

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-253/Lok/2009/

Dr. Vinesh Kawatra
Vs.
Sh. Raj Kumar Chauhan, Cabinet Minister,
Govt. of NCT of Delhi

ORDER

- (1) This is a complaint filed by the petitioner who happens to be a medical practitioner and resident of Block No. – 11, Malviya Nagar against the Respondent Minister Sh. Raj Kumar Chauhan, accusing the Respondent of having abused his position to obtain gain and favour to himself or another person. The genesis of the controversy lies in the development of 1400 sq. yds of open land in between Block Nos. 4, 5, 9, 10 & 11 in Malviya Nagar. It is claimed that this piece of land was in a dilapidated state with encroachments thereon. Sometime in 1994, the Lay Out Scrutiny Committee of MCD took a decision for creation and development of a park on the said piece of land with a 16 ft. wide service road around it.
- (2) It is stated that the construction of the park did not have a smooth sailing. A PIL had to be filed in the High Court wherein directions were given to the MCD to construct a park on the land in question and while doing so remove encroachments thereon. It is the Complainant's case that several encroachments had to be removed. The MCD had to seek permission for felling of trees in front of Block No. 4, 5, 10 & 11. Following the permission granted, 11 trees were felled while three trees in front of Block No. 10 facing the park remained.
- (3) It is the Complainant's case, that there can be no obstruction or encroachment on the service Road. He has been representing to the MCD, the Conservator of Forests and Govt. of NCT of Delhi for felling and removal of the remaining three trees standing in the middle of the Road, which constituted an obstruction. The Complainant claims that MCD's communication bearing No. EEIV/SZ/2005/D-406 dated 23.6.2005 itself accepts that "trees on account of their position

in the Service Road carriage-way were obstructing the smooth flow of light traffic and the passers by also”.

(4) Dr. Vinesh Kawatra urges that the Respondent Minister has abused his position and authority by giving direction on the representation from the Residents Welfare Association of Block Nos. 3, 4, 5, 10, 11 & 12 against felling of trees. The protesting residents had claimed that a 3.5 mts. path was sought to be converted into the road after cutting of mature green trees. The Respondent Minister’s Secretary vide a communication dated 6.9.05 appearing at page 10 of the paper book, while noting the representation of the residents against felling of trees and alleged conversion of path into a road, recorded the Minister’s concern on tree felling describing it as an “environmental massacre”. It was conveyed to the Dy. Conservator of Forests that no such permission of tree felling be granted.

(5) Dr. Vinesh Kawatra says that the above directions of the Minister amount to permitting obstructions on the road. He submits that it is an admitted case that the Town Planner in the “Lay Out” provided for a park with a 16 ft. service road. Hence, it can not be described as a path. He submits that the impugned decision taken at the behest of local activists for narrow political ends is as an abuse of legal position and authority by the Minister. He further states that certain other residents have also commenced planting of trees on the carpeted road which would cause further obstruction and encroachment. There is nothing in the complaint or the documents filed along with it to support the allegation of abuse of authority for gain or favour to himself or other person.

(6) It may be noted that the Complainant has earlier moved an application for directions to the MCD for removal of encroachment in the disposed of writ petition, which was not entertained. It was disposed with the observation that if he had any fresh grievance with regard to the park, he can approach the appropriate authorities for redressal of his grievance. He had been representing to the authorities time and again but to no avail. An application for contempt filed in the year 2009 was also not entertained.

(7) Dr. Vinesh Kawatra candidly also admitted that one of the reasons for his seeking the service road to be free of all obstructions and encroachments, was to avail of a comparatively easier access to the main

Shivalik Road rather than the circuitous route which the residents have to follow otherwise.

It has been put to Dr. Vinesh Kawatra that in the absence of any specific allegations regarding corrupt or improper motive or failure to act in accordance with norms of integrity, the decision or action of a public functionary even though unpalatable or erroneous will not fall within the meaning of Section 2 (b) of "allegations" under the Delhi Lokayukta & Upalokayukta Act 1995. In the instant case, it appears that the public functionary has accepted the representation made by certain residents, who were opposed to the felling of trees and wanted what the Complainant described as service road to remain as a walking path with trees. Additionally it appears that felling of trees not being conducive to a healthy environment also appealed to the Minister. I refrain from commenting on whether the impugned order was legally sustainable or not, a challenge to the said order is not within the province of jurisdiction in an enquiry under Section 7 read with 2(b) of the Act.

Dr. Vinesh Kawatra also candidly stated that he was not raising any allegation of corruption or improper motive or conduct but was assailing the decision since he was convinced that it was wrong to permit obstructions whether in the form of trees or otherwise on a service road.

Confronted with the above position that the complaint does not disclose a cause of action by Respondent's conduct coming within the meaning of Section 2 (b) of the Act on the averments made in the complaint, Dr. Vinesh Kawatra seeks to withdraw the complaint with a permission to avail of his legal remedy in the appropriate forum in assailing the order. The complaint is dismissed as withdrawn with liberty to seek relief as admissible in Law.

-Sd/-

(Justice Manmohan Sarin)
Lokayukta

Dated : 03.12.2009
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