8

$~

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

% *Date of Judgment: 23.01.2017*

\+ W.P.(C) 11446/2015

NARESH KUMAR ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

For orders, see file of WP(C) No. 10055/2015.

INDERMEET KAUR, J

JANUARY 23, 2017
A

Signature Not Verified
Digitally Signed
By:AMULYA

$~6 to 41, 43 to 47 & 58

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Judgment: 23.01.2017*

\+ W.P.(C) 10055/2015

GHANSHYAM DASS ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10008/2015

RAKESH KUMAR .....Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10026/2015

MONIKA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Suprret Bambra, Advocate.

\+ W.P.(C) 10028/2015

NISHANT ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10032/2015

CHIRAG ALUDEEN ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 10033/2015

BRAHAM PRAKASH ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 10046/2015

LAXMI NARAIN GUPTA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 10051/2015

RANBIR SINGH ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

12

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10053/2015

ANIL KUMAR BHARDWAJ ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Suprret Bambra, Advocate.

\+ W.P.(C) 10057/2015

KUSUM ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10058/2015

LALITA GARG ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10060/2015

ANURAG RANA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 10064/2015

JASWANT SINGH ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION .... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 11016/2015

SITA RAM SHARMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 11017/2015

ANIL KUMAR ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 11025/2015

RAVINDER KUMAR ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

15

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11027/2015

GURMUKH BHARDWAJ ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11028/2015

AMIT SEHRAWAT ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11429/2015

VIDYA DEVI ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11446/2015

NARESH KUMAR ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11449/2015

ATUL GUPTA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

17

+ W.P.(C) 11471/2015

SANJAY ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 11531/2015

SANDEEP GARG ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 11532/2015

MR. CHARANJEET ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

18

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11737/2015

SUMIT VERMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11780/2015

HARINDER SINGH ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

\+ W.P.(C) 11784/2015

SURENDER KUMAR VATS ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

19

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11785/2015

JITENDER SINGH ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11789/2015

NIRMALA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 11792/2015

VIPIN KUMAR GUPTA ..... Petitioner

20

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

+ W.P.(C) 11793/2015

ANIL KUMAR ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

+ W.P.(C) 11796/2015

ARVIND KUMAR SINGH ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

+ W.P.(C) 11797/2015

HEMRAJ SHARMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

21

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

\+ W.P.(C) 11799/2015

RAJESH GUPTA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

\+ W.P.(C) 11803/2015

AMIT VERMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Suprret Bambra, Advocate.

\+ W.P.(C) 11805/2015

KULDEEP VERMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

22

24

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Renu Gupta, Advocate.

\+ W.P.(C) 3891/2016

BABITA BHARDWAJ ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 4035/2016

RAJEEV MITTAL ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 4061/2016

SATBIR VATS ..... Petitioner

23

25

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 4062/2016

ASHOK KUMAR ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

\+ W.P.(C) 4079/2016

SURENDER KUMAR VERMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

+ W.P.(C) 11026/2015

GANGA RAM SHARMA ..... Petitioner

Through Ms.Anusuya Salwan and Mr.Abhishek Pundir, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Mr.Sunil Goel, Standing Counsel for North DMC with Ms.Supreet Bambra, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 This order shall dispose of this batch of writ petitions.

2 At the outset, it is pointed out that a bunch of similarly placed contractors had filed certain suits which had been decreed in their favour against which a Regular First Appeal had been filed. That Regular First Appeal had been disposed of by a Single Bench of this Court on 01.12.2016 (RFA No.786/2016); it was based on the consent order dated 17.11.2016 arrived inter-se the parties

3 This Court notes that these writ petitions arise out of the grievances of the petitioner who were and are still operating as contractors and doing works for the North Delhi Municipal

Corporation. All the petitioners are duly registered contractors registered with the respondent Corporation and have been carrying out various works of the respondent. The petitioners having completed the said works to the satisfaction of the respondent for which bills had been prepared and certified but complete payment not having been received by the petitioners had accordingly been constrained to file these petitions. Contention of the petitioners being that they are claiming only those bills which had been duly certified for payment and for which no amount had been paid.

4 The stand of the respondent was that there is a specific clause in the agreement which is binding upon the parties and which was to the effect that the payment of the passed bills will be subject to the availability of funds in particular head of account from time to time and the payments shall be made strictly on queue basis i.e. first the past liabilities will be cleared and after the release of payments for past bills only then the case of the petitioners would be considered; interest would also not be payable.

5 The relevant extract of Clause 7 of the 'General Conditions of Contract for Municipal Corporation of Delhi Works' highlighted by the respondent Corporation is reproduced herein as under:-

> *"The payment of passed bills will be subject to availability of funds in particular head of account from time to time in MCD. Payment of bills shall be strictly on Queue basis i.e. first the past liabilities will be cleared and after that the release of payment for passed bills be in order of the demand received at HQ under particular head of accounts. No interest shall be payable to the contractor in case of delay in payment on account of non-availability of funds in the particular head of account of MCD."*

6 This being the stand of the respondent Corporation, the petition had progressed and the matter was to be taken up for final hearing.

7 However, at this stage, as noted supra, attention of this Court has been drawn to the judgment passed by the Single Bench of this Court in RFA No. 786/2016; these RFAs had arisen out of decrees which had enured in favour of such like contractors who had preferred to file civil suits instead of filing writ petitions.

8 In the course of these proceedings on 07.09.2016, the additional submission of the respondent was noted which was that the payments being asked for by the petitioner are under 'non-planned head' and the petitioner will have to stand in queue along with others; submission of the petitioner was that there is a mis-utilization of funds in the 'non-

planned head' and the money under the 'non-planned head' is being mis-used i.e. for purpose other than those purposes for which it is required to be used. The respondent had been directed to place on record an affidavit stating the amounts expended in the 'non-planned head'. This affidavit is on record and the details of money sought to be expended in the 'non-planned head' have been given.

9 Court is of the view that the orders passed in RFA No. 786/2016 this Court is of the view that these petitions can also be disposed off on the same terms and conditions as there is no dispute to the fact that the case of these petitioners is similar to those who were parties in the RFA.

10 The terms of the consent order passed on 17.11.2016 and reproduced in RFA No. 786/2016 read as:-

"(i) The appellants shall file fresh compilations, complete in all respects in respect of the respondents and the other contractors, irrespective of whether they have filed any appeals/suits of recovery or not, so that there is a clarity about their priority in the wait list.

(ii) The appellants undertake to strictly adhere to the timeline mentioned in the compilation , for releasing payments to the respondents.

(iii) No payment shall be released out of turn by the appellants.

28

30

(iv) The appellants shall ensure that the budget for release of amounts under the head of Non-Plan Expenditure is increased on a regular basis so that the release of payments can be expedited to the respondents and other contractors in the wait list, even prior to the dates of priority mentioned against their names.

(v) The appellants shall upload the compilation on their websites for ease of access and update it regularly at the end of each month for the respondents and others to know what their status is in the wait list.

(vi) Having regard to the fact that the appellants expect the respondents to stay their hands and not pursue their legal remedies for execution of the impugned judgments and decrees for a period mentioned hereinafter, it is agreed that interest shall be payable to the respondents on the principal amount after the expiry of three years and ninety days reckoned from the date the concerned Division had passed the bills of the respondents for payment. In other words, a cushion of 90 days is being provided to the Head Quarters of both the appellants for completing the administrative work of receiving and diarising the bills received from different Divisions and preparing a combined list for payment and it is agreed that for the said period, no interest shall be payable to the respondents.

(vii) It is further agreed that the appellants will not be liable to pay interest on the principal amounts payable to the respondents under the impugned judgments and decrees, for a period of three years reckoned from the date of expiry of 90 days mentioned above.

(viii) However, immediately on expiry of three years as noted above, if the amounts remain outstanding for any reason whatsoever, the appellants shall pay interest @ 9% per annum on the principal amount to the respondents, for the remaining period, till realization.

(ix) It is further agreed that the aforesaid arrangement of payment of interest by the appellants @ 9% per annum on the outstanding principal amount to the respondents shall continue only for a period of two years, reckoned from the end of the third year as mentioned in clause (vii) hereinabove.

29

(x) If the amounts remain payable by the appellants even thereafter, the respondents shall be entitled to seek legal recourse for execution of the impugned judgments and decrees and claim interest on the decretal amount from day one.

(xi) The respondents undertake that in view of the settlement arrived at with the appellants, as recorded RFA786/2016 & RFA 192/2016 Page 4 of 9 above, they shall not take any steps to file execution petitions in respect of the impugned judgments and decrees, subject matter of the present appeals, for the period mentioned hereinabove.

(xii) As for the already pending execution petitions, orders passed in these proceedings shall be placed on record so that they can be disposed of by the concerned courts on the basis of the consent order, with liberty granted to the respondents to file fresh execution petitions in case of default on the part of the appellants, as has been detailed above."

11 Learned counsel appearing for the Corporation (Mr. Sunil Goel) was also the counsel who had appeared before the RFA Court.

12. This consent order arrived at on 17.11.2016 inter-se those contractors and the Corporation will thus bind the parties in the present petitions as well. The respondent Corporation will strictly adhere to the timeline for releasing payment to the petitioners which is to the effect that besides the fact that no payment shall be released out of turn to any party, a period of three years and 90 days reckoned from the date the concerned Division has passed the bills of the Contractors for payment shall be the period from which the payment shall start to be made to the contractors. In other words, a cushion of 90 days is agreed to be provided to the Head Quarter/respondent for completing

all administrative works of receiving and diarising the bills received from different Divisions and preparing the combined list for payment. Up to three years & 90 days, no interest would be payable by the Department to the contractors. However, even if after the expiry of three years, the amounts remain outstanding, the respondent Corporation will pay interest @ 9% per annum on the principal amount to the contractors for the remaining period till realization. The aforesaid arrangement for payment of interest by the respondent Corporation @ 9% on the outstanding principal amount to the contractors shall continue only for a period of two years reckoned from the end of the third year as mentioned in the sub-clause (vii) and if this amount remains payable by the respondent Corporation, even thereafter the contractors will be entitled to seek legal recourse by filing an execution of the entire amount and this order will be treated as a decree which would then become executable. The respondent Corporation has also ensured that the budget for realization of amount under the head of 'non-planned expenditure' will be increased so that the release of payment to the contractors can be expedited in the wait list even prior to the date of priority mentioned against their names.

This Court thus notes that the consent order of 17.11.2016 reproduced in RFA No.786/2016 is modified to the extent that there being no judgment and decree in favour of the contractors in the present case; however all other terms and conditions which the respondent (as appellants in the RFA) has agreed and undertaken will be binding upon them and this order shall be treated as a decree which in the eventuality of non-payment (as per the terms detailed supra) shall become executable.

13 Needless to state that this order passed by this Court will be fully adhered to in true letter and spirit by respondent No. 1 and will thus not constrain any party to approach the Court on this count.

14 No further orders are called for on these petitions. They are disposed of.

INDERMEET KAUR, J

JANUARY 23, 2017
A