

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 23491/2005

Judgment reserved on 17th December, 2008
Judgment pronounced on : 15th January, 2009

SADHANA SHARMA Petitioner
Through:Mr.Manish Aggarwal with Mr.M.L.
Srivastava, Mr.Subhash Vashisht and
Mr.Sachin Sharma, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.
.....Respondents
Through:Mr.R.S.Mathur for Mr.Amitabh
Marwah, Advocates for respondent/Delhi
Police.
Mr.Amit K.Paul and Mr.Sanjeev Sabharwal,
Standing Counsel for respondent/MCD.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. Whether Reporters of local papers may 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
Digest? | Yes |

J U D G M E N T
15.01.2009

S. MURALIDHAR, J.

1. This writ petition was filed as a public interest litigation ('PIL') made a grievance that there was a huge scam to the extent of Rs.120 crores in the invitation of tenders and awarding of contracts by the Municipal

Corporation of Delhi ('MCD') for laying and re-laying of roads. The petitioner was, at the time of filing of the writ petition, a Municipal Councilor of Ward No.104, Village Burari, Delhi. Among the allegations made were that MCD officials has passed for payment bogus and forged bills of contractors; that roads for the construction of which tenders were awarded were in fact not laid; that bills were passed even when the work was not done in accordance with the specifications in the tender and so on. The allegations pertained to the works done in Civil Line Zone Division XII of the MCD.

2. On 4th April, 2006, pursuant to the notice issued by this Court, the MCD filed a detailed reply affidavit denying the allegations in the writ petition. It was pointed out that a Committee had been constituted by the Commissioner, MCD to examine some of the randomly selected cases out of 112 different works cited in the writ petition. The remarks of the Committee were also placed on record. As regards the works pertaining to the Flood and Irrigation Department, Govt. of NCT of Delhi, the clarification obtained from that Department showed that the allegations were without basis.

3. The petition was listed before this Court on 6th December, 2006. This Court was informed that Delhi Police was investigating the matter and that a final status report would be submitted within four weeks. The status report on behalf of Delhi Police filed on 11th October, 2006 stated as under:-

“During the inquiry from MCD Officials and

documents collected from MCD Office regarding allocation of budget for the period 2002 to 2005 is found to be Rs.9.74 Crore. The total of the expenditure incurred on the works mentioned in the enclosed list with the said Writ Petition is Rs.2.74 Crore, where as, the total amount of alleged embezzlement is of Rs.120 Crore. In view of the above facts prima-facie there are contradictions in the version of the complainant And MCD regarding the amount of Rs. 120 crore. Clarifications regarding the above said contradictions are necessary to proceed further in this regard which is not possible at this stage as Smt. Sadhna Sharma is not cooperating in the inquiry and evading the police. The orders of the Hon'ble court will be complied with in this regard.”

4. A further detailed status report was filed by the Delhi Police on 25th January, 2007. Each of the 112 works mentioned by the petitioner was examined. Surprisingly, when the petitioner was questioned by the police, she appeared to have done a complete u-turn as regards the extent of the scam. She maintained that the allegedly embezzled amount was to the tune of Rs.1.2 crores and not Rs.120 crores and that the latter figure was “only due to clerical mistake”.

5. The petitioner was not happy with the status report filed by the Delhi Police as it did not substantiate her allegations. By an order dated 1st February, 2007 passed by this Court she was given permission to file further affidavit giving specific instances where amounts had been drawn and disbursed but no work had been executed. The Petitioner then filed the additional affidavit limiting her claims to only 29 items. Thereafter the

following detailed order was passed by this Court on 4th December, 2007:

“This petition has been filed by a former member of the Municipal Corporation of Delhi in public interest. The petitioner's case primarily is that although payments have been released by the MCD authorities for a large number of civil works in Sant Nagar, Burari, the works have not actually been executed. She, therefore, prays for a direction for a proper enquiry into the matter at the appropriate level.

2. Keeping in view the serious nature of the allegations made by the petitioner, an investigation was directed by this Court through the jurisdictional police to prima facie verify the correctness of the allegations to enable this Court to take a final view in the matter and issue proper directions. A preliminary report was submitted by the SHO concerned which was followed by a detailed report filed in this Court on 25th January, 2007. A perusal of the said report would show that in some of the instances where the works was not carried out have been on verification found to be factually incorrect in relation to some other instances the report has termed the matters to be of technical in nature calling for the assistance of a technical expert to verify the allegations. We are told by learned counsel for the Delhi Police that a request for deputing a technical expert was made to the Government of NCT of Delhi who has not, despite lapse of considerable period of time, come forward to nominate any such expert. This is evident even from the following passage appearing in the report submitted by SHO, P.S. Civil Lines.

“The Petitioner has admitted that the sites mentioned at serial nos. 17,18,20, 31, and 36 are repeated by mistake while serial nos. 19, 46, 58, 104, and 91 are mentioned

twice and are mere repetition of allegations and have been dealt with in the report. In relation to the allegations made at serial nos.1,9,33,39,46,50, 52, 59, 61, 90, 97, 98, 103, 107, 109 of the writ petition, the MCD has stated that it has never executed the aforesaid works and made no payment for the same. In relations to the allegations made at serial nos.6,7,10, 11,22, 25, 26, 27, 28, 37, 56, 83, 85, and 88 of the writ petition, further investigation with the help of experts would be required to ascertain the correctness of the allegations, which process has already been initiated. Expert opinion is required because of the technicality involved in ascertaining the amount of work done in relation to the payment made. The aforesaid co-relation can only be made with the help of experts”.

3. When the matter came before us today, learned counsel for the petitioner submitted that instead of waiting for the Government it would be more appropriate if this Court appoint a Court Commissioner to verify the veracity of the allegations with the help of a technical expert if so required by him. It was urged that the petitioner was ready to bear the expense involved in the appointment of any such Court Commissioner, if so directed by this Court.

4. On behalf of respondent/MCD, it was, on the other hand submitted that the works have actually been carried out by the contractors concerned and no payment has been released undeservedly as alleged by the petitioner. It was further argued that the police report testifies the genuineness of the payments and the execution of the works at site, no matter in some of the cases the report has sought the assistance of a technical expert. It was, all the same, argued that if the Court were to appoint a Court Commissioner, MCD has no objections to the same

either.

5. In the circumstances, therefore, and keeping in view the nature of the allegations made in the writ petition as also the fact that the petitioner has, pursuant to the order of this Court, filed an additional affidavit limiting her charge of non-execution of the works and the proposed verification only to 29 items, we are inclined to appoint a Court Commissioner to verify whether any payments have been released by the MCD for any work not actually executed on the spot. We, therefore, appoint Sh. G.P. Thareja, Advocate (Retd. Additional District and Sessions Judge) as Court Commissioner with the direction that he shall visit the spot, look into the allegations of non-execution of the works by the contractors concerned and release of payment in their favour and submit a report to this Court expeditiously but not later than three months from the date a copy of this order is received by him. We further direct that Sh. Thareja shall be free to take the assistance of any technical expert viz; an Engineer or an Architect of his choice in the process of preparing and submission of a report. The MCD authorities as also the jurisdictional police shall lend all assistance to the Commissioner for completing this job at an early date. We also fix a fee of Rs.20,000/- for the Court Commissioner tentatively to be paid in equal proportions by the petitioner and the respondent/MCD. The expense incurred in the appointment of the Commissioner shall, however, be taken as costs in the proceedings. The writ petition shall now be posted for further orders on 27th February, 2008”.

6. By the subsequent order dated 29th January, 2008, this Court

directed MCD to cooperate with the Court Commissioner. It was further recorded as under:-

“Mr.Thareja, points out that while this court has authorized him to engage services of an engineer, the fee to be paid to the engineer has not been fixed. However, we left it to Mr.Thareja to suitably fix the fee of the engineer to be engaged for this purpose and raise the bill for the services rendered by him for the orders of the court.”

7. The Court Commissioner filed a detailed report in this Court on 24th March, 2008. As regards the work undertaken by M/s R.K.Tushir Construction Company of Lane No.2, 4 and 6 back (extension), it was observed by the Court Commissioner that “the work done is in conformity with the tender and the contract and also the observations made at the site.” As regards the contract given to M/s An Construction in respect of lane No.1, the Court Commissioner found that the thickness was less than 10 cms as required by the contract and extra payment had been made for 96 cubic meters of 5” thickness. The Commissioner also disagreed with the stand of the Junior Engineer of the MCD that extra work had been done in lieu of work of lane No.9.

8. What is significant in the report of the Court Commissioner is that although the petitioner had before this Court limited her claims to 29 items, before the Court Commissioner Shri G.P.Thareja she further limited her claims to just two items.

9. In his report to this Court the Court Commissioner, observed that the

Petitioner showed him 23 photographs. Thereafter, he observed:

“Ultimately the petitioner through her counsel pressed her claim only to photograph No.1 item no.11 of affidavit, work order dated 7.4.03 No.EE XII/2002-03/39/24/16, development of rural villages development to lane from Shambhoo to Milap properties, Om Prakash to Ram Narain and from Bhupender to Rajender valued at Rs.555,398/- of which contractor is M/s. An Con.)

And photograph No.3 item no.7 of affidavit work order No.EE XII/8 dated 07.04.03 development of rural village lane no.2,4, & 6 by PDG CC And drainage system is Sant Nagar Burari C-104 valued at Rs.375,883/- of which contractor is M/s. R.K.Tushir Construction Company”.

10. In response to the report of the Court Commissioner, the MCD filed an additional affidavit dated 25th August, 2008. It appears that as regards the work order issued in favour of M/s An Construction, the facts were enquired into by MCD on the basis of the observations of the Court Commissioner and it was found that the allegations leveled by the petitioner were false and baseless.

11. In particular the MCD has in its additional affidavit dated 29th August 2008 pointed out in paras 5,6, and 7 as under:

“5. From the report of the Court Commissioner (page 2 paragraphs 2-6) it is evident that after taking into account the report filed by the police the Petitioner limited her charge of non execution of works to 29 cases only, and thereafter proceeded to give photographs of 23 in stances only and ultimately pressed her allegations in respect of two instances only i.e. two work orders both dated 7/4/04 totalling to approx. Rs.9,31,281/- one in favour of M/s

An Con amounting to Rs.5,55,398/- and the other in favour of M/s R K Tushir amounting to Rs.3,75,883/-.

6. In respect of the said two works the observations of the Ld Court Commissioner are found in paragraphs 1,2 and 3 of the Report at page 7. It is respectfully submitted that it appears that the contentions of the Respondents as also essential documents in response to the clarifications sought by the Ld Court Commissioner on 28/2/08 in respect of the two work orders have not been effectively and appropriately communicated due to the non availability of the other concerned and therefore for a proper appreciation of the facts in their right perspective the necessary clarifications are being given hereunder along with supporting documents:

a) Work Order 8 dated 7/4/3 was issued in favour of M/s R K Tushir Construction Company for carrying out inter alia road work (cc) and drainage work in lanes 2,4,6 and their backlanes in Sant Nagar. (lanes referred to as Man Ass, RM Pathak, Nihal Balaji respectively). As per rules for the work done by the contractor payments were made strictly as per the recordings of the measurement book upon the completion of the work on 25/6/03.

b) Work Order 16 dated 7/4/03 was issued in favour of M/s An Con for carrying out inter alia road work (cc) and drainage work in lanes Shambhu to Milap (hereinafter referred to as 'A'), Om Prakash to Ram Narayan ('B') and Bhupinder to Rajinder ('C'). While the execution of the said works was going on a request was received from the Petitioner herself requesting that since the roads 2,4,6 constructed earlier (a reference to the roads constructed by M/s R K Tushir) had been damaged due to cutting by the residents the same may be reconstructed afresh instead of executing the work in lane 'C'. A copy of the said letter of the Petitioner dated 21/7/03 is annexed herewith as Annexure B. In view of the savings against

work order 16 necessary permission was taken to relay the streets as requested by the Petitioner and a copy of the same is annexed herewith as Annexure C. It is respectfully submitted that no extra payment was made to M/s An Con and the same was made strictly as per the work executed and recorded in the measurement books. It is further submitted that on a proper appreciation of all the facts and keeping in mind the nature of the work, the location of its execution, the expertise of the workmen, the conduct of the residents etc. It would emerge that like in all the other cases in this case too the allegations leveled by the Petitioner are false and baseless. In fact pursuant to the observations in the report of the Ld Court Commissioner the facts were enquired by the Respondents and the statement of the JE in this respect is annexed herewith as Annexure D.

12. Enclosed with the above affidavit was a letter dated 21st July, 2003 purportedly written by the petitioner herself to the MCD which is in Hindi and the translated version of which reads as under:-

“Sir,

As I had requested on you on telephone that I have found during the inspection in Sant Nagar, Buradi, Delhi -84 that the Corporation had got done the work of Gali No.2,4 and 6 etc., about two months ago,, but the local public had laid down the sewer line on the road at their own expense and due to which all the five streets have been damaged. Repair may not be carried on other places, the work which is going on in Milap Wali Gali, in which the work be stopped in Rajinder Wali Gali and all these five streets be constructed afresh because my residence is also adjoining to these streets. Therefore the local public is pressurizing me again and again to get them constructed.

I shall be highly obliged.”

13. It is thereafter pointed out in the said additional affidavit of the MCD as under:-

“It is respectfully submitted that the instant petition is in fact a gross abuse of the process of this Court and an attempt by the Petitioner to subserve her own vested interests and settle her personal scores with officers who refused to yield to her illegal demands during her tenure as a Corporator. As evident from the exaggerated false allegations made in the Petition and the subsequent conduct of the Petitioner it is clear that the instant Petition stems more from personal vendetta than from any desire to espouse or protect public interests. It is pertinent to note that the Petitioner despite being a sitting Corporator did not complain or take any remedial action if so required when the works in question were being executed in her area in 2003, some of her directions only a few yards away from her house but chose to ventilate her grievances only in 2005. The Petitioner was duly empowered by law to sanction/scrutinize the works being undertaken in her ward and was well aware of all the procedures/powers enabling her to raise all issues including issues of public interest in the Standing Committee or the House or the Commissioner or the Vigilance Department at the relevant time. Reference may be made to Section 50/51 and 52 of the DMC Act along with the fifteenth schedule thereunder.

As already mentioned in the counter affidavit(paragraph 2) it is reiterated that the Petitioner had been unduly canvassing the cause of two contracting firms namely

M/s H B Contractor and M/s Ram Doot Builders who had been awarded several contracts for works recommended for execution by the Petitioner from her annual Councillor Funds.(Rs.70 lakhs). Despite having been awarded various works no work was executed by these contractors in almost 15 cases yet demands for releasing payments in lieu of the same were made repeatedly. However all attempts of pressurizing officials for releasing payments from the Councillor's Funds in favour of these contractors despite non execution of works were resisted and ultimately all the non executed contracts were closed. The instant Petition appears to be a counter blast to the said action of the Respondents.”

14. At the hearing of the case by this Court on 3rd December, 2008, the learned Court Commissioner Shri G.P.Thareja was present. The Court took note of his observation in his report dated 24th March, 2008 that “I did not feel the necessity of an engineer or architect in the matter of task assigned by the Hon’ble Court.” Mr.Thareja confirmed that since he was well versed in technical matters as well, he did not feel the need to take the services of an engineer notwithstanding the fact that in its order dated 29th January, 2008, this Court had authorised Shri Thareja to “suitably fix the fee of the engineer to be engaged for this purpose and raise the bill for the services rendered by him for the orders of the court.” Considering the fact that the MCD has now filed an additional affidavit disputing the report of the Court Commissioner to the extent that he has held that extra payment was made by the MCD to the contractor with reference to the thickness measured of the road, it becomes difficult for us to accept his report which has been prepared without any technical input from a qualified engineer.

15. The present case brought forth by a former Councilor has several disturbing features. At her instance, an exhaustive investigation was carried out by the Delhi Police into each of the 112 works cited by her. They found that her statement to this Court in her petition, supported by her affidavit, that financial bungling was to the tune of Rs.120 crores was made incorrectly. She told Delhi Police that the figure was in fact Rs.1.2 crores and that there had been a typographical error in the petition.

16. We are unable to accept this kind of a simplistic explanation particularly since at more than one place in the petition the figure of Rs.120 crores has been repeated. This includes the opening paragraph of the synopsis, (page C-I), Para 13 (page 12) and prayer clause 'A'(p.13-A). Thus, it appears that the petitioner made a deliberately false statement which was false to her knowledge.

17. Secondly, as noted in the status report dated 10th October, 2006, she did not co-operate with the Delhi Police which pointed out there was discrepancy in the figures. Thereafter, an exhaustive status report running to 94 pages was filed by the Delhi Police on 25th January 2007. Each of the 112 works cited by the petitioner was thoroughly investigated over a period of one year. When the petitioner found that the report of the Delhi Police did not substantiate most of her allegations, she filed an additional affidavit limiting her charge as to non-execution of works to 29 items only. This then led this Court to appoint a Court Commissioner at her instance.

18. Before the Court Commissioner, she could not substantiate her charges vis-à-vis the 29 items. She further limited her claims only to Item No.11 of her affidavit i.e. work order dated 7th April, 2003 No. EE XII/2002-03/39/24/16 and item No.7 of the affidavit i.e. work order No.EE XII/8 dated 7th April, 2003). Of these two, the Court Commissioner found discrepancy only in regard to one of the works, which in any event has been denied by the MCD.

19. We have no doubt that the above facts clearly demonstrate that the petitioner had been shifting her stand from time to time, sending all authorities on a wild goose chase thus abusing the process of the Court. This has resulted in an avoidable waste of time and effort.

20. The Court Commissioner has in his report been able to detect an irregularity only in respect of one of the works i.e. of M/s An Construction. For the reasons explained, this Court finds it difficult to accept the report as such particularly since the Court Commissioner did not think it necessary to engage the services of an engineer for making measurements despite this Court specially permitting him, at his instance, to do so. It is pointed out by MCD in the additional affidavit that the findings of the Court Commissioner are not substantiated by its records. Moreover, MCD's submission that the petitioner's claims in this behalf were not bona fide, cannot be brushed aside.

21. There is yet another disturbing aspect of the matter. The counsel for the petitioner was questioned by this Court at the hearing on 3rd December,

2008, about the letter dated 21st July, 2003 purportedly written by the petitioner to the MCD (Copy of which is at Vol. III, p.280 of the paper book). He submitted that this was a fabricated document and that the petitioner's signature had been forged. This Court passed the following order on 3rd December, 2008:-

“Learned counsel appearing for the petitioner states that the letter at p.280 of the paperbook filed along with additional affidavit of MCD allegedly issued by the petitioner requesting for re-laying of the road is a fabricated document and that her signature thereon has been forged. However, on comparison of the signature appearing on the letter at p.280 filed along with additional affidavit of MCD with the earlier letters of the petitioner at p.33 and p.35 of the paper book Vol.I it, prima facie, appears that letter at p.280 has been signed by the petitioner. Let the petitioner file an affidavit explaining the position about the document at p.280.

List on 10th December, 2008.”

22. Pursuant to the above order, an affidavit dated 9th December, 2008 sworn by the petitioner has been tendered in this Court today i.e. 17th December, 2008 . The said affidavit reads as under:-

“I, SADHNA SHARMA w/o Shri J.K.Sharma aged about 39 years resident of H.No.92, Gali No.5, Sant Nagar Burari, Delhi – 1100 84 do hereby solemnly affirm as declare as under:-

1. That the deponent is the petitioner in the captioned case and being well conversant with the facts and circumstances of the same and competent to swear

this affidavit.

2. That the letter dated 21.07.2003 has neither signed by me nor send by me to the MCD respondent.

VERIFICATION:

Verified at New Delhi on this 09th day of December 2008, that the contents of the above affidavit are true and correct to me the best of my knowledge, no part of it is false and nothing has been concealed there from.

Sd/-
DEPONENT”

23. The petitioner was also present before us at the hearing on 17th December 2008. The Court raised a specific query whether the petitioner stood by her version that she had not signed the letter dated 21st July, 2003. In our presence, she instructed her counsel to say that her signature was taken on a blank letterhead of hers and perhaps the letter dated 21st July, 2003 was typed out thereon afterwards. Unfortunately, this is not the stand taken either by her counsel at the hearing on 3rd December, 2008 or in the affidavit dated 9th December, 2008 tendered by her before us.

24. It is plain that the petitioner is trying to wriggle out of the difficult situation that she has placed herself in by taking contradictory stands. It appears that she is now unable to deny that the signature on the said letter is, in fact, hers, but wants to contend that she had signed at a blank letterhead which was later misused by MCD to fabricate a document. We find this conduct of the petitioner to be suspicious particularly since she has not chosen to be candid with the Court at any point of time. From
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beginning of this litigation, we find that the petitioner has been constantly changing her stand which has not only resulted in wastage of the precious time of the Court but has constituted an inexcusable abuse of the process of law. Therefore, we have no hesitation in dismissing this petition with cost of Rs.1.5 lakh. Of this, Rs. 1 lakh will be paid by the petitioner to the MCD within a period of four weeks from today. The petitioner will pay the balance cost of Rs.50,000/- to Delhi High Court Legal Services Committee within four weeks from today. Proof of payment of costs shall also be filed by the Petitioner in this Court within four weeks.

Suo- motu Contempt No...../2008 (to be numbered by the Registry)

25. In view of the above order dismissing W.P.(C) No. 23491 of 2005 and for the reasons stated therein, we are, prima facie of the view that the petitioner should be made liable for criminal contempt for making false statements on affidavit and abusing the process of Court with a view to interfering in the course of administration of justice.

26. Issue notice to Sadhna Sharma w/o Shri J.K. Sharma, resident of H.No.92, Gali No.5, Sant Nagar Burari, Delhi to show cause why she should not be punished for committing criminal contempt of this Court for interfering or tending to interfere with the due course of judicial proceedings within the meaning of criminal contempt as defined in Section 2(c)(ii) of the Contempt of Courts Act, 1971 and to show cause why she should not be punished for criminal contempt of this Court for interfering or tending to interfere with the administration of justice within the meaning of criminal contempt as defined in Section 2(c)(iii) of the Contempt of

Courts Act, 1971.

27. The Registry will now register the suo motu contempt proceedings as a criminal contempt case by giving it a separate number with the cause title “In Re: Sadhna Sharma”. The petitioner is directed to file a reply to the notice within four weeks from the date of issuance of notice and to be personally present on the next date of hearing.

28. The suo motu contempt petition be listed before this Court on 1st February, 2009.

S. MURALIDHAR, J.

CHIEF JUSTICE

JANUARY 15, 2009
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