

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

Date of Decision: 07th January, 2016

+ W.P.(C) 3385/2015

**CAMPAIGN FOR PEOPLE PARTICIPATION
IN DEVELOPMENT PLANNING**

..... Petitioner

Through: Mr.Anil K. Aggarwal, Adv. with Mr.K.S.
Wahi and Md. Imtiyaz, Advocates

Versus

LT. GOVERNOR OF NCT OF DELHI & ORS. Respondents

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr.Sandeep Bajaj, Adv. for R-1 and R-2

Ms.Arti Bansal, Addl. Standing Counsel with
Ms.Rishika Katyal, Advocate for R-4/SDMC.

Mrs.Biji Rajesh and Ms.Eshita Baruah, Advocate for
Mr.Gaurang Kanth, Advocate for R-5/EDMC

Mr.Ajay Arora, Advocate for MCD/R-6

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

: **G.ROHINI, CHIEF JUSTICE:**

1. The petitioner, which claims to be a voluntary organization incorporated and registered under the Societies Registration Act, 1860, filed this petition by way of Public Interest Litigation with the following prayers:

- (a) To direct the Lieutenant Governor of NCT of Delhi/respondent No.1 to immediately constitute the Fifth Finance Commission

of Delhi in terms of Article 243-Y read with Article 234-I of the Constitution of India.

- (b) To direct the implementation of the report of the Fourth Finance Commission of Delhi by laying the said report before the Legislative Assembly of Delhi forthwith and by distributing the consolidated fund of NCT of Delhi amongst the respondent Nos. 4 to 6 - Municipal Corporations, i.e., SDMC, EDMC and NDMC.
- (c) To direct the respondent Nos. 1 to 3 i.e. Lieutenant Governor of NCT of Delhi, Govt. of NCT of Delhi and Finance Commission of India to implement and enforce the provisions of Part IX-A of the Constitution of India to ensure financial independence and freedom of the respondent Nos. 4 to 6.

2. Before advertng to the contentions advanced in the writ petition, it may be noticed that Article 243-I of the Constitution of India provides for constitution of a Finance Commission by the Governors of the States for every 5 years to review the financial position of the Panchayats and to make recommendations to the Governor on the aspects specified therein. Article 243-Y which has been inserted by the Constitution (74th Amendment) Act, 1992 further provides that the Finance Commission constituted under Article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to the principles which should govern (i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation

between the Municipalities at all levels of their respective shares of such proceeds; (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities; (iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State and the measures needed to improve the financial position of the Municipalities.

3. In terms of Article 243-I, the Delhi Finance Commission Act, 1994 was enacted providing for the composition of a Finance Commission for the National Capital Territory of Delhi. Section 3 of the said Act provides for composition of the Finance Commission, Section 4 provides for qualifications for appointment and manner of selection of Chairman and members. As per Section 5, the Chairman and the members of the Commission shall hold office for such period as may be specified from time to time. The functions of the Commission have been enumerated in Section 13 which included review of the financial position of the municipalities and make recommendations to the Lieutenant Governor as to the principles which should govern (i) the distribution between the Government and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the Government which may be divided between them; (ii) the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the Municipalities; (iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the National Capital Territory of Delhi and the measures needed to improve the financial position of the Municipalities.

4. It is not in dispute that in compliance with the mandate of Article 243-I of the Constitution of India and in terms of the provisions of the Delhi

Finance Commission Act, 1994, Finance Commissions have been constituted from time to time for National Capital Territory of Delhi. The Fourth Finance Commission was constituted on the recommendation of the Council of Ministers by the Lieutenant Governor of NCTD by order dated 14.09.2009 fixing the term upto 30.09.2010 and the same was extended upto 30.09.2011 vide order dated 16.12.2010. However, the Fifth Finance Commission has not been constituted till date for the National Capital Territory of Delhi.

5. The present petition, therefore, has been filed contending *inter alia* that on account of the failure of the respondent Nos.1 and 2 to constitute the Fifth Finance Commission, the Municipal Corporations of Delhi are deprived of their legitimate share out of the consolidated fund of the State and consequently they are unable to carry out and perform their functions. It is also contended that the people of Delhi are deprived of their participation in local self governance through the elected local representatives in matters touching the daily needs and necessities of life.

6. It is alleged in the writ petition that even the constitution of the Fourth Finance Commission for NCTD was not in conformity with Article 243-I read with Article 243-Y of the Constitution of India as well as the provisions of the Delhi Finance Commission Act, 1994 since the term of the members of the Fourth Finance Commission was restricted to only 1 year whereas the provisions of the Constitution of India as well as the aforesaid statutes mandate that the same shall be 5 years. It is also alleged that the Fourth Finance Commission was directed to make its recommendations for fund allocation to the Municipal Corporations only in respect of sanitation,

street lighting, primary health, primary education and storm water drains and left out the various other functions, like urban planning including town planning, regulation of land use, water supply and slum improvement and upgradation, entrusted to the municipalities under the Constitution. It is pleaded that the said action of the respondent Nos.1 and 2 amounts to curtailing the powers and responsibilities of Municipalities enshrined under Article 243-W of the Constitution of India and virtually it has resulted in superseding the Municipal Corporations thereby negating the very object and purpose of the Constitution (74th Amendment) Act, 1992 which aimed at according constitutional status to the Municipalities so as to enable them to perform effectively as democratic unit of self government.

7. The further allegation is that though the Fourth Finance Commission had submitted its report in March, 2013, no action has been taken by the Lieutenant Governor for implementation of the same. It is alleged that no action has been taken till date even for implementation of the recommendations of the Third Finance Commission which was submitted long back in October, 2006.

8. Responding to the averments in the writ petition, a short affidavit dated 29.06.2015 has been filed on behalf of the respondent No.2/GNCTD. This court not being convinced with the stand taken in the said short affidavit directed to file a detailed affidavit and accordingly an additional counter affidavit dated 09.07.2015 has been filed on behalf of the respondent No.2 as well as respondent No.1 contending *inter alia* that the writ petition which is filed merely on the basis of unconfirmed and unauthentic media reports is not maintainable. It is also contended that no relief can be granted

in the writ petition in the absence of the Government of India and therefore the writ petition is also liable to be dismissed on the ground of non-joinder of necessary parties.

9. On merits it is submitted that the issues sought to be espoused in the present petition are under consideration and appropriate decision would be taken at the earliest after discussing the issues with the other stakeholders including the Government of India, Delhi Development Authority and other local bodies. It is explained that the proposal for constitution of the Fifth Finance Commission has been put up to the Minister for Urban Development and the process would be completed within a period of four months and requisite notification would be issued thereafter.

10. So far as implementation of the report of the Fourth Finance Commission is concerned, it is submitted that the respondents No.1 and 2 are seized of the issue and the recommendations of the Commission are under consideration. Since the recommendations are required to be implemented by various agencies, the Principal Secretary (Urban Development), Government of Delhi had requested all the stakeholders, namely, DDA, New Delhi Municipal Council, Municipal Corporations of Delhi, Ministry of Home Affairs, Delhi Jal Board to communicate their views and pursuant thereto, their comments have already been received. Thereafter, the appropriate orders have been sought from the competent authority vide note dated 07.07.2015 and all further proceedings would be taken expeditiously to place the report before the Assembly in compliance of Article 243Y of the Constitution of India.

11. Regarding the release of adequate funds to the municipal corporations in terms of the recommendations of Third Finance Commission of Delhi which were already accepted, it is stated that during the current financial year the Delhi Administration has not adjusted the recovery towards outstanding loan interest due from the municipalities as a special measure to help Delhi Municipal Corporations of East and North to tide over their financial difficulties. That apart, the respondents No.1 and 2 have released funds to the tune of Rs.85.31 crores to the three municipalities in the current financial year which are more than the funds released in the corresponding period of the previous year. The matter relating to increasing the revenue of all the municipalities is also under consideration and the requisite funds would be released as per the budget estimates from time to time subject to adjustments with reference to net tax collection of Govt. of NCT of Delhi. While specifically denying the allegations made in the writ petition, particularly, that the respondents No.1 and 2 have been attempting to curtail the powers of the municipalities and that the consolidated fund of the State of Delhi is being misutilised, it is sought to be contended that the respondents No.1 and 2 are taking all the necessary steps to redress the issues that are raised in the writ petition.

12. We have heard the learned Counsel appearing for both the parties and perused the material placed on record.

13. Though it is vehemently contended by the learned counsel for the respondents that the writ petition itself is not maintainable since the allegations therein are solely based on newspaper reports, having regard to the admitted fact that the report of the Fourth Finance Commission of Delhi

has not been implemented so far and the Fifth Finance Commission has not been constituted till date, we are of the view that the issue sought to be espoused is a matter of public importance and deserves consideration on merits. Accordingly, the preliminary objection raised by the respondents as to the maintainability of the writ petition is rejected.

14. Article 243I of the Constitution of India mandates constitution of a Finance Commission by the Governors of the States at the expiration of every 5th year. Article 243Y further mandates that the Finance Commission constituted under Article 243I shall also review the financial position of the municipalities and make recommendations to the Governors as to the various aspects specified therein. As per Clause (2) of Article 243Y, the Governor shall cause every recommendation made by the Finance Commission under the said Article together with an explanatory memorandum as to the action taken thereon to be laid before the legislature of the State.

15. The Fourth Finance Commission for National Capital Territory of Delhi was constituted on the recommendations of the Council of Ministers by the Lieutenant Governor of NCT of Delhi by order dated 14.09.2009. Though it is alleged in the petition that the constitution of the said Commission for a period of one year only and extension granted thereafter by one more year till 30.09.2011 is not in conformity with the mandatory provisions of the Constitution as well as the Delhi Finance Commission Act, 1994, we do not wish to enter into said controversy since even the period of five years from 14.09.2009 has expired in September, 2014. Having regard to the admitted fact that the said Commission submitted its report in March,

2013 and five years from the date of its constitution has expired long back in September, 2014, the failure on the part of the Respondents in constituting the Fifth Finance Commission for NCT of Delhi is a clear violation of the constitutional mandate. In the counter affidavit filed on behalf of respondents No.1 and 2 dated 09.07.2015 though it is stated that steps for constitution of the Fifth Finance Commission have already been taken up and the requisite notification constituting the Fifth Finance Commission would be issued within a period of four months, nothing appears to have been materialised so far.

16. Regarding the implementation of the recommendations of the Fourth Finance Commission of Delhi, even according to the respondents No.1 and 2, the report was submitted in March, 2013 itself. As per Section 13 of the Delhi Finance Commission Act, 1994, the Commission shall review the financial position of the municipalities and make its recommendations to the Lieutenant Governor as to the principles which should govern the distribution between the government and the municipalities of the net proceeds of the taxes and etc. leviable by the government which may be divided between them, the determination of the taxes and etc. which may be assigned to or appropriated by the municipalities, the grants-in-aid to the municipalities from the consolidated fund of the National Capital Territory of Delhi and the measures needed to improve the financial position of the municipalities. Such recommendations are required to be acted upon expediently to enable the Lieutenant Governor to cause the recommendations made by the Commission together with the explanatory memorandum as to the action taken thereon to be laid before the legislative

assembly in compliance with clause (2) of Article 243-Y. We do not find any satisfactory explanation from the counter affidavit filed on behalf of the respondents No.1 and 2 as to the inordinate delay in taking such steps regarding the recommendations of the Fourth Finance Commission. It may be true that the implementation requires consultation with the other stakeholders, but on that ground the matter cannot be kept pending for years together since it would frustrate the very object of constitution of the Finance Commission.

17. In the facts and circumstances noticed above, we consider it appropriate to dispose of the writ petition with the following directions:-

- i) The steps stated to have been initiated for constitution of the Fifth Finance Commission for National Capital Territory of Delhi shall be concluded at the earliest and the respondents No.1 and 2 shall ensure that the Commission in accordance with the provisions of Article 243-I and Article 243-Y read with the provisions of the Delhi Finance Commission Act, 1994 is constituted within eight weeks from today.
- ii) The respondents No.1 and 2 shall also ensure that the recommendations made by the Fourth Finance Commission together with the explanatory memorandum as to the action taken thereon is laid before the next Assembly Session without fail.
- iii) In the meanwhile, the respondents No.1 and 2 shall ensure that funds be released to the respondents No.4 to 6 in terms of the

recommendations of the Third Finance Commission of National Capital Territory of Delhi.

18. The writ petition is accordingly disposed of.

No costs.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 07, 2016
'kks/anb'