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Rajinder Nagar Welfare Assn. vs. Delhi Water Board & Ors., 2011

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* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 9th February, 2011

+ **WP(C) No.5918/2010**

RAJINDER NAGAR WELFARE ASSN. PETITIONER

Through: Mr.Rakesh Kumar Singh and
Mr.Shah Alam Khan, Advocates

versus

DELHI WATER BOARD & ORS. RESPONDENTS

Through: Mr.Sumeet Pushkarna and
Mr.Jitendra Kumar, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

- | | | |
|----|---|-----|
| 1. | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

Public Interest Litigation, in its denotative contour as well as connotative sweep eschews characteristics of an adversarial litigation and encompasses affirmative facets of public good, endeavours to ameliorate the conditions of the marginalized sections of the society and bestows beneficence through interpretative dynamics on those who

deserve. Quite apart from the above, it throws laser beam on issues relating to good governance and attempts to guide the citizens' behaviour in certain fields on the substructure of good governance, economic purity, sustenance of environment and such other spectrums. It, in conceptual essentiality, has an obligation to avoid 'personal interest', 'publicity interest' and 'paise interest' like the plague. Sometimes necessity arises where the court comes across a controversy where it is compelled to remind the citizens their constitutional duty and the obligation because everyone has to bear in mind the age old saying 'Right, to its last particle, is duty'. The present prefatory note has become necessary as, we are disposed to think, citizens who are consumers cannot make their sense of duty an imaginary one totally ostracizing the idea that 'grandest of all laws is the law of progressive development' and the same is not possible without responsible positive participation of the citizens of a civilized nation. The issue before us is whether consumers of water, supplied by the Delhi Jal Board can only complain that they have not been supplied measuring meters on the basis of which they have to pay the charges or they also have the duty to have the meters and pay for their actual accurate consumption, for "accuracy is the twin brother of honesty, inaccuracy, of dishonesty".

2. In the present public litigation, the petitioner, namely, Rajinder Nagar Welfare Association(Regd.) through its General Secretary has made colossal grievance that the Delhi Jal Board (for short, 'the Board') has not performed its statutory duty of installing water meters and taken a decision on 29.10.2009 and hence, a writ of certiorari should be issued for quashment of the said decision and further a writ of mandamus be issued commanding the Board to install the water meter of ISI/ISO standard to the respective water consumers forthwith within the National Capital Territory of Delhi and to stock water and avoid any shortage of water meters in future and further not to take any coercive action against the consumers.

3. It is submitted by Mr.Rakesh Kumar Singh, learned counsel appearing for the petitioner association, that it is obligatory on the part of the Board under Section 17 of the Delhi Water Board Act, 1998 (for brevity 'the Act') to install the water meters to measure the consumption of water but the Board instead of installing the water meters has issued notices on 20th October, 2009 to the consumers to install a functional water meter within a month under intimation to the Zonal Revenue Officer of the Delhi Jal Board so that the charges of water consumption

can be raised against the water connection on the basis of actual consumption. It is urged by Mr.Singh that Delhi Jal Board is resiling from its statutory duty by putting the burden on the citizens.

4. Mr.Sumeet Pushkarna, learned counsel appearing for the Delhi Jal Board, submitted that the Delhi Jal Board has issued notices due to shortage of water meters available with it. It is urged by him that due to large logistics shortage of manpower and supply of meters, large number of consumers are not paying for actual consumption of water. It is his further submission that while most of the consumers do not have the meter as a consequence of which the Board is charging them on an average of 20 Kiloliters to 30 Kiloliters per month depending upon the area in question. The said charges approximately ranges between Rs.150/- to 200/-. Learned counsel would contend that the consumers drawing water from the Board network are under obligation to pay for the actual consumption but the said amount is not being collected by the Board because of the non-installation of the meters. Mr.Pushkarna, further propounded that it is obligatory on the part of the citizens to co-operate and not to consume the water as a result of which the network of the Board suffers and in the ultimate eventuate enormous loss is sustained. It is put forth by him that even if the Board supplies meters,

the consumers are to pay for the same but a situation has emerged that the Board is not in a position to supply but is prepared to permit the consumers to install the same.

5. The question that emanates for consideration is whether the Board is under obligation to install water meter or the citizens. That apart a larger question that emanates for consideration is whether the citizens because of the non-installation of water meters while knowing fully well about the more consumption should consume the same and not pay the charges as per actual consumption. At this juncture, we think it appropriate to refer to certain citations pertaining to the fundamental concept of public interest litigation and the role of the Court.

6. In *Fertilizer Corporation, Kamagar Union v. Union of India*, (1981) 1 SCC 568, the Apex Court has expressed thus:

“43. Public interest litigation is part of the process of participative justice and ‘standing’ in civil litigation of that pattern must have liberal reception at the judicial doorsteps.”

7. In *Bandhua Mukti Morcha v. Union of India & Ors.*, (1984) 3 SCC 161, the Apex Court expressed thus:

“9.When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting

at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives.”

Thereafter, their Lordships proceeded to hold as follows:

“55.In public interest litigation, the role held by the Court is more assertive than in traditional actions. During the regime of the Warren Court in the United States, it proceeded to the point where affirmative programmes were envisaged, and the relationship between right and remedy was freed from the rigid intimacy which constitutes a fundamental feature of private law litigation. While remedial procedure was fashioned according to the demands of the case and varied from stage to stage, in the shaping of relief the court treated with the future and devised a code of regulatory action. Viewed in that context, the role of the Court is creative rather than passive, and it assumes a more positive attitude in determining facts.”

8. In ***Sheela Barse v. Union of India & Ors., (1988) 4 SCC 226***,

while dealing with the concept of public interest litigation, the Apex

Court has opined thus:

“11. ...In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual

rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare State. Effective solutions to the problems peculiar to this transformation are not available in the traditional judicial system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert-and quite often not even aware of-those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group rights and interests....

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The proceedings do not partake of predetermined private law litigation models but are exogenously determined by variations of the theme.

Thereafter, their Lordships proceeded to state as follows:

12. More importantly, the court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the

proceedings, moulding of the relief and-this is important-also supervising the implementation thereof. The Court is entitled to, and often does, seek the assistance of expert panels, Commissioners, Advisory Committees, Amici etc. This wide range of the responsibilities necessarily implies correspondingly higher measure of control over the parties, the subject matter and the procedure. Indeed as the relief is positive and implies affirmative action the decisions are not "one-shot" determinations but have on going implications. Remedy is both imposed, negotiated or quasi-negotiated."

9. In ***M.C. Mehta v. Union of India***, AIR 2006 SC 1325, the Apex Court has held thus:

"64. Rule of law is the essence of Democracy. It has to be preserved. Laws have to be enforced...."

10. In ***State of Uttranchal v. Balwant Singh Chaufal & Ors.***, (2010) 3 SCC 402, in paragraphs 36, 96 and 103, it has been held thus:

"36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and

exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.

96. In the 1990s, the Supreme Court expanded the ambit and scope of public interest litigation further. The High Courts also under Article 226 followed the Supreme Court and passed a number of judgments, orders or directions to unearth corruption and maintain probity and morality in the governance of the State. The probity in governance is a sine qua non for an efficient system of administration and for the development of the country and an important requirement for ensuring probity in governance is the absence of corruption. This may broadly be called as the third phase of the Public Interest Litigation. The Supreme Court and High Courts have passed significant orders.

103. These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation.”

11. The enunciation of law in the aforesaid decisions clearly demonstrates that the Court has a dynamic role and it has the power to mould the relief regard being had that litigation is not adversarial in nature. It is not a litigation in the traditional sense of the term and the reliefs can be shaped keeping in view the future. It should have a liberal reception at the judicial doorstep. The social and economic justice has to become a meaningful reality and cannot be in the realm of illusion. The Court has a sacrosanct duty to protect the rights of the weaker and marginalised sections. Sometimes it is regarded as a duty under Article 226 of the Court to see that the probity and morality in the governance of the State is maintained. Any kind of personal vengeance is not to be entertained and is to be thrown at the threshold. The terms ‘government’ and ‘governance’ are inter-twined. In Black’s Law Dictionary, sixth edition, the term ‘government’ has been defined. We may profitably reproduce the part which is relevant for the present purpose:

“The system of polity in a state; that form of fundamental rules and principles by which a nation of state is governed, or by which individual members of a body politic are to regulate their social actions. A constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and

defined, as a monarchical government, a republican government, etc. The sovereign or supreme power in a state or nation. The machinery by which the sovereign power in a state expresses its will and exercises its functions; or the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative, and administrative business of the state is carried on.”

12. A good governance also requires peoples’ participation, for a citizen cannot claim his right in a routine manner without thinking about his duty. One cannot be oblivious of the fact that democratic governance in its fundamental expanse has to include performance of democratic duties by a citizen. Governance neither etymologically nor in its completest canvas would only include government. A good democratic set up can only be built with excellence where the citizens realise their duty and act giving respect to the spirit of law. It needs no special emphasis to state that the citizens have the constitutional as well as statutory obligations.

13. This being the position, the factual matrix that has surfaced in the case at hand has to be keenly scrutinized. At first we shall proceed to appreciate the statutory scheme.

14. Section 15 of the Act provides for power to require water supply to be taken and to require maintenance of service pipes. The said

provision reads as follows:

“15. Power to require water supply to be taken and to require maintenance of service pipe—(1)

The Board may require any person, who desires the supply of water for domestic or any other purpose, to comply with such requirements as may be specified in requirements made in this behalf including the provisions of any supply pipes or any tanks, pumps or other pipes or fittings, as may be required by the Board, or deposit of the cost of so doing, and the payment of any amount required by way of development charges.

(2) After obtaining the sanction of water connection from the Board the delivery pipe shall be got laid by consumer through a licenced plumber at his own cost from the main to consumer's premises including ferrule.

(3) It shall be the duty of the consumer to maintain, repair and replace, if required, such delivery pipe at his own cost.

(4) All service pipes laid for a period of 15 years or more shall be got inspected by the consumer, at his own cost, through a licenced plumber. If the service pipes are found rusted/leading, and this is likely to result in contamination of water, the work of repair/replacement shall be got executed by the consumer, at his own cost, through a licenced plumber.

(5) It shall be the responsibility of the Developing Agency carrying out, any construction, including multi-storeyed construction or additions to existing construction, to ensure provision of water supply through storage tanks, either underground or overhead, and booster pumping

stations. The construction shall be the responsibility of the Developing Agency and the maintenance and operation of the arrangements shall be the responsibility of the occupant of such premises. The Board shall be responsible for giving water in the mains feeding the service pipe. The construction, arrangements shall be done with the prior permission of the Board and on such terms and conditions as shall be determined by the Board.”

15. On a perusal of the said provision, it is discernible that the Board has the responsibility to supply water for domestic or any other purpose on certain conditions. The consumer is required to maintain, repair and replace the pipelines.

16. Section 17 deals with the power of Board to provide meters which reads as follows:

*“17. **Power of Board to provide meters**—(1) The Board may provide water meters to measure the consumption of water by any person using water supply by the Board and, until the contrary is proved, it shall be presumed that the quantity of water shown by the meter has been consumed.*

Provided that the Board may in its discretion permit a consumer to use own water meter.

(2) The use, installation fees and rent to be paid for such use, maintenance and testing of meters shall be in accordance with regulations framed under his Act.”

17. Relying on the said provision it is urged by Mr.Rakesh Kumar Singh, learned counsel for the petitioner, that it is obligatory on the part of the Board to provide water meter to measure the consumption of water and the consumer has no role to play. Per contra, Mr.Pushkarna would submit that the Board can grant permission to the consumer to use his own meter and in the present factual scenario the Board is prepared to notify to the consumers to buy their own meters. It is urged by him that in any case the consumer has to pay for the meters.

18. In the course of hearing, Mr.Pushkarna apprised this Court that presently the Board has five thousand meters and the same shall be installed within three weeks hence.

19. The core issue, which we are inclined to think is whether the citizens should consume more water and not pay for the same simply on the ground that the water meters are not installed or to install the meters and pay the charges. Mr.Pushkarna, learned counsel for the Board, submitted that if the Board is not able to provide meters from the stores, the citizens can buy their own meters of specific brands and standards as notified by the Board. We have already noted that if the Board supplies the same, the consumer has to pay. It is also contended that the water

consumption of an average family may go much higher than what is being charged. It has also been contended, in certain cases, the average charges fixed at 20 Kiloliters per month may go down. Learned counsel for the respondent submitted that it is the tendency of the people to consume more and pay less because there is non-installation of meters.

20. Availability of the water is a primary requirement in any human habitation. The need of the same cannot be marginalized. Paucity of the water cannot be countenanced. Similarly consumption of more water by the citizens on less payment is also deplorable. It is the duty of the collective to see that the economic growth of a country rises when the members of the society pay their charges and taxes and any kind of evasion or any subterfuge or any sort of refusal is not acceptable. In this context, we may refer with profit to Article 51A¹. The Article 51A(j) deals with fundamentals which reads as follows:

“(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”

21. The term ‘achievement’ has to be understood in a broader and larger context including achievement in the field of understanding of the

¹ Corrected vide order dated 18th February, 2011.

morality of economic and political growth of a nation. The collective cannot only think of its fundamental rights totally brushing aside the conception of duty. A nation constantly rises to a higher level if the citizens act with responsibility as per the existing law. If the citizens take recourse to same maladroit efforts to have something without payment, it is the betrayal of the national value. On certain occasions, it has been noticed that when the State has given one line connection or one 'batti' connection, the consumers have abused the same and put the institution to loss. Every institution has a collective character and the Board is no exception. Thus, the consumers are expected to cooperate with the Board and put the meters so that the appropriate charges are collected.

22. In view of the aforesaid, we proceed to issue the following directions:

- (a) The Board shall first endeavour to install the meters and replace the defective meters.
- (b) In case the Board is not in a position to do so, it shall notify the brands and standards available in such shops so that citizens can buy the meter.
- (c) The Board shall publish the same widely in the newspapers

so that the consumers are made aware of the changed scenario.

- (d) If any consumer purchases meter from the notified shop, the Board shall not compel him to purchase the meter from the Board and the meter shall be installed by the Board. It shall be the duty of the Board to send a licensed plumber.
- (e) If the meter is installed, the Board shall do 100 per cent billing as per the meter reading.
- (f) The installation fee and the maintenance of the meter shall be paid in accordance with the regulations framed under Section 17(2) of the Act.

23. The writ petition is, accordingly, disposed of without any order as to costs.

CHIEF JUSTICE

FEBRUARY 09, 2011

SV

SANJIV KHANNA, J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI** #30
+ W.P.(C) 5918/2010

RAINDER NAGAR WELFARE ASSN Petitioner
Through None
versus

DELHI WATER BOARD & ORS Respondents
Through Mr.Jitendra Kr. Jha, Adv. R-DJB

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
18.02.2011

At page 15, in the 8th line of paragraph 20 of the decision it has been mentioned as follows –

‘...we may refer with profit to Article 51.’

Though it should have been -

‘...we may refer with profit to Article 51A.’

The said mistake has been corrected in today’s date.

The corrected order be placed on the website.

CHIEF JUSTICE

FEBRUARY 18, 2011
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SANJIV KHANNA, J