

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2069 OF 2015

Sales Tax Tribunal Bar	}	
Association and Anr.	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. P. V. Surte with Mr.P. C. Joshi, Mr. D. K. Bapat, Mr. C. B. Thakar, Ms. N. R. Badheka and Mr.Subhash Surte i/b. Ms. Manjiri S.Parasnis for the petitioner.

Mr. V. A. Sonpal - Special Counsel for the respondents.

Mr. S. N. Bagul - Joint Secretary, General Administration Department present.

**CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATED :- JUNE 28, 2016

P.C. :-

When this petition was listed today, we took the further affidavit of the Joint Secretary in the Finance Department, Government of Maharashtra on record. We have heard the learned Senior Advocates practicing in the tribunal and members of the association and Mr. Sonpal at some length.

2) We are informed that there are two posts of judicial members, which are presently vacant. The details of this are set

out in the affidavit of Mr. Vinay D. Athavle Joint Secretary, Finance Department, Government of Maharashtra tendered today and taken on record.

3) On instructions, Mr. Sonpal assures the court that these vacancies will be filled in expeditiously.

4) It is common ground and undisputed that a judicial member who retired on 25th January, 2016, the vacancy caused by his retirement was sought to be filled in and by coordinating with the Registrar General of this court. The High Court administration recommended two names. One of the recommendations, of the then Principal District and Sessions Judge, Dhule for appointment as judicial member was accepted by the Government. The order of appointment was also issued. However, that judicial member expressed his inability to join due to personal difficulties. On the earlier occasion, we have noted his personal difficulties, which included the Government's apathy in not making available to him the Government accommodation commensurate to his dignity and status. The present market rates were not affordable and therefore, when he was informed that he must first join and thereafter his accommodation issue will be looked into, therefore, he refused to join. He had other personal difficulties as well. However, one of the reasons was non availability of the residential accommodation.

5) Therefore, a request has been made to the High Court administration to recommend names for appointment and the administration will surely process it expeditiously and duly recommend the name. The other vacancy is sought to be filled in and the process is on. The file is now moved for seeking approval of the Hon'ble Chief Minister. The files are being processed through the Finance Ministry and the Department of Law and Judiciary. Mr. Sonpal, on instructions, states that within two weeks from today, the recommendation would be finalised, the process of appointment will be completed and the appointee will be requested to take charge.

6) When such state of affairs were disclosed and during the course of arguments, we pointed out to the State that once a senior judicial officer (retired District Judge) has been chosen for the post, the problem of his accommodation should be addressed well in advance so that he does not suffer any indignity and embarrassment.

7) In that regard, we invited the attention of Mr. Sonpal to the affidavit filed by one Mr. S. N. Bagul Joint Secretary, Department of General Administration, Government of Maharashtra. That is affirmed on 15th June, 2016. Paras 3, 4 and 5 of this affidavit make interesting reading. They are reproduced hereinbelow:-

“3. I say and respectfully submit that, according to GR dated 30.12.2014, Government servant who desires/ requires Government Accommodation, has to submit his application online. According to para 3(D) of the said Government Resolution the Government Servant has to submit requisite scanned documents along with the application online to the concerned Head of the Office/Department using given user ID. According to para 3(E) of the said Government Resolution, after receiving the application the concerned Head of the Office/Department has to scrutinize whether office of the applicant is under his purview as well as the applicant's appointment is regular, birth date/date of retirement is correct and if it is found that the information filled in by the applicant is correct and applicant has submitted all the required documents, Head of the Office/Department has to send the application to the General Administration Department online. Thus the applicant can submit his application only after he assumes his duty on the post of his posting since the Head of the Office/Department has to certify documents to be submitted by Applicant. The applications are scrutinized as and when received online by General Administration Department. If applicants fulfill criteria then their applications are waitlisted. A copy of the said Government Resolution dated 30.12.2014 G. R. is annexed hereto and marked as **Exhibit-A**.

4. I say and respectfully submit that as per Government Resolution dated 05.10.2012 Judicial Officers are categorized in different categories as per their pay scales. In the said Government Resolution dated 05.10.2012 the grades of the judicial officers are classified in various categories for the purpose of entitlement of nature and place of accommodation on the basis of area and size of accommodation. They are thus entitled for the government accommodation as mentioned in the said Government Resolution dated 05.10.2012. A copy of the Government Resolution dated 05.10.2012 is annexed hereto and marked as **Exhibit-B**.

5. I further say and submit that category wise common waiting lists are prepared for the Administrative as well as Judicial Officers by the General Administration Department. Government Accommodations are allotted as per waiting list and the demand (demand in particular area or building) of the Applicants. However Judicial Officers are given

priority as Administrative and Judicial Officers are allotted Government Accommodations in the ratio 1:1 as per the decision taken by the Government.”

8) The deponent of this affidavit is present in court and has identified himself. On taking instructions from him, Mr.Sonpal states that the Government would alter the process and bring about a radical change so that no judicial officer will have to wait for allotment of residential accommodation if he does not have one of his own in Mumbai. He would not have to suffer for want of accommodation or wait endlessly in the hope that during his tenure he would be able to obtain it.

9) Mr. Sonpal states that now no Government official will sit on the files or hold on to the request of such judicial officers who are to join as members of any judicial tribunal or court in the State of Maharashtra. Mr. Sonpal submits that the moment the appointment is notified and a request comes from such official for allotment of residential accommodation in Mumbai, an allotment order would be placed in hands even before he joins duty or at least on the date he joins the duty. The insistence on compliance with the Government Resolutions particularly that the officer must first join the post and thereafter notify his requirement to the Departmental Head would be relaxed in cases of judicial officers and who have no residential accommodation of their own in Mumbai.

10) Although we welcome these statements and accept them as undertakings given to this court, we are sceptical. Meaning thereby, we have our own doubts whether the State will abide by these undertakings. There are ways and means by which the General Administration Department and the Finance Department of the State create hurdles and obstacles in the smooth working and functioning of all the tribunals and courts set up by the State. Ordinarily, these courts are under the administrative and judicial control of this court. Our experience is that most of the judicial officers, who have no base in Mumbai but chosen for manning such tribunals and courts are not allotted residential accommodation expeditiously. Their wait is endless. Sometimes the High Court administration had to arrange for a dormitory type accommodation for their temporary or transit stay. This situation has never undergone any change for decades together.

11) Equally, we must note the plight of the support staff. Those working as Class III and Class IV officers and serving either on the establishment of the High Court, City Civil Court, Small Causes Court and other such courts and tribunals are not allotted a residential accommodation from the Government for years together. The High Court administration goes on corresponding

and making requests in writing in that behalf. The files are moved by the High Court officials, but even they have to wait endlessly for response, much less favourable and positive. Whenever requests with specific names have been made, the State desires to treat them as out of turn or special requests. They would treat such a request as a special case and process the files only then. There also the stock reply is that the powers are vested only in the Chief Minister of the State and so long as the files are not cleared from his secretariat under his signatures, no allotment orders can be issued. This is the experience of the judicial as well as administrative staff in the State.

12) It is these dismal state of affairs which compell us to observe as above. We are still apprehensive for this State has yet to adopt a culture of respect and regard for the judiciary. The judiciary is an important organ of the State. The State has a wider connotation and included in it are the legislature, executive and the judiciary. The executive wing of the State Government continues to show disrespect and disregard to the judiciary in matters which are of above routine nature. We have seen precious time being wasted on the judicial side on such trivial issues. We do not think that such state of affairs are prevailing anywhere else in the country. The other State Governments are

responsive and they regard such request from the judiciary as an urgent matter and take steps to comply with it promptly. That is because there is a realisation that vital functions such as the maintenance of law and order and equally the administration of justice are sovereign and regal. They cannot be outsourced or privatised. The judiciary should not be embroiled and engaged in these problems and the administrative machinery should help it in solving the same. If judges and judicial officers do not have the minimum comfort and necessities, none should expect speedy justice. If the judicial officers in the State continue to worry about allotment of residential quarters and have to wait for months together or sometimes till their retirement for such allotment,, then, something is drastically wrong with the administration and governance of the State and needs repairs. We do not think any statements made by Mr. Sonpal and which we have recorded as undertakings given to this court are going to improve the situation. We hope that we do not have to say anything more. The departments concerned have to simplify and streamline the entire process. We have found in the affidavit of the General Administration Department that their process lacks transparency. The allotment of government residential quarters appears to be a closely guarded and secret affair. The General Administration Department should forthwith display on its

website all the relevant information. They must indicate the availability of Government accommodation and for allotment of judicial officers and other senior administrative officers. They must indicate on the website itself as to how many residential quarters and from a common pool are earmarked for allotment to the judiciary and particularly the senior judicial officers serving the State. If any application is received for allotment, the date of receipt of such application, the serial number allotted to it and when was it considered and disposed of should be displayed on the website. If there is a reason for delay and on exceptional occasions, then, the reasons for the same ought to be also indicated with clarity. We would expect the Government to earmark certain tenements in Mumbai for allotment to judicial officers and the officers in the rank of Class II, Class III and Class IV serving in judicial and administrative wings of the judiciary. These earmarked tenements, if few in number and inadequate, then, steps be taken to increase it and what arrangements have been made by the State. All this be now indicated on affidavit and we expect Mr. Sonpal to file such a comprehensive affidavit from both the Departments. We would expect the same deponents to report to this court by filing further affidavits.

13) It is time that we inform and impress upon the administration of the State that when this court is critical of their conduct and examines it in such a manner on the judicial side, it does not mean to look down upon anybody. It merely discharges its duty and fulfills its responsibilities towards the public. As the Hon'ble Supreme Court of India observes and holds, in the case of *Bigyan Kumar and Ors. vs. Union of India and Ors.*¹ after emphasising the role of the judiciary, and we quote the relevant paragraph, which reads as under:-

“7. We would part with the matter by recording our serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the courts and the multiplying instances of confrontation. The Court, including the apex one, is a part of the State and is a built-in mechanism of the Constitution to administer justice in accordance with law. For discharging that duty, the court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the court in accord with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realises this situation and does not unnecessarily get into a confrontation.”

14) We say nothing more. We hope that the senior administrative functionaries are aware of the constitutional

¹ AIR 1988 SC 1025

status and position of the judiciary. It is expected to be impartial and independent. No direct or indirect interference with the functioning and working of the Judges at all levels is tolerated by the Constitution. That is the only corrective mechanism available to the citizens against the illegalities committed by State officials and which result in their legal rights being jeopardised. In the adversarial system of justice that we have, the State is proving to be the single largest adversary. It is responsible on most occasions in creating and generating litigation. The statistics have proved this fact. Such attitude and approach of the State results in setting up more courts of justice and judicial tribunals. That requires trained, efficient and equipped manpower, staff and infrastructure. That is hopelessly lacking in the State of Maharashtra and especially in Mumbai. In the prevailing set up, the State and its residents would never be able to fulfill and honour the constitutional mandate of cheap, inexpensive, quick and firm justice.

15) We place this matter on 9th August, 2016 in the fond hope that on that date we may not have to be still harsh and critical. We would expect the vacancy in the post of judicial member as also in the post of administrative member to be filled in and the tribunal then functions to its capacity.

16) We are not making these observations by restricting the case only to the Sales Tax Tribunal. We would expect these directions and observations to hold good equally for other courts and tribunals functional in the State. Let therefore a copy of this order be forwarded to the Chief Secretary of the State. He should invite the attention of all concerned to the above observations.

17) We would request Mr. Surte and Mr. Joshi to place on record of this petition the requirement of staff by the registry of the Maharashtra Sales Tax Tribunal. If the President has forwarded any request and for filling up vacant posts or sanction of additional posts, then, that data also should be placed before us duly authenticated by the authorised official and thereafter this court would look into that aspect as well.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)