

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin

Complaint No. C-245/Lok/2009/

Lokayukta on its own motion in the matter of Publication of news report "Pension Ke Badle Parshad Vasul Rahen Hai Chanda" in - "Jagran City" section "Dainik Jagran", dated 22.10.2009

And

In the matter of Inquiry under Section 7 read with Section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995

Vs.

Shri Narender Bindal, Councillor Ward-41 – Respondent,
 R/o Y-307, Phase-I,
 JJ. Colony, Nangloi,
 Delhi-110 041

Mr. Hari Om Gupta, Counsel for the Respondent,
 Col. (Retd.) R. Balasubramanian, Advocate Amicus Curiae.

REPORT

FACTS OF THE CASE

1. A news report titled "Pension Ke Badle Parshad Vasul Rahen Hai Chanda" appeared in "Jagran City" section of a Hindi Daily "Dainik Jagran" on 22.10.2009. As per the report, Respondent Sh. Narender Bindal, Municipal Councillor, Ward -41 was collecting Rs. 1100/- each as contribution in the name of magazine 'Dharam Pravaha' in lieu of releasing the increased monthly pension to the aged, widows, handicapped persons and others. Pension had been increased from Rs. 500/- per month to Rs. 1000/- per month w.e.f April, 2009. Lump sum amount of Rs. 6000/- for six months was to be paid. There were 700 pensioner

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beneficiaries in his Ward. As per the press report, whoever did not pay the 'Chanda' hereinafter referred to as 'contribution' for the magazine, would not receive pension. There were also threats of deletion from the list of eligible pensioners. The contribution for the magazine being collected was not voluntary, but under coercion and as a condition for release of pension.

2. Murti Devi and Shanti Devi R/o R-65 & 63, Jawalapuri, paid the contribution for the magazine 'Dharam Pravaha' and were given receipts. Bakhtawari Devi R/o R-421, Jawalapuri and Manju Devi, R/o R-302 Jawalapuri complained that contribution was forcibly collected from them by the Respondent Councillor. Payment was made by them under coercion, having reconciled that even upon payment of Rs. 1100/- they were still getting Rs. 4900/- out of the total Rs. 6000/-. Report also mentions the instance of Sh. Rakesh Garg, R/o Nangloi, who declined to pay contribution for the magazine. It resulted in stoppage of pension of his parents. Report quotes Respondent as saying that since these days nobody willingly makes payment, this formula had been devised by which magazine would be given to the pensioners against contribution. When the Councillor was informed of resentment over collection in this manner, he responded that it was far better to pay Rs. 1100/- as contribution for the magazine than giving bribe of Rs. 3000/- to get pension.

3. The news report having come to the notice of this forum. Suo-Moto cognizance was taken in the matter. Notice was directed to be issued to Respondent Sh. Narender Bindal, Councillor, Ward -41 to show cause why inquiry be not held against him on the basis of allegations contained in the press report and for failing to act in accordance with the norms of integrity and conduct expected of his class of public functionary. Simultaneously direction was issued to Sh. Dhananjay Kumar, of "Dainik Jagran", author of the news report to

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preserve evidence, including tape recordings, shorthand notes of interviews with aggrieved persons, if any, till further notice.

PROCEEDINGS

4. Mr. Narender Bindal appeared before this forum on 9th November, 2009. He made some submissions and desired to make a statement which was recorded on oath. Respondent stated that he knew Sh. Sunil Kumar Sharma, who was running the magazine 'Dharam Pravaha', which belonged to "Dharam Yatra Maha Sangha". Those running the magazine set up stalls at book fairs, religious functions etc. to promote the sale of the magazine. Life time subscription for the magazine was Rs. 1100/-. Regarding disbursement of pension, he stated that Sanitation Department of MCD holds camps and the area Councillor is invited to handover the first few pension cheques and rest were distributed by the Sanitation Department. He stated that he is also life member of the magazine. He did not recall if any stall for the magazine had been put up at the time of distribution of pension cheques. No stall of the magazine was put up at the time of "Chowki" held in his house.

5. He stated that news report was false and fabricated. A freelance reporter Mr. Atul Krishan, who was earlier working with "Statesman" had demanded Rs. 1100/- from him for publishing his photograph with Diwali greetings in papers such as "Dainik Jagran" and "Meri Dilli". Respondent stated that he had never seen Mr. Dhananjay Kumar and Mr. Atul Krishan together, but inferred their friendship from the fact that report in question was published immediately after Mr. Atul Krishan had come and demanded money from him. The persons whose names were mentioned in the report never complained to him about having been forced to pay contribution for the magazine 'Dharam Pravaha'. He stated that he had neither asked them to make payment nor it was done at his behest or in his presence.

6. Formal reply was also filed by the Respondent claiming that the report was published to tarnish his image. He denied having pressurized any one to become member of the magazine 'Dharam Pravaha' or having issued any receipt for the same. If a pensioner has become member, it is on account of his or her free will or as a result of the efforts of the magazine's officials who would have approached them to become members. Respondent denied having held out any threat to any one of stopping payment of pension as alleged. Respondent's role was limited to forwarding the list of eligible candidates to the MCD. It is MCD who selects out of the eligible candidates, the persons who are to be given pension. Respondent denied being the Editor or Publisher of the magazine or having any role in the marketing and distribution of the same, MCD distributed pension departmentally and maintained the records there for.

7. As regards the allegation in the news report regarding stoppage of Sh. Rajesh Garg's pension, respondent said that no person by the name of Rajesh Garg was even on the roll of MCD as a pensioner. Respondent, along with reply, also produced affidavits dated 7th November, 2009, purported to have been sworn by Mr. Mahesh Tanwar, Om Prakash, Maya Devi and Murti Devi. The affidavits were attested by Sh. R.K. Khatri, Notary Public and were in English language to the effect that the amount of . 1100/- paid to the magazine 'Dharam Pravaha' was at the deponent's own will and consent and their names had been falsely implicated in the news report dated 22.10.2009 of "Dainik Jagran". Significantly all the affidavits are identical in their language and content. These shall be adverted to under the section "appreciation of evidence".

8. Considering the nature of controversy involved in the matter, Col. (Retd.) R. Balasubramaniam, Advocate was appointed as Amicus Curiae to assist the forum in the inquiry. Directions were also given to the Dy. Commissioner, MCD, West Zone to file an affidavit disclosing the procedure followed for the receipt of

application, consideration and criteria for grant of pension to senior citizens, widows, handicapped persons etc and the disbursement thereof in respect of Ward -41, in particular.

9. Author of the report Mr. Dhananjay Kumar appeared on 4.12.2009. He stated that the report was written by him after due inquiry and verification. He also tendered his note book carrying various notings taken by him. Note book was marked as "A" and notings also marked for the purpose of identification. Clarifications were sought from Dy. Commissioner West Zone MCD with regard to affidavit filed in pursuance to the directions given. Notices were directed to be issued to pensioners whose affidavits were filed by the Respondent.

10. During the course of proceedings, statements of CW1 Murti Devi, CW2 Ghanshyam Tanwar, CW3 Manju Devi, CW4 Shanti Devi, CW5 Dhananjay Kumar, Correspondent and author of the report and CW6 Atul Krishan, CW7 Rajesh Garg, CW8 Tanuj Bhanot, were got recorded by the Amicus Curiae. In rebuttal, Sh. Narender Bindal himself appeared, followed by Smt. Arti Sharma and Sh. Jai Kishan Gupta, as witnesses on his behalf. On 6.8.2010, opportunity was given to Mr. Narender Bindal, Respondent to move an application within a week for further evidence if so desired, since his counsel was not available. Sh. Narender Bindal made a statement on 18.8.2010, stating that after discussion and review of the case with his Counsel, they did not wish to lead any further evidence.

11. Opportunity was given to the Respondent, as also the Amicus Curiae to file written submissions. Sh. Narender Bindal, Respondent stated that he had consulted his Counsel and they did not wish to file written submissions. The reply given together with evidence and cross examination be considered. Opportunity was given again to the Respondent to argue the matter, which was not availed. Amicus Curiae was asked to place written submissions giving his

appreciation of the evidence for the assistance of the Forum. Matter was adjourned to 18th October, 2010, when Mr. Bindal sought adjournment again as his counsel was not available. Matter was adjourned to 12th November, 2010. Amicus Curiae gave his over view of the case and laid emphasis on the subscription receipts issued in the hand of the Respondent. Respondent admitted Ex. CW5/A to L as appearing to be signed by him. He also replied in affirmative to the question as to whether he had signed receipts for contribution to 'Dharam Pravaha' magazine. Amicus Curiae also filed his written submissions on 20th December, 2010 and proceedings were closed, after due opportunity having been given to the Respondent.

APPRECIATION OF EVIDENCE.

12. In the section under "proceedings", the facts as per News Report, the version of the witnesses who deposed as also the stand of the Respondent was noticed. In this section, it is proposed to discuss and appreciate the evidence on record.

13. The first deposition to be noticed is of CW-5 i.e. author of the news report. Sh. Dhananjay Kumar, who reported on Community matters. He proved the report dated 22.10.2009, Ex. CW 5/1 under the caption "Pension Ke Badle Parshad Vasul Rahen Hai Chanda". He stated that he had written it after due verification. Sh. Suresh Agarwal, an office bearer of R-Block Jawala Puri association informed him of contribution being collected by the Respondent-Councillor for release of payment of pension to aged persons, widows and handicapped. Receipts issued for the contribution for the magazine had to be shown for collecting the pension. Dhananjay Kumar deposed that Mr. Atul Krishan, a reporter of "Statesman" told him that his parents' pension was held up due to non-payment of contribution for the magazine. Copy of the report lodged by Mr. Atul Krishan, with the Anti Corruption Branch of Delhi Police was also sent to him. Mr. Dhananjay Kumar deposed about his visit to the shop of Sh.

Suresh Agarwal, where he was given photocopies of the receipts issued for contributions to the magazine to various persons. He tendered on record photocopies of the said receipts marked CW-5/A to I, purportedly signed by the Respondent. Exs. CW5/M to Ex. CW5/R were tendered as receipts issued to pensioners, who had paid contributions for the magazine to obtain payment of pension. On scrutiny of these receipts it is noticed that erroneously Exs. CW5/E, CW 5/G, CW 5/I, CW5/J, CW 5/K and CW 5/L which are copies of Exs. CW 5/A, CW 5/B, CW 5/C, CW 5/D and CW 5/F and CW 5/H have been exhibited twice.

14. Mr. Dhananjay Kumar had already tendered in original his note book containing notes of interviews, maintained by him in the usual course of profession. The note book carries the names of persons, whose pension had been held up for non-payment of contribution, as also those who received pension upon payment of the contribution. He deposed having telephoned the respondent in the evening of 21st October, 2009, on the latter's mobile no. 9958693041 and having the following conversation in vernacular:

"Bhai Shahab Aap to khud samajdar hain. Aaj kal prem se paisa kaun deta hain. Ye hamne naya formula nikala hai. Aap to sab samajate hai. Iske badle mein sabko magazine bhi to milegi. Ye paisa to Sanstha ke sadasaya he le rahe hai. Main is sanstha ka mahamantri hoon. Dusri jagahe 3000 Rs. ghos dekar paise lene se to acha hai 1100 rupe ka chanda dekar pension pa rahe hai."

15. During cross-examination, Mr. Dhananjay Kumar candidly admitted that he did not check the MCD records to verify the allegation that pension was held up for non-payment of contribution. However pension of parents of Sh. Atul Krishan, mother of Sh. Rajesh Garg and Om Parkash, had been cited as cases, where pension had not been paid, for non contribution. He admitted that he had not spoken either to the parents of Sh. Atul Krishan or to the mother of

Sh. Rajesh Garg. He had spoken to Sh. Narinder Bindal/Respondent, who told him that he was the 'Rashtriya Mahamantri' of the 'Dharam Yatra Maha Sangh'. Mr. Dhananjay Kumar denied being a friend of Sh. Atul Krishan or having regular interaction with him in the journalistic field. A significant part of the Reporter's testimony is for receipts issued for contribution for the magazine in the hand of Respondent. This runs counter to Respondent's stand that he had nothing to do with the magazine. The note book recording his version of interviews and scribbling therein, made in the usual course of profession, inspire confidence and appear to be credible.

16. The testimony next to be considered is of CW-6, Sh. Atul Krishan whose parents are Senior Citizens and recipients of pension through the courtesy of Sh. Narinder Bindal/Respondent. They are not residents of Ward 41, but reside in the same Zone. Hence were included as pensioners. Sh. Atul Krishan deposed that the pension of his parents had been increased to Rs.1000/- per month. He visited the office of the Respondent to collect increased pension. He met the Respondent who asked him to give cheque of Rs.1100/- each in favour of magazine 'Dharam Pravaha' and then only he would release the pension of his parents. The Respondent was unrelenting and therefore he issued two cheques of Rs.1100/- each from his account in favour of magazine 'Dharam Pravaha', being cheque no. 753697 and 753698 and the pension was released. Receipts issued by Respondent for cheques given being Ex. CW 6/1 and Ex. CW 6/2. These carry two circled numbers respectively 655 in Ex. CW 6/1 and 568 in Ex. CW 6/2. The numbers 555 and 568 are those given on recipient's pension cards namely Ex. CW 6/3 and Ex. CW 6/3A and Ex. CW 6/4 and Ex. CW 6/4A. The Respondent is described as 'Rashtriya Mahamantri' Dharam Yatra Maha Sangh in the pension cards. After the pension of his parents was collected on the basis of receipts namely Ex. CW 6/1 and Ex. CW 6/2; he stopped payment of the

cheques. Sh. Atul Krishan along with Sh. Rajesh Gargh claimed to have sent documents to Commissioner of Police and matter is under investigation, FIR was likely to be registered. A complaint was lodged with the Anti Corruption Cell of Delhi Police. He narrated the cases of others like Sh. Bhagwati Parshad to whom the pension was not released till contribution was paid. During his cross-examination, Sh. Atul Krishan admitted receiving from the Respondent charges for publication of greetings/ advertisements in the paper 'Meri Delhi'. He also admitted receipt Ex. CW6/R-1 issued to the Respondent for Rs.1100/- being the price of 1000 copies of News Paper purchased by Respondent, which carried news about the Respondent-Councillor for distribution among his constituents.

17. He categorically deposed handing over the two cheques of Rs.1100/- each to Mr. Bindal personally as contribution for the magazine on behalf of his parents. Respondent passed on the cheques to the person sitting next to him. He also denied the suggestion that he voluntarily paid money as contribution to the magazine and not under any coercion or pressure. He denied lodging a false complaint on account of Respondent having declined him the donation for advertisement sought for Diwali greetings.

18. CW-7, Sh. Rajesh Garg is the next witness. He is President of the Janta Market Association, Nangloi, falling in Ward No. 43 which is proximate to Ward No. 41. His mother Smt. Raj Dulari was recipient of old age pension. He was called by the Respondent in November, 2008 and asked to make contribution to 'Dharam Pravaha' magazine and on refusal to do so, pension of his mother was stopped in the month of March-April 2009. He stated that he went to meet Respondent at the latter's brother's office, when he was asked to pay Rs.1100/-, which he declined. He produced his mother's Saving Bank Pass Book to demonstrate pension had not been credited. Pension was last received at the rate of Rs.500/- pm for six months on 22/11/2008. During his cross-examination he

admitted being a member of the BJP. Further that he did not complain to any leader of BJP against the Respondent for demanding contribution for the magazine for release of pension. He did not complain even to the President of 'Dharam Yatra Maha Sangh' Sh. Mange Ram Garg, with whom he barely had an interaction. Pension was not credited to his mother's account even in August, 2009.

19. CW-8, Sh. Tanuj Bhanot, Administrative Officer West Zone of MCD produced the record in relation to the pensioners of Ward No. 41 as directed. One significant fact which emerged from his evidence is that no public notice or advertisement was published, inviting applications from eligible candidates by the MCD for grant of pension. Applications were forwarded and recommended only by the concerned Municipal Councillor. There were about 700 pensioners in one ward. Categories of persons eligible for pension are Blind, widow, crippled, widower, divorcee women and insane persons. The above categories of pensioners without any source of income or means are eligible for pension irrespective of age. Apart from the above categories, those who were over 60 years of age without any source of income or means are eligible. Recommendations made by the Councillor are checked for eligibility by MCD. Pension had been raised from Rs.500/- to Rs. 1000/- w.e.f. from April 2009. Mr. Tanuj Bhanot deposed that the pension of Smt. Raj Dulari mother of Sh. Rajesh Garg stood paid up to 30th September, 2008. However, pension from 1st October, 2008 to 31st March, 2009 though remitted to her, the cheque was received back on account of shiffling of residence. This runs counter to the statement of Sh. Rajesh Garg to the effect that on refusal to make the contribution pension of his mother has been stopped after 22/11/2008. There is no explanation coming forward why the payment of pension was not paid till August, 2009 except the bald claim that there was a change of residence. There is no evidence regarding

change of residence brought on record. The categorical statement of Sh. Rajesh Garg regarding the meeting with the respondent, where demand for contribution for magazine was made and on his refusal stoppage of pension cannot be simply ignored. Mr. Tanuj Bhanot explained the procedure of preparation and distribution of pension cheques. The manner in which the record is maintained, it is not possible to know in most of the cases the date of delivery of cheques to pensioners. It is only when cheques are distributed at functions organized by the RWA's or political parties, then the date of delivery would be date of function.

20. The Statements of CW-1, Ms. Murti Devi, CW-2, Ghanshyam Tanwar, CW-3, Smt. Maya Devi and CW-4, Smt. Shanti Devi, are now taken up for consideration. The press report authored by CW-5, Sh. Dhananjay Kumar carried their names as illustrative cases of pensioners, who had paid Rs.1100/- contribution to the magazine 'Dharam Pravaha' to receive their pension. Notices were issued to these pensioners for appearance and examination. At this stage, the Respondent filed their affidavits to the effect that they had made the contribution for the magazine of their own free will and consent and that their names had been falsely implicated in the report, appearing in 'Dainik Jagran'.

21. CW-1, Smt. Murti Devi, 60 years old widow stated on oath that she cannot read or write either English or Hindi. She could not even sign and affixes her thumb impression. She was shown the affidavit marked 'A'. She stated that she had not been taken to any Notary Public or Oath Commissioner or Lawyer for attestation of the same. She did not recall putting her thumb impression. She did not know and could recall what is written in the affidavit. Nobody had explained anything as to what was written in the affidavit. Her family consists of three daughters, who work as labourers, she got Rs.6000/- by way of pension. She stated that she found a magazine in her quarter and she paid Rs.1100/- for the magazine. She pointed out to Respondent/councillor as the person from whom

pension was received. She stated that she had paid Rs.1100/- so that she could get pension. She tendered the receipt before this forum. She had not asked for the supply of the magazine or its purchase as she did not know how to read or write. During cross examination by the counsel for the Respondent, she remembered putting thumb impression on some papers brought by Sh. Ghanshyam Tanwar. It was suggested to her in cross examination that she had contributed Rs. 1100/- on the asking of a Mahant, who used to do the Satsang. In reply she stated that she could not say. She said because everyone else was paying the money for magazine, she also did so. From the foregoing narration, it would be seen that the witness being illiterate, the contents of affidavit had neither been read over and explained to her nor she was taken to notary for identification. Though she pointed out to the Respondent as the person through whom pension was received, she did not say that Respondent directly made any demand. However, it is clear that being illiterate, she could neither understand nor have any benefit from the magazine. Thus, it appears that contribution was made to get pension. A situation appears to have been created, where, the pensioners verily believed that contribution for magazine was a must to get the pension. The execution of the affidavit is in highly doubtful circumstances. It does not inspire any confidence.

22. CW-3, Smt. Maya Devi, another widow pensioner, deposed that she had one married daughter and three sons. The sons were sporadically employed. She stated that she could not read or write but knew only how to write her name in Hindi, that too not very properly. She stated categorically that she had subscribed to the magazine and paid Rs.1100/- as subscription for the magazine at the place and to the person who was distributing the cheques for pension. The said person was referred as 'Safaiwala' by some and by others as 'Daroga'. She stated that receipt of the magazine has been cut by the person who gave the

pension cheques. She did recall Sh. Ghanshyam Tanwar (wrongly typed as Bharam Singh) in the Statement had got her signatures on a paper. She did not know what was written on the said paper. He had asked her to sign it. She therefore, signed it. She had not gone for the attestation of affidavit. She also received one copy of the magazine 'Dharam Pravaha' or may be twice. It came to her house. She accepted that Councillor had himself not threatened that if she did not pay for the magazine, pension would not be released. She paid because others were paying it for getting the pension. If on payment of Rs.1100/-, Rs. 6000/- were being released, it was better than to wait for years. This witness was also illiterate. The factum of contents of affidavit not being read or explained to her or known by her and having executed it at the instance of Sh. Ghanshyam Tanwar, are factors to hold that it does not inspire any confidence. Further she has clearly deposed that the person distributing the magazine and the pension was the same and receipts had also been cut by the same person, thereby clearly showing the nexus between payment of pension and contribution for the magazine. Besides the pensioner being illiterate, would hardly have any benefit from the magazine.

23. CW-4, Smt. Shanti Devi, is also the recipient of old age pension. She deposed having paid Rs.1100/- as contribution for the magazine 'Dharam Pravaha'. She stated that she was told that pension has been increased to Rs.1000/- and the arrears were Rs.6000/- and if she paid Rs.1100/-, she would get Rs.6000/- as arrears of pension. She said greed was a bad thing. Therefore, for getting Rs.6000/- she paid Rs.1100/-. She showed the receipt of the amount when she collected the pension cheque. She stated that she had shown the paper mentioning the number which was the pension card receipt number for payment of the contribution.

24. During cross-examination, she admitted having affixed thumb impression on stamp paper. She was told it was required to increase pension therefore she had put her thumb impression. She even did not recall whether it was typed or it was a blank paper. Nobody had explained as to what was written on the affidavit. She further stated that it was true that no threats were held out to her for the payment of Rs.1100/-. No newspaper correspondent had contacted her. When somebody had asked whether she had received pension, she replied that she had paid Rs.1100/- and received pension. Rupees 1100/- was paid for printing of magazine.


25. To sum up, the affidavits taken from these poor helpless individuals, old pensioners, helpless widows all of whom have stated that neither the contents of affidavit were explained to them in vernacular nor otherwise. Being illiterate they did not know what was written in the affidavit. They paid the contribution amount needed for release of pension and the magazine was delivered to them. It had no use or purpose for them because they could neither read nor write. The testimony of these witnesses namely Smt. Murti Devi, Smt. Maya Devi and Smt. Shanti Devi clearly demonstrate the nexus and connection between payment of contribution for the magazine and release of pensions and the role and involvement of the Respondent and distributors of magazine. In his statement Sh. Ghanshyam Tanwar who obtained the thumb impressions and signatures of the pensioners admits that the affidavits were given to him by the Respondent to be got signed, if the pensioners wanted to avoid getting involved in litigation and their appearance in Court. Sh. Ghanshyam Tanwar claims that he had explained to Smt. Maya Devi and Smt. Murti Devi as to what was written in the affidavits. However, the absence of any statement in the affidavit itself that the contents had been explained in vernacular, especially when the affidavits were in English language, militates against the said position. His statement therefore, cannot lend

credibility to the affidavits. Besides the deponents have denied being taken before Notary or oath commissioner or being aware of the contents.

26. Respondent apart from examining himself as RW-1, produced two other witnesses namely, RW-2, Smt. Arti Sharma and RW-3, Sh. Jai Kishan Gupta. Both of them are recipients of old age pension. RW-2, Smt. Arti Sharma stated that she was getting regular pension for the last three years she had no grievance on this score. Nobody ever approached her to become member of the magazine 'Dharam Pravaha' or make a donation of Rs.1100/- as contribution for getting pension. She did not know about any persons complaining about pension. She had no personal knowledge of allegations contained in the press report.

27. RW-3, Sh. Jai Kishan Gupta stated that he was not getting pension since September 2009 and gave details of MIG flats owned by him. He did not know about demand for payment of contribution for magazine 'Dharam Pravaha' for release of pension. At best the testimony of these witnesses only indicates that no demand for payment of contribution of magazine was made from them. It does not negate the direct testimonies, supported with documents which have come on record.

28. The respondent initially claimed that the news report was false and fabricated. It has been published to tarnish his image. He neither pressurized any one to become the member of magazine 'Dharam Pravaha' nor issued any receipt for the same. He had not withheld the pension of anyone or threatened anyone else to do so. The list of pensioners was controlled by the MCD and the respondent's task was limited to recommending the applications of eligible candidates. He was neither the editor nor publisher of the magazine nor had any role in marketing or distribution thereof. He similarly had no role in distribution of pension. Along with his reply, the respondent had filed affidavits of Maya Devi, Murti Devi, Mahesh Tanwar and Om Parkash, who had been cited as




persons forced to give donation as per the news report. The respondent also claimed that since he did not give the advertisement for greetings to Atul Krishan, he got the report authored by Sh. Dhananjay Kumar, known to him. The testimony of Sh. Rajesh Garg was sought to be discredited on the ground that he had political and business rivalry and was inimical to him.

29. As noted in the section "appreciation of evidence" respondent did admit that he was known to Sh. Sunil Sharma, who was running the magazine "Dharam Pravaha". He himself was the life member of the magazine. But he had denied being an officer bearer of the "Dharam Yatra Maha Sangh" the organization running the magazine. Direct evidence has come on record to establish the active role of the respondent in propagating the magazine and collecting the contribution for membership subscription. CW-5 Sh. Dhananjay Kumar the author of the report deposed receiving information from Sh. Suresh Agarwal, an officer bearer of the Resident Welfare Association regarding respondent collecting contribution for the magazine for payment of pension. Similar information was given by Sh. Atul Krishan and Sh. Rajesh Garg, who had themselves come as witnesses and deposed. Respondent himself when confronted with receipts bearing nos. Ex. CW5/A to L had admitted that said receipts appear to bear his signatures but he could not say whether these were his signatures or not. He however admitted issuing receipts on behalf of the magazine for the contribution contrary to earlier denial. CW-5 Sh. Dhananjay Kumar had also produced receipts of pensioners who had paid contribution to obtain pension cheques, when he collectively met the pensioners at the market place. The notings in his own hands of the name of persons, who had been forced to pay the contribution for the magazine, were tendered in evidence. CW-5 Sh. Dhananjay Kumar also deposed regarding the conversation that he had with the respondent and the respondent response as reproduced earlier regarding the

justification for collection of the contribution being better than to pay bribe, which has been quoted in vernacular.

30. CW-6, Atul Krishan, deposed that he visited the office of respondent Narender Bindal in October, 2009, for his parent's pension after it had been increased. Narender Bindal, the Respondent told him that he should give cheques of Rs.1100/- each in favour of publication 'Dharam Pravaha' magazine and then he would release his parent's pension. He objected to the demand but Mr. Bindal did not relent. He therefore, issued the two cheques bearing no. 753697 and 753698 dated 21st October, 2009, against which two receipts ie. Ex. CW-6/1 in favour of his mother Smt. Sudesh Soni and Ex. CW 6/2 in favour of his father Sh. Mohan Lal Soni were issued. The receipts carried two circled numbers respectively 655 in Ex. CW 6/1 and 568 in Ex. CW 6/2. These are also the numbers on pensioners cards. The pensioner's card also described Narender Bindal at the 'Rastriya Mahamantri' of Dharam Yatra Mahasangh. For getting the pension, a pensioner was required to show the receipts of contribution made for 'Dharam Pravaha' magazine published by Dharam Yatra Mahasangh with the number. Sh. Atul Krishan deposed that after getting the receipts, he stopped payment of both the cheques, but got his parents' pension released on the same day. He deposed that he and Sh. Rajesh Garg had sent these documents to Commissioner of Police and matter was under investigation with the Police Station Nangloi. He deposed that he had met one Sh. Bhagwati Parshad resident of Nangloi who got the pension after he contributed for the magazine but, did not receive the magazine. Sh. Atul Krishan also tendered the receipt of the copy of the card received from Sh. Bhagwati Parshad for contribution. During cross examination, the testimony of Sh. Atul Krishan remained unshaken. It was put to him that he used to collect donation for publication of advertisements in the paper. He candidly admitted receipt Ex. CW 6/R-1 issued to Sh. Narender Bindal



for Rs.1100/- which he explained was for the price of 1000 copies of News Paper that were supplied to the respondent, since it is carried news concerning him. He handed over cheques of Rs. 1100/- each to Mr. Bindal as contribution, on behalf of his parents, who then passed it on to the person sitting next to him. He also denied the suggestion that cheques were not handed over to Mr. Bindal or pension cheques were not distributed from the office of Mr. Bindal. Curiously, the respondent then suggested that cheques were given by Sh. Atul Krishan voluntarily for the magazine, which suggestion was denied. He also said that he had spoken to the leader of opposition in MCD Sh. Jai Kishan about it. He said he had published the report in the Statesman after due verification.

From the foregoing, it would be seen that Sh. Atul Krishan's testimony directly implicates the respondent. He accepted the factum of advertisement charges and cost of news paper received from the respondent. It shows that he is a truthful and credible witness.

31. The next person whose testimony implicate is CW-7, Sh. Rajesh Garg, who happens to be the President of the Janta Market Association, Nangloi, which is proximate to Ward No. 41. He deposed that as President he has lot of social interaction with people. His mother Smt. Raj Dulari was recipient of old age pension, who got the last pension at the rate of Rs.500/- per month i.e. a sum of Rs. 3000/- on 22.11.2008. The pension thereafter was stopped since he did not meet the respondent's demand of contribution for the magazine 'Dharam Pravaha'. It happened in March-April 2009. He deposed that he met the Respondent in the latter office, when respondent asked him to pay Rs.1100/-, but he declined to pay. He claimed that respondent had attempted to dislodge him from the post of President but majority of the members did not accept the decision of the unauthorized meeting. He tendered his mother's pass book Ex. CW 7/1 to support that pension was stopped. During his cross examination, he

admitted being a member of BJP and having held responsible position. He also stated that he did not lodge a complaint with the Police or President of "Dharam Yatra Mahasangh". He denied that news report was published at his instance. He admitted knowing Sh. Atul Krishan but did not have close friendship. He also admitted that he had helped Mr. Bindal by collecting contribution during election from the market. He denied that he was deposing on account of animosity and difference with Sh. Narinder Bindal.

32. Having noticed the direct evidence which implicates the respondent, let us notice his defence.

Initially on the first date i.e 9/11/2009, he denied having any role in the marketing, distribution or publication of the magazine 'Dharam Pravaha'. He only admitted knowing Sh. Sunil Sharma, who ran the magazine. He denied collecting contribution for the magazine or issuing any receipts. He denied having given any direction for withholding or stopping pension of any pensioner for nonpayment of contribution for magazine or being involved in cheque distribution which he claimed was done by the sanitation department of MCD. He denied holding any position on the editorial board or otherwise in the magazine 'Dharam Pravaha'. He said that he had no direct association with the magazine except the fact that he was associated with "Dharam Yatra Maha Sangh" which is part of Vishwa Hindu Parishad being a member of RSS. He estimated about 40 to 50 pensioners having subscribed to the magazine. He said that it was the MCD who officially decided the eligibility of the pensioners. He suggested that handing over of pension cheques in the function on showing of the subscription receipts for 'Dharam Pravaha' magazine could be mischief played by Sh. Rajesh Garg to defame and involve him. However, no such suggestion was made to Sh. Rajesh Garg during cross-examination. However, on showing Ex. CW 5/A to Ex. CW 5/L and the signatures at points marked 1 to 12,

he stated that signatures resemble his but could not accept in the absence of originals. Further that he admitted that he had got some members for 'Dharam Pravaha' magazine enrolled. He had also issued receipts for enrolling the said members. This was contrary to the earlier claims regarding no association with 'Dharam Pravaha'. Moreover in the pension cards, Respondent is described as 'Rashtriya Mahamantri' Dharam Yatra Mahasangh.

33. Another contradiction which needs to be noticed is that Respondent claimed that the affidavits of illiterate pensioners i.e. CW-1, Smt. Murti Devi, CW-3, Maya Devi and CW-4, Shanti Devi were handed over by Sh. Ghanshyam Tanwar to him for filing before the forum. On the other hand, Sh. Ghanshyam Tanwar stated that Councillor gave him affidavits to be got signed, if the pensioners wanted to avoid getting involved in litigation and their appearance in Court. Sh. Ghanshyam Tanwar deposed that he got thumb impressions on the affidavit from Smt. Murti Devi and Maya Devi. It has already been discussed in detail as to why the affidavits do not inspire confidence and appear to be involuntary. It is sufficient to notice that the affidavits of these witnesses i.e. CW-1, Murti Devi, CW-3, Maya Devi and CW-4, Shanti Devi do not inspire any confidence. The affidavits were executed by the deponents without understanding their contents rather the circumstances attendant to their execution show that a clear impression had been created by the respondent and others associated with distribution of pension that unless contribution was made to the magazine, pension would not be forthcoming and these illiterate helpless women paid the said sum to get pension. One of them Smt. Murti Devi pointed out to Narender Bindal as the person from whom the pension was received.

34. CW-4, Smt. Shanti Devi deposed that she was told that pension has been increased to Rs. 1000/- and the arrears were Rs.6000/- and if she paid the sum of Rs.1100/- she would get Rs.6000/- of pension. Further when she collected

pension she showed the receipt of the amount paid as contribution for the magazine. The receipts carried the number and on seeing the number, she received the pension. Similarly, CW-3, Smt. Maya Devi deposed that the receipt of Rs.1100/- for 'Dharam Pravaha' i.e Ex. CW 3/2 had been issued by the same person who had given the pension cheque. In her examination in chief, she stated that persons who distributed the pension came to the park and the receipt for magazine had been cut by the same person. She deposed that she received only one copy of the magazine. CW-1, Smt. Murti Devi had pointed out to the respondent as the person from whom pension was received. She did not accept the suggestion that she had paid Rs. 1100/- as contribution on the asking of Mahant.

As noted earlier the evidence of the witnesses produced by the Respondent namely, Smt. Aarti Sharma and Sh. Jai Kishan Gupta does not advance his case. At best it only shows that no demand for contribution to the magazine was made from them.

35. In view of the foregoing analysis it is clear that the respondent was "Maha Mantri" of "Dharam Yatra Maha Sangh". As per Dhananjay Kumar, he admitted to him in a conversation of devising this method of collecting contribution of Rs.1100/- for the magazine against release of pension as a preferred alternative to paying bribe of Rs.3000/-. The deposition of Sh. Atul Krishan directly proves that pension of his parents as withheld and upon the Respondent demanding Rs. 1100/- each he gave two cheques to the Respondent who issued receipts, enabling him to collect pension. He thereupon stopped the payment of the cheques. The membership card numbers on the receipts is direct evidence that cheques were handed over to Mr. Bindal. It clearly implicates him and Mr. Bindal admitted that receipts were issued in his hand.

36. Therefore a clear case against the respondent for not conducting himself in accordance with the norms of integrity and conduct expected of his class under Section 2 b(1) and (2) of the Act is made out. He has also abused and misused his position to obtain favour for the magazine, being the 'Mahamantri' of the organization 'Dharam Yatra Maha Sangh' running the magazine.

37. The scrutiny of records and the evidence on record has also brought to the fore lapses and lacuna in the manner of receiving application for grants and remittance of pension and their processing. There is abnormal delay in distribution of pension cheques and completion of acquittance rolls. The acquittance roll for 2007 were written only on 25th March, 2008 as admitted by CW-8. For the period April, 2009 onwards, the acquittance rolls were yet to be received back by the MCD. At present, the acquittance rolls do not reflect either the date of cheque or date of disbursement to the pensioner concerned. Identity cards were not issued to pensioners, therefore, the sad spectacles of pensioners' cards being issued by the Councillor could be seen. During the inquiry it has been noticed that some of the recipients may not be eligible for grant of pension. The pre-requisite or eligibility is of not having any source of income or support appears to be over looked. In the case of Rajesh Garg, who happened to be President Nangloi Janta Flats Market Associations and on his own admission has lot of social interactions, has stated that he and his mother reside together. It would, therefore, appear that it cannot be said that his mother Smt. Raj Dulari a pensioner was bereft of any support or means. Similarly in the case of RW-2, Aarti Sharam, she herself deposed that she is a widow having three daughters, two daughters being married and the third one is unmarried but who is working with an NGO, getting Rs. 9000/- per month. She and her unmarried daughter live together. This is also a case which cannot be said to be without any source of income. RW-3, Jai Krishan Gupta, recipient of pension, was a commission agent

and claims to be now leading a retired life. His wife is a house wife. He has three sons, one is posted in Hyderabad, younger son is a share broker, the elder one is working Chemical Market at Khari Baowli. Both his sons owned car and reside with him. He owns a DDA flat.

Similarly, the parents of Sh. Atul Krishan, who is a reporter in a daily news paper and who it seems looks after his parents, cannot be said to be without any support.

The above shows the need for greater care and inquiry into the family relationship before grant of pension so that more deserving persons can get it.

FINDINGS AND RECOMMENDATIONS.

38 (i) In view of the facts noted and evidence as analyzed and for the reasons stated herein before, the Respondent along with others on account of various acts of omission and commission induced the belief in pensioners and made them verily believe that payment of contribution or subscription for the magazine 'Dharam Pravaha' was a pre-requisite for payment or release of pension and thereby caused gain for the magazine and caused loss to the pensioners.

(ii) Thus, the Respondent has failed to act in accordance with the norms of integrity and conduct, which ought to be followed by the class to which he belongs. The Respondent has also abused and misused his position in demanding and collecting Rs.1100/- each as contribution for the magazine 'Dharam Pravaha', being the Rashtriya Mahamantri of the 'Dharm Yatra Maha Sangh' owning the magazine, as a condition for release or payment of pension to individual pensioners as detailed in the report.

(iii) As a result of the inquiry held under Section 7 and for the reasons set-out herein before it is held that the allegations against the Respondent in terms of Sections 2(b) (i) (ii) and (iv) are established.

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(iv) In the circumstances, it is a fit case for the Competent Authority to direct a thorough investigation and inquiry into the complaints lodged by Shri Atul Krishan sand Sh. Rajesh Garg with the Police and Anti-Corruption Bureau. The evidence which is recorded in these proceedings be also made available to the investigation agencies and action be taken in accordance with law in respect of commission of such offences under the Indian Penal Code and Prevention of Corruption Act, 1988 as may be disclosed against Respondent and others.

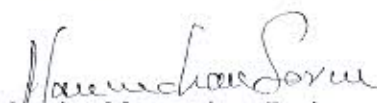
(v) The Municipal Councillor being an elected representative is regarded by the downtrodden and the general masses as their saviour to whom they can go with their problems and for seeking succour. In the instant case, the poor aged, handicapped, widows, illiterate and helpless women, who have no means were sought to be deprived by the Respondent of a significant part of their pension i.e. more than one month's entire pension i.e. Rs.1100/- to further interest of a religious magazine and organization of which he was the Mahamantri. This was a despicable act and is no service to cause of religion. It deserves excoriation i. e. condemnation in strongest terms. In these circumstances, it is recommended that it is a fit case for application of the doctrine of "name and shame". It is, therefore, recommended that the factum of indictment of the Respondent be made known to the electorate by publication of notices displayed in the constituency.

(vi) It is recommended to his Excellency the Lt. Governor that the Municipal Corporation be directed to dispense forthwith the disbursement of old age pension to pensioners through personal distribution of cheques. Instead disbursement should be made electronically by ECS within a time-bound frame work into the Pensioner's account, even in the present dispensation, pensioners are required to have a Bank Account for encashment of the cheques. This may deprive the elected representatives of some political mileage but would rid the system of existing malpractices apart from ensuring timely remittances.

(vii) A system can be put in place where the pensioners comes for periodic physical verification of his/her being alive as is done for regular service pensioners.

(viii) With a view to ensure that the only really deserving and those in penury and real need, get the benefit of the scheme, MCD should introduce the system of public notice/advertisement for inviting applications from within the wards in place of the existing system of the Municipal Councillor receiving applications and forwarding them. This would enable a wider section of the population to seek pension while retaining the role of the Councillor in selecting the fittest out of them. Greater care and scrutiny is needed while evaluating the cases for grant of pension. The inquiry itself revealed that some of the pensioners appear to be having adequate means of support and were living with their families, some were even owning properties or their wards were well placed being President of the Market Association, Journalist and Reporter or beneficiary himself owning a flat with two sons, one of them being a share broker and another engaged in chemical market. While in appropriate cases a pensioner may be still entitled for pension while living with wards but without support, yet it would be prudent to consider eligibility in comparative terms with others who may not have any means at all.

(xi) MCD ought to ensure that there is continuity in the cases of pensioners and a fresh list is not drawn out upon a new Councillor being elected. Only the vacancies, migrations or other cases where pensioners become disentitled to pension, should be filled up by new pensioners.


Justice Manmohan Sarin
Lokayukta

Dated: 7th June, 2011
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