not under the jurisdiction of Mangalore City Corporation area, HRA and CCA cannot be paid at the same rates from 1.4.1994 onwards". Accordingly the following order was passed by the Government :-

> "Employees of Mangalore University at Konaje have been exempted from the recovery of HRA and CCA paid from 1988-89 to 1992-93 only if they have been resident in the jurisdiction of Mangalore City Corporation Area.
>
> This is subject to the condition that employees of Mangalore University at Konaje shall not be paid HRA and CCA from 1.4.1994 at the rates applicable in the Mangalore City Corporation area."

Though in the first para extracted above, recovery was waived upto 1992-93, actually such waiver was upto 31.3.1994 as is evident from what is stated in the subsequent G.O. No. ED:131:UDV:96 dated 24.5.1997. By that G.O. dated 24.5.1997 as well as earlier G.O. dated 5.3.1997 the Government directed the University authorities to recover the excess amount of HRA and CCA paid to the employees of Mangalore University w.e.f. 1.4.1994 in compliance with G.O. No. ED:42:UDK:93 dated 13.2.1996 in 100 monthly instalments as proposed by the Vice-Chancellor of Mangalore University. The suggestion of the Vice-Chancellor to reconsider the decision in the light of inclusion of Konaje within the extended area of Mangalore Urban Development Authority w.e.f. 2.12.1996 was not accepted by the Government. This led to the filing of Writ Petitions in the High Court. The legality of the orders issued by the Government on 13.2.1996, 05.03.1997 and 24.5.1997 was assailed in the Writ Petitions and a direction was sought to pay HRA and CCA to teaching and non-teaching employees of the University at the same rate as is applicable to the 'C' category city/town. It may also be mentioned at this juncture that the Vice Chancellor of the University by his communication dated 5.3.1997 addressed to the Chief Secretary requested the Government to waive the excess payment upto 31.3.1997 and continue to pay the HRA at the same rate. It indicates that notwithstanding the G.O. dated 13.2.1996, status quo in regard to the payment of the allowances continued upto 31.3.1997 and that was the position till the date of filing of the Writ Petitions in the year 1997.

The learned Single Judge of the High Court held that the action of the State Government in withdrawing the concession extended to the University employees on a re-examination of the matter did not suffer from any legal infirmity. The learned Judge negatived the contention that the Government

A should have treated the University employees of Mangalore on par with the Government employees posted at a place within 8 Kms. from the periphery of Bangalore City Corporation limits. The learned Judge observed that such comparison was misconceived. Further, the learned Judge took the view that the Notification issued on 28.11.1996 under the Karnataka Urban and Rural Planning Act, 1961, including Konaje village within the purview of the B Mangalore Urban Development Authority is not relevant and does not enure to the benefit of the writ petitioners. The learned Judge then held that on the facts of the case, the question of affording opportunity to the aggrieved employees to have their say does not arise.

C The Division Bench was of the view that on the analogy of the benefit given to the employees working within the peripheral area of the Bangalore City Corporation, the University employees of Mangalore too should have been given the same benefit and not doing so will be violative of Article 14. The Division Bench also faulted the observation of the learned Single Judge that the grant of HRA and CCA is a concession. It was then observed that D these allowances are part of service conditions and the employees should not be deprived of the benefits which have accrued to them. The learned Judges were also of the view that opportunity to show cause should have been afforded to the affected employees as their accrued rights were being curtailed.

E As already noticed, it is the stand of the appellant - State Government that under the relevant rules/orders the respondents do not have the entitlement to draw HRA/CCA applicable to the employees working within the Corporation limits of Mangalore area or within the specified places adjacent to the Corporation area. For those employees who have the place of work within the Mangalore City Corporation or the contiguous areas specified in G.O., F the HRA/CCA applicable to a 'C' class city is payable, whereas according to the stand of the Government, the Mangalore University employees will be entitled to get the said allowances at the rate applicable to 'E' class station which is only 3 per cent of the basic pay. We shall, therefore, turn our attention first to the relevant Government Order under which the payment of G HRA and CCA is regulated. G.O. No. FD 67 SRP 89 dated 4.5.1990 deals with reclassification of places for purposes of HRA and CCA and revision of rates of these allowances. This Government Order was issued as a sequel to the recommendations of the Karnataka State Third Pay Commission. The relevant paragraphs in the Government Order are extracted hereunder :-

H "2.2. For the purposes of HRA and CCA, cities and other places in

the State are classified into six groups as shown below with reference to their population according to 1981 census :-

Population of city/other places	Classification
(i) 16 lakhs and above	'A'
(ii) 8 lakhs and above but not exceeding 16 lakhs	'B1'
(iii) 4 lakhs and above but not exceeding 8 lakhs	'B2'
(iv) 50,000 and above but not exceeding 4 lakhs	'C'
(v) 25,000 and above not exceeding 50,000	'D'
(vi) Other places	'E'

2.4. Details of the places under each of the six groups mentioned above and the areas which form part of the City urban agglomeration are given in annexures I and II respectively.

2.5. Government servants shall be entitled to HRA and CCA with reference to their basic pay at the rates shown below :-

Tabular statement omitted (According to the table the HRA/CCA is fixed with reference to the basic pay and the class of city or other place).

Para 2.6. on which the respondents - writ petitioners placed much reliance is as follows :-

The orders issued in G.O. No. FD 4 SRP 80 22nd March 1980 regarding admissibility of HRA and CCA for the employees who are posted to any place which is situated within a distance of eight kilometers from the periphery of the municipal limits of the Bangalore City Corporation and which is not included in the Bangalore Urban Agglomeration area, but who reside within the limits of Bangalore City Corporation, shall continue to be in force.

2.8. HRA and CCA are payable with reference to the place of duty, irrespective of the place of residence of a Government servant.

3.1. A Government servant will not be eligible for HRA, if he is provided with rent free accommodation.

5.1. These orders shall be applicable to all full-time Government servants, who are governed by the provisions of the Karnataka Civil

A Service Rules and who are on time-scales of pay.

5.2. These orders are extended to (i) full-time employees borne on work-charged or contingent establishment of Government, on time scales of pay, (ii) full-time employees of the aided educational institutions and non-teaching staff of the Universities, who are on B time-scale of pay and to (iii) staff of the Universities/Engineering colleges who are drawing pay in the UGC scales of pay/AICTE scales of pay.

6.1. The HRA and CCA sanctioned by this order shall be payable in cash from the month of April 1990 and onwards until further orders.

C

In Annexure I, 'A' class city which is Bangalore Urban Agglomeration, 'B2' cities, 'D' towns and 'E' places with a population of less than 25,000 are mentioned. Mangalore (Urban Agglomeration) is one amongst 'C' cities. Items VI of Annexure II pertains to Mangalore Urban Agglomeration; Konaje is not one of the places specified therein.

D

It is clear from para 2.8 that HRA and CCA is determined with reference to the place of duty. The place of duty in the instant case is Konaje where the University campus is located. The village Konaje is outside the City Corporation limits. It is said to be at a distance of 5 kms. from the outer E limits of the Mangalore City Corporation. However, if it falls under Mangalore Urban Agglomeration, the rate of HRA/CCA applicable for 'C' class city employees is payable because under classification 'C' in Annexure I, Mangalore Urban Agglomeration is included. The next step is to identify what is Mangalore Urban Agglomeration. We need not determine this question with reference to the enactment in which the expression 'Urban Agglomeration' F or an equivalent expression occurs. The answer is provided by the very GO in Annexure II. Para 2.4 makes it explicit that the areas which form part of the city urban agglomeration are given in Annexure H. As per item VI of Annexure II, Mangalore Urban Agglomeration consists of (a) Aple; (b) Derebail (i) Derebail, (ii) Bangrakalur; (c) Kankanadi; (d) Kavuru; (e) G Kotekare; (f) Mangalore (i) Mangalore (ii) Kadri (iii) Maroli. It appears that the places which are included in Mangalore Urban Agglomeration are either situate in Corporation limits or within the close proximity to the Corporation area. Konaje, as already mentioned, is at a distance of 5 kms. from the Corporation limits and it is not included in Mangalore Urban Agglomeration. The G.O. dated 4.5.1990 governs the drawal of HRA and CCA during the H relevant period. It is brought to our notice that on August 10, 1999, a fresh

G.O. was issued revising the rates of HRA and CCA based on 1991 census. Annexure I almost remains the same. In Annexure II, under the head 'Mangalore Urban Agglomeration' we find some changes and inclusion of three more localities. Even here, Konaje stands omitted. As rightly held by the learned Single Judge, when there is definite identification of the Mangalore Urban Agglomeration in the relevant notification relating to HRA/CCA, it is not open to the Court to look into the notification issued for a different purpose under a different enactment. The mere fact that the Government of Karnataka extended the peripheral area falling within the purview of Mangalore Urban Development Authority so as to cover several out-lying areas including Konaje does not ipso facto entitle the university employees to draw HRA/CCA at the rates applicable to 'C' class city-based employees. At best, the notification issued under Karnataka Urban and Rural Planning Act could only pave the way for appropriate decision to be taken by the State Government afresh.

Before dealing with the argument based on Article 14, we may advert to the comment of the Division Bench that the payment of HRA and CCA is not in the nature of concession as opined by the learned Single Judge. True, as pointed out by the Division Bench, the HRA and CCA, which are components of total salary undoubtedly form part of conditions of service and it may not be accurate to describe them as concession. Probably, the learned Single treated it as a concession for the reason that the benefit was being given over and above what was contemplated by the rules embodied in G.O. 67 dated 4.5.1990. Be that as it may, the fact that HRA and CCA are part of conditions of service does not lead the respondents anywhere for the simple reason that the conditions of service can be unilaterally altered so long as such action is in conformity with legal and constitutional provisions. Ultimately, therefore, the issue turns on the question whether Article 14 is violated for not extending the benefit of higher scale of allowances admissible to 'C' class city employees or by withdrawing a benefit which was being given under the *ad hoc* orders issued from time to time.

In considering the question from the stand point of Article 14, it is to be borne in mind that the impugned orders of the Government dated 13.2.1996, 5.3.1997 and 24.5.1997 do not, by themselves, fall foul of Article 14. These orders were issued only to rectify the mistake that was committed in extending the benefit of HRA and CCA applicable to 'C' class city to the Mangalore University employees. As already noticed, the entitlement to HRA/CCA arose essentially from G.O. No. ED:67:SRP:89 dated 4.5.1990. Applying the rules

A contained in that G.O., the employees of Mangalore University will only be entitled to draw the said allowances at the meagre rate applicable to 'E' class station because the place where Mangalore University is located comes under 'E' class. To repeat, Konaje is not included in Mangalore Urban Agglomeration. The grievance of the respondents, therefore, arises on account of that. However, the respondents have not assailed the G.O. dated 4.5.1990 B on the ground that non-inclusion of Konage in Mangalore Urban Agglomeration ('C' class) is an instance of inequality arising from lack of proper classification or that there is an element of arbitrariness in specifying the places comprised in Mangalore Urban Agglomeration. The limited challenge to the G.O. of 1990 which received approval of the Division Bench C of the High Court was on the ground that there was a discrimination as between the employees working in peripherial area of Mangalore City Corporation and Bangalore City Corporation. In other words, the respondent - writ petitions have built up their plea of violation of Article 14 by taking the limited ground that the same benefit as was conferred by para 2.6 on the employees posted to work in any place situated within a distance of 8 Kms. D from the periphery of Bangalore City Corporation limits (though not part of Bangalore Urban Agglomeration) ought to have been extended to the employees working within the same peripheral area of Mangalore City Corporation, even if their place of work was outside the Mangalore Urban Agglomeration. We are unable to concur with the view expressed by the E Appellate Bench of the High Court that the same yard-stick should have been applied to the employees residing within the limits of Bangalore City Corporation and Mangalore City Corporation both of whom are posted to work outside the Urban Agglomeration. The contention that the criterion of 8 Kms. limit from the periphery of municipal limits should be uniformly applied in the case of all urban areas irrespective of their categorization fails F to take note of ground realities. Such extension upto 8 Kms., be it noted, is peculiar to Bangalore city only. Bangalore which is the capital of State of Karnataka is classified as 'A' class city. It cannot stand in comparison with Mangalore city. The manner of spread-over of offices, the pattern of development and the problems relating to housing and habitation will not be G the same. If 8 Kms. yard-stick is prescribed in the case of Bangalore city, it does not mean that the same criterion should be applied for all other cities in the State of Karnataka. The complaint based on Article 14 of the Constitution cannot be judged by adopting a doctrinaire approach or by having regard to individual cases. It is not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies H in view of the inherent complexities involved in fixing the scales of allowances

based on the places of work. It is pointed out in the 'additional ground' filed in S.L.P. that the State Government has adopted Central Government's policy with regard to the pattern of regulation of HRA and CCA in respect of the employees working beyond the Corporation/City municipal limits. While formulating such rules it is difficult to envisage all situations and facts peculiar to a few places here and there. A legislative provision or an executive order of general application does not become unconstitutional merely because, in its actual application, it turns out to be disadvantageous or inequitable to certain individuals or a small section of people. That is not to say that the Government should not take note of individual cases of hardship and afford relief wherever such relief is genuinely needed; but, the rule or the provision does not become bad or obnoxious to Article 14 for the reason that the criterion adopted in the case of 'A' class city is not extended to 'B' or 'C' class city. If, as stated, by the learned senior counsel for Respondents, some of the members of University staff are compelled to reside outside the Campus by reason of non-availability of residential quarters, the Respondents have a genuine grievance and on the University authorities or Respondent-Association approaching the Government, we have no reason to think that the Government will not give earnest consideration to the problem.

The only other question to be considered is whether the Government Orders impugned in the Writ Petitions are liable to be quashed on account of infraction of principles of natural justice. It is true, in a case of this nature where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences, the affected employees should have been put on notice and their objections called for. But, it is by now well settled that in all cases of violation of principles of natural justice the Court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the Court in considering the effect of violation of principles of natural justice. When undisputably the action taken is within the parameters of the Rules governing the payment of HRA and CCA and moreover the University authorities themselves espoused the cause of employees while corresponding with the Government, it is difficult to visualize any real prejudice to the respondents on account of not affording the opportunity to make representation. We cannot, therefore, uphold the view of the Appellate Bench of the High Court on this aspect of this case.

Though the above discussion merits the dismissal of the Writ Petitions

A and the denial of relief to the respondents, we are of the view that on the special facts of the this case, the employees of the University have to be protected against the move to recover the excess payments upto 31.3.1997. When the concerned employees drew the allowances on the basis of financial sanction accorded by the Competent Authority i.e. the Government and they incurred additional expenditure towards house rent, the employees should not B be penalized for no fault of theirs. It would be totally unjust to recover the amounts paid between 1.4.1994 and the date of issuance of the G.O. No. 42 dated 13.2.1996. Even thereafter, it took considerable time to implement the G.O. It is only after 5th March 1997 the Government acted further to implement the decision taken a year earlier. Final orders regarding recovery were passed C on 25.3.1997, as already noticed. The Vice-Chancellor of the University also made out a strong case for waiver of recovery upto 31.3.1997. That means, the payments continued upto March 1997 despite the decision taken in principle. In these circumstances, we direct that no recovery shall be effected from any of the University employees who were compelled to take rental accommodation in Mangalore City limits for want of accommodation in D University Campus upto 31.3.1997. The amounts paid thereafter can be recovered in instalments. As regards the future entitlement, it is left to the Government to take appropriate decision, as we already indicated above. Subject to the above direction and observation, the appeals are allowed. No costs.

E

K.K.T. Appeals allowed.