

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

% **Date of decision: 6th February, 2018.**

+ **CS(COMM) 265/2018 & IA No.1748/2018 (u/O XXXIX R-1&2 CPC).**

SURINDER NAYYAR & ORS

..... Plaintiffs

Through: Ms. Anusuya Salwan with Ms. Nikita Salwan, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.1749/2018 (exemption from filing copy of order dated 8th December, 2016 and 29th January, 2018) and IA No.1750/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CS(COMM) 265/2018 & IA No.1748/2018 (u/O XXXIX R-1&2 CPC).

3. The five plaintiffs namely Surinder Nayyar, S.N. Malhotra & Sons, Om Prakash, Ashish Kumar and Manish Nayyar have instituted this suit against the sole defendant South Delhi Municipal Corporation (SDMC) for (i) declaration that the recovery sought to be made by the defendant SDMC pursuant to Circular No.03/EE(P)-I/SDMC/2015-2015 dated 08.05.2014, Circular No. 03/EE(P)-I/SDMC/2015-2015 dated 08.05.2014 and Circular No.F.1/E-in-C/SDMC/2016/151 dated 31.07.2015 are illegal and arbitrary and liable to be set aside; and, (ii) permanent injunction restraining the defendant SDMC from recovering from the plaintiffs the reimbursement towards Third Party Quality Assurance charges paid to the plaintiffs.

4. It is the plea of the plaintiffs (i) that each of the five plaintiffs are contractors registered with the Municipal Corporation of Delhi (MCD) and have been executing several works with the MCD for past several years; (ii) that with a view to improve the quality of the works the MCD took a decision that in all works of MCD, Quality Assurance would be carried out by selected independent organisations other than MCD; (iii) that various circulars as detailed in the plaint were issued in this regard and the effect whereof was that the charges for such quality audit and testing shall be borne by the contractor and for which due weightage will be considered while arriving at the justification of rates and the same will be reflected in the notice inviting tenders and for the contracts for which such weightage is not given, the charges for quality audit and testing will be borne initially by the contractor but reimbursed to the contractor by the MCD; (iv) however the defendant SDMC being a successor of the MCD, has by the impugned circulars altered the provision earlier existing for reimbursement of the said charges; (v) that the five plaintiffs filed W.P.(C) No.10491/2015 impugning the said circulars and which was dismissed vide judgment dated 8th December, 2016; and, (vi) that LPA No.39/2017 preferred thereagainst by the five plaintiffs was on 29th January, 2018 withdrawn with liberty to approach the Civil Court and the Division Bench also clarified that the observations in the judgment dated 8th December, 2016 shall not be treated as binding or conclusive in any manner whatsoever.

5. The plaintiffs, in the plaint have not given any particulars of any contract which any of the plaintiffs may have entered into with the defendant SDMC or its predecessor MCD and/or qua which claim for reimbursement has been denied.

6. I have thus enquired from the counsel for the plaintiffs as to how a Civil Suit without any facts and without any personal/individual grievance of any of the plaintiffs and without pleading cloud over title if any claimed by any of the plaintiffs to any property, is maintainable.

7. The counsel for the plaintiffs states that it is pleaded in the plaint that each of the five plaintiffs is a contractor registered with the MCD/ defendant SDMC and has executed various contracts for the MCD/defendant SDMC.

8. However merely pleading so does not suffice. A plaint, in terms of Order VI and Order VII of the Code of Civil Procedure, 1908, is required to contain a concise statement of facts leading to the cause of action and which is found to be absolutely missing in the present case. The plaintiffs have generally, without stating any particulars, pleaded having executed contracts. In fact, cause of action even is not pleaded.

9. The relief of declaration and injunction claimed in the suit is governed by the provisions of the Specific Relief Act, 1963 and vide Section 4 thereof specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law. Neither of the plaintiffs in the present case has pleaded any individual civil right. Moreover, it is also not known from the vague averments in the plaint whether a cause of action has arisen to any of the plaintiffs and whether the relief claimed in the suit is within the time prescribed by the Limitation Act, 1963. The plaintiffs want this Court to adjudicate in vacuum and without any facts being before this Court and which procedure, what to talk of suits, is alien even to writ petitions. Reference in this regard if any required can be made to *Arnit Das Vs. State of Bihar* (2001) 7 SCC 657 and *Association for Development Vs. Union of India* ILR (2010) III Delhi 522 holding that the

Court does not decide matter which are only of academic interest. Similarly, in ***Central Bank of India Vs. Workmen*** AIR 1960 SC 12, it was held that it is not necessary for the Courts to decide hypothetical questions and that the Courts do not given speculative opinions on hypothetical questions – it would be contrary to principle, inconvenient and inexpedient that opinion should be given on such questions – if and when they arise, they must arise in concrete cases – it would be extremely unwise for Courts to attempt beforehand to exhaust all possible cases and facts which might occur to qualify, cut down and override the operation of particular words when the concrete case is not before it. Similarly, in ***State of Uttar Pradesh Vs. Kartar Singh*** 1964 AIR SC 1135, it was held that "if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of material placed before the Court by way of scientific analysis this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations -- that where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rule offends Article 14, the burden is on him to plead and prove the infirmity is too well established to need elaboration." The Supreme Court in ***State of Andhra Pradesh Vs. K. Jayaraman*** (1974) 2 SCC 738 held that to contend that a rule is invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out. Yet again in ***Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited*** (1983) 1 SCC 147, it was expressed that it is not open to a Court to answer academic or hypothetical questions, particularly so when serious constitutional issues are

involved, as Judges are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. It was further held that judicial pronouncements cannot be immaculate legal conceptions and that no important point of law should be decided without a proper *lis* between parties properly ranged on either side and a crossing of the swords. Reference in this regard may also be made to ***Federation of Indian Mineral Industries (FIMI) Vs. Union of India*** MANU/DE/3251/2014 (DB) and ***The Delhi Network of Positive People Vs. Union of India*** MANU/DE/1401/2015 (DB).

10. In the context of suits also, it has been followed by me in ***Rakesh Jain Vs. Mithilesh Mishra*** 2016 SCC OnLine Del 3246 that without showing any individual civil right, a suit cannot be maintained.

11. It has also been enquired from the counsel for the plaintiffs as to how the five plaintiffs, amongst whom no commonality or nexus is pleaded, can join together in instituting the suit. The right if any of each of the plaintiffs to reimbursement will have to be enforced by filing a suit for recovery of money and the plaintiffs, without showing any ground for joinder, cannot join in one suit. Further, each of the plaintiffs in their respective suits for recovery of money shall be liable to pay *ad valorem* court fees.

12. The counsel for the plaintiffs withdraws the suit with liberty to file separate suits on behalf of each of the plaintiffs.

13. Allowed.

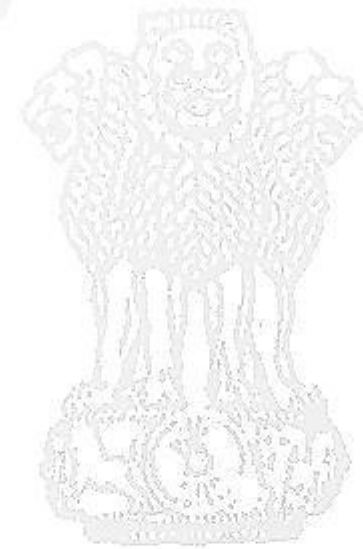
14. The suit is dismissed as withdrawn with liberty to each of the plaintiffs to sue afresh for the cause of action if any available to the plaintiffs and within the confines of order dated 29th January, 2018 aforesaid of the Division Bench in LPA No.39/2017.

15. The counsel for the plaintiffs also seeks refund of court fees paid.
16. Though the plaintiffs having filed a misconceived Civil Suit are not entitled to any refund and have to suffer for their fault but in the interest of justice, it is directed that a certificate entitling the plaintiffs to refund of court fees paid less Rs.30,000/- be issued and handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 06, 2018

‘pp’..



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