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BEFORE THE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-265/Lok/2009

Lokayukta in its own motion in Re: Illegal digging of a pit at the behest of N. Raja, Municipal Councillor.

And

In the matter of inquiry under Section 7 read with Section 2 (b) (1) of the Delhi Lokayukta and Upalokayukta Act, 1995 for illegal digging of a pit at the behest of N. Raja, Municipal Councillor.

Present:-

1. Ms. Manmeet Arora, Advocate, Amicus Curiae, Ms. Liza Baruah, Advocate
2. Mr. Pradeep K. Dubey, Advocate for the Respondent.
3. Mr. Ved Pal Hooda, AE (EE-M-II), Rohini Zone, MCD.
4. Mr. S.P. Singh, Dy. Director (Horticulture), MCD.

REPORT

(1) A news report titled "Shocking negligence - 2 boys drown in a pit illegally dug on Councillor's order" appeared in Hindustan Times dated 2nd December, 2009. A detailed report also appeared at page-3, under the heading "Councillor authorized digging of killer ditch". The Times of India dated 2nd December, 2009 also carried a report titled "Councillor ordered digging work: MCD", in respect of the same incident.

(2) It was reported that bodies of 2 young boys, missing since last week, were found in a ditch allegedly dug at the behest of the MCD Councillor, N.Raja, without taking any safety precautions. The detailed report titled, "Councillor authorized digging of killer ditch", attributed the digging to the brain wave of the first time Councillor N.Raja of Shakupur and Rohini Zone. A ditch almost 7ft. deep was

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dug to bury debris, which became the graveyard of the 2 minor boys. It was reported that no permission was taken from the Engineering Department and a water line passing through had burst while digging, resulting in the stoppage of the work. The 'Times of India' quoted Municipal Commissioner setting up an inquiry to ascertain if any of the officers were responsible for the incident. The Junior Engineer claimed no knowledge in the matter and passed the buck on to the Horticulture Department, which in turn referred to the Councillor N.Raja, Respondent herein.

(3) Vide orders passed on 3rd December, 2009, suo moto cognizance was taken of the news reports and notice was directed to be issued to area Councillor Rohini. Notice was also directed to be issued to the Commissioner, MCD to submit the fact finding report so that aspects of accountability and dereliction of duty by Public Functionaries and authorities could be considered, returnable on 17th of December, 2009.

(4) On 17th of December, 2009 appearance was entered by Mr. Pradeep K. Dubey on behalf of the Respondent Councillor, N. Raja. The Councillor filed a reply denying his involvement in the digging of the pit and in carrying out the said work. He claimed that he had nothing to do with the matter and denied the veracity of the news reports. He claimed that he was sought to be implicated on account of political vendetta.

(5) Fresh notice was directed to be issued to the Commissioner, MCD since none had appeared on behalf of the MCD. The Commissioner, MCD despite service of notice had not produced the inquiry report on 17.12.2009, when notice u/s 11 of the Act was issued to show cause why proceedings under CRPC be not initiated. Bailable warrants in the sum of Rs. 5000/- for ensuring appearance of the Commissioner, returnable on 14th of January, 2010, was ordered.

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(6) Application for exemption and cancellation of bailable warrant was submitted and allowed. One week's time was granted to MCD to produce the inquiry report on 14th January, 2010.

(7) Statement of N.Raja, Municipal Councillor, on oath was also recorded on 4th February, 2010, which shall be referred to later on in the report. Ms. Manmeet Arora, Advocate was appointed Amicus Curiae having regard to the nature of controversy involved.

Statement of N.Raja, Municipal Councillor

(8) In his statement on oath, N.Raja, Municipal Councillor stated that he was not involved in the incident in any manner. He was not even in Delhi when the incident took place and learnt of it only when his wife informed him on watching the television on 1st December, 2009. He stated that he is the first time Councillor from Tri Nagar Constituency and had earnestly taken up the work of cleaning of slums and gave an impetus to the Indira Gandhi Poly Clinic. He stated that the garbage from the colony was carried in Rickshaws to various Dhallaos. The Malba from the construction sites was not carried to Dhallaos, but taken to the land fill 5 to 6 kms. away in trucks. He stated that he had not given any instructions of digging up of a pit or filling up of malba and debris either to the Horticultural or Engineering Department of MCD or to the DDA officials. He was not even aware of the digging of pits. However, he stated that he knew the two labourers Jeet and Anup, to whom he use to give instructions for cleaning etc. on receiving complaints from the citizens, on the spot. Kanwar Pal (Section Officer) was also known to him in connection with official work. He had no private dealings with him. He stated that only possible reason for his name being crept into this controversy, could be the political vendetta as there was otherwise no basis for implicating him.

Pleas in the reply and enquiry by Deputy Commissioner, MCD

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(9) The Respondent also filed a formal reply dated 17.12.2009, praying that the proceedings against him be dropped. In the reply, he claimed that the press reports carrying the news items that 2 boys drowned in a pit illegally dug at the Respondent's orders or his behest was wholly wrong as far as it sought to attribute the digging of the pit at his behest. The Respondent averred that he was sought to be implicated only on the statement of the Mayor Sh. Kanwar Sain. It was not known as to what was the basis for the Mayor's opinion. He believed it to be an attempt as part of political vendetta, to blame him. Neither he had anything to do with the digging of the ditch nor could any negligence be attributed to him there for.

(10) The Respondent placed reliance and produced an affidavit filed on behalf of the MCD by Sh. V.K. Gupta, the Dy. Commissioner, in the Writ Petition No. 13570/2009 wherein suo moto cognizance had been taken by the Court. In the affidavit, the Dy. Commissioner explained the topography of the area by referring to it as a piece of land also called a park, being surrounded by 6 ft. Boundary wall with a gate. Within the complex, there was an Anjani Swasthya Club (Akhara) which was being unauthorisedly run. Key of club was kept by one shopkeeper Ravi. On one side NDPL office was located. The boundary wall with a height of 4 ft. or so was damaged at this point. The above land had been handed over by DDA to MCD, vide notification dated 27.05.1988. As per the Deponent, 2 children aged 8 & 4, would have found it difficult to enter after scaling a wall of the height of 4 to 6 ft. Children were reported missing from the 25th of November. As per the non official witness examined, they had searched unsuccessfully everywhere including the land park in the night of 25th and 26th of November and again on 29th November. FIR was not registered on 26th but on 27th of November.

(11) The bodies of the children were found floating on 1st of December, 2009. The Inquiry Officer also recorded that the mother of one of the deceased child Arman was separated from her husband Md. Ali, who was living with another women. She had further reported on

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25th of November at 2.00 P.M that when she returned to her husband, children were found missing. The Inquiry Officer recorded that the person interrogated suspected some foul play, but MCD could not comment on it. However, one of the points which emerged in the inquiry report was that the malba and garbage was not dumped on the same day. One of the witnesses Dalip Chand stated that local residents were pressing Councillor to develop the said land as a park and work started 10 to 15 days back. Based on the Inquiry carried out, the Inquiry Officer concluded that there was negligence in not taking any safety precautions while digging the pit as also in not dumping malba on the same day of the digging. It recommended disciplinary proceedings against Rajinder, Mali, Mahavir Chaudhary and Kanwar Pal, Section Officer. Action was also to be taken against Anup and Jeet of the Engineering Department for digging of pits in front portion without any work order. Vigilance inquiry was also carried out when it was found that 4 pits were dug in the park and 2 at the gate. Further, that officials/employees of Engineering and Horticulture Department did digging work at times without the knowledge of their department. It also recommended probing the role of the Junior Engineer (Maintenance). MCD stated that since the pits were dug without safety precautions, hence it would pay compensation for the negligence, as may be assessed.

(12) From the foregoing, it would be seen that as regards the Respondent, the only observation which has been made is based on the statement of one witness Dalip Chand, who stated that due to the pressure of local residents, to develop the land as park, on the Councillor, work started 10 to 15 days back.

Evidence recorded in the present inquiry

(13) The Amicus Curiae led evidence of 15 witnesses, namely, CW-1 Dharmveer Singh, Inspector Crime Branch, CW-2 Kanwar Pal Singh, Section Officer, Horticulture Department, CW-3 Mahavir Singh Chaudhary, Horticulture Department, MCD, CW-4 Rajinder Singh, Mali, Horticulture Deptt. MCD, CW-5 Anoop Singh, Baildar,

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CW-6 Jeet Singh, Baildar (Maintenance), MCD, CW-7 Naresh Kumar Yadav, Teacher/Contractor on behalf of his wife Yogandri Yadav, CW-8 Vasudev, Supervisor of Yogandri Yadav, CW-9 Sushil Kumar, Helper in JCB, CW-10 Nahar Singh, Asstt. Director (Horticulture), CW-11 Ajay Puri, JCB Owner, CW-12 Ashok Kumar, JCB Driver, CW-13 Vinod Kumar, DJB employee, CW-14 Jagdish Prasad, JE, DJB, CW-15 Maya Ram, DJB employee. Lastly, N. Raja recorded his statement in defence.

Opportunity of cross examination of all the above witnesses was duly afforded to the Respondent's counsel as also the counsel for MCD. The Amicus Curiae was also permitted to ask questions and seek clarifications, wherever required.

(14) Extensive evidence as noted above has been recorded. For the purpose of the inquiry report, focus would be on the evidence which has bearing to the conduct of or tends to implicate or explicate the Public Functionary. This would be the material evidence for the purpose of inquiry under section 2 (b) (i) of the Delhi Lokayukta and Upalokayukta Act, 1995. Hence, while sifting and evaluating the evidence of the witnesses, the focus has been on the above while noting only those particulars and details which may be germane or necessary for the purposes of the material evidence as noted above.

(15) It is with the above object in mind that the appreciation and evaluation of the material evidence for the purpose of inquiry, as it unfolds itself in the statements of the various witnesses, is given.

Narration and appreciation of evidence as recorded.

CW-1, Insp. Dharamveer Singh, Crime Branch, deposed that as a result of investigation, 3 persons were arrested namely Kanwar Pal Singh, Section Officer, Horticulture Department, Mahavir Singh Chaudhary, Horticulture Department, MCD, Rajinder Singh, Mali, Horticulture Deptt. MCD. He also proved the status report, Exhibit CW-1/1 submitted by him. The status report narrated in detail the lodging of the FIR No. 581/2009, its registration in respect of the

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missing children and discovery of the dead bodies of two children on 1st December. A reward had also been announced on 30th November for giving any clue of the missing children. The dead bodies were found in the water filled pits. The status report also described the topography of E-Block, Shakurpur land referred to as park. It had a 130 cm high wall with 95 cm of iron railing on the brick wall. There is a Delhi Jal Board pumping station on the back of the park and on one side is the III sewing centre. Nearby there is also NDPL office, where the boundary wall is damaged. The pits were dug for disposal of garbage/malba in the park and the soil which was excavated from the pits was to be used for leveling the ground surface.

Report mention that local residents had made representation to the Councillor for cleaning up of the park. The Investigating Officer did not find any material or evidence of criminal negligence, for prosecution of the Respondent.

During the investigation, the Investigating officer had produced and called for the attendance register of Kanwar Pal Singh, Section Officer, Mahavir Singh Chaudhary of Horticulture Department, MCD and Rajinder Singh, Mali. The cause of death was given as asphyxia as a result of anti mortem drowning. Time since death was reported to be approximately 6 days. No injury marks were found. Mud particles were present in trachea and its division. Lungs were voluminous. Investigations revealed that 4 pits were dug by JCB, which was driven by driver Ashok. The status report also records that the digging of pits and damaged pipe line was in the knowledge of N. Raja, Councillor, but despite knowledge of these facts and circumstances, as a public representative, it was expected from him to sort out the matter, so that the public safety was not compromised. It held the MCD officers namely Kanwar Pal Singh, Section Officer, Horticulture Department, Mahavir Singh Chaudhary, Horticulture Department, MCD, Rajinder Singh, Mali, Horticulture Department, MCD responsible for the death of 2 children by the

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negligent act of leaving behind water filled pits in the park, without taking any safety measures.

During his cross examination, Dharamvir Singh, stated that Kanwarpal had been asked by Nahar Singh, Assistant Director, Horticulture, MCD, to take up the work of beautification of the park. However, Kanwarpal took up the digging work, unauthorisedly inside the park without the knowledge or approval of senior officers of MCD. The digging of pits and breaking of water pipe was in the knowledge of N. Raja. Dharamvir clarified that while stating that there was no evidence against N. Raja, he was talking of criminal culpability and not of any negligence or breach of duty. Dharamvir stated that he had carried out several investigations. He was influenced by the vigilance report and inquiry conducted by the MCD, while making his report. He deposed that during the investigation, he found that Vinod Kumar of DJB had met the Councillor and informed him of the breaking of water pipe. The Respondent Councillor even tried to contact someone, but did not succeed and therefore told Vinod Kumar to arrange the piece of pipe himself.

(16) CW-2, Kanwar Pal, Section Officer, Horticulture Department, MCD, deposed that the park in question though falling within Ward No. 64 was not within his jurisdiction. It was not included in the inventory of parks. He stated that he knew the Respondent Councillor N. Raja, who used to call him whenever there was work. Choudhary Mahavir Singh used to give him report in respect of maintenance of different parks. He did not receive any report in respect of this park which was not in his jurisdiction. He claimed that the Councillor had not called him in relation to this park. He came to know about the incident only on 1st December. He stated that the digging was carried out under the instructions of Nahar Singh, Assistant Director (H), MCD. N. Raja, Councillor had called Nahar Singh, who asked him also to reach the Councillor's Office. Conversation took place between N. Raja and Nahar Singh only for this work. Councillor desired park to be levelled and garbage being filled. Nahar Singh

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agreed to carry out the instructions. On reaching the site, he told Nahar Singh that the site was not in his charge and he would not do any work. Upon this Nahar Singh himself called the contractor Yadav and asked him to carry out the work. Yadav said that he would do it as soon as he got time. He claims to have told CW-1 Dharamvir Singh that he did not execute the work. It was Nahar Singh Assistant Director, who had got it done, and no heed was paid to him.

(17) In the cross examination by Counsel for MCD, Kanwar Pal, admitted that before the MCD Vigilance Enquiry Committee, he did not tell about the Respondent calling Nahar Singh. Kanwar Pal said, he only deposed that work was not done by him. He did not say that the work was got executed by Nahar Singh. He only answered what he was asked about. He was only required to write answers to questions and not to make his own statement. As regards digging of pits, he stated that he does not know anything about it. During the cross examination by Respondent's Counsel, he reiterated that he had heard the conversation between N. Raja and Nahar Singh. Work was to dump the garbage and level the ground which Nahar Singh agreed to get it done on the asking of the Councillor. It was got done through Yadav, contractor. He maintained that he had told Nahar Singh that the site was not in his inventory. He, therefore, could not get the work done. He denied having engaged the contractor and said that contractor was lying in saying said that he had engaged him. He denied the suggestion that the respondent was sought to be involved as a result of political rivalry. He maintained that he was not allowed to have his say but was only to answer questions. He said that he did not have the power to hire JCB machine for digging. He declined any knowledge of the terms agreed between Nahar Singh and Yadav, except that Yadav had agreed to get the work done. He maintained that only Nahar Singh had the authority to hire the JCB machine.

(18) From the foregoing it would be seen that the essence of the statement of CW-2 is that it was not him but Nahar Singh, who received instructions from the Councillor and got the work done from

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Contractor Yadav. Further that the park was not in his inventory and therefore he did not get the work done or pay any attention to it.

(19) CW-3, Mahavir Singh deposed that he used to report to Nahar Singh through Kanwar Pal and had 18 gardeners working under him to attend to 53 parks. Apart from exchanging pleasantries with the Respondent, he had no inter-action with him. People could approach the Section Officer for getting the park cleaned up. Nahar Singh also gave directions for beautifying the park. He declined any knowledge of Respondent Councillor having called Nahar Singh for a meeting. He did not meet the Councillor. He said that work in E-Block had been done by JCB and not by gardeners. No gardeners had been deputed by him when JCB was working. JCB had been sent by Section Officer Kanwar Pal. On 18th November, the storekeeper told him that the Section Officer had called and desired him to reach the site, where JCB was working. He reached the site with Rajender, Storekeeper. At that time, there were two drivers of JCB and a clerk of the contractor called Vasudev. The pit earlier dug by JCB was being filled up with 'malba'. When he was passing by the park later at about 5.00 pm, there was no leakage or collection of water and JCB was still working. This he saw from the road nearby. He learnt on 19th November about the leakage having taken place. On 19th November, he saw the park inundated from outside. He did not take any work force there since his 'Malis' were not involved. Rajender apart from being the Storekeeper is also a Mali. Instructions regarding digging of pit could have been given by Kanwar Pal, Section Officer to Rajender. Regarding inundation of water, he did not file any report. The pit where the tragedy took place was 7 ft deep and could be 10' x 8' (length & breadth). He said he was not aware of any policy or programme of cleaning and beautification of parks by digging of pits and filling the same with malba lying around.

(20) CW-4, Rajender Singh, Mali, deposed that on 18th November, Kanwar Pal, Section Officer, called him on telephone and they went to see the work being done by JCB in the park at E-Block. During

lunch time, the Contractor's Munshi had also come to Choudhary and told him to see the work. He also received a call from Section Officer Kanwar Pal, who could not get through to Choudhary. He told him to go and see the work being done by the JCB. He informed Choudhary about the call of Kanwar Pal and both of them went to see the work. He learnt about the leakage on 19th November. The residents came and met him at the Store. Choudhary was also present. Choudhary asked him to go to the Councillor and ask him to get the water supply stopped so that the line could be repaired. He went to meet the Councillor but could meet only his PA, who rang up DJB for getting the water supply stopped. He assumed the water supply would have been stopped because the residents did not come to him again. They had only seen the JCB machine filling and levelling the pit but did not venture into the park.

He deposed that the Councillor used to pass instructions to the Section Officer, which were transmitted to him or the Beldar. The pits remained filled with water from 18th November to 26th November. No steps were taken for its clearance. No report was sent to higher officials regarding inundation of park.

Counsel for Respondent did not cross examine this witness since there was nothing specific deposed against the Councillor.

(21) CW-5, Anup Singh, Beldar, deposed that he did not know why the pits were dug by the Engineering Department. He said that he had not been told the reasons for his suspension. He had heard about Raja but never met him personally. His statement is not of any significance.

(22) CW-6 Jeet Singh, Beldar, in his statement deposed that he had never met the Councillor, N. Raja and does not know why he was suspended. He had heard about the tragedy of death of children. No instructions were issued by Raja to him or Anup.

(23) CW-7, Naresh Kumar Yadav, deposed that his wife was the sole proprietor of Green Age Enterprises doing the work of horticulture. Vasudev @ Pondyal was the authorized signatory for the

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business. His wife was a homemaker while he was a teacher. He deposed that Kanwarpal, Section Officer, had called Vasudev and told him that horticultural development work was to be carried out before the boundary wall was built. As the boundary wall was not made, this work was kept pending. Work Order had been issued. Boundary wall was being made in November, 2009 and Vasudev was told by Section Officer Kanwar Pal to get the development work completed. Vasudev had hired JCB of Ajay Puri.

Naresh Kumar claimed that neither he nor his wife nor Vasudev knew the Respondent. While they had been asked to execute the formal work, Kanwar Pal also asked the JCB to be spared for some work at another site, i.e. at E-Block. Such requests from the Corporation officials are usually accommodated. Accordingly, they had acceded to the said request. Yadav deposed that he did not meet the Assistant Director, Nahar Singh, personally but had received a call from Kanwar Pal, Section Officer, since he could not speak to his wife. He initially tried to defer it by saying that he would check with Vasudev who was executing the works. Deployment of JCB at the site was on the basis of request of Kanwar Pal with the understanding that either MCD would take sanction for payment or if that was not feasible it would be absorbed as part of expenses on public relation. He stated that Nahar Singh had not called either him or his wife.

(24) CW-8, Vasudev deposed that he was working on salary and was told by Kanwar Pal, Section Officer, on 10th or 11th of November to execute the pending work at site near the Health Centre. JCB was arranged through Ajay Puri. He had informed Yadav that there was no talk or settlement about payment. Initially the request was sought to be deferred. He also admitted that the workers of DJB had informed that there was water pipeline and they should be careful while digging. The line was damaged at around 8.00 PM on 18th November. Rajender went to DJB Office to get the water supply stopped. JCB operator did not operate the JCB due to inundation. Considerable digging had already been done. He stated that he informed Rajender,

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but did not inform Kanwar Pal. He also informed Mr Yadav at home, but neither met nor informed N. Raja.

(25) CW-9, Sushil Kumar, Helper of JCB, in his statement deposed that JCB was taken to site as per directions of Vasudev. He said that the work had started around 9.30 AM and by 5.30 PM one of the water pipelines had burst. As there was considerable pressure of water, pits got filled up with water. There was no cross examination of this witness.

(26) CW-10, Nahar Singh, in his statement, after describing his organizational structure, described his financial limits to be Rs. 500/- with incidental work upto Rs. 10000/- that could be sanctioned by Deputy Commissioner. Ward No. 64 had come in his jurisdiction in August 2009. He had not issued any work order for this area. The site did not come in the inventory of parks, which were in his jurisdiction. He claimed that he visited the site only on 1-12-2009. He admitted that Kanwar Pal could not grant sanction of any work or issue work order. He knew Respondent Councillor, who did not make any request to him or Kanwar Pal. He denied having been called by the Councillor along with Kanwar Pal. Kanwar Pal did not have the authority or financial powers to hire JCB and deploy them. There was nothing to be gained personally by Kanwar Pal by getting the work executed. Kanwar Pal had no personal interest in it. He stated that what came to be known later on was that N. Raja, Councillor was concerned about the lack of cleanliness and collection of malba and had asked Kanwar Pal to attend to it, who asked the Contractor working in the vicinity of park to get the site cleaned up. This was the information he received from the malis and supervisors but cannot definitely say who was supervising the malis. He did not ask N. Raja whether he had instructed Kanwar Pal or not. He stated that Kanwar Pal and Raja were in the knowledge of pits being excavated. He deposed that no action had been taken against the contractor for having excavated the pit which got inundated. Green Age Enterprises Contractor had not claimed any amount for deployment of JCB for excavation of the pit.

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He denied having asked Kanwarpal to do the work of beautification of parks. He denied the suggestion that he and Kanwar Pal had been in the office of Councillor in November, 2009, who gave instructions to him. He deposed that he did not have any talk with the contractor.

(27) CW-11, Ajay Puri, owner of the JCB, in his statement has disclosed the cost of hire of JCB as Rs. 4000-5000 per day. He stated that Yadav wanted to hire the JCB. JCB was supplied to them and kept by them for one day on 18th. He further stated that he had no knowledge of the site where the JCB was deployed and the work it did. He had not visited the site. Mr Yadav had paid him Rs. 5000/- without any bill. JCB was to work under the instructions of Vasudev.

(28) CW-12, Ashok Kumar, Driver of JCB, deposed that it was operated under the instructions of two persons Mahavir Singh Choudhary and Rajender Mali, whom he recognized also in the Court. He deposed that Mahavir Singh Choudhary and Rajender Mali came to the site about 2-3 times and had earlier given instructions to Vasudev. Leakage was seen at about 6-6.30 PM. Mahavir Singh and Rajender Mali did not attempt to connect the joint or stop the leakage. Vasudev tried but was unsuccessful. Both of them had seen the inundation of the pit. He further deposed that on 29th October Vasudev had taken him to the park where malba and garbage was collected. Pit was to be dug and garbage and malba was to be dumped in. He did not see Nahar Singh in the Court. MCD workers also could not plug the leakage.

(29) CW-13, Vinod Kumar, in his statement stated that he was an employee of DJB and was asked by Jr Engineer Jagdish Pd, who had received a complaint of breaking of waterline, to go and visit the Councillor Respondent whose office was in C-Block, Shakurpur. He was asked to request the Councillor to provide the damaged pipe. N.Raja told that the damaged pipe must be lying at the site. With this answer he returned and informed the JE about it. He cannot say whether the damaged pipe was ultimately found or not. It would be in the knowledge of JE who was doing the repairing of pipeline.

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(30) CW-14, Jagdish Pd, Jr Engineer, deposed that MCD was digging some pits and in that process the pipeline got damaged. It was around 17th or 18th November. He had received a call on his mobile from N. Raja, though not from Raja's mobile but some other phone. Raja informed him about the breaking of line and asked his men to be deputed for repairing it. He deposed that his staff informed him that the line did not burst of its own but was punctured on account of digging of the pits. Jagdish Pd deposed that he asked Vinod to go and see the Councillor and request for the damaged pipe so that the same could be used by putting a joint in the pipe. As the pipe could not be located, he instructed for the line to be blocked by a dart. The original piece of pipe was not available at the site. It could have been removed by the labourers and sold. He stated that he was only asked to get the repair done. Nearly two meters of pipe was missing, that is why he had sent Vinod to the Councillor. The testimony of CW-13 and CW-14 has gone unrebutted without any cross-examination by the Respondent and the significance of the same would be noticed in the analysis.

(31) CW-15, Maya Ram, deposed in his statement that JCB drivers and helpers were duly informed and shown the location of DJB water line. They had done the digging during the night also and broken the water line. It was only in the morning they learnt about the breaking of water pipeline. When he informed their JE, he asked them to go to the site and the water supply was closed as dart could not be fixed on the flowing water from 4 inch pipe. Damaged portion of the pipe could not be found. Another piece of pipe was ultimately obtained from a contractor and the line was repaired.

(32) Detailed statement of N. Raja was recorded after the evidence was led. He stated that he was elected at the age of 31 years for the first time from Tri Nagar constituency. In keeping with his public duty he held out the promise of keeping the constituency clean and to maintain hygiene. Towards this end, he kept on urging officials maintaining sanitation to remove the garbage. He used to tell the

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officials to get the safai done and would even tell the labourers if people complained against them. He admitted knowing the Deputy Director, Assistant Director and Section Officer Kanwar Pal. He also used to meet the constituents between 9 AM and 12 Noon at his residence. He claimed improving the condition of roads as also having got built a Polyclinic and parks developed. Officers of MCD were not a regular feature in his public meetings since he was in the opposition. He did not maintain a complaint register or book but would immediately call the concerned officers whenever complaints were received. He stated that there was a Mosque next to the park and because of the dirt, garbage and malba collected Namazis could not offer prayers.

(33) He could not recall who had come from the Horticultural Department but he could have told Mr. Hooda, Deputy Director or Nahar Singh, Assistant Director, being the persons with whom he mostly talks. He declined knowledge of any proposal of shifting the malba near the parks by digging pits and getting the uneven areas levelled. He admitted that at time parks were also used to throw malba. He did not recall any employee of DJB coming to him to inform about the bursting of water pipe and filling of water in the pit. Someone from his office did try to contact DJB and told about the mishap but he did not do so. His office is attended by party workers and it could be one of them. He did not recall whom his workers spoke to. The DJB was not under the jurisdiction of Corporation so for any problem relating to DJB, he met Officers along with the MLA. He did not have any contact with the DJB officers except in the meeting with MLA. He admitted knowing Jagdish Pd of DJB whom he had met during the rounds of his constituency. He did not recall whether Jagdish Prasad contacted him regarding the bursting of water line. He stated that he cannot say whether the statement of Jagdish Pd to the police on 19th November that he had spoken to him and he had even tried to help was correct or not. He did not recall meeting Vinod Chowkidar of DJB. He remembers some officers of DJB having come

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to his office asking for pipe and his staff informing him about the same. He did notice the water flowing from the park when he went for a round on 19th. He also admitted that parents or some relations of missing children had come to see him to seek help since they were missing and he advised them to lodge a police report but cannot recall the name of child whose parents had come to see him. He had told them to have an announcement made in the Masjid also. It was only on watching TV news about missing children having drowned in the pit, he came to know of it. He had requested the Commissioner for grant of ex-gratia compensation and had written to him. He had gone for a round on 3rd or 4th December and seen one pit which was filled with water. The whole of area was 'ubar khabar' (uneven) and he could not make out if there were other pits. He said that he was not told about 6 pits; 4 dug by Horticulture and 2 dug by Engineering Department. He had only seen one pit.

(34) It would be recalled, in the preliminary statement, the Respondent had stated that garbage from the colony was put in rickshaws and carried to dhalaos. While admitting there was lot of garbage in the vicinity of the park, he had declined any knowledge as to why the pit was dug in the park and claimed that he was not responsible for it or filling of malba. He denied having given any instructions to the Horticulture Department or Construction Department of MCD for digging of the pits. He claimed that he was not even aware of digging of the pits. Neither he directed any officer for digging of the pits nor could he explain how his name had crept into the controversy. He stated that he knew Kanwar Pal as well as Mahavir Singh, Choudhary of Malis and used to give instructions to Jeet, Anup and Choudhary for cleaning because persons who used to do Yoga or jogging in the park used to complain about lots of dry leaves strewn in the park. He said that he did not know why and how the concerned pits were dug.

Submissions on behalf of Amicus Curaie

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35. Facts emerging from statements of witnesses have already been noted in the preceding paras. Hence are not being repeated.

(i) Ld. Amicus Curiae, Ms. Manmeet Arora, submitted that it is in evidence that pits were dug on or around 18.11.2009. These were seven to eight feet deep, and got filled with water due to breakage of water pipe line, running underneath through the land. Despite the pits getting filled with water, neither the Respondent nor any Officer or employee of Horticulture Department of MCD, took any action or preventive measures to drain out the water and cover up these pits or cordon them off so as to avoid any untoward accident. These pits continued to remain unattended by the officials, unprotected and uncovered. Unfortunately from 27.11.2010, one Mohammed Arshad aged 4 years and Mohammed Armaan aged 8 years, who were playing, went missing and their bodies were found floating in the said uncovered pit on 1st December, 2009.

(ii) Based on the newspaper reports, suo moto notice was issued to the Respondent/Councillor as also to MCD. The Councillor claimed that he came to know of the incident and death of children only from TV and newspaper reports and not otherwise. He disclaimed any knowledge as to why the pits were dug in the park and denied giving instructions to MCD employees for digging of the pit(s). Councillor otherwise admitted having dealings with Kanwar Pal (Section Officer), Mahavir Choudhary, Nahar Singh and beldars for resolving complaints received from residents of his constituency.

(iii) Ld. Amicus Curiae also relied on the report of the Vigilance Department of MCD, wherein disciplinary action had been recommended against Rajinder Mali, Mahavir Choudhary and Kanwar Pal, Section Officer, found responsible for digging the pits inside the enclosed piece of land/park. Reliance has also been placed on the Status Report filed by the I.O, Insp. Dharamvir Singh, who carried out the investigation in the FIR registered for the incident.

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(iv) Amicus Curiae relied on the statement of Dalip, resident of the area, who deposed before the Inquiry Committed that following the demand made by the local residents to the Councillor, the Officer/staff of the Horticulture Department of MCD had taken up the work of levelling the park. The Deputy Commissioner (Vigilance) at page-5 of report concluded that, "it is also observed that the Works Department take up development works in the parks not only on the requisition of the Horticulture Department but also at the behest of public representatives without any knowledge of Horticulture Department as was being done in this case." The pits were being dug for dumping of malba and garbage and levelling of the park.

(v) The Deputy Commissioner of MCD in its inquiry report however did not give the cause of water collecting in the pits. He observed that water supply lines were found to be intact and simply noted that residents informed that the water supply line had broken earlier and the water had flown to the pits but remained silent with regard to digging of the pits. Deputy Commissioner however held the two beldars of the Engineering Department namely Jeet and Anup responsible for allegedly digging the other two shallow pits near the entrance of the park.

36. Inspector Dharamvir Singh, IO, who produced the status report and was examined before this Forum recorded the conclusion at paragraph 13 (iii) of his report that the digging of the pits and damage to the water pipeline led to the filling of the water in these pits. He also held this to be within the knowledge of N. Raja, Councillor, who despite knowledge of these facts and circumstances, as a public representative, failed to take any steps to ensure public safety. The breakage of the water line was in the knowledge of the officials as also of the Councillor but on account of the negligence they failed to take steps for draining out the water from the pits or barricading the said pits which could have prevented the accident.

37. Kanwar Pal, Section Officer claimed that digging was carried out under the instructions of Nahar Singh, Assistant Director as given

to him by the Councillor, when he and Nahar Singh had been called to latter's office. He heard the conversation of Nahar Singh and Councillor. He claimed that Councillor desired that the park be got levelled and garbage/malba filled/dumped in to the pits. Kanwar Pal stated that he did not have any authority to hire JCB machine. It was Nahar Singh, who had the authority to hire the JCB machine and had got the work done.

On the other hand, Nahar Singh claimed that he had heard about the unfortunate incident of the death of the children but denied any role or part in the work. He learnt that the Councillor had expressed concern about the lack of cleanliness and had asked for removal of malba and garbage and in this regard had asked Kanwar Pal to attend to the same. This was as per the information gathered from his staff members. He also claimed that Kanwar Pal and N. Raja were in the knowledge of digging of the pits in the park, which was going on. He denied having called the contractor for sending the JCB.

38. Ld. Amicus Curiae submitted that while Kanwar Pal claimed that it was Nahar Singh, who had received instructions from the Councillor and conveyed to him, on which he told Nahar Singh that the said park was not within his jurisdiction. Thereupon Nahar Singh himself contacted the contractor for bringing the JCB and getting the work done, Nahar Singh, on the other hand, claimed that he did not meet the Councillor and gave no instructions. Councillor also claimed that he was not involved in the digging of the pits.

39. Critical independent evidence is of the contractor Naresh Kumar Yadav, whose wife was the sole proprietor of M/s Green Age Enterprises. He deposed that Kanwar Pal, Section Officer, had called and told him that horticultural development work was to be carried out before the boundary wall was built. While work order had been issued and boundary wall was being made in November 2009, he was told by Kanwar Pal to get the development work completed. Kanwar Pal also asked the JCB to be spared for some work at another site, i.e at E-Block, the site in question. He deposed that he did not meet the

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Assistant Director, Nahar Singh. He had received the call from Kanwar Pal, Section Officer, and JCB was sent at the request of Kanwar Pal. From the evidence of the contractor, it becomes apparent that it was Kanwar Pal, who had contacted the contractor and arranged JCB.

40. Apart from the deposition of Naresh Kumar Yadav, Ld. Amicus Curiae also relied on the deposition of Rajender, CW-4, who deposed that after the breakage of the water pipeline the residents of the colony came to the Store and met him and Mahavir Choudhary. He stated that Choudhary ji sent him to the respondent to ask him to have the water supply to the line stopped which was inundating the park. He went to meet N. Raja but could only meet his PA since N. Raja had gone elsewhere.

41. The statement of Jagdish Prasad, CW-14, working as J.E. in Delhi Jal Board is also relevant. On learning of the breakage of the water line he deputed officials to contact the Councillor for necessary help in retrieving the missing piece of pipe required for repairing the pipeline. He stated that he had received a call from N. Raja on his mobile informing that Delhi Jal Board water pipe line had burst and he should depute some men for attending to it. The Councillor did not inform him how the damage was done but only asked him to get the repair done. Jagdish Prasad stated that when he sent the workers they reported that the MCD workers were digging pits and approximately 2 meters of pipe was missing. Significantly this witness has deposed about a call from a mobile from N. Raja but he was not cross examined by Respondent despite opportunity.

42. Vinod Kumar, CW-13, another employee, stated on oath that he met the Councillor N. Raja to enquire about the missing piece of pipe. He claimed that damaged pipe was required for repair of water line. He was told that pipe would be lying at the site. This witness was also not cross examined.

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43. Ld. Amicus Curiae further submitted that from the evidence and statements as referred above, it was evident that digging of the pits was undertaken by the officials of the Horticulture Department at the request of the Councillor and the same was within the knowledge of the Councillor. She submitted that denial by the Respondent does not inspire any confidence and lacks credibility when viewed with attendant and surrounding circumstances. Moreover in his deposition on 20.1.2011, he admitted that he had called officers from the Sanitation, Horticulture and Works department to clean the garbage and the malba near the Mosque next to the park. The above is also corroborated by the evidence of Dalip regarding the residents putting pressure on the Councillor to have the park cleaned up and levelled. Further, from the foregoing discussion, the breakage of the water line and the consequent filling of water in the pits was also in the knowledge of the Councillor on 19th November, 2009.

44. Ld. Amicus Curiae submitted that Councillor is a Public Functionary and public representative at whose behest work was carried out. He failed in his duty to take elementary precautions. The pits were neither covered nor the water drained out, even though the primary responsibility for doing these rests with the officers of Horticulture Department, who had actually executed the work, the Respondent cannot be wholly absolved of his part in not ensuring that due care was taken.

45. Councillor had claimed that the newspaper reports were false and published without seeking or reporting his version. He was not in Delhi at the relevant time and he himself on reaching Delhi had written to the Commissioner seeking assistance for the bereaved family and sought a suitable enquiry and punishment for those found guilty. He also relied on the order passed by the Division Bench of Delhi High Court in the Writ Petition (C) No. 13570/2009, wherein he had also been impleaded as Respondent but the High Court while disposing of the matter gave directions to the MCD to grant exgratia payment of Rs. 7.5 lakhs each to the bereaved/affected families. No

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order, direction or comments had been made with regard to the role of respondent/ Councillor, who had also filed his affidavit there in.

46. Mr. Dubey, Ld. Counsel for the Respondent submitted that on going through the deposition of the witnesses, it would be seen that none of the witnesses has categorically stated that he was instructed by the Respondent to carry out any work. CW-1, 2, 10, 13 and 14, have not even referred to the respondent in their depositions. He claimed that even Nahar Singh in his deposition stated that as per his knowledge N. Raja Councillor did not make any request for work to him or to Kanwar Pal. He denied that he and Kanwar Pal were called by N. Raja. Regarding Respondent expressing concern about lack of cleanliness and asking for removal of malba in response to the demand of local residents near the mosque, the same does not establish any allegation against the respondent of having directed the digging of the pits. He also refuted the deposition of CW-2 Kanwar Pal Singh as motivated, who stated that the digging was carried out under the instructions of Nahar Singh and that the Respondent had called Nahar Singh and him to his office. Statements of Nahar Singh and Kanwar Pal were contradictory. Rajinder, Mali, had only deposed that Choudhary Mahavir had sent him to the Councillor to have the supply to water line stopped, but he could meet only Respondent's PA. These two also do not establish any allegation. Further even if the PA of the Respondent rang up Delhi Jal Board for getting the water supply stopped, it only demonstrated his concern. Mr. Dubey submits that evidence of CW-14 Jagdish Prasad, JE, and CW-13, Vinod Kumar of DJB, pointed to their own shortcomings because even after receiving a call from the Respondent/Councillor they failed to act effectively and were asking Councillor to provide piece of missing pipe. In fact the office of the Councillor acted only as a facilitator. It was the duty of the Delhi Jal Board employees to take all effective means for repairing the broken leaking pipe. Mr. Dubey submits that the whole controversy was sought to be given a political colour to involve the Respondent as a part of political vendetta. He

referred to the statement of BJP Councillor Meera Aggarwal, who said "the Councillor of the area as well as MLA and MP are from Congress, so how should we know about what happened there and who dug up the Pit?" Mr. Dubey submits that it was unfair to hold Respondent liable on the basis of these press reports.

47. He next submits that it was unlikely that children could climb the boundary wall with iron grills and enter the park. Children normally were not found playing in the park as per the version of non-official witnesses. Foul play was suspected in view of relationship of parents of one of the children. He said it was rather curious that even though the children died in the pit filled with water, their bodies did not float for more than 2-3 days. Besides there was no foul smell even after 2-3 days of death. He said that there is possibility that children were killed somewhere and later on dumped there. There was no reliable or credible evidence to conclude that the alleged digging of pit was at the behest of the Respondent, rather he was victim of political vendetta.

Mr. Dubey submits that respondent could not be blamed for the failure of the MCD staff to take precautions while digging the pits. His only role was in receiving complaint in public grievance redressal session in his office, where he asked the Delhi Jal Board officials to repair the leaking pipeline.

48. Mr. Dubey submitted that the respondent had categorically stated that he did not order or instruct digging of the pits. He had only desired the cleanliness of the park and removal of debris and garbage. The normal practice being that malba is collected and dumped at 'dhalao' about 5-6 km away or using a land fill through private contractor. He said that garbage is collected from individual spots by safai karamcharis and it is dumped in the Dhalao. From the dhalao, vehicle of the contractors carried the garbage to the land fill sites.

49. From the foregoing discussion and analysis of the evidence and considering respective submissions, it would be seen from the

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testimony of Dalip before the Deputy Commissioner that the residents had demanded and put pressure on the Councillor for cleaning and levelling of the land/park remains unrebutted. The Councillor himself admits that he was committed to keeping his constituency clean. Kanwar Pal, Section Officer, has claimed that instructions were issued by N. Raja to Nahar Singh, Assistant Director to get this work done and to have the pits dug and garbage and malba filled in and the excavated earth used for levelling the park. Nahar Singh has denied the same but claimed that he had learnt from the staff that it was Kanwar Pal and Mahavir Choudhary who had got the JCB for getting the pits excavated. The evidence of two disinterested witnesses namely, the contractor CW-7, Naresh Kumar Yadav and CW-8, Vasudev, Supervisor of the contractor Yadav, makes it clear that it was Kanwar Pal who had spoken to them for the development work as also the work of levelling of the park at E-Block and digging of the pits. Naresh Kumar Yadav has described in detail that they had hired the JCB of Ajay Puri for doing the development work for which even work order has been issued. Yadav deposed that Kanwar Pal had asked the supervisor to spare the JCB for getting the work done at another site which turned out to be a public site where the incident has taken place. He stated that they had agreed to provide the JCB since such requests were accommodated in dealings with the corporation. Yadav also deposed that he had not met Nahar Singh and neither he nor his wife received any call from Nahar Singh. CW-8, Vasudev has clearly deposed that it was Kanwar Pal who had asked him to get the work done. He also stated that he had informed the contractor that nothing has been settled about payment and after initial hesitation he was instructed to go ahead with the work. It would follow from the above, that Kanwar Pal had arranged for the JCB and was responsible for commencing the work of digging of pits and cleaning and levelling of the parks.

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The next question to be considered is whether Kanwar Pal acted on his own or under instruction in getting this work done and

arranging the JCB etc. In the natural course of events, Junior officers and employees would loathe to take initiative on their own without financial sanction or approvals, in getting the work done. Such initiatives are only taken at the behest of superiors or under the influence of political bosses or those in position of power and authority like the Respondent. There was no special or personal interest or benefit to Kanwar Pal or Choudhary or the Mali in getting this work done on their own. Nahar Singh also stated that there was no special or personal interest or benefit to Kanwar Pal, Choudhary or storekeeper to get involved in getting this work done on their own.

50. The high preponderance of probability rather the only feasible option in the circumstances appears to be that this work was carried out on the asking or at the behest of the Councillor/Respondent. This gets support even as per the information gathered by Nahar Singh from the staff. The statement of Kanwar Pal that instructions were given for execution of the work by the Respondent/Councillor appears to be correct though in order to shift blame from himself, he has wrongly claimed that instructions were given to him through Nahar Singh and it was Nahar Singh who executed the work. Further the post-event conduct of the Respondent is also in sync with the involvement of the Councillor. In this regard, it is significant that deposition of CW-13 and CW-14 have gone unrebutted without cross-examination by the Respondent. These demonstrate the initiative taken by the Respondent in calling the Delhi Jal Board for getting the burst water line repaired and in turn the Delhi Jal Board's maintenance employees looking upon the Councillor to find and locate the missing piece of pipe, thereby revealing the extent of in-depth involvement of the Councillor in the matter.

51. Leaving the above apart, the Respondent himself admitted receiving complaints of garbage etc. in the plot of land adjacent to the Mosque. Further the bursting of the water pipe line, resultant inundation and his efforts in giving instructions to DJB for getting the

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repair carried out, have come in evidence. Thus knowing of the digging of the pits and water being filled therein, it would come within the duty of a Councillor, who on his own showing is engaged in bringing cleanliness in his constituency and making available civic amenities to his constituency, to enquire and satisfy himself that there are no uncovered water filled pits or uncovered manhole which could be a safety hazard for his constituency, even though the primary responsibility for the same rests with the municipal staff against whom disciplinary action has been recommended in Departmental Enquiry.

52. Once the Respondent/Councillor had come to know of the bursting of the pipeline and inundation of water in a pit 8 feet deep, 10 feet wide and 14 feet in length, it was expected that he would issue necessary instructions to ensure that same was barricaded to ensure public safety. The first time elected Councillor's enthusiasm in maintaining cleanliness in slum area of the constituency and for that matter having the park cleaned up and levelled may be a laudatory measure. However, he was remiss in not ensuring safety precautions and measures being taken by either having the pits immediately refilled with malba/earth and covered, or once the water line had burst and inundation taken place, to have the same barricaded. The findings in this enquiry will not affect the enquiry proceedings and disciplinary action which the Municipal Corporation may take against its employees. The purpose of this enquiry is only to look into the role of the Public Functionary i.e. Councillor.

53. Having regard to all the facts and circumstances, analysis and appreciation of evidence as noted above, this appears to be a fit case to recommend to His Excellency, the Lt. Governor to issue an advisory to the Respondent to be careful in the discharge of his functions and to ensure that safety precautions are taken as necessary.

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54. It is also an appropriate case to recommend U/s 16 of the Delhi Lokayukta and Upalokayukta Act, 1995, to His Excellency the Lt. Governor the introduction of "Constituency Visit Instruction Book" to be used by the Councillors. The redressal of public grievances by Councillors in their respective Constituencies is a necessity and part of their public duty. With a view to ensure that proper records are kept of oral instructions as given during the rounds of a Councillor, the "Constituency Visit Instruction Book" can be introduced, wherein the instructions as given by the Councillor are noted, initialled by the Councillor and then passed on to the concerned officers with copies to be retained. This would ensure proper financial sanction and procedure to be followed and above all ensure timely follow up of execution and all safety precautions being taken.

Recommended accordingly.


(Justice Manmohan Sarin)
Lokayukta

Dated: 26th May, 2012