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

+ W.P.(C) 10902/2016 & CM No.42708/2016

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Date of decision : 31st August, 2017

M/S RUBY NEWS NETWORK

PVT. LTD. & ORS

..... Petitioners

Through : Mr. Karanjeet Kumar, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS.. Respondents

Through : Mr. Gautam Narayan, ASC for
GNCTD with Mr. R.A. Iyer and
Ms. Mahamaya Chatterjee,
Advs.

Mr. Roshan Lal Goel and Mr.
Kavindra Gill, Advs. for R-2
and 3.

Mr. Rajiv Khosla and Mr.
Abhishek Kumar, Advs.
for R-6.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This petition primarily makes a grievance on the action of the Public Grievances Commission on the complaints dated 16th December, 2015 and 8th February, 2016 made by the respondent no.6

alleging unauthorized constructions in certain properties in Laxmi Nagar, Delhi and Shakarpur, Delhi as well as encroachments with regard to these properties. The petitioner makes a grievance that without issuance of any notice to show cause, the Public Grievances Commission, constituted by the Government of NCT of Delhi, heard only the complainant and the Assistant Engineers of the East Delhi Municipal Corporation (EDMC) and on the 19th of July, 2016 issued the directions.

2. The proceedings of the Public Grievances Commission conducted on 19th July, 2017 are as follows :

“Proceedings in the Public Grievances Commission

The PGC convened its first hearing on the complaint on 16.2.2016 and latest on 5.5.2016 wherein the following were present :

Complainant : Present
Respondent : Sh. Chandan Singh A.E. (Bldg.)
Shahdra South Zone, EDMC.

An ATR has been filed by the A.E. (Bldg.) Shahdra South Zone, EDMC stating therein that demolition team along with the police had reached the sites on designated date but due to still resistance from the occupants of the premises and the local residents, action was started only at 4.00 p.m. only after vacating the premises, wherein some parts of the Chajjas had been demolished.

2. That in the meanwhile, the occupants had put forth the application dt. 6.7.20016 regarding regularization and had further requested that the remaining part of the uncompoundable unauthorised construction/portion would be demolished by themselves within 15 days.

3. That programs have already been scheduled for the

month of July 2016 and further demolition/sealing action would be taken in the remaining properties, in accordance with law. The police have supported the Municipal staff fully during the demolition. That it is humbly requested that the facts enumerated above may please be condoned. The building department Shahdra South Zone is duty bound to demolish the u/c and/or render relief, if any in those constructions which are protected by any law."

Copy of the ATR has been given to the Complainant. Partial demolition is done by the EDMC the AE(Bldg) has requested for one month's time to complete demolition action. His request acceded to.

Directions of PGC:

The Asstt. Engineer (Bldg.), Shahdra South Zone, EDMC is advised to complete demolish the unauthorised construction within one month.

The DPC, (East) is advised to ensure that adequate police force is provided to special demolition program organised by EDMC Since there are occupants in the illegal constructed flats local police will provide protection and assistance to EDMC in getting premises vacated.

All concerned to file ATR on the next date of hearing fixed for 13.09.2016 at 2.00 P.M.

Sd/-

(N. Dilip Kumar)

Member PGC

19.07.2016"

3. The petitioners make a grievance that the complaints were motivated and that the properties which were affected were owned by the petitioners. It is contended that no directions could have been made without hearing the party affected.

4. In the writ petition, the petitioners have further contended that some of the properties against which grievance has been made were

old constructions and that with regard to these constructions, the petitioners had filed application for regularization. So far as one of the properties is concerned, it is submitted that it was protected by the order of stay passed by the Appellate Tribunal (Municipal Corporation of Delhi).

5. The primary grievance of the writ petitioners is that pre-emptory orders were passed by the Public Grievances Commission against the properties of the petitioners *inter alia* issuing time bound directions to undertake demolition action behind the back of the petitioners.

6. We have heard Id. counsels for the parties.

7. It is trite that if rights of a person are being affected by proceedings conducted by an authority, it is mandatory to ensure compliance with the principles of natural justice, irrespective of as to whether the statutory provision mandates such compliance or not.

8. The petitioners have placed before us a Resolution bearing No.F.4/14/94-AR dated 25th September, 1997 of the Government of NCT of Delhi on record. The preamble to this resolution sets out the Constitution and the Objects of the Public Grievances Commission as follows :

“A. Composition

(i) The Commission shall consist of a Chairman and three Members (including two part-time Members) who shall be appointed by the Lt. Governor of the National Capital Territory of Delhi.

*(ii) * The Chairman of the Commission shall be a person who has, in the opinion of the Government of NCT of Delhi, distinguished himself in the field of public administration and was holding prior to his appointment in the Commission, a post in the rank of Secretary to the Government of India.*

The Whole time member shall be a person who has been a Director General of Police of a State or has held an office of comparative status and responsibility. The two part-time Members shall be persons of public eminence having special knowledge or practical experience in the field of education or science or law or literature or social service or human rights. Of these two part-time members, at least, one shall be a lady.

*(iii) * The Chairman and the Members (including part-time members) shall hold office at the pleasure of the Lt. Governor of the National Capital Territory of Delhi, or till they attain the age of 65 years, whichever is earlier*

*(iv) * The Chairman and Members (including part-time members) may resign their office by giving notice in writing to the Lt. Governor of NCT of Delhi and upon such resignation having been accepted, they shall be deemed to have vacated their office."*

(v) The Chairman shall be paid a fixed salary of Rs.8,000/- per month together with such allowances as admissible from time to time, provided further that if the Chairman at the time of his appointment is in receipt of pension (other than disability or war pension) in respect of any previous service under the Government of India or under the Government of State, his salary, irrespective of his service in the Commission, shall be reduced by the amount of that pension. The Whole-time Member shall be paid, subject to the same conditions, a fixed salary of Rs.7,500/- per month together with such allowances as admissible from time to time. The two part-time Members shall be paid a fixed fee of Rs.7,500/- per month. The other terms and conditions of service of the

Chairman and Members (including part-time Members) shall be such as are applicable to the officers of comparable status in the Government of India.

(vi) A person shall be disqualified from being appointed as Chairman or Member (including part-time Member) if he (a) is not a citizen of India; or (b) is of unsound mind and has been so declared by the competent court; or (c) is adjudged as an undischarged insolvent; or (d) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Government of NCT of Delhi, involves moral turpitude.

B. Powers and Functions

*(i) * The Commission shall consider, if it is satisfied that the circumstances of the case so warrant, complaints made by members of public against acts of omission or commission including cases of inaction or harassment or extortion or corruption or abuse of power and authority on the part of the officials of the departments of Government of NCT of Delhi and local bodies, autonomous organizations/undertakings and other institutions owned or substantially financed by the Government of NCT of Delhi including Delhi Police. The advisory jurisdiction of the Commission shall not, however, extend to the Delhi Development Authority.*

(ii) It shall be open to the Commission to take suo motu action in respect of any omission or commission on the part of the aforesaid public officials on the basis of information contained in media reports or received otherwise. The Commission shall also consider cases specifically referred to it by the Lt. Governor of the National Capital Territory of Delhi, the Chief Minister, Govt. of NCT of Delhi or the Chief Secretary, Government of NCT of Delhi. The Commission shall not, however, consider complaints which are sub-judice.

(iii) A person aggrieved by any act of omission or commission on the part of the said public officials may make an **application** to the Commission for the **redressal of his grievance** giving specific details of the case supported with a duly sworn affidavit. The applicant shall make a specific declaration to the effect that to the best of his knowledge and belief the subject-matter of the complaint is not sub-judice.

(iv) The **Commission may conduct the hearing** of the case singly or in benches consisting of the Chairman or the whole-time Member and one of the two part-time Members. The **aggrieved person who has made the complaint** shall himself represent the case before the Authority and will not be entitled to engage a legal practitioner for the purpose.

(v) **"The Commission, shall, on receipt of a complaint and if it is satisfied that it needs to be looked into, call for such records and summon such officials as considered necessary, hear them and come to a quick decision as to whether there is any dereliction on the part of the officials concerned. The Commission shall lay particular emphasis on the speedy disposal of the complaint. It shall be incumbent on the Chief Secretary of Government of NCT of Delhi, Commissioner of Police, Delhi and the Head of the Department concerned to ensure that the documents called for by the Commission are furnished to it within the time frame specified by the Commission and also to ensure that officials, if any summoned by the Commission appear before the Commission at such time and date as fixed for the purpose by the Commission.**

(vi) The Commission shall, on conclusion of the hearing of the complaint, pass an appropriate **"speaking" order** and in cases where it is held that the allegations made against the officials concerned are **prima facie established**, the Commission shall also **recommend action to be taken against the erring officials**. The recommendations thus made by the Commission shall be given due consideration by the appropriate administrative authority for its speedy

implementation. However, where the appropriate administrative authority on the basis of the merits of the case takes a contrary view, it shall communicate to the Commission, in writing, specific reasons because of which its recommendations could not be accepted. If the Commission is not satisfied with the reasons indicated for non-implementation of its recommendations, it shall be reflected as a case of non-acceptance of Commission's recommendations in its annual report.

3. The Commission may also conduct research into systemic causes of complaints on a regular basis and provide such reports that can form the basis of bringing administrative reforms in areas needing improvements so that the administration becomes more transparent and responsive.

*4. Notwithstanding the establishment of the Public Grievances Commission, the **Government of National Capital Territory of Delhi** will continue to **endeavor to strengthen the internal grievance redressal machinery in various departments and agencies under its administrative control and ensure transparency of procedures, free flow of information to the public, etc. The Commission will, therefore, primarily consider complaints on matters relating to corruption or those beyond the control of individual agencies.***”

(Emphasis supplied)

9. The Public Grievances Commission was set up by the Government of NCT of Delhi with the approval of the Central Government which was conveyed vide Ministry of Home Affairs D.O. letter No.14011/40/95-Delhi-II dated 26th June, 1997. It is stated to be a functionally independent body responsible for speedy redressal of complaints of the public against acts of omission or commission on the part of public officials working in the said organizations and to

recommend such action as considered necessary for removal of such grievances.

10. In the present case, so far as the complaints made by the respondent no.6 were concerned, the commission was informed by the officers of the Municipal Corporation with regard to the factual position. A perusal of the directions dated 16th February, 2016 would show that the Commission has noted the information furnished by the Municipal Corporation that the occupants had put forth an application dated 6th July, 2016 for regularization and requested that the remaining part of the unauthorized construction/portion which was not compoundable be demolished within 15 days. The Commission took note of the statement on behalf of the Municipal Corporation that the demolition action for the remaining unauthorized constructions had been scheduled for the month of July, 2016 “*in accordance with law*”. The Commission has clearly noted that the Building Department, Shahdara (South Zone) was duty bound to demolish the unauthorized constructions and/or render relief, if any, to those constructions which are protected by law.

11. It was in this background that the matter was disposed of with the advice to the East Delhi Municipal Corporation, Shahdara (South Zone) to completely demolish the unauthorized constructions within one month.

12. We may point out that a reading of the Resolution dated 25th September, 1997 would show that so far as “*Powers and Function*” of the Commission are concerned, the Commission is required to consider complaints by members of the public against officials of the

GNCTD and local bodies. The Commission has only advisory jurisdiction. Para (v) of the 'Section B' captioned "*Powers and Functions*" mandates satisfaction of the Commission after calling for necessary records, summoning officials and hearing. The Commission is required to decide whether or not there is a dereliction of duty on the part of the authorities.

13. Clearly, the said Resolution itself postulates a hearing. It cannot be denied that it would be gross injustice, if the complaint by a party before the Public Grievances Commission, also implicates or makes allegations against a third party, and such third party is not joined in the proceedings by the Commission. There ought not be a "*decision*" behind the back of such person.

14. This position would obtain in the present case as well. However, in the facts and circumstances the possibility of any prejudice having resulted to the petitioners by their absence from the proceedings stands prevented inasmuch as the Municipal Corporation has apprised the Commission of the factual background, including all steps taken by the petitioner. The Commission has not passed any order but has merely advised Municipal Corporation to abide with the requirements of law.

15. It is well settled that principles of natural justice are not in the nature of embodied rules which are to be followed in any strait jacket method or formula. The same have to be moulded and applied in the light of the facts and circumstances of each case. However, as the Municipal Corporation takes a decision on the basis of the recommendation of the Commission, it is made clear that the

Commission has to issue notice to a person implicated in a complaint and to hear it before taking a decision in accordance with the principles of natural justice.

16. This writ petition is disposed of in the above terms. The pending application also stands disposed of.

17. We make it clear that we have not expressed any opinion on the factual background so far as the complaint made by the respondent or the merits of the demolition order and action of the MCD are concerned.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 31, 2017

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