
Om Prakash and Others Vs Govt. of Nct of Delhi and Others

Writ Petition (C) 4282 of 2013

Court: Delhi High Court

Date of Decision: July 9, 2013

Acts Referred:

Delhi Municipal Corporation Act, 1957 " Section 44

Citation: (2013) 07 DEL CK 0482

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Anand Nandan, for the Appellant; Sana Ansari, for Ms. Zubeda Begum, for R-1 and R-2, Ms. Mini Pushkarna, Standing Counsel, NDMC, Mr. Shantanu Tyagi, for R-3, Mr. R.N. Singh and Mr. A.S. Singh for R-4 and Mr. Kumar Rajesh Singh, for R-5, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

C.M. No. 9949/2013 (Exemption)

Allowed.

W.P.(C) 4282/2013

1. Deciding a batch of the transfer applications which were filed as writ petitions in this Court but were re-registered as transfer applications upon a

notification being issued requiring service disputes between employees of the Municipal Corporation of Delhi and the Corporation to be decided

by the Central Administrative Tribunal, the Tribunal took a view that though right to employment is not a fundamental right but in matters pertaining

to employment under the State and the statutory authorities constituted under Acts of Parliament an element of fairness must permeate the

employment. The issue before the Tribunal was a claim by the seasonally appointed Domestic Breeding Checkers seeking creation of 3500

permanent posts and permanently appointed against the said posts. It appears that the Standing Committee of the Corporation and the

Corporation was in favour of converting the seasonal posts into permanent posts but the Commissioner of the Corporation was not in favour

thereof in view of the fact that the work of Domestic Breeding Checkers was available only for 7 months in a year, when mosquitoes breed.

2. Vide decision dated December 23, 2009 the Tribunal decided the transfer applications seeking a virtual Mandamus that 3500 seasonal posts be

converted into regular posts. The Mandamus issued by the Tribunal is interestingly worded as under:-

Resultantly, for the foregoing reasons, we dispose of all these TAs with a direction to the respondents to MCD to adopt a methodology on

Resolution etc. and to provide infrastructure of regular appointments of these applicants and thereafter a conscious decision be taken to offer them

regular appointments as DBC/Health Workers. In this regard, Commissioner is expected in law to take a final decision, dealing with all the

contentions raised by the applicants in these Writ Petitions (TAs) and the material relied upon and also our observations made. By doing so, we

are not interfering in the domain of the executive but giving guidelines on their prerogative to decide the issue, which is yet to be decided finally. A

decision shall be arrived at within two months from the date of receipt of a copy of this order. On the basis of the decision the claim of applicants

be processed further.

3. As we are finding in various orders passed by the Tribunal no definite conclusions are arrived at. On the one hand the Tribunal takes the view

that it cannot enter into the domain of the executive, in that, it is the executive alone which can create permanent posts and yet makes observations

and return findings which are determinative of the fact that permanent posts are required to be created. At the second stage of litigation the

Tribunal holds the respondents being bound by the determinative findings arrived at by the Tribunal and under contempt jurisdiction virtually forces

the authorities to sanction posts.

4. This is to be found in paragraph 32 of the decision dated December 23, 2009. On the one hand, in the first paragraph, the Tribunal has directed

MCD to adopt a methodology on resolution to provide an infrastructure for regular appointments. How else would one understand the Mandamus

to be other than that the seasonal posts be created and converted into regular posts. But immediately thereafter the Tribunal records that it is not

interfering in the domain of the executive but giving guidance on their prerogative to decide the issue.

5. The Commissioner of the Corporation put up a preamble for consideration of the Corporation as per his Communication No. F.

33/Health/531/C &C dated June 09, 2011. With respect to the factual information which was required to be considered by the Corporation i.e.

the body constituted under the Delhi Municipal Corporation Act, 1957 to take a decision, the Commissioner pointed out as under:

(a) The scientific work assignment of DBC"s is only for seven months i.e. from May to November for containment of Aedes breeding.

(b) The 3500 post of DBC"s are temporarily sanctioned every year as per seasonal requirement with prior approval of Commissioner, MCD and

there is no permanent sanctioned post against which they can be regularised.

(c) Aedes mosquitoes cannot mate below 16 degrees centigrade and as such there is no requirement of DBC"s during winter when there is

minimal/non-transmission of Aedes breeding.

(d) Extremes of weather both hot and cold engendered by global warming may not facilitate enhanced breeding season.

(e) For control of perennial breeding of culex mosquitoes in polluted water in the drains there are 2302 anti larval Field Worker in MCD. The

DBC"s have no role in it.

(f) The DBC"s have no role in treated water born diseases like Cholera, Polio etc.

(g) In MCD there is no policy to regularise contractual staff. The data base of staff of MCD is in toto is 143216 out of it 3500 DBC"s are working

contractually and considered for regularisation in isolation living a side the entire group of 35000 (illegible) approx. similarly situated

contractual/seasonal employees.

(h) NDMC has 164 Anti Malaria gang men which is similar to 2302 Field Worker of MCD and do DBC work as well.

6. The Corporation resolved that the recommendations put up by the Commissioner as contained in letter dated June 09, 2011 be rejected. A

fresh preamble was directed to be placed.

7. The Commissioner refused to do so.

8. The second stage litigation commenced when the seasonal Domestic Breeding Checkers filed O.A. No. 417/2013. The same has been decided

vide impugned order dated February 22, 2013.

9. Relief claimed in the Original Application was that a direction be issued to the Commissioners of the three Municipal Corporation in Delhi to put

up a preamble in a manner which would facilitate conversion of the seasonal posts into permanent posts.

10. It be noted that the Municipal Corporation of Delhi was trifurcated into 3 Corporations; being South, North and East Municipal Corporations.

11. Relief has been declined by the Tribunal following words:

The applicants while disputing the opinion expressed by the Commissioner, inter alia, submit that the Commissioner is under statutory obligation to

present a preamble before the respective Standing Committees and the House in view of the Resolutions passed by the House of the Corporation

vide their Resolutions dated 28.03.2011 and 26.07.2011. Though much time has elapsed, Respondent No. 2 who is required to coordinate with

the Commissioners of the South, North and East Municipal Corporations and to make them to present a preamble, is not discharging his statutory

obligations under the Delhi Municipal Corporation Act. The applicants, by filing this OA, are seeking a direction to the respondents to direct the

respective Commissioners to place the preamble before the Standing Committee of the House of the Corporation and to implement the

Resolutions of the Corporation passed resolving to regularize the services of the applicants.

It is to be seen that the Hon^{ble} High Court of Delhi while disposing of the Writ Petition No. 3130/2010 and batch vide its order dated

10.05.2011 categorically observed that under the Scheme of the Act, the Commissioner is required to give his views before passing the Resolution

by the Corporation and the Commissioner in pursuance of the said observations, furnished his views, though against to the interest of the

applicants. Therefore, in view of the significant role of the Commissioner and in view of his discharge of the same, in our considered view, the

Tribunal cannot compel the Commissioner to change his views without there being any change of circumstances or facts and to place a fresh

preamble before the Corporation.

12. With respect to the status of the Commissioner of the erstwhile Municipal Corporation of Delhi (which would now be the status of the

Commissioners in the 3 trifurcated Corporations) a Single Judge of this Court in the decision reported as Nirmal Kumar Jain and Others Vs.

Municipal Corporation of Delhi and Another, ., which was upheld by a Division Bench of this Court in the decision reported as Nirmal Kumar Jain

and Others Vs. Municipal Corporation of Delhi and Others, and also the Supreme Court as per decision reported as Shri B.S. Khurana and

Others Vs. Municipal Corporation of Delhi and Others, held the Commissioner is not an employee of the Corporations. The view taken was the

Commissioner is not subordinate to the Standing Committee. The view taken was that the Commissioner of the Corporation holds a unique

position under the Delhi Municipal Corporation Act, 1957. His status was at par with statutory authorities constituted under the Delhi Municipal

Corporation Act, 1957.

13. Suffice would it be to state that u/s 44 of Delhi Municipal Corporation Act 1957, for the efficient performance of functions of the Corporation,

the municipal authorities being (i) The Standing Committee; (ii) The Wards; and (iii) The Commissioner, are noted.

14. We concur with the view taken by the Tribunal that no Court can issue any direction to an executive authority to consider a particular matter in

a particular way. Of course, where a statutory authority takes a decision which is found to be suffering from the impropriety of taking into account

irrelevant considerations or excluding relevant considerations, the decision making process can be faulted requiring a fresh decision to be taken

after excluding irrelevant considerations and taking into account only such considerations which are relevant.

15. Writ Petition is dismissed in limine. No costs.

C.M. No. 9950/2013

Dismissed as infructuous.