

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

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Date of decision: 7th August, 2015

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W.P.(C) No.4912/1998 & CM No.12564/2003 (for directions).

KRISHAK BHARAT

... Petitioner

Through: None.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Barkha Babbar, Adv. for UOI.
Ms. Maninder Acharya, Sr. Adv. with
Mr. Yashish Chandra, Ms. Ishani Das,
Advs. for Lok Sabha with Mr. R.K.
Trivedi, Executive Officer, Lok Sabha
Secretariat.
Ms. Zubeda Begum, Adv. with Ms.
Sana Ansari, Ms. Vanessa Singh,
Advs. for Rajya Sabha.
Mr. Anil Grover with Ms. Divya Jain,
Advs. for NDMC.
Mr. Balendu Shekhar, Adv. for BJP.
Mr. Vaibhav Kalra, Adv. for MTNL.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), was premised on a news article published in the magazine India Today of 29th July, 1998 reporting that a number of

politicians and political parties in occupation of government accommodation allotted to them were in default of payment of electricity, water and telephone charges with respect thereto and that no steps were being taken by the municipal and other governmental agencies for recovery of the said public dues. It was further reported that some politicians and political parties also owed monies to five star hotels run by India Tourism Development Corporation Ltd. (ITDC), a Public Sector Corporation, for events, functions held therein or for use thereof and that the ITDC, run and managed by bureaucrats under the control of the said politicians, had also not taken any action for recovery of the said dues which were again public monies. Reliefs, in this petition, of issuance of directions to (i) Cabinet Secretary; (ii) Ministry of Urban Development; (iii) Ministry of Telecommunications; (iv) Ministry of Tourism Development; and, (v) New Delhi Municipal Council (NDMC), to recover the dues with penal interest at 24% per annum from the defaulter politicians and political parties was claimed in the petition.

2. The petition was entertained and vide order of the very first date i.e. 24th September, 1998, ITDC and Mahanagar Telephone Nigam Limited (MTNL) were also joined as respondents to the petition and notice issued to all the respondents. On the contention of the counsel for MTNL that the dues

were owed to Bharat Sanchar Nigam Limited (BSNL) also, BSNL was also impleaded as respondent to the petition.

3. In the last nearly 18 years for which the petition is pending, this Court has endeavoured to make the public bodies to whom the monies were owed recover their dues by directing them to take resort to all means thereof. Alas, without much success. The zeal, which the same public bodies show to recover similar dues from other citizens not yielding any power, was found to be totally missing and which in fact had resulted in the arrears accumulating.

4. The possibility of having the recoveries effected through the Lok Sabha and Rajya Sabha Secretariats was also explored. Rule 23 of the Members of Parliament (Travelling and Daily Allowances) Rule, 1957 framed under the Salary and Allowances of Members of Parliament Act, 1954 provides for deduction of certified government dues such as house rent, telephones dues from the next salary or travelling allowance or daily allowance of the Member. It was thus enquired from MTNL and NDMC as to why they had not approached the Rajya Sabha and Lok Sabha Secretariats in this regard. Notice was issued to the said Secretariats as well. The order

dated 13th October, 2004 records the assurance of the Lok Sabha Secretariat that a sum of Rs.3,000/- per month will be deducted from the salaries/allowances of the 51 sitting MPs who owed dues to NDMC and of the 11 MPs who owed dues to MTNL. Similarly the Rajya Sabha Secretariat also informed on that date that recoveries were being made from the allowances of the sitting MPs. The order dated 15th March, 2007 however records the stand of the Secretariats of Lok Sabha and Rajya Sabha that the amounts due were huge and it was not possible to recover the same by way of deduction from the salaries. The Secretariats of the Lok Sabha and Rajya Sabha, on 6th August, 2008 informed that they could deduct the dues only from the salaries of sitting MPs and that they could do nothing about the dues of ex-MPs. Vide order dated 9th May, 2012 the Lok Sabha and Rajya Sabha Secretariats were directed to examine whether deductions could be made from the pension payable to the ex-MPs who were defaulters of electricity, water and telephone dues. In response thereto, they on 10th July, 2012 informed that in terms of Section 60(1)(g) of the Code of Civil Procedure, 1908 and as per the judgment in *Radhey Shyam Gupta Vs. Punjab National Bank* AIR 2009 SC 930, no recovery could be made from the ex-MPs. On 22nd January, 2013, the Lok Sabha Secretariat gave their no

objection to disconnection of the telephone connections of the sitting MPs who were in arrears. The Lok Sabha Secretariat on 24th May, 2013 also gave no objection to disconnection of water, electricity and telephone connections of sitting MPs who had failed to pay their dues. The Lok Sabha Secretariat on that date further informed that it was not possible to deduct and pay more than 10,000/- per month towards existing dues payable by the sitting Lok Sabha MP to the service providers / authorities. Vide order dated 26th July, 2013, order of disconnection of electricity, water and telephone facilities of the sitting Rajya Sabha Members in arrears was also made on the parity of the Lok Sabha.

5. During the pendency of this petition, the elections to Lok Sabha were due. The order dated 4th February, 2004 records that the Election Commission of India (ECI) in terms of the directions issued by the Supreme Court in *Union of India Vs. Association for Democratic Reforms* (2002) 5 SCC 294, had issued a direction requiring candidate seeking election to Parliament or State Legislature to along with his nomination form disclose the liabilities if any particularly of any overdues of any public financial institution or Government dues. Notice was issued to the ECI to show cause as to why no objection certificate was not insisted upon and whether the ECI

was going to insist upon the said certificate in the then ensuing elections. The order dated 1st March, 2014 also records that ECI had issued an order dated 27th March, 2003 containing the form of the affidavit which a candidate along with his nomination papers was required to submit, giving particulars of the government dues owed by him. A direction was also issued for the ECI to before election widely advertise the government dues owed by each of the contesting candidates.

6. However since none of the measures aforesaid resulted in any substantial recoveries, this Court next turned its attention to the political parties to whom the ex-MPs owing such arrears belonged, and vide order dated 6th August, 2008 directed for such political parties to be identified for attempting recovery therefrom. On 3rd December, 2008 it was informed that the ex-MPs owing dues belonged to as many as 43 political parties. Notice of the petition was accordingly ordered to be issued to the said political parties as well. The counsel for the political parties which chose to appear in pursuance to the notice, on 22nd July, 2009 took time to consider as to how they could compel their members to clear the dues towards electricity, water, telephone etc. However this also did not meet with any success. In fact most political parties chose not to appear.

7. We have encountered a total lack of will on the part of governmental agencies to whom dues are owed, to recover the same from the politicians and political parties. This is demonstrated from the order dated 12th November, 2003 when ITDC reported that Indian Youth Congress owed a sum of Rs.2,91,958.97p to it and though proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 had been initiated for recovery of the said dues and a certificate under Section 14 thereof for the said amount had also been obtained but no steps had been taken for execution of the said recovery certificate. Similarly, the order dated 22nd January, 2013 records that MTNL and BSNL had obtained awards under Section 7B of the Indian Telegraph Act, 1885 for recovery of its dues from as many as 194 ex-MPs and that the Lok Sabha and Rajya Sabha Secretariats had provided details to MTNL of the bank accounts of the ex-MPs to enable the MTNL to execute the said awards. However, inspite thereof, no recovery was reported.

8. Thus, neither the cajoling by this Court of the governmental agencies to whom dues are owed could spur them into action for recovery thereof nor the different avenues explored by this Court to effect recovery of dues from the defaulter politicians and political parties have had any substantial

success. The inertia and reluctance of the governmental agencies to treat their political masters equally, as they treat other citizens, has proved to be insurmountable. At the same time, the defaulter politicians and political parties are found to have misused their position of power for their own benefit and gain. All have in the process forgotten the social philosophy and philosophy of law in this area which emphatically requires that offices of public power shall not be the workshops of personal gain. Those wielding power, have made it an instrument of self seeking, forgetting that power is like a trust and that abuse of authority by those in power inevitably causes mass disillusionment and results in public frustration. The frustration part is evident from the petitioner also having lost interest in this petition and having stopped appearing and pursuing the same.

9. We are of the opinion that rather than continuing to flog the issue of recovery of old dues and which with the passage of time may not bear much fruit, the need of the hour is to ensure that at least the present MPs, Members of Legislative Assembly (MLAs) and political parties are not able to consume electricity, water and telephone amenities or the facilities at ITDC hotels or the facilities and amenities provided by other governmental agencies, without paying therefor. Else we fret that in our continued efforts

to recover old dues, the dues may keep multiplying. None has reported the steps if any taken to ensure that the situation highlighting which this petition was filed, does not re-occur.

10. After having given our considered thought including on the various steps which were taken during the pendency of the present petition, we feel the need to issue directions which will ensure that the MPs, MLAs and the political parties, taking advantage of the clout enjoyed by them over the officials of the municipal, electricity, water, telephone and other facilities agencies, are not able to escape paying the dues therefor.

11. The Supreme Court recently in *S.D. Bandi Vs. Divisional Traffic Officer KSRTC* (2013) 12 SCC 631 faced with the issue of continued unauthorized occupation of government accommodation and non recovery of charges therefor inspite of existence of provisions / rules, directions, laws for dealing therewith, owing to use of influence by the defaulters / errants or taking advantage by them of the lengthy procedures provided under the laws, issued directions in the form of suggestions to address the issue. It was observed that since allotment of government accommodation is a privilege given to Ministers and Members of Parliament, action for breach of

privilege would also lie. We, in formulating the directions hereunder given, have taken guidance therefrom as well.

12. One of us (Rajiv Sahai Endlaw, J.) sitting singly, in *Raj Kumar Vs. NDPL MANU/DE/2185/2011* (and against which no appeal is found to have been preferred) was concerned with the stand of electricity distribution companies as the NDPL of seeking to recover the electricity dues of earlier occupant of government accommodation from the subsequent allottee of such accommodation and which was resulting in none being interested in taking allotment of accommodation with respect to which electricity arrears were due and which in turn was found to have created a situation of a large number of government houses lying unutilized. The problem was sought to be solved by directing the Estate Office of the government to insist upon the occupant, before surrendering the accommodation, furnishing a No dues Certificate from the electricity distribution company and making it a term of occupation that dues of electricity shall be receivable / adjustable from the emoluments of the allottee. Though we do not know whether the said direction is being abided with, but a similar arrangement can be made here also.

13. We accordingly issue the following directions:-

- A. The respondents i.e. NDMC, MTNL, BSNL and any other municipalities/governmental agencies providing any chargeable amenities/facilities to the houses in occupation of the MPs, MLAs and political parties, whether such houses belong to the government or otherwise, to not allow arrears of more than of three months of said charges to accumulate.
- B. If the said charges are in arrears for three months, the facility/amenity/utility be disconnected forthwith, of course in accordance with law.
- C. If payment of any part of the said charges with respect to government accommodation is to be made by the government or any department of the government and where as per terms of allotment of such accommodation or otherwise the responsibility of onward payment of charges including share of occupant is of the government, then the Estate Office or other department allotting such accommodation to also not allow arrears of share of the charges payable by the occupant to

accumulate for a period of more than three months and to immediately thereafter have the facility / amenity disconnected.

- D. The agency providing such facility/amenity/utility to within six months after the aforesaid disconnection initiate proceedings for recovery/realization of the amounts due.
- E. The agency providing such facilities/amenities/utilities to also intimate the said arrears to the Secretary of the Lok Sabha or the Rajya Sabha or of the Legislative Assembly of which the occupant is a member and the Secretariat of the Lok Sabha or the Rajya Sabha or the Legislative Assembly of which the said occupant may be a member to use his/her good offices to ensure payment and take such other steps as may be permissible in law.
- F. The Secretariats of the Lok Sabha, Rajya Sabha and Legislative Assembly as well as the House Allotment Committee to within six months hereof explore as to whether any action for cancellation of allotment of the house of such occupant in arrears or of putting a stop to any further allotments in favour of

members of the political party to whom the occupant in default belongs can be initiated and make provision therefore.

- G. The agency providing such amenity/facility/utility to also within one month of the charges being due for three months, communicate said fact to the political party to which the occupant belongs.
- H. The ECI to, as directed in the earlier orders in this petition, continue to insist upon the candidates desirous of contesting an election to Parliament or to Legislative Assembly, along with their nomination form furnishing an affidavit of their being not in arrears of any public dues and if such candidate is in occupation of or in the past ten years been in occupation of any government accommodation to furnish a No Dues Certificate from the agency providing electricity, water and telephone to the said accommodation.
- I. The ECI to also within six months consider the possibility if any of putting any impediment to a defaulter of public dues contesting election, to ensure quick recovery of the said dues.

- J. The ECI to within six months hereof also consider the possibility of requiring political parties fielding candidates in any election to also furnish an affidavit that they are not in arrears of any electricity, water, telephone or other public dues, as a pre-condition to their fielding candidates in any election.
- K. ITDC and other public sector undertakings providing any chargeable services to political parties, MPs or MLAs to also not allow credit to them beyond what they usually allow to other customers and to take steps for recovery thereof and to similarly convey the names of the defaulters to the Secretariats of Parliament/Legislative Assembly.

14. The aforesaid would not limit the powers of the authorities/agencies supplying such amenities/facilities/utilities to devise other ways and means to ensure that no amounts, particularly from MPs, MLAs and political party remain unrecovered.

15. The fact that we chose to dispose of this petition should not however be interpreted as entitling the respondents to stop pursuing actions already initiated under the directions of this Court for recovery of their dues. The said actions to continue.

16. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

AUGUST 07th, 2015
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